

?????? C-240/10

Cathy Schulz-Delzers

???

Pascal Schulz

????

Finanzamt Stuttgart III

(?????? ??? Finanzgericht Baden-Württemberg

??? ??? ?????? ?????????????? ??????????)

«????????? ?????????? ??? ??????? – ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
?????? – ??? ?????????? – ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ??????????
????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ?????????? ?????????? ???'
????????? ??? ?????????? ?????????? – ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????????? ?????????? – ?? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????????? ?????????? ?????????? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????????? – ??????????»

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????????? ?????????? ??? ??????? – ?????????? – ??? ?????????? – ??? ??????????

(????? 39 ??)

??. ?????? 39 ?? ??? ?????? ??? ?????? ??? ?????? ?????????? ?? ?????? ?????????? ??? ?????? ??????????
???????????, ??????? ??? ?????? ?????????? ?? ?????? ?????????? ?? ?????? ?????????? ??? ??????? ??????????
????????? ?????? ??? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????????????? ??? ??????
????????????? ?????????? ??? ?????? ?????? ?????? ?????????? ?????? ??? ?????? ??????????
??? ?????????? ??? ?????? ?????? ?????? ?????? ?????????? ?????? ??? ?????? ??????????
????????????? ??? ?????????????? ? ???/??? ?????? ???/???, ??? ?????? ??????????
????????????? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????, ? ?????? ??????????
??? ?????? ??? ?????? ?????? ??????, ?????????? ?????? ??? ??? ?????? ??????????
????????????? ?????? ??????????.

(???. ?????? 43 ??? ??????).

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

??? 15?? ??????????? 2011 (*)

«????????? ?????????? ??? ??????? – ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
?????? – ??? ?????????? – ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ??????????
????????? ??? ?????????? ??? ??????? ?????? ?????????? ?????????? ?????????? ??? ?????????? ???’
????????? ??? ?????????? ?????????? ?????????? – ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????????? ?????????? ?????????? ?????????? – ??? ?????????? ??? ?????????? ???
????????? ??? ?????????? ?????????? ?????????? ?????????? ?????????? ??? ?????????? ???
????????? ??? ?????????? ?????????? – ?????????? ??? ?????????? ??? ?????????? ???»

???? ??????? C?240/10,

? ? ?????????? ??? ?????? ??????? ?????????? ?????????? ?????????? ??? ?????? 267 ????,
??? ??????? ?? Finanzgericht Baden-Württemberg (????????) ?? ??????? ??? 21??
????????? 2009, ? ??? ?????? ??????? ??? ?????????? ??? 14 ????? 2010, ??? ??????? ???
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Cathy Schulz-Delzers,

Pascal Schulz

????

Finanzamt Stuttgart III,

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

????????? ??? ??? J.-C. Bonichot, ??????? ???????, K. Schiemann (????????), C. Toader,
A. Prechal ??? E. Jaraši?nas, ???????,

????????? ??????????: P. Mengozzi

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

????????? ??? ??? ??????? ?????????? ??? ??????? ??? ??' ?????????? ??? ?????????? ???
24?? ??????? 2011,

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

- ?? C. Schulz-Delzers ??? P. Schulz, ?????????????? ??? ??? S. Hoffmann, ????????,
- ? ?????????? ???????, ?????????????? ??? ??? T. Henze ??? C. Blaschke,
- ? ?????????? ???????, ?????????????? ??? ??? M. Muñoz Pérez,
- ? ?????????? ???????, ?????????????? ??? ??? R. Lyal ??? W. Mölls,

???? ?????? ??? ?????? ?????????? ??? ??????? ??? ?????????? ??? ?????? ??? ?????? ???
??? 26?? ????? 2011,

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

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1 ? ?????? ?????????? ?????????????? ?????????? ?????? ??? ???????? ??? ?????? 12 ??,
18 ?? ??? 39 ??.

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ??? C. Schulz-Delzers ??? P.
Schulz (??? ????: ?? ?????? Schulz) ??? ??? Finanzamt Stuttgart III (??? ????: Finanzamt),
????????? ?? ??? ?????? ?????????? ??? ??? ??? ?????????? ??? ?????? ?? Finanzamt
??? ?? ??? 2005 ??? 2006.

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

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

3 ??? ?? ??? 2005 ??? 2006, ? ?????????? ??? ?????????? ??? ?????????? ??? ?????????
??? ??? ??? ??? ?????????? ??? (Einkommensteuergesetz, ??? ????: EStG), ???
????? ??? ?? ?????????????? ???.

4 ? ?????? ??? ?????? 1 ??? EStG, ????? ?????????? ?????????? ????????, ????, ??
?????? ??????? ?? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??????.

5 ? ?????????? ??? ????? ?????????? ?????????? ?????????? ??? ????? ?????????? ??????????
??? ?????? ??? ?????? ?? ?????????? ?????????? ?????????? ??? ?????????? ??? ??????????
?????????. ? ?????? ??? ?????? ?????????? ??? ?????????? ?? ?????? ??? ?????? ??? ??????????
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?????????.

6 ? ?????? ??? ?????????? ?????????????? ?????????????? ??? ??? ??? ?????????? ???
?????, ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ??????, ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ???' ?????? ??? ?????????? ??? ?????????? ???
????????? ??? ??? ??? ?????????? ???, ?? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ??? ?????????? ??? ?????? ??? ?????????? ??? «?? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??? ?????»
(«Progressionsvorbehalt»).

7 ? ?????? ??? ?????????????? ??? ?????? ?????????????? ?????????? ???
????????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ???
????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???, ???, ???
????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???, ???, ???
????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????? ??? ?????? ??? ?????? ??? ?????????? ???, ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

8 ? ???????, ??????? ? ?????????? ?????????? ?????????? ?????? ?????????????? ???
????????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????, ?????? ???
??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

9 ???????????? ?? ???????? ? ?????????????? ?? ?????????????? ??? ?????????? ??? ??????????????
???? ??? ??? ?????? ?????????? ?? ?????????????? ?????? ??? ?????????????? ??? ?????????? ??????????
???? ??? ?????? ?????????? ?????????? ??? ?????? ?????????????? ??? ?????????? ?????? ?????????? ???
???? ?????? ?????????? ?????????? ??? ?????? ?????? ?????????????? ??? ?????????? ?????? ??????????
???? ?????? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ??????????
??? ?????????? «splitting». ??? ?????? ???, ?? ?????????????????? ??? ?????? ??????????
????????? ?????????? ??? ?????? ?????????? ??? ?????? ??????. ? ?????? ?????????? ??? ??????
??? ?????? ?????????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??????????
??? ?????? ??? ?????? ?????????? ?????? ???.

? ??????????, ??? ??????, ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ????

10 ? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????????? ??? ??????????
??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ??????
????????? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ???
????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ???
??? ?????? ??? 21? ?????? 1959 (*Bundesgesetzblatt* 1961 II, ?, 397), ??? ?????????????? ??
??? ?????? ??? ?????? ??? ?????? ??? ?????? 20 ?????????? 2001 (*Bundesgesetzblatt*
2002 II, ?, 2370, ??? ????: ?????????? ?????? ?????????? ??????), ?????????? ??? ?????? ???
14, ?????????? 1, ?????? ??????, ??? «????? ??? ?????????? ??? ?????? ?????? ??????», ???
??? ?????? ?? ??????, ?????? ??? ?????? ?????????? ??? ??????, ?? ?????? ?????????? ???
????? ?????? ?????? ?????? ?????? ?????????? ?????? ?? ?????? ?????? ?????? ???
????????? ?? ??? ?????? ??? ?????????? ?????????? ?????????? ?????????? ??? ?????? ??
????????? ?????? ??? ?????? ??? ?????? ?????? ???.

11 ?? ????? 20, ?????????? 1, ??? ?????????????? ?????????? ?????????? ??? ??????????
???, ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??????????
?? ?????? ?????? ??? ?????? ?????????? ??? ?????? ?? ?????????? ??? ?????? ??? ??????
????????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ?????? ??? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ?? ?????? ??? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???,
????? ??? ?????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ?????? ???.

12 ?? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

13 ?????? ??? ?????? 32b, ?????????? 1, ?????? 3, ??? EstG:

«?? ?????????? ??? ? ?????????????? ???, ? ?????? ?????????? ??? ?????????? ??? ?????? ???
??? ?????????? ??? ?????? ???' ??? ?? ?????? ??? [...]

[...]

3. ?????????????? ?????????? ?? ????, ?????? ??????? ??? ?? ?????? ?????? ???
?????? ?????????? ? ?????????? ?????? ?????? ?????????? ???????, ?????????????? ??? ??
????????? ?????????? ?? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??????????
??? ?????? ?????????? [...], ?????? ??? ?? ?????????? ?????? ??? ?????? 32?,
????????? 1, ?????????? ?? ?????????? ?????? ?????????? ?????????? ??????????»

14 ?? ??? 32b, ?????????? 2, ?????? 2, ??? EStG ??????:

«? ?????????? ??? 1 ?????? ?????????? ?????????? ?????????? ?????????? ??? ??
??? ?? ?????????? ??? ?????? ?????????? ??? ?????????? ?????? ??? ?????? 32a,
????????? 1, ?????????? ?????? ??? [...]»

[...]

2. ??? ?????? ??? 1, ?????? 2 ?? 3, ??? ?????????? ???????, ???
?? ?????????? ?????? ?????? ?????????? ?????? ??? ?? ??? ??????»

? ??????????, ??? ??????, ??? ?????????? ?????????? ??? ?????????? ???
????????? ??? ?????? ?????? ?????????? ?????????? ??????

15 ??? ?????? ?? ?????????? ??? ?? ?????????? ?????????? ?????????????? ??? ??
????? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ??????????, ?? ?????????? ???
????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ??????????????, ??? ??????????,
??? ??? ??? ?????????? ??? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????????? ???
??? ?? ??? ??????.

16 ?? ??? 3, ?????? 64, ??? EStG ??????:

«????????????? ??? ?? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ???
????? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ???
????? ??? ?????? ?????? ??????, ??? ?? ?????????? ??? ?????? ??? ??????????, ?????? ??
????????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?? ??? 54 ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
("Bundesbesoldungsgesetz") ??? ?????? ??? ?????? ??? ??????»

? ?????? ??? ?????? ??? ?????? ??? ?? ?????????? ??? ??????»

17 ?? ??? Schulz ?????? ??? ?????? ??? ?? ?????????? ??? ?????? ??? ?????????? ????.
?? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ?????????? ???, ??? ?? ???
??? ?????? 1 ??? EStG, ?????????? ?? ?????? ??? ?????? ?????????? ????.
????????? ??? ??????.

18 ? P. Schulz, ?????? ??????, ?????? ?? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ?????? ??? 2005 ??? ?? 2006.

20 ??? ??? ?????????????? ??? ?????????? ????:

– ??? «????????????? ??????????» ??? ?????????? ??? ?? ?????????????? ????? ??
????????? ??? ?????????? ?????????? ??? ?????????? ??????? ?????? ??? ?????? 4B,
????????? e, ??? ?????????? ????. 2002-22, ??? ?????? ?? ?????????? ??? ?????????? ??
134,20 ????. ??? ?? 136,41 ????. ??? ?? ??? ?? ??? ?? ??? ??????????.

22 ????? ??????? ??????? ?????? ??? ?? ?????????????? ??? ??? 2005 ??? 2006, ??
Finanzamt ????? ??? ?? ?????? ??? ??????? ??? ?? ?????? ???????????, ??? ?? ??????????????,
????? ??? ?? ?????? ??????? ??? C. Schulz-Delzers, ??????? ??????????? ???' ???????
????? ??? ?????????????? ??? 920 ??? ?? ?????? ??? ??? ?? ???, ??? ?????? ??? ?????? 32b, ??????????? 1, ?????? 3,
??? 2, ?????? 2, ??? EStG. ? ?????????????? ??? ?????? ??? ?? ??? ?????? ?????????? ??? ??
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? Schulz ??? 654 ??? ??? 664 ???
????? ??? ??? 2005 ??? 2006 ???????????.

23 ?? ?????? Schulz ??????? ?????????? ??? ?? ??????? ?????? ?????? ??????? ??, ??
?????? ?????????????? ?? ??????? ?? Finanzamt ?? ??????? ?? 30?? ??????? 2009.

24 ?? ??????? ?? ?? ?????? ?? ?????? ?? ?????? ?? ?? ??????? ?? ??????????? ?? ?? 18 ?? 2009, ??
?????? Schulz ??????????? ?? ?? ??????????? ?? ?? ??????????? ?? ?? ??????????? ?? ?? ??????? ?? ?? ???????????
?? ?? ?? ??????????? ?? ?? ??????????? ?? ?? ??????????? ?? ?? ??????????? ?? ?? ??????????? ?? ?? ???????????
?????????? ??' ?? ??????? ?? ?? ??????????? ?? ?? ??????????? ?? ?? ??????????? ?? ?? ??????? ?? ?? ???????
????? ?? ?? ??????? ?? ?? ?????? ? C. Schulz-Delzers ?? ?? ??????? ?? ?? ??????????? ?? ?? ???????
?? ???. ?? ??????????? ?? ?? ?? ??????????? ?? ?? ??????????? ?? ?? ??????????? ?? ?? ??????? ?? ?? ??????? ??
?????? 39 ??, ?? ??????? ?? ?? ??????? ?? ?? ??????? ?? ?? ??????? ?? ?? ??????? ?? ?? ??????? ?? ??
?????????? ?? ?? ??? 3, ?? ??????? 64, ?? EStG ?? ?? ??????????? ?? ??.

25 ????? ?? ??????? ???????????, ?? ?????? 3, ?????? 64, ??? EStG ?????? ?? ???????????
????? ?????? ??????? ?????????? ?? ?????????????????? ?????????? ?????????? ??? ????????,

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

?????????? ?? ???? ?????? ?????????????? ????????????, ??? ???? ?????? ?????????????? ????

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

????????????? ?????? ??? ?????? ??? ?????????????? ?????????? ??? ??????.

26 ?????????????? ?????? ?????????????? ??? ?????? 39, ?????????? 1 ??? 3, ??, ??? ??

?????? ????????????, ?? ??? 3, ?????? 64, ??? EStG ?????? ?????? ????????????????

?????? ?????????? ??? ?????????????? ????, ??? ??????, ?? ???????????????? ?? ????????????

?????? ?????????? ?????????? ?????? ?????? ?????????? ??????, ?????????, ?????????? ??? ????

?????? ?????? ?????????????? ??? ?????????????? ??? ?????????????? ??? ???? 3, ?????? 64,

??? EStG.

27 ??? ??? ?????????? ????, ?? Finanzgericht Baden-Württemberg ?????????? ??

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

?????????:

«1) ?) ??????????? ?? ??? 3, ?????? 64, ??? [EStG] ?? ??? ?????? ?????????? ????

?????????? ?????? ??? ?????? [39 ??, ??? ?????? 45 ???];

?) ?????????? ?? ??? 3, ?????? 64, ??? [EStG] ?????????????? ????????????????

????????? ?????? ??? ?????????? ??? ???? ?????? ??? ?????? [12 ??, ??? ?????? 18 ???];

2) ?? ?????????? ?????????? ?????????? ??? ?????? 1: ?????????????? ?? ??? 3, ??????

64, ??? [EStG] ?? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? [18

??, ??? ?????? 21 ???];»

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

28 ????????????, ????????????, ???, ??? ?????? ?????? ? ?????? ?????????? ????

?????? 39 ??? 43 ??? ????????, ??? ?? ?????? ??? ?????? ??? ?????? ?? ???? ?????? ????????????

?? ?????? ?????????? ??? ?????? ???, ?????? ?? ?????? 39 ?? ?????????? ?? ???

????????? ??? ?????? ??? ?????? ??? ??????.

29 ????????????, ??? ?????? ???, ?? ?????? 12 ??, ?? ?????? ?????? ?? ?????? ????

?????????? ??? ?????????? ??? ?????? ?????? ???, ?????? ?? ?????? ?????? ?????????? ????

?? ?????????? ??? ?????? ??? ?? ?????? ??? ??????, ??? ??? ?????? ? ?????? ????

????????? ??? ?????? ??? ?????? ?????? ?????? ???????. ? ??? ?????? ??? ????????????

?? ?????????? ??? ?????? ?? ?????? ???, ??? ?????? ??? ?????? ?????? ??? ?????? ????

??????????, ??? ?? ?????? 39 ?? (??., ?????? ???, ?????????? ??? 10?? ????????????

2009, C-269/07, ??????? ??? ?????? ??????, ?????? 2009, ?. I?7811, ?????? 98 ??? 99 ???

???? ?????????? ??? ??????????).

30 ??? ?????? ???, ?? ?????? 18 ??, ?? ?????? ??????????, ???????, ?? ?????? ????

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

????, ?????? ?????? ??? ?????? ??? ?????? 39 ?? ?????? ?????? ??? ?????? ?????? ????

????????? (?? . ?????? ??? 1?? ?????? 2009, C?3/08, Leyman, ?????? 2009, ?.

I?9085, ?????? 20 ??? ?????? ?????????? ??? ??????).

31 ????????, ??????, ?????? ?????? ??? ? C. Schulz?Delzers ?????????? ?? ??????

?????????? ?? ?????????? ??? ?????? ?????? ???, ???????, ??? ?????????????? ??? ??????

????????? ?????? ??? ?????? ??? ?????? ??? ?????? 39 E?. ??????, ?? ??????????

????????? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? (??.,

????????, ?????????????? ?????? Leyman, ?????? 18 ??? 20 ??? ?????? ????????????)

?????????).

32 ??????????, ???????, ??? ?? ?????? ??? ?????????????? ??? ?????? 3, ?????? 64, ???
EStG ??? ? ???? 39 E? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
?? ?? ???? ??? 3, ?????? 64, ?????????? ??? ?????? ??? ?????? ?????? ??????
????????? ?????????? ??? ?????????? ??? ??????????, ??? ??? ?????????? ??? ??????????
??? ?????????? ?????????? ?????????? ??? ?????? ?????? ??? ?????????? ??? ??????????
?????. ????????, ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????? ??????, ?? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????
?? ?????? ?????? ?????.

33 ??? ??? ?????????? ??????, ?? ?????????????? ???????????, ?? ?????? ?????? ?? ??????????
???? ??????, ?????? ?? ??????? ?? ???????, ???????????, ?? ?????? ?? ?????? ?? ?????
39 ?? ??? ???? ?? ?????? ?? ??????????? ?? ???????, ???? ??? ???? ?? ?????? 3, ?????? 64, ???
?StG, ??????? ?? ?????? ?????????? ?? ???????, ?? ??????? ?????? ???, ?? ??????
?????????? ?? ?????? ??????? ??????? ?????? ?? ?????? ?? ?????????? ?? ??? ?????? ?????? ?????
???? ?????????????? ?? ?????? ?????????? ??????????? ?????? ??? ?????? ??????????, ???
?????????? ?? ??? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ??? ?????? ?????? ?????
?????????? ?? ?????? ??? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ??? ?????? ?????? ?????
?????????? ?? ?????? ??? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ??? ?????? ?????/??
????????? ???/??, ??? ?????? ?????????? ??????????? ?? ?????????? ?? ?????????? ??? ?????? ?????? ??? ?????
????? ??????? ??????, ? ?????? ?????????? ?? ??????? ??? ?????? ??? ?????? ?????????? ??????,
?????????? ?????? ??? ?? ?????????? ?? ?????????? ?? ?????????? ?????? ?????????? ??????.

34 ???????, ??? ????? ?????????? ?????????? ??? ?? ??? 39 ?? ??????????, ??????, ?? ??????? ?????????? ??? ???????, ??? ???????, ???' ???????, ??? ?????????? ?????????????????, ?????? ?? ????? ?????????????? ?????? ?????????? ? ?????, ???' ???????, ??? ?????????? ?????????? ?????????????????, ?????????? ??? ?????? ??? ?????? ??? ?????????????? (??????, ??? 14?? ??????????? 1995, C?279/93, Schumacker, ??????? 1995, ?. I?225, ??? 26) ???, ???????, ?? ??? ????? ???????, ?????? ??? ?? ?????????? ???????????, ? ?????? ?????????? ? ?????????????? ??????? ??????? ??????? ?? ?????????????? ?? ??????? ?????????? ???, ??? ???????, ??????????? ?? ??????? ??????? ?????????? ?????????? (??????, ??? 12?? ?????????? 2002, C?385/00, de Groot, ??????? 2002, ?. I?11819, ????? 78).

35 ????? ??????? ?? ?????? ??????, ??? ?????????????? ??? ? C. Schulz?Delzers, ? ?????
?????? ?? ??????? ?? ??????? ???????????, ??? ???????, ??? ?????? ???????,
?????????????? ?? ??????????? ??, ?? ???? ?? ??????? ??????? ??? ??????? ??????? ?? ?????
????????? ????????. ???????, ??? ??? ??? ?? ???, ?? ?????? 3, ?????? 64, ??? EStG
??? ?????? ?? ??????????? ?? ?????????????? ??? ??????????? ??? ?????????? ??? ?????????? ??????
??? ??????? ??? ??????????? ?????????????? ????? ?????????????? ??? ??????????.

36 ?? ?????? ??????????? ?? ?????? ?? ?? ?????????? ? ?? ?????????? ?? ??????????????????
????? ?? ??????????????? ?? ??????????? ?? ?????? ?????????? ?? C. Schulz?Delzers ??
????????????? ?? ?????? ?? ?????? ?? ?? ?????????? ?? ???????????, ?? ?????? ?? ?????????????? ?? ?? ?
????????? ?? C. Schulz?Delzers ?????? ??????????? ?? ?????? ?? ?????????? ?? ?????????????? ?? ?? ?? ??
??????????????, ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????? 39 ?? ??? ?????????? ?? ??
????? ???.

37 ??????????????, ????, ??? ???? ?????????? ?????? ?????????????? ??? ?? ?????? ??
?????? ??? ?????????? ?? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ??
????????? ???' ??????, ??? ?????????? ??? ?????????? ?????? ?????????? 5 ??? 8 ??? ??????
?????????, ?? ??? ?????? ??? ?????????? ?????? ?????????? ??? ?????????? ??? ?????????? ? ???
????????????? ?????????? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ??? ??????

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38 ??? ?? ?????? ???, ???????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ???
????? 3, ?????? 64, ??? EStG, ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ???
????????? ? ??????????, ??? ?? ?????????? ?????? ??? ?????? ??? ?????? ???, ?? ??? ??????
????? ?? ?????? ??? ?????? ??? ??????, ??? ?????? ?? ?????? ??? ?????? ??? ?????? ???
????????? ???, ??????, ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ??? ??? ???.

39 ???????, ?? ??????? ??? ?????? ? C. Schulz-Delzers ??? ??????? ??????????
????? ??? ??????? ??? ??????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
??? ???????, ???????, ?? ?????????? ??? ?????? ??? ???????, ??? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???, ??? ?????? ???,
????????? ??? ?????? ??? ?????? ??? ?????????????? ??? ?????.

40 ?? ?????? ???, ??? ?? ?????? ??? ?????? ??? ?????? ??? ???????, ?????????? ??? ?? ???
????????? ??? ?? ??????? ??? ?????? ??? ?????? ??? ?????????? ???, ??? ??
????????? ??? ?? ?????? ??? ???????, ?? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??? ??
????? ?? ?????? ??? ???????, ??????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????????
????? ??' ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ??????????
????????? ??? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

41 ?? ?????? ??? ? ?????? ??? ?????? Schulz ?? ?????????? ??? ??????
????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ???, ?????????? ??? ?? ???
????????? ??? ?????? ??? ???????, ?????????? ??? ?? ?????????? ??? C. Schulz-Delzers
????????? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
????????? ?? ?? ?????????? ??? ?????? ??? ?????????? ???, ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? 39 ??, ??? ??? ??????
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

42 ???????????, ??????, ??? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
? ?????? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ??? ??????
????? ?? ???????, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? (??., ??' ???, ??????? ??? 15?? ?????? 2004, C?365/02, Lindfors,
????? 2004, ?. I?7183, ??? 34, ??? ?? 12?? ?????? 2005, C?403/03, Schempp, ??????
2005, ?. I?6421, ??? 45).

43 ??????, ??? ?????????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?? ??? 39 ??
????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 3, ?????? 64, ???
?StG, ?????? ??? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ???, ?? ??????
????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
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????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ???/???, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????? ???, ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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44 ?????????? ??? ? ??????? ?????????? ??? ?? ??? ????? ????? ?????????? ??? ?????? ?????
??? ?????????? ?????????????? ??? ??????? ?????????? ??? ?????? ?????????? ??????????????, ?' ????
????????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ????? ??????????????
???? ??????? ?????????????? ??? ?????????? , ??? ??? ?? ??? ?????????? , ??? ??????????.

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

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

* ??????? ?????????????; ? ??????????.