

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

??? 20?? ?????? 2013 (*)

«????????????? ?????????? – ??? ?????? ??? – ?????? 2, ?????? 1, ??? 6, ?????????? 1 –
?????? ??? ??? “????? ??????” – ?????? ?????????????? ?????????? ??? ??????????
????????? ?????? – ?????????? – ?????????? ??? ?????? ?????????????? ???
????????? – ?????????? ?????? – ?????????? ??? ?????? ?????????? ?? ?????????????? ???
????? ??? ?????? ?????? ?????????? ??????????»

????? ?????? C-653/11,

? ?????????? ?????? ?????????????? ?????????? ?????? ??? ?????? 267 ????, ??? ??????
?? Upper Tribunal (Tax and Chancery Chamber) (????? ????) ?? ?????? ??? 13??
????????? 2011, ? ?????? ?????? ??? ?????????? ??? 19 ?????????? 2011, ??? ??????
??? ????

Her Majesty's Commissioners of Revenue and Customs

????

Paul Newey, ?????????? ?????? ??? ??? ?????? Ocean Finance,

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

????????? ??? ??? M. Ileši?, ?????? ??????, E. Jaraši?nas, A. Ó Caoimh, C. Toader
(?????????) ??? C. G. Fernlund, ????????,

????????? ??????: P. Mengozzi

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

????? ?????? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???
20?? ?????? 2013,

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

- o P. Newey, ?????? ?????? ??? ??? ?????? Ocean Finance, ?????????????? ???
??? J. Ghosh, QC, ?????? ??? ??? E. Wilson ??? ??? J. Bremner, barristers,
- ? ?????????? ??? ?????? ??????????, ?????????????? ??? ??? S. Ossowski ??? L.
Christie, ?????????????? ??? ??? O. Thomas, barrister,
- ? ????????, ?????????? ??? E. Creedon, ?????????? ??? ??? A. Collins,
SC,
- ? ????????, ?????????? ??? G. Palmieri, ?????????? ??? ??? A.
De Stefano, avvocato dello Stato,
- ? ????????, ????????, ?????????? ??? R. Lyal ??? ??? C. Soulay,
?????? ??? ??????? ??? ???, ??? ?????? ??? ?????? ??????????, ?? ??????? ???

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

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

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1 H ?????? ?????????????? ?????????? ?????? ??? ?????? ??? ?????? ?????????
77/388/E?? ??? ???????????, ??? 17?? ????? 1977, ??? ?????????????? ??? ?????????????? ???
????? ?????, ??? ??????? ?? ??? ????? ?????? ?????? ?????? – ??? ?????? ?????? ??????
????????????? ?????: ?????????? ?????????? ??? (EE ????. ????. 09/001, ?. 49), ???
????????????? ?? ??? ????? 2000/65/?? ??? ??????????, ??? 17?? ?????????? 2000 (?? L
269, ?. 44, ??? ?: ??? ?????).

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ?????? ??? Her Majesty's
Commissioners of Revenue and Customs (??? ?: Commissioners) ??? ??? P. Newey,
????????? ?????? ??? ??? ?????? Ocean Finance (??? ?: P. Newey), ?? ??????????
?? ??? ?????????? ??? (???) ??? ?????? ??? ??? ?????? ?????????????? ??????????
?????????.

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

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

3 ??? ?? ??? 299, ?????????? 6, ??, ?? ?????????? ??? ??????? ?? ??????????????
???? ?????????????? ??????, ??? ?????? ?????? ?????? Jersey, ????? ?????? ???
????? ??????? ??? ?? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ??
????? ?????? ??? ?? ?????????? ????. 3 ??? ??? ?????????????? ?????? ??? ??
????? ??? (?????? ??? ?????????????? ??? ?????????????? ?????? ??????????????, 1987 ??, ?. 69), ???
????? ?????????? ??? ?? ?????? ??? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??
??? ?????????? ??? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??
????????? ??? ?? ?????????? ??? ?????? (?????? ??? ?????????????? ???
????????? ??????????, 1987 ??, ?. 25). ?????????? ??? ?? ??? ?????????? ??? ?????????? ??? ??
????????? ?????????? ??? ?????? ?? ??? ???, ? ?????????? ??? ?????????? ??? ?? ??? ??
????????? ??? ??? Jersey.

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

5 ?? ?????? 2, ?????? 1, ??? ?????? ?????? ?????? ??? ?????????? ??? ?????? ?? «??
????????? ?????? ??? ?? ?????? ?????????? ??? ?????????? ??? ?????????????? ?? ?????????? ???
?? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????».

6 ????. ?? ?????? 5, ??????????? 1, ??? ??????? ??????, ?? «????????? ??????» ??????? ?
?????????? ???. ?????????? ?? ??????? ?????? ?????? ??????? ?????? ?? ?????? ???, ??? ??
?????? 6, ??????????? 1, ??? ?? ??? ?????? ???????, ?? «?????? ??????????» ??????? ??? ?????? ?
?????? ??? ??????? ??????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 5 ??? ?????? ???????.

7 ?? ?????? 9 ??? ?????? ??????? ?????:

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

[...]

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

[...]

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

[...]

– ??????????, ?????????????? ??? ?????????????? ???????, ?????????????????? ???
??????, ?????????????? ??? ?????????? ??? ?????????? ???????????????,

[...]

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

3. ????? ??????? ??????????? ?????? ??????????, ?? ??????????? ? ??????????? ??
??????????, ?? ????? ?? ?????????, ????? ????? ?? ??????? ?????????? ??
?????????? ?? ????? ??????? 2, ??????? ??, ????? ?? ????? ?????????? ??????????? ??,
?? ??????:

[...]

8 ?? ?????? 13 ??? ?????? ????????, ?? ?????? «?????????? ???. ??????????? ???. ??????»,
?????? ???. ?????? «B?????? ??????????» ???. ????:

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

[...]

?) ??? ?????????? ????????:

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

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

[...]».

9 ?? ????? 17, ?????????? 2, ??? ?????? ?????? ?????? ?? ????:

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

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

[...]».

10 ?? ????? 21 ??? ????? ?????? ?????????? ?? ????????:

«? [??] ????????:

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

[...]

?) ??? ??? ?????????? ??? ?????? ????? ?????????? ?????????? ??? ?????????? ?? ???
????????? 2 ??? ?????? 9, ? ??? ??? ?????????? ?????? ?????????? ?????? (??) ???
????????? ??? ?????, ????? ?????????? ?????????? ?????? ?????? ?, ?, ? ??? ?? ??? ?????
28?, ?????? ?? ?????????? ?????????? ??? ?????????? ??? ?????? ?????????????? ???
???????????

[...]».

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

11 ???? ??? ????? ??? ?????????? ?????????? ??? ?????? ??????, ?? ?????? 4,
????????? 1, ??? ????? ??? 1994 ??? ??? ????? ?????????? ?????? (Value Added Tax
Act 1994) ??? ?? ????:

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

12 ?? ?????? 5, ?????????? 2, ??????? a ??? b, ??? ????? ?????? ?????? ?? ??????:

«a) ??? ??? ?????? ??? ?????? ?????? ??????, ?? “????????? ??????” ? “?????? ??????????”
?????? ??? ?????? ?????? ?????????? ?????? ? ?????? ?????? ?????? ?????? ???
????????????????? ?????? ?????? ??????»

b) ?????????? ??? ?????? ?????? ?????? ??????, ??? ?????????????????? ??????
??????? [...] ?????? ?????? ??????»

13 ?? ?????? 7, ?????????? 10, ??? ?? ??? ????? ?????? ??? ???:

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

a) ??? ?????? ?????? ??? ?????? ?? ? ?????? ?????? ?????? ?????????????? ??? ?????? ?????? ??????,
???

b) ?? ?????? ??? (??? ??? ?? ?????? ??????) ?? ? ?????? ?????? ?????? ??????????????????
?? ?????? ???»

14 ?? ?????? 8, ?????????? 1 ??? 2, ??? ?????? ?????? ?????? ?????????? ?????????? ??????????
????????????? ??? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ????:

«1) ??? ??? ?????????? ??? ?????????? 3 ????????, ??? ??? ?????????? ??????????

a) ?????? ?????? ??? ?????? ?? ? ?????? ??? ?????? ?????? ??????????, ???

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

?? ?????????? ??? ??? ?????? ??? ?????? (????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ??? ??? ??? ??????) ?????????? ???' ?????? ?? ? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ??? ??? ? ?? ??? ?????? ??? ?????? ?????? ?????? ??????.

2) ??? ??? ?????? ??? ??????? ??????, ?? “????????????? ??????????” ?????????? ??
????????? ??? ?????????? ??? ?????? ?????? ??? ?????????? 5 ??? ??? ?????????? ??????????
????????? ??? ?????? ?????? 9.

3) ?? ?????? ??? ?????????? ??? ?????? ??? ?????? 1 ?????? ???
????????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 26, ?????????? 1.»

15 ?? ?????? 9 ??? ?????? ??? 1994 ??? ??? ?????? ?????????????? ?????? ?????? ???
????????? ??? ?????? ??? ?????? «????? ??? ?????? ?????? ??????» (place of belonging) ?
????????? ??? ?????? ??????:

«1) ? ?????????? 2 ?????????? ?????????? ?????????? ?? ??????????????, ??? ???
????? ??????????, ?? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 3
??? 4 ?????????? ?????????? (?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? 8, ?????????? 6) ?????????? ?? ?????????? ??? ?????? ?????? ?????? ???, ??

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

2) ? ??????? ?? ??????? ?????????? ?????????? ??? ?????????? ?? ??????? ????:

a) ??? ????? ?? ?????????????? ??? ? ??? ?????? ?????????? ??? ??? ?????? ?????? ?????????? ?? ??? ?????? ??????

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

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

3) ?? ?????? ??? ?????? ??? ?????? ?????????????????? ? ?????? ?????????? ?????????? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???.

4) ?????? ??? ?????????? ? ?????????? 3 ??????, ? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???:

a) ?????????? ??? ??? ?????? ?????????? ??? ?????????? 2, ?????? a ??? b,

b) ??? ?????????? ??? ??? ?????? ??? ?????? ??? ?????????? 2 ?????? ??? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??????.

5) ??? ??? ?????? ??? ?????? ?????? (??? ?????):

a) ? ?????? ?????????? ??? ?????? ?????????? ? ?????????? ?? ?????????? ??? ?????? ??? ?????? ???

b) ?? “?????? ??????” ??? ?????? ?????? ?????? ? ?????? ??? ?????? ??? ?????? ??? ?????? ???

16 ?? ????? 31 ??? ?????? ??? 1994 ??? ??? ?????? ?????????????? ?????? ??? ? ?????????? 5 ??? ?????????? 9 ??? ?????? ?????? ?????? ??? ?????? 13, B, ?????????? ?, ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? «?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??????» ??? ??? ??? ?

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

17 ????? ?????????? ??? ???? ?????? ????? ???????????, ??? ???? ???? ?????? ?????? ?????? ???
????? ?????? ?????? ?????? ?, ? P. Newey ?????? ?????? ?????? ?????? ?????? ??????
????? ?????? ?????? Tamworth (?????. ??????). ?????? ?? ???? 13, B,
????? ??, ??? ???? ??????, ? ?????? ?????? ?????? ?????? ??? ???? P. Newey ???
??? ?????? ?????? ?????? ?????? ??? ?. ???????, ?? ?????????? ??????
????? ?????? ??? ?????? ??? P. Newey ??? ?????? ?????? ?? ???? ???
????? ?????? ?????? ?????? ?????? ??? ???, ?? ?????? ?????? ?? ???? ???
????? ?????? ? ??? ???? ??? ?????? P. Newey ??? ???? ?????? ?????? ??? ???? ???
????? ?????? ? ??? ???? ??? ?????? P. Newey ??? ???? ?????? ?????? ??? ???? ???.

18 ?????????? ?? ???? ?????? ?? ???? ?????? ?????? ?????? ???????????, ? P. Newey
????? ??? ?????? Alabaster (CI) Ltd (??? ?: Alabaster) ?? ??? ???? Jersey, ???
????? ??? ?????? ??? ?????? ?????? ??? ?????, ??? ??? ?????? ??? ???? ???
????? ?????? ??? ?????? ?????? Ocean Finance. ? P. Newey ?????? ?? ???? ???
????? ?????? ???.

19 ? Alabaster ?????????? ?????????? ??? ?????? ?????? ?????? ?????????? ???
????? ?? ?????????? ??? ?????? ?????? ??? ?????????? ??? Jersey, ??? ?????? ??????
????? ?? ?????? ??? ?????? ???, ?? ?????? ?????????? ??? ?????????? ???
????? ?????? ??? P. Newey ??? ?????? ??? ?? ?????? ??? ?? ??? ?????? ??? ?????? ???
????? ?????? ??? Alabaster.

20 ???' ?????? ??? ?????????? ??? Alabaster ??? ??? ?????? ??? Jersey
??????????, ?? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?? ??????
????? ??? ?????? ??? ?????? ???, ??? ? P. Newey ??? ??? ?????? ??? ?????? ???
????? ??? ?????? ???.

21 ?? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
Alabaster, ?? ?????? ??? ?? ?????? ?????? ?????? ??? ?????? ??? P. Newey,
????? ??? ?????? ???.

22 ??????, ? Alabaster ??? ?????? ??? ???? ??? ?????? ??? ?????? ???
??????, ??? ?????????? ??? ???? ??? ?????? ??? ?????? ??? P. Newey, ??? ???
????????? ??? «?????????» (??? ?: ?????? ??????) ??? ???
????????? ??? ?? ?????? ?????? ?? ?????????? ??? ??? Tamworth. ? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ? P. Newey, ?????? ??? ????
????????? ???, ???' ??????, ??? ??? ?????? ??? ?????? ??? ?? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?? ??? ?????? ???, ? P. Newey ???
????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? Alabaster ??? ??? ??????.

23 ?? ?????? ??? ?????? ?????? ?, ? P. Newey ?????? ??? ?????? ??????????
????? ?? ?????? 50 % ???, ??? ??????, ?? ?????? 60 % ??? ??? ??????????
????? ??? ?????? ?????? ? Alabaster ??? ??? ?????? ??? ?????? ???, ???
????? ?????? ?????? ??? ?????? ???.

24 ??? ??????, ?? ?????? ?????? ?????????? ?????? ??? ?????? ???
????????? ?? ??? ?????? ??? P. Newey, ?? ?????? ?????? ??? ?????? ???
????????? ??? ??? Jersey, ??? ?????? ??? ??? ?????? ??? Alabaster, ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????. ? ?????? ??? ??????
????????? ??? ?????? ??? ??? ???, ??? ?????? ?????? ???, ??? ?????? ???

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

26 ??? ?? ?????? ??????????, ?? ?????????? ?????????? ?????????? ??? ?? Wallace
Barnaby & Associates Ltd (???: Wallace Barnaby), ??????? ?? ???? ?????????? ?? ??
Alabaster ??? ??? ?????? ??? ?? Jersey, ??????? ?????????? ?????????? ?? ??
Alabaster. ??? ?? ??? ?????????? ?????????? ?????????? ??? Wallace Barnaby
????????? ?????????? ?????????? ??? ?????????? ?????????? ?????????? ?? ??
????????? Ekay Advertising. ??????? ?? ?????????? ??? ?? Jersey
?????????, ?? ???????? ??? Alabaster ??? ?? Wallace Barnaby ??? ?? ?? ??? ??????????
?? ???????? ?? ???.

27 ? P. Newey ??? ??? ??? ??????? ?? ?????????? ?????????????? ?????????? ???
????????? ??? Alabaster ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????? Wallace Barnaby ??? ?????? ????. ????????, ??? ?? ?????? ?? ?????????? ??
?? ?????????? ??? ??????????, ?? ??? ?? ?????? ??? ?????????????? ?? ?????????? ???
Ekay Advertising ?????????? ??? ?????? ??????. ??????? ?? ?????????????? ??????, ??
??? ?????????? ?????????? ?????????? ??? Wallace Barnaby.

28 ? Wallace Barnaby ?????????? ?? ?? ?????? ??? ?????????? ??? ?????? ???
????????? ??? Alabaster, ?? ??????, ??? ?? ??????????, ?????????????? ??? ?????? ???
?? ?? ?????? ?????? ??? ?? ?????????????? ?????????????? ??? ??????. ??? ??,
????????? ?????????? ?????? ??? ?? ??????????.

29 ?? Commissioners ??????????, ??? ?????? ??? ?????? ??? ???, ??????, ??? ??
????????? ?????????? ?????????? ?????????? ??? P. Newey ??? ?????? ?????????? ???,
????????, ??? ?? ??????????, ???, ???????, ??? ?? ?????????? ?????????? ??????????
????????? ??? ?? P. Newey ??? ??? ?????? ??????????.

30 ??????????, ?????????? ???, ?? ? Alabaster ?????????? ?? ?????????? ???
????????? ??? ?????????? ??? ?? Jersey ??? ?????? ??? ?????????? ?????????? ???
????? ??? ??, ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
????????? ??? ?? ?????? ??? ?????????????? ??? ?????????? ?????????????? ???, ??? ??
???? ?????????? ??? ?? ?????????? ??? ?? ?????? ??? 21? ?????????? 2006, C-255/02,
Halifax ??. (?????? 2006, ?. ?-1609), ????? ?????????? ? ?????? ??? ??????
????????? ???.

31 ?????? ??????, ??? 27 ?????????? 2005 ?? Commissioners ?????? ???
????????? ??? ?? ?????? ??? P. Newey, ??? ?? ?????? ?????????? ?????? 1??
?????? 2002 ?? 31?? ?????????? 2004, ??? ?? ??? 10 707 075 ????? ??????????
(GBP), ?????????? ?? ?????????? ??? ?????? ??? ?? ?????? ??? ?????????????? ??????????
?? ?? ??? ?????? ?????????? ??? ?? ?????? ??????????.

32 ? P. Newey ?????????? ??? ?? ?????? ?????? ??? ?????? ??? ?????????? ??????????
????? ?????? ? Alabaster ??? ?? ??? Jersey ??? ?? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?? ?????????? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?? ?????????? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?? ?????? ??? ?????????? ?????? ???.

33 ?????? ??????, ? P. Newey ?????? ?????? ??? ?? ??? ?? ?????? ??????
????????? ??? First-tier Tribunal (Tax Chamber), ?? ?????? ?????? ???

????????? ?? ??????? ??? 23?? ??????? 2010.

34 ?? ?????????? ??? ???? ?????? ?? ? ?????????????? ?????????? ?????????? ?????????? ???
??? Alabaster, ??? ???? ?????????? ??? ?????? ? P. Newey ??? ???' ?????????? ???
????????? ??????????. ??? ?????? ? Alabaster ??? ??????? ?? ?????????????? ??
«?????-?????????????».

35 ?? First-tier Tribunal (Tax Chamber) ?????? ?????? ??? ? Alabaster ?????? ???
????????? ?????????? ?????????? ?????? ?????? ?????? ??? ??? ?????? ?????????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ??? Wallace Barnaby. ????????
??? P. Newey ??? ??? ?????? ??? ?????? ??? ??? ???? Alabaster ??? ???? ?????? ?????????? ??????
????? ?? ?????????? ???, ??? ?????? ??????, ?????????? ??? ?? ?????? ??? ?????? ?????? ??????
Alabaster ??? ??? ?????? ??? ??? ?????? ??? ?????? ??????.

36 ?? Commissioners ?????? ?????? ??? ??? ?? ??? ?????????? ?????? ??? Upper
Tribunal (Tax and Chancery Chamber).

37 ??? ??? ??????? ????, ?? Upper Tribunal (Tax and Chancery Chamber) ?????????? ???
????????? ??? ?????????? ??? ?????? ??? ?????????? ?? ?????????? ??????????????
?????????:

«1) ??? ?????????? ??? ???? ?????? ??? ?????? ?????? ??????????, ?? ??? ?????? ?????? ?????? ???
?????? ?????????? ?? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??? ?? ?????????? ???
????, ??? ?????? ???, ? ?????? ??? ?????? ?????? ??????; ??????????, ??? ?????? ??????
??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????? ?????????? ?????? ?? ??? ??? ?????? ??? ??????
???:;

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

3) ????????, ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??????????, ?? ??? ??????
????? ?? ?????? ??? ?????? ??? ?????? ??????:

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

) ??? ???? ??????????, ?? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?? ??????
????????? ??? ?????? ??? ?????? ??? ??????

) ??? ??? ??????, ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ???, ??????????
????????? ?????????? ??? ?????? ??? ?????? ??? ??????

) ??? ??? ?????????? ??? ??????, ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ??????
????? ?? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
?????????

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

4) ??? ?????????????? ??? ????? ??? ??? ????? ??????????, ??????? ?? ??????
?????????? ?? ?? ????? ??? ?????? ??? ??????? ?? ?????????? ??? ??????;

5) ?? ?????????? ?????????? ?????????? ??? ?????? ???????, ?????? ?? ???
?????????? ?????? ?????????? ?????????? ??? ?????? ?? ??????? ?? ??????????
?????????? ? ??????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ???
??? ?????? ??? ?????? 74 ??? 86 ??? [????????????? ?????????? Halifax ???.];

6) ?? ?????????? ?????????? ?????????? ??? ?????? ???????, ??? ?????? ??
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????;»

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

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

38 ??? ?? ??? ?????, ?? ??????, ?? ?????? ??? ?? ?????? ?????? ?????????? ???, ??
????? ?????? ?? ?????????? ???, ?? ?????? ?????????? ?????? ???' ?????? ??
????????? ?? ?? ?????????? ??? ?????? ?????? ?????????? ?????????? ?? ?????????????? ??
????? ??? ? ?????????? ?? ??? ????? «?????? ??????????», ??? ?? ?????? ??? ?????? 2,
????? 1, ??? 6, ?????????? 1, ??? ?????? ??????, ???, ?? ?????????? ??????????
?????????, ??? ?????? ?????????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??????????
??? ?? ??? ???.

39 ?????????? ?? ?????????? ??? ?????????? ??? ? ?????? ?????? ?????????? ?????? ??????
??? ?? ?????? ??????????, ??? ?????? ???, ??? ?????? ?????? ??? ?????????? ?????? ??????
(????????? ?????? Halifax ???., ??? 48).

40 ??? ?? ??? 2, ??? 1, ??? ?????? ??????, ??? ?? ?????? ?????????? «?? ??????????
????? ??? ?? ?????? ?????????? ??? ?????????????? ?? ?????????? ?????? ???
????????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ».
???? ???, ??????????, ??? ?????? ??? ?????? ?????? ?????????, ?? ?????????? ???
????????????? ??? ?????? ??? ? ?????? ?????????? ?????????????? «?? ?????????? ???»,
???? ?? ?????? ??? ?????? 2, ??? 1, ??? ?????? ??????, ???, ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ??? ?????? ???
????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ?????????? ??? ?????? ???
????? ??? ?????? ??? ?????? (????? ??? 16?? ?????????? 2010, C-270/09, ?????? 2010, ?. I-
13179, ??? 16 ??? ?????????? ??????).

41 ??? ?????? ?????????? ??? ?? ?????????? ??? ?????????? ?, ??? ?????? ??? ??????
????????? ??? ?????????????? ??? ?????????? ??? ?????????? ?????????? ??? ?????? ???
??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???
(??., ??' ????, ?????????????? ?????? Halifax ???., ?????? 56 ??? 57 ?????? ??? ???
????????? ?????? ??????).

42 ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????????
????????? ??? ?????? ?? ?????????? ???, ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????????
??? (??., ??' ????, ?????? ??? 7?? ?????????? 2010, C-53/09 ??? C-55/09, Loyalty
Management UK ??? Baxi Group, ?????? 2010, ?. I-9187, ?????? 39 ??? 40 ?????? ??? ???

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

43 ?????????? ??? ? ?????????? ?????? ?????????????????? ??? ?????? ??? ?????? ??? ??????????

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

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

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

??? ?????? «?????? ??????????» ??? ?????? ?????? ??? ?????? 2, ??? ?????? 1, ??? 6, ??????????

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

44 ????????????????? ?????? ?????????? ?????????? ?????????? ???? ?????? ?? ???
????????????????? ?????? ??? ?????????? ??? ?????? ?????????? ?????????? ??? ??????
??????.

45 ?????? ?????????? ?????? ??? ?????????????????? ??? ?? ? ? ? ? ? ? ? ? ? ? ? ? ? ? ?
????????? ??? ?????? ?????? ?????? ??? ?????? ?????????????? ??? ?????? ?????????? ??? ? ?
????????? ?????????????? ??? ?????? ?????? ??????.

46 ????????, ?? ?????????? ????? ?????? ?????????????????? ??? ? ?????? ???
???????????, ??? ?????????????? ??? ??? ?????????? ?????????????? ?????????? ?????????
????? ??? ????? ?????????? ??? ?????????? ? ??? ?????? (?. ?????????????? ??????
Halifax .??., ????? 71 ??? ????? ?????????? ??????????) ??? ??? ? ??? ?????? ??????????
??? ?????????? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??????
????????, ?? ????? ??? ????? ?????????? ?????????? ?????????? ??? ?????????? ??? ?????????? ?? ???
????? ??? ?????? ?????????? ?????????? ?????????? (?. ?????????? ??? 22? ??? 2008, C-
162/07, Ampliscientifica ??? Amplifin, ?????? 2008, ?. I-4019, ????? 28? ??? 27? ??????
2011, C-504/10, Tanoarch, ?????? 2011, ?. ?.10853, ????? 51, ??? ??? 12? ??? 2012, C-
326/11, J.J. Komen en Zonen Beheer Heerhugowaard, ????? 35).

47 ????? ??????? ?? ?????? ??????, ??? ??????????????? ???, ??? ?????? ???????, ???
????? ??????????? ????, ? Alabaster ??????? ?????????? ?????????? ??????? ????
????????? ??? ??? ????? ?????????? ??? ?????????????? ?????????? ??? ?????????? ??? ??
Wallace Barnaby.

48 ???????, ?????????????? ????? ?? ?????????????? ?????????????????? ??? ??????????
?????? ??????, ??????, ??? P. Newey, ??? Alabaster ??? ?? ???????, ???, ???????, ???
P. Newey, ??? Alabaster ??? ??? Wallace Barnaby, ??? ?????????? ??? ??? ?????? ???
????????? ???, ?????, ??? ?? ?????????? ???????? ??? ?????????? ?? Upper Tribunal (Tax
and Chancery Chamber) ??? ?????? ??? ?????? ??????????, ??? ?????????? ?
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ??????
???? ??? ?????? ??? ?????? ??? P. Newey.

49 ???? ?????? ??????????? ????????????, ??? ?????? ?????????? ?????????? ???
????????? ??? ?????????? ??? ?????? ???, ?? ?????????? ?? ? ? ?????????? ???
????????????? ??? ?????? ??? ?????????? ?????????????? ??? ?? ? ?????????? ???
????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??????????
??? ?????????? ??? ?? Wallace Barnaby ??? ?????????????? ? P. Newey ??? ??? ?
Alabaster.

50 ??????? ?????????????? ????, ? ??????? ?????????????? ???, ?? ?? ??? ??????????
????? ?? ?????? ?? ?????????? ?????????? ?? ?????????? ?? ?????????? ?? ?????????????? ???
????????? ?? ?? ?? ?????? ?? ??? ?????? ?????????? ?? ?????????? ?? ?????????? ?? ?? ?? ???
????????????? ?? ?????? (??., ??' ?????? ?????????????? ??????? Halifax, ????? 98).

51 ?? ???????????, ? ??????????? ??? ?????????? ??? ?????????? ??? ?? ??????
????????? ??? ??????? ???????, ?????? ??????? ?? ?????? ?????????? ?????????????? ???
?????? ?????? ?? ?????????????? ???????, ?? ?????????? ?? ?????????? ?????????? ???
??? ?? ?????????? ??? ?????????? ??????? ??? ?? ?????????? ?????? ?????????? ???
??? Alabaster ??? ??? Wallace Barnaby ?????? ??? Commissioners, ?? ?????????? ??
?????? ?????? ?????? ?? ?????????????? ??? P. Newey ?? ??? ?????????? ?????? ??
?????? ?????? ?????? ?????? ??? ??? ?????????? ?????? ??? ?????? ?????????? ???
????????????? ??????????.

52 ?????? ??? ?????? ??????????, ??? ????, ?? ??????, ?? ?????? ??? ?? ??????
????????????? ??????? ?? ?????? ?? ?????? ? ??????? ??? ?? ?????????? ???, ???????
????????? ??????? ?? ?????? ?? ?????????? ?????, ??? ?????? ?????????? ??????
??? ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? «?????? ??????»
???? ?? ?????? ?? ?????? 2, ?????? 1, ??? 6, ?????????? 1, ??? ?????? ??????. ??????
?? ?? ?????????? ?????? ??? ?????? ??? ?????????????? ??? ?????????? ??? ??????
?????????????, ??? ?????????? ??? ?????? ?????? ??????, ??? ?????????????? ??????,
?? ?????? ??? ?????? ??? ?????????? ??????????????, ?????? ??? ??????
????????????? ??? ?????? ?????????? ?? ??????????.

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

53 ?????? ??? ?????????? ??? ?????? ??? ?????, ?? ??????, ?? ?????? ??? ?? ??????
??????????, ??????? ? ??????? ??? ?????? ??? ?????? ??? ?????? ??????????????
?????? ??? ??????? ??????????.

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

54 ?????? ??? ? ?????? ?????????? ??? ?? ?????? ??? ?????? ?????????? ??? ?? ??????
??? ?????????? ?????????????? ??? ?????? ?????? ??? ?????? ?????????? ???, ?? ???
????????? ?? ?????????? ??? ?? ?????????? ??????. ?? ?????? ??? ?????? ??????????
???? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????????.

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

?? ?????????? ????, ??????? ?????????? ?????????? ??? ?????? ?? ?????????? ???
?????, ??? ?????? ?????????? ?????????? ??? ??? ?????????? ??? ?????? ??? ?????????? ???
??? ?????? ?? ?????? «?????? ??????» ??? ??? ?????? ??? ?????? 2,
????? 1, ??? 6, ?????????? 1, ??? ?????? 77/388/??? ??? ??????????, ??? 17??
????? 1977, ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ????, ??? ?????????? ??
???? ?????? ?????? ?????? – ????? ?????? ??? ?????????? ?????? ?????????? ??????:
????????? ?????????? ????, ??? ?????????? ??? ?????? 2000/65//?? ??
?????????, ??? 17?? ?????? 2000. ?????? ?? ?? ?????????? ??? ?????? ????
??? ?????????????? ??? ?????????? ??? ?????? ?????????? ??????????????, ???
????????? ??? ?????? ?????? ????, ??? ?????? ?????????? ??????????, ?? ?????? ???
???? ??? ?????? ?????????? ?????????? ??????, ?????? ?????????? ??????????, ?? ?????? ???
??? ?????? ?????? ?????????? ?? ??????.

(?????????)

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