

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

??? 21?? ??????????? 2016 (*)

«????????????? ?????????? – ?????????? – ?????????? ?????? ??? ?????????? ?????????? ???
??? ?????? ?????? ???, ??????, ??? ??? ?????????? ???????????????, ?????????, ??? ???
????????? ?????????? ??? ?????? – ??? ?????????? – ??? ?????? ?????????? – ??????
??? ?????????? ?????????? ??? ??? ?????? ?????????? ?????????? ?????????? ??????????
???? ?????????? ?????? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ?????, ??? 2?? ????? 1992 – ?????????? ?????? ?????? ? ?????? ?????????? ???
??? ?????????? ??? ?? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????????? ???,
????? ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???
?????»

???? ?????? C?478/15,

? ? ?????????? ??? ?????? ?????????????? ?????????? ??? ?????? 267 ????, ???
?????? ?? Finanzgericht Baden-Württemberg (?????????? ?????????? ???
??????????????????, ?????????) ?? ??????? ??? 15?? ??????? 2015, ? ?????? ?????????? ???
????????? ??? 8 ?????????? 2015, ??? ?????? ??? ??????

Peter Radgen,

Lilian Radgen

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Finanzamt Ettlingen,

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

? ? ?????????? ??? ??? A. Arabadjiev, ??????? ????????, C. G. Fernlund (?????????) ??? E.
Regan, ???????,

? ? ?????? ??????????: M. Watheler

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

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

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

- ? ? ?????????? ????????, ?????????????? ??? ??? T. Henze ??? J. Möller,
- ? ? ?????????? ????????, ?????????????? ??? ??? B.?R. Killmann ??? W. Roels,

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

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

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1 ? ?????? ?????????????? ?????????? ?????? ??? ???????? ??? ?????????? ?????? ???
????????? ?????????? ??? ?????? ?????? ???, ??????, ??? ??? ??????????
????????????? ???, ???????, ??? ??? ?????? ?????????? ??? ???????, ? ???
????????? ??? ?????????? ??? 21? ?????? 1999 (?? 2002, L 114, ?. 6, ??? ???:
????????? ??? ??? ?????? ?????????? ??? ??????????).

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ???????, ??????, ??? Peter
Radgen ??? ??? ?????? ??? Lilian Radgen (???, ???, ??? ??????: ?????? Radgen), ???????
?????? ??? ??????? ?????????, ???, ???????, ??? Finanzamt Ettlingen (???????????)
????? ??? Ettlingen, ???????, ??? ????: ?????????? ???????), ?? ??????????? ??? ??????
??? ?? ??? ?????????? ?? ?????? ???, ?? ?????????????? ??? ?????? ?????????? ??? ??
????????? ??? 2009, ?? ?????????? ??? P. Radgen ??? ?????????? ??????????????
????????????? ??? ??? ?????? ??? ?????? ?????????? ??????? ?? ??? ?????? ??????.

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

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

3 ? ?????????? ?????????? ??? ?? ?????? ???, ??????, ??? ? ???????
???????????, ???????, ?????????? ??? 21 ?????? 1999 ??? ????????, ?????? ???
????? ?????????? ??? ? ??????? ??? ??? ?????? ?????????? ??? ????????. ?? ???
????????? 2002/309/??, ??????? ??? ?????????? ??? ??? ?????????? ??????? ?? ?? ???????
????????????? ??? ?????????? ???????????, ??? 4?? ?????? 2002, ??? ?? ?????? ???
????????? ?? ??? ?????? ?????????????? (?? 2002, L 114, ?. 1), ?? ?????????? ???
????????? ?? ?????? ??? ?????????? ??? ??????? ?? ??? ??? 1? ?????? 2002.

4 ???? ?? ??????? ??? ?????????? ??? ?? ?????? ?????????? ?????????? ??? ???????, ??
???????????, ??? «????????????? ?? ?????????? ??? ?????? ??? ?????? ??? ???????,
???????????, ??? ??????? ??? ?????????? ???, ??? ?????? ??? ?????????? ??? ??????? ???
??? ??????? ??? ?????????? ???».

5 ?? ?????? 1 ??? ?? ??? ?????????? ?????? ?? ????:

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

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

[...]

) ?? ?????????? ??? ?????? ???????, ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ???????.»

6 ?? ?????? 2 ??? ?? ??? ???????, ?? ??? ?????? ?????????? «?? ??????», ?????????? ??
?????:

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

7 ???? ?? ????? 4 ??? ????? ????????, ?? ????? ?????????? «????????? ?????????? ???
????????? ?? ?????????? ??????????????»:

«?? ??????? ??????? ??? ?????????? ?? ??? ?????????? ?????????????? ?????????????? ???
[...] ??????? ?? ??? ?????????? ?? ?????????????? ?.»

8 ?? ????? 11, ?????????? 1, ??? ?????????? ??? ??? ?????????? ?????????? ???
????????, ?? ????? ?????????? «????????? ?? ??????????», ?????????? ?? ?????????? ???
????????? ?? ?????? ? ?????????? ??? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ?? ?????????? ???.

9 ???? ?? ????? 15 ??? ?????????? ??? ??? ?????????? ?????????? ??? ??????????, ??
????????????? ??? ?? ?????????? ??? ????? ?????????? ?????? ???.

10 ?? ????? 16, ?????????? 2, ??? ?????????? ???, ?? ????? ?????????? «????????? ???
????????? ???», ?????? ?? ???:

«????????? ??? ? ?????????? ??? ?????????? ?????????? ?????????? ??? ?????????? ???
????????, ?? ?????? ??? ? [????????] ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ???? ??? ?????????? ??? ?????????? ??? . ? ?????????? ??? ??? ??? ??????????
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ????. ?????????? ???
????????? ??? ?????????? ??? ?????????? ??? ?????????? , ? ?????? ?????????? ?? ?????????? , ??? ???
????? ??? ?????? , ??? ?????????? ??? ?? ??? ????? ??????????..»

11 ?? ????? 21 ??? ?? ??? ????????, ?? ????? ?????????? «????? ?? ??? ??????????
????????? ??? ?????? ?? ????? ??????????», ?????? ?? ???:

«1. ?? ?????????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ??? ???
????????? ??? ?????????? ?? ?????? ??? ?????? ?????????? ??? ?????????? ??? ??? ???
??? ?????????? ?????????? . ?????????? , ?? ?????????? ??? ?????????? ?????????? ??? ???
????????? ??? ?????? ??? [?????????] ?????????? , ??? ?????? ?????????? ??? ??? ???
????????? ??? ?? ?????? ??????????.

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

[...]»

12 ?? ?????????? | ??? ?? ??? ?????????? ??? ?????? ?? ?????????? ?????????? ???
?? ?? ??????? || ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ??
????????? ??????????.

13 ?? ????? 6, ?????????? 1, ??? ?????????? ???, ?? ?????? ?????????? «?????????
??? ??????», ?????? ??? «[?] ?????? ?????? ?????????? ?????? ??? ?????????? ???
(?? ??? ??? ?????? ?????? ?????? ??????) ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??? ???

? ?????????? ??? ???????? ??? [...]». . ? ?????????? 2 ??? ?????? ?????? ?????? ?????? ?? ??????
?? ?????? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?????? ??????
????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? . ?? ?????????? 3 ??? 7 ??? ??
????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?? ?????? ?????? ?????? ???
????? ?????? ??????.

14 ??? ???? 7, ?????????? 1, ??? ???? ??????????, «[?] ?????? [?????????] ?????????? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?? ?????? ??????
????????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ? ?????? ?????? ??? ?????? ??? ??????».

15 ?? ??? 9, ?????????? 1 ??? 2, ??? ?????????? | ??? ?????????? ??? ??? ?? ??????
????????? ??? ??????, ?? ?????? ?????? «????? ??????», ?????? ?? ???:

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

2. ? ?????? ?????? ?????????? ??? ?? ??? ??? ?????????? ??? ??? ?????????? ??? ???
3 ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???»

16 ?? ?????? III ??? ?????????? | ??? ?????? ???, ?? ?????? ??????????
«????? ?????? ??????», ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????.

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

17 ??? ???? 1, ?????????? 1, ??? Einkommensteuergesetz (????? ??? ?????? ??????)
??????????, BGBI. 2002 I, ?. 4212), ??? ?????? ??? ?????? ??? ?????????? ??? ??????
????????? ???, ??? 19?? ?????? 2008, ??? ?????? ?? ?????? 2009 (BGBI. 2009 I, ?. 2794) (?? ????: EStG), ?? ?????? ?????? ??? ?????? ??? ?????? ???
?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.
????? ??????.

18 ?? ??? 3, ?????? 26, ??? EStG ?????? ??? ???? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ?????? ? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????? ?????? ???, ??? 2?? ?????? 1992 (?? 1994, L 1, ?. 3, ??? ????: ?????? ???),
????????? ??? ?????? ??? ?????? ?????? ?????? ??? 2 100 ??? ??????.

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

19 ??? ??? ??????? ??? ?????????? ?????????? ??? ?????? ?? ?????? Radgen
????? ??????? ??? ?????? ??? ?????????? ??? ???????. ?????????? ??? ?? ??? ?????? ??? ??
????? ??? ??? ?????????? ????. ??? ?? ?????????? ??? ?????? ?????? ??????
????? ??? P. Radgen ?????? ??? ?????????? ??? ?????? ?????????? ??? ?? ??? ?? ???
????? ???.

20 ??? ?? ??????? ??? ??? 2009, ? P. Radgen ?????? ?????????? ??????????????
????????? ?? ??? ?????? ??????? ??? ???????. ? ?????? ??? ??????????????
????? ?????? ?????? ?????????? ??? ?????? ??? P. Radgen ??? ??
??????. ??? ?? ?????????? ??? ???????. ? P. Radgen ?????? ??? ?? ??? ??
????? ??? ??? ??? ?????? ??? ???????. ??? ???????. ??? ?? ??? ?? ??? ?????????????? ???
?? ??? ??? 4 095 ?????? (CHF) (?????? 2 702 ???). ?? ?????? Radgen
????? ??? ? ?????????? ??? ??? 3, ?????? 26, ??? EStG ?????? ??? ?? ???
????? ??? ??? ??? ?????? ???.

21 ??? ??????? ??? ?????????? ??? ?? ??? 2009, ? ?????????? ?????????? ???
?? ??? ??? ?? ??? ??????????, ??? ?????? ??? ?? ?????????? ??? ?? ??? ?? ???
????? ?????????? ??? ?????????? ?? 121,44 ??? ??? ??? ?? ?????????? ??????????
????? ??? ??? ?????????? ???.

22 ?? ?????? Radgen ?????? ?????????? ?????????? ??? ?? ?????????? ????. ?
????????? ?????? ??? ?????? ??? ?????? ?? ???????, ?? ??? ?????????? ??? ?? ???
????????? ??? ?????????? ??? 3, ?????? 26, ??? EStG ?????? ???.
????????? ??? ?????? ??? ??? ?????? ??? ?????????? ??? ?????????? ???.

23 ?? ?????? Radgen ?????? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ???
Finanzgericht Baden-Württemberg (????????? ?????? ??? ?????????? ??? ?? ?????????????? ???,
?????????). ?? ?????? ??????????, ?????????????? ??? P. Radgen «????? [?????????] ???
?????????», ??? ??? ?????? ??? ?????? 7, ?????????? 1, ??? ?????????? | ???
????????? ??? ??? ?????? ?????????? ??? ???????, ?????????? ??? ?? ??? ??? ???
????????? ??? ??? ?????? ??? 18? ?????????? 2007, Jundt (C?281/06, EU:C:2007:816),
????? ?? ??? ?????? ?????? ??? ??? ?????? ??? ?????????? ???.

24 ?? ?????? ?????????? ?????????? ??? ?????? ???, ?? ?????? ??????????
????????? ???, ?? ??? ?????? ??? ? ?????????? ??? ?? ?????????? ??? ?? ??? ?? ???
????????? ??? ? ?????? ??? ? ?????? ??? 18? ?????????? 2007, Jundt (C?281/06,
EU:C:2007:816), ?????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ?? ??? ???
????? ?????????? ?? ??? ?????? ?????? ??? ?????? ??? ?? ??? ??? ??? ?????? ??? ?? ???
?????????.

25 ??? ??? ??????? ????, ?? Finanzgericht Baden-Württemberg (????????? ??????????
??? ??????????????) ??????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?? ???
????? ??? ?????????? ?? ?????? ?????????? ??? ?????????? ???:

«????? ?? ?????????? ??? ?????????? ??? ?? ?????????? ?????????? ??? ?????????? ???
?? ?????????? ??? ?? ??? 1, 2, 4, 11, 16 ?? 21, ??? ??? ?? ??? ?? 7, 9 ?? 15 ??
????????? ?, ?? ?????? ??? ?????? ??? ?????????? ?? ?????? ?????? ???, ??? ?? ???
??? ??????????, ?? ?????? ??? ?????? ??? ?? ??? ?????? ??? ?????? ?????? ???
?????, ?????????? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????????? ???
??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

???, ??? ?????????? ????, ?????????? ? ??? ?????????????? ???????? ?????????? ?????????? ?????????? ??????????
???, ?????????? ???, ?????? ???, ?????????? ??????????????????;»

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

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26 ??????, ? ?????????? ?????????? ??? ? ?????????? ?????????? ?????????????? ??? ?
????????? ??? ?????? 11 ??? ?????????? ??? ??? ?????????? ?????????? ??? ??????????, ??
????? ?????? ??? ???????, ??? ?????????? ??? ??????????, ??? ? ?????????? ??? ?????? 15 ??? ?????????????? ?
??? ?????????? ????, ?? ?????? ???? ??? ?????????? ?????????????? ??????????????, ?????? ????
????????? ??? ??? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ??????????
?????????.

27 ???????, ??? ????? ??????????? ??? ??????????????, ??? ?? ??????? ?? ??? ???????????
??? ??????? ??? ????? ??????????? ??? ??? ??????????? ?? ??????? ???????????, ??? ?? ????
????????????? ??? ?????????????? ?????????? ??? ??? ??????????????? ?? ??? ??? ??? ?????? ???
??? ??????? ??? ?????? ??? ????? ??????? ?? ??????? ?? ???????????, ??? ?? ?????? ???????
?????????. ?? ?????????? ??? ????? ?? ?????????? ??? ??????? ??? ??? ??? ??? ??????? ??
?????? ?????????? ??? ????? ?? ?????????? ??? ?????????? ??? ??????? ??? ??????? ???
?????? ??? ????? ?? ?????????? ??? ?????????? ??? ??????? ??? ??????? ?? ?? ?????????? ??
????????? ??? ?????? ??? ?????????? ??? ???????, ??? ?? ?????????? ?????? ??????????? ??????? ?
???? ?? ?????????? ??? ?????????? ??? ??????? ?? ?????????? ??? ??????? ?????? ?????????? ???
????????? ?????????? ?? ??? ??????? ?????? ?????????? ??? ??????? ??? ??????? ??? ?????? ???
????????? ??? ??????? 7?? ??????? 2016, KA Finanz, C-483/14, EU:C:2016:205, ??? 41 ??? ???
????????? ??????????).

28 ?? ???????????, ??????, ??? ?? ?????? 11 ??? ??????????? ??? ?? ?????????? ???????????
???? ??????? ?????????? ??? ?? ?? ????? ????? ?????????? ??? ??????? ?? ?????? ??? ?????? ?
????????? ??? ?? ?????????? ?? ?????????????? ??? ?????????? ?????? ??? ?? ?????????? ???
????????? ??? ?? ?????????? ?? ?????????????? ??? ?????????? ??? ?????????? ?????? ??? ??
????? Radgen ?????????? ??? ?????????? ?????.

29 ????????, ??? ?????????????? ??? ? ?????????????? ??? ?????? P. Radgen ???
?????? ?????? ?????? ??????????????. ??????? ?? ????? 15 ??? ?????????????? ? ???
?????????? ??? ??? ?????????? ?????????? ??? ?????????? ?????????????? ?????? ??????????
??????????????, ?????? ??? ?????? ??? ?????? ?? ?????? ???????????????, ? P. Radgen
??? ?????????? ??? ????? ?????????? ??? ?????? ???.

31 ????????, ? ????????, ?????????? ??????? ? P. Radgen ??? ?????? ?? ??????? «?????? [?????????] ?????????», ??? ???? ?????? ??? ?????? 7 ??? ?????????? | ??? ?????????? ??? ??? ?????????? ?????????? ??? ??????????. ? ?? ??? ????? ?????????? ??? ?????????? ??? ? P. Radgen ??? ??? ?????? ??? ?????????? ??? ?????????? ?????????? ??? ??? ??????????.

32 ????? ?????????? ?? ?? ????? 27 ?? ??????? ??????????, ?????????? ?? ?????
?????? ?? ??????? ?? ?????????? ?? ?????????? ?? ??????? ?? ??????? ?? ???????

? ?????? ??. ??????? ?? ?????? ??????????? ??????????? ??? P. Radgen ??? ??????? ???
«??????? [?????????] ?????????», ??? ???? ????? ?? ?????? 7, ?????????? 1, ???
????????????? I ??? ?? ??? ????? ???????, ?? ?????????? ?????? ?? ?????????? ??? ??????
??? ? P. Radgen ??? ???? ?????? ???.

33 ?? ??? ???????????, ??????? ??? ?????????????? ??? ? P. Radgen ????? ??? ??
?????????? ??? ?????????? ?????????????? ??? ???? ?????? ?????????? ?????????????? ???
?????? ?????? ?????????????? ??? ?????? ?????????? ??? ?????? ?????? ?????????? ???
?????????, ??? ?????????????? ??? ?????????? ?????????????? , ? ?????????????? ?????????? ???
????????? ??? ?????????? ??? ?????? ??? ?????????????? ??? ?????????? ?????????? ???
????????? ??? ?????????? ??? ?????? ??? ?????????????? ??? ?????????? ?????????? ???
??? ?????? ??? ?????? ??? ?????? ???.

34 ???????, ? ??????? ??? ??? ??????? ?????????? ??? ?????????? ??? ?????????? ???
????????? ?????????? ??? ?????????? ??? ?' ??? ???, ?? ?????????? ?? ?????? 7 ???
????????? ??? I, ??? ??? ??? ?????????? ???, ?????? ??? ?? ?????????? , ???
????????? ??? ?? ?? ??? ?????? 7 ?? ?????????? ?? ?? ?????? 6 ??? ?????? ?????????? ???
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ?????????? ???
????????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???
????????? ?????? (??., ??????, ?????? ??? 22? ?????????? 2008, Stamm ??? Hauser,
C?13/08, EU:C:2008:774, ??? 39).

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

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

36 ??? ??????? ??? ?? ??????? ??? ?? ??? ?? ?????? 1 ??? ?? ?????? 16, ?????????? 2,
?? ?????????? ??? ??? ?????? ?????????? ??? ???????, ?????? ??? ?????? ? ??????????,
???? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? , ??? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ???
????????? ???, ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (?????? ???
19? ?????????? 2015, Bukovsky, C?241/14, EU:C:2015:766, ??? 40).

37 ??? ?????? ??? ?????????????? , ??????? ??? ?????? 1, ??????? ?? ??? ??, ???
????????? ???, ??? ? ?????? ??? ?? ??? ?????? , ?????? ???, ??? ??????????
??????, ???????, ?????????? ?? ?????? ?????????? ?????????? ??? ?????????? ???
????? ??????? ?????????? , ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????.

38 ???????????, ?? ?????? 4 ??? ?????? ??? ?? ?????? ?????????? ??? ???????
????????? ?? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ???

? ?????????? ??? ?????????????? I ??? ?????????? ??????, ?? ???? ?????????? II ??? ???? ????
????????????? ??? ?????????? ?????????? ?? ??? ?????????? ?????????? ??? ??????????
????????????? ???, ??????????, ?? ??? ??? ??? ??? ??? ??????????????.

39 ?????????????? ??? ?????? ?? ??? ??? 9 ??? ?????????????? I ??? ?????????? ??? ???
????????? ?????????? ??? ???????, ?? ??? ?????????? «????????? ??????????????»,
????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?? ??? 2
??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? (?????????
??? 19?? ?????????? 2015, Bukovsky, C?241/14, EU:C:2015:766, ??? 47).

40 ?? ?? ??? 9 ?????????? ??? ?????????? 2 ?????? ?????? ?????????? ?
????????? ?????????? ??? ?? ??? ??? ?????????? ??? ?? ?????????? ??? ??????
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ?? ??????????
????????? ?????????? ??? ?? ??? ??? ?????????? ??? ?????. ??? ?????? ?? ??????????
?????????????, ?? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????????? ???
????????? ??? ?????? ??? ????? ?????????????? ??? ??? ?????????? ??? ?????? ??? ?????? ??????
????????????? ??? ?????? ??? ????? ?????? ?? ?????????? ??? ?????????? ??? ?????????? ?????????? ??????
??? ?????????? ??? (????????? ??? 19?? ?????????? 2015, Bukovsky, C?241/14,
EU:C:2015:766, ??? 36 ??? ??? ?????????? ??????????).

41 ??? ?????? ??? ?????? ??? ?????? ??? ?????, ??? ?????????????? ??? ?????? 33 ???
????????? ???????, ??? ?????????????? ??? ? P. Radgen ??? ?????? ??? ?????????? ??? ?????????? ???
????????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????????
?????????????. ????, ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ?? ?????????? II ???
????????????? I ??? ?????????? ??? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ??????
?????????, ?? ?????????? ??? ?????? 9 ??? ?????? II ??? ?????????? ??? ?????? ?????? ???
????????? ?????????? ???.

42 ??????, ??????, ?? ?????????? ??? ? P. Radgen ?????? ?????????? ??????????
????????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????????????? ???, ?????? ??? ?????, ?????? ?? ?????????????? ??? ?????? ??? ??????
????????? ?????????? ??? ?????? ?? ?????? ?????? ??? ?????? ??? ?????, ?? ?????? ??? ?????? ???
??? ?????? ? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

44 ??? ? ?????????? ?????????? ??? ?????? ?? ?????????? ??? ? ?????? ??? ??????
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????
????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???, ???
????????? ?????? ??? ?????? ?????? ??? ?????? ???' ?????, ?????????? ??? ?????? 9,
????????? 2, ??? ?????????? I ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.
?????????.

45 ?????????? ??????, ??????, ?? ?????? ??????, ??????, ?? ?????? 21, ?????????? 2, ???
????????? ?????, ?? ?????? ?????????? ?? ?????????? ?????????? ?????????? ???
????????????? ??? ?? ?????????? ?? ?????????? ??????????, ?????? ??? ?????? ??? ????
????????? ???.

46 ????????, ??? ? ?????????????? ?????????? ?? ?????????? ??????????, ??? ??
????? ?????????? ??? ? ?????????? ??? ?????????? ??????????, ??? ??? ???? ?????????? ?
??????, ?????????? ??? ? ?????????? ?????????? ???????, ??????, ?? ?????????????? ?
??? ?????????? ?????? ?????? ?????????? ??????????. ??? ??? ??? ?????????? ??? ?????? ??
????? ?????????? ??? ??? ?????????? ??? ?????????? ?????? ??? ?? ?? ?????? ?????? ???
????????? ??? ??? ?????????? ??? ?????? ?????? ?????? (??., ?????? ???, ?????????? ???
31?? ??????? 1993, Kraus, C?19/92, EU:C:1993:125, ????? 32 ??? ??? ??????????????
?????????, ??? ??? ??? ??? 16?? ??????? 2010, Olympique Lyonnais, C?325/08, EU:C:2010:143,
????? 38 ??? ??? ?????????????? ??????????).

47 ?????????? ??? ???? ????? ????? ?????????????????? ??????? ?????? ??? ?????????? ???
?????? (?????? ?? 6?? ?????????? 2011, Graf ??? Engel, C?506/10, EU:C:2011:643, ???
26), ??? ?? ??????????? ??? ????? ?????????? ?????? ??????????? ??? ??????? ???
????????? ??? ?? ?????????? ?????????? ??? ???????, ??????, ??? ?????????? ??? ??
????? 36 ??? ??????? ??????????, ?? ????? ???' ?????????? ?????????? ??? ?????? ???
????????? ??? ?? ?????????? ??? ?????????? ???? ?????? ?????????? ??? ??????????
????? ??? ??????? ??????????.

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

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

50 ??????? ?????? ?? ??????????? ??? ?? ???????????, ??? ??????? ?? ???? 18??
?????????? 2007, Jundt (C-281/06, EU:C:2007:816), ??? ??????? ??????? ??????? ?? ?????
????? ?????? ?????? ??? ??????????? ??????????? ??????? ??????????? ???????????
?????????????? ?? ??????????? ??????????????? ?? ??????????? ??? ?????? ??? ?????? ??
????? ?????? ??????, ??? ??????????????? ?? ??????????? ??? ?????? ??????????? ????, ??????
??? ? ?? ??????????? ??????????? ??????????? ??????????? ??? ?? ??? ??????????? ??? ??
????????? ??? ??????? ??? ??? ??????????????? ??? ???????, ? ??? ??????????? ??? ??
?????? 3, ?????? 26, ??? EStG, ??????? ?? ??????????? ??? ??????????? ?????
?????? ???????????.

51 ?? ??????????? ??????, ??? ?????? 63 ??? 64 ??? ?????????? ??? 18?? ??????????
2007, Jundt (C?281/06, EU:C:2007:816), ??? ? ? ???? ?????????? ?????????? ???
????????? ?? ?????????????? ??? ?????????? ??? ?????????? ?????????? ?????????? ?? ???
????????? ??? ??????????????, ??? ?????? ??? ??? ?????????, ?????????? ??? ????? ???
????????? ??? ?????????????? ??? ?????? ?????????? ?????????? ?????????? ?????????? ??
????????? ??? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ??????, ????? ??
????????????? ???, ??? ??? ?????? ??? ?????????? ??? ?????????? ?????? ??? ?????????? ???
?????????????. ?????? ?????????? ? ?????????? ??? ?????????? ?????????? ?????? ???

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

52 ?? ??????????? ????????, ??? ?????? 69 ??? 71 ??? ?????????? ????,
????????????? ??? ?????????? ?? ?????????? ??? ?????????? ?????????????? ?????????????? ??
??? ?????? ?????????? ??? ?????????? ??? ?????????? ?????????????? ?????????????? ?????? ???
????? ?????? ?????????? ??? ?????????? ??? ?????????? ?????????????? ?????????? ?????? ???
????????????? ??? ?????????? ?????????? ?????????? ?????????? ?????????? ??? ?????? ???
????????? ?? ?????????? ?????????????? ??? ??? ?????????????? ??? ?????????? ??? ?????????? ???
????? ??? ?????????? ?????????? ??????????.

53 ?????, ?? ?????????? ????????????, ??? ?????? 83 ??? 88 ??? ?? ??? ?????? ??????????,,
??????, ??? ? ?????????? ??? ?????? 3, ?????? 26, ??? EStG ?????????? ??? ??????????
????? ?????? ?? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????????????
??????????, ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????????? ??????????????,,
???? ? ?????? ??? ?????? ?????????????? ??? ?????? ??? ?????????? ?????? ?????????? ??????????,,
????? ??????, ?? ??? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ???
????? ??? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ?????? ?????????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???.

54 ?? ?????????? ??? ?????? ?????? ?? ?????? ?????????? ??? ?? ?????????? ??? ? ?????? ???
????? ?????? ??? ?????? ??????. ????????, ?? ?????? ??? ? ?????? ??????????????
????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ??? ?????? ?????????? ???
????? ??? 18?? ?????????? 2007, Jundt (C?281/06, EU:C:2007:816), ? ??? ?????? ???, ???
????? ?????? ??? ?????? ???, ??? ?????? ?????????? ??? ?????? ??? ?????????? ???, ??
????????? ??? ?????????? ???, ? ?????? ?????? ??? ?????? ???, ?? ?????????? ?? ??? 3,
????? 26, ??? EStG, ?????? ?? ?????? ??? ?????? ???, ?? ?????? ??? ?????????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ??????.

55 ?? ?? ??? ?????????? ???, ??????, ?? ??? ?????? ??? ?????????? ??? ??
????????? ?????????? ??? ????????, ? ??????, ??? ?????????? ??? ?? ?????????? ???, ???
? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????????? ??? ?????? ???.

56 ?? ??? ?????? ?????????? ??? ?????? ?????????? ?????????? ??? ? ?????? ???
????????? ??? ?????? ???, ??? ??? ?????? ??? ?????????? ?????????????? ???
????????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????????? ???
????? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ???, ??????, ?????????? ??? ?????? 9, ?????????? 2,
??? ?????????? | ??? ?????????? ??? ?????? ?????????? ??? ??????.

57 ??? ??? ?????? ???, ??? ?????????? ?????? ??? ?????? ??? ?????? ? ?????????? ??? ??
????????? ??? ?????????? ??? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?? ??? ??
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

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

58 ?????????? ??? ? ??????? ?????????? ??? ?? ???? ??? ????? ?????????? ??? ?????? ???
??? ?????????? ?????????????? ??? ?????? ?????? ??? ?????? ?????????? ?????????? ,? ???
????????? ?? ??????? ??? ?????????? ??? ?? ?????????? ??????. ?? ?????? ??? ?????? ??????????
????? ?????????? ?????????????? ??? ?????????? ,????? ??? ?? ??? ?????????? ,??? ??????????????.

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

???????????? ???? ?????????? ?????? ????? ?????????????? ?????? ?????????????? ?????????????? ?????? ??? ?????
?????? ???, ??????, ??? ??? ?????????? ??????????????????, ??????????, ??? ??? ??????????
????????????? ??? ??????????, ? ?????? ?????????? ??? ?????????????? ??? 21? ??????
1999, ??????? ?? ??? ??? ?????????????? ??? ?????????? ?????? ?????? ?????????? ?????? ??? ??????
??? ?????????????? ?? ??????? ?????????? ??????? ?????? ?????? ?????? ?????????? ?????? ?????? ???
?????? ?????, ???? ??? ?????? ?? ?????????? ??? ?????????? ?????? ?????????? ?????? ???????, ?????? ??????
????????? ?????????? ?????? ?????????????? ??? ?????? ?????? ?????? ?????? ??? ??????????????
??? ?????????? ?????????????? ??? ?? ??????? ?????????????? ?????????????????? ??????????????????, ??
????????? ?????? ?????????? ??????????????, ???? ?????????? ?????? ?????? ?????????? ?????? ??????
????????? ??? ??????? ?????? ??????????, ???? ?????????? ?????????? ?????????? ?????? ??? ??
????????????? ??? ?? ?????????????? ?????? ?????????????? ?????????? ?????????????? ???, ???
? ?????????? ??? ?? ??? ?????? ?????????? ??? ? ?? ??? ?????? ?????????????? ??? ?????? ??????
????? ?????????? ??????? ?????????? ?????????? ?????????? ??? ?????? ?????? ??? ?????? ? ??
????? ??????? ?????? ??? ?????????? ?????????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?
????? ?????? ??? ??? ?????????? ?????????? ?????? ???, ??? 2?? ?????? 1992.

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

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