

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

??? 17?? ??????????? 2015 (*)

«????????????? ?????????? — ?????????? ?????????? ??? ?????????? — ??? 56 ?? —
????????? ?????????? ?????????? ?? ????? ?????????????? ?????? ?????? ??? ??????
????? ??? ??? ?????????? ?????????? ?????? — ?? ?????????? ?????????? ??????????, ???
?? ??? ?????????? ??? ?????????? ?????, ??? ?????? ??? ?????????? ?? ?????? ??? ??????????
??? ?????? ??? ?????? ??? ?????????????? ?? ??????, ??? ?????????????? ??? ??? ??? ??????
?????? ?????????? ??? ??? ?????? ?????? ?????????»

???? ?????? C?589/13,

??. ?????????? ??? ?????? ?????????????? ?????????? ??????? ??? ?????? 267 ????, ??? ???
?????? ?? Verwaltungsgerichtshof (???????) ?? ?????? ??? 23?? ?????????? 2013, ???
?????? ?? ?????????? ??? 19 ?????????? 2013, ??? ?????? ??? ???

F. E. Familienprivatstiftung Eisenstadt,

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

Unabhängiger Finanzsenat, Außenstelle Wien,

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

????????? ??? ??? T. von Danwitz, ??????? ????????, C. Vajda, A. Rosas (?????????), E.
Juhász ??? D. Šváby, ????????,

????????? ??????????: M. Wathelet

?????????: M. Aleksejov, ?????????? ??????????,

????????? ?????? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???
21?? ?????????? 2015,

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

– ? ?????????? ????????, ?????????????? ??? ??? C. Pesendorfer ??? ??? ??? J. Bauer
??? M. Klamert,

– ? ?????????? ????????, ?????????????? ??? ??? A. Cordewener, W. Roels ??? M.
Wasmeier,

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

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

???????

1 ? ??????? ?????????????? ??????? ??? ??????? ??? ?????? 56, ?????????? 1,
??.

2 ? ??????? ??? ?????????? ??? ??????? ?????????? ??? ?????? ?? F. E.
Familienprivatstiftung Eisenstadt (??? ????: ??????? ??????) ??? ??? ??????? ???
Unabhängiger Finanzsenat, Außenstelle Wien (????????????? ??????? ?????????????? ???????,
????? ???????, ??? ????: UFS) ?? ??? ??? ?????????? ?? ??????? ?? ??????? ???
????? ??? ?????????? ?????? ??? ?????? ?????? ?? ?????????? ?? ??????? ?????? ???
????????? ??? 2001 ??? 2002, ?? ?????? ??? ?????????? ??????? ??? ?????????? ?? ???
????? ????.

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

3 ? ??????? ??? ?????? ?????? ?????? ??????? ??? ??? ?????????? ??????? ??? ?? ??????????
??? ?????????? ?????????? ??? 2001 ??? 2002.

? ? ?????????? ?????????? ??? ?????????? ?????????? ??? ?? 2001

4 ?? ??????? ?????? («Privatstiftungen») ?????????? ?? ?????? ?????? ??? ??
????????? ?????? ?? 1993, ??? ?????? ??? ?????? ?? ?? ?????? 1993
(Privatstiftungsgesetz, *BGBI.* 694/1993).

5 ?? ??????? ?????? ?????? ?????????? ??? ?????? ?????? ?????????? ??????? ????????.
?????????, ?????? ??? ?????????? ??? ?????? ??? ?? ?????? ??? ?????? 2000, ???
????????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???????
????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???????
????????? ???, ? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ??? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 27, ?????????? 1,
????? 7, ??? ?????? ??? 1988 ??? ??? ????? ?????????? (Einkommensteuergesetz, ??? ????:
EStG 1988), ?? ?????? ??? ??????????, ??? ??? ??????????, ?? ?????????? ??? ??????
????? ?????????? ??? ?????? ??? ?? ?????????? 25 %.

? ? ?????????? ?????????? ??? ?????????? ?????????? ??? ?? 2001 ??? 2004

6 ?? ??????? ?????????? ??? ?????????? ?????????? ?????????????? ?? 2001 ?? ??
????? ??? ??? ?????????? ??? 2001 (Budgetbegleitgesetz 2001, *BGBI.* I, 142/2000), ???
????????? ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 1988 ??? ??? ???
????????? ??? (Körperschaftsteuergesetz 1988, ??? ????: KStG 1988).

7 ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
??? 2001, ?? ?? ??? ?????? ?????????? ???' ?????? ?? ?????? ?? ?????????? ??? ???????,
??? ?????? ?????????? ?? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ???????,
????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???, ?? ?????? ??? ??????
????????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
«?????????» («Zwischensteuer», ??? ????: ?????????? ???).

8 ?? ?????? 13, ?????????? 3, ??? KStG 1988, ??? ?????????? ?? ??? ??? ??? ???
????????? ??? 2001, ?????????? ?? ???:

«????? ?????? ?? [?????????] ???????? ??? ???? ??????? ??? ????? 5, ?????? 6 ? ?????? 7, ???? ??? ????? 7, ?????????? 3, ??? ?????????? ?????? ?? ?????? ?? ???? ?????? ?? ???? ??????, ???? ?????????????? ?????? ???' ???????? ??? ?????? 22, ?????????? 3:

1. ?? ??????? ? ??????? ?????????? ??? ?????? ??? ?????? ?? ?????? ?????????? ???

— ?????????? ?? ?????????????? ?????? ?????? ?? ?????? ?????????? ?????? ?????? ?????? ?????? (????? 93, ?????????? 2, ?????? 3, ??? [EStG 1988]),

— ?????????? ???? ??? ?????? ??? ?????? 93, ?????????? 3, ?????? 1 ??? 3, ??? [EStG 1988], ?????? ???? ??? ?????? ??? ??????????, ???? ??? ?????? ???? ???? ??? ?????????? ????, ???? ?????? ?? ?????????? ?????? ?????? ???????,

— ?????????? ???? ??? ?????? ??? ?????? 93, ?????????? 3, ?????? 4 ??? 5, ??? [EStG 1988], ?????? ?? ?????????? ???? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???? ?????? ??? ?????????? ?????? ???? ??? ?????? 27 ??? [EStG 1988]?

2. ?? ?????????? ??? ??????? ?????????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? 31 ??? [EStG 1988], ?????? ??? ?????? ?????????? ? ?????? 4.

??? ?????????? ??? (????? 22, ?????????? 3) ??? ?????????? ??? ?????? ??? ?????? ???
??? ?????? ?????? ?????? ???, ?? ???? ?? ?????? ?????????? ???,
????????????? ??? ?????? ??? ?????? ??? ?????? 27, ?????????? 1, ?????? 7, ???
[EStG 1988], ???? ??? ?????? ?????????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ???
??? ?????? ??????????»

9. ??? ?? ?????? 22, ?????????? 3, ??? KStG ??? 1988, ??? ?????????? ?? ???
??? ??? ?????????? ??? 2001, ? ??? ?????? ?????????? ?????? ?????? ?????????? ???
12,5 % ??? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ?????? ??? ?????? 13, ?????????? 3, ??? KStG 1988.

10. ?? ?????? 24, ?????????? 5, ??? KStG 1988, ??? ?????????? ?? ???
????????? ??? 2001, ??? ?? ??????:

«? ?????? ?????????? ?????? ?????? ? ?????? ?????? ?????? ??? ?????????? ??? ?????? ???
????? ??? ?????? ?????? ??? ?????? ??? ?????? 13, ?????????? 3 ??? 4, ??????????,
????? ??? ?????? ???, ?????? ??? ?????? ??? ?????? ??????:

1. ? ?????? ?????????? ?????? ?????? ?????????? ?????????? ??? ?????????? ??? ??????
????????? ??? ?????????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???.

2. ?? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 27, ??????????
1, ?????? 7, ??? [EStG 1988], ?? ?????? ??? ?????????? ?????? ??? ?????? ??? ??????
????? ??? ?????? 13, ?????????? 3, ?????????? ???.

3. ? ?????? ?????? ??? 12,5 % ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????? ???.

4. ?? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ??? ?????? ???
????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

5. ??? ?????????? ??? ?? ??????? ?????? ???????, ??? ????? ?? ???? ?? ??????? ??
????????? ?? ?????????? ??????? ????? ?? ??????? ?????? ??? ??????? ?????????? ??
?????? ?? ??' ????????.»

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

11 ??? ?????????? ??????? ?? ?? ??????? ?????????? ??? ?? 2001, ??? ??????
????????? ?? ?? ?????? ??????????, ?????????? ?? ??????? ?? ?????? ?? ?? ?? ??????????
????:

«[...] ??? ?? 2001 [?] ?????????? ??? ?????? ?????????? ? ?????????? ?? ?????????? ??
????? ?????? ?????????? ??????????, ??? ?????? ?? ?????????? ?????????? ??????????
??????????. ? ?????????? ?????? ??? ?????? ?????? ?????????????? ??? ?????????? ??
(?? ??????) ?? ??????? ?????? ?????? ??? ?????, ?????????? ?????????? ??
????????? ?????? ???' ??????? ?????? ?????????????? ?????????? ??????????. ?? ??? ??
????? ??? ??????? ?????? ?? ??????? ?????????? ??????????.

? ? ??????? ??? ??????????, ??????? ?????????? ??? ??, ?? ??? ???. ??????,
????????????? ??????? ?? ?????? ?????? ?????????? ?????????? ??? ?????????? ??
?????? 13, ?????????? 2, [?? KStG 1988]. ?? ?????? ?????? ?????????? ??????????
?????????????, ?? ??????? ?????????? ?????????, ?? ??????? ?????????? ?????? 12,5 %
(?? . ?????? 13, ?????????? 3, [?? KStG 1988]), ??????? ??? ?????????? ??? ??????. ??
????????? ?????, ?? ??? ?? ?????? ?????? ?? ?????? ?????????????? ?? ?????????? ??
????? ?????? ??????. ???????, ?? ?????? 24, ?????????? 5, ?????????? ??? ?????? ??
????????? ?????? ?????? ?????? ??? ?????????? ??? . ?????? ?????????? ??? ?????? ??
????????? ?????? ?????? ?? ?????? ??? ?????????? ? ?????????? ?????? ??? ?????? ??
??? ?????? ??? ?????? ??? ?????????? ??????. ?????? ?????? ?? ?????????? ??????????
??? ?????? ??? ?????? ??? ?????????? ?????? ?????? ??? ?????????? ??? ?????? . ?
????? ?????? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ??? 12,5 % ??? ?????.
????? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
????? ???.

? ? ??????????: ??? ??????? ?????? ?????? ?????????? ?? 2001 ?????? ??? ?????? ???
????????????? ?????????? ?????? (ATS). ?? ?????? ??? ?????????? ?????????? ??? ??
????? ??? ?????????? ?? 500 000 ATS. ?????????? ?????????? ??? ?? ?????????? 12,5
% ??? ??? 1 500 000 ATS, ?????? ??? 187 500 ATS. ?? 2002 ?????????? ??? ??
??? ?????? ??? 2 500 000 ATS. ??? ?? ??? ??? ?????? ?????? ??? ??????. ?
????????? ??? ?? 2002 ?????? ?? 312 500 ATS. ?? 2003 ?? ?????? ??? ??????
????? 2 000 000 ATS, ?? ?????? ??? ?????????? ?????? ??? ?????? ?? 2 100 000 ATS.
??? ?? ??? ??? ?????? ?????? ??????. ??? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?? 2001 ??? 2002 ?????????? ??? ?????? ??? ?? 12,5 % ??? 100 000 ATS,
????? ??? 12 500 ATS.»

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

12 ?? ??????? ??????, ??? ??? ?????? ?????? ??? ?????????? ?????? ??? ??????????
????????????? ?? 2001 ?? ?? 2002 ?????????? ??? ?????? ??? ?? ??????
????????? ?????? ?? ?????? ?????????? ??? ?????? ?????????? ??? ?????? 13, ??????????
3, ??? ??????, ??? KStG 1988, ??? ?????????? ??? ?? ??? ?????? ??? ??????????

??? 2001. ???????????, ??? ???? ??? ??, ?? ?????????? ??????? ??????? ?? ?????? ???
???? ??????? ??????????? ??? ?????? ??? ????? ?????? ?????????? ??? ???????.

13 ??? ?????????? ??????? ??? ?? ??? ??, ?? ?????????? ??????? ?????????? ?????????? ???
????, ??? ?????????? ??? ?? ??? ?????????? ??? ?????? ??? ?????? ???????, ?? 25 % ??? ???
??? ?????????? ?? ??? ?????? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ????????
????????? ???.

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

15 ?? ?????????? ????, ??? ?????????? ??? ?????? ??? ??????? ?? ??? ?? ???
????????? ??? ?????? ??? ?????? ??? ?? 2001 ?? 2002, ?????????? ??? ?????? ??? ??????????
??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???, ?? ??????
????????? ???' ?????? ?? «????????? ??????????» ?????? ??? ?????? 13, ?????????? 3,
????? ????, ??? KStG 1988, ??? ?????????? ?? ??? ?????? ??? ?????? ??? ?????????? ???
2001, ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ???, ?? ?????? ??? ?????? ??? ?????? ?????????? ??? 0 ????, ??? ?? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

16 ????????, ? Finanzamt (????????? ????) ?????? ?? ??? ?????? ?? ?????? ???
????????? ??? ?????? ?? ?????? ??? ?? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? 13,
????????? 3, ????, ??? KStG 1988, ??? ?????????? ?? ??? ?????? ??? ?????? ??? ??????
????????? ??? 2001, ?????? ?? ??? ?????? ??? ?????? ??? ?????? ?????????? ???
????????? ??? ?? ?????? ??? ?????? ?????????? ???, ??? ?? ??? ?????? ?????????? ???
?????. ??? ???????, ? Finanzamt ????????, ?? ??? ?? ?????????? ?? ???
????????? ??? 2001 ?? 2002 ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???
????????? ??? ?? ?????????? 12,5 %, ??? ?????????? ??? ?????? 22, ?????????? 3, ???
KStG 1988, ??? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? 2001.

17 ?? ??????? ?????? ?????? ?????? ??? UFS ?????????? ??? ?? ??? ?????? ?? ???
????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?? 2001 ?? 2002.

18 ????????, ?? ?????? ?????? ?????? ?????????? ??? UFS ???, ?????? ???
????? 24, ??????? 5, ??? KStG 1988, ??? ?????????? ?? ??? ?????? ??? ??????
????????? ??? 2001, ?? ?????? ?? ?????????? ???, ??? ?? ?????? ???,
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

19 ?? ?????? ?? 10? 2010, ?? UFS ?????????? ??? ?????? ?????????? ???
????????? ?????? ?????????? ??? ?????? ?? ??? ?????? ?????? ?????????? 12,5 % ???
????????? ??? ?????? ??? ?????? ?????????? ???, ??? ?? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? 2001 ?? ??? ?????? ??? ?????????? ??? ??????

?? 2002.

20 ?? UFS, ?????????????? ?? ?????? ?????????? ??? Finanzamt, ???????? ???, ???
????? ??? ?? ??? ??????, ? ?????????? ??? ??? ?????????????? ??? ?????????? ???
??? ?????????? ?????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ???
?? ??? ?????? ?????? ??? ?????????? ???.

21 ????????, ?? UFS ?????? ?? ?????? ?? ?????????? ?????? ??? ??????????
????????? ??? ?? ??????????, ?????? ??? ?????? 24, ?????????? 5, ??? KStG 1988, ???
????????? ?? ??? ??? ?????? ?????????? ??? 2001, ?? ??? ?????? ??????????
????????? ?? ??? ??? ?????????? ??? 2001 ?????? ???, ?? ??? ??? ??? ???
????????? ?????? ??? 2002. ?? UFS ??????, ???
?????????, ??? ?? ?????? ??? ?????? ?? 2002 ??? ??? ?????????? ? ?????? ??????
?? ?????? ?????? ???, ??? ?? ?????? ?????? ???, ??? ?? ?????? ?????? ?????? ???,
????????? ?????? ??????.

22 ?? ??????? ?????? ??? ?? ?????? ??? ?????? ??? UFS ??????? ?????? ???
Verwaltungsgerichtshof.

23 ?? ??????? ?????? ?????????? ?????? ??? ?????????? ?????????? ???
????????? ??? ?????? ?????? ?????????? ???, ??? ?????? ?????????? ???
56 ??, ? ?????????? ??? ?????? ??? ?? ?????? ?????? ??? ?????????? ???
?? ??? ?? ??? ?????? ?? ?????????? ??? ?????? ?????? ?????????? ???
??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????????? ???, ?????? ?? UFS
????????? ???, ??? ?????? ?????? ?????? ?????? ??? ?? ?????? ???, ?????????? ??
????????? ?????? ?????? ?????? ??????.

24 ?? ?????? ??????????, ?? ?????? ??? ?????? ?????? ?????? ???
??? ?????? ?????? ?????? ?????? ???, ??? ?????? ??? ?????? ??? 56 ??, ???
??? ??? ?????? ?????? ???, ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ???, ??? ?????? ?????? ???, ??? ?????? ?????? ???
????????? ??? ?????? ???, ??? ?????? ?????? ???, ??? ?????? ??? ?????? ???
????????? ??? ?????? ???, ??? ?????? ?????? ???, ??? ?????? ???, ??? ?????? ???
??? ?????? ?????? ???, ??? ?????? ?????? ???, ??? ?????? ???, ??? ?????? ???
????????? ??? ?????? ???, ??? ?????? ?????? ???.

25 ?? ?????? ?????????? ?????????? ??? ? ?????? ??? ?????????? ???
??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????????? ??? ?????? ???
????????? 3, ??? KStG 1988, ??? ?????? ???, ??? ?????? ???, ??? ?????? ???
2001, ?????????? ???, ??? ?????? ???, ??? ?????? ???, ??? ?????? ???, ???
????? ??? ?????? ???, ??? ?????? ???, ??? ?????? ???, ??? ?????? ???, ???

26 ????? ?? ??????? ??????????, ?????? ??? ?????????? ?????????? ?????????? ?????? ??
????????? ??? ?????????? ??? ?????????? ?? ? ?????????? ?????????? ?????????? ??? ??????
????????? ??????????. ?? ?????? ??? ??????, ??? ?????? ?????? ?????? ?????????? ?????? ???
????????? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? 2000, ???
????????? ??? ?????????? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ???????. ??
????????? ??? ? ?? ??????????, ??? ??????, ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ??????, ??? ?????? ?????? ??? ? ?????? ?????? ?????? ?????? ?? ??? ??? ??? ??????
????? ??? ?????? ????????????, ??? ?????? ?????????? ??? ??? ?????? ?????? ?????? ?????? ?????? ???
????? ??? ?????? ??????????.

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

28 ?? ?????? ?????????? ?????????? ??? ?? ?????? 13, ?????????? 3, ??????????
?????, ??? KStG 1988, ??? ?????????? ?? ??? ??? ??? ?????? ?????????? ??? 2001,
????? ??? ?? ?????? ???, ??? ?? ?? ?????? ?????, ??? ?? ?? ?????? ?????, ??? ?????? ??? ??
????????? ??? ?????? ?????????? ?????, ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ??? ??
????????? ??? ? ??????, ??? ?????? ?? ?? ?????? 24, ?????????? 5, ??? KStG 1988 ???
????? ?????????? ???, ?????????? ?? ??? ?????? ?? ?????????? ?????????? ??? ?????????? ???
????????? ??????, ??? ?? ?????? ??? ?????????? ??? ?????????? . ?????? ??? ?????? ??? ??????????
????? ?????????? ?? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????????? ??? ?? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??????????
????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

29 ?? ?????? ?????????? ?? ?????????? ??? ?? ?????????? ?????? ? ?????????? ???
????? ?????????? ? ?????? ?????????? ?????????? ?? ?????? ??? ?????????? ?????????? ???
????????? ??? ?? ?????? 56 ??, ??? ?????? ?????? ??? ?? ?????????? ??????, ????, ???
????????? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ?? ?????????? ???,
????????? , ??? ?????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??????.

30 ????? ???, ?? Verwaltungsgerichtshof ??????? ?? ?????????? ?? ??????????
??? ?? ??????? ?? ?????????? ?? ?????????? ?????????? ??????:

«????? ?? ?????? 56 ?? ??? ?????? ??? ?????????? ?? ?????? ?????????? ??? ??????????
??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ?? ?????? ???
????????? ??? ?????????? ??????, ??? ?????? ?? ?????? ??? ?????? ??? ?????????? ??
????????? ??? ?????????? ?????????? ?? ?? ?????? ??? ?????? ??? ?????? «????????? ???», ???
??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
??? ? ?????????? ?????????? ?? ?????? ??? ?????? ?????? ??? ?????? ?????????? , ??? ?????? ???
????????? ?????? ?????????? , ??? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ??
????????? ?????? ?????????? ??? ?????? ??? ?????? ??????;»

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

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31 ??? ?? ?????????? ??? ?????????? ?????? ?????????? ?????????? ??? ?????????? ???
????? ?? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ?????????? ???, ???

????????????? ??? ? ?????????????? ??? ?????? ?? ?????? ?????????? ?????????? ?????????????? ??????????????
??? ??? ??? ??? ??? ??????? ??? ????? ??????? ??? ??? ?????? ?????? ?????????? ?????????? , ??? ??? ??
????? ?????????? ??? ?????? ?? ?????????????? ??? ?? ?????? 56 ?? ?????? ?? ?????????? ??? ?????????? ???
??? ?????? ??? ??? ?????????? ?????????? ?????????? ??? ?????? ?? ?????????? ??? ?????????? ???
????? ????, ?? ??? ?????? ?????? ?? ?????????? ??? ?????????? ??? ?????????? ?? ?????????? ?????????? ???
????????? ??? ?? 2001.

32 ????? ?????????? ?? 7, 11 ??? 26 ??? 28 ??? ?????????? ??????????, ?
????????? ??? ?????????????? ?????????? ?? ?????????? ?????????? ?????????? ?? ?????????? ?? ?????????? ??
?? ??????? ?? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ?????????? ?????????? ?? ?????????? ??
?????? ?? ??????? ?? ?????? ?????????? ?? ?????? ?????????? ?? ?????? ?????????? ?? ?????????? ?? ?????????? ??
?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??.

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

34 ??????????????, ?? ?? ?????????????? ??? ???????, ?? ?????? ?????????????? ?????? ???'
????? ?? ?????????????? ?? ?? ?????? 56 ?? ?????? ?? ?????????? ??? ?????? ??? ?????? ???
????????? ?????????? ?????? ?????? ?????? ?????? ???? ?????? ?????? ?????? ?????? ???
?????, ? ?????? ?????????? ???, ??? ?????? ??? ?????????? ?????????? ?????????? ???
??? ???? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ???
????????? ?????? ??, ?? ?????????? ??? ?????? ?????? ?? ?????? ??? ?? ??? ?????? ???
????? ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ???
??? ?????? ?????? ??? ?????? ?????????? ??? ?? ??????, ??? ?? ??? ?????? ?????? ??????????
????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
????? ???, ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????? ??? ??????????, ??????????
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ???' ?????? ?? ??????.

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

35 ????? ?????? ?????????? ??? ????????????, ?? ????? 56, ?????????? 1, ?? ??????????
??????? ??? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????? ???
(????????? Persche, C?318/07, EU:C:2009:33, ??? 23, ??? Mattner, C?510/08,
EU:C:2010:216, ??? 18).

36 ?????????? ??? ?? ??????? ?? ??? ?????????? ? ?????? «????????? ??????????» ????
????????????????? ??? ?? 56, ?????????? 1, ??, ?? ?????????? ??? ?????? ??? ?
????????????? ??? ?????????????? ?? ??? ?????????? 88/361/??? ??? ??????????, ??? 24??
????????? 1988, ??? ??? ?????????? ??? ?????? 67 ??? ?????????? [????? ??? ?????????? ??? ??
????????? ??? ??????????] (?? L 178, . 5) ??? ?????????? ???, ?????????? ? ?????? ???
???? ?????? ??? ?????? ??? ?????? 69 ??? 70, ?????????? 1, ??? ?????? ??? (??????????)
????? 69 ??? 70, ?????????? 1, ??? ?????? ?? ?????????? ?? ?? ?????? ???

???????????, ?????????????? ??? ???? ???, ??????? ?? ?? ?????????????? ??????? ??? ?? ??
?????????????, ? ?????????? ??? ?????????? ?? ??? ?????? ??? ????? ??????????????. ?? ??????
??? ?? ?????????? ?????????????? ??? ?????? XI ??? ?? ??? ????? ?????????????? ?, ??? ???
????? «????????? ?????????? ?????????? ??????» (????????? Persche, C?318/07,
EU:C:2009:33, ??? 24? Mattner, C?510/08, EU:C:2010:216, ??? 19, ??? ?????????? ???
????????, C?127/12, EU:C:2014:2130, ??? 52).

37 ?? ?????????? ??? ?????? ??? ?????????? ??? ? ?????????? ?????????????? ??? ??????,
????????????? ??? ?? ??????? ???????, ??????? ? ?????? ???????, ?????????? ??? ??????????
?? ??? ??????? ?????????? ?????????? ??? ???????, ?? ??????? ??? ?????????????? ??? ??
????????? ??????? ??? ?????? ????? ?????????????? ?????? ??? ?????? ?????? ?????? ?????? (??.,
??' ??? ???? ??? ??????, ?????????? Persche, C?318/07, EU:C:2009:33, ??? 27? Mattner,
C?510/08, EU:C:2010:216, ??? 20, ??? Q, C?133/13, EU:C:2014:2460, ??? 18).

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

39 ??? ?????? ??? ?????? ??? ?????, ??? ?? 2001 ?? 2002, ?? ??????? ??????
?????? ?? ?????? ??? ?????? ??? ?????????????? ?? ?????? ?????????? ?? ??? ?????? ??????, ??? ??
??? ?????????? ??? ??????. ?????????? ??? ?????????? ?????????? ?????? ?????? ??????????
????????? ?? ?????? ??? ???????????. ??? ?????? ?????????? ?????? ?????????? ??????????, ?
???? «????????? ??????????» ??? ?? ?????? ??? ?????? 56, ?????????? 1, ?? ?????????? ???
????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????, ??? ??? ??? ??? ?????? ?????????????? ?????????? ??? ?????????? ??? ??? ??? ?? ???
????????? ??? ??? ??????????.

40 ?? ?? ??????, ?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????, ????, ???, ??? 2001 ??? ??
?? 2002, ?????????? ?????????? ?????????? ?????????????? ?????????? ??? ?????? 56,
????????? 1, ?? ??? ?????????? ??? ??????????.

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

42 ?? ??????? ??? ?????????? ?? ?? ?????? 13, ?????????? 3, ??? KStG 1988, ???
????????????? ?? ??? ??? ??? ?????????????? ??? 2001, ?????????? ??????????????
????????????? ?? ??? ?????????? ?????????? ?????????, ?? ??? ?? ?????? ??? ?????? ??? ??
????? ??? ?????????? ????, ?????? ?? ?? ?? ?????????? ??? ??? ?????? ??? ??????
????????????? ?? ?????????? ??? ?????? ?????? ?????? ?????????? ?????? ?????????? ??? ??????
????????? ???, ???, ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ???.

43 ???????, ??? ?????????? ? ?????????? ?????????, ?? ?????? ?? ??? ?????? ???
????????? ?????? ?????? ?????????? ?????? ?????? ?????????? ?????????? ??? ??????????????
??? ?????? ??? ?????????????? ?????????? ?????? ???????, ?????? ?? ??????????
????????????? ??? ??? ??? ?????????? ??? ?????? ???????, ?????????? ??? ??????????
??? ?????? ??? ?????? ?????????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?? ???

?????????? ??????? ?? ?????????? ?????????????? ?????????????? ??? ?????????? (????) ???
??? ??????? ?????? ????????????, ?? ?????? ?????????? ?? ?????????? ??? ??? ?????? ???
?????? 21, ??????????? 1, ??? ?? ??? ?????????????? ?????????? ??? ??? ?????????????? ???
??????, ?????????? ??? ?????????? ??? ?????????? ?????????????? ?????????? ??? ??????
??? ??????? ??? ???????????.

44 ??? ?????????????? ? ????????, ? ?????????? ??? ?????????? ??? ?????? ???
?????? ??? ?????? 13, ?????????? 3, ?????????? ???, ??? KStG 1988, ???
????????????? ?? ??? ??? ??? ??? ?????????????? ??? 2001, ?????????? ??? ??????
????????? ??? ??? ???.

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

46 ??? ??????????, ? ??????? ?????????? ?????????? ? ?????? ??? ?????? ???
????????? ??? ?????? 13, ?????????? 3, ?????????? ???, ??? KStG 1988, ???
????????????? ?? ??? ??? ??? ??? ?????????????? ??? 2001, ?? ??? ??? ??? ??????????
????? ??? ?????????????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ??????????.

47 ??? ???????, ??? ?????? ??? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??? ?????? ??? ??????????????,
????? ???, ??? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???, ???,
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?? ??????, ??? ?????????? ?? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
?????? ??? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

48 ???, ??? ?????? ???, ??? ??? ?????, ?? ?????? ??? ?????????????? ??? ??????????
?? ??? ?????? ?????? ?? ??? ??? ?????? ?? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????????? ?? ??? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ???
????????? ??' ?? ???? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

49 ??? ??????? ??' ?????? ???, ??? ?? ?????? ?????? ??? ?????????????? ??? ?????????? ???
?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

50 ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????
?????? ? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? (??., ??? ???

??????, ??? ?????? ?? ??????? ?????????? ??? ???????, ?????? Dijkman ??? Dijkman-Lavaleije, C?233/09, EU:C:2010:397, ????? 42, ???, ??? ????? ??? ?????????? ????????????, ?????????? ?????????? ??? ???????, C?34/98, EU:C:2000:84, ????? 49, ??? Lasteyrie du Saillant, C?9/02, EU:C:2004:138, ????? 43).

51 ???????????, ??????? ?? ?????????????????? ??????????? ??? ???????????
?????????? ???, ?? ?? ??????????? ???????, ?????????? ??????? ??????????? ??
????? ?? ??????????? ?? ?????? ?????? ?????? (??., ??' ??? ???? ?? ??????, ??????????
Metallgesellschaft ??., C?397/98 ??? C?410/98, EU:C:2001:134, ??????? 44, 54 ??? 76? X ???
Y, C?436/00, EU:C:2002:704, ??????? 36 ??? 37? Rewe Zentralfinanz, C?347/04,
EU:C:2007:194, ??????? 26 ??? 30? National Grid Indus, C?371/10, EU:C:2011:785, ??????? 36
??? 37? DMC, C?164/12, EU:C:2014:20, ??????? 40 ??? 43, ????? ??? ???????? ???
??????????, C?591/13, EU:C:2015:230, ??????? 55 ??? 61).

52 ? ?????????????? ?????????????? ?? ??? ????? ?????????????? ?? ?????????????? ?? ?????????????? ??
????? ?? ?????????????? ?????????? ?????????????? ?? ?????????? ?????????? ?????????? ?? ??????
????????????? ?? ??????? ?? ?????? ????? ?????????????? ?? ?????????? ?? ?????????? ?? ?????? ?? ??????
??, ?? ?? ??????, ?????? ?? ?????????? ?????????????? ?? ?????????? ?? ?????????????? ?? ?????????? ??, ?? ??
????? ?????? ?? ?????? ?????????????????? ?????????? ?? ?????????? ?? ??? ????? ?????????? ?????? ??????
?????????. ?? ??????????, ?? ?????? ??? ?????? ????? ?????????? ?? ?????? ?????? ?????? ?????????? ??????
?????????????, ??? ?? ?????? ?????? ??? ????? ?????????????? ?? ?????????? ?? ?????? ?????? ??? ?? ??
????????? ?? ?? ??? 2001 ?? 2002, ??????? ?????? ?????????? ?????????????? ??, ?? ?????? ?? ??
????????? ?? ??? ?????? ?????? ??? UFS ??? ?????? ?????????? ?????????? ?????? ??? ?????? ?? ??
????????? ?? ??? ??? ?????? ?????????? ??? ?????????? ?????? ??? ?????????? ??? ?????? ?? 2001 ??
?? ?????????? ?????? ??? 2002.

53 ????????, ? ????????, ??? ?????? 13, ?????????? 3, ?????????? ????, ??? KStG 1988,
???? ?????????????? ?? ??? ????? ??? ??? ?????????????? ??? 2001, ??????????, ?? ???
??? ??????? ?????????? ??? ????????, ??? ?????????? ? ?????? ?????????? ???'
????? ??? ?? ????? 56 ??.

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

55 ??' ????? ??????????????? ???, ??? ???? 58, ?????????? 1, ????????? ??, ??, ??
????? 56 ?? «??? ????? ?? ??????? ??? ?????? ?????? ?? ?????????? ?? ??????????
????????? ?? ?????????????? ??? ????? ?????????? ?? ?????? ?????????? ??????
????????????? ?? ??? ??? ?????????? ??? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?
?? ??? ????? ?? ?????? ?????????? ?? ?????? ???».

56 ? ?? ??? ????????, ????. ????? ???. ????????. ?????????? ???. ???. ?????????? ???. ???.
????????? ?????????? ???. ????????, ????. ???. ?????????? ???. ??????. ???. ???. ??????, ???.
????????? ???. ???. ?????????? ???. ???. ???. ?????? ???. ?????? ???. ???. ?????? ???. ???.
????????? ???. ???. ?????? ???. ???. ?????? ???. ???. ?????? ???. ?????? ???. ???. ?????? ???.
???. ?????????? ???. ???. ???. ???. ???. ???. ???. ?????? ???. ???. ?????? ???. ???.
(????????? Mattner, C?510/08, EU:C:2010:216, ????. 32, ??? FIM Santander Top 25 Euro Fi,
C?338/11 ??? C?347/11, EU:C:2012:286, ????. 21).

57 ????????, ? ????????, ??? ?????? 58, ?????????? 1, ?????????? ?, ?? ??????????????
???? ? ????? ??? ?????????? 3 ??? ????? ??????, ??? ?????????? ??? ?? ??????
????????? ??? ????? ?????? ?????????? ? ?????????? 1 ??? ????? ?????? «??? ?????? ??
????????? ??? ????? ?????? ?????????? ?????? ?????????????? ?????? ???

?????????? ??????? ??? ???????? ??? ?? ??????? ????? ?????? ??? ?????? [56]»
(?????????? Mattner, C?510/08, EU:C:2010:216, ??? 33, ??? FIM Santander Top 25 Euro Fi,
C?338/11 ??? C?347/11, EU:C:2012:286, ??? 22).

58 ??????, ??? ???????, ?? ?????? ??? ?????????????? ?????? ??? ???????????
????????????? ?????????????? ?? ?????? ?????????????? ?????? ??? ?????? 58, ???????????
1, ??????? ??, ?? ??? ?? ??????????? ?? ?????? ?????????????? ??? ?????? ??? ?????? 3 ??? ??
?????. ??? ?? ?????????? ?? ???????????, ??????, ?????????? ???, ??? ?? ?????? ???
?????? ?????????? ?????? ??? ? ??????? ??? ?????? ??? ?????? ??? ?????? ?? ??????
?????? ?? ??? ?????????? ??? ??????? ??? ?????? ??? ?????? ?????????? ??? ??????
?????? ?????????? ? ?????????? ?????????? ??? ?? ?????? ?????????? ??? ??? ??? ???
????????????? ?????????? ??? ?? ?????????? ??? ?????? ?????????? ??? ?????? ??? ???
?????????. ???????, ??? ?? ?????? ??? ?????? ??? ?????? ??????????????, ? ???????????
????????? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ?? ?????? ?????? ??? ?????? ???
????? ??????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? (??.,
??' ???, ??? ??????, ?????????? Manninen, C?319/02, EU:C:2004:484, ??? 29? Mattner,
C?510/08, EU:C:2010:216, ??? 34, ??? FIM Santander Top 25 Euro Fi, C?338/11 ??,
C?347/11, EU:C:2012:286, ??? 23).

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

59 ? ?????????? ?????????? ?????????? ??? ? ??????? ??? ?????? ??? ?????? ??? ??????
?????? ??????? ?? ??????? ?????????? ??? ?????????? ?????????? ??? ??????????
??????, ??? ?? ?????? ???, ? ?????????? ??? ?????? ?????? ?????? ?????????? ?? ?????? ???
????????????? ?????????? ?? ?????? ??? ?????? ?? ?? ?????? ?????????? ??? ?????????? ???
????????? ??????? ??? ?? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????????? ?????
??? ??? ?? ?????? ?????? ?????????? ?????????? ?? ??? ?????? ?????? ??? ?????????? ?????
????????? ?? ?????? ??? ?????? ?????????? ?????????? ??? ?????? ?????? ??? ?????????? ?????.

60 ??? ?? ?????????? ?????????, ?? ??? ?? ?????? ??? ?????? ??? ?????????????? ???????????
???? ???????, ? ?????????? ??????? ?????????? ?????????? ??? ??????????, ???' ????, ???
????????? ??????? ?? ?????? ?????? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ???
????? ?????? ?????????? ?? ?????? ?????? ?????? ?????????? ?????????? ??? ?????? ???
????? ?? ?????????? ?????? ?????? ?????? ?? ?????? ???' ?????? ?? ?????????? ???
????? ?? ??? ?? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ?? ??????
????????? ??? ?? ?????? ??? ??????.

61 ??? ?? ?????? ??? ?????????? ??? ??????, ?????????? ???, ??? ?????????? ??? ??
????????? ??? ?? ?????? ?????? ?????????? ?? ?????? ?????????? ?????????? ??? ??
????????????? ??? ??, ? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??
????? ?? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????????? ???,
????? ?? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ??? ?????????? ???
????? ?? ?????????? ??, ?? ??? ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???.

62 ?????????????? ??????? ???, ?????????? ??? ?? ??? ?????????????? ? ??????????
?????????, ? ?????????? ??? ?????? ?????????? ??? ?????????????? ??? ??????
????????????? ??? ?????? ??? ?????? ?????? ??? ??????.

63 ???????, ??? ?????? ? ???????, ??? ?????? ??? ?????? 58, ?????????? 1,
?????? ??, ??, ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

64 ?????????????? ?????????? ??? ? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?? ??
????????? ??? ??????, ??????, ??? ?? ??? ?????????????? ?????????????? ??? ??????????,
?????????, ?????????? ??? ??? ?????? ?????? ?????? ?????????? ?? ??????, ??????? ?? ??
????????? ?????????? ??? ????, ?????????????? ?? ?????????????? ?????????? ?????????? ?? ???
????????????? ??????? ?? ?????????? ??? ?????????????? ??? ?????????? ??? ?????????? ??? ??,
???? ?????????? ??? ??? ?????????????? ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ???
??? ?????? ??? ?????? ?? ?????? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ????. ??????, ???
????????????? ?? ?????????? ??? ?????????? ?????????? ?????????? ??? ?????? ??? ?????????? ???
????????? ?????????? ?????????? ??? ?? ?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ? ?????????? ?? ??? ?? ??? ??? ??? ?????
????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ???????, ?????????????? ??
????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ?????? ??
????????? ?????????? ???????????, ?? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???
????????? ??? ???????.

65 ??????? ?????????????? ???, ????, ??? ???? ?????? ?? ??????? ?????? ?????? ??
????????????? ??? ???? ?????? ??????? ??????????, ??? ?? ?????? ?????? ??? ??????????
?????????? ??? ?????? ??? ?????????? ?????????? ?????????????? ???, ?????????????? ??
????????????? ? ??? ???? ?????????? ?????????? ??? ?????? ??????????????, ?? ?????????? ??
???? «?????????????» ?????? ??? ??????? ?????? ??? ??????????, ? ?????? ???, ??
?????????? ????, ?? ??? ?????????? ??????????. ??????? ?? ??? ?????????????? ??? ??
«?????????», ? ??? ?????? ?????? ?????? ?? ?????????????? ??? ?????????? ?? ?????????? ?? ??
????????? ??? ?????????? ??????????, ??? ?????????? ??????????, ??? ?????? ??? ??????????,
????????? ?????????? ?????????? ??? ?? ??? ?????? ??? ?????????? ?? ?????????? ??? ??
? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????????? ???.

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

66 ?????? ?????? ??????? ?????????? ?? ?????? ?????? ?????? ? ?????????????? ??? ??????????
????????????? ??? ?????????? ? ?????? ?????????? ??? ??? ?????? ?????? ?????? ??? ? ??????
???? ??????? ??? ?????? ?????? ?????? ?? ?????????????? ?????????????? ??? ??????
???? ?????? ???????????.

67 ???' ?????? ??????? ?? ?????????????? ?? ? ??????? ?????????????? ??????????????
????????????????? ?????????????? ??? ???? ?????? ?????????????? ??? ?????????????????? ?????
??? ?????????????? ?????????? ??????? ??? ?????? ?????, ??? ?????????????? ? ??????????
?????????.

68 ??' ?????? ??????????????, ??????, ??? ? ?????????? ??? ?????????????? ?????? ?????????????? ??????????
??? ?????????? ??????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????
????? ?????????? ?? ??????????. ???????, ??? ?????? ?????????, ?????????? ?????? ?????? ?????
????????? ? ?????????? ?? ??????? ?????????? ???????, ?? ?????? ??? ?????? ?????? ???
????????? ?? ??????????, ?????????? ? ??????????, ?? ?????? ??? ?????????? ?????? ???
????????? ??? ???????, ??????????, ?????? ????, ?? ?????????? ?? ??????
????????? (????????? DMC, C?164/12, EU:C:2014:20, ?????? 46 ??? 47? ??????? ?????
?????????, C?591/13, EU:C:2015:230, ??? 64, ??? Grunewald, C?559/13, EU:C:2015:109,
????? 40).

69 ??????, ??? ?????????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??????, ?
????????????? ?????????????????? ?????? ??? ???????.

70 ?????????????????? ????. ?????????????? ????. ?????? ?????? ?????????????? ????. ?????????????? ?????
????????? ????. ?????????????? ??????. ?????? ????. ?????? ?????? ?????? ?????? ???. ?????? ?????? ??????
????????? ????. ?????? ????. ?????????????? ???. ?????? ?????? ?????? ?????? ???. ?????? ?????? ???.
????????? ????. ?????? ?????? ??????, ?????????? Rewe Zentralfinanz, C?347/04, EU:C:2007:194,
????? 42? Oy AA, C?231/05, EU:C:2007:439, ????? 54, ??? Aberdeen Property Fininvest Alpha,
C?303/07, EU:C:2009:377, ????? 66).

71 ?? ??????????? ???, ???? ?????????????? ??? ?? ?? ?????? 64 ??? ?????????? ????????,
?? ?????? ??? ?????????? ??? ?????????????? ?????? ?????? ??? ?????????????? ??? ??????????
??? ??? ?????????? ??? ???????, ??????, ?????? ??? ?????????????? ?????????????? ???
??????????, ???????, ???? ?????????? ??? ??? ?????????? ??? ??? ?????? ???
?????????? ??? ??????? ?????? ?????????? ??? ??? ??? ?????? ?????? ???? ??? ????????????,
???????? ??? ??? ?????????? ???????, ??? ?????????????? ?????? ?????????? ??? ?????? ???
????????????? ?????? ??? ?????????? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ???
???. ?? ??? ?????? ?????, ?????????? ??? ??? ??? ?????????????? ?????????? ??? ?????????? ???
????????? ?????????? ??? ??? ??????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???
????? ??????? ??? ??? ?????????? ??? ??? ??? ?????? ?????? ?????? ???, ??? ?????????? ???
?????????? ??? ??? ?????????? ?????? ??? ?????????? ??? ?????????? ??, ?????????? ???
????? ??? ??? ?????? ?????? ??? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????? ???????, ??? ??? ?????????? ??? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
??????, ??? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
?????????? ??? ??? ?????????? ??? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
?????????? ??? ??? ?????????? ??? ??? ?????? ??? ?????????? ???

72 ????? ?????????? ??? ??????? ??? ?????? ???, ??????????? ??? ?????????? ?????
??? ?????????? ?????????? ??? ????? ?????????? ?????? ?????????? ??? ?????????? ??? ?????
?????? ?????? ??????, ??????, ?????? ?????????? ?????? ?????????? ??? ??? ?????? ??????
??????????, ?? ?????????? ??? ??? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????
?????????? ??? ?????? ??????. ? ?????????? ?????????? ?????????? ?????????? ??? ?? ?????????? ???
????????? ??? ?????? 13, ?????????? 3, ?????????? ???, ??? KStG 1988, ???
????????? ??? ??? ??? ??? ??? ??? ?????????? ??? 2001, ?????? ?? ?????????? ???
?????? ?????? ??? ?????????? ?????? ?????? ?? ?????????? ??? ?????????? ??? ?????????? ??
????? ?????????? ?? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
?????? ?? ?????????? ??????.

73 ?????????? ?????? ???-?? ?????????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????

????????????????? ??? ?????????? ??? ?? ??????? ?? ?????????????? ??? ?????????? ???
????????????? ??? ??????? ?? ?????????????? ??? ???????, ?????????????? ??? ?????????? ???
??? ?????????????? ??? ?????????????? ??? ?? ??????? ?????????? ?? ?????????? Lankhorst-
Hohorst (C?324/00, EU:C:2002:749) ??? Glaxo Wellcome (C?182/08, EU:C:2009:559), ??
????????? ??? ?????????? ??? ??????? ?? ?????????????? ??? ?????????????? ???
????????? ??? ?????????? ?? ??? ?????????? ?? ?????????????? ??? ?????????? ???????, ??????? ?? ??
????????? ??? ? ?????????? ??????? ??? ?? ??????? ?? ?????????????? ??? ??????????
????????? ?? ?????????????? ??? ??????? ??? ??????? ??????? ?????? ??????. ??????????, ?? ?????? ???
??? ?????????? ??????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??????
????????? ??????? ??????? ?????? ?????????????? ??? ?????? ??? ??????? ??????.

74 ???????, ??? ?????? ?? ???? ?????? ?????????? ? ??????? Argenta Spaarbank
(C?350/11, EU:C:2013:447), ??????? ?? ?? ?????????? ?????????????? ?????????? ??????????
?? ?? ?? ?? ?????????? ?? ???? ?????? ??, ?? ?????????? ??????, ?? ?? ?? ?? 51 ??
????????? ??????, ?? ?? ?????? ??, ?????? ?????????? ??, ?????? ?????????? ?? ?? ?? ?????? ??????
?????????, ?? ????? ?? ?????? ?????? ?????????????? ?? ?????? ?????????? ?????????? ?????????? ?? ??
????? ?????? ?????????????? ?? ?? ??, ?????? ?? ?????????????? ?????? ?????? ??????
????????? ?? ?????? ?? ?????????? ?? ?????? ?????? ??, ?????? ?????????? ?? ?? ?? ?????? ?? ??????
????????????? ?? ?? ?? ?????? ?????? ??????????????, ?? ?????? ?? ?????????? ?? ?????????? ??????????
?? ?????? ?????????? ?????? ?????? ?????????? ?????????????? ?? ?? ?????????? ?? ?? ?????? ?? ??
????????? ?? ?? ?????? ?????? ?????????? ??????????????, ?? ?????? ?????? ?????? ?????????? ??????????

75 ????????, ? ?????? ??? ?? ?????????????? ?? ?????????????? ??? ?????????????? ????? ??????????????
????????????? ??? ??? ????? ??? ?????? ??? ?????? ?????????????? ??? ?????????????? ?? ?????? ?????? ??????
????????? ?????????????? ?????????????? ?????????????? ??? ?????? ??? ?????? ??? ?????? ?????? ???
????????? ?????????????? ?????? ??? ??? ?????????????? ?????? ?????? ?????? (??., ??' ???? ???
?????, ?????? Argenta Spaarbank, C?350/11, EU:C:2013:447, ????? 52 ??? ??????????????
?????????).

76 ???????, ?? ?????????? ????? ?????????? ??? ?????' ?????? ? ?????? ???????????
????????????? ?????????????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????????? ???
????????? ?????????????? ?? ?????? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????????? ?
????????? ???????, ??? ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ?? ?????????????? ?? ??
?? ?????????? ?? ?????????? ?????? ?????????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? . ?
?????? ?????????? ??? ??????? ??? ?????????? ?????? ?????? ??? ?????????? , ???????, ???
?????? ??? ?????? ??? ?????? 46, ?????????? 1, ?? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ?????????? ?? ?????? ?????? ?? ?????????? ?????? ?????????? ?????? ??? ???
????????? ??? ?????????? ??? ?????? (??., ??? ??? ??????, ?????? Cadbury
Schweppes ??? Cadbury Schweppes Overseas, C196/04, EU:C:2006:544, ??? 49).

78 ?? ??? ?????????????? ?????????????????? ???, ?? ??? ????? ??? ?????? ??? ????? ???????????
????????????? ???, ?? ?????? ??? ?????? 13, ?????????? 3, ?????????? ???, ??? KStG
1988, ??? ?????????????? ?? ??? ?????? ??? ?????? ?????????????? ??? 2001, ? ??????????
????? ??? ?????????????? ??? ?? ?????????? ?????? ??? ?????????? ??? ?????? ??????????
??? ?????????? ??? ?????? ?????????? ? ?????? ?????? ??? ?????? ?????? ??????????.

79 ??????????????, ????. ?????????????? ????. ?????? 28 ????. ?????????? ??????????, ????. ?????? ??????
????? ?????????? ?????????????? ????. ???? ? ?????????? ?????????? ????. ?????? ?????? ?????????? ??
????????? ?????? ????. ?????? ?????? ??????????. ?????? ?? ?????? ????????????. ?? ?????? ????

????????? ??? ??????? ?????? ?????????? ?????????????? ??????????????, ?? ?????? ?????????????? ???
????????? ??? ??????????, ?????? ??????? ?? ?????????? ??? ?????????? ??? ?????????? ? ??????? ??? ???
????????? ?????? ?????????? ??? ??????? ??? ?????????? ??? ??????????????, ?????? ?? ?? ?????????? ????,
????????? ??? ? ?????? ??? ?????????? ??? ?????? ??? ?????? ??????????, ??? ?????? ??????
??? ?????????? ??? ?? ?????????? ???, ??????? ?? ?? ?????? 24, ?????????? 5, ??? KStG
1988, ??? ?????????? ?? ??? ??? ??? ??? ?????????????? ??? 2001 ?????????? ??
????????? ?????? ??? ?????????? ??? ?????????? ??? ?? ?????????? ??? ?????? ?? ?????????? ??? ??????????.

80 ?? ??????? ?? ?????????????? ?? ? ?? ? ??????? ?? ?????????????? ?? ?????????????? ??
????????????????? ?? ? ?? ? ?? ? ??????? ?? ?????????????? ?? ? ?? ? ??????? ?? ? ?? ? ??????????????
?????????.

81 ???????????, ??? ?? ??????????? ??????????? ??????????? ?????????????? ??? ?????????????? ???
????, ?? ?????????? ??????? ?? ?????????? ? ??????? ?????? ?????? ?????? ?????? ???
?????? ?????????? ?????????? ?????????? ??? ?? ?????????? ??? ?????? ?????? ?????? ?????? ???
????????? ??????????, ? ?? ?????????? ?????? ?? ?????????? ??? ?? ?????? ??? ?? ?????? ???
??? ?????? ?????? (?., ??? ??? ?????, ??????? Papillon, C?418/07, EU:C:2008:659,
?????? 43 ??? 44? ??????? ??? ????????, C?211/13, EU:C:2014:2148, ????? 55, ???
Grünwald, C?559/13, EU:C:2015:109, ????? 47).

82 ??????? ?????? ?????????? ?????????? ?? ????????????, ??? ??????? ??????.

83 ???' ?????, ????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ? ??? ?????????? ?????????? ?????????? ?????????? (??., ??' ??? ???? ???
?????, ????????? DI. VI. Finanziaria di Diego della Valle & C., C?380/11, EU:C:2012:552,
???? 47, ??? Grunewald, EU:C:2015:109, ??? 49). ??? ?????? ?????????? ???
????????? ?????????, ?????????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????
??? ?????????? ?????????? ?? ??? ????? ?????????? ??? ?????? ??? ?????? ??? ? ?????? ???
???? ?????????? ????

84 ????????, ??? ?????????? ? ????????, ??? ?? ?????????? ?????????????? ???
????????? ??? ?????????? ?? ??? ?????? ?????? ?????? ?????????? ?? ??? ?????? ?????? ??????
??? ??? ??? ?????????? ??? ?????????? ??? ?????? ?????? ??????, ??? ?????? ? ??????
????????? ?????? ?? ?? ?????????? ??? ?????? ?????? ?????????? ??? ??? ?????? ?????? ??????
?????????, ?? ?????????? ?????????? ??? ?????? ?????? ?? ?????????? ?????? ??? ???
????????? ??? ?????? ?????? ?????? ??????.

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86 ?????????? ??? ? ??????? ?????????? ??? ???? ???? ?????? ?????? ??? ?????? ?????? ?????? ??????
???? ??????? ?????????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ,?' ????
????????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ?????? ?????????? ??????
???? ?????????? ?????????? ??? ??????????, ??? ??? ???? ??? ?????? , ??? ?????? .

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

?? ?????? 56 ?? ??? ???? ?????? ?? ???? ?????????? ?? ???? ?????????? ?? ???? ?????? ?? ????
?????? ?? ???? ? ??????? ?? ???? ??????? ?? ???? ?????? ?? ???? ??????, ? ????? ?????????? ?? , ??
?????? ?? ?????????? ?? ?????????? ?? ???? ?????????? ?? ???? ?????????? ?? ???? ?????????? ??
?????? ?? ?????????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????????? ?? ????
????????, ?? ?????????? ?? ???? ?????????? ?? ???? ?????????? ?? ???? ?????? ?? ???? ?????? ?? ????
?? ???? ??????? ?? ?????????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ????
?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????????? ?? ???? ?????? ?? ???? ?????????? ?? ????
?? ???? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????????? ?? ???? ?? ???? ?????, ?? ? ? ?? ????
????????? ?? ?????????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????????? ?? ???? ?
????????? ?? ?????????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????????? ?? ????
????????? ?? ?????????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????????? ?? ????
????????? ?? ?????????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????????? ?? ????.

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

* ?????? ?????????????; ? ??????????.