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????? 4, ?????????? 3, ??? — ?????????? ??? ?????????? ? ?????? — ?????? ???  
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??? ?????? ?????? ?? Corte suprema di cassazione (??????) ?? ?????? ??? 27?? ?????? 2010,  
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Ministero dell'Economia e delle Finanze,

Agenzia delle Entrate

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3M Italia SpA,

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

????????? ??? ??? J.-C. Bonichot, ?????? ???????, A. Prechal, L. Bay Larsen, C. Toader  
??? E. Jaraši?nas (?????????), ????????,

????? ??????????: E. Sharpston

?????????: A. Impellizzeri, ??????? ????????????,

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22?? ?????????? 2011,

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? 3M Italia SpA, ?????????????? ??? ??? G. Iannotta, avvocato,

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? ?????? ????????, ?????????????? ??? ??? G. Palmieri, ?????????????? ??? ??? P.  
Gentili, avvocato dello Stato,

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? ????????, ?????????????? ??? ??? D. O'Hagan,

—  
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—  
?????????? ???????, ?????????????? ??? ??? E. Traversa ??? R. Lyal,  
?????? ??? ??????? ??? ?????, ??? ????? ?? ?????? ??????????, ?? ?????????? ???  
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Finanze (????????? ?????????? ??? ?????????? ??? ?????????? ???) ??? ??? Agenzia delle  
Entrate (????????? ?????????? ???) ?????? ??? ??? 3M Italia SpA (??? ????: 3M Italia)  
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3

?? ????? 3, ?????????? 2bis, ??? ?????????? ?????????? 40/2010 (GURI [????????? ???  
????????? ??? ??????] ????. ?????? 71, ??? 26?? ?????? 2010), ??? ?????????? ???  
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848, ??? 4?? ?????????? 1955, ??? ??? ??? ????? ?????????? ??? ?????????? ??? ???????  
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b)

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4

H ?????? 3M Company, ??? ?????? ??? ?????? ?????? ?????? (??),  
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??????, ??? ??? ?????? Shearson Lehman Hutton Special Financing, ? ??? ??????  
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????? Olivetti & C., ? ?????? ?????? ??? ??????, ??? ?? ?????????? ???  
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5

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3M Italia ??? Olivetti & C. ??? ?????? ??? ?? ?????????? ??? ?? Shearson Lehman  
Hutton Special Financing, ?????? ?? ?????? ??? ?? ?????? . ??? ??????, ?? ?????? ???  
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1989, 12960747000 ITL ??? ?? 1990 ??? 9806820000 ITL ??? ?? 1991, ??? ?????? ???  
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6

? 3M Italia ?????? ??? ?????? ?????? ?????????? ?????? ??? Commissione  
tributaria provinciale di Caserta (????????? ??? ?????? ??? ?? ?????? ???), ? ???  
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della Campania (????????? ??? ?????? ??? ?? ?????? ??? ?? ?????? ???), ? ???  
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?? Ministero dell'Economia e delle Finanze ??? ? Agenzia delle Entrate ?????? ???  
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di cassazione ???????????.

8

?? Corte suprema di cassazione ?????????? ?? ? ?? ? ?? ? ?? ? ?????? ?????? ?? ?? ?  
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9

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?????????? ??? 21?? ??????????? 2006, C-255/02, Halifax ??. (?????? 2006, ?. I-1609), ???  
??? 21?? ??????????? 2008, C-425/06, Part Service (?????? 2008, ?. I-897), ??????? ??  
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11

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13

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14

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«1)

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(???, ???????????, ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????????  
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15

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?? ????? 4, ?????????? 3, ???, ?? ?????????? ??? ?????????????? ?? ?? ?????????? ???, ?  
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16

? 3M Italia ??? ? ?????? ?????????? ?????????? ??? ? ?????? ?????? ?????? ??????????????  
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17

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18

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19

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????????????? (??., ?????? ????, ?????????? ??? 15?? ?????????? 1995, C-415/93, Bosman,  
???????? 1995, ?. I-4921, ????? 61, ??? ??? 31?? ?????? 2011, C-450/09, Schröder, ??????  
2011, ?. ?-2497, ??? 17).

20

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????????? (?????? ??? 8?? ?????????? 2009, C-42/07, Liga Portuguesa de Futebol  
Profissional ??? Bwin International, ?????? 2009, ?. I-7633, ??? 40 ??? ??? ??????????????  
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21

? ? ??????????, ? ?????? ??? ?????? ?????? ?????????? ?????? ?? ?????????? ?????????????? ??? ??  
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40/2010. ???????, ??? ?????? ??? ?????? ??? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ??????  
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22

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?? «????? ??? ?????? ??? ?????? ??? ?????», ??? ?????????? ??? ?? ??? ?????, ?  
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?? ??? ?????????? ?? ??? ?? ?????? ??? ?????? ??? ?????? 3, ?????????? 2bis, ?????? b, ???  
????????? ?????????? 40/2010 ?? ?? ?????? ??? ??????, ?????? ?? ?????? ??? ??????????  
??????, ?????????? ?? ?????? ??? ?????? ??? ?????? ?????????????? ??? ?? ?????? ??  
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?????????? ? ?????????? ??? ??????????? ?? ?????? ?????? ?????????? ??? ??????  
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23

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

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

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25

?????? ?? ?????????? ???, ??? ?????? ??????????, ?????????? ? ??? ?????? ?????????? ??????????  
???? ?????????? ??? ?????? ?????, ?? ?????? ??? ??????, ??? ??? ?????? ???, ??  
?????? ?? ?????? ??? ?????? (??., ?????? ?????, ?????? ??? 17?? ?????????? 2009, C-  
182/08, Glaxo Wellcome, ?????? 2009, ?. I-8591, ????? 34 ??? ??? ??????????????  
?????????).

26

? ? ??????????, ?? ?????? 3, ?????????? 2bis, ??????? b, ??? ?????????? ??????????  
40/2010 ?????????? ??? ? ??? ?????? ?????????? ?????? ??? Corte di cassazione ??????????  
????????? ?????????? ?? ??? ?????????? ?????? ??? ?? 5 % ??? ?????? ??? ?????????? ???  
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????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????, ??  
????? ?????????? ? [??], ??? ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? 6, ?????????? 1, ??? ?? ??? ??????».

27

???????, ?????? ?? ??????? ??? ?? ?????? 3, ?????????? 2bis, ??????? b, ???  
????????? ?????? 40/2010, ?? ?????? ?? ?????? ?????????? ?????????? ??  
????????? ??? ?? ?????????? ???????, ???????, ??? ?????????? ??? ?? ??? ??  
??, ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??????????, ??? ?? ?????????? ??  
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28

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?? ??? ?? ??????? ??????? ??? ?????? ?? ?????????? ?? ?? ??????? ??? ?? ?????? ??  
?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???  
?????????, ?? ??? ?????? ??? ?????? ??? ?????? ??? ??????, ??? ?????? ??? ?????? ??? ?????? ??  
????? 3, ?????????? 2bis, ?????? b, ??? ?????????? ?????????? 40/2010.

30

??????, ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?? ?????? 4,  
????????? 3, ???, ?????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??  
????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??  
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??  
??? ??? ??? ?????? ??? ?????? ?? ?????????? ?????? Halifax ??? ??? Part Service, ??  
?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??  
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31

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? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ??? ?????????? ????. ??? ??????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
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?????????, ??? ?????? ??? ?????????? ??? ?????? ?? ??? ?????? ??? ?????? ??? 12?? ?????????? 2006,  
C-196/04, Cadbury Schweppes ??? Cadbury Schweppes Overseas (?????? 2006, ?. I-7995),  
??? 13?? ?????? 2007, C-524/04, Test Claimants in the Thin Cap Group Litigation (??????  
2007, ?. I-2107), ??? 4?? ?????????? 2008, C-330/07, Jobra (?????? 2008, ?. I-9099), ??? ??  
??? ?????????? ??? ?????? Glaxo Wellcome.

32

????? ??? ?? ??? ??????????, ?????????? ? ?????????? ??? ?????????? ??? ?? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ? ?????????? ??? ?????? ??? ?????? ???  
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33

???? ???????, ? ??? ?? ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ?? ?????? 4,  
????????? 3, ???, ??? ?? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? 3, ?????????? 2bis, ?????? b, ??? ?????????? ??????????

40/2010.

34

???????, ??? ?????? ??? ?????????? ??? ??? ?????????????? ? ?????? ??? ??? ??? ??? ?????  
??? ?????????? ??? ???????????, ?????????? ??? ?????????? ??? ? ?????? ??? ??? ??????  
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??? ?????? ?????? ?????? ?? ??? ?????? ?????? ?????? ??????. ?????? ?????? ?????? ??? ?  
????????? ??? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?  
????? ?? ??? 3, ?????????? 2bis, ?????? b, ??? ?????????? ?????? 40/2010  
?????, ?? ??? ?????? ??? ?????? ??? ?????? ??????, ?? ?????????? ?????????? ???  
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35

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????????? ???, ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? (??.  
????????? ??? 11?? ?????? 2010, C-384/08, Attanasio Group, ?????? 2010, ?. I-2055,  
????? 31), ?? ??? ??? ??? ??? ?????????? ??? ?????? ??? ??????????, ??? ?????????? ??? ?????? ??  
????????? ??? ?????? ??????????, ??? ?????? ?????? ?????? ??? ?????? 3, ??????????  
2bis, ?????? b, ??? ?????????? ?????? 40/2010.

36

?????, ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? ??????????, ?? ?????????? ???  
????????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????? ?????????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? «?????????»,  
???? ??? ?????? ??? ?????? 107 ????. ???????, ?? ?? ??? ?????? ??? ?????? ??? ?????? ?????????  
????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??????????, ??? ?????? ??? ?????? ??? ??????????  
?? ?? ?????????? ??? (??. ?????? ??? 22?? ?????????? 2008, C-487/06 P, British  
Aggregates ??? ????????, ?????? 2008, ?. I-10515, ?????? 84 ?? 85 ?????? ??? ???  
????????? ??? ????????).

37

???? ?????? ????????, ??? ??? ?????????? ??? ?????? ??? ?????? ?? ?????? ??? ??????????  
????????? ?? ?????????? ??? ?? ?????? ??? ?????????? ???????????. ??????, ?????? ?? ??????????  
??? ?????????? ?? ?????? ??? ?????? ?????? ??????. ??????, ?????????? ??? ?????? ??? ??????????  
????? ?? ?????????? ?? ?????? ??? ?????? ??????. ??????, ?????? ?? ?????? ??? ??????????  
????????? ??? ?????? ??????. ??????, ?????? ?? ?????? ?? ?????? ?? ?? ?????? ??? ?????????? ???  
????????? (????? ??? 10?? ?????? 2010, C-140/09, Fallimento Traghetti del  
Mediterraneo, ?????? 2010, ?. I-5243, ?????? 31 ??? ?????? ?????????? ??????????).

38

???? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?? ?? ?????? ?? ??????????  
????? ?????????? ?? ?????????? ?????????? ?????? ?????? ?????????? ?????????? ??? ??  
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????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? 107, ?????????? 1, ??? (??.  
????? ??? 15?? ?????????? 2005, C-66/02, ?????? ??? ?????? ?????? 2005, ?. I-

10901, ?????? 78).

39

???????, ?? ?????????????? ??? ?????????? ??? ?????? ??????? ???????, ?? ????  
?????????? ?????????? ?? ?????? ??? ???????????????, ??? ?????????? ??????? ???????,  
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????? 99).

40

?????????? ?? ?????????????? ?? ??? ?????? ??? ?????????????? ???????, ?????? ??  
?????????? ??, ??? ?????? ?????????????? ??????? ???????????, ?? ?????? ??? ???????  
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????? ??????? ?? ?????? ???????????, ??? ? ?????????????? ??? ?????????? ??? ?? ???  
? ??? ?????????? ??? ?????????? ??? ?????? ??????????? ?? ?????? ??? (?.  
????????????? ?????? British Aggregates ??? ???????, ??????? 82 ??? 83 ????? ???  
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41

? ? ??????????, ??? ? ?? ??????? ??? ? ??????? ??? ? ??????? 3, ?????????? 2bis,  
????????? b, ??? ?????????? ?????????? 40/2010 ?????? ???????, ??? ??????????  
????????, ?? ?????? ?????????? ??? ??????? ??? ??????? ????? ?????????? ???  
????????, ?????????????, ??? ?????? ??? ?????????????? ??? ???????, ??? ?? ?????? ???  
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????????? ??? ?????? ??? Corte suprema di cassazione, ?????????? ??? ?? ???  
??? ?????? ???, ?? ? ?????? ?????? ??????? ??????? ??? ?????? ??? ??????????????  
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42

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????????? ? ?????? ???????, ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
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43

? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???????????, ?????? ?? ??????  
????? ?????? ??? ?????? ?????????? ?? ?????? ?????? ?????? ??? ?????? ?????? ??????????  
????? 90 ?????? ??? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? ?? ?? ?????? ??????? ?? ????. ??????, ?????? ? ?????????? ??? ??????  
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44

???? ????????, ??? ????? ??? ???? ??? ?????????? ??? ?????? 3, ?????????? 2bis,  
????????? b, ??? ?????????? ?????????????? 40/2010 ??? ?????? ?? ?????????????? ??  
????? ????????, ??? ?? ?????????? ?? ?????????? ?? ?????? ?????????? ?????? ???  
????????????? ?????? ??? ?????? 37.

45

?????, ??? ????? ??? ?????????? ?????????????? ??? ?????????????? ?????????? ???  
????????? ??? ??????, ??? ?? ?????? ??? ?????????????? ?????????? ??? ???? ???  
????????? ??? ?????????? ?????????????? ?? ?????? 4, ?????????? 3, ???, ?? ??????????  
??? ?????????????? ?? ?? ?????? ???, ? ??? ?????? ??? ?????????? ??? ?????????? ??? ??  
????????? ??? ?????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ???  
????????? ??? ?????? ??? ?????????? ?????????? ??? ?????????? ?????????? ??? ?? ??? 3,  
????????? 2bis, ?????? b, ??? ?????????? ?????????? 40/2010.

46

???? ????????, ??? ?????? ?????????? ?????????? ??? ?????? ??? ??????, ??? ?????? ??  
????? ?????? ??? ???? ?????? ???, ? ?????, ??? ??? ?????? ?????? ??? ?????????? ???  
????????? ??? ?????? ??? ??? ?????? ?????????? ??? ??? ?????? ??????, ?????????? ??  
????????? ?????????? ??? ?????? ?? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ???  
????????? ?? ?? ?????? ??? ??????, ?????? ?????????? ?????????? ?????????? ??? ??????????  
??' ??????? ?? ?? 267 ????, ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???  
????????? ?????? ?? ?????????????? ??? ?????????? ??? ?????????? ??? ?????????? ???, ???  
????????????? ?????? ??? ?????????? ??? ??????.

47

?????? ?????? ??? ?????? ???????, ??? ?????????????? ?????????? ?????? ?? ?????? ?  
????????? ??? ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???  
????????? ?????????? ?? ?????? 4, ?????????? 3, ???, ?? ?????????? ???  
????????????? ?? ?? ?????? ???, ? ??? ?????? ??? ?????????? ??? ?????????? ??, ?? ??????  
????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??????????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????  
?? ??? ?????? ??? ??????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????  
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?? ?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ?? ??  
????????? ?????? ??? ?? ?? 5 % ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???  
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48

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

?? ?????? ??? ?????? ??? ?????????? ? ??? ?????? ??? ?????????? ??? ??????????  
???????????, ?? ????? 4, ?????????? 3, ???, ?? ?????????? ??? ?????????????? ?? ??  
?????? ???, ?? ?????? ??? ?????????? ??? ??????????, ?? ??????? ??? ?????? ??? ??????????  
?????????? ???, ?? ?????? ??? ?????????? ??? ??????????, ?? ?????????? ??? ?????? ??? ??????????  
??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????, ?? ??? ?????? ??? ??????  
?????, ??? ?????? ??? ?????? ??? ??????, ??? ?????? ????????, ??? ?????? ????????, ??? ?????? ????????, ???  
????????? ?? ?????? ??? ?????????? ??? ????????, ??? ?????? ????????, ??? ?????? ????????, ???  
????????? ??? ?????? ??? ?????????? ??? ????????, ??? ?????? ????????, ??? ?????? ????????, ???  
?? ?? 5 % ??? ?????? ??? ?????????? ??? ????????, ??? ?????? ??? ????????, ??? ?????? ??? ????????, ???  
????????? ????????, ??? ?????? ??? ?????????? ??? ????????, ??? ?????? ??? ????????, ??? ?????? ??? ????????, ???  
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ????????, ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ????????, ???.

(?????????)

( \*) ?????? ??????????: ? ??????.