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

??? 7?? ????????? 2013 (*1)

«????? ????????????????? ?????? — ?????? 77/388/??? — ????????? ???? ?????????????????
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???? ????????? C-424/11,

?? ?????????????? ?????? ????????????????? ?????????? ????????? ???? ?????? 267 ???? , ???
????????? ?? First-tier Tribunal (Tax Chamber) (????????? ??????????) ?? ????????? ???? 8?? ?????????
2011, ? ?????? ?????????? ??? ?????????????? ???? 11 ?????????? 2011, ??? ????????? ???? ??????

Wheels Common Investment Fund Trustees Ltd,

National Association of Pension Funds Ltd,

Ford Pension Fund Trustees Ltd,

Ford Salaried Pension Fund Trustees Ltd,

Ford Pension Scheme for Senior Staff Trustee Ltd

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Commissioners for Her Majesty's Revenue and Customs,

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

????????????? ??? ???? A. Tizzano, ????????? ?????????, A. Borg Barthet, E. Levits, J.-J. Kasel ???
M. Safjan (?????????), ?????????,

????????? ??????????????: P. Cruz Villalón

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

????????? ?????? ??? ?????????? ?????????????? ??? ?????????? ??? ??' ?????????????? ?????????????? ???
12?? ?????????????? 2012,

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?? Wheels Common Investment Fund Trustees Ltd ?..?, ?????????????????????? ??? ??? P. Lasok,
QC, ?????????????????? ??? ??? A. Brown, solicitor,

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??? ??? R. Hill, barrister,

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? ?????????? ?????????, ?????????????????? ??? ??? R. Lyal ??? ??? C. Soulay,

????????? ??? ?????????? ??? ?????, ????? ??????? ??? ?????? ?????????????, ?? ?????????? ???
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1

? ?????? ?????????????????? ??????????? ?????? ??? ?????????? ??? ?????? 13, B, ?????????? ??,
????????? 6, ??? ?????? ?????????? 77/388/??? ??? ?????????????, ??? 17?? ?????? 1977, ???
????????????????? ??? ?????????????? ??? ??????? ??????, ??? ?????????? ?? ?????? ??????? ???????
?????????? –?????? ?????????? ?????? ?????????????????? ??????: ?????????????? ?????????????? ????? (??
???. ????. 09/001, ? 49, ??? ?????: ???? ???????) ??? ??? ??????? 135, ?????????????? 1, ??????????
??, ??? ?????????? 2006/112/?? ??? ?????????????, ??? 28?? ????????????? 2006, ?????????? ?? ??
?????? ?????????? ?????? ?????????????????? ?????? (?? L 347, ? 1).

2

? ??????? ???? ?????????????? ??? ?????????? ?????????? ?????????? ??????? ??? Wheels Common
Investment Fund Trustees Ltd ?..?. ??? ??? Commissioners for Her Majesty's Revenue and
Customs (??? ?????: Commissioners) ?????????? ?? ??? ?? ?????????? ??? ?????????? ?????????? ???
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????????????????????? ?????????????? ?? ?????????? ?????????????????????? ??? Wheels Common Investment Fund
Trustees Ltd ?..?.

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3

? ?????? ?????????? ?????????????????? ??? ??? ?????????? 2006/112, ? ?????? ?????????? ?? ?????? ??? 1?
????????????????? 2007. ?????????????? ??? ?? ?????????? ??? ??? ?????????? ??? ?????????? ??????????
????????????? ?????????????? ??? ??? 1? ?????????? 2004 ?????? ??? ??? 30 ?????????? 2007, ?????????????
?? ?????????? ??????? ??????? ?????????????? ?????? ?????????? ??? ?????????? ??????.

4

?? ?????????? ??? ?????????? 13, B, ?????????? ??, ?????????? 6, ??? ?????? ?????????? ??????, ???' ???????,
????????????????????? ?????? ??? ?????????? 135, ?????????????? 1, ?????????? ??, ??? ?????????? 2006/112.
????????? ??? ?????????????? ??????, ?? ?????? ?????? ?????????????????? ??? ??? «?? ?????????????????? ???
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5

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135, ?????????????? 1, ?????????? ??, ??? ?????????? 2006/112 ?????? ?????????????????? ?????? ??????????????

?????? ???? ?? ?? ?????? 9 ??? 10 ??? ????????? 5 ??? ????????????? 9 ??? ?????? ??? 1994
???? ????? ????????????????? ?????? (Value Added Tax Act 1994), ?????? ??? ??????
???????????????? ??? ??? ???:

«9.

? ?????????? ?????????????? ?????? ?????????????? ?????????????? ?? ?? ?????? ??????????????????
[authorised unit trust, ??? ?????: ???] ? ?????????? ?????????????? ?? ??????????

10.

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ended investment company, ??? ?????: ?????]».

6

?????????????? ?? ??????? ?????? ? ??????????? ??? ?????????????? ??? ?????????????? ?? ???
????????? ??? 28?? ????????? 2007, C-363/05, JP Morgan Fleming Claverhouse Investment Trust
??? The Association of Investment Trust Companies, ????????? 2007, ? I-5517, ??? ?????:
????????? Claverhouse), ?????????????? ?? ?????? ?????????????? ??? ?? ??? ????????? 9 ??? 10, ???
1?? ????????????? 2008, ????????? ??? ????????????????? ??? 2008 ?????? ?????? ?????????????????? ??????
(Finance) [Value Added Tax (Finance) (?????. 2) Order 2008]. ?????? ??? ?????????? ??????
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????? ?? Investment trust companies.

7

?????? ??? ?????????????? 6 ?????? ?????????? 5 ??? ?????????????????? 9 ??? ?????? ??? 1994 ?????? ??????
????????????????????? ??????, ?? ?????? ??? ?? ??? ?????????????? ?????????? ??? ?????? ??? 2000 ?????
????????????????????????????? ?????????????? ??? ??????? (Financial Services and Markets Act 2000).

8

?? ?????? XVII ??? ?????? ?????? ?????????????? ?????????? ?????? ?? ?????, ??? ?????? ??? 235 ??? 237:
«235.

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(1) ??? ?????? ??????, ?? “????????????? ?????????????? ?????????????? ? ??????? ??????????????
?????????????” ?????????? ?????????????????? ?????????? ?????? ?????????? ?????????????????? ?????? ???????,
????????????????????????? ??? ??????????, ??? ?????????? ?????????? ? ?????????????? ?????? ?? ?? ?????? ??
?????? ?????????????????? ?????????????????? ?????? (????? ?????????????????? ??? ?????????????? ??? ??????????????
?????????????????, ?? ??? ? ?? ??????, ?????? ?? ?????? ??????) ? ?????????????? ?????????????? ? ???????
????????? ? ?????????? ??? ??? ??????, ??? ?????????, ?? ?????????????? ? ?? ?????????? ??? ??????????????
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(2) ?????? ??? ?????????????????? ??????, ?? ?????????? ??? ?????????? ?? ?????????????????? ?????? (???
?????: “????????????????? ?????”) ??? ?????? ??? ?????????? ?????????? ??? ?????????????????? ???
?????????????????, ?????????????????? ??? ?? ?????? ?????????? ?????????? ? ?????????????? ??????????????????
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(3) ?? ?????????? ?????? ?? ????? ?????? ???, ????????????, ??? ?? ?????????
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(a)

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(b)

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236.

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(1) ??? ?????? ?????? ?? “????????? ?????????????? ?????????????????? ??????????” ?????????
????????????? ?????????????? ?????????????? ?? ?????? ?? ?????? ?????????????? ?????? ? ?????? ??????????????
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(2) ?????? ??? ?????????????????? ?????? ??????????????, ?????? ??? ?????????????? ??? ?????????????????? ???
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(???? ?????: ??) ??? ?????? ?? ?????????????????? ?????? ?????????? ??? ?????????????? ?????? ?? ??????:

(a)

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(b)

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237.

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[...]

(3) ??? ?????? ??????:

?? “????????????????? ?????????????? ?????????????? ??????????????” ?????????? ?????? ??? ?? ?????? ??????
????????????? ??????? ??? ?????? ?????????? ??? ?????????? ?????? ?? ?????????? ?????? ?????????????? ??????
??? ?????????? 243.

?? “????????? ?????? ?????????? ?????????????? ?????????????????? ??????????????” ?????????? ?????????
????????????? ?????????????? ??????? ??? ?????????????? ??? ?????????????????? ??? ??????? 262, ??? ?? ??????
????? ?????????????? ?????? ?? ?????????? ?????? ?????????????? ??? ?????????????? ???’ ??????????
????????????????? ?????????????? ?????????????????? ?????? ?????? ?????? ?????????????? 2, ??????? 1, ???

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9

? Wheels Common Investment Fund Trustees Ltd (??? ???? : Wheels) ????? ? «trustee»
[?????????????] ?????????? ??? ?????? ?????????????????, ??? ?????????????? ?????????, ??
????????? ??? ?????????????? ?????????? ?????????????????? ?????????????? ??? ?????????? ???
????????? ?????? ????????? ? ?????????????? Ford Motor Company ?????? ?????????????? ?????? ??????????????
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10

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11

????? ??? ?????? ??? ?????????????????? ??????????????????, ? Capital International Limited ?????????
????????????????? ?????????????????? ?????????????? ?????? ?? Wheels. ?????????? ?? ??? ?????????????? ???
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???? ??????? ??? ?????????????? ??????? Commissioners.

12

???? ?????????????????? ??? 2007, ?????????? ??? ?????????????? ??? ?????????????? Claverhouse, ? Capital
International Limited ?????????? ?????????? ??? Commissioners ?????????? ?????????????????? ??? ??? ???
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????????? ??? ?????????????????? ??????? ?????????????? ??? ??????? ?????????????????? ??? ?????????????????? ???
????????????????????? ??? ??????? 135, ?????????????????? 1, ?????????????? ??, ??? ?????????????? 2006/112 ? ???
?????? 13, B, ?????????????? ??, ?????????? 6, ??? ?????????? ??????????, ?????????????? ??? ?????????????? ??????????
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13

?? ?????????? ??? 2?? ?????????????????? 2008, ?? Commissioners ?????????????? ??? ?????????? ??????
????????????? ?????????, ? Wheels ?????????? ?????????????? ?????? ??? ?????????????????? ??????? ?????????????? ??? First-tier
Tribunal (Tax Chamber). ?????? ?? ?????????? ??????????????????, ?????????????? ?? ?????????????????? ???
????????????????????? ??? Wheels ?????????????????? ?????????????? «????????????????????» ?????? ??? ?????????? ???
????????????????? ??? ??? ??? ??? ??????? ?????????????????? ?? ??????? 13, B, ?????????????? ??, ?????????? 6, ???
?????? ?????????????? ??? ?? ??????? 135, ?????????????????? 1, ?????????????? ??, ??? ?????????????? 2006/112, ??????
????????????????? ?? ?? ?????????????????? ?????? ?????????? ? Wheels ?????????? ?? ?????????????????????? ?? «?????????????
?????????????» ?????? ??? ?????????? ?????? ?? ?????? ??????????????????

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???? ? ??? “????????? ?????????”, ??? ?? ??? [13, B, ????????? ??, ?????? 6, ??? ?????
 ??????] ?? ?? ????? 135, ?????????? 1, ????????? ??, ??? ?????? 2006/112, ??? ?????
 ??? ????????????? i) ?????????????? ?????????? ??? ?????? ??? ?????? ?????? ??????????
 ?? ?????? ?? ?????????? ?????????????????? ??????? ?????? ?????????????? ??? ??????????????
 ??? ???/ ? ii) ?????? ?????????????? ?????????? ??? ?????? ?????????????????? ??? ??????????????
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 ?????????? ?????? ??? ?????????????????? ??????????, ?????? ??? ?????? ?????????? ??? ??????) ??? ??
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 ??? ?????????????? ?????????????? ?? “?????”)?

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 ?????????????????? ??? ?????????????????? (????????? ?? ??????) ?????????????????? ?? ?????????? ??????????,
 ?????? ??? ?????? ?? ?????? ??? ?????????????????????? ??? ?????????? ??? ??????????????????????
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????????? ?????????? ????? ?? ?????????????????????? ??? ?????? ?????????? ??? ?? ?????????????????
????????? ?????????????? ??????????????, ?????? ??? ?????????? ??? ?????????? 85/611/[????? ??? ??????????????,
???? 20?? ?????????????? 1985, ??? ??? ?????????????? ??? ??????????????, ?????????????????? ???
????????????????? ?????????????? ?????????? ?? ?????????????? ?????????????? ?????????????? ?????????????? ??
????????? ?????? (?????) (?? L 375, ? 3), ?????? ?????? ?????????????????? ?? ??? ????????? 2001/108/??
??? ?????????????? ?????????????????? ??? ??? ??????????????, ??? 21?? ?????????????? 2002 (?? 2002, L
41, ? 35, ??? ?????: ????????? ??????)],

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?????? ??? ?? ?????? ?????? ?????????? ?? ?????????? ?????????? ?? ?????? ?? ?????????? ?? ??????????
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?????????????”;

3)

????????, ?????????? ??? ?????????? ??? ?????????????? ??? ?????????? ??????????, ?????????????? ??, ??????????
?????????????, ?????? ?????????????? ?? ?????????????? ? ?????????? ?????? ?????? ?? ?????????????? ??????
“????????????????? ??? ?? ?? ?????????? ?? ??????????????????” ?? ?????????????????? ?????? ?? ?????? ??????
????????????????????? ??? ?? ?????????? ?????? ?? “????????????? ??????????”, ?? ?????????????? ? ?????????? ? ?
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15

?? ?? ?????????????? ???, ?? ?????????? ?????????????????? ??????, ??????????????????, ?? ?????????????????????? ?? ???
??? ?????? ?????????????????? ?? ?????????????? ?????????????????? ?????????????????????? ?????????????????? ??? ??
????????????????? ?????????????? ??? ?????? ?????????????????????? ?? ?????????????? ?????? ?????????????? ?????? ?????????
??? ?????? «????????????? ?????????????», ?????? ?? ?????? 13, B, ?????????????? ??, ?????????? 6, ??? ??????
????????????? ??? ?? ?????? 135, ?????????????????? 1, ?????????????? ??, ??? ?????????? 2006/112.

16

????????? ?? ?????????????????? ?????????????? ???, ?????? ?????? ??????????????, ?????????????? ?? ?????????????????? ???
????????? ??????????????????, ?????????? ??????, ?? ?????? 13, B, ?????????????? ??, ?????????? 6, ??? ??????
????????????? ??? ?? ?????? 135 ??? ?????????? 2006/112 ?????????????? ?????????????????? ?????????? ???
????????????? ??? ?????????? ??? ?????????, ??????????????, ?? ?????????? ?????????? ?????????? ?? ?????? ???
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??? ??????, ?? ?????????????? ?? ?????????? ?????? ?? ??? ?????????? ?? ?????????????????? ?? ?????????????????? ??????,
????????? ??? ?????????? ?? ?????????????????? ?????? ??? ?????? ? ?????????????????? ?????? ?????????? ??? ?????????? ??
????????????????? ?????????????? ??? ??? ?????????????????????? ??? ?????????????? (??., ??????????, ?????????? ???

4?? ????? 2006, C-169/04, Abbey National, ?????? 2006, ? I-4027, ?????? 38 ??? 39, ???
??????? Claverhouse, ?????? 19 ??? 20). ????? ??? ?????????? ?????, ???, ?????????? ???
????? ??? ? ?????? ?? ?????? ??? ?????? ??? «????????? ??????????» (??, ?????????,
????????????????? ?????????? Abbey National, ?????? 40 ??? 41, ??? Claverhouse, ?????
43).

17

? ?? ??? ?????????? ?????? ? ?????? ?????????????? ???' ????? ??? ????? ??? ????? ???
????????? ??? ?????????? ??? ?????????? ??? ??? ?????????????? ?? ?????? ?? ??? ???
????????????????? ??? ?????? ?????????????? ? ?????????? ??? ?????? (??, ??????
Claverhouse, ?????? 21). ??????????, ??? ?????? ?????? ??? ??????, ?????? ?? ?????????? ???
???? ??? ?????? ??? ??? «????????? ?????????», ?? ?????????? ?? ?????????? ?????????? ???
????????? ?????????? ?????????????? ??? ??? ?? ?????????? ????. ?? ?? ??? ??????????
?????????, ?????????, ??? ?????? ?????? ?? ?????????? ?????? ?? ?????????, ??? ?????????
??? ??????, ?? ?????????? ??? ?????????? ??? ?????? ??? «????????? ??????????» (??.
???????? Claverhouse, ?????? 41 ??? 43).

18

? ?????? ?????? ??? ?????? ??? «????????? ??????????» ? ?????? ?????????????? ??? ?????
???? ?????? ?? ?????????? ??? ?????? ?????????? ?? ??? ?????????? ??? ?????? ?????????????? ?
????????? ?? ??? ?????? ?????? ??? ??? ?????? 2006/112 ??? ?? ??? ?????? ??? ??????????????
????????????????? ? ?????? ?????? ?????? ?? ?? ?????? ?????? ??? (??, ????????? Claverhouse,
???????? 22 ??? 43).

19

??????, ?????? ?? ?????????????, ??????, ??? ? ?????? ??? ?????????? ??? ?????? ???
????????????? ?? ?? ?????????????? ?????????? ??????????, ?????????, ??? ??
????????????? ??? ?????????? ?? ?????????? ?? ?????? ??? ?????????????? ??????????,
????????????? ?? ?????? ?????? ??? ??? ???, ???, ?? ?? ??????, ??? ?? ?????????????? ??? ??
????? ?????? ??? ?????? ?????????????? ?????????? ?? ?????? ??? ?????? ?????? ??? ??????
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????????????? ?????????? (??, ?????????????????? ?????????? Abbey National, ?????? 62, ???
Claverhouse, ?????? 45).

20

???? ?????, ?????????, ??? ??? ??? ?????????????? ?????????????????, ????? ?????
????????????? ? ?????????????? ?????????????, ?? ??? ??? ?????????? ??? ???, ??????????????
??? ?????????????? ??? ?????? ?????? (??, ?????????, ?????????? ??? 16?? ?????????????? 2004,
C-382/02, Cimber Air, ?????? 2004, ? I-8379, ?????? 23 ??? 24, ??? ??? 8?? ?????????????
2005, C-280/04, Jyske Finans, ?????? 2005, ? I-10683, ?????? 39, ????? ???
????????????????????? ?????????? Abbey National, ?????? 56, ??? Claverhouse, ?????? 29).

21

?????? ?? ?????????????? ?????? ???, ??? ??? ?????????? ??? ?????? ?????, ??? ?????????????? ??
????????????? ??? ?????????????????? ??????. ??????????????, ????? ?????? ??????????, ????? ??? ??
???? ?????? ?????????????? ?????? ? ?????????????? ?????????????, ??? ?????? ??? ???,
????????????? ?????????? ??????????, ?? ??????, ?? ?? ??????, ?????????????? ??????????????????
?????? ??? (??, ?????? ?????, ?????????? ??? 23?? ?????????? 2003, C-109/02, ?????????

???? ?????????, ??????? 2003, ? I-12691, ????? 20, ??? 17?? ????????????? 2005, C-453/02
??? C-462/02, Linneweber ??? ?????????, ??????? 2005, ? I-1131, ????? 24, ??? 26?? ?????
2005, C-498/03, Kingscrest Associates ??? Montecello, ??????? 2005, ? I-4427, ????? 54, ???
8?? ??????? 2006, C-106/05, L.u.P., ??????? 2006, ? I-5123, ????? 32, ??? 12?? ???????????
2006, C-246/04, Turn- und Sportunion Waldburg, ??????? 2006, ? I-589, ????? 33, ??? 27??
???????? 2006, C-443/04 ??? C-444/04, Solleveld ??? van den Hout-van Eijnsbergen, ???????
2006, ? I-3617, ????? 39, ????? ??? ??????? Claverhouse, ????? 46).

22

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?????? 13, B, ????????? ??, ??????? 6, ??? ????? ????????? ??? ??? ??????? 135, ??????????? 1,
?????????? ??, ??? ????????? 2006/112, ? ?? ????? ?? ??????? ????? ????????????? ??? ?????????
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23

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?????????? (??, ?????????, ??????? ?????, ????????? ??? 19?? ????????? 2012, C-44/11, Deutsche
Bank, ????? 32). ??? ??????????? ??? ?? ????? 1, ????????????? 2, ??? ?? ????? ?????????,
???????????? ??????????? ??? ??????? ?? ???????, ????? ??? ?? ??? ??? ?? ????? (??, ?????????,
???????? Claverhouse, ????? 50), ????? ??????????????????? ?? ?????????????, ????????? ?? ???
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?????????? ??, ??????? 6, ??? ????? ??????????? ??? ?? ????? 135, ????????????? 1, ??????????? ??,
??? ????????? 2006/112, ??? ????????????? ??????????????? ?? ????????? ??????? ??? ??????????? ???
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24

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???????????????? ??????????????????? (??, ?????????, ??????????????????????? ??????????? Abbey
National, ??????? 53 ??? 56, ??? Claverhouse, ??????? 48 ??? 51).

25

?????????????? ?????????, ?????, ??? ????? ??????????????????????? ?? ????????? ???????????????
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??????????, ????? ??? ??????? ??? ??????? 13, B, ??????????? ??, ??????? 6, ??? ????? ??????????? ???
??? ??????? 135, ????????????? 1, ??????????? ??, ??? ????????? 2006/112.

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 ?????????????? ????????????? (??., ?????????, ???????? Claverhouse, ??? 50). ?? ? ??????? ??
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 ?? ?? ????? 13, B, ?????????? ??, ?????? 6, ?? ?????? ?????????? ?? ?? ????? 135,
 ????????????? 1, ?????????? ??, ?? ????????? 2006/112 ?????? ?? ?????? ?? ??????????????
 ?????????? ?? ?????? ?????????????????????? ?? ?????????? ?????????????? ??? ??????????????????
 ?????????????????? ?? ?????????? ??? ?????? ?? ??? «????????? ??????????», ??? ??
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 ?????????????? ?? ?????????? ??? ??? ?????????????? ??????. ?? ?????? ??? ?????? ??????????????
 ????? ?????????? ?????????????? ??? ?????????????, ????? ??? ?? ??? ??????????, ??? ?????????????.

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

?? ?????? 13, B, ????????? ??, ??????? 6, ??? ?????? ????????? 77/388/??? ??? ?????????????, ???
 17?? ?????? 1977, ???? ?????????????????? ??? ?????????????? ??? ??????? ??????, ??? ?????????? ??
 ?????? ??????? ??????? ?????????? – ?????? ?????????? ?????? ?????????????????? ??????: ?????????????
 ?????????????? ?????, ??? ?? ?????? 135, ?????????????? 1, ?????????? ??, ??? ?????????? 2006/112/??
 ??? ?????????????, ??? 28?? ????????????? 2006, ?????????? ?? ?? ?????? ?????????? ??????
 ?????????????????? ?????, ?????? ??? ??????? ??? ?????????????? ?????????? ??? ??????
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 ?????????? ?????? ??????? ??? ?????? «?????????? ???????????», ?????? ??? ?????????????? ??????, ???
 ??????? ? ?????????????? ?????????? ?? ?????????????? ??? ??? ?? ?????????? ??? ?????? ??? ?????????
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(????????????)

(*1) ??????? ?????????????????? ? ?????????.