

?????? C-450/09

Ulrich Schröder

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Finanzamt Hameln

[?????? ??? Niedersächsisches Finanzgericht
??? ??? ?????? ?????????????? ??????????]

«????????? ?????????? ??? ?????????? – ?????? ??? – ?????????? ??? ?????????? ???
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????? ??? ?????? ?????? – ?????????? ??? ?????????? ?? ?????? ? ?????????? ???
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1. ?????????? ?????? – ?????? – ?????? ??? ?????????? ??? ?????????? ???
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(????? 267 ??? ?????? ??????????, ??? 23)

2. ?????? ?????? ?????? – ?????? – ?????? ?????? – ?????? – ?????? – ??????
????????? – ?????? ??? ?????? ??????

(????? 63 ????)

1. ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????
????????? ??? ??? ??????????, ??? ?????? ?????? ??? ?????????? ?? ?????????? ??? ?????? 267
????, ??? ?????? ?? ?????????? ??? ?? ?????? ?????? ??????????, ??? ?????? ?????? ??? ?????? ???
??? ??????????, ?? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ??????
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????
???. ??????????, ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
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????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
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(?. ??? 19)

2. ?? ??? 63 ??? ?????? ?????????? ?????????? ?????? ?????? ?????? ?????? ???
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??? ??? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?????? ?????? ??????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
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??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??, ???

????????????? ??? ?????? ??????????? ?? ???????????, ?????????? ??? ?????? ??????
?????????? ?? ??? ??????????? ??? ??????? ?????, ????? ? ?????????????? ??????????
??? ??? ????? ????, ?? ??????? ?????? ??????? ?? ????? ??? ?????????????? ??? ???
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??? ??? ??????? ????, ?????? ??????????? ??????? ??? ?????? ??? ??????????
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???????, ??? ??? ?????? ??????? ??????? ?????? ?????? ?????????? ?? ??? 63 ???,
?????? ??? ?????? ?? ?????????????? ??? ??? ???.

(???. ??????? 46-47, 49 ??? ??????.)

?????? ??? ?????????? (?????? ????)

??? 31?? ?????? 2011 (*)

«????????? ?????????? ??? ??????? – ?????? ??? – ?????????? ??? ?????????? ???
????????? ?????? – ?????? ??? ??????? ??? ?????????????? ?? ?????? ??? ??????
????? ??? ?????? ?????? – ?????????? ??? ?????????? ?? ?????? ? ?????????? ???
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???? ?????? C450/09,

? ? ?????????? ??? ?????? ?????????? ?????????? ?????? ??? ?????? 234 ??,
?? ??????? ?? Niedersächsisches Finanzgericht (???????) ?? ??????? ?? 14?? ????????
2009, ? ?????? ??????? ?? ?????????? ??? 19 ?????????? 2009, ??? ?????? ??? ???

Ulrich Schröder

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Finanzamt Hameln,

? ? ?????????? (?????? ????),

????????? ??? ??? J. N. Cunha Rodrigues, ?????? ???????, A. Arabadjiev, U. Lõhmus
(??????), A. Ó Caoimh ?? P. Lindh, ???????,

?????? ??????????: Y. Bot

?????????: B. Fülöp, ??????? ??????????,

?????? ??? ?????? ??? ?????? ?????????? ??? ??????? ??? ??' ?????????? ?????????? ???
10?? ??????? 2010,

????????? ?????? ??? ?????????? ??? ???????:

- ? U. Schröder, ??????????????? ??? ??? R. Geck, Rechtsanwalt,
- ? Finanzamt Hameln, ??????????????? ??? ??? P. Klose,
- ? ?????????? ??????????, ??????????????? ??? ??? C. Blaschke,
- ? ?????????? ??????????, ??????????????? ??? ??? G. de Bergues ??? J.?S. Pilczer,
- ? ?????????? ??????????, ??????????????? ??? ??? R. Lyal ??? W. Mölls,

????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 9?? ??????? 2010,

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1 ? ??????? ?????????? ?????????????? ?????????? ?????? ??? ?????? ??? ?????? 18 ???
??? 63 ???.

2 ? ??????? ?????????? ??? ?????? ?????????? ?????? ??? U. Schröder ??? ???
Finanzamt Hameln, ? ?????? ?????? ?????? ?????????? ??? ?????????? ?? ?????????? ??? U.
Schröder ?? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?? ?????????? ???
??? ??? ?????????? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????
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3 ?? ??? 1, ?????????? 1, ??? ?????? 88/361/???, ??? ??????????, ??? 24?? ??????
1988, ??? ?? ??? ?? ??????? ??? ?????? 67 ??? ?????? [????? ?????????? ?? ??
????? ??? ??????????] (?? L 178, ?. 5), ??????:

«?? ??? ?????? ?????? ?????????? ??? ?????????????? ??? ?????????? ?????????? ???
????????????? ?????? ?????????? ??? ?????? ???, ?? ??? ?????????? ??? ??????
?????????. ??? ??? ?????????? ??? ?????? ??? ?????????? ??? ??????, ?? ?????? ??? ??????
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ?.»

4 ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ? ??? ?????????? 88/361
?????????????, ??? ?????????? ??, ?? ?????????? ?????????? ?????????? ??????????, ???
????? ?????????????? ?? ?????? ??? ?? ??????????.

? ???????

5 ?? ?????? 1 ??? ?????? ?????? ?????? ?????????????? (Einkommensteuergesetz), ?? ???.
????? ??? ?????? ??? ?????????????? ?????????????? ??? ?????????? ??? ?????? ?????? (BGBI.
2002 I, ?, 4210, ???: EStG), ?????? ??? ?? ?????? ??????? ??? ?????? ??? ?????? ??? ?????????? ? ??
????? ?????? ??? ?????? ??? ?????????? ?????????? ?????? ??? ?????? ?????? ??????????, ??? ??
????? ??? ?????? ??? ?????? ??? ?????????? ? ?? ?????? ?????? ??? ?????? ??? ?????? ??????????
?? ?????? ??? ?????? ???, ??? ?????????????? ?????????? ??? ?????????? ??? ?????? ??? ??????,
????? ??? ?????? ??? ?????? 49 ??? EStG. ??? ?????????? ??? ?????????????? ??? ?? ???.
????? 49 ?????????? ?? ?????????? ??? ?????????? ?????????? ?????????? ?????????? ???
?????????.

6 ?? ?????? 10 ??? EStG ??? ?? «?????? ?????. ? ?????????? 1 ??? ??????
????? ??? ?? ???:

«????????? ??????? ??????? ?? ??????? ??????, ?????? ??? ?????????? ??? ?????????? ?????? ???? ?????????? ?????? ???? ?????????? ??????:

[...]

7 ?? ????? 50 ??? EStG ?????????????? ??????? ?????????? ??? ?? ??????? ??? ??????
?????? ?????????? ??????????, ??? ?? ?????????? 1 ??? ?????? ?????;

«?? ?? ?????? ??????????? ???. ???. ?????? ???. ???. ?????????? ???. ???. ?????? (????? 4,
????????? 4 ???. 8) ? ???. ?????????? ???. (????? 9) ???. ???. ???. ???. ???. ???.
????????? ???. ???. ?????????? ???. ???. ???. ?????????? ???. ???. ?????????? ???. ???.
????????? ???. ???. ???. [...][?] ???. [...]. 10 [...]. ???. ?????????? [...]. [...]»

? ?????????? ??? ?????????? ?????? ??? ?? ?????????????????? ??????????

8 ? U. Schröder ?????? ??????? ?????? ??? ??????? ???????, ??? ??????? ??
???????.

9 ?? ??????????????? ?? 27?? ?? ?????? 1992, ?? ?????? ?? ?? ?? ???????????
?????? ?? ???????, ?????????????? ?? ??????????. ?? ?????????????????? ?? ?? 2??
?????????? 2002, ? ?????? ?? ?????????? ?? U. Schröder ??? ?? ??????? ??, ??
?????? ?? ?????? ?? ?????? ???????, ??? ?????? ?? ??????. ?? ??????????
?????????? ?? ?? ?? ?? ?? ?? ? ?????? ?????????????? ?? ?? ?????? ?? 1 000
???, ?? ?????? ?? ?????? ?? ??????????, ?? 1?? ?????????? 2002, ??? ? U. Schröder ???
?? ? ??????? ??.

10 ????? ?? ??? 2002, ? U. Schröder ?????????????? ?? ?????????? ?????????? 2 785
????? ?? ?? ??????? ?? ??????? ?? 1992 ?? 749,50 ??? ?? ?? ?? ??????? ?? ??????
????? ??????? ?? ?? ??????? ??.

11 ? Finanzamt Hameln ??????? ?? ??? U. Schröder ????? ??????? ????? ??
2002 ??? ?? ??? ????? ??????, ?????????? ?? ?????????????? ??? ???????? ????? 1 000
???? ?? ????? ?????? ?? ?????????? ??? ?? ?????????? ??? 2002

12 ? U. Schröder ?????? ??????? ??? ?? ??????? ??? ?? ?????????????? ???
?????? ??? ?????? ??? Niedersächsisches Finanzgericht. ?? ?? ??? ?????????? ???
??? ??????? ??? ?????????? ??? Bundesfinanzhof ??? ?????? ??? ? ?????? ??? U

Schröder, ?? ?????? ?????? ?????????? ??????????? ???, ?? ?? ??????, ?????????? ?????? ?????? ??????
????? ??? ?????????? ?????? ?? ?????? ??? ???? 10, ?????????? 1, ?????? 1a, ??? EStG.
??????????, ??? ?? Bundesfinanzhof, ? ?????????? ?????????? ?????? ?????? ?????? ?????
?????????, ??? ?????? ??? ?????? ?????????? ?????????? ? ?????? ?????? ?????? ?????? ?
????????, ??? ?????? ??? ?????? ?? ?????? ?????? ?????? ?? ?????? ?? ?????? ?????? ?????? ?????? ??
?? ????? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?? ??????????.

13 ??????, ??? ?? ?????? ???????????, ??????? ?? ?????, ??? ? U. Schröder, ?????
????????? ?????????? ???, ?? ?? ?????, ?????????? ?????? ??? ?????? ?????? ?????????? ???
????????? ??? ?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?? ?????????? ?????? ???,
????? ?? ????? 50, ?????????? 1, ??? EStG ?????????? ??? ?????? ??? ?????? 10 ???
EStG ?? ??? ?????.

14 ?? ?????? ?????????? ??? ?????????? ?? ??? ???? ? ???? ? ?????????? ???
????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?? ??? ?????? ??? ?????? ??? ?????? ???,
????????? ??? ?????? 63 ???.

15 ??? ?? ?????? ???, ?? Niedersächsisches Finanzgericht ?????????? ?? ??????????
?? ?????? ??? ?????????? ??? ?? ?????? ??? ?????????? ?? ?????? ??? ?????????? ??????????
?????:

«????? ?????? ??? [63 ???] ??? [18 ???] ?? ?????? ??? ?? ?????????? ?? ?????? ???
????? ?? ?????????? ??? ?? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?? ??????, ?? ??????????
?? ?????? ??? ?????????? ??? ?? ?????? ??? ?????? ???, ?? ?????????? ??? ?? ?? ??????????
????????? ???, ?? ?????? ??? ?????? ?? ??? ?????? ??? ?????????? ?? ?????????? ?? ?????? ??
????? ??? ?????????? ???;»

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16 ? ?????????? ?????????? ?????????? ??? ???? ?????? ?????????? ??????????????
????????? ???, ?????? ?? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???
????????? ???, ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ???, ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? U. Schröder, ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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17 ???????????, ???????, ??? ?? ?????????? ??? ?????? ?? ?????????? ?????? ???
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

????????????? (??., ?????? ????, ?????????? ??? 15?? ?????????? 1995, C?415/93, Bosman, ?????? 1995, ?. I?4921, ????? 61, ????? ??? ??? 26?? ?????????? 2010, C?97/09, Schmelz, ??? ??? ??? ????? ?????????? ??? ???????, ??? 29).

18 ???? ??????, ??????????, ?? ??????? ??? ?????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
?????? ??????? ??????? ?????????? ?????????????? ???????, ?????????????? ??? ?? ???? ??????
???? ?????? ?? ??????? ??? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ??????????
??????????, ??? ?? ?????????? ??? ?????? ?????? ??? ?? ?????? ??? ?????? ?????????????? ??? ??
?????????? ?? ?????????? ?????????? ??????? ?? ?? ?????? 23 ??? ?????????? ??? ??
?????????. ????. ????, ????? ???????, ?? ?????? ??????? ?? ?????? ?????????? ?? ?????????? ??
????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ?????????? ?? ?????????? ??? ??
????????? ?, ??????????, ?? ?????? ??? ?????????? ?????????? ??? ?????????? ??? ?? ??????
????????? ?? ?????????? ??? (??., ??????, ??????? ?? 10?? ?????? 2009, C?345/06,
Heinrich, ?????? 2009, ?. I?1659, ?????? 30 ?? 31, ?????? ??? ??? 8?? ?????????? 2009,
C?42/07, Liga Portuguesa de Futebol Profissional ??? Bwin International, ?????? 2009, ?.
I?7633, ??? 40).

20 ?? ???????????, ??? ?????????? ??? ??? ?????? 8 ??? 13 ??? ?????????? ???????????, ?
?????? ??? ?????????? ??? ??????? ?? ???????, ????, ??? ?????????? ??? ??????? ???
U. Schröder ??? ???????, ???? ??? ??? ?????? ??? ?????? ??? ?????????? ??? ??????? ???,
???, ??? ???????, ??? ?????????? ??? ??????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ?? ?? ??????? ??? ??????? ??? ?? ?????????? ??? ?????? ??? U. Schröder.
??????, ?? ??????? ?????????? ??????????? ??? ? ??????? ??? ?????????? ??? ??????? ???
?????? ?????????? ??? ?? ?? ?????????? ??????????? ??? ??????? ??? ?????????? ???
????? ??????? ??? ??????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?? ??
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22 ??????? ?? ??????????????, ? ?????? ??????? ?????????????? ?????????? ?????????
?????????.

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23 ?? ?? ??????? ???, ?? ?????? ??????????? ??????, ???' ??????, ?? ??????????????? ?? ??
????? 18 ???? ?? 63 ???? ??????????? ??????????? ?????? ?????? ??????? ???????, ?????? ???

?????? ? ??????? ??????? ??????? ?? ??????? ??? ??????? ??? ??????????? ?? ???
??? ??? ?????????? ??????? ?????????? ??? ??????? ??? ??????? ??? ????? ?? ??
????????? ??? ?????????????? ??? ??? ?????????? ???, ??? ? ??????? ?????????? ??? ???
????? ??????????.

24 ??????, ???????, ?? ?????????????? ??? ?????? ??? ??????? ??? ??????? ??? ???
????????? ?? ??????????.

25 ??? ????? ?? ??? 63 ???, ??????? ??? ?????? ???, ?????? ? ??????? ???
????????? ??? «?????? ??????» ??? ?????????? 1 ??? ?????? ???, ?
????????? ??? ?????? ??? ?????????? 88/361 ??? ?????? ???, ???, ?????????? ?
????? ??? ?????? ??? 69 ??? 70, ?????????? 1, ??? ?????? ??? (??
????? 67 ??? 73 ??? ?????? ??? ?????????????? ??? ?? ?????? 73 ? ??? 73 ? ???
????????? ?, ?? ?????? ?? ?????? ?????????? 56 ?? ??? 60 ??), ?????????? ???,
????? ?? ?????? ?????? ??? ?????????? ??? ??????????????, ? ?????????????? ??? ??????????????
?? ?? ??? ?????? ??? ?????? ?????????????? ??? ?????? ??? ?????? ??? ??? «???????
?????????» (??., ?????? ???, ?????????? ??? 27?? ?????????? 2009, C?318/07, Persche,
?????? 2009, ?. I?359, ????? 24 ??? ??? ?????????? ???, ??? 17?? ??????????
2009, C?182/08, Glaxo Wellcome, ?????? 2009, ?. I?8591, ??? 39, ??? 15?? ??????????
2009, C?35/08, Busley ??? Cibrian Fernandez, ?????? 2009, ?. I?9807, ??? 17, ??? ???
??? 10?? ?????????? 2011, C?25/10, Missionswerk Werner Heukelbach, ??? ??? ??? ???
????????? ??? ??????, ??? 15).

26 ??????, ?? ?????????? ??? ?????? ??? ?? ?????????? ??? ?? ??????, ?? ??????
????????? ??? ????? XI ??? ?????????? I ??? ?????? 88/361, ??? ??????????
«?????? ?????? ??????», ?????????? ?????????? ?????? ??? ?? ???
????? ??? ?????? 63 ???, ?????? ?? ?? ?????????? ??? ?????? ?????? ??????????????
????? ??? ?????? ?????? ?????? (??., ??????, ?????????????? ?????????? Persche,
????? 27, Busley ??? Cibrian Fernandez, ??? 18, ??? ??? Missionswerk Werner
Heukelbach, ??? 16).

27 ??????, ? ?????????? ?????? ?????? ??? ?????????? ??? ???????, ??? ??????? ?????? ?
????? ??? ?????? ???????, ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????
??? ?????? ??????? ??? ?????? 63 ???.

28 ??? ??? 18 ???, ?? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?? ??????????
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????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ? ?????? ???
??? ?????? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ? ?????????? (??.,
????? ???, ?????? ??? 11?? ?????? 2007, C?443/06, Hollmann, ?????? 2007, ?.
I?8491, ??? 28 ??? ??? ?????????? ???, ??? 21?? ?????? 2010, C?311/08,
SGI, ??? ??? ??? ?????? ?????????? ??? ??????, ??? 31, ??? ??? ??? ??
????????? ?????? Missionswerk Werner Heukelbach, ??? 18).

29 ??????, ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????, ?? ?????? 18 ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? (??.
????????? ?????? Hollmann, ??? 29, ??? ??? Missionswerk Werner
Heukelbach, ??? 19).

30 ??????, ?????????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ???
63, ?????? 1, ???, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??

? ?????????????? ?? ? ?????????? ?????????? ?? ???? ???? (??., ??????, ??????, ????)
22? ?????????? 2009, C?377/07, STEKO Industriemontage, ?????? 2009, ?. I?299, ??????
23 ??? 24 ??? ??? ?????????????? ??????????).

31 ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??????????, ?????? ?????? ??? ??? ???
??? ?????? ??? ? ? ?????? ?????? ??? ?????? ?????? ??????????, ?????? ?? ?????? 49 ???
EStG, ?? ??? ?????????????? ??? ???? ?????? ?????? ?????? ??? ?????? ?????????? ??? ??? ???
????????? ?????????? ?????????????? ??? ?????? ??? ?????? ??????????, ???' ?????????? ??? ???
????????????? ??? ?????? ?????? ?????????, ?? ??? ??? ?????????????? ??? ??????,
????????? ??? ?????? 50 ??? EStG, ?? ?????????? ??? ?? ?????????? ??? ?????? ?????? ??? ???
??? ?????????? ? U. Schröder ??? ?????? ???, ??? ?????? ?????? ?????? ??? ?????? ??????????
?? ?????? ?????? ??? ?????? ??? ?????? 10, ?????????? 1, ?????? 1a, ??? EStG.

32 ? ?????????? ?????????? ?????????? ?????????? ??? ?????????? ?????????? ?????????? ???
????????? ?? ?????? ??? ?????? ?? ???? ?????????? ? ?? ?????????? ??? ?????????? ???
????????? ??? ?????? (??., ???' ??????, ?????? ??? 8?? ?????????? 2005, C?512/03,
Blanckaert, ?????? 2005, ?. I?7685, ??? 39). ??????????, ??????, ?? ?????????? ???
????????? ?????????? ??? ?? ?? ?????? ?? ?????? ??? ?????? ?????? ?????????? ?? ??????????
????????? ??? ?????? ?????? ?????? ?????? ??????, ??? ??? ?????????????? ??????????
??? ?????????? (??., ???' ??????, ?????????????? ?????? Missionswerk Werner
Heukelbach, ??? 25).

33 ??????, ??? ?????? ?????????? ?????? ?????????? ??? ?????????? ??? ?????????? ??????????
??? ?????? ???, ???' ????, ?????????? ??? ?? ??? 63 ???.

34 ??????, ??? ??? 65, ?????????? 1, ??????? ??, ???, ?? ????? 63 ??? ??
????? ?? ?????? ??? ?????? ??? ?????? ?? ??????????, ??? ?????????? ??? ??????????
????? ?? ?????????????? ??? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ??
????????? ???.

35 ??????, ? ??? ??? 65, ?????????? 1, ??????? ??, ??? ?????????? ???
????????? ??? ?????? ?? ?????????????? ??? ??? ?????????? ?????????? ? ???
????????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? 3 ??? ???
?????. ?????????? ???, ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ? ?????? ???
????? ???, ? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ???
??? ?????? ??? ?????? ?????? ???????, ?? ?????? ?????? ??? ?????? ??? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ? ?????????? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ??????, ? ??????????
????????? ??? ?? ?????? ???????????, ??? ?????? ?? ?????????? ?? ??? ??? ??? ???
????????? ??? ?? ?????? ?????? ??? ?????? ?????? ?????????? (?. ??????????????
???????? Persche, ??? 41, ??? ?????? ??? 22? ?????? 2010, C?510/08, Mattner, ??? ??
??? ??? ?????? ?????????? ??? ???????, ??? 34).

36 ??????, ??????, ?? ?????? ??, ??? ??? ?????????? ??? ?????????? ??? ?????????? ???
?????, ? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????.

37 ??????, ??????, ?????? ?????????? ???, ??? ?????????? ??? ?????? ?????????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???

???, ?? ?????????????? ?????????????? ??? ?????????? ?????????????? ?, ?????? ??????????
??? ?? ?????? ??? ?????????????? ??? ??? ?? ?????????? ??? ?????????????? ???
??????????, ?????? ?? ?????????? ?????????????? ??? ??? ?????? ??? ?? ?????? ???
?????????? ??? ?????????? ??? ?????????????? ??? ??????????, ? ?????? ?????????? ??? ?????? ???
????? ??? ?????????? ?????????? ??? (????????? ??? 14?? ?????????? 1995, C-279/93,
Schumacker, ?????? 1995, ?. I-225, ?????? 31 ??? 32, ??? 12?? ?????? 2003, C?234/01,
Gerritse, ?????? 2003, ?. I?5933, ????? 43, ????? ??? ??? 6?? ?????? 2009, C?562/07,
????????? ??? ?????????, ?????? 2009, ?. I?9553, ????? 46).

38 ??????, ?? ??????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ??????????
????????? ?????????? ?????????????? ?? ?????? ?????????? ?????? ?????? ??????????
????????? ??? ??????, ??? ?????? ??????, ?????????? ??????, ?????? ??? ??????????????
????????? ??? ?????????? ?????? ??? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ???
????????? ??????????, ??? ?????? ??? ?????? ?????? ?????????? ?????? ??? ??? ??????????
????????? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????????
????????? ?????? (????????????? ?????? Schumacker, ????? 34, Gerritse, ????? 44, ???
????????? ??? ?????????, ????? 47).

39 ?? ??????????, ??? ?????????????? ??? ?? ?????????? ??? ?????????????? ?? U.
Schröder ?? 2002 ??? ?? ?????????? ??? ?????????? ??? ?? ?????????? ?????????? ???
????? ??? ?????????? ?????????? ??? ?? ?????? ???.

40 ??????, ?? ?????????? ??? ?????? ???, ??? ?????? ?? ?????????????? ?????? ???
????????? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ?? ??????????
????????? ??? ?????? ??? ??????, ?? ?????? ?????? ??? ?? ?????? ?????????? ?????? ???
????????? ?? ?????????? ??????????, ?????? ? ?????? ?????? ??? ??? ?????????? ???
????????? ??????????, ??? ?????? ??? ?????????? ???, ?? ?????? ?????? ?????????? ???
????????????? ??? ?????? ??? ?????????? ?????? ?? ?? ?????????????? ??? ??? ???
????????? ?? ?????????? ?????? ??? ?????? ???, ???, ??????????, ???
?? ?????????? ??? ?????? ?????????? ?????????, ?????? ??? ?????? ?? ?????? ?????? ??
????? ??? ?????? ?????? ???, ?? ?? ??????, ?????? ?????? ?????? ?????? ?????????? ??????
?? ??? ??? ?????? (??., ??????, ?????????????? ?????? Gerritse, ?????? 27 ?? 28,
????????? ??? 6?? ?????? 2006, C?346/04, Conijn, ?????? 2006, ?. I?6137, ?????? 20, ???
3?? ?????? 2006, C?290/04, FKP Scorpio Konzertproduktionen, ?????? 2006, ?. I?9461,
????? 49, ??? 15?? ?????????? 2007, C?345/04, Centro Equestre da Lezíria Grande, ??????
2007, ?. I?1425, ????? 23, ?????? ??? ??? 11?? ?????????? 2008, C?11/07, Eckelkamp ?.,
????? 2008, ?. I?6845, ????? 50, ??? C?43/07, Arens-Sikken, ?????? 2008, ?. I?6887, ???
44).

41 ??????, ?????????? ??? ?????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??????
????????? ??? ????? 63 ???, ?????? ?????? ??? ?????? ??? ? ?????????? ??? ?????????? ?? U.
Schröder ??? ?????? ??? ?????????? ??? ?? ?????????????? ???, ? ?????? ?????????? ??
????? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??
????? ???.

42 ? ?????????? ?????????? ?????????? ??? ??? ?????????? ?? ?????????? ??????
????? ??????????. ??? ??? ?? ??? ??????????, ? ??????, ? ?????? ?????? ?????? ???
????? ??? ?????? ??? ?????? 10, ?????? 1, ?????? 1a, ??? EStG, ?????? ???
?? ?????????? ??? ?? ?????? ??? ?????????? ?????, ?? ??? ?? ?????? ??? ?????? ??????
?????????, ??? ?? ?????? 50, ?????????? 1, ??? EStG, ?? ?????????? ??? ?? ??????
????????? ??????, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
?? ??? ?????? ?????? ?????? ??????????. ?????????? ???, ? ?????? ??? ?????? ???

????????? ?????? ? ?????? ?????????? ??? ??????????? ?????? ??? ?????????? ??????????, ???
???? ?????????????? ??????????????????, ?? ?? ??? ??? ?????????? ??? ?? ??? ??? ???
??? ?????????????? ??????, ??? ?? ??? ??? ?????? ?????????? ?????????? ??? ??????????,
????? ??? ?? ?????? ?????????? ?????????? ??? ????????, ??? ?????? ?????? ?? ??????
????? ??? ?????????? ?????? ??? ??? ?? ??? ?????? ??????????. ??? ??? ??????, ?
????????? ?????????? ?????????? ??? ?? ??? ??? ?????? ??? ?????????? ??? ?????????? ?? ??????????
??? ??? ?????????? ?????? ??? ??? ?????????? ???, ?????????? ???, ?? ?????????? ??? ?? ???
????? ??? ?????????? ?????.

43 ?? ?????????????? ????. ??? ??????? ?? ?????? ??????. ?????? ??? ?? ???? ???????????
????? ?????? ??? ?????????? ? U. Schröder ?????????? ??? ?? ?????????? ?????????? ???
????????? ??? ?? ?????? ?????????? ?????????? ??? ?? ??????????, ? ?????? ??????????, ???? ???
????? ??? ?????????? ??? ?????????? ??? ?? ?????????, ???? ??? ??????????, ??????????
??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ?????? ??? ??? ?????? ???
????????????? ???????????, ???? ??? ?? ?????? ??? ? ?????? ??? ?????? ??? ?????? ??????????? ??
?? ??????????? ??? ??? ?????? ?????????? ?? ?????????? ??? (?).., ???????,
????????????? ?????? Centro Equestre da Lezíria Grande, ????? 25)

44 ??????????????, ?? ?????????? ????? ?????? ??? ?????????????? ?????? ?? ??
????????????? ??? ?? ?????? ?? ????? ?????????? ??? ?????? ??? ?????, ???????,
????????? ??? ?? ?????? ??? (??., ???????, ?????????????????? ?????????? Gerritse,
??????? 9 ??? 27, ?????? ??? Centro Equestre da Lezíria Grande, ?????? 25). ??????, ???
????? ??? ??????? ?????? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ??
????? ?????????? ??????????, ?????? ??? ?????????? ?????????? ?????????? ??????????, ??????
????????? ??????? ?????? ?????? ?????? ?????? ?????? ?????? ?????????????????
????????? ?????? ??? ?????? ?????? ?????? ?????? (?)?. ?????????????? ?????? Conijn,
????? 22).

45 ???????, ??? ?? ??????? ?????????? ??? ?????????????? ?????????? ??? ?? ?????????????????? ??? U.
Schröder ??????? ???????????, ??????????? ?? ??????, ?? ???????, ?? ??????????? ???????????, ?? ???
?? ??????? ?????????????????? ??? ?? ??????????? ??????????? ??????????? ??????????? ??????????? ???
?????? ????. ???????, ? ??????? ??????????? ??? ??????? ??????????? ??????????? ?? ??????? ???
?????????? ??? ??????? ???????, ? ?? ??????? ??? ?? ??? ??????????? ??????????? ??? ???????????
?????????? ? U. Schröder ?? ??????? ?? ??????? ???, ???????, ??? ??
?????????????? ?? ??????? ??? ??????? ??? ????? ???????????, ?? ??? ?? ??? ????? ??????
?????????? ??????? ??? ???????.

46 ???????, ???????, ?? ?????? ?????? ???, ??????? ? ??????????? ??? U. Schröder ??
?????????? ??????? ?? ?????? ??? ?????? ??? ?????????? ??? ?? ?????????? ?? ?????? ???????
????????????? ?? ??????????, ?????? ??? ?????????? ??? ?????? ?????????? ?? ??????? ??
??????????, ?????????? ??? ?????? ?????? ?????? ??????????? ?? ??? ?????????????? ??? ???????
????, ??? ? U. Schröder ???????, ??? ??? ?????? ???, ?? ?????????? ??????? ??
????? ??? ?????????????? ??? ?????? ?????? ?????????? ???????.

48 ???????, ? ?????????? ?????????? ??? ?????????????? ??? ?? ?????? ?????????? ???
??????? ??????? ?????????? ??? ?????? ??????? ????????????,

???? 63 ??? ?????????? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?
????????? ?????? ?????? ?? ?????? ??? ?????? ??? ?????? ?????? ?? ?????? ??? ???
????????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?? ?????? ???
????????? ??? ??? ?????? ??? ?????? ?????, ??? ? ?????? ?????? ?????? ??? ???
????? ????????, ?????? ? ?????? ??? ?????? ??? ?? ?????? ??? ?? ?????? ???
?????.

??? ??? ?????????? ??????

50 ?????????? ??? ? ?????? ?????????? ??? ?? ??? ?????? ?????? ?????? ??? ?????? ???
??? ?????????? ?????????????? ??? ?????? ?????? ??? ?????? ?????? ???????????, ?' ???
????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ?????? ?????????????? ???
????????? ?????????????? ??? ??????????, ??? ??? ?? ??? ?????? ??? ?? ?????????? ???
?????????.

??? ??? ?????? ??????, ?? ?????????? (??????? ????) ??????????:

?? ??? 63 ??? ?????????? ?????????? ?????? ?????? ?????? ?????? ?????? ???
????? ? ?????? ?????? ?????? ?? ?????? ??? ?????? ?????? ??? ?????????? ??
????? ??? ??? ?????????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
??? ?? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ???, ??? ?
????????? ?????????? ??? ?????? ?????? ??????????, ?????? ? ?????? ?????? ???
????????? ??? ?? ?????????? ??? ?????? ?????? ???.

(?????????)

* ?????? ??????????: ? ??????????.