

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

??? 14?? ??????? 2016 (*)

«????????????? ?????????? – ?????????? ?????????????? – ????? 49 ??? – ?????????? ???????
?????? ??? ?????????? ??? ?????????? ?????????? ??? ?????????? ?? ?????????????? ???
????????????? ??? ?????????????? ??? ?? ?????????? ?????????? ?????????? ??? ??????????, ???
?? ?????????? ? ????? ?????????? – ?????????? ??? ?????????? ?????? ??? ??????????????
?? ????? ?????????????? ?? ??? ????? ?????? ??? ?????? ??? ?????? ?? ?????????? ??????????
??????????, ???' ????, ??? ?????? ??????????»

???? ??????? C-522/14:

? ? ?????????? ?????? ?????????????? ?????????? ?????????? ??? ?????? 267 ???, ???
?????? ?? Bundesfinanzhof (????????) ?? ??????? ??? 1?? ?????????? 2014, ? ???
????????? ??? ?????????? ??? 19 ?????????? 2014, ??? ??????? ??? ????

Sparkasse Allgäu,

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Finanzamt Kempten,

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

????????? ??? ??? L. Bay Larsen, ??????? ????????, D. Šváby, J. Malenovský, M. Safjan
???. ?. ?????? (????????), ????????,

?????? ??????????: M. Szpunar

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

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

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

- ? Sparkasse Allgäu, ?????????????? ??? ?? W.?R. Bub, Rechtsanwalt,
- ? Finanzamt Kempten, ?????????????? ??? ?? L. Bachmann,
- ? ?????????? ????????, ?????????????? ??? ?? T. Henze ??? B. Beutler,
- ? ?????????? ????????, ?????????????? ??? ?? A. ?????????????? ??? A. ????????,
- ? ?????????? ????????, ?????????????? ??? ?? B. Majczyna,
- ? ?????????? ????????, ?????????????? ??? ?? o?? W. Mölls ??? M. Wasmeier,

???? ?????? ??? ?????? ??????????? ??? ??????? ??? ?????????? ??? ????? ?? ???????????
??? 26?? ?????????? 2015,

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

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1 ? ?????? ?????????????? ?????????? ?????? ??? ??????? ??? ?????? 49 ????.

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ?????????? ?????? ??? Sparkasse
Allgäu ??? ??? Finanzamt Kempten (?????????? ??? Kempten), ??? ?????? ??? ??????
??? ?????????? ??? ?????? ?????????? ?? ?????????????? ??? ?? ?????? ??? ?????? ?????????????? ???
????? ?????????????? ??? ?????????? ??? ?? ?????????? ?????????????? ??? ?? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????????? ?????????? ??? ?? ???
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?? ?????? ??? ??????

? ?????? 2006/48/??

3 ?? ??? 23, ?????????? 1, ??? ?????? 2006/48/?? ??? ?????????? ?????????????? ???
??? ??????????, ??? 14?? ?????? 2006, ?????? ?? ??? ?????? ??? ??? ??????
????????????? ?????????? (?? L 177, ?. 1), ?????:

«?? ??? ?????? ??? ?????????? ??? ?? ?????????????? ??? ?????????????? ??? ?????? ?????????? ???
????????? | ?????? ?? ?????????? ??? ?????? ???, ?????? ?? ??? ?????????? ???
????? 25, 26, ?????????? 1 ??? 3, 28, ?????????? 1 ??? 2, ??? 29 ??? 37, ??? ?? ???
????????? ?????????????? ??? ?? ??? ?????? ?????????, ??? ??? ??????????
????? ??? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ??? ?? ??? ?????????? ?????? ???
????? ?????? ??????, ?????? ?? ?????????????? ??? ?????? ?????????? ??? ?? ??? ??????
?????????»

4 ??? ?????????????? ??? ?????????? ??? ?????????? I ??? ?????? 2006/48
?????????????, ?????? ???, ? «[?]????? ?????????? ? ??? ?????? ?????????? ???».

5 ?? ??? 31 ??? ?? ??? ?????? ?????? ?? ????:

«?? ??? 29 ??? 30 ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? . ??? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ???
????????? ?? ?????????? ?? ?????? ?????? ??? ?????? ??? ???.

? ?????? 2011/16/??

6 ?? ??? 8, ?????????? 3?, ??? ?????? 2011/16/EE ??? ??????????, ??? 15??
????????? 2011, ?????? ?? ?? ?????????? ?????????? ??? ?????? ??? ?????????? ???
?? ??? ?????????? ??? ?????? 77/799/??? (?? L 64, ?. 1), ??? ?????????????? ??? ???
????? ??? ?????????? 2014/107/E? ??? ??????????, ??? 9?? ?????????? 2014 (?? L 359, ?.
1) (??? ????: ?????? 2011/16), ??????:

«???? ?????? ?????? ?????????? ?? ?????????? ?????? ??? ?????? ??? ???? ???????
????????????????? ??? ?????????? ?? ?????????? ??? ?????? ?????????? ??? ???? ?????? ???????
????????? ?????????? ??? ?????????????? ??? ?????????? I ??? ???? ???? ???? ?????????? ??? ???? IX ???
????????? I.

????????? ??? ?????????? ?????? ?????????? ?????????? ??? ?????? ?????????? ?????????? ???
????????? ??? ?????????? I ??? ?, ? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ?????? ??????????
???? ?????? ??? ?????????? ?????? ?????? ?????? ??????, ?? ?????? ?????? ?????????? ??? ??????
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?) ??? ?????????? 6, ??? ??????
????????? ??? ?????? ??? ?????? ?????????? ?????????? ??? ???? 1? ?????????? 2016 ??? ???
???? ?????? ??? ?????? ??????????:

?) ?? ??????, ?? ??????????, ???/??? [?????/??? ?????? ?????? ?????????? ?????? (??)]
??? ??? ?????????? ??? ??? ?????? ?????? (????? ?????????? ?????? ?????? ??????) ???
????????? ?????????? ??? ?????? ?????????? ?????????? ???, ??? ?????????? ?????????? ???
????? ??? ?????????? ?????????? ??? ?????? ??? ??????, ?????? ?????? ?????????? ??????
????????? ?????????? ?????????? ??? ?????? ??? ?????????? ??????, ?????????? ?????????? ??? ??????
????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??????, ??? ?????????? ?? ??????????
??? ???/??? ??? ??? ??????????, ?????? ??? ???? ?? ??????, ?? ??????????, ???/??? ?????/???
????????? ??? ?????? ??? ???? ?????????? ??? ??? ?????? ?????? ?????? ?????? ??????
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?) ??? ?????? ?????????? (? ?????????? ?????? ?????????? ?????? ?????? ?????????? ??????????)?

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

[...]».

7 ??? ?? ????? VIII, ?, ?????? 1, ??? ?????? ??? ?????????? I ??? ??????
2011/16, ?? «????????? ??????????» ??????, ??????????, ? ??????????????????
????????? ??? ?????????? ??? ?????? ?????????????? ?????? ?????? ?????? ??
????????? ??? ???? ?????????? ?????? ??????, ?????? ?????????????? ?? ??????
????????? ?? ??? ?????????? ?????? ?????????? ??? ?????????? ??? ?????????? ?? ??????
VII.

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

8 ??? ?? ????? 33, ?????????? 1, ??? ?????? ??? ??? ?????? ?????????? ??? ??????
(Erbschaftsteuer- und Schenkungsteuergesetz, ??? ????: ErbStG), ?????? ?????? ???
????????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????????? ??? ?????? ??? ?????? ???, ?????? ??? ?????? ?????????? ?????????? ??????

?????.

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

9 ?????? ??? ??????? 9, ??????????? 1 ??? 7, ??? ?????? ??? ?????? ??? ??????????? ???????????
(Bankwesengesetz, ??? ????: BWG), ?? ?????????????? ?????????? ?????????? ???
????????? ?? ??? ????? ?????? ????? ?????????? ?? ?????????? ?????????????? ??? ?????? ???
????????? ??? ?????????????? ??? ?????????? ??? ?????? ?? ?????? ?????????? ?????????? ???
????????? ??? ???????????, ?????? ??? ?????? ??? ???? 38 ??? BWG.

10 ?? ?????? 38 ??? BWG ??????? ?? ????:

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

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

[...]

5) ????? ? ??????? ????? ?????????? ?????? ??? ?????? ?????? ?????? ?????????? ??? ??????????

[...]».

11 ?? ????? 101 ??? BWG ?????????? ?????????? ?????????? ??? ?? ???????????
?????????? ?? ?????????? ??????????.

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

12 ?? Sparkasse Allgäu ?????? ?????????? ???????, ??? ???? ?????? ??? ?????? 2006/48,
?? ?????? ?????????????????????? ??????? ?????? ??? ???? ?????? ?????????? ??? ???? ??????????
?????. ?? ?????? ??? ??????????????, ?????? ???, ?????????????? ??? ???? ?????? ??? ????
????? ?????????? ?????? ??????????????.

13 ????. 25 ??????????? 2008, ? ?????????? ??? Kempton ?????? ??? ?? Sparkasse
Allgäu ?? ??? ??????????, ??? ?? ??????? ??? 1?? ?????????? 2001, ??? ??????????
????????? ??? ?? 33 ??? ErbStG, ??? ?????? ??? ?????? ??? ?? ??????
????????????? ??? ?? ?????? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ?? ?????? ???,.

14 ?? Sparkasse Allgäu ??????? ?????????? ??????? ?? ?? ?? ???????????, ? ???????????????, ??? ???? ???????, ??? ???? ? ??????? ???? ??????? ?? ?????????????? ????????????. ??? ??? ??????? ?????, ? ??????????????? ???? ??????? ?????? ??????? ??????? ??????? ??????? ??????? ???? ??????? ???????.

15 ?? ??????? ??????????? ??????????? ?? ?? ??? 33, ??????????? 1, ??? ErbStG
?????????? ?? ???? ??????? ???????????????, ???' ??? ?? ???? ? ?????????? ??????????? ??
?????????? ?? ???? ??????? ??? ??????? ??????????? ?? ?? ?? ???? ??????? ??????????
?????????. ???????????, ? ?????????? ??? ?? ?????????? ?? ?????????? ?? ??????????
????????? ??????? ?? ???????, ??? ???????????????, ????? ??????????????? ??
????????, ?????, ?? ?????? ?????????? ?????????? ??????, ?????, ??? ?? ??????????

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

16 ??? ??? ????????, ?? Bundesfinanzhof (????????????? ?????????? ??????????)
????????? ?? ?????????? ??? ???????, ?? ?????????? ??? ???????, ?? ?????????? ??? ?????????? ??
????????? ?????????? ??????:

«????????? ??? ?????????? ?????????? (????? 49 ????, ??? ?????? 43 ??) ??????
????????? ?????? ??? ?????? ??? ?????? ?????????? ?????? ??? ??????? ?????? ?????? ?????? ???
??? ?????? ?????? ?????????? ?????????? ?? ?????????? ??? ?????????? ?????? ?????? ??? ??????
????????? ??? ?? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ?? ??????????
??? ?? ??? ?????????? ??? ???????, ?? ?????? ?????????? ?? ?????? ?????? ?????? ??? ??? ???
????????? ?????? ?????????? ??? ???????, ??? ?????????? ??? ?? ?????????? ?????? ??????
????????? ??????, ??? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ??????????
??? ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ??????????
?????????, ? ?????????? ??? ?????? ?????????? ??????;»

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

17 ?? ?? ????????, ?? ?????? ?????????? ???, ???' ??????, ?? ?? ?????? 49 ????
????? ??? ?????? ??? ?????????? ?? ?????? ?????? ?????? ?? ??? ?????? ?????? ??????????
??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????????? ??? ?????? ?? ?????????? ?????? ??? ??????
????????? ??? ?? ?????? ?????????? ??? ?????? ?????????? ?????? ?????????? ?????? ??? ????
????? ?????? ?????????????? ???, ??? ?????????? ??? ?? ?????????? ?????? ??????????
????????????? ???, ?? ?????????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??????
????????? ??? ??? ??? ??? ?????????? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ????
??? ?????????? ?????? ??? ?????????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ????
????????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ????
????????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ????.
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

18 ????????, ?????????? ??? ?? ?????? 49 ???? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????????? . ??? ?? ?????? ???, ? ?? ??? ?????? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????????? ?????????? ??? ????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? . ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? (??., ????, ???????, ???????, ????, 270/83, EU:C:1986:37, ??? 13?
Royal Bank of Scotland, C?311/97, EU:C:1999:216, ??? 22, ??? CLT-UFA, C?253/03,
EU:C:2006:129, ??? 13).

19 ?????? ??? ?????? 54, ?????? ??????, ???, ?? ?????? ?????? ??? ?????? ?????? ????
????????? ?? ?????? 49 ????, ?????? ??? ?? ?????? ?????? ?????? ??? ?????? ??? ??????
??? ??? ?????????? ?????????? ?????? . ??? ??? ?????????? ??? ?????? ??? ??????
?????????, ? Sparkasse Allgäu ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ?? ?????? 49 ????.

20 ????? ?????? ??????????, ???????, ??? ???? ?????? ???, ?? ?????????? ?? ??? ????? ??????????
????????????? ?????????? ??? ?????????? ??? ?????? ?? ?????? ?? ??????????, ?????? ???
????????? ?????? ?????????? ??? ?????????????? ??? ?????? ?????? ?????????? ?????????? ???
????????? ?????? ?????????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????????
????????? ?????? ??? ?????????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ???? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ??? (?????? Verder LabTec, C-657/13, EU:C:2015:331,
????? 33 ??? ??? ?????????????? ??????????).

21 ??????????????, ??? ????????, ?????? ???, ??? ?? ?????? 33, ?????????? 1, ???
ErbStG, ?????? ???' ?????????? ?? ?????????????? ??? ?????????????? ? ??????????????
????? ?????????? ??? ?????????? ?? ??????????, ???????, ??? ?????? ??? ?? ?????????? ???
????? ?????????? ??? ?????????? ?? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ??
????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ???, ?????? ??? ?????? ??? ??????????
????????? ?????? ???.

22 ?????????? ? ?????????? ??? ? ?? ??? ?????? ?????? ??? ?????? ?????? ?????????? ???
??? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ?? ?????????????? ???
????????????? ? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

23 ?? ?????? ?????????? ?????????? ?? ? ?????????????? ??? ?????? ?????????? ?????
?? ?????? ?????? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????????? ???
????? 33, ?????????? 1, ??? ErbStG ?????????? ?????????? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????????? ???
??? ?? ??? 38, ?????????? 2, ??? ?? ?? ???? 101 ??? BGW. ??????, ?? ??????????
????? ?????????? ???, ??? ?? ?????????? ?? ??? ?? ??? ?????? ?????????? ??? ??????????
????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ?? ???????, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??
????????? ??? ???????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

24 ??????, ??????, ??? ?????? ?? ?????????? ? ?????????? ? ?????? ??? ??????
33, ?????????? 1, ??? ErbStG ?? ?????? ?? ?????????? ??? ?????? ??? ?????? ???
????????? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ?? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,
??? ?????? ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? 49 ???.

25 ??? ??? ?????????? ??? ?????? ?? ?????? ??????????, ?????????? ???
??, ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 33, ?????????? 1,

??? ErbStG, ?????????? ??? ?? ?????????? ?????? ??? [?????????] ?????????????? ???
??? ?????? ????, ??????, ??? ??? ???? ?????????? ??? ?????????? ??? ?????????? ??? ??
?????? ?????????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ???, ???????, ??? ??? ???? ?????????? ?????? ??? ?????? ??? ?????? ???
????? ????, ?????????? Kerckhaert ??? Morres, C-513/04, EU:C:2006:713, ??? 20?
Columbus Container Services, C-298/05, EU:C:2007:754, ??? 43, ??? CIBA, C-96/08,
EU:C:2010:185, ??? 25).

26 ??????????, ??? ?? ?????????? ??????, ? ?????? ??? ?????????? ?????????? ???
?????? ?? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ???????,
????????? ??? 33, ?????????? 1, ??? ErbStG, ???????, ???
????????? ?? ?????????? ??? ?????????? ?????????? ?????????? ?????????? ???
????????? ??? ?????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
?????????. ???????, ??? ?????????? ?????? ?? ???? 38 ??? BWG ?????? ???????
??????, ?????? ?? ??????? ?????? ??????, ???' ????, ?? ??????? ?????? ????,
????????????????? ??? ?????????? ???.

27 ?????? ?????? ??? ?? ?????? ?????????? ?????? ??? ?? ?????????? ?????? ???,
????? ?? ?? ?????? ??? ?????????? ?? ?????? ???, ??? ? ?????? ??? ?? ?????????? ???
????????? ?????????? ??? ?????????? ??? ?????? 8, ?????????? 3? ??? ?????? 2011/16,
?????? ?? ?????????? ?? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ??
??????????, ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ???? ??? ?? ??????????
????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
?????.

28 ?? ?????? ?????????? ??????????, ??????, ??? ?????? ?????? ?????? ??? ??
????????? ?????????? ?? ?????????? ?????? ?????? ??? ?????????? ?????????? ???
????????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? 1? ?????? 2012,
????? ???? ??? ?? ?????? ??? ?????? ??? 1?? ?????? 2011
??????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??
Kempten ???? ?? Sparkasse Allgäu. ??????, ? ?????? 2011/16 ??? ?????????????? ???
????????? ?????????? ??? ?????? ???.

29 ?????????? ???, ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ???
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????????? ???, ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ???
????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ???
????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? (??., ??? ?? ??????
????, ?????? Columbus Container Services, C?298/05, EU:C:2007:754, ?????? 51 ?? 53,
????? ??? ?????? KBC Bank ??? Beleggen, Risicokapitaal, Beheer, C?439/07 ??? C?499/07,
EU:C:2009:339, ????? 80).

30 ??? ???, ??? ?????????? ??? ?????? 22 ??? ?????? ?????????? ?? ?????? 33,
????????? 1, ??? ErbStG ??? ??????, ?????? ?? ?? ?????? ???, ??? ??????
????????? ??? ?????? ??? ??????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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31 ?? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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? ??????????? ? ?????????? ??? ?????????????? ?????????????? ??? ?????????? ?? ?????????? ?
??? ?????? ????????. ????????, ??? ????? ?????? ????????, ??? ?????????? ??? ?????????? , ? ??????????
????????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ?????? ??????
????????? ?? ?????????? ??? ?????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????
????? ??? ?? ????????, ?? ??? ?? ?????????? , ??? ??? ? ?????? ?????? ?????????? ???
????????????? ??? ?????????? ?????? ?????? ?????? ?????????? ?????????? (??., ??? ??? ??????
????, ?????????? Columbus Container Services, C?298/05, EU:C:2007:754, ??? 51, ???
National Grid Indus, C-371/10, EU:C:2011:785, ??? 62).

32 ??????? ??? ?????? ??? ?????????? ??? ?????????????? , ??? ?????????? ?????? ?????? ?? ?????? ?
????????? ??? ?? ?????? 49 ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????????? ?????? ??????
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????? ?????? , ??? ??? ??? ?????? ?????? ??? ?????? ??? ?????????? ?????? ?????? ?????? ??????
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33 ?????????? ??? ? ??????? ?????????? ??? ?? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?
??? ?????????? ?????????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? , ?' ???
????????? ?? ?????????? ??? ??? ?????????? ?????? ?????? . ?? ?????? ??? ?????? ??????????
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??? ??? ?????? ?????? , ?? ?????????? (????? ????) ??????????:

? ? ?????? 49 ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?? ?????? ?????? ?????? ??????
?? ??? ?????? ?????????? ??? ?????????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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?? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ???
????? ?????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????????? ?????? ?????? ?????? ?????? ?????? , ?? ?????? ?????? ?????? ??? ?????? ?????? ???
????????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
????? , ??? ??? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????
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????????? ?????? , ?? ??? ?????? ?????????? ??? ??? ?????? ?????? ?????? ?????? ?????? ???
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(?????????)

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