

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

??? 3?? ???? 2012 (*)

«????????? — ??? ?????? ??? — ??? 2 — ?????? ?????????? ?? ?????????? ?????? — ?????????? ?????????????????? — ?????????????? ?????????????? ?????????????? ?????????????? ?????????????? ??? ?????????????? ??? ?????????? ?? ?????????? ?????????????? ?????????? — ?????????? ??? ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ??????»

???? ??????? C?520/10,

??. ?????????????? ?????? ?????????????? ?????????? ?????? ??? ?????? 267 ????, ??? ?????? ?? First-tier Tribunal (Tax Chamber) (????? ??????) ?? ?????? ??? 22?? ?????????? 2010, ? ?????? ??????? ?? ?????????? ??? 8 ?????????? 2010, ??? ??????? ??? ??????

Lebara Ltd

????

Commissioners for Her Majesty's Revenue and Customs,

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

????????? ??? ??? K. Lenaerts, ?????? ???????, J. Malenovský, R. Silva de Lapuerta, ?. ?????? ??? T. von Danwitz (??????), ????????,

?????? ??????????: N. Jääskinen

?????????: K. Sztranc-S?awiczek, ??????? ????????????,

?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ??? 13?? ??????? 2011,

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

- ? Lebara Ltd, ?????????????? ??? ??? P. Lasok, QC, ??? M. Angiolini, barrister, ??? ?????? ??? S. Macherla, solicitor,
- ? ?????????? ??? ??????? ??????????, ?????????????? ??? ??? S. Hathaway ??? L. Seeboruth, ?????????????? ??? ??? R. Hill, barrister,
- ? ?????????? ????????, ?????????????? ??? ??? K. ??????????????, M. ?????? ??? I. ????,
- ? ?????????? ????????, ?????????????? ??? ??? C. Wissels, M. de Ree ??? M. Bulterman, ??? ??? ??? J. Langer,
- ? ?????????? ????????, ?????????????? ??? ??? R. Lyal ??? ??? C. Soulay,

???? ?????? ??? ?????? ??????????? ??? ??????? ??? ?????????? ??? ?????? ?? ???????????
??? 8?? ??????????? 2011,

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

???????

1 ? ?????? ?????????????? ?????????? ?????? ??? ??????? ??? ?????? 2, ?????? 1, ???
????? ??????? 77/388/??? ??? ??????????, ??? 17?? ????? 1977, ??? ?????????????? ???
????????? ??? ?????? ?????, ??? ??????? ?? ??? ????? ?????? ?????? ?????? — ???
?????? ??? ????? ?????????????? ????: ?????????? ?????????? ??? (?? ????. ????. 09/001, ?. 49),
???? ?????????????? ??? ??? ?????? 2002/92/E? ??? ??????????, ??? ??? ??????????
2003 (?? L 260, ?. 8, ??? ????: ??? ?????).

2 ? ?????? ??? ?????????? ??? ??????? ?????????? ??????? ??? Lebara Ltd (???
????: Lebara) ??? ??? Commissioners for Her Majesty's Revenue and Customs (???
Commissioners) ?? ?????????? ??? ????? ?????? ?????? ??? ?????????? ?? ??????????
?????? ?? ??? ??? ?????????????? ??? (?? ????: ???) ??? ?????????? ??? ??????
Lebara ??? ??? ?????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? 2005.

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

3 ?????? ??? 2, ?????? ??? ?????? ??????, ??? ?????? ?????? 67/227/??? ???
??????????, ??? 11?? ??????? 1967, ??? ?????? ?????????????? ??? ??????????? ???
?????, ??? ?????? ?? ??? ?????? ?????? ?????? (?? ????. ????. 09/001, ?. 3, ??? ???
????? ??????):

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

?? ??? ?????????? ? ??? ?????????????? ????, ?????????????? ??? ??? ??? ?????? ???
????? ??? ??? ??????????, ?? ??? ?????????? ??? ?????? ??? ? ??? ?????????? ???
??????????, ??? ????? ?????????? ???' ?????????? ??? ?????? ??? ?????? ?????????????? ????, ?
????? ?????????? ??? ??? ?????? ??? ?????????? ??? ?????????? ?? ??? ?????
????..»

4 ??? ???? 2, ?????? 1, ??? ?????? ??????, ??? ??? ?????? «? ??????????
????? ??? ???? ?????? ???????, ??? ?????????????? ?? ?????? ?????? ???
????????? ??? ?????? ??? ?????????? ????, ??? ?????? ??? ??? ?????? ???
?????»..

5 ??? ???? 5, ?????????? 1, ??? ???? ??????, ?????????? ?? «????????? ???»
? ?????????? ??? ?????? ?? ?????? ?????? ??? ?????? ?? ??????.

6 ?? ????? 6 ??? ???? ?????? ?????? ?? ???:

«1. ?? “????? ??????” ?????? ??? ?????? ???? ???? ???? ???? ???? ???? ????
????? ??? ?????? ??? ?????? 5.

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

- ??????? ?????? ??????, ?? ?????? ?????????????????? ? ??? ??? ?????,

[...]

4. ??? ?????????????? ????, ? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ??????????

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

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

[...]»

7 ??? ?? ??? 9 ??? ????? ??????, ?? ?????? ?????????????? ??? ?????? ??? VI, ??

????? «????? ??? ?????????? ????:

«1. ?? ?????? ?????? ?????????? ?????????? ???? ?????? ??? ?????????? ?????????????? ???

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

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

2. ??????????:

[...]

?) ??? ?????? ?????? ??? ?????????? ??????????, ?? ?????? ?????????? [...] ?? ??????????????

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

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

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

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

????:

[...]

- ?????????????????? ??????????. ?? ?????????????? ?????????? ?????????? ???

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

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

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

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

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

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

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

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

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

[...]».

8 ?? ????? 10, ?????????? 1 ??? 2, ??? ?? ??? ?????, ??? ?????????? ??? ????? VII

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

«1. ?????????? ??:

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

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

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

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

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

2. ? ?????????????? ????? ?????????? ??? ? ????? ?????????? ??????????, ??? ???? ????
????????????????? ??? ???? ?????????? ??? ?????? ???? ?????? ??? ?????????? [...]

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

[...]»

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

9 ? Lebara ?????? ??????? ?????????????? ??? ??????? ?????????? ???? ????
????????????????? ??????????. ??? ???? ??? ?????? ?????????? ?????????????? ??? ????
????, ?????????? ??? ???? ??? ?????? ???, ?????????? ?????????? ??? ???? ???
????????????? ?? ??????? ??? ?????? ??? (??? ????: ?????????), ??????????,
????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??
????????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???.

10 ??? ??? ?????????? ??? ?????? ? Lebara ???????????, ?????? ????, ?? ?????? ???
??????, ? ?????????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ???????, ??? ? ?????????? ?????? ?????? ?????? ?????????? ???
???? ?????????? ??????? ????. ??? ??? ?????????????? ??????, ?????? ??? ?????? ???
?? ?????????? ????, ??? ?????? ??? ?????? PIN.

11 ?? ?????????? ??????? ?? ?????????????? ??? ?????? ??? ?????????? ??????. ?
????? ??? ???????????, ??????, ??? ??? ?????????? ?? ?????? ?????????? ??? ???,
??????, ??? ??????????? ???????, ?????????? ??? ?????? ??? ?????????? ??? ???
????? ????. ??? ??? ?????????? ??? ?????? ??????, ?????? ??? ?????? ??? ??????????????
?????? ????.

12 ?????????? ?? ?????? ?????????? ?????????????? ?? ?????? ????, ? ??????
????????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ??????. ? ????
????????? ??? ?????? ?????????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ? Lebara ??? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ???????, ??? ?????????? ??? ?????? ?????? ?????? ?????????? ???
????? ??? Lebara ??? ??? ?????? ??? ?????????????? ??? ?????? ?????? ?????? ???
?? ?????????????? ??? Lebara ?????? ??? ??? ?????? ??? ?????? ??? ?????????? ???
????? PIN ??? ?????????? ??? ?????? ????. ??? ? ?????????????? ??? ?????? ???
??? ?????? PIN, ? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ???
? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ???
????????? ?????????? ??? ?????? ??? ?????? ? Lebara ?????? ??? ?????? ??????????
????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????????.

13 ? Lebara ??? ?????? ??? ?????????? ?????????? ??? ?????? ???????????, ???
????????????? ??? ?????? ??? ?????? ???.

14 ??? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ?????????? ???
????????? ??? ? Lebara ?? ?????????? ???, ?????????? ??? ?????????? ??? ?????? ???
??? ?????? ???, ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ?????? ? ??? ??? ?????? ??? Lebara. ?? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??? ? ?????????? ??? Lebara.

? ? ?????????? ? ??????? ? ?????????????? ?? ? ??????? ? ??????? ??? ? ?????? ????
??? ???????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????????, ??? ??????
????????? ? ??????? ? ??????? ?????????????? ??? ?? ??? ?????? ?????? ??? ?????? ??? ??????????
?? ??????????. ? Lebara ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????
?? ??????? ? ?? ?????? ??????????.

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

16 ? Lebara ??? ??????? ??? ??? ??? ?????? ?????????? ??? ?????? ??????????, ??? ???
????? ??? ? ?????? ??? ?????????? ??? ?????? ?????????????? ??? ??????????, ? ?????? ??????
??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????????? ??? ??????????, ??????? ?
????????? ?????? ?? ?????????? ??? ??? ?????? ??? ?????????????? ??? ??????, ??????? ?? ???
????????? ??? ?????????? ??? ?????????? ??? ??????? Lebara, ? ?????????? ?????? ???
????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???.

17 ???????, ?? Commissioners ?????? ??? ? Lebara ?????? ?? ?????????? ??? ??? ???
?????? ???????, ?????? ? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??? ??????????:
??????, ??? «?????» ??? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ???,
??????, ??? «?????» ??? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ??? ??? ??????
?????. ???' ??????, ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??? ??? ??????
??? ??? ?? ??? ?????? ??? ?? ??????. ??? ?????? ??? ??????, ?????????? ??? ?????? ? ??????. ?
???? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
Lebara, ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????? ??? ?????????? ??? ?????? ??? ??????.

18 ?????? ??? ??????, ?? Commissioners ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ??? ?????? ? Lebara ??? ?????? ??? 2005. ? Lebara ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????.

19 ?? ?????????? ??????, ?????? ?????, ???, ?????????? ??? ?????? ??? ??????????
?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????
?????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????????? ???
?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????, ?? First-
tier Tribunal (Tax Chamber) ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????????? ?? ??? ?????? ?????????? ??? ??????.

«??? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? :

1) ??? ? ? ?????? 2, ?????????? 1, ?? ???? ?????? ?????? ??? ? ???? ?????? ???, ??
????????? ??? ?????????? ??? ("????????????? A") ?????? ?????????? ???
????????? ?? ??????? ?????? ?????? ?????????????? ?????????? ??? ? ???? ?????? ???, ?
????????? A ??????? ?? ??? ?????? ?????? ?? ??? ????: ??? ??? ??? ??????
????? ??? ?????????? ??? ??? ?????????? A ?? ??? ?????? ?????????? ??? ???
("????????????? B") ??? ??? ??? ??? ?????? ??? ?????????? ??? (????? ??? ?????? ???
??? ?????? —“??? ?????? ?????”— ??? ??? ?????????? ???);

2) ?? ?????????? ??????????, ??? ?????? ?????? (????????? ?? ??? ??????????
????? ??? ??? ??????) ?????? ?? ?????????? ??? ??? ?????? ??????????, ??? ??????????
??? ? ?????????? A ?????? ??? ?????????? ??? ?????????????? B, ? ?????????????? B
????????? ??? ?????????? ??? ?????? ????? B ??? ??? ?????? ?????????? ??? ??????
????? ??? ?????? ??? ?, ??? ? ?????? ?????? ?????????? ?????????? ??? ??????
?????????, ??? ?? ?????????? ?????? ?????????? ??????????;»

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

20 ?? ? ? ?????? ??????, ?? ?????? ?????????? ?????????? ?? ??? ?????? ?????????? ???
????????? ?????????????? ?????? ??? ?????? ?????????? ??? ?????? ?????? ?? ??????????
????????? ??? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ??? ??????????????
????????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ???
??? ??? ?????? ?????????? ? ??????????, ??? ?????? ??? ?????? ??? ??? ?????? ??????????, ??
????????? ??????, ??? ?????? ??? ?????? ?????? ?????? ??????????????, ??? ??????
????????? ??? ?????? ?????? ??????. ?? ?? ??? ?????? ?????????? ????, ???' ??????, ??? ??????
?? ?????? 2, ?????? 1, ??? ?????? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

21 ?? ??? ?????????? ??? ?????????? ?????????????? ??????????????, ???' ??????,
????? ?????????? ?????? ?????? ??????. ??? ??? ??? ??????, ? ?????? ??? ??????????
????????? ??? ??? ?????????? ?????????? ?????? ??????, ??? ??? ?????? ??? ??????, ??? ? ??
????? ?????? ??? ??? ?????? ?????? ??????, ??? ??? ?????? ??? ??? ?????? ?? ??????????
?? ?????????????? ?????????? ??? ??????, ?????????? ?? ?????????? ?????? ??????. ???
??? ?????? ????, ? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????, ??? ? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???.

22 ?????????? ?? ??? ?????? ?????? ??? ?????????? ??? ??????, ?????? ?? ?????????? ??
????? ??? ?? ?????? ?????? ??? ?????? ?????????? ??? ??? ?????? ??? ??
????????? ??? ?????? ??? ?????? ???.

23 ?? ?????? ?????? ??? ??????????, ?????? ??? ?????? 2 ??? ?????? ??????, ???
????? ??? ??? ?????? ??? ?????? ??????, ??? ?? ?????? ??? ?????? ??????,
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ??????, ??? ?? ?????? ?????? ??? ?????? (??., ??????
?????, ?????? ??? 3?? ?????? 2006, C?475/03, Banca popolare di Cremona, ??????
2006, ?. I?9373, ?????? 21, ??? ??? 28?? ?????? 2010, C?49/09, ?????? ??? ??????
????? 2010, ?. ??10619, ????? 44).

24 ??????, ?? ??? ?????? ??????, ? ??? ?????????? ?????????? ??? ?????? ??? ??????
????? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??

?????????? ? ????. . ??????????? ?? ?????????? ??????????? ?????????? ?????? ?????? ?????? ??
????????? ????. ?? ??????? ?? ?????? ?? ?????????? ?? ?????????? ????. ????. ?????????? ????. ?? ??????
??? ?? ?, ?? ??????????? ??????, ?????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????????? ????.
? ?????? ?? ???????????, ?? ????. ??????, ?????? ?? ?????????? ????. ????. ????. ?? ?????????? ????.
??????, ??? ?????? ?????????? (??.. ?????????????? ?????????? Banca popolare di
Cremona, ????. 22, ??? ?????? ????. ?????? 44).

25 ?? ??? ?????????????? ?????????? ????. ?????? ????. ?????????????? ?? ????. ????. ????.
?????? ?????? ?? ??????? ?????????????? ????. ????. ????. ?????? ?????????????? ?? ????. ?? ??????
????????? ?????????? ????. ?????? ?????????? ????. ????. ????. ?????? ?????????? ????. ?? ??????????
????????? ????. ?????? ?????? ????. ?????? ?????? ????. ????. ?????? ?????? ?????????? ????.
??? ?????? ????. ?????? ?????? (??., ???' ????. ????. ??????, ?????? ????. 15??
????????? 2002, C?427/98, ??????? ????. ?????? 2002, ?. I?8315, ????. 29).

26 ???????, ??? ?? ????. 2, ?????? 1, ??? ?? ?????? ?????? ?????????? ????. ????. ????.
????????? ?? ?????????? ????. ????. ?? ?????? ?????? ?????????? ????. ????. ?? ?????????? ????.
????????????? ?? ?????????? ????. (??., ???' ????. ????. ??????, ?????????? ????. 9??
????????? 2001, C?108/99, Cantor Fitzgerald International, ?????? 2001, ?. I?7257, ????. 17,
????? ????. 21?? ?????????? 2006, C?419/02, BUPA Hospitals ??? Goldsborough
Developments, ?????? 2006, ?. I?1685, ????. 50). ???????, ?????? ????. 10,
????????? 2, ?????? ????. ????. ????. ?????? ????. ?? ?????????? ?????????? ?????????? ????. ?
??? ?????????? ?????????, ?????? ?? ????. ?????? ?????? ?? ?????? ?? ?? ????. ?????????? ????.
????????, ?????? ????. ?????? ?????? ?????? ????. ?????? ?????????? ??????, ?????? ????.
????????? ?????? ?????? ????. ?????? ????. ?????? ?????? ?????? ?????? ?????? ?????? ????.
(??.. ?????????? ?????? BUPA Hospitals ??? Goldsborough Developments, ????. 48).

27 ????, ????. ?????? ???????, ?????? ?????????? ?????????? ?????????? «?? ???????
?????», ????. ????. ?????? ????. 2, ?????? 1, ????. ?????? ???????, ????. ?????????? ????.
??????????, ????. ?? ?????????? ????. ????. ?????? ?????? ????. ?????? ????. ?? ????.
????? ?????? ????. ?? ?????? ????. ?? ?????? ?????? ?????????? ?????? ????. ?? ????. ?? ??
????? ????. ?????? ????. ?? ?????? ????. ?????? ?????? ?????? ????. ?????? ?????? ????.
????????? ????. ?????? ????. ?????? ????. ? ?????? ?????? ?????? ?????? ????. ?????? ????.
????????? ????. ?????? ????. ?????? ????. ? ?????? ?????? ?????? ????. ?????? ????.
????????? ????. ?????? ????. ?????? ????. ?????? ????. ?????? ????. ?????? ????. (??., ????.
????, ?????????? ????. 3?? ?????????? 2009, C?37/08, RCI Europe, ?????? 2009, ?. I?7533,
?????? 24 ????. 30, ????. 29?? ?????????? 2009, C?246/08, ??????? ????. ?????? ????.
?????? 2009, ?. I?10605, ?????? 44 ????. 45, ?????? ????. 27?? ?????? 2011, C?93/10,
GFKL Financial Services, ?????? 2011, ?. ??10791, ?????? 18 ????. 19).

28 ????. ?????? ????. ?????????????? ????. ?????? ?????? ?????????? ?????????? ????.
????????? ????. ?? ?????????? ????. ?????? ????. ?????? ???????, ????. ?????? ?????? ????.
????????????? ????. ?????? ?????? ????. ?????? ?????? ?????? ????. ?? ????. ????.
????????? ????. ?? ????. ?????? ????. ?????? ?????? ????. ?????? ?????? ????.
????????? ????. ?????? ????. ?????? ????. ?????? ????. ?????? ????.
????????? ????.

29 ? ?????? ????. ?????????? ?????? ?????????? ????. ?????? ?????? ?????? ????.
????????? ????. ?????? ?????? ????. ?????? ????. ?????? ?????? ????. ?????? ????.
? ?????? ?????? ????. ?????? ?????? ????. ?????? ????. ?????? ?????? ????. ?????? ????.
???. ?????? ??????. ?????? ????. ?????? ?????? ????. ?????? ?????? ????. ?????? ????.
????? ?????? ????. ????. ?????? ????. ?????? ????. ?????? ????. ?????? ????.
????? ?????? ????. ????. ?????? ????. ?????? ????.

30 ???????, ? ????. ????. ?????????? ? ?????? ?????? ????. ????. ????. ?????? ????.

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

31 ?????????? ??? ?????? ?????????? ?????? ?????????????? ?????? ?? ?????????????????? ??
????????? ??????, ?????? ??? ?????????????? ??? ?????? ?????????????? ?????? ??
????????????? ?????????? ??? ??? ?????????????? ??? ?????????????? ??? ?????????? ???,
????????????? ??? ?????? 27 ??? ?????? ??????????, ?????????????? ? ?????????? ??
??? ?????????? ?????? ??? ?????????????? ??? ?????????????? ??? ?????? ??? ?????? ??? ??????
??? ?????????????? ??? ??????????.

32 ???? ?????? ??? ????????, ??? ?????? ?? ????????, ??? ? ?????? ??????????
????????????? ??? ?????? ?????????? ?? ????????, ??? ?????? ?????? ??? ?????? 6,
????????? 1, ??? ?????? ????????, ??? ??? ?????? ?????????? ??? ??? ?????? ?????? ??????.

33 ??????????? ?? ??????????? ? ?????????? ??? ??? ??? ????? ?????? ????????

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

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

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

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

34 ???????, ??????????????, ??????, ??? ? ?????? ?????????? ??????? ?????? ??????????,
?? ??? ?????? ??? ??????????, ??? ???? ?????? ?????????? ?????????? ??? ??? ??????????????
?????? ?????????? ?????? ?????? ?????????? ?????????? ?????? ??? ?????? ?????? ???
????? ??? ???????, ??? ???, ?? ?? ??????, ?????????? ??? ?????????? ?? ?????? ?????? ??
????????????? ??? ?? ??? ?????? ?????? ??? ??? ?????????? ?????? ?????? ??????.
??????, ? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????.

35 ? ?????????? ????, ?????????? ????, ?????? ?????? ???, ?????????????????????? ???????????, ????, ???
?????? ???? ??????? 9, ??????????? 2, ?????????? ??, ?????? ??????????, ??? ?????? ??????.
??????????, ? ??????? ????, ?????? ?? ?????????????? ?????? ?????? ?????? ?????? ????,
????????????????????? ??? ?????? ????, ?????????? ?? ?????????? ?????? ?????? ????, ????, ????, ???
????? ??? ?????????? «??? ????, ?? ??????????» ??????? ?????? ???????, ????, ????, ???
????????? ??? ??????????? ??????? ?????????? ??? ??????? ?????? ???????, ?????? ???????.

38 ???????????, ? ??????? ?????????? ?? ?????????? ?????? ?????? ?????? ?? ????
????? ?????????? ?? ?????????? ??????, ?????????? ?? ?????? ?? ?????? ?? ????
??????????, ?? ?????? ?????????? ?????? ???. ??????? ?????????? ?????????? ??
????????? ?????????? ??????. ???????, ?? ??? ???? ? ?????? ?????????? ??????????
????????? ??? ???? ???? ?????? ?? ?????????? ?? ???? ???? ?????? ? ??? ???? ????
????????? ?????? ?? ?????????? ?? ???? ???? ?????? ??' ?????? ?? ???? ???? ????
????????? ??? ???? ???? ?????? ?? ???? ???? ?????? ?? ???? ???? ???? ???? ????
????????? ??? ???? ???? ?????? ?? ???? ???? ?????? ?? ???? ???? ???? ???? ???? ??

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

41 ??? ?? ?????????????? ??? ?????????? ??? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????? , ???
??? ?????? ??? ?????????????? ??? ?????? 27 ??? ?????????? ?????????? ?????????? ?????????? , ??????
??? ?????? ??? ?????????? ??? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??
?????.

42 ????????, ? ?????? ??? ?????? 2, ????? ??????, ??? ?????? ??????? ??? ??? ??? ??????
??? ?????????? ??? ?????????? ?????? ?????????? ?? ?????????? ?????? ??????????
????????? ?????????????? ?????? ?????????? ??? ? ???????, ????? ??? ? ?????????? ???
????????? ??? ?????? ?????? ??? ?????? ??????. ??????????, ??? ? ?????? ???
????????? ??? ??? ? ?????????? ?????? ?????????? ?????????? ?????????? ??????. ??
???? ?????? ??? ???????, ? ??? ?????? ?????? ?????????? ??? ?????????? ?????????? ??????????
??? ?????? ??? ?????????? ?????? ??? ?????? ??????. ??????????, ??? ??? ??? ??????????
????? ?????????? ??? ?????? ??? ?????? ???????, ? ??? ?????? ?????? ?????????? ??? ??????????
??? ?????? ??? ?????? ??? ?????? ???????, ??? ??? ?????? ?????? ?????????? ??? ??????????
????? ?????????? ??? ?????? ??? ?????? ???????, ??? ??? ?????? ?????? ?????????? ???

43 ????????????, ??? ????? ??????? ??????? ?? ?????? ? ?????????? ??? ?? ?????? 2,
?????? 1, ??? ????? ??????? ??????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????
????????????????????? ?????????? ?????????????? ????? ?????? ?? ?????????? ??????????????, ??
?????? ?????????? ??? ?????? ??? ?????????? ?????? ?????? ??? ?????????? ??? ?????????? ??????????
?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ? ?? ?????? ?????? ??? ??? ??????
????????? ? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ?????? ?????? ?????????? ???????,
????? ?????? ??? ?????????? ?????? ?????????? ?????? ???, ??? ?????????? ?????????? ???
????????? ??????????, ??? ?????? ?????????????????? ?????????? ?? ?????????? ?????? ??????
?????????. ??????????, ? ?? ??? ?????? ?????? ??? ?????????? ?? ?????????? ?????? ?????????? ???
????????? ?????? ??? ?????? ??????, ??? ? ??????????, ?????? ?????????? ??? ?????? ?????????? ???, ??
????? ?? ?????????? ?????????????? ?????? ?????????? ???, ?????????? ?????????? ???
????????????? ??? ?????????????? ?????? ??????????.

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

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

45 ?????????? ??? ? ??????? ?????????? ??? ?? ??? ????? ?????????? ??? ?????? ?????? ?????
??? ?????????? ?????????????? ??? ?????? ?????? ?????? ??? ?????? ??????????????, ?' ???
????????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ?????? ??????????????
???? ?????????? ?????????????? ??? ?????????? ?????? ??? ?? ??? ??????????, ??? ??????????.

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

?? ??? 2, ??? 1, ??? ??? ?????? 77/388/???, ??? ??????????, ??? 17?? ???
1977, ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????, ??? ?????????? ?? ???
????? ?????? ?????? — ??? ?????? ?????? ????? ?????????????? ?????: ??????????
????????? ????, ??? ?????????????? ??? ??? ?????? 2002/92/E? ??? ??????????,
?? 7?? ?????? 2003, ??? ?????? ?????? ??? ?????? ?????????? ??? ??????????
????????????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ??????????
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????

(?????????)

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