

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

??? 6?? ?????????????? 2012 (*)

«????????? ?????????????? – ?????????? ?????????? – ????? ?????????? – ?????? ?????? –
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???? ?????? C-18/11,

?? ??? ?? ?????????????? ?????? ?????????????? ?????????? ?????????? ??? ?????? 267 ???,
?? ??? ?????? ?? Upper Tribunal (Tax and Chancery Chamber) (????????? ??????????) ??
????????? ??? 17?? ?????????? 2010, ? ?????? ?????????? ??? ?????????? ??? 12 ??????????
2011, ??? ?????? ??? ??????

The Commissioners for Her Majesty's Revenue & Customs

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Philips Electronics UK Ltd,

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

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

????? ??????????: J. Kokott

?????????: L. Hewlett, ?????? ?????????? ????????????,

????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???
16?? ?????????? 2012,

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

– ? Philips Electronics UK Ltd, ?????????????? ??? ??? D. Milne, QC, ??? ??? D. Jowell,
barrister,

– ? ?????????? ??? ?????? ??????????, ?????????????? ??? ??? S. Hathaway,
????????????? ??? ??? K. Bacon, barrister,

– ? ?????? ??????, ?????????? ??? ??? C. Vang,

– ? ?????? ??????, ?????????? ??? ??? W. Mölls ??? ??? R. Lyal,

???? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ??????????
?? 19?? ?????? 2012,

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1 ? ?????? ?????????????? ?????? ??? ?????? ??? ?????? 43 ?? ??? 48 ??.

2 ? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ??????
Philips Electronics UK Ltd (??? ????: Philips Electronics UK) ??? ??? Commissioners for Her
Majesty's Revenue & Customs, ?????????? ??? ?????? ?????? ?? ?????? ?? ? ?????????? ???
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?? ?????? ?????? ???????

3 ? ?????? ??? 1988 ??? ?? ?????????? ?????????? ??? ?????? ??? ?????? ??????????
(Income and Corporation Taxes Act ??? 1988, ??? ????: ICTA), ??? ?????? ??? ?????? ???
????????? ??? ??? ?????? ??? ?????? ?????? ??????????????, ?????????? ??? ?????? 402 ??
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«1. ??? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
492, ?????????? 8, ??? ?????? ??????, ??? ?????????????? ??? ?????????? ?????????? ???
????????? 2 ??? 3, ?? ?????????? ("????????? ??????") ??? ?????? ??????????, ???
????????? ??? ?????????? ??? ??? ?????? ?????? ?????? ??? ?????????? "??????????"
????????? ??? ??????", ??? ??? ?????? ??? ?????????????? ?????? ??? ??? ?????? ???
????? ??? ?? ?????? ?????????? ?????????? ??? ?????? ??? ??? ?????? ?????????? ???
????????? ??? ? ?????? ?????? ("????? ??????") ?????? ?? ?????????? ???
????????? ??? ?????? ??? ??????????.

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3. H ?????????? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ??????????
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3A. H ?????????? ?????????? ??? ?????? ?????????? ?????? ?? ??? ? ??????????????
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3B. ? ?????????? ??? ?????? ??? ? ?????? ?????? ?? ??? ?????? ??? ?????? ??? ?????? ??????????
? ?? ?????? ?????????? ?????????????? ??? ?????? ?????? ??? ?????? ?????? ??????????.

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6. ?? ??? ??? ?????????????? ?? ?????????? ?? ??? ?????? ?? ?????????? ?????????? ???
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a) ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ? ?????? ?????? ??? ??? ???
????????, ??? ?????? ??? ?????? ?????? ?????? ???.

b) ??? ?????????? ?? ??? ?????? ?????????? ?? ?????? ?????? ?????? ? ?????????? ?????????? ???
?? ???????, ??? ??? ?????? ??? ?????? ??? ??? ?????? ?????? ?????? ?????? ?????? ??????
[Corporation Tax Acts].

????? ?????? ?????????? ?? "????? ??? ?????????? ?? ??? ?????????? ?? ??? ??? ??

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4 ?? ????? 403D ??? ICTA ??? ?? ???:

«1. ??? ?????? ???????????, ???' ??????? ??? ?????????? ???????????, ??? ???????????
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????? ???, ????? ??:

- a) ?? ?????? ?? ??? ??? ?????? ??????????? ?? ?????????????? ??? ???????, ??? ??
?????? ?? ??? ??? ?????? ??? ?????????? ?????????????? ?? ??? ?????????????? (?? ???????)
??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??? ?????? ??
?????? ?? ?????????? ??? ?????? ?????????? ???????, ???
- b) ?? ?????? ?? ??? ??? ?????? ??? ?????????? ?? ?????????????? ??? ?????????? ??
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i) ?????? ??? ?? ?????? ??? ?????? ??? ?????? ????

ii) ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??? ?????????? ??
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??? ?????????? ??? ?????? ??? ?????? ??? ?????? (?? ?????????? ????) ?? ???????
???' ?????????? ????, ??? ?????? ??? ?????? ?????????? ????, ??? ?????? ???
[“non-UK profits”] ??? ?????? ??? ?????????? ??? ?????? ???.

[...]

3. ??? ?????? ?????? ??????? ?? “????????? ????” [“non-UK profits”] ???????????
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- a) ???????, ??? ?????? ??? ?????? ?????????? ???????, ?? ?? ??????? ??? ???????,
??? ?????????? ?? ??? ?????? ??? ?????? ?????????? (?????? ?? ??? ???????
?????????) ?? ?? ??? ?????? ???
- b) ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??
????? (????? ?? ?????????? ????) ??? ?????????? ??? ?????????? ????,
? ??? ??? ?????????? ??? ?????? ??? ??? ?????????? ??? ?????? ???.

[...]

6. ??? ?????? ??????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ?????? ??? ???????
?????? ? ?????? ??? ?????? ??? ?????????? ?????? [?? ?????? ?????? ?????????? ??? ???????
?????????] ??? ?????? ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
??? ??? ?????? ??? ?????????? ??? ?????? ??? ???????.

[...]»

5 ?? ?? ?????? 406, ??????????? 2, ??? I C T A ??? ? ? ? ? :

6 ? Philips Electronics UK ?????? ??????? ??? ??? ?? ?????????? ??? ?? ??? ?? ???????
???????. ????. ??? Philips, ? ?????? ?????? ??? ?? ?????? ??? ?? ?????? ??? ?? ???
?????. ? ?????? ??? ?????? ???, ??? ?? ??? ?????????????? ??? LG Electronics,
??? ????. ??????????. ? ????. ??? ?????????? ??? ?? ?????????? ??? ?????????? ???,
??? LG Philips Displays Netherlands BV (???. ????: LG.PD Netherlands), ? ????. ?????? ???
???????. ?????? ??? ?????????????? ??? ??????????.

7 ? Philips Electronics UK ??????? ?? ??????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ???
?????? ?? ?? ?????? 2001 ?? 2004 ? ?????? ?????????? ??? LG.PD Netherlands ???
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8 ? ?????? ?? ??????????? ?? ?????? ?? ??????????? ?? ?????? ?? ??????????? ?? ?????? ?? ??????????? ??
?? ??????????? ?? ?????? ?? ?? ?????? ?? LG.PD Netherlands ??????????? ?? ??????????? ??
?? ?????? ?? ?????? ???. ???. ?? ??????????? ?? ?????? ??, ???. ?? ?????? ?? ??????????? ??
?? ?????? ??, ???. ?? ?????? ?? First-tier Tribunal (Tax Chamber).

9 ?? First-tier Tribunal (Tax Chamber) ??????? ??? ???????? ??? Philips Electronics UK.
?????? ?????, ?? ??????????? ??? ????? ??? ???????? ??????? ?????? ?????? ?????? ???
Upper Tribunal (Tax and Chancery Chamber).

10 ?? Upper Tribunal (Tax and Chancery Chamber) ?????????? ?? ?????????? ?? ??????
?? ?????? ?? ?????????? ?? ? ? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ??
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«1) ?????????? ??? ????? ?????? (????? ?? ?????? ??????) ?????????????? ???
????? ?????????? ??? ?????? ?? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??
?????????? ??? ?????? ?? ?????? ?????? ?????? (????? ?? ?????? ??????), ?????? ?? ?????? ??????
????????????? ??? ?????? ?? ?????? ?????????????? ?????????????? ??? ?????? ??? ??????
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????????? ????????, ?????? ?????????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ??????
????????? ??? ????????, ??? ?????? ?????? ??? ?????? ?????? (????? 49 ????) (?????
????? 43 ??), ?? ?????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ?????????????? ??? ?????? ?????? ?????? ??? ?????????? ?????????? ??? ?????? ??? ??????????
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?? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???

? ?????????? ????? ?????, ?????? ??????????? ?????? ??? ?????? ?????? ?????? ? ?????? ?????? ?????? ????
??? ?????????????????? ??? ?? ?????????? ??? ?????? ?????? ?????? “????????????? ??? ? ?????? ??????
????? ??? ?????? (?? ?????????? ????) ?? ?????? ???' ?????????? ????, ??? ??????
??? ?????? ?????? ??????, ??? ?????? ?????? ?????? [“hon-UK profits”] ??? ??????
????????????? ??????”, ?? ?????? ?????? ??? ?????? ???? ?????? ?????? ?????? ?????? ??????
??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ??????
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?????, ??? ?????? ??? ?????? ??????), ??? ??? ?????? ?? ??? ??? ?????? ?????? ?????? ?????? ??? ??????
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????????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????; ;

2) ?? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ??????, ?????? ??
????????????? ??? ?????? ??? ?????? ?????? ?????? ?? ??????; ;

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

?) ??? ? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????????? ?????? ?????? ?????? ??????
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?) ? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
??? ?????? ????, ?? ?????????? ?? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ??????; ;

3) ?? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ??????, ?????? ? ?????????? ????
????????? ??? ?????? ??? ?????????????? ??? ?????? ??? ?????? ?????????? ?????? ?????? ??????; ;

4) ?? ? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????
????????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???, ??? ??
????? ?????? ???, ??? ?????? ??? [...] ?????, ??? ?????? ?? ?????? ??? ?????? ??? ????
????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???, ?.?. ??? ?????? ?????? ?????? ???
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11 ?? ?????? ??????????, ?? ?? ?????? ??????, ?????? ???' ?????? ?? ?????? ?? ?????? ?? ?? ??????
43 ?? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
?? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
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12 ? ?????????? ?????????? ??? ?????? ?????? ?????? ?? ?????? 43 ?? ?????? ??????
??? ?????? ??? ? ?????? ?????? ???' ?????? ??? ?????? ??? ?????? ??? ?????? ??? ????
????????????? ??? ?????? ??? ? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ????
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??? ????? ???? ??? ???????, ???????????, ?????? ?? ?? ????? 48 EK, ??? ????? ???
????????? ??? ????? ??????? ??? ?? ?????????? ??? ?????? ?????? ??? ?? ?????? ???
??? ?????????? ??? ??, ??? ??????? ??? ?????? ?????? ??? ?? ?????? ?????????? ???
????? ??? ??????? ???, ?? ??????? ?? ?????? ?? ?????????? ??? ?? ?????? ?????????? ???
????? ??? ?????? ??? ?????????? ???, ?????????? ?????? ? ?????????? (????????? ???
21?? ?????????? 1999, C-307/97, Saint-Gobain ZN, ?????? 1999, ?. I-6161, ??? 35, ???
??? 13?? ?????????? 2005, C-446/03, Marks & Spencer, ?????? 2005, ?. I-10837, ??? 30).

13 ?????????? ??? ?? ??? 43, ?????? ??????, ??????? ???????, ?? ?????? ???
????????????? ?? ?????????? ?? ?????????? ?????????? ??? ?????????? ?????? ???
??? ?????? ??? ?????????????? ??? ?????? ?????? ?????? ??????, ??? ? ??????????
????????? ??? ?????? ?? ?????????? ??? ?????????? ?????? ?????????? ??? ??????????
????????? (????????? ??? 28?? ?????????? 1986, 270/83, ?????? ??? ??????, ???
1986, ?. 273, ??? 22).

14 ? ?????????? ??????? ??? ?????????? ?????? ?????? ??? ?? ??????
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?? ??? ?????? ?????, ?????????? ?? ?????? ?????? ??? ?????? ??? ?????????????? ??? ??? ???
????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ?????????? ?????? (????????? ??? 23??
????????? 2006, C-253/03, CLT-UFA, ?????? 2006, ?. I-1831, ??? 15).

15 ??? ?????????? ??? ? ??????? ??? ??????? ??? ?????? ?????? ?????? ??????????
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?????????, ??? ?????? ?????????? ??? ?????????? ??? ??????, ??? ?????? ??? ??? ?????? ??????
? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????, ??? ?
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16 ? ?????????? ??? ?????? ?????????? ?????? ?????? ?????????? ??? ?? ?????? ?????????? ???
????????? ?? ??? ?????? ???, ??? ?????? ??? ?????????? ?????????? ??? ?????? ??????
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17 ? ?????????? ??? ?????????? ???, ??? ?? ?????? ?????? ?? ??? ?????? ?????????? ???
????????? ?? ??? ?????????? ?????????? ???, ?????? ?? ?????? ?????????? ??? ??? ??? ???
????????????? ??? ?????????? ???, ??? ?????? ?????????? ??? ?????? ?????????? ??? ??? ???
????????? (??., ??' ????, ??? ?????? ??? 12?? ?????????? 2006, C-446/04, Test
Claimants in the FII Group Litigation, ?????? 2006, ?. ?-11753, ??? 167). ??? ??
????????????? ?? ??? ?????????? ?????????? ??? ?????? ?????????? ?? ??? ??? ??????????
?????????, ??? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?? ??? ??? ??????????
????????? ?????????? (????????? ??? 25?? ?????????? 2010, C-337/08, X Holding, ??????
2010, ?. I-1215, ??? 22).

18 ?? ?????? ?????? ?????? ?????????? ??? ? ?????????? ??? ?????? ??? ?? ??????
????? ?????? ??????????, ??? ?????? ??? ?????? ??? ?????? ?????? ??????????, ? ????
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?? ??? ?? ?????? ??? ?????? ?????? ??????, ??? ?????? ?????? ?????? ??? ?? ??? ?????????? ???
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????????? ???, ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???.

19 ? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??????. ??????????????, ? ??????????

???? ?????????? ??? ?? ??????? ??? ?????? ??????????????, ??? ???? ??? ?????? ??? ?????? ??? ?????? ?
?????????????, ??? ???? ?????????????? ???????????, ??? ??? ??? ?????? ??? ?????? ??? ?????????? ?
????? ??? ??? ?????? ??? ?????????? ???????, ?? ??? ??? ?????????? ??? ?????? ??? ?????? ???
????? ??? ?????? ???????, ??? ???? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??????????? ?? ???????, ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ???
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20 ??? ????????, ??? ?????? ??????? ??? ?????? ?? ?????? ? ?????????? ??? ?? ?????? 43 ??
????? ??? ?????? ??? ??????? ??????????? ??? ?????????? ??? ?????????? ??? ?????? ??????????
????????? ?? ?????????????? ?? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??????????
?????????, ??? ?????? ?? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??
?????????, ??? ?????? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ??????
? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???,
????????? ?? ??? ??????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ???????, ??? ???? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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21 ?? ?????? ???????????, ?? ?? ??????? ???????, ?????? ???' ?????? ?? ?????? ?? ?????? ?? ??? ??
????????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ?? ?????????????? ??
????? ?????? ?????, ??? ?????? ?? ??????? ??? ?????? ??? ?????? ??? ?????? ??????????????,
????????? ?? ?????????? ?? ?????????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??????
????????????, ??? ?????????????? ?? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ???
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22 ??? ????? ?????????? ?????????? ??? ? ?????????????? ??? ?????????????? ?????????????? ??????????????
????? ?? ????? ???????????, ?? ?????????? ?? ?????????????? ??? ?????? ??????????
?????????????. ?????? ??? ??? ?????? ?????????? ??? ? ?? ??? ?????????????? ??? ?????? ?? ??????
????????????? ??? ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?? ??? ??????????
?? ?????????? ??? ??? ?????? ?????? ??? ?????? ?????? (????????????? ?????? Marks &
Spencer, ??? 35).

23 ??? ?????, ????, ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???
??? ?????? ????, ?????????????? ??? ?????????? ??? ?????? ???, ? ?????? ???
????????????? ??? ?? ?????????? (??., ????, ????, ????, ??? 29?? ?????????? 2011, C-
371/10, National Grid Indus, ??? 2011, ?. I-12273, ??? 45).

24 ? ?????? ?????? ???????????, ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? (?? . ?????? ??? 15?? ??? 2008, C-414/06, Lidl Belgium, ??? 2008, ?. I-
3601, ??? 33).

25 ??????????, ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

26 ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

27 ????? ??????????, ?? ?????? ?????? ??????????, ??? ?????? ??? ?????? ?????????? ?
????????? ?????????????????? ?? ?????????? ??? ?????? ??? ?????? ??? ??????????????, ???
????? ?? ????????????, ?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????, ???
????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
?? ?????????????? ??? ??? ??? ? ?????? ??? ?????????? ??? ??????????, ??? ????? ??
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????, ??? ??????
????????? ??? ?????????? ??? ??????, ??? ?????? ??? ?????? ?????????? ? ?????? ??????????
???? ?????? ??? ?????????? ??? ?????? ?????? ?????????, ??? ?????????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????????? ?????????? ???, ??? ?
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??????, ???

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

29 ??????????????, ??????????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ? ?????????????? ??
????????? ?????? ?????????? ?? ?????????? ?????????? ?????????????? ?????????? ?? ??
????????????? ??? ?????????????? ??? ?????????? ?????????? ?? ??????????, ??? ??????
????????????? ?????????? ??? ??????, ??? ?????? ??? ?????? ?????? ?????? ? ?????? ??????????
??? ?????? ?????? ??? ?????? ?????????????? ??? ?????????? ??????????, ??? ? ??????????
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ??? ?????? ?????????? ?? ?????? ?????????? ??????????.

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

31 ????? ??????? ? ?????? ?????????????? ??? ?????? 49 ???. ??? ?????????? ???, ?? ??????
??? ?????? ?????????????? ??? LG.PD Netherlands ??? ?????? ??????????, ??? ?????? ???
????????? ????. ? Philips Electronics UK, ??????? ?????????? ??? ?????? ??????????
????????? ????. ? ?????? ??? ?????????? ??????? ??? ?????? ??? ?????? ?????????? ????. ? ??????????
????? ?????? ??? ?????? ?????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ?????? ?????????? ??
????????? ??? ???.

32 ????? ????????, ??? ?????????? ????? ?????? ??? ?????????? ??? ?????? ?????, ??
?????? ?????? ??? ????? ?????????? ? ?????? ?????????? ??? ?????, ?????????? ???
????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????, ?? ?????????? ??? ?????
??? ?????? ??? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ???

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

33 ?? ?????? ??? ????? ???????, ?? ?????? ??? ????? ?????????? ? ?????? ??? ???????????,
??? ?????? ??????? ?? ??????? ?? ?????????? ?????????????? ??? ?? ?????? ??? ?????????? ???,
?????? ?????????? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ??????????
????? ????????????, ??? ?????? ?????? ??????? ??? ??????.

34 ?? ??? ??????, ??? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? 23 ?? 33,
??? ??? ?????????? ??? ?????? ?????? ?????????? ??? ?????????? ?????????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ??????
????????? ??? ??????.

35 ??? ?? ??????? ?????????? ??? ?? ??????? ?????????? ??? ?????? ?? ?????? ? ?????????? ???
??? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????????? ???, ??? ?????????? ??? ?????????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????????? ???, ??? ?????????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????.

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

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

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

37 ?? ?????? ??????????, ?? ?? ?????? ???????, ?????? ???' ?????? ?? ?????? ??? ?????? ???
????????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

38 ??? ??? ?????? ?????????? ??? ??????? ??? ?????? ?????????? ??? ?????????????? ???
????????? ??? ?????????? ??? ?????? ??? ?????????? ???, ?? ?????? ?????????? ???, ???' ??????????
??? ?????? ??? ?????????? ??? ?????????? ??? ?????? 10 ??, ?? ?????????? ??? ??????
?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?? ?????????? ??? ?????????? ??? ??????
?? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? (??. ??' ????, ?????? ????, ?????????? ??? 9?? ?????? 1978, 106/77, Simmenthal,
????? ??? 1978, ?. 239, ?????? 16 ?? 21, ??? ??? 19?? ?????? 1990, C-213/89,
Factortame ?.., ?????? 1990, ?. I-2433, ??? 19).

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

40 ???????, ??? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? ???, ?????? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?????? ?????????? ??? ?????? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 43 ??.

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

41 ?????????? ??? ? ??????? ?????????? ??? ?? ??? ???? ?????????? ??? ?????? ?????? ?????? ??????
??? ?????????? ?????????????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ??????????, ?' ???
????????? ??? ? ?????????? ??? ?? ?????????? ??????. ?? ?????? ??? ?????? ??????????
????? ?????????? ?????????????? ??? ?????????? , ??? ?????? ?? ??? ?????? , ??? ??????????.

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

1) ?? ??? 43 ?? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ?????? ?????? ??? ?????????? ?? ?????????? ?? ??? ?????? ?????? ?????? ??
????????? ??? ? ?????? ?????????? ?????????? , ??? ?????? ?? ?????????? ?????? ???
????????? ??? ?????? ?????? ?????????? ?? ?????????? , ??? ?????? ?????? ?????????? ???
????????? ??? ?????? , ??? ?????? ??? ?????? ?????? ?????? ? ?????? ?????????? ?????? ???
????????? ??? ?????????? ??? ?????? ?????? ?????? , ??? ?????????? ?? ??? ??? ??????
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??????
????? , ??? ? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ?? ?????? ?????????? ?????? ??????????.

2) ??? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???
?? ?????????? ?? ??? ?????? ?????? , ??? ?????? ?? ?????????? ?? ??? ?????????? ???
????? ??? ?????? ?????????? , ??? ?????? ?? ?????????? ?? ?????????? ?? ??? ?????????? ???
????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????????? , ??? ?????????? ???
????? ?????????? ??? ?????? ?????? ?????? , ? ?????? ?????????? ???
????????? ?????????? ??? ?????????? ?????? ?????????? ?????? ??? ?????? ?????? ??? ?
????????? ??? ??? ??? ?????? ?????.

3) ?????? ?????????? ?????????? ??? ??? ???? ?????? ?????? ? ?????? ???, ??
????? ?????????? ??? ?????? ?? ?????? ?????????? ??? ?????? ?????? ??? ??????
????? ??? ?????? ?????? ??? ?????? 43 ??.

(?????????)

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