

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

??? 8?? ?????????? 2012 (*)

«????????? – ??? – ?????????????? ?????? – ??????????????, ??? ??? ?????? ???
?????????????, ??? ??? ?????????? “??? ?????? ??? ??????????????” – ?????????? ???
????? ??? ?????? ?????? – ?????????? ??? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ?????? ??? ??????»

???? ?????? C-299/11,

?? ?????????? ?????? ?????????????? ?????? 267 ????, ??? ??????
?? Hoge Raad der Nederlanden (????? ????) ?? ?????? ??? 13?? ?????? 2011, ? ????
????????? ??? ?????????? ??? 15 ?????? 2011, ??? ?????? ??? ??????

Staatssecretaris van Financiën

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Gemeente Vlaardingen,

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

????????? ??? ??? A. Tizzano, ?????? ???????, A. Borg Barthet, M. Illeši? (?????????), E.
Levits ??? M. Berger, ???????,

?????? ??????????: J. Mazák

?????????: M. Ferreira, ????? ?????????? ??????????,

?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???
24?? ??? 2012,

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

- ? Gemeente Vlaardingen, ?????????????? ??? ??? G. J. A. van Kalmthout, advocaat,
- ? ?????????? ????????, ?????????????? ??? ??? C. Wissels, J. Langer ??? M. K.
Bulterman,
- ? ?????????? ????????, ?????????????? ??? ??? L. Lozano Palacios ??? P. van Nuffel,

???? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??? ?? ??????????
?? 11?? ?????????? 2012,

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

??????

1 ? ?????? ?????????????? ?????? ??? ?????? ??? ?????? 5, ?????????? 7,
????????? ??, ??? ?????? ?????? 77/388/???, ??? ??????????, ??? 17?? ?????? 1977, ???
????????????? ??? ?????????? ??? ?????? ?????, ??? ?????????? ?? ??? ?????? ??????

????????? – ????? ??????? ?????? ?????????????????? ?????: ?????????????? ?????????????? ??? (???. ??. 09/001, ?. 49), ??? ?????????????? ?? ??? ????? 95/7/??. ??? ??????????, ??? 10??. ?????????? 1995 (?? L 102, ?. 18, ??? ?????: ????. ??????).

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

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

3 ? ????? ??????? ?????????????? ??? ??????????????????, ??? 1?? ?????????? 2007, ?? ?? ?????? 2006/112/?? ??? ???????????, ??? 28?? ?????????? 2006, ??????? ?? ?? ?????????? ?????? ??? ?????? ?????? ?????????????? ??? (?? L 347, ?. 1). ??????????, ?????????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??????.

4 ????? ?? ?????? 2 ??? ?????? ????????:

«???? [?] ?????????????:

1. ?? ??????????? ?????? ?? ??????? ??????????, ??? ??????????????????? ??
????????? ?????? ?? ??????????? ?? ?????? ?? ?????????????? ?? ?????, ??? ?????? ??
????????? ?? ??????

2. ?? ?????????? ???».

5 ?? ?????? 4 ??? ??????? ?????? ?????? ????:

«1. ?????????? ?? “?????????? ???? ????” ?????????????? ????, ??? ?????????????? ??? ???? ?????????? ????, ??? ?????????? 2, [...]

2. ??????????? ??????????????, ??? ???? ?????? ??? ?????????? 1, ??? ???? ??
????????????? ??? ??????????, ??? ?????? ? ??? ?????????? ?????????? [...]. ??
????????? ?????????? ?????? ?????? ? ?????????????? ?????????? ? ?????? ??????,
???? ???? ?????? ?????????? ?????? ?????????? ??????????.

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

?? “??????” ??????? ??? ?????????? ??? ???????? ??????? ?? ?? ??????.

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

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

[...]»

6 ?? ?????? V ??? ????? ??????? ??? ????? «????????????? ??????» ???
????????????? ?? ????? 5 ??? 7 ??? ?????? ?????, ?????????? ?? ????? «?????????
?????», «????? ??????» ??? «?????????».

7 ?? ????? 5 ??? ????? ??????? ??? ?? ??????????:

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

[...]

5. ?? ????? ??? ?????????? ?? ??????? ?? ??????????, ??? ??? ?????? ??? ?????????? 1,
??? ??????? ?????????? ?????????? ??? ??????.

[...]

7. ?? ????? ??? ?????????? ?? ?????????? ??? ?????????? ?? ?????????? ??????:

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

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

?) ?????????? ??? ?????????? ??? ?????????? ??? ?????????? 8, ??? ?????? ??????
??? ?????????? ??? ? ?????? ??? ? ?????? ??? ? ?????? ?????? ??? ?????????? ???
???? ?????????? ??? ?????????? ???, ??? ?????? ??? ?????? ?????? ?????? ? ?????????? ???
????? ??????, ?????? ?? [?? ??????] ??, ?????????? ??? ?????? ??? ? ?????? ???
?????.

[...]»

8 ?? ????? 11 ??? ?? ??? ?????? ?????? ?? ?????:

«A. ??? ?????? ??? ??????

1. ??? ?????? ??? ?????? ?????:

[...]

?) ??? ??? ?????? ??? ?????????? ??? ?????? 5, ?????????? 6 ??? 7, ? ?????? ???

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

[...]».

9 ??? ?? ??? 13, B, ??? ????? ??????:

«[...]

B. [...] [?] ? ????? ???? ?????????? [...]

?) ??? ?????????? ?????? ? ?????? ?????? ??? ?? ?????????? ?? ??? ????????,
???? ?? ?????????? ??? 4, ?????????? 3, [?????????] ???

?) ??? ?????????? ?? ?????????????? ??????, ??? ?? ?????????????? ??? ????? 4,
????????? 3, [?????????] ??, ?????? ??? ??????????»..

10 ?? ??? 18 ??? 74 ??? ?????? 2006/112 ??????????, ???' ??????, ??? ?? ??? 5,
????????? 7, ??? 11, A, ?????????? 1, [?????????] ??, ??? ????? ??????.

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

11 ?? ??? 3 ??? ?????? ??? 1968 ??? ?????? ?????? ?????? (Wet op de Omzetbelasting
1968), ??? ?????? ??? ?????? ??? (??? ????: Wet OB), ??? ?? ??????????:

«1. ?????????? ?????? ?????:

[...]

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

[...]

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

[...]».

12 ?? ??? 8, ?????????? 3, ??? Wet OB ?????? ?? ???:

«????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? 3, ?????????? 1, ?????? g ??? h,
[...] ? ?????????? ??? ?????????? ??? ???, ?? ?????????????? ??? ?????? ?????? ??????????,
??? ?? ?????? ?? ?????????? ??? ?? ?????? ??? ?????, ??? ?? ?????? ?????? ?????? ???
????????? ???, ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????????
????? ?? ?????? ??? ??????».

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

13 ? ??? Vlaardingen ??? ??? ?????????? ?????????????? ?????????????? ??? ??????????

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

14 ?? 2003 ? ?????? ?????? ??????? ?? ?????????????? ?? ?????????????? ?? ?? ?? ?? ?????? ??????
?????????????, ?? ?????? ?????? ???????????, ?? ?????? ??????????. ???? ?? ??????????
??? ??????? ?? ?????????? ?????, ?? 2004, ?????????? ?? ??????????? ?? ?? ?? ?????? ??????, ??
????????? ?? ?? ?? ??, ?????? ?????????? ??????? ?? ?? ?? ?????????? ?? ?? ?????????? ?? ?? ??????????????.

15 ????. ????. ?????????? ????. ????????????. ????. ?????????? ?? ?? ????. ????, ?????????? ????. 1
547 440 ????, ????. ????. ????????????. ????. ?????? 293 993 ????, ????. ?????? ?????? ? ?? ??????
????. ?????? ????. Vlaardingen ??????. ????. ????, ?????? ? ??????. ?? ??????. ?? ?? ??????. ????.
????????????? ????, ????. ? ??????. ????. ?? ??????. ?????? ??????, ?????????? ????. ????. ????.
???.

16 ??????? ??????? ??? ???????????? ???????????? ??? ?????? ??? Vlaardingen, ? ???????
????? ??????????? ??? ?????? ??? ?????? ?????? ?????????? ??????, ??? ??????? ??? ??? ??? ???
????? 2004, ????? 116 099 ????. ????. ??? ?????? ????, ? ?????????????? ??? ??? ??? ??? ???
Vlaardingen ??? ?? ??? ?????? ??? ?? ??????? ?????????????? ??? ?????? ?? ???????
?? «???????, ??? ??? ?????? ??? ????????????, ?????? [...] ??? ?????????? ??????
????????? ??????? ?? ??????? ?????? ??? ?????? ????????????, ??? ?????? ?????????????? ??? ??
??????», ??? ??? ?????? ??? ?????? 3, ?????????? 1, ???????? h, ??? Wet OB.

17 ????? ??????????? ???, ??, ? ? ???? ????? ?????? ?????? ?????? ?? ?????? ?????? ?????????????? ????
????????? ??? ??, ??? ?????? ??? ?????? ?????? ?????? ?????????? ??????:

?????? ???????? ??? ??? ??????: 1 547 440 ????

???? ???: + 610 940 ????

????????????? ???: 2 158 380 ????

??? 19 % ??? 2 158 380 ????: 410 092 ????

????????? ?????? ??? ?? ???????? ??? ?????????: - 293 993 ????

????????????? ????: 116 099 ????.

18 ? ?????? ??? Vlaardingen ??????????? ??
Rechtbank te 's-Gravenhage. ??? ? ? ? ?, ?? ?????? ? ? ?????????? ?? ? ? ? ? ?
????????????? ?? ? ? ? ? ? ?, ?? ?????? ?????????? ?? ?

20 ?? Hoge Raad der Nederlanden (????????? ??????????? ??? ??? ????) ?????????? ??
?????????? ?? ??????????? ??? ?? ?????????? ??? ??????????? ?? ?????????? ???????????

????????:

«???? ?? ?????? 5, ??????????? 7, ???????? ??, ??? ?????? ????????, ?? ??????????? ?? ?? ?????? 5, ??????????? 5, ??? ?? ????? 11, A, ??????????? 1, ???????? ??, ??? ?????? ????????, ??? ?????? ?? ?????? ????????, ??? ?????? ?? ?????? ????????, ??? ?????? ?? ?????? ????????, ??? ?????? ?? ?????? ????????, ??? ?????? ?? ?????? ????????, ??? ??????:

– ?? ??????? ?? (?????????????) ?? ?????? ?? ?????????????????? ??
?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
???

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

????????????? ???? ?????????????????? (???? ??????) ???? ?????????? ???? ????? ?????????? ???? ?????;»

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

21 ????? ?????????? ??? ??? ??????? ??? ?????????? ????????????, ?? ??????? ???
?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? Vlaardingen ??? ????????????
??? ?????? ?? ?????????? ??????. ? ?? ??? ????? ?????? ?????? ?????? ?????????? ?????????? ??????????
????????????? ??? ??? ???.

22 ?????????????? ?????? ??? ??? ?????? ?????????? ?????????? ??? ?????? ??????
????????? ???, ??????? ??? ??? ???? ??? Vlaardingen. ?????? ?? ?????????? ?? ??????????????
?? ? ?? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????????????? ??? ??????
5, ?????????? 5, ??? ????? ?????? ? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ? ?????? ???, ?? ??? ?????????? ??? ?? ?????????? ??? ?????? ???
????????? ?????? ??? ? ?????? ??? ?? ?????? ??? ?? ?????? ???, ??? ?????? ?? ??????????
??? ?????? ??? ?? ?????? ??? ?????? ??? Vlaardingen, ??? ???, ??????, ? ??????????
????????? ??? ?????? ??? ?????????? ?? ?????????? ??????, ??? ?????????? 5,
????????? 7, ??????? ?, ??? ???? ??????.

24 ????????, ?? ???? ?? ???? ?????? ??? ?? ?? ?????????????? ??????? ?????????? ??
????????????? ?? ?? ???? 5, ?????????? 7, ??????? ??, ?? ?????? ??????, ?? ???? ?????? ??
?? ?? ???? 11, A, ?????????? 1, ??????? ??, ??, ??, ?? ???? ?????? ?? ? ?? ?????? ??
????????? ?? ???? ?????????????, ?? ???? ?????? ?? ???? ??????????
????????????? ?????????????? ?? ???? ??, ?????? ?? ???? ?????? ?????? ?? ???? ??
????????? ?? ?? ???? ?????????? ?????????? ?? ???? ?????? ?????? ?????? ?? ???? ??
????????? ?? ??, ?????????? ?? ???? ?????? ?????? ?? ???? ?????? ?? ???? ?????????? ??
????? ?? ?? ???? ?????? ?????? ?? ???? ?????? ?????????? ??.

25 ?? ?? ??? ?????? 5, ??????????? 7, ?????????? ??, ?????????? ?????????????? ??? ???? ??????
???? ?????????? ?? ??? ????? ?????????? ? ?????????? ?????????? ??? ?????? ??? ??????, ?? ??????
??????, ? ??? ??????. ??? ?????? ?????????????????? ??? ?????????? ?????????? ?????????????? ???

????????? ??? ??????? ??????????? ?????? ??? ????? ?????? ??? ?????? ?????, ?????????????? ?
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????????????? ?? ?????????????? ? ??????
????????????? ????. ????, ??????????, ?????? ??? ?????? ?????? ?????????????? ?????? ????
????????????? ??? ?????????????? ?? ?????? ?????????? ?????? ?????? ?????????? ?????, ??? ?????? ?????? ?
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? (??., ?????, ?????????? ??? 30??
????????? 2006, C-184/04, Uudenkaupungin kaupunki, ??????? 2006, ?. I-3039, ????? 24? ???
12?? ?????????? 2009, C-515/07, Vereniging Noordelijke Land- en Tuinbouw Organisatie,
????????? 2009, ?. I-839, ????? 28, ??? ??? 16?? ?????????? 2012, C-118/11, Eon Aset
Menidjmunt, ??? 44). ??? ?????????? ? ?????????? ?????????? ??? ? ?????????? ??????????,
?? ??? 5, ?????????? 7, ????????, ??? ?????? ?????????? ?????????? ?????? ????
?????????, ??? ?????, ?????????? ??? ?????? ?????? ?????, ?????????? ??? ?????? ????
????????? ??? ?????? ?????, ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???.

26 ??????????, ??? ?????? ? ?????? ?????????? ?????????? ??? ?????? 45 ??? ?????????? ???, ?
?? ??? ?????? ?????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ?? ??????????
???? ?????????? ??? ?????? ??? ?? ?????????? ?? ???????, ?????? ??????
????????????? ??? ??? ??? ?????????? ?????, ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??? ??
??? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???, ?? ??? ?????????? ??
????????? ??? ?? ?????? ?? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?? ?????? ??? ?????????? ??? ?????? ?????????? ???, ?????????? ?? ?????? ??? ??
???? ?, ?????????, ?????????? ?? «??? ?????? ??? ?????????? [????]». ??? ??
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ?? ?????????? ?? ?????? ???
????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 5, ?????????? 7,
????? ??, ??? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ??
?????????, ??? ??? ?????? ??? ?????? ??? ?????????? ?????????? ?????????? ?????????? ??????
?????????, ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?????? ?????? ?????? ??????
?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 2, ?????????? 1, ??? 5, ?????????? 1, ???
????? ????, ??? ?? ??????, ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???.

27 ??? ?? ?????? ?? ?????? ??? ?????? ??? ?????????? ???, ? ?????? ?????????? ??
????????? ??? ?????? 18 ??? ?????? 2006/112, ??? ?????? ??? ?????? ??? ?????? ???
???? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ???, ?? ??? «????? ??????, ?????????? ???, ??????????, ??????????, ??????????,
[...] ??? ?????? ??? ?????????? ???» ?????? ?? ??????????, ??? ?????????? ??
????????? ?????????? ??? ? ?????????, ??? ??? ?????? ??? ?????????? ??? ?????? ?? ?????? ??
????? ??? ?????? ??? ??????????, ?????????????? ???, ?????????????? ??? ?????????? ??
??? ??? ??? ?????? ??????????, ??? ?????? ??? ?????? ?? ?????? ??? ?????? ??????????,
?????????????, ?????????? ??? ?????????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ???
????? ??? ? ?????????? ???.

28 ??????, ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??? ?????? ???
????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???
????????? ?? ?????, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 5, ?????????? 7, ?????? ???, ??? ??
????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ??, ??? ?? ?????? ??? ?? ?????? ?????? ??? ?????? ???, ?????? ??? ?? ??
????? ??? ?? ?????? 5, ?????????? 7, ?????? ??, ?? ??? ?????? ??? ?????? ??? ?? ??
????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?? ??
????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??

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

29 ????? ????????, ?? ????? ??????? ?????? ??? ????? ?????? ??? ??????????
?????????? ????? ??????? ?? ??????? ??????, ? ????? ?????????????? ??? ?? ??? ????? 5,
?????????? 7, ??????? ??, ??????? ?? ??????? ??? ? ?????????? ???????????, ???
?????? ??? ??, ??? ?????????? ??? ????? ?? ?????????? ?? ?????????? ???????
????? ?????????????? ?? ????? ??????? ?? ?????????? ?????????? ??????? ?? ?????? ? ??? ??
????? ??? ??????? ??? ??????????? ??? ? ?????????? ?????????? ?? ?????????? ???????
????? ??????????? ?? ?????? ?????????? ?? ?????????? ??? ?????????? ?????????? ??? ???????
?????.

30 ?????????????? ????, ??????? ?? ??? ????? ?????? ??? ?????? 11, A, ??????????? 1,
????????? ??, ??? ????? ???????, ? ?????? ?????????????????? ??? ?????? 74 ??? ??????
2006/112, ?? ?? ??? ????? ?????? ??????? ?? ?????????????? ??? ??? ??? ????? ?????? ??? ?? ??
????????????? ??? ????? ?????? ?????? ?????? ??? ?????????????? ??? ??? ??? ?????? ???
????????????? ??? ????? ?????? ?????????????? ??? ?????? ?????????? ?????????? ??????????,
?????? ?? ??????? ?????? ??? ?????? ??? ?????? ?????????? ?? ?????????????????? ??? ??? ??????
??? ?????????????? ??????????????, ??? ? ?????? ?????????????? ??? ??? ??? ?, ???
?????, ??????? ?????????????? ??? ?????????? ?? ?????????? ??? ?????????? ?????????? ?? ?? ??????
?????? ??? ????? ?????? ??????? ?? ??? ?????????? ??????????. ?????? ??? ?????????? ???????,
?? ??????? ??? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??????????
?????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????.

32 ???????, ?????? ?? ??????????? ??? ?????? ?????????? ?????????? ??????????????? ??? ?? ?
??? ? ?????? ????? ?????????????? ??? ??? ?????????????? ?????? ??? ?????? ? ??????????, ? ??
????????????? ??? ??? ?????????? ?????????? ?????? ?????????????? ??? ??? ?????? ??????????
??? ?????????? ??? ??? ?????????? ?????? (??., ?????, ?????????? ??? 16??
????????? 1992, C-208/91, Beaulande, ?????? 1992, ?. I-6709, ????? 14? ??? 17??
????????? 1997, C-347/95, UCAL, ?????? 1997, ?. I-4911, ????? 34, ????? ??? ??? 29??
????????? 2004, C-308/01, GIL Insurance ?.??., ?????? 2004, ?. I-4777, ????? 33). ???
??????, ? ?????????? ?????????????? ??? ?????????? ?? ?????????? ???????, ??? ???
????????? ??? ?????????????? ?????????? ??? ?????????? ?????????? ???????, ??? ??????? ??
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??? ?????, ???????, ?? ?????? ?? ?????????? ??? ??????????. ??? ?????????????? ? ??????????, ???
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??? ?????, ???????, ?? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??? ??? ??
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? ??????? ? ?????? ? ??????????????. ?? ?????? ??? ?????, ?? ?????? ?? ?????????? ??? ?????? ????
????????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? Vlaardingen, ??????
?? ??? ?????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ???, ?????? ?????? ??? ?????? ???
????????????? ??? ?????????????? ??? ?????? 5, ?????????? 7, ?????????? ?, ??? ?????? ??????????
??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????.

34 ?? ?????????? ??? ?????????? ??? ?????? ??? Vlaardingen ??? ??? ??????????, ???
??? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????????? ?? ?????????????? ??? ?????????? ???
?????? ??????, ??? ??? ??? ??? ?????? ??? ?????? ?????????? ??????????????, ?? ?????? ???
????????????, ?????????, ??? ?? ?????? ?? ?????? ?????? ?????? ?????? ??? ?????? 5, ?????????? 7,
????????? ?, ??? ?????? ?????? ? ?????? ??? ?????? ?????? ?????????? ? ?? ??? ??????, ???
?? ?????? ??? ?????? ?????????? ??? ?????????????? ??? ?????? ?????? ?????????? ?? ?????? 13, B,
????????? ?, ??? ?????? ?????? ???.

35 ???????, ??? ?? ?? ??? ?????? 13, B, ????????, ??, ?? ?????????? ?? ?????????????? ??? ??????????????
??????, ??? ??? ?????????????? ??? ?????? 4, ?????????? 3, ?????????? ?, ??? ??????
??????, ?????????????? ??? ??? ???.

36 ???????, ??? ?? ?????????? ??? ?? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??????
????????????? ??? ?????? ?? ?????????????? ?? ?????????????? ?????? ?? ?????? ??? ?????? ???
?????????? ??? ??? ?????? ??? ?? ?????? ??? ?????? 4, ?????????? 3, ?????????? ?,
????????????? ?? ??? ? ?????????????? ??? ??? ?????? ?????? ??? ?????? ?????????????? ???????,
????? ?? ?????????? ???, ???, ?????? ??? ?????????????? ??? ?????????????? ??? ?????? 5,
????????? 7, ?????????? ?, ??? ?????? ??????, ? ?????????????? ??? ??? ?????????? ???
????????????? ?????????? ??? ??? ?????? ?????? ?????????????? ?????? ??? ?????? ?????? ???
????????????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????,
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? 13, B, ????????, ??, ??? ??????
????????? ??? ?????????? ??? ?????????????? ??? ?????? ?????? ??? ???.

37 ?? ??????????, ?????????? ??? ?????? ?????????? ?? ?????? ?? ? ??????????????
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38 ?????????? ??? ?????? ??? ?????? ??? ??????, ??? ?????????? ?????? ??? ?????? ??? ?????? ?
????????? ??? ?? ?????? 5, ?????????? 7, ?????????? ?, ??? ?????? ??????, ?? ?????? ??? ?????? ??
?? ?????? 11, A, ?????????? 1, ?????????? ?, ??? ?????? ??????, ??? ?????? ?????? ???
????????????? ??? ?????????????? ??? ?????? ???, ??? ?????? ?????? ??? ?????? ??????????
????????????? ??? ?? ?????? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ???
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B, ????????, ??, ??? ?????? ???.

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39 ?????????? ??? ? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
??? ?????????? ?????????????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ??????????, ?' ???
????????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??????????
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??? ??? ???? ?????? ??????, ?? ?????????? (????? ????) ??????????:

?? ?????? 5, ?????????? 7, ????????, ??, ??? ????? ?????? 77/388/??? ???
??????????, ??? 17?? ??? 1977, ??? ?????????? ??? ?????????? ??? ?????
?????, ??? ??????? ?? ??? ????? ?????? ?????? ?????? - ??? ?????? ?????? ???
????????????? ?????: ?????????? ?????????? ???, ??? ?????????????? ?? ???
?????? 95/7/?? ??? ??????????, ??? 10?? ?????? 1995, ?? ?????????? ?? ?? ???
11, A, ?????????? 1, ??????? ??, ??? ?????? ?????, ??? ??? ?????? ??? ?
????????????? ??? ?????????? ???, ??? ??? ?????? ??? ?????? ????? ??????????
????????????? ??? ?????????? ??? ??? ???, ?????????? ??? ??? ?????? ?????? ???
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????? ?????? ?? ?????????? ?? ??? ?????? ?????????? ??? ?????????? ???, ??? ??? ??????????
????? ??? ?? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??? ??? ??
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????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? 13, B, ?????????? ??, ??? ??????
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(?????????)

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