

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

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

??? 22?? ??????? 2017 (*)

«????????????? ?????????? – ?????????? ?????????????? ??? ?????????????? – ?????????? ???
????????????? ?? ??? ?????? ?????? ??? ?? ?????? ?????? ?????? ?????????? – ??????? ??????????
??? ??? ??? ?? ??? ?????????? ?????????? ?????????????? ?????????????? ?????????????? ???
?????? ?????? ?????????? – ?????????? ?????????? ?????????? ??? ?????????? ?????????????? ???
????????????? ??? ?????????? ?????????? ?? ??? ?????? ?????? ?????? ??? ?? ?????? ?????? ???
????????? – ??????? ??? ?????????? ?????? – ?????????? ?? ??? ?????? ?????? ?????? ???
????????????? ??????????»

???? ??????? C20/16,

? ? ?????????? ?????? ?????????????? ?????????? ?????????? ??? ?????? 267 ????, ???
?????? ?? Bundesfinanzhof (????????????? ?????????? ??????????, ?????????) ?? ???????
??? 16?? ?????????? 2015, ? ????? ?????? ??? ?????????? ??? 15 ?????????? 2016,
??? ??????? ??? ???

Wolfram Bechtel,

Marie-Laure Bechtel

????

Finanzamt Offenburg,

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

????????? ??? ??? M. Berger, ??????? ????????, E. Levits (?????????) ??? F. Biltgen,
???????,

?????? ??????????: M. Campos Sánchez-Bordona

?????????: K. Malacek, ?????????? ??????????,

?????? ??? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???
1?? ?????????? 2017,

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

- ? **Wolfram ??? ? Marie-Laure** Bechtel, ?????????????? ??? ??? J. Garde, Rechtsanwalt,
- ? Finanzamt Offenburg, ?????????? ??? ??? E. Lehmann,
- ? ??????? ????????, ?????????? ??? T. Henze, R. Kanitz ??? D. Klebs,
- ? ??????? ????????, ?????????? ??? W. Roels ??? M. Wasmeier,

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

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

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

???????

1 ? ?????? ?????????????? ?????????? ?????? ??? ??????? ??? ?????? 45 ???.

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ??? Wolfram Bechtel
??? ??? Marie-Laure Bechtel, ????, ??? ??? Finanzamt Offenburg (???????????)
??? Offenburg, ??????), ??????, ?? ?????????? ??? ?????????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????????? ?????????? ??? ?????????? ? Marie-Laure Bechtel ???
??????, ??? ?????? ?????????????? ??? ?????????? ?????? ?????????? ?????????? ???
????????? ??? ??? ?????????? ?????? ?????? ?????????? ?????????? ?????????? ???
2005 ??? 2006.

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

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

3 ??? ?? ??? 1 ??? Einkommensteuergesetz (????? ??? ?????? ????????????) ???
2002, ??? ?????? ??? ?????? ??? ?????? ??? ?????? (??? ????: EStG ??? 2002), ?? ???
????????? ??? ?????? ??? ?????????? ? ?? ?????? ?????????? ??? ?????? ?????????? ???
????????? ??? ?????? ??? ?????????? ?????????? ???.

4 ?? ??? 2 ??? ?? ??? ?????, ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
?????????, ??? ??? ?? ???:

«(1) ?? ??? ?????????? ???:

[...]

4. ?? ?????????? (Einkünfte) ??? ?????? ???:

[...]

(2) ?????????? (Einkünfte) ???:

[...]

2. ?? ?????????????? ??? ?????? ?????? ?????????? ??? ?????????????? ??? ?????? ???
????????? ??? ?????? ?????????? ?????????? (????? 8 ??? 9a).

(3) ?? ?????????? ??? ?????????? (Einkünfte), ?????? ?????????? ??? ??????????
????????? ??? ?????????? ??????????????, ??? ?????? ??? ?????????? ??? ??????
????????? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? 13, ???
3, ??? ?????? ??? ?????? ??? ?????? (Gesamtbetrag der Einkünfte).

(4) ?? ?????????? ??? ?????? ?????????? ?????? ?????????? ??? ?????? ???
??? ?????? ?????????? (Einkommen).

(5) ?? ??????? (Einkommen), ??????? ?????????? ??? ??' ??????? ?????????? ???
?????? 32, ?????????? 6, ??? ?? ?????? ?????????? ??? ?? ??????? ??????, ??????? ??
????????? ?????? (versteuernde Einkommen)? ?? ??????? ??? ?????????? ?? ???
????????? ??? ?????? ?????????? ??? ?????? ?? ?? ?????????? ??????. [...]»

5 ?? ??? 9 ??? EStG ??? 2002, ?? ??? ?????? «????????????????? ??????»,
????????? ?? ???:

«(1) ?????????????? ??????? ?? ?????? ?? ??????? ??? ?????????? ?? ??? ???????, ??
????????? ?? ?? ??????? ?? ??????. ?????? ?? ?????????? ?? ??? ??????? ??
????????? ?? ?? ?????? ?????? ?????? ??????:

[...]

3. ?? ??????? ?? ?????????????? ??????? ??? ?????? ?????????????? ?????? ??
?? ?????????? ?????????? ???????,

[...]».

6 ?? ??? 10 ??? EStG ??? 2002, ?? ??? «?????? ??????», ???????, ???
?????? 1, ?????? 1, ??? ??????? ?????? ?? ??? ?????? ?? ??? ?????????? ???
?????? ?? ??, ?????? ?? ?????? ?????? ?????? ?????????? ?????? ??? ??????????????
??????. ?? ??? 10, ?????????? 1, ?????? 2 ??? 3, ??? EStG ??? 2002 ??????? ?? ???
??? ?????????? ?????? ??? ??? ?? ????:

«2.

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

b) ?? ??????? ?? ?????????? ??? ?????????? ??? ?? ?????? ?????????????? ???
????????????? ??????, ?????? ?? ?????? ?????? ?????????? ??? ?? ?????? ???, ??????
????????? ??????, ?? ?????????? ?????? ?????????? ?????? ??? ?????? ???, ??????
????????? ??????, ? ?????????? ?????? ?????????? ?????? ??? ?????? (??????
?????????), ?????????? ?????????? ??? ?????? (?????? ?????? ??????????), ? ???
????????? ?????????? (?????? ??????????)? [...] ?? ?? ??? ?????????? ???
????????????? ??? ?????????????? ??? ?? ??? ?????? ?????? ?? ???????, ?????? ?
????????????? ??? ?????? ?????? ?????????? ??? ?????? ??????????.

???? ??????? ?? ?????????? a) ??? b) ?????? ?? ?????????? ?? ?????????????? ???
????? ?????????? ??? [...] ?? ?????????? ?????????? ?????????? ??? ?????? ???
????????? ??? ?? ?????????? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
?????????.

3.

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

[...]».

7 ?? ?????? 10, ??????????? 2, ??? EStG ??? 2002 ?????? ?? ????:
«?????????? ??? ?? ??????? ??? ????? ?? ????? ?????????? ??? ?????? 1, ?????? 2 ??? 3
(???????) ????

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

[...]»

8 ?? ?????? 10, ??????????? 3, ??? EStG ??? 2002 ?????????? ?? ?? ?????? ??????????
??? ?????? 10, ??????????? 1, ?????? 2, ?????? ???????, ?? ?????? ?????? ??????????????
????? ??? ?? ??? 20 000 ????? ?? ??? ????? ?????????????? ?? ?????????? ??????
????????????? ??? ??????.

9 ?? ?????? 32a ??? EStG ??? 2002, ?? ????? «????????????? ??????????», ??? ? ? ????:

«(1) ?? ?????????? ??? ????? ?????????? ?????????? ?????? ??? ??????????????
????????????? (versteuernde Einkommen). ?????????? ?? ?????????????? ?? ???, ??? ??
????????? ??? ?????? 32b, 34, 34 b ??? 34 c, ??? ??? ?????????? ??????????:

1. ??? 7 664 ??? (????????????? ?????? ???): ?? 0,

2. ??? 7 665 ??? 12 739 ????: ?? (883,74 X y + 1 500) X y,

3. ??? 12 740 ??? 52 151 ????: ?? (228,74 X z + 2 397) X z + 989,

4. ??? 52 152 ????: ?? 0,42 X x-7 914.

?? "y" ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ?? 7 664
????? ??? ?????????????????? ?????????? ?????????? ???????????. ?? "z" ?????????? ??? ??
????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ?????????? ?? 12 739 ??? ??
????????????? ?????? ?????????? ???????????. ?? "x" ?????????? ??? ??
????????????? ?????? ?????????? ???????. ?? ??? ?? ?????????? ??? ??
????????????? ?????? ?????????? ?????? ??? ?????? ??? ?????????? ????.»

10 ??? ?? ?????? 32b ??? EStG ??? 2002, ?? ????? «????????? ??????????????»,
?????????????:

«(1) ??? ?????? ?? ?????? ???, ?????????? ? ???' ??? ?? ?????? ?????????? ??????????????,
????????????? ?????????? ?????????? [...] ??????»

[...]

3. ?????????? (Einkünfte) ??? ?????????? ??? ?????? ??? ?????? ?????????? ??
????????? ??? ?????? ?????????? ? ??? ?????? ?????????? ?????? ??????, ??? ??? ?????????? ??
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ?, ??? ?????????? ??
????????? ??? ?????? ?????? ??? ?????? ?????????? ?, ??? ?? ?????? ??? ??????????
????????? ?, ???' ?????? ??? ?????? 1, ?????????? 3, ? ??? ?????? 1a ? ??? ??????
50, ?????????? 5, ?????? ??????, ?????? 2, ??? ?? ??? ?????? ?????????? ?????? ????
??????,

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

(versteuernde Einkommen) ?????? ??? ??????? 32a, ??????????? 1.

[...]

(2) ? ??????? ??????????? ??????????? ??? ?????????? 1 ?????? ? ??????????? ???
????????? ????, ??? ?? ?????????? ??? ????? ???????????, ?? ?????????? ???????
(versteuernde Einkommen) ?????? ??? ??????? 32a, ??????????? 1 ?????????? ? ?????????? ??
????:

[...]

2. ??? ??????? ??? ??????? 1, ?????? 2 ?? 3, ??? ?? ??????? (Einkünfte) ???
?????? ? ??????? ????, ??????????? ?????? ??? ?????? ?????? ??? ??????????? ?' ????
?????? ????????

[...]»

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

11 ? ??????? ??? ??????? ??? ??????? ??????????? ??? ?? ?????????????? ???????????
??? ???????, ??? 21?? ?????? 1959, ??? ?? ?????? ??? ?????? ?????????? ??? ??
?????? ??????? ??????? ?????????? ??? ?????????? ?????? (BGBI. II 1961, ?. 397),
???? ?? ?????????????? ?? ??? ?????????? ??????? ??? ?????????? ??? 9 ??????? 1969 (BGBI. II 1970, ?. 717), ??? 28 ?????????? 1989 (BGBI. II 1990, ?. 770) ??? ?? 20
?????????? 2001 (BGBI. II 2002, ?. 2370) (??? ????: ?????????????? ????) ?????? ???
????? 14, ?????????? 1 ?? ????:

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

12 ?? ?????? 20, ?????????? 1, ??? ?????????????? ??????? ?????????? ?? ????:

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

a) ??? ?? ??????? ??? ?????????? ??? ?????????? ??? ?????? b ?? c, ??? ?? ??? ??????????? ???
????????? ??? ????? ?????????? ?? ?????????? ??? ?? ?????? ?????????? ??? ??
????????? ??? ?????? ?????????? ??? ?????? ???, ?????? ??? ?????????? ??????????,
????? ?????????? ??? ?????? . ? ?????? ?????? ??? ?????? ??? ?????????? ?? ?????????? ???
????????????? ?????????? [??? ??????????] ?? ?????? ???, ??? ?? ?????????? ???
????????? ??? ???????, ?? ???' ???? ??? ?????? ?????????? ?????????? ???
????????? ??? ???????.

[...]»

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

13 ?? ?????????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?? 2005 ?? 2006
????????? ??? ???????, ??? ??????????? ??? ?????? ?? ?????????? ??? ?????????? ???.

14 ? W. Bechtel ??? ?????? 2005 ?? 2006 ?????????? ??? ?? ?????? ??? ??

????????? ?????????? ??? ??????? ?????????? ?????????? ??? ? Marie-Laure Bechtel, ???????
?????????, ?????????? ?? ??????? ?????????? ??? ?????????? ?????????? ?????????? ?????????? ?????
??? ??? ?????? ?????? ?????? ?????? ?????? 22 342 ??? 2005 ?? 24 397 ??? ?? 2006.

15 ??? ???? ??? ??????? ?????????? ???, ?? ?????? ??????? ??? ?????????????? ???
????? ??? ?????????? ??? ?? ??? ?????? ?????????????? ??? ?????, ??? ?????????????? ???
????? ??? ?????????? ??? ?????, ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ??????
????????? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????????? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ??????
??? ?????????? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ??????
????????? ??? ?????? ?????????? ??????????) ??? ??? ?????? ??? ?????????? ??? ?????????? ???
????? ????.

16 ? ?????????? ?????????? ??? Offenburg ?????????? ??? ?? ??? ?????????????? ??? ???
????????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???
????????????? ??? ?? ??? 2005 ?? 2006, ?? ?????????? ?????????????? ??? ??? ??? ???
??? ?????????????? ????.

17 ??????, ?? ?? ??? ?????? ???????, ?????????? ??? ?? ?????????? «?????????????»
??? «????????? ??????? ??? ?? ?????????? ?????????? ?????????? ??? ?????????? ???
????????? ??? ?? ?????????? ?????????? ??? ?????? ???' ?????????? ??? ?????????? ???
????????? ??? ?????????? ??? ?????? 32b, ?????????? 1, ?????? 3, ??? EStG ??? 2002,
????????? ?? ?????????? ??? ?????? ?????? ?????????? ?????????? ??? ??? ???
????????? ??? ?????????? ??? ?????????? ??? ?????? ????.

18 ?? ?????????????? ??? ?????? ???, ?????????? ??? ?? ??? ?????????????? ???
??? ??? ?????????? ??? Marie-Laure Bechtel ?????? ?? ?????????? ??? ??? ?????????? ???
????????? ??? ?? ?????? ??? ?????????? ??? ?????? ???' ?????????? ??? ?????????? ???
????????? ??? ?????????? ??? ?????? ?????? ??? Finanzgericht Baden-Württemberg
(????????? ??? ??????-????????? ???). ?????? ?????????? ???
????????? ??? ?? ?????? ??? 31?? ?????? 2013, ?????? ?????? ?????? ???
Bundesfinanzhof (????????? ??? ?????????? ??? ?????????? ???).).

19 ?? ?????????? ??? ?????? ?????????? ???, ??? ?? ??? 14, ?????????? 1, ??? ?? ???
20, ?????????? 1, ??????? ??, ??? ?????????? ???, ?? ?????????? ???, ?? ?????????? ???
????????? ? Marie-Laure Bechtel ??? ?? ?????????? ??? ?? ?????? ??? ?????? ???
????????? ??? ?? ?????? ?????????? ??? ?????????? ??? ?????? ?????????? ???
????????? ??? ?????? ???, ?????? ??? ?????? 32b, ?????????? 1, ?????? 3, ??? EStG ??? 2002, ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ????.

20 ??? ??? ?????? ??? ?????????? ?????????? ???, ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? «?????????»
?????», ??? ??? ?????? ??? ?????? 9 ??? EStG ??? 2002.

21 ???????, ?? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ???
??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???
?? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 10, ?????????? 1,

?????? 2, ??????? ??, ? ?? ?????? 10, ?????????? 1, ?????? 3, ??????? ??, ??? EStG ??? 2002.

22 ??????, ?? ????? 10, ?????????? 2, ?????? 1, ??? EStG ??? 2002 ?????? ??? ??????
?????? ?? ?????? ?????? ??? ?? ?????????? ??? ?? ?????? ?????? ??? ?? ?????? ??? ??
????????? ??? ?? ?????????? ?????? ?? ?????????? ??????. ?????? ??? ?? ?????????? ???
????????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?? ??????????
????????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 2005 ?? 2006, ???
?? ?????? ??? ?? ?????? 10, ?????????? 3, ??? EStG ??? 2002 ?????? ??? ??????
????? ?????? ?????? ??? ?? ?????? ?????? ?????? ??? ?????????????? ??? ?? ?????? ???,
?? ?????? ??? ?????????? ??? ?? ?????? ??????.

23 ?? ??????? ??????? ?? ?????????? ?? ?????????????? ?? ?????? ??? ?? ??????? ?? ???????
????? ??? ??????? ?????????????? ?? ?????????? ?? ?????????? ?? ?????????? ?????????? ???
????????? ??? ?? ?????? ?????? ?????? ?????? ?????????? ?????????? ?????? ?? ?? ???
32b ??? EStG ??? 2002. ?? ?????? 32b, ?????????? 2, ?????? 2, ??? EStG ??? 2002
????????? ??? ?????????? ??? ?????????? (Einkünfte). ???, ? ?????? ??? ??????
????? ??? ?????? ?????? ??? ?? ?????? ?????????? ??? ?????????? (Einkünfte).

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

25 ??' ?????? ?? ???????, ?? Bundesfinanzhof (????????? ?????? ??????????)
????????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ??????????:

«1) ?????????? ?? ?????? 39 ?? (??? ?????? 45 ???) ?????? ?? ?????????? ??????????,
????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ?? ??????, ? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ?? ??????, ??? ?????? ?? ??? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????? ?? ?????? ?? ?????? ?? ?????? ??;;

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

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

?) ?????????? ??? ?? ???????, ?????????????? ? ???' ????????, ????? ???? ?????? ???
?????????? ?????, ?????? ??? ?????????? ??????? ?????? ???, ?? ? ? ??????, ???
????????? ???;»

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

26 ?? ?? ?????????? ???, ?? ?????? ??????? ?? ?????????? ??? ???????, ?? ??????
????????? ???, ???' ????, ?? ?????????????? ??? ?? ?????? 45 ???? ???? ??? ?????? ???
????????? ?? ??????? ?????? ???????, ???? ? ??????? ???? ?????? ???, ??????? ???
????? ? ?????????? ???? ??????? ???? ?????? ???? ?????? ???? ?????? ???? ?????????? ???
????? ?????? ???? ?????? ?????? ?????? ???? ?????? ?? ?????? ???? ???? ?????? ?????? ???
????? ?????????? ???? ?????? ?????? ?????? ???? ?????? ???? ?????? ?????? ?????? ???
????? ?????????? ???? ?????? ?????? ?????? ???? ?????? ???? ?????? ???? ?????? ?????? ???
????? ?????????? ???? ?????? ?????? ?????? ???? ?????? ???? ?????? ???? ?????? ?????? ???
????? ?????? ???? ?????? ?????? ?????? ???? ?????? ???, ??????, ?????? ???
????? ?????? ???? ???? ?????? ?????? ???? ?????? ???? ?????? ?????? ?????? ?????? ???
????? ?????? ???? ???? ?????? ?????? ???? ?????? ???? ?????? ?????? ?????? ???
????? ?????? ???? ???? ?????? ?????? ???? ?????? ?????? ?????? ?????? ?????? ???.

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

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

28 ?????, ???' ????, ?? ?????????? ???? ?????? ?? ?????? ?????????? ???? ?????? 45 ???,
?? ?????? ??? ?????? ???? ?????? ?? ?????? ?????????? , ?? ?????????? ???? ? ?????? ????
????? ???? ???? ?????? ?? ?????? ?????? ?????????? ???? ???? ?????? ???? ?????? ???? ?????????? ,
?? ?????? ?????? ?????? ???? ?????? ???? ?????? ?????? ???? ???? ?????? ???? ?????? ????
????? ?????? ?????? ???? ?????? ?????? ???, ?????????? , ???? ?????? ???? ?????????? ????
????? ???? ?????? ???? ?????? ???? ?????? ?????? ???? ?????????? ???? ?? ?? ???? ?????? ????
????? ???? ?????? ?????? .

29 ?? ?????????????? ???? ???? ???? ?????? ?????? ?????????????? , ???' ??????, ???, ??? ?????? ???
??? ?????? ???? ?????? ???? ?????? ?????? ?????????????? , ? ?????????? ???? ??????
????????? ???? ?????? ???? ?????? ???? ?????? ???? ?????? ???? ?????? 18, ????, ????,
????.

30 ?????? ?????? ?? ?????????? ???' ???? ???, ???? ?????? ?????????? , ?? ?????? 18
????, ?? ?????? ?????????? ?? ?????? ???? ?????? ???? ?????????? ???? ?????? ?????????? ????
????????? , ?????? ?? ?????????? ?????? ???? ?? ?????????? ?????? ?????? ?????? ????
????? ???? ?????? , ???? ???? ?????? ? ?????? ???? ?????? ?????? ?????? ?????? ?????? ????
????? ?????? ?????? (??., ?????? ????, ?????? ???? 12? ??? 1998, Gilly, C?336/96,
EU:C:1998:221, ??? 37, ??? 26? 2002, Oteiza Olazabal, C?100/01,
EU:C:2002:712, ??? 25, ??? 15? ?????? 2011, Schulz-Delzers ??? Schulz, C?240/10,
EU:C:2011:591, ??? 29, ??? 25? ?????? 2012, Prete, C?367/11,
EU:C:2012:668, ??? 18).

31 ? ???? ??? ?????????? ???? ?????????? ?????????? , ???? ?????? ???? ??????????
????????? ???? ?????????? , ?? ?? ?????? 45 ??? (??., ?????? ????, ?????????? ??? 12??

????? 1998, Gilly, C?336/96, EU:C:1998:221, ???? 38, ??? 10?? ??????????? 2009, ??????? ?????? ???????????, C?269/07, EU:C:2009:527, ??????? 98 ??? 99, ??? 15?? ??????????? 2011, Schulz-Delzers ??? Schulz, C?240/10, EU:C:2011:591, ????? 29, ????? ??? ??? 25?? ??????????? 2012, Prete, C?367/11, EU:C:2012:668, ????? 19).

32 ????? ?????? ??????????, ???? ??????? ?? ?????????? ???????, ??????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ??? ??????? ??, ? ?????? ?????? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 45 ??? (????????? ??? 12?? ?????????? 2002, de Groot, C?385/00, EU:C:2002:750, ????? 76, ??? 2?? ?????????? 2003, van Lent, C?232/01, EU:C:2003:535, ????? 14, ??? 13?? ?????????? 2003, Schilling ??? Fleck-Schilling, C?209/01, EU:C:2003:610, ????? 23, ????? ??? ??? 16?? ?????????? 2006, Öberg, C?185/04, EU:C:2006:107, ????? 11).

33 ????? ?????? ?? ?????? ??? ? ?????????????? ???? ?????? ???, ? ?????? ?????????? ???? ?????? ?????? ?????? «?????????» ???? ??? ?????? ??? ?????? 45 ???? ?????? ?? ?????????? ???? ? ?????? ???? ??? ?????? ?????? ???? ?????? ?????? ???? ?????? ?????? ???? ?????? ?????? ???? ?????? ?????? ???? ?????? ?????? ???? ?????? ?????? ???? ?????? ?????? ???? ?????? ?????? ???? ?????? ?????? (???. ?????? 26?? ?????????? 2007, ????????, C?392/05, EU:C:2007:251, ????? 68 ??? ??? ?????????????? ??????????).

34 ???????, ?? ??? 45, ?????????? 4, ???? ?????????? ???? ?? ?????????? ???? ?????? 45, ?????????? 1 ??? 3, ????, ??? ?????????? ?? ?????????? ???? ??? ?????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ???? ?????????? ???? ?????? ?????? ???? ?????? ?????? ???? ?????? ?????? ???? ?????? ?????? ???? ?????? ?????? ???? ?????? ?????? ???? ?????? ?????? ???? ?????? ?????? ???? ?????? ?????? ???? ?????? ?????? ???? ?????? ?????? ???? ?????? ?????? ???? ?????? ?????? ???? ?????? ?????? (???. ?????? 26?? ?????????? 2007, ????????, C?392/05, EU:C:2007:251, ????? 69).

35 ? ?????? ?????? ?????? ?????????? ???? ?????? ???? ?????? ???? ?????? ???? ?????????? ???? ?????? ?????? ???? ?????? ?????? 12?? ?????????? 1974, Sotgiu, 152/73, EU:C:1974:13, ????? 4), ? ?????? ??? ?????? ?????? ?????? ???? ?????? ?????????? ???? ?????? ?????????? ???? ?????? ?????? ???? ?????? ?????? ???? ?????? ?????? ???? ?????? (???. ?????? 17?? ?????????? 1980, ?????????? ???? ?????? 149/79, EU:C:1980:297, ????? 10). ?? ??? 45, ?????????? 4, ???? ??? ?????? ?????? ?????? ???? ?????? ???? ?????? ???? ?????? ???? ?????? ???? ?????? ?????? ???? ?????? ?????? 1 ??? 3 ??? ?????? 45 ??? (??????? ??? 26?? ?????????? 2007, ????????, C?392/05, EU:C:2007:251, ????? 70 ??? ??? ?????????? ??????????).

36 ???????, ? ?????????????? ???? ?????? ???? ?????? «?????????» ???? ??? ?????? ???? ?????? 45 ???? ??? ? ?????????? ???? ??? ?????? ?????? ???? ?????? ?????? ???? ?????? ???? ?????? ???? ?????? ???? ???? ????.

????? ?????? ??? ??????? ??????????? ??? ????? 45 ????

37 ??? ?????? ?????????? ?????????? ??? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ????
????????? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
??? ?????? ?????????? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
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?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? (??.,
?????? ????, ?????????? ??? 13?? ?????????? 2003, Schilling ??? Fleck-Schilling, C?209/01,
EU:C:2003:610, ??? 24, ??? 21?? ?????????? 2006, Ritter-Coulais, C?152/03,
EU:C:2006:123, ??? 33, ??? 18?? ?????????? 2007, Lakebrink ??? Peters-Lakebrink, C?182/06,
EU:C:2007:452, ??? 17, ??? 16?? ?????????? 2008, Renneberg, C?527/06,
EU:C:2008:566, ??? 43).

38 ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
?? ?????????? ?? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
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?? ?????? ?????????? ?????????????? ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?? ?????? ?????? ??? (?????? ??? 16?? ?????????? 2008, Renneberg,
C?527/06, EU:C:2008:566, ??? 44).

39 ?? ????? 45 ??? ??????????, ????, ?? ?????? ??? ?????, ??? ?????? ??? ?????, ??? ?????? ???
????????????? ?????????? ?????????? ???, ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????????? ??? ?????????? ???' ?? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????
??????, ??? ?????? ?? ?????? ?? ?????????? ??? ?????? ?????????? ??? ?????? ??????????????
????????? (??., ????, ????, ??? 5?? ?????????? 2013, Zentralbetriebsrat der
gemeinnützigen Salzburger Landeskliniken, C?514/12, EU:C:2013:799, ??? 26 ??? ???
????????? ????, ??? ?????? ?? 2?? ?????? 2017, Eschenbrenner, C?496/15,
EU:C:2017:152, ??? 36).

40 ??? ?????? ??? ?????? ????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 14, ??? 1, ???
??? ?????? 20, ??? 1, ??? ?????? ????. ??? ?????? ??? 1, ??? ?????? ????, ??? ??????
????, ????, ????, ????, ??? 20, ??? 1, ??? ?????? ????, ????, ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? 32b ??? EStG ??? 2002.

41 ??? ??? ?????? ??? ?????? ????, ??? ?????, ??? ?????????? ??? ??????
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?? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 10, ??? ??????
1, ??? 2 ??? 3, ??? EStG ??? 2002, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
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42 ????? ??? ?????????????? ??? ?????????????? ??? ??? ?????????????? ?????????????? ?????????????? ???
????????????????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ?????????? ?????? ?? ? ? ????
32b ??? EStG ??? 2002, ? ?????? ??? ?????????????? ?????? ?????? ??? ?????? ?????? ??????, ???
?? ?????????? ?? ?????? ?????? ?????????? ?????????? ?????????? ??? ?????? ??????????.
?????????????, ??? ?????? ??? ?????? 32b, ?????????? 2, ??? EStG ??? 2002, ? ?????????? ???
????? ?????????? ?????????? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ??????????
????????? (versteuernde Einkommen) ?? ?? ?????????? ?????? (Einkünfte).
??????, ?? ?????? ?????? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ??????????
????? ??? ?????????? ??? ?????????? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???,
??? ?????? ??? ??? ?????????? ??? ?????????? ??? ?????? 10, ?????????? 2, ??? EStG ???
2002, ???, ???????, ? ?????? ??? ?? ?????? ?????? ??? ?? ?????? ?????? ??? ?????????? ???
????? ?????? ??? ?? ?????? ?????????? ??? ?????????? (Einkünfte) ??? ????????,
????? ??? ?????? 2, ?????????? 2, ?????? 2, ??? EStG ??? 2002, ?? ?? ?????????? ???
????? ??? ???????? ??? ?????????? ??????.

44 ? ?????????????? ??? ????? 10, ?????????? 2, ??? EStG ??? 2002 ??????????, ??? ??
????? ?? ??????? ???????? ??? ?????? ?? ?????? ?????? ?????????? ?????? ??
????????????? ????, ??? ?? ?????????? ?? ?????? ??? ?????????????? ????, ??
????????? ??? ? ??????? ??? ?????? ???, ??? ?? ?????? ? ?????????????? ??????
????????? ??????? ??? ?????? ?????? ?????? ????, ? ?????? ?????????? ???
????????? ??? ?????? ?????? ??? ?????????? ???, ??? ?????? ?????????? ???
??? ?????????? ?????? ?????? ??? ?????????? ??? ?????? ?????? ??? ??????
????????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ???

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

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

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

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

49 ? ?????? ??????? ?? ? ??????? ?????? ?????????? ?????????? ?????? ??? ??????????
?? ?????????????? ??? ??????, ??? ?? ??????? ?????? ???, ??? ?? ??????????,
??????, ??? ?????? ??? ?????????? ?????? ?????????? ?????????? ?????? ??? ??
????????????? ??? ?????? ???, ???????, ??? ?????????? ??? ?????????? ??????????????
????????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ?????, ????? ?????????? ???
????????? ??? ?????? ??? ?????????? ?????? ?? ??? ?????, ??? ?? ?????? ??? ?? ?????????? ???
? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
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50 ??? ?????? ??????? ?????????? ?????????? ?? ?????????? ??? ?????????????? ???
????????? ??? ?????? ??? ??????, ??????? ? ?????????? ??? ?????????? ??? ?????????? ???
????? ?????? ??? ?????? ??? ?????????? ???.

51 ?????? ???????, ??? ? ?????? ??? ?????? ???, ? ?????? ?????? ??? ??????? ???
?????? ??????? ??? ?? ?????????? ?? ??? ?????? ?? ?? ?????? ?????? ?????? ??????????
????? ?? ?????????? ??? ?????? ??????, ???????, ?? ?????????? ??? ? ?????? ??? ?????? ???
????, ?????????? ??? ?????????? ?????????? ??? ??????????, ? ?????? ?????????? ???
????????? ??? ?? ????? 45 ???.

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52 ?????? ?????????? ??????? ?? ?????? ?????? ?????? ?? ?????? ?????????? ??? ??
????? ?????????? ?????? ?????????? ?? ?? ?????????? ??? ?????????? ??? ??????
????? ?????????? (??., ?????? ????, ?????????? ?? 17?? ?????????? 2015, Timac Agro
Deutschland, C?388/14, EU:C:2015:829, ????? 26, ????? ?? 26?? ????? 2016, Kohll ???
Kohll-Schlesser, C?300/15, EU:C:2016:361, ????? 45).

53 ??? ?????? ?? ?????? ?? ?? ??????? ?????????? ?????? ??????????????
??????????, ?????????? ???, ??? ?? ?????????? ??? ?????????? ?????? ??????????
????? ?????????? ?? ?????????? ???????, ??????? ?? ?????????? ??? ?? ?????? ??? ??????
?? ?????????? ?? ?????????? ??????? (??., ??????, ?????????? ?? 25??
????????? 2010, X Holding, C?337/08, EU:C:2010:89, ????? 22, ??? 6?? ?????????? 2012,
Philips Electronics UK, C?18/11, EU:C:2012:532, ????? 17, ????? ?? 26?? ????? 2016,
Kohll ??? Kohll-Schlesser, C?300/15, EU:C:2016:361, ????? 46).

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

55 ??????, ???????, ?? ?????????? ???, ??? ?? ?????? ?????????? ??? ??????????
????????? ???, ???' ????, ?? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???

?????? ???? ?????????????? ??? ?? ?????????? ?????????????? ??? ?? ?????????? ?? ??
????????? ??? ?????????? ??? ??????????, ?????????? ??? ?? ?????? ?????? ??????
???? ??????????, ?? ??????? ??? ?????? ??? ?????????? ??? ?????????? ?????????? ?????
???? ?? ??? ??????????????, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????????? ??? ?????????? (??., ?????? ???, ?????????? ??? 14?? ?????????? 1995,
Schumacker, C?279/93, EU:C:1995:31, ??? 32, ??? 16?? ??oy 2000, Zurstrassen, C?87/99,
EU:C:2000:251, ??? 21, ??? 28?? ?????????? 2013, Beker ??? Beker, C?168/11,
EU:C:2013:117, ??? 43, ??? 12?? ?????????? 2013, Imfeld ??? Garcet, C?303/12,
EU:C:2013:822, ??? 43).

56 ? ?????????? ?????????????? ??? ?????????? ??? ?????????????? ??? ?????????????? ??????????????
?????? ?? ?????? ??? ?????? ??? ?????? ?????????? ? ??????????????, ??? ?? ?????? ??????
?? ?????? ? ?????? ?? ?????? ??? ?????????? ?????????????? ??? ?? ?????? ??????????????
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????????? ???, ?? ?????????? ?? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ?????????? ??
????????????? ??? ?????????? ??? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????????????
?? ?????????? (??., ?????? ???, ?????????? ??? 14?? ?????????? 1995, Schumacker,
C?279/93, EU:C:1995:31, ??? 36, ??? 14?? ?????????? 1999, Gschwind, C?391/97,
EU:C:1999:409, ??? 27, ??? 16?? ??? 2000, Zurstrassen, C?87/99, EU:C:2000:251,
????? 21 ??? 23, ??? 12?? ?????????? 2002, de Groot, C?385/00, EU:C:2002:750, ??? 89,
????? ??? 12?? ?????????? 2013, Imfeld ??? Garcet, C?303/12, EU:C:2013:822, ??? 44).

57 ???????, ??? ?????? ?? ?????????????? ??? ?????????? ??? ?? ?????????? ??? ?????????????? ??
????????? ??? ?????????? ??? ?????????????? ??? ??????????????, ? ?????????????? ??? ?????????? ???
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????????? ???, ?????? ?????? ??? ?????? ?????????? ?????????? ??? ?? ?????? ?????? ???
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58 ???, ?? ??????????, ??? ?????? ??? ?????? ????. ??? ?? ??? ?????? ?????????????? ??
????????????? ??? ?????? ???, ?????? ?? ?? ?????????????? ??? ?????? ??? ?? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?? ??? ?????? ???
????? ?? ??? ?? ??? ?? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?? ???
????????? ??? ?????????? ??? ?????? ???, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?? ???
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59 ??????, ? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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60 ??????, ? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?? ?????? ??? ?????? ??????????????
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????????? ??? ?????? ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ???
????? ?????? (????????? ??? 17?? ?????????? 2015, Timac Agro Deutschland, C?388/14,
EU:C:2015:829, ??? 29 ??? ?????????? ??????????, ??? ??? 26?? ???
2016, Kohll ??? Kohll-Schlesser, C?300/15, EU:C:2016:361, ??? 49).

61 ??????, ? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ?? ??????
????? ??? ?????????? ?????? ?????????? ?????????? ??? ?????????? ??? ?????????? ???
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62 ?????, ? ?? ??? ?????????????? ?????????????? ??, ?????????? ?? ? ?? ?????? 14, ?????????? 1,
????? ???????, ??? ?????????????? ??????????, ? ?????????? ?????????? ??? ? ?? ???????
????????????? ??? ?????????? ??? ?????????? ??? ?????????? ?? ?????????? ?????? ??? ? ?? ??
????????????? ? ?????? ?????????? ?????????? ??? ?????????? ?????????????? ?????????? ??? ? ?? ?
????????????? ?????????? ??? ?????????? ??? ?????????? ?????????? ?? ?????? ?????????? ?????? ???
????????? ?????????? ??? ?????????? ??? ?????????? ?????????? ?????? ?????? ??? ? ?? ???????
????????? ?????? ?? ?????????? ??? ?????????? ?????????? ??????.

63 ???????, ?? ?? ?????????? ??? ?????? 10, ?????????? 2, ?????? 1, ??? EStG ??? 2002
????????? ?? ?????????? ?? ??????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ? ??
????????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???,
?? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ? ?? ? ?? ? ??,
????????? ?? ?????????? ?????? ??? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ???
????? ??? ??? ?????????? ??? ?????? ?????????? ?????, ? ?????????? ?????? ??? ?????? ???
?? ?????????? ?????????? ?? ??????? ??? ?????????? ?????? ??? ?????????? ??? ?????? ??? ? ??
????????? ??? ?? ??? ?????? ??? . ? ?????????? ?????? ??? ?????????? ??? ?????????? ??? ? ??
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??? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
?????????, ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
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64 ??????, ??????, ?? ?????????? ???, ??????, ? ?????????? ??? ?????????? ???
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
????? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ? ??
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? (????????? ??? 28?? ?????????? 2013, Beker
??? Beker, C?168/11, EU:C:2013:117, ????? 56, ????? ??? ??? 12?? ?????????? 2013, Imfeld
??? Garcet, C?303/12, EU:C:2013:822, ????? 68).

65 ???? ? ?????????????? ?????? ?????, ??????, ?? ?????? ?????? ?????? ??? ? ??
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????? ?? ??? ?????????? ??? ?????????? ??? ?????? ??? (??., ??????, ?????????? ???
29?? ?????? 2007, Rewe Zentralfinanz, C?347/04, EU:C:2007:194, ????? 42, ??? 18??
?????? 2007, Oy AA, C?231/05, EU:C:2007:439, ????? 54, ??? 21?? ?????????? 2010, SGI,
C?311/08, EU:C:2010:26, ????? 60, ??? 28?? ?????????? 2013, Beker ??? Beker, C?168/11,
EU:C:2013:117, ????? 57, ????? ??? ??? 12?? ?????????? 2013, Imfeld ??? Garcet, C?303/12,
EU:C:2013:822, ????? 75).

66 ???? ???? ??????????, ?????????? ?? ?????? ??? ?????? ?????? ?????? ??????, ??? ?????????? ??????
????????? ??? ??? ?????? ??? ?????? ?????? ??????, ?? ?????????? ?? ?????????? ??? ??????????
?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ??? ? ??
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?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
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????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? (??., ??????, ?????????? ???

12?? ?????????? 2002, de Groot, C?385/00, EU:C:2002:750, ??????? 93 ??? 94, ??? 19??
?????????? 2006, Bouanich, C?265/04, EU:C:2006:51, ??????? 49 ??? 50, ????? ??? ??? 12??
?????????? 2013, Imfeld ??? Garcet, C?303/12, EU:C:2013:822, ??????? 41 ??? 42).

67 ?? ???????????, ?? ?????? ??? ?????????? ??? ?????????????? ?????????????? ?????????????? ??????
????????? ?????????? ??? ?????? ?????? ?????? ??????, ??????????, ?? ?????????, ?? ?????????? ?????????? ???
????????? ?????????? ?????? ?????????????? ??? ?????????????? ??????, Land ? ?????? ??????
????????? ?????????? ??? ?????? ?????? ??? Land ?? ?????? ?????? ??? ?????????? ??? ?????????? ???
??? ?????? ???????, ??? ?????????? ??? ?????????????? ?????????????? ?????????????? ??????????,
????????????? ??? ?????? ??? ?????? ??????????. ??? ???????, ? ??????? ?????? ??? ?????????? ???
?? ?????????? ??? ?? ?????? ???????????, ?? ??????, ??????? ??? ?????????? ??? ??????,
????????????? ??? ?? ?????? ?????? ?????? ??? ?????????? ??? ?????? ?????????? ???
????????????? ??? ?????????? ??? ??????????, ?????????? ??? ?? ??? ?????? ?????????? ???
????????? ???, ?????? ? ?????? ?????? ??? ?? ?????????? ??? ?????????? ??? ??????????????
????????? ??? ?????? ?????? ??? ?????? ???, ??? ?????? ?????????? ??? ?????????? ??? ??????????
????????? ??? ?? ???' ?????? ??? ?????? ?????????? ???????????. ??????, ? ?? ??? ?????? ?????? ???
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68 ? ?????????????? ?????????? ??? ?????????? ??????????, ???????, ?????????? ???
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?????????, ?????????????? ??? ?????????? ?????????????? ???????, ????? ?? ?????? ???
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69 ?????? ? ??????????? ?????????? ?? ?????????????? ?????????????? ?? ?????????? ??
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70 ???????, ? ?? ?????? ?? ?????????????? ?????????????? ?? ?????????????? ?? ?????????????? ?? ?????????????? ??
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????? ?? ?????????? ?? ?????? ?? ?, ?? ?????? ?? ?????????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ??????????
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??? ?????????? ?? ?, ?? ?????????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??
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??? ?????? ?????????????? ??????????, ??? ? ?????????? ?????? ?????????????? ?????????? ???
??? ?????????? ??? ??????????, ?????????? ?????? ??? ?????? ?????????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? (??., ??????, ??????)
??? 12?? ?????????? 2002, de Groot, C?385/00, EU:C:2002:750, ?????? 99 ??? 100, ???
28?? ?????????? 2013, Beker ??? Beker, C?168/11, EU:C:2013:117, ????? 56, ????? ??? ??
12?? ?????????? 2013, Imfeld ??? Garcet, C?303/12, EU:C:2013:822, ????? 69).

72 ????, ??? ? ?????????? ??? ?????? 67 ??? 68 ??? ?????? ?????????? ??????????, ?
????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????????????
?????????, ??? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
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73 ??? ?????? ?????????? ?????????? ?????????? ??? ? ?????? ?????? ?????? ??????????????
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74 ?? ??? ??????????, ? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??
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?? ?????????? ?????????? ??? ?????? ??? ?????? ?? ?????? ?? ?????? ?????? ?????? ??? ??????
????? ??? ?????????? ??? (??., ???' ??????, ?????? ??? 12?? ?????????? 2013,
Imfeld ??? Garcet, C?303/12, EU:C:2013:822, ????? 73).

75 ????????, ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????????
?????????, ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????????? ?????? ??
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????????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ??? ??? ?????? ??? ?????? ?????? (??., ???' ??????, ?????? ??? 1?? ?????? 2010,
Dijkman ??? Dijkman-Lavaleije, C?233/09, EU:C:2010:397, ?????? 54 ??? 55 ??? ???
????????? ??? ?????? ??? ??? 26?? ????? 2016, Kohll ??? Kohll-Schlesser, C?300/15,
EU:C:2016:361, ????? 60).

76 ?? ??????????, ?? ??? ?????????????? ???, ? ?????? ?????? ?????????? ?????????? ??
?????????, ??????, ??? ? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??
????????? ??? ? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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????????? ?????? ??? ?????? ???, ??????, ??? ? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

77 ?????? ?????? ?? ?????????? ??? ??? ?????? ?????? ?????? ???, ??? ??? ?????? ???
????????? ??? ??? 75 ??? ?????? ?????? ?????? ??? ?????? ???, ??????, ??????, ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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?? ?? ??????????????? ??????????. ??????????????, ? ?????????????????? ?? ?? ???????????
?????????? ?? ?? ?????????? ?? ?? ?????? ?????? ?????? ??????????, ? ?????? ?????? ?????? ???
?????? ??????????? ?? ?? ??? ?????? ??????????? ?? ?? ?????????????? ??????????? ??
??????????, ??? ?????????? ?? ?? ??? ??????????, ??? ?? ??? ?????? ??????? ??, ???
????????????? ?? ?? ?????????? ?? ?? ?????????????? ?????????????? ?? ?? ?????????????? (??.,
??'???????, ??????? ?? ?? 12?? ?????????? 2002, de Groot, C?385/00, EU:C:2002:750, ??,
109).

78 ??????????, ?????? ? ?????????????? ?????????? ??? ?????????? ??????????, ?? ??
????????????? ??????, ??? ?? ?????????? ??? ?????????? ??? ??????? ?? ??????????????
???? ?? ?? ??? ??????, ??? ?????? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??
????? ??? ?? ?????? ??? ?????? ??? ?????????? ?????? ??? ?? ?????????? ??? ?? ?????? ???
????????????? ??? ?? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????. ??? ??
????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ?????????????? ???
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79 ? ??????? ??????? ???? ?????????????? ? ?????? ??????? ???? ??????? ??
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????????????? ??? ?? ?? ????? ?????????? ??? ?? ?????????? ?????????? ?????????? ??????????
????????????? ?????????? ?????????? ??? ?????????? ?????????? ?????????? ?????????? ??????????
????, ?? ??????? ???????, ??? ?????? ??????? ?? ?????????????? ??? ?????? ??? ??????
????????????? ?? ??? ??????? ??????? ??? ?????? ?????????? ?????????????? ?????? ??? ?? ??
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80 ??????? ?? ???????????????, ??? ?????????????? ?????????? ??????? ?? ?????? ???? ??????
???? ?? ????? 45 ??? ????? ?? ?????? ??? ?????????? ?? ?????????? ?? ??????? ???????, ??? ?
????????? ??? ?????? ????, ??????? ?? ?????? ? ?????????? ?????????????????? ?? ?????????? ??? ??????? ?? ?????
?????? ?????? ??? ?????????? ?? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ??? ??????? ??
????????? ??? ?? ????? ?????????? ?? ?????? ?????????? ?????? ?????? ?????? ?????? ?????????? ??? ??
????????? ?????????? ?????? ??? ?????????? ?????? ?????????? ?????? ?????? ?????????? ?????? ??? ??
????? ??? ?? ?????? ?????? ?????? ???????????????, ?? ?????????? ??? ?? ?????????? ?????? ?????????? ??????????
??? ?????????????? ?? ?????? ?????????? ?????????? ?????????? ??? ?????? ?????? ?????? ??????????
???, ???????, ??? ????? ?? ?????????? ?????? ??? ?? ?????? ?????? ?????? ??? ?? ?????? ?????????? ???
?????? ???????????, ? ?????? ?????????? ?? ?????????? ?????? ??? ?????? ?????? ?????? ??????????
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81 ?????????? ??? ? ??????? ?????????? ??? ?? ??? ????? ????? ?????????? ??? ?????? ?????
??? ?????????? ?????????????? ??? ??????? ??????? ??? ??????? ?????????? ???????????, ?' ????
?????????? ?? ??????? ??? ?? ?????????? ??????. ?? ????? ?? ??? ????? ???????????
???? ??????? ?????????? ??? ???????????, ??? ??????? ?? ??? ??????????, ??? ???????????.

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

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

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