

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

??? 6?? ??????? 2015 (*)

«????????????? ?????????? — ???? 49 ????, 54 ????, 107 ????, 108, ?????????? 3, ????
— ?????????? ?????????? — ?????? ?????? — ?????????? ?????? ?????? —
????? ?????????? ??? ?????? ?????? — ?????? ??? ?????? ??? ?????????? ??? ??????????
— ?????????? ??? ?????? ?????? ?? ?????? ?????? ??????»

???? ?????? C?66/14,

? ? ?????????? ?????? ?????????? ?????? ?????? ??? ?????? 267 ????, ???
????? ?? Verwaltungsgerichtshof (??????) ?? ?????? ??? 30?? ?????????? 2014, ? ????
????? ?? ?????? ??? 10 ?????????? 2014, ??? ?????? ??? ????

Finanzamt Linz

????

Bundesfinanzgericht, Außenstelle Linz,

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

IFN-Holding AG,

IFN Beteiligungs GmbH,

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

????????? ??? ??? L. Bay Larsen, ?????? ???????, K. Jürimäe, J. Malenovský, M. Safjan
??? A. Prechal (??????????), ????????,

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

?????????: A. Calot Escobar,

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

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

– ?? IFN?Holding AG ??? IFN Beteiligungs GmbH, ?????????????? ??? ??? A. Damböck
??? ??? B. Stürzlinger, Steuerberater,

– ? ?????????? ????????, ?????????????? ??? ??? J. Bauer,

– ? ?????????? ????????, ?????????????? ??? ??? W. Roels ??? R. Sauer,

????? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ??????????
??? 16?? ??????? 2015,

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

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1 ? ?????? ?????????????? ?????????? ?????? ??? ?????? ??? ?????? 49 ????, 54
TFUE, 107 TFUE ??? 108, ?????????? 3, ???.

2 ? ?????? ????? ?????????? ??? ?????? ?????????? ?????? ??? Finanzamt Linz
(????????? ??? Linz, ??? ????: ?????????? ???) ??? ??? Bundesfinanzgericht,
Außenstelle Linz (????? Unabhängiger Finanzsenat, Außenstelle Linz), ? ?????? ??????
????????? ??? ?????? ?? ??? ?????? ??? ???????, ??? ?????? ?????????????? ??????
?????????, ?? ?????? ?? ?????? ?????? ?????????? ?? ?????? ?????? ?????? ?? ?????? ??
????????? ?????? ?????????? ??????????.

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

3 ??? ?? ?????????? ??????, ? ?????? ??? ?? ?????????? ??????????
(Körperschaftsteuergesetz) ??? 7? ?????? 1988 *BGBI.* 401/1988), ??? ?????????????? ??
??? ??? ????? ?????????? ?????????????? ??? 2005 (Steuerreformgesetz 2005, *BGBI.* I,
57/2004, ??? ????: ?????? ??? ?? ?????????? ?????????? ??? 1988), ??????????, ??? ??? 9,
????????? ?????????? ?????? ??????. ??? ?????? ??? ?????????? ?????, ??????
????????? ?? ?????????? ?????? ?????? ?????? ??? ?? ??? ?????????? ??? ?? ?? ??????
????????? ?????? ?????? ?????? ?????????? ?? 50 % ??? ?????????? ??????. ???
????????? ???, ?? ?????????? ?????????? (????? ??? ????) ??? ?????????? ???
????????? ??? ?? ??? ?????? ?????? ?? ?????????? ?????? ??? ?????????? ?????? ???
????????? ??? ?????? ?????? ?????? ??????:

«[...] ?? ?????????? ?????? ?????????? [...] ?? ?????? ?????? ?????????? ? ??? ?? ??????
????????? ??????, ?? ??? ?????? ?????????? ?? ?????????? ?????? ?????? ??????????, ??
????????? ?????? ??? ?????? ?????????? ?????? ?????????? ??? ?????? ?????? ??????????
????????? ?????? ?????? [...] , ?????? ?? ? ?????????? ??? ??????, ?????? ? ??????, ??? ??????
?? ?????? ?????? ??? ?????? ?????? ?, ?????? ? ??????, ??? ?????? ??? ?????? ??????????
????????, ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??????????
????????? ??? ?????????? ??? ?????????? ??? ?????? ?? ?????? ??? ?????? ?????? ?????????? ???
????????? ??? ?????? ?????????? ?? ??? ?????????? ??????, ??? ??? ?????? ?????????? ???:

- ?? ?????????? ?????????? ?????? ?? ?????????? ??? ??? ?????????? ?????????? ???
????????? ??????, ??????, ??? ??? ?????? ?????????? ?????? ?????? ?????? ?????????? ???
????????? ?????? ??? ?????? ??? ?????? ?????????? ?????? ??? ?? ?????????? ?????? ??????????
????????? ???, ???????, ??? ?????????? ?????? ?????? ?????? ???', ?????? ????
????? ??? ?? 50 % ??? ?? ??? ??????. ? ?????? ??? ?????? ?????????? ?????????? ??????????
????????? ?????? ?????????? ?? ??? ?????? ??????, ??? ??? ?????? ?????????? ???:

[...]

- ?????? ?? ?????????? ??? ?????? ?????????? ?????????? ?? ?????? ??? ?????????? ??????????, ?
????? ??? ?????????? ??? ?????? ?????????? ?????? [...] .

- ?? ??? ???? ??? ?????? ?????? ?????? ?????????? ?????? ??? ?????????? ?????? ???
????? ?????? ? ?????? ?? ?????? ?????? ?????? ?????? ?????? ???.

5 ?? ????? 10 ??? ?????? ??? ?? ?????????? ?????? ??? 1988, ?????? ?? ??? ??????

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

«(2) ?????????????? ??? ????? ?????????? ?????????? ??? ?????? ??? ?????????
?????????. ?????? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ???? ???
????????? ??? ???? 7, ?????????? 3, ? ????? ?????????? ?????????? ??? ???? ?? ????
????????? ?????? ??? ?????????? ?? ??? ????? ??? ???? 7, ?????????? 3,
????????? ??? ?, ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ??? ??????????
???? ??? ?????? ?????? 10 %:

- a) ?? ?????????? ?????????? ??? ?????????????? ?? ?????? ?????????????? ????????,
b) ?? ?????? ?????????? ?????????? ??? ?????? ??? ?????????? [...] ??? ?????? 2 ???
?????? 90/435/??? ??? ??????????, ??? 23? ?????? 1990 [????????? ?? ?? ????
????????? ?????? ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??????????
????????? ?????? ??????] (?? L 225, ?. 6), ?? ?????????? ??????. ? ??????????????
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
?????????, ?????? ? ?????? ?????? ??? ?????? ?? ?????????? ?????? ??? ?????????? ??????
??? ???????.

(3) ??? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???, ?????? ???
?????? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? 2. ??? ?????? ??? ?????? ??? ??? ?????????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ?????? (????????? ??? ??????????) ??? ??????????
?????????. ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????????????? ???
??? ??? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ???
????? ?????? ? ?????????? ? ?????? ??? ?????????? ??? ?????? [...] ? ?????????? ??????????
??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???

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

[...]»

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

6 ??? ??? ?????????? ??? ?????? ??? ?????? ??? ? IFN Beteiligungs GmbH (??? ????:
IFN) ?????? ?? 99,71 % ??? ?????? ??? ?????? ??? IFN?Holding AG (??? ????:
IFN?Holding), ? ?????, ?? ?? ?????? ???, ?????? ?????????? ??? ?????? ?? ????
????????? ?? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ???? 2006 ??
2007, ? IFN?Holding ?????? ?? 100 % ??? ?????? ??? CEE Holding GmbH (??? ????:
CEE), ? ?????, ?? 2005, ??? ?????? ?? 100 % ??? ?????? ??? HSF s.r.o. Slowakei
(??? ????: HSF), ?????? ?????????? ??? ?????? ??? ? CEE ??? ?? 2005 ??? ? HSF ???
?? 2006 ??? ?????? ??? ??????, ??? ??? ?????? ??? ?????? 9 ??? ?????? ??? ??
????????? ?????? ??? 1988. ?????? ?????????? ??? IFN?Holding ??? CEE, ? ??????
????? ??? ??? 31 ?????????? 2007, ? ?????? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ??????, ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? HSF.

7 ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???? 2006 ??? 2010, ?
CEE, ??? ?? ?????? ? IFN?Holding, ?????? ??????, ?? ?????? ??? ??? ?? ???

??????????, ??? ?????????? ??? ??????????????, ??? ??? ?????? ??? ?????? 9, ??????????? 7,
??? ??? ?? ???? ?????? ??? ?????? ??? 1988, ?????????????? ??? ??? ??? ??? ???
????? ??? ?????? ??? ?????? ??? ?????? (???? 5,5 ?????????? ???). ?? ??????????
??? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ???? ?? ?????? ??? ??????
?????????? ??? ?????????? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?? ?????? ??? ??????
?? ?????? ??? ??????.

8 ?? ??? ?????? ??????? ????, ? ?????????? ????, ?? ?????????? ????, ???
?????? ??? ?????????? ??? ?????? ??? ?????????? ?????????? ?? ?? ?????????? ???, ??????
?? ?? ??? 9, ?????????? 7, ??? ??? ?? ???? ?????? ?????? 1988, ??????????
????????? ??? ?????????? ?????? ?????? ?????? ?????????? ?????????? ?? ?????????? ???
?????? ?????????? ?????????? ??????.

9 ?????? ??? ?????????? ?????????? ??? ?????? ?? IFN?Holding ??? IFN ??? ??
?????? ???, ?? Unabhängiger Finanzsenat, Außenstelle Linz, ?? ?????? ??? 16??
????????? 2013, ?????? ??? ?????????? ??? ?????????? ??????. ?????? ??? ? ??????????
??? ?????????? ?????????? ?????????? ?????? ??? ?????????? ?? ?????????? ?? ??????
????????? ?????????? ?????????? ?????????, ??? ?? ??? 9, ?????????? 7, ??? ??? ??
?? ?????????? ??? 1988, ?????????? ??? ?????????? ?????????? ??? ?????? ??? ??
????????? ?? ?????????? ??? ?????????? ?????? ?????? ?????? ?????????? ?????? ???
????? ???, ??????, ??? ?????????? ?? ?? ?????? ??? ??????, ?? ?????????? ? ?????? ???
????????? ?????????? ?????????? ??? ?? ?????? ??? ?????????? ?? ?????????? ???
????????? ??? ?????? ??? ??????.

10 ????????? ?????????? ??? ?????????? ??? ?????? ??? ?? ?? ??????????, ?? ????
????????? ???, ?? ?????????? ???, ???, ?? ? ?????? ??? ?????????? ?????????? ???,
?? ??? 9, ?????????? 7, ??? ??? ?? ???? ?????? ?????? 1988, ?????? ??????
???? ?? ??? 107 ??? 108, ?????????? 3, ????. ?????? ??? ?? ??? ??????
????????? ?????????? ??? ?????????? ??? ?????? ?? ?????????????? ?? ?? ??????????
???? ?????? ?? ?????????? ?? ?????? ?????????? ?????????? ?????????? ? ??????????
????? ??????.

11 ??????, ?? ?????? ?????????? ?????????? ?? ?????? ? ??? ?? ??? 9,
????????? 7, ??? ??? ?? ???? ?????? ?????? 1988 ?????? ??????
????????? ??? ?? ??? 49 ??? ?? 54 ????. ?????? ?? ?????????? ?? ?? ??? ??
????, ?? ??? ?? ??? ?? ??? ?????? ?????? ?????? ?????? ?????????? ??????????
????? ?????? ??? ?????? ?? ?????????? ?????? ?????? ?????????? ?? ?????? ??? ??
????????? ?????? ?????? ?? ?????????? ?????? ?????? ?????????? ?????? ?????? ??????.

12 ???? ?? ?????? ?? ?????????? ??? ?????????? ???, ??? ?? ??? ? ?????????? ???
????????? ?????? ??? ? ?????????? ??? ?????????? ?????? ??? ?????? ??? ??
????????, ?? ??? ?????? ?????????? ???, ??? ?????? ??? ?????? ?? ?????????? (?????
??? ??????) ?????????? ?? ?????????? ??? ?????????? ?????? ??? ?????? ??? ??
????????, ?? ?????? ?????????? ??? ?? ?????????? ?????? ??? ?????? ?????? ??? ??
???? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ??
????? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????? ?????? ? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????? ??? ??????.

13 ?? ?????? ?????????? ?????????? ??? ?????? ??? ? ?????? ?????? ?????????? ??????????

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

14 ?? ??? ???? ???? ?????????? ??? ?????????? ??? ???? ???? ?? ?????? ??? ??????????
?????? ??? ?????? ?????????? ?????????? ??? ???? ?????? ??? ?????????? ?????????? ??? ????
????? ??? ?????? ??? ?????????? ?????? ?????????? ?? ?????????? ?????????? ?????????? ??? ????
????????? ????, ??? ?????????? ??? ???? 10, ?????????? 3, ??? ?????? ??? ??
????????? ?????? ??? 1988, ?? ?????? ?????????? ?????? ??? ? ?????????? ?????? ??? ???? ??
??????, ??????? ?????? ??? ???? ?????????? ?? ?????? ?????? ?? ?????? ??? ?????? ???, ??
????????? ?????? ??? ?????????? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ???? ?????????? ??? ???????, ??????, ??? ?????? ??? ???? ?????????? ??????
????????? ?????? ???, ???????, ??????, ???, ?????? ??? ???? ?????????? ??????
??? ?????????? ?????? ??? ?????????? ?????????? ?????????? ???, ?????????? ??? ???? ??????????
????????? ??? ?????? ?????????? ??? ?????????? ?????????? ??? ???? ?????????? ??????.

15 ??? ??? ??????? ????, ?? Verwaltungsgerichtshof (????????? ??????????)
????????? ?? ?????????? ??? ?????? ??? ?????????? ??? ???? ?????? ??? ???? ?????????? ??
????????? ?????????? ??????:

«1) ?????????? ?? ??? 107 ??? [...] ?? ?????? ?? ?? 108, ?????????? 3, ???
[...] ?? ?????? ?????????? ?????? ??? ?????? ?—????????? ?? ?????????? ??? ????;
?? ?? ?? ?????? ??? ?? ?????????? ??????—????????? ?????????? ?????????? ??? ????;
????????? ?????????? ?????????? ?????? ??? ?????? ??? ?????????? ??? ??????, ???
??? ?????????? ?? ??? ?????? ?????????? ?????? ??? ?????????? ??? ?????????? ??? ????;
?????????;

2) ?? ??? 49 ??? [...] ?? ?????? ?? ?? 54 ??? [...] ?????????? ??
????????? ?????? ?????? ??? [...] ??? ??? ?????? ? ?????????? ?????????? ??
????????? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ?? ?????????? ??? ????;
????????? (????? ?? ??? ?? ??? ?????? ??? [...]);»

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

16 ? IFN-Holding ??? ? ?????????? ?????????? ?????????? ??? ?? ?????? ?????????? ??? ????
?????????, ?????? ??? ?????????? ?? ?????????? ?? ?????? ??? ?????? ?????? ?????????? ??? ????;
????? ?????????? ??? ?????? ??? ?????? ?? ?????? ?????????? ?? ?????????? ??? ???? ??
????????? ??? ?????? ??? ??????.

17 ?????????????? ??? P (C?6/12, EU:C:2013:525, ?? 39), ? IFN?Holding
????????????? ?????????? ???, ??? ?????????? ??? ?????????? ??????????, ??? ??????????
??? ??????? ?????????? ??? ? ?????????? ??? ?????????? ??? ?????????? ??? ?????
????????? ?????????? ??? ??? ?????????? ???' ?????????? ??? ?????? 108, ?????????? 3, ???.
??? ??????????, ???, ?? ?????????? ?????? ?????????, ????? ?????? ??? ??? ??????????
??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? 107 ????.

18 ? ?????????? ?????? ?? IFN-Holding ??? IFN ??? ??????????, ?? ??? ??????????, ??
?????????????, ?????? ??? ?????? ??????????, ??? ?????? ?????????? ??? ??????????
??? ?????? 9, ?????????? 7, ??? ?????? ??? ?? ?????????? ?????????? ??? 1988 ??? ??????
??? ?????? ??? ?????? ?????????? ??????????.

19 ?????????????? ??? ?????? ?????? ?????????? ?????????????? ??? ??? ?????? ??????????????
????????? ??? ?????? ?? ?????????? ?????????? ??? ?????? ?????????? ?????????? ??? ?
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????
????????? ?????????? ?? ?????? ?????? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??????
????????? ?????????? ?? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??????????
(??., ????, ????? Belvedere Costruzioni, C?500/10, EU:C:2012:186, ??? 16 ??? ??
????????? ??????????).

20 ?? ?????? ?????? ?? ?????????? ??? ?????????? ??? ?? ?????? 107 ??? 108, ??????????
3, ??? ?????????? ???, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ???
????? ?? ?????? ?? ?????????? ???, ?? ??????, ?? ?????? ??? ?????? ?????? ?????????? ??
????? ?????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????????.

21 ??????????, ????, ? ?????????? ??? ? ?????????? ?? ?????? ??? ?????? ??? ?????? ??
????????? ??? ?????????? ??? ? ?????? ??? ?????????? ??? ?????? ?????????? ?????????? ??????
????????? ??? ? ?????? ?? ?????????? ??? ? ?????? ?????????? ??? ?? ??? ?????? ??? (??.,
??????, ?????? Air Liquide Industries Belgium, C?393/04 ?? C?41/05, EU:C:2006:403, ???
43).

22 ?????????, ? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?? ?????? ???
?? ?????? ???, ??? ?? ?????? ??? ?? IFN ??? IFN?Holding ??? ?????????? ?? ??????????
????? ??? ???? ?????? ??? ?????? 107 ??? 108, ?????????? 3, ???, ? ??????????
?? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?? ?????? ??????????
?? ?????? ?? ?????? ??? ?????? ??? ?????? ???.

23 ??? ??? ?????? ???, ?????? ?????? ??? ?? ?????? ??? ?????? ??? ?? ??? ?????? ???
????? ?? ?? ?????????? ??? ?????? ??? ?????? ???.

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

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

25 ?? ?? ??????? ??????? ???, ?? ?????? ??????????? ?????? ???' ?????? ??
?????????????? ?? ?? ?????? 49 ??? ??????????????? ?? ??????????? ??????? ???????,
???? ? ??????? ?????? ?????? ?????? ?????, ? ?????, ??? ?? ??????????? ??????
?????????, ?????????? ?? ?????? ??????? ?????, ?????? ?????? ??????????? ?? ??????? ??????
????? ??????????? ?????? ?????? ??? ??????, ?? ?????? ?? ?????????? ??? ??????? ??????
????????????? ???' ?????? ??? ?? 50 % ??? ?????? ?????? ??? ??????????? ??? ??????? ??
????????? ?? ?????????? ??????? ?????????? ?? ?????????? ???????.

26 ??????? ?? ??????? ?? ?? ?????????? ?????? ?????????????? ??????????? ?? ??????? ??
????? ?? ?????? ?? ?????????????? ?????? ??? ?????? ?????? ?????????? ??? ?? ???????????
??? ?????????? ?? ??? ????? ??????????, ?????????? ?????????????? ??? ?? ?????? ?????? ??????
????????? ?? ?????????? ??? ?????????????? ?? ??? ?????? ?????, ?????? ?????? ???????
????????????? ?????????????? ?????, ??? ?????? ?????? ??? ?????? ?????????? ??????????????
????????? ??? ?????? ??????. ??????????, ? ?????? ??? ?????????? ??????????????
????????? ??, ?????? ?????????? ?????? ?????, ?????? ?????? ?????? ??? ??????? ?? ??????????
????????? ?? ??? ?????? ?????? ?? ??? ?????? ?????? ??? ?????? ?????? ??? ??????? ??
????????? ?????????? ???, ??? 2?? ????? 1992, (?? 1994, L 1, ?. 3), ???????
????????? ?????????? ?????????? ?????? ??? ?????? ?????????? ??? ?? ?????????? ???
????????? ?????????? ??? (??., ???????, ?????? Nordea Bank Danmark, C?48/13, EU:C:2014:2087, ?????? 18 ??? 19).

27 ?????????????? ?? ??????????? ?????? ??? ? ??????? ?????? ??? ?????? ??????? ??
????? ??????? ?? ??????????? ??????????? ??????????? ?? ??????? ??????? ?? ??????
?????? ?????????? ?? ??????? ???????, ??? ? ??????? ?????? ?????? ??????.
??????????, ??? ?????????? ?? ?????? ???????????, ?? ?????? ??? ?????? ??? ?????? ?? ??????????
?? ?????? ?? ??????? ??? ?????????? ???????????, ??? ??? ?????? ??? ?????? ??
????????? 7, ??? ?????? ??? ?? ?????????? ?????????? ??? 1988, ??????? ?? ?????????? ???
??? ??????? ??????? ???, ??? ???????, ?? ?????????? ?????????? ????.

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

29 ??? ? ?????????? ??????????? ??????? ?? ?????????? ??????? ??????? ? ??????
?????? ??????? ?? ??????? ??????????? ?? ??????? ??? ?????????? ?????????????? ???
?????? ??????? ??? ?????? 49 ???, ?????????????? ??? ?? ?????????? ??? ?? ?????????? ?? ??
?????? ??????? ?? ??? ?????? ??? (??., ???????, ??????? ?????????? ??? ??????????).
C?172/13, EU:C:2015:50, ??? 23 ??? ?????? ?????????? ???????????).

30 ?????? ?????????? ??????????? ??????? ?? ??? ?????? ?????? ?????? ?? ??????
?????????? ??? ??? ?????? ?????????????? ??????????? ?? ?? ?????????????? ???
?????????? ??? ?????? ?????????? (??., ???????, ??????? Nordea Bank Danmark,
C?48/13, EU:C:2014:2087, ??? 23).

31 ??? ?????? ?? ?????? ?? ?? ?????? ?????????? ?????? ?????????????? ?????? ??????????????
??????????, ?????????????? ?? ??? ?? ?????????? ?????? ??? ?????????????? ???????????
????? ?????????? ?? ??? ?????? ?????????? ???????, ?????? ?? ?????????? ?????? ?? ?????? ??
????????? ?? ??? ?????? ?????????? ??????? (?????? ??????? ??????? ??? ??????????),
C?342/10, EU:C:2012:688, ??? 36 ??? ?????? ?????????? ???????????).

32 ??? ?????? ?? Verwaltungsgerichtshof ??? ?????? ???????????, ?? ??? ???????????

????? ??? 2005, ? ??????????? ?????????? ?????????? ?? ?????????? ?????????????? ?????????? ?????????
??? ?? ??????? ?????? ?????? ?????????? ?????????????? ?? ?????????? ??? ?????? ?????????? ??????????
????????? ??? ?????????????? («asset deal») ??? ?? ?????? ?????????? ?????? ?????? ?????? ???
????? ?????? ? ?????????? («share deal»).

33 ?????????? ???, ??????? ?????????? ?????????? ??? ? ??????? ?????? ??? ?????? ?????? ???
?????? ??????, ?????? ?????????? ?????? ?? ?????????? ??? ?????? ?????? ??? ?????? ???
????????? ??????, ? ?????????? ?????????? ?????? ? ?????? ?????? ?? ?????? ?????????? ?? ??????????????
????? ?????? ?????? ?? ??????? ?????????? ??? ?????? ?????????? ???????????????, ???
????????? ??? ?????? ?????????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ??????
?????, ?? ??? ?????????? ?????????? ?????????? ? ?????? ?????? ?????? ?????? ?????????? ?? ??????????????
????? ?????????? ?? ?????????? ?????????? ???, ??????? ?? ?????????? ?????????? ?????????? ?????? ??
????????? ??? ?????????? ?? ?????????? ??? ?????????? ??? ?? ?????????? ?????? ?????????? ??
????? ?????????? (??., ???????, ??????? X Holding, C?337/08, EU:C:2010:89, ??? 24).

34 ? ?????????? ??? ?????? ??? ?????????? ??? ?? ??????, ??? ?????? ?????????? ??
????????? ??? ???????, ?????????????? ??? ?????? ?????????? ??, ??? ?????? ???
????????? ???????, ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??, ??????, ??? ???
????????? ???????, ???????, ??? ?? ?????????? ?????? ?????? ??????.

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

36 ??? ??? ??????? ???, ??? ?????????? ?? ?????? ?????????? ??, ?????????? ?????? ??? 40 ???
????????? ???, ? ?????????? ?? ?? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?? ?????? ???
????????? ??? ?? ?????????? ??? ?? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ???
????????? ??? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????.

37 ????????, ?? ?????????? ??? ?????? 33 ??? ?????? ?????? ?????????? ??? ?????????? ???
??? ?? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????????? ???
????????? ??? ? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?? ?????????? ?? ?????????? ???
????????? ??? «share deal» ?? ?????? ?? «asset deal». ??? ?? ?? ??? ?????? ???, ??
????? ??? ?????????? ?? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ?? ?????? ?? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? «share deal» ??? ?????????? ?????? ??? ?????? ??? ?????? ???
??? «asset deal» ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???.

38 ????????, ??? ?? ?????? ??? ?????? ??? ?????? ??????, ?????? ?????? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?? ?????? ??? ?????? ?????? ??? ?????? ?????? ?? ?????? ?????? ?????? ???, ??????, ???
?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???, ??????, ??? ?? ???
????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ??? ?? ??? ?????? ???, ??? ?????? ??? ?? ?????? 32 ??? ?????? ?????? ???, ???
????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?? ?????? ??? ?????? ?????? ???.

39 ?????????? ??????????, ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????, ?????? ?? ?????????? ???, ???????, ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ?????? ???, ??? ?????? ??? ?????? ???, ? ?????????? ??? ?????? ???
?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (??, ?????? Nordea Bank

Danmark, C?48/13, EU:C:2014:2087, ????? 25 ??? ????? ?????????????? ??????????).

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

41 ?????????????? ?????? ???, ?????????? ??? ? ?????????? ?????? ??? ???? ?????? ?????? ??? ?????? ??????
????????? ?????? ?????????????? ? ??????????????, ?? ?????? ??? ?????????????? ??? ???? ?????? ???
????? ???? ??????????, ?????????????, ????, ?? ?????????? ?? ?????? ?????? ?????????, ??? ???? ?
????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ???? ?????? ?????? ?????? ?????? ???
????????? (?)?. ?????? Nordea Bank Danmark, C?48/13, EU:C:2014:2087, ????? 27 ??? ???
????????????? ??????????).

42 ??? ?????, ??? ???? ?????????????? ??? ?????? 35 ??? ?????????? ??????????,
????????? ?????? ??? ???? ? ?????? ??? ?????? ?????, ?????????? ??? ?????? ?????? ?????????? ??
????? ???? ?????? ??? ?????????? ?????????????? ?????????????? ??? ???? ?????? ?????? ??? ???? ?????? ???
????? ??? ???? ?????? ?????????? ?????????????? ?????? ? ?????????? ?????? ??????. ??? ?????? ???
????????? ??? ???? ?????? ?????? ?????????????? ?????????????? ??? ?????? ??? ?????? ??? ???? ???
????????? ??? ???? ?????? ??? ?????????? ?????????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ?????? ?????? ?????????? ?????????????? ???, ??? ???? ?????? ?????? ??? ?????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

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

44 ??? ?????? ??? ???? ?????????? ??? ?????? ?????? ??? ? ?????? ?????????????? ???
????????? ??? ?????????? ?????? ?????? ??? ?????????????? ?????? ???? ?????? ?????? ?????? ?????
??? ?????????? ?????????? ??? ?????????????? ??? ?????? ??????. ??????????, ??? ???? ?????????? ???
????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ?????????????? ?????? ??? ????
????????????? ??? ???? ?????????? ?????? ?????? ?????? ?????????? ?????? ? ???? ?????? ???
????????? ?????? ?????? ?? ?????????????? ??? ?????? ??? ?????? ?????? ??? ???? ?????? ???
????????? (?)?. ?????? Grünwald, C?559/13, EU:C:2015:109, ????? 48 ??? ??? ??????????????
?????????).

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

46 ?? ?????????? ??? ?????? ??? ?????? ?????????? ?? ?????? ?????. ??????????????, ??? ????
????? ?????? ??? ?????? ??? ?????? ?????? 35 ??? 42 ??? ?????? ?????????? ??????????, ??? ??????
?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ???? ?????? ??????????
????????????? ??? ?????? ?????? ?????? ?????? ?????????????? ??? ?????? ??? ?????? ??????????
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????????????? ??? ?????? ??? ?????? ??????
????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ???? ?????? ??????
????????????? ?? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??????.

47 ???????, ? ?????? ?????? ?? ?????????? ?????????? ??? ?????????? ?????? ?????????? ??????????,
??? ?? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ?? 44 ??? ?????? ?????????? ??????????,
?????? ?? ?????????? ?????????? ?????????? ?? ??????, ??? ?? ?????????? ?????? ?? ??????????
???????? ?? ?????? ?????? ?????? ?? ?????? ?? ?????? ?????? ?????? ?? ?????? ?? ??????
????????? ?? ?????? ?????? ??????, ??????. ?? ?????? ?????? ?????????? ?????? ?????????? ??
????????? ?? ?????? ?????? ?????? ?????? ?? ?????? ?????? ??????, ? ?????????? ?? ??????
????????? ?? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????????? ?????? ??
????????? ?? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??.

48 ??????, ??????????, ??????, ??? ?? ?????????? ?????????? ??? ?????????? ??? ?????????? ???
????????? ?????????? ?????? ?????? ?????????? ??? ?? ?????????? ??????????, ??? ?
????????? ??? ?????????? ?????? ?? ?????????? ?????????? ??? ?????????? ??? ?????????? ?? ??????
????????? ??? ?????????? ?????? ?????????? ??? ?????????? ??? ??????????, ?? ?? ?????? ??????????
????????? ?????? ?? ?????????? ?????? ?? ?????????? ?????? ?????????? ?? ?????? ?????? ??????????
????????? . ??? ?? ?????????? ??????, ?? ?????? ??? ?????????? ??? ?????????? ? ?????????? ???
????????? ?????? ?? ?????????? ?????? ?????????? ?????? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?? ?????????? ?????? ?? ?????? ??? ?????????? ??? ?????????? ?????? ?????????? ???
????????? ??? ? ?????????? ?????? ?????? ?????????? ??? ?????????? ??? ?????????? ?????? ??????
????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????????? ?????? ?????????? ?????? ??????
EU:C:2007:194, ??? 67, ??? ?? DI. VI. Finanziaria di Diego della Valle & C., C?347/04,
EU:C:2012:552, ??? 49).

49 ??????, ??? ?????????? ? ?????? ?????????? ??? ?????? ?????????? ??? ?????? 61 ??? ?????????? ???,
?? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?????? ?? ?????? ?? ?????????? ??????????
??? ?????????? ?????????? ?????? ??? ?????? ?? ?????? ?????? ?????? ??????, ??? ?? ??????
10, ?????????? 3, ?????? 1, ??? ?????? ??? ?? ?????????? ?????????? ??? 1988, ??? ??????
???? ?? ?????????? ?????????? ??? ?????????? ?????? ?????????? ?????????? ?? ?????????? ??
????????? ??? ?????????? ??????????.

50 ???????? ??? ?????????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
??? ???????? ??? ?????????? ?????? ??????, ??? ?????, ??? ?????????? ?????????? ?????????? ???
????????? ??? ?????????? ?????? ?????????? ???, ??????, ??? ?????????? ?????? ??? ?????????? ???
????????? ??? ?????????? ??? ?????????? ???, ?? ?????????? ?? ??? ?????? ?? ?????? ?? ??????
??? ?????????? ?????????? ?, ??? ? ?????? ??? ?????? ??? ??????, ?????????? ??? ?????? ???
????? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ??? (??.,
?????, ??? ?????? ?????? ??? ??????, C?269/09, EU:C:2012:439, ??? 87).

51 ?????, ??? ?? ?????????? ??? ?????? ?????????? ?????????? ??? ?? ?????????? ???
????????? ??? ?????????? ?????? ?????????? ?????????? ?? ?????? ?????????? ??? ?????????? ???
?? ?????????? ??? ?????????? ?????? ?????????? ?? ?? ?????????? ?????????? ?? ?????????? ???, ? ??????
??? ?????????? ?????? ?????????? ?????? ?????????? ??? ?????? ?????????? ?????????? ??? ??????
????????? ?? ?????????? ???????. ?????????? ???, ??? ?????? ?????????? ?????????? ??
????????? ?????????? ??? ?????? ?????????? ???, ??? ?????? ?????????? ??? ?????? ??? ?? ??? ??
?????.

52 ?????, ?? ?????????? ???, ?? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??????????
????????? ??? ?????? ??? ?????????? ?????????, ??? ?????? ??? ?????? ?????? ??????
????????? ?????? ?????????? ?????????? ??? ?????????? ???, ???, ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????????? ??? ?????? ?????????? ???, ??? ?????? ?????????? ??? ?? ?? ??

40 ??? ?????????? ??????????. ??????????, ???????, ? ???????? ??? ?? ??? ??????????
????????????? ??? ??? 42 ??? ??????? ?????????? ??????.

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

54 ??? ????????, ??? ??????? ?????????? ?????????????? ?? ??? ? ??????? ? ?????????? ??? ?? ???
49 ??? ?????????? ?? ?????????? ?????????? ???????, ??? ? ??????? ?????? ??? ?????????? ???
??? ?????? ????, ? ?????, ??? ?? ?????????? ??????? ???????, ?????????? ?? ?????
????????, ?????? ?????? ?????????? ?? ??????? ??????? ? ?????? ?????????? ?????? ???
??? ??????, ?? ?????? ?? ??????? ??? ?????????? ?????????????? ???' ?????? ??? ?? ??
50 % ??? ?????? ???????, ??? ?? ?????????? ?? ?????????? ??? ?????????? ??? ??????????
????????? ?? ??????? ??????.

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

55 ??? ?????????? ??? ? ??????? ?????????? ??? ?? ??? ? ?????? ?????????? ??? ??????? ???
??? ?????????? ?????????????? ??? ??????? ??????? ??????? ??? ?????? ?????????? ???, ?' ???
????????????? ?? ?????????? ??? ?? ?????????? ???????, ?? ?????? ??? ?????? ?????????? ???
???? ?????????? ?????????????? ??? ?????????? ?????? ??? ??????? ??? ?????? ?????????? ???
??? ??? ?????? ???????, ?? ?????????? (??????? ????) ??????????:

?? ??? 49 ??? ?????????? ?? ?????????? ??????? ??????? ???????, ??? ?
????????? ??? ??????? ??? ??????? ??????, ? ?????, ??? ?? ?????????? ???????
????????, ?????????? ?? ??????? ???????, ?????? ?????? ?????????? ??? ???????
???????? ? ?????? ?????????? ?????? ?????? ??? ??????, ?? ?????? ?? ?????????? ???
????????? ?????????????? ???' ??????? ??? ?? ?? 50 % ??? ?????? ?????? ???
????????? ??? ??? ?? ?????????? ?? ?????????? ??????? ?????????? ??? ??????????
??????.

(?????????)

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