

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

??? 26?? ?????????? 2019 (*)

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«????????????? ?????????? – ?????????? ??? ?????????? – ????? ?????? ?????????? ???
????? ??? ??? ?????????? ??? ?????????? ?????? ?????????? ?????????? ??????????
????????????? ?????? – ?????? 2003/49/?? – ?????????? ??? ?????? ??? ???
????????? – ????? 5 – ?????????? ?????????? – ?????? ?????????? ?? ??? ??? ??????
????? ?????????? ?? ?????????? ?????? ?????????? ?? ??? ?????? ?????? ?????? ??????
?? ?????? ?????????? ??? ????????, ??? ?????? ??? ? ?????? ??? ?????? ??? ?????? ???,
??? ?????? ??? ?????????? ?????? – ?????????? ?????? ?????????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ???»

???? ?????????????? C?115/16, C?118/16, C?119/16 ??? C?299/16,

?? ?????????? ?????? ?????????? ?????????? ?????????? ??? ?????? 267 ???, ???
?????? ?? Østre Landsret (?????? ??? ?????????? ???????????, ???) (C?115/16,
C?118/16 ??? C?119/16) ?? ?????????? ??? 19?? ?????????? 2016, ?? ?????? ??????????
?? ?????????? ??? 25 ?????????? 2016, ?????? ??? ?? Vestre Landsret (?????? ???
????? ???????, ???) (C?299/16) ?? ?????? ??? 24?? ?????? 2016, ? ???
????????? ??? ?????????? ??? 26 ?????? 2016, ??? ?????? ??? ??? ???

N Luxembourg 1 (C?115/16),

X Denmark A/S (C?118/16),

C Denmark I (C?119/16),

Z Denmark ApS (C?299/16)

????

Skatteministeriet,

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

????????? ??? ??? K. Lenaerts, ???????, J.-C. Bonichot, A. Arabadjiev, T. von Danwitz, C.
Toader ??? F. Biltgen, ??????? ???????, A. Rosas (?????????), M. Illeši?, L. Bay Larsen, M.
Safjan, C. G. Fernlund, C. Vajda ??? S. Rodin, ???????,

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

?????????: R. ?ere?, ?????????? ??????????,

????????? ?????? ??? ??????? ???????????? ??? ??????? ??? ??' ???????????? ???????????? ???
10?? ?????????? 2017,

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

- ? N Luxembourg 1 ??? ? C Danmark I, ???????????????? ??? ??? A. M. Ottosen ??? S. Andersen, advokater,
- ? X Denmark A/S ??? ? Z Denmark ApS, ???????????????? ??? ??? L. E. Christensen ??? H. S. Hansen, advokater,
- ? ?????? ????????, ?????????????? ??? ??? C. Thorning ??? J. Nymann-Lindgren, ?????? ??? ??? M. S. Wolff, ?????????????? ??? ??? J. S. Horsbøl Jensen, advokat,
- ? ?????????? ????????, ?????????????? ??? ??? T. Henze ??? R. Kanitz,
- ? ?????????? ????????, ?????????????? ??? ??? G. Palmieri, ?????????????? ??? ??? G. De Socio, avvocato dello Stato,
- ? ?????????????? ????????, ?????????????? ??? ??? D. Holderer, ?????????????? ??? ??? P.-E. Partsch ??? T. Lesage, avocats,
- ? ?????????? ????????, ?????????????? ??? ??? M. K. Bulterman ??? C. S. Schillemans,
- ? ?????????? ????????, ?????????????? ??? ??? G. Eberhard,
- ? ?????????? ????????, ?????????????? ??? ??? A. Falk, C. Meyer-Seitz, H. Shev, U. Persson ??? N. Otte Widgren, ?????? ??? ??? F. Bergius,
- ? ?????????? ????????, ?????????????? ??? ??? W. Roels ??? R. Lyal, ?????? ??? ??? ??? L. Grønfeldt, ?????????????? ??? ??? H. Peytz, avocat,

???? ?????? ?? ?????? ?????????? ??? ??????? ??? ??????? ??? ??????? ??? ?????? ?? ??????????
?? 1?? ?????? 2018,

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

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1 ?? ?????????? ?????????????? ?????????? ??? ??????? ??? ??????? ??? ?????? 2003/49/??
?? ?????????? ??? 3?? ?????? 2003, ??? ??? ?????????? ?????? ?????????? ?????????? ??????????
?? ?????? ??? ??? ?????????? ??? ?????????? ?????? ?????? ?????????? ?????????? ??????????
????????? ?????? (?? 2003, L 157, ?. 49), ?????? ??? ??? ?????????? ??? ?????? 49,
54 ??? 63 ???.

2 ?? ?????????? ??? ?????????? ??? ??????? ??? ??????? ??????? ??? ?????? N
Luxembourg 1, X Denmark A/S, C Danmark I ??? Z Denmark ApS, ??????, ??? ???
Skatteministeriet (????????? ?????????? ???), ???????, ??????? ?? ??? ??????????
???? ??????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ?????? ???, ??? ???
?????????, ??? ???, ??? ??? ?? ?????????? ??? ?????? ?????? ?????? ??? ??? ??????????
?? ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? 2003/49.

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

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

3 ?? ?????????? ??? ?????????? ?????????????? ?????????????? ??? ?????????? (?????)
???????, ??? 30 ??????? 1963, ??????? ??????? ?? ?? ?????????? ??? ?????? ??????????
??? ??????? ??? ?????????? ??? ?????? ????? ?? ??????????????, ??? ?? ?????? ??? ??????
????????? ?????? ???????, ??? «????????? ??????? ??? ?? ?????? ??? ?????? ??? ??????
????????? ?????? ?? ??? ?????? ?????????? ??? ??????????», ??? ?????????? ??? ?? ???
????????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?? ?????? (???)
????: ?????????? ?????????? ?????????? ??? ???). ?? ?? ??? ?????????? ??????????
????????? ?????????????? ??? ?????????????? ?? ?????????? ????. ??? ?? ??????????????
????? ?????????????? ??? ?????? ??? ?????????? ??? ?? ?????????? ??? ?? ???.

4 ?? ?????? 7 ??? 10 ??? ??????? ??? ?? ?????? 1 ??? ?????????????? ??????????????
????????? ??? ???, ??? ?????? ?????? ??? ?????????? ??? ?????????????? ??? ?? 1977 (???)
????: ?????????? ?????????? ?????????? ??? ?????? ??? 1977), ??????? ?? ?? ??????
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ??? ??
????????? ???, ??????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ??? ??
????????? ???, ??? ?????? ??? ?????????? ???, ?? ?????? ?? ?????????? ???, ??? ??????
????????? ???, ?? ?????? ??? ?? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ??? ??
????????? ??? «?????????», ??? ?????? ?????? ??? ?? ????? 10 (????????? ???
?????????) ??? ?? ??? 11 (????????? ???) ??? ?? ??? ?????????? ??? ??????????,
????? ??? ?? ??? ?????? ?????????? ??? ?????????? ??? ?? ??????????).

5 ?? ????? 11, ?????????? 1 ??? 2, ??? ?????????? ?????????? ?????????? ??? ?? ???
??? 1977 ??? ?? ???:

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

2. ?????, ?? ?????? ?????? ?????? ?????? ?? ?????????????? ??? ?? ??????????????
????? ??? ??? ?????? ?????? ??? ?????? ?? ?? ?????????? ??? ?????????? ???, ???, ?? ??
????? ??? ?????? ??? ?????? ??? ?????? ?????? ???, ?? ?????? ??? ??????????
??' ?????? ??? ?????? ??? ?????????? ?? 10 % ??? ?????????? ??? ?? ??? ??
????????? ???, ??? ?????????? ??? ?????????? ???, ??? ?????? ??? ??????, ??? ?? ???
????????? ??? ?????? ???.

6 ??? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????????? ?? 2003, ?? ?????? ???
????????? ??? ?????????? ??? ?????? «?????????-??????», ?????? ??????? ???,
????????? ??? ?????? ??? ?????? ??? ?????????? ???, ??? ?????? ??? ?????? ??? ??????????
????????? ?? ?????? ??? ?????????? ??? ?????? ?????????????? ??? ?????? ??? ??????????
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?? ?????? ??? ??
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? 8 ??? ?????? ??? ?? ??? ??
11, ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? 2003, ???????, ???
????, ??? «[?] ??? “?????????” ??? ?????????? ??? ?? ?????? ??? ?????? ??? ??
????, ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?? ??? ??
????????? ??? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?? ??? ??
????????? ??? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?? ??? ??
8.1 ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? «?? ?????? ???
????????? ??? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?? ??? ??

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

7 ??? ??????? ??? ?????????????? ??? ??????? ??? ?????????????????? ??? ?????? ??
????????? ??? 2014, ??????? ?????????????? ??????? ?? ??? ?????? «??????????» ???
«?????????». ?? ?????? 10.3 ??? ??????? ?????? ??? ?????? ?????????? ??????? ???
«????????? ??? ?????? ??? ?? ?????????????? ?? ?????? ??? ?????????? ?????????? ???,
??????????, ? ??????? ?????????? ??? ?????????? ??? ?????????? ?????????? ???????????, ???,
?????? ??????, ??????? ?????????? ??? ?????? ??? ?????????? ??? ???????????, ?? ???????
?????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????
??? ?? ??????? ??? “????????????? ??????????”».

? ?????? 2003/49

8 ?? ?????????????? ??????? 1 ??? 6 ??? ?????? 2003/49 ?????? ?? ????:

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

(2) ? ?????????? ??? ?????? ?? ?????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????????? ???
??? ??????????. ?? ??????? ?????????? ???????????, ?? ??????????, ??? ???????????, ??
????????? ? ?????????? ??????????, ?????????? ?? ??? ?????????? ??? ?????? ?????????? ???
????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?????? ?????????? ???
????????????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ???.

(3) ????? ?????? ?? ?????????????? ??? ?? ?????????? ?????? ??? ?????????? ???
????????????? ???, ?? ??? ?????? ???.

(4) ? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????? ??????????, ??? ?? ?????????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ??????????,
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ??? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ??? ?????? ???.

(5) ?? ?????????? ?????????? ?? ?????? ?? ?????????????? ??? ?????? ?? ?????????? ???
????? ? ?? ?????????? ?? ?????? ?? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ?? ??? ?????? ??? ?????? ??? ?????? ???.

(6) ????? ?????????? ?????????? ?? ??? ?????? ?????????? ?? ?????? ??? ?????? ?? ?????????? ??
????????? ??? ?????? ?????????? ?? ?????? ?????????? ??? ?????? ??? ?????????? ???.

9 ?? ?????? 1 ??? ??????? 2003/49 ??????, ?????? ?????, ?? ???:

«1. ?????????? ?????? ? ?????????????? ??? ?????????????? ?? ??? ?????????? ??????
????????????? ??? ?????????????? ?????? ??' ?????? ??? ?? ?????? ?????? (????
????????????? ??? ?????????????? ?????? ??????????) ?????? ? ?????????? ??? ??????
?? ??? ?????????? ??? ????? ?????? ?????? ?????? ?????? ? ?????? ?????????? ??????
????? ?????? ?????? ?????? ?????? ??????.

[...]

4. ?????????? ??? ?????????? ?????? ??????????? ?? ?????????????? ?????? ? ?????????????? ??????
?????? ??????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ???? ?????????? ???
?????????????, ??? ??? ?????????????? ?????????????? ???? ?????????????? ???? ?????????????? ???
????????????? ?? ?????????? ?????? ?????? ??????.

5. ?????????? ?????????????? ??????????? ?? ?????????????? ?????? ? ??????????????:

[...]

?) ??????? ?? ?????????? ??? ?????? ??? ?????????????? ?????????????????? ?????????????? ??? ??
????? ? ?????? ?????????????? ??????????, ??? ?????? ?????? ??? ??????????, ?? ??? ???? ??
???? ?????? ??? ?????????????? ??? ?????? 3 ?????????? ?) ?????? iii) ?, ??? ?????????? ???
???????, ??? “impôt des non-résidents/belasting der niet-verblijfhouders” ?, ??? ??????
?? ????????, ??? “Impuesto sobre la Renta de no Residentes” ? ?? ??? ??????????????
? ?? ??????? ?????????? ?? ??????, ? ?????? ?????????????? ??? ??? ?????????????? ???????
?????? ??? ??????? ??????, ?????????????? ?? ?? ?????????????? ??? ??? ?????????????? ???????
?????.

[...]

[...]

11. ?????????? ??? ??????????????? ????? ????? ?????? ?? ?????????? ?? ?????????????????? ?
????????? ??? ??????????????? ????? ?????????? ?? ????? ?????? ?????? ??? ????? 3 ???? ?? ??????
??? ?????????? ??? ?????? ? ?????????????? ?? ??????????. ??? ? ?????????? ??? ??????????????
????? ??? ?????????? ??? ????? ?? ?????? ??? ????????, ?? ?????? ?????? ?????? ?????????? ??
????????? ?????????? ??? ?????? ????.

12. ??????? ?? ?????????? ????? ?????????? ?????? ?????? ?????? ?? ?????????? ??? ?????????? ?????? ???????
?? ??? ??????? ?????? ??? ??????? ??? ?? ??? ?????? ?????????? ?????????? ?????????? ?????????? ??????
?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ?????????? ?????? ??? ??
?????? 3. ? ??????? ?????? ?????????? ?? ?????????? ?????? ?????? ?????? ?????? ??? ?? ?????? ??? ??????
??? ?????????? ??? ?? ?????????????????? ?????????????? ??? ?? ?????? ??? ?????? ??? ??????????????
????? ??? ?????? ?????? ???????, ??? ?????? ??? ?? ?????? ??? ?????? ?????????????? ??? ?? ???
???.

13. ??? ???? ??????? ?? ?????????? ?? ???? ?????????? 11 ??? 12, ? ?????????? ??
?????????, ?????? ?? ???? ?????? ?????? ??? ?????? ??? ??? ??? ?????????? ??? ???

?????????? ????????, ??? ? ?? ????? ?? ????? ???, ??? ??????????? ?? ???????
???????:

[...]

?) ?????????? ??? ?????????? ?????????? ??????? ?? ??? ???????? 4 ? ?????? ???
????????? ??? ?????????? 5 ?????? ? ?????????? ??? ???????? ????? ??????????????
[...]».

10 ?? ??? ? ?? ?????????????? ??? ??? 1, ?????????? 1, ??? ?????? 2003/49
?????, ??????? ?? ?? ?????? ??? ?????????? ???, «????? ??? ??????????» [???
????????? (?????????????), ?????? (bénéficiaire), ?????? (benefici?rs) ??? ??????????
????? (beneficiarul)], «????? ??? ?????????? ??????????» [????? ?????????? (beneficiario
efectivo), ?????? (skute?ný vlastník), ?????? (tulusaaja), ?????? (beneficial owner),
????? (beneficiario effettivo), ?????? (tikrasis savininkas), ?????? (sid benefi?jarju),
????? (beneficiário efectivo) ??? ?????????? ?????? (tosiasiallinen edunsaaja)], «?
?????»/«????? ??? ?????????? ?? ??????????» [??? ?????????? (der Nutzungsberechtigte),
????? (retmæssige ejer), ?????? (?????????????), ?????? (ovlašteni korisnik), ??????
(haszonhúzó), ?????? (w?a?ciciel), ?????? (vlastník požitkov), ?????? (upravi?eni
lastnik) ??? ?????? (den som har rätt till)], ? ????? «? ?????? ??????????» [?????
????????? ?????? (de uiteindel?k gerechtigde)].

11 ?? ??? 2 ??? ?????? ?????? ??? ????:

«??? ??? ?????? ??? ?????? ????:

?) ?? ??? ??? “?????” ?????? ?????? ??? ??? ?????? ?????? ???????????, ?????????????? ?
?? ?? ?????? ??? ?????????? ? ?? ?????? ?????? ?????????? ??? ?????? ??? ???????, ??
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???????,
????????????????????? ?????????????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???
??? ??????, ?????????? ??? ????? ??????????

[...]».

12 ?? ??? 3 ??? ?? ??? ?????? ?????? ?? ????:

«??? ??? ?????? ??? ?????? ????:

?) ?? ??? ??? “????????? ?????? ??????” ?????? ??? ??????:

i) ?? ??? ??? ?????? ??? ?????? ?? ?? ??? ??? ?????? ??? ?????????? ??? ??????????, ??

ii) ?? ???, ??? ?????? ?? ?? ?????????? ?????????? ??? ?????? ??? ?????????? ???, ?????????? ??
????? ?????????? ??? ?? ??? ?????? ?????? ??? ? ?????? ??? ?????????? ??? ?? ???
????????? ??? ?????? ?????? ?????????? ??? ?? ?????? ?????????? ??? ?????????? ??? ?? ???
????????? ??? ?????? ?????????? ??? ?????????? ??? ?? ?????? ?????????? ??? ?????? ?????????? ???

iii) ?? ??? ?????? ??? ?????? ?? ?? ??? ?????? ?????????? ???, ?????? ?? ??? ??????
????????? ??? ??????, ?? ??? ?????? ??? ?????????? ??? ?? ?????? ??? ?????????? ??? ??????, ??
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ??????, ??
????????? ??? ?? ?????????? ??? ?? ??? ?????????? ??? ?? ??? ?????????? ??? ??????:

[...]

–“selskabsskat” ??? ?????,

[...]

–“impôt sur le revenu des collectivités” ??? ????????????,

[...]

?) ??? ???????? ?????????? “????????????” ?? ??? ?????????? ??????, ????????????:

i) ? ?????? ?????????? ??????? ?????? ?????????? ?????????? 25 % ??? ??????? ??????????
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ii) ? ??????? ??????? ?????? ?????????? ?????????? 25 % ??? ??????? ???????
??? ?????? ??????????, ?

iii) ??? ?????? ???????? ??????? ?????? ?????? ???????? ?????????? 25 % ??? ???????? ??????????
????? ??? ?????? ??? ??? ??? ???????? ??????????.

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

[...] »

13 ??????????? ???. ??????????? ???. ?????? 3, ??????? ??, ??? ?????? 2003/49, ???
?????? ? ??????? ???. ??????????????? ???. ?????????? ???. ??????? ???. ??????, ???????????????,
?????? ???. «?????? ???. ??????? ???. ??????????????? ???. ??? ?????? “société anonyme”,
“société en commandite par actions” ??? “société à responsabilité limitée”».

14 ?? ????? 4 ?? ?????? 2003/49, ?? ????? ???? ??? ????? “????????? ??? ???????
 ?? ?????? ? ??????????”, ??????, ??? ?????????? 1, ?? ???:

?) ?????????? ?? ?????? ??????????? ??????? ?????? ? ?????????? ?????????? ?????????? ??
?? ?????????? ??? ?????? ??? ?????????????? ??? ????? ?????

?) ??????? ???. ?????????? ???. ????????. ?????????? ???. ?????????? ???. ????????

[...]».

15 ?? ?????? 5 ??? ??????? ??????, ??? ??? ????? «????? ??? ??????????», ?????????? ??
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«1. ? ??????? ?????? ??? ?????????? ??? ?????????? ?????????? ?????????? ? ?????????? ??
????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????????.

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

16 ?? ?????? 11, ?????????? 1, ??? ??????? ?????? ??? ?????????? ??? ?????? ???.
????????? ??? ?????????? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ???
????????? ??? ?????? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? 17 ?????????? 1980 (??? ????: ?????????? ?????? ?????? ???
????????? ??? ??? ?????), ?????????? ?? ?????????? ?????? ?????? ??? ??? ?????
????? ??? ?????? ?? ?????? ?????? ??? ?????? ?? ?????:

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

17 ?? ?????? 11, ?????????? 1, ??? ??????? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???,
????????? ??? ?????? ??? 23 ?????????? 1996, ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ??? (??? ????: ?????????? ?????? ??? ?????? ???
?????), ??? ?????????? ??????????.

18 ??? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????,
????, ??? ?????? ??? ?????? ??? ??????, ?? ?????? ??? ??????, ?????? ?? ??????????
???? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????, ??? ???
????????? ??? ?? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????. ? ?????? ???
«?????????» ??? ?????? ?????? ??? ?????? ??? ??????.

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

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

19 ?? ?????? 2, ?????????? 1, ??????? d, ??? selskabsskattelov (????? ???? ????)
????????? ??? ?????? ????:

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

[...]

d) ??? ?????? ??? ?????? ??? ?????????? ??? ??? ?????? ??? ?????????? ??? ?????? ???
??? ?????? ??? ?????? [?????? ?????????? ??? ?????? ??? ??????] ? [??????
????????? ??? ?????? ???] ?????? ?????? ?????????? ??? ?????? ??? ?????? 3B
??? ?????? ??? ?????????? ??? (????????? ???) [...]. ? ??????????
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ???' ?????? ??? ?????? [2003/49] ? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

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

20 ???, ???' ?????????? ??? ?????? 2, ?????????? 1, ??????? d, ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

????????????? ??? ?? ?????????????? ??? ?????? ??? ?????????????? ??? ?? ????, ? ??????
????????? ??? ??? ?????????????? ?? ?????????????? ??? ??? ?????? ??? ?????? ??? ??????
65 D ??? kildeskattelov (????? ??? ?????????????? ??? ??? ?????? ??? ?????). ? ?????????? ???
????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ??? ?????????? ??? ?????????????? ???
?????.

21 ??? ?????????? ??? ?????? ??? ??????? ??? ?????????? ??? ?????????????? ??? ????? C?115/16, ???
?? ??? 2006 ??? 2008, ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ???
????????? ?????????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ?????????? ?????????? ?????????? ??????, ??? ?????, ??? ?????? ??? ?????????? ??? ?????? ???
??? ?????? ????, ??? ? ?? ????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
??? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ?????????? ??? ?????????? ??? ?????? ???
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

22 ? ?????? ??? ?????????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ????, ??? ? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????.

23 ???' ?????????? ??? ?????? 65 C, ?????????? 1, ??? ?????? ??? ?????????????? ???
????? ????, ? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???, ??? ? ??????????
????? ?????? ????.

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

24 ??? ?? ?????? ??? ?????? 540 ??? 29? ?????? 2015 ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????????? ??? ???????????. ??????????, ??? ??????????
????????? ? ?????? «????? ??? ??????????», ??? ??? ?????? ??? ??????????
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ???????????. ???
?????????, ????, ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?? ?? ??????
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???
????????? ?????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
(substance?over-form).

25 ??? ?? ?????????? ??? ?????????? ??? ?????????? ???, ?? ?????? ??? ?????? ???
??? ?????? ????, ?? ?????? ??? ?????????? ?? ??? ?? ??? ?????? ??? ?????????? ???
??? ?????? ??? ?????? ??? ?????????? ??? ?? ?? ?????? ??? ?????? ??? ?????????? ???
?? ??? ?????? ???.

26 ??? ?????????? ??? ?? ?????????? ??? ?????????? ?, ?????????? ??? ?????? ???
????? ?? ?????????? ??? «????????? ??? ?????? ??? ??????????» (rette
indkomstmodtager). ? ??? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ???, ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
(????????? ???), ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
-????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

27 ????? ?????????? ?????????? ??? ?????? ??????, ?????????????????? ??????? ??? ??????
????????? ??? ?????????? ?????? ?????? (?????? C?115/16), ?????? ??? ?????? ??????
????????? (????????? C?118/16, C?119/16 ??? C?299/16) ?????????????? ??? ?????????? ???
SKAT (???????????, ????, ??? ???? SKAT) ?? ??? ?????? ??? ?????????? ?? ???
????????? ??? ?????????? ??? ??? ????? ?????????? ?????? ?????? ??? ?????? ??????????
? ?????? 2003/49 ??? ??? ?????? ?????? ??? ?????????????? ?? ?????????? ?????????????? ??
???? ?????? ??????, ?? ??? ?????????? ??? ?? ?????????? ?????? ??? ?????? ?? ?????? ???
????? ?????? ??? ?????????? ?????? ??????-??????.

28 ??? ?? ?????? ??? ??????????? ?????????????? ?????????????? ??? ?????????? ? ??????? 2003/49, ?
????????? ??? ?????????? ??? ?????? ?????? ?????? ?? ?????? ??? ?????????? ??? ??????? ?
?????? ????. ??????????, ??? ?????????? ? ?????? ?????????? ?? ?????? ?????????? ?? ??? ?????????????? ???,
????????? ?? ???????? ?????????? ??? ?????? ?????? ?????????? ??? ??? ?????? ???
????????????? ??? ?????? ???????????, ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???
??? ?????????? ??? ?????????? ?????? ?? ?????? ?????? ??? ?????????? ???, ??? ?
????????????? ?????????? ???????, ?? ?????? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?? ??
????? ??????. ?? ?????????? ??? ?????????? ?????????????? ?????????? ?? ??? ??????????
??????????, ??? ??? ??? ??? ?????? ??? «?????????» ?????? ?????? ??????
????????????? ??????????.

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

1) ??????? C?115/16, N Luxembourg 1

30 ????? ???? ?????????? ????? ????????????, ?????? ?????????? ????????????, ????????????, ?? ???
?????? ?????? ??? ????? ?????? ?????????? ?????????????? ?? ?????? ?????? ?? ?????? ?? ???? ?????? ?? ???? ??????
?? ?????????? ??? ?????? ????? ?????????? ?????????? ?????????? ??? ?????? ?????? ?????? ?????? ??????
???????????, ??? ???? ?????????? ??? 2005, ?????? ????????????, ??? ?????? ?? ???? ??????????.

31 ????? ?????????????? ???, ? ?????? ?????????? ?????????? ??? ? ?????? C?115/16
????? ??? ??? ????? ?????? ?????????? ?? ??????? ??? ?????? ? ?????? C?116/16, ?????? ?? ????
????????? ??? ??????????, ? ?????? ?????? ?????????? ??? ?????????? ??? ?????????? T
Danmark ??? Y Denmark Aps (C?116/16 ??? C?117/16).

32 ????? ??????? ?? ?????? ???????????, ?? ??????? ??????????? ???????????
?????????? ??????? ?? ???????????, ?????? ??? ?????? ??? A Luxembourg Holding,
????? ??? ??????? ?? ??????, ??? ?? ??? ?????? ?????? N Danmark 1. ? ??????? ??? T
Danmark ??????????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??????
?????????? ?????????? ??? N Danmark 1 ??? ?? ?????????? ??? ?????????? ??? ?????? ???
????.. ??? ?? ?????????? ??? 2009, ? N Danmark 1 ??????????? ?? ??? ?????? ?????? ???
????? ?????? ??? ?????????? ??? 2010 ?????? ?????????????? ?????????????? ?? ?? C
Luxembourg. H C Luxembourg ?????? ?????????? ??? ?????????? ??? ?????? ??? ??????????
?????????? ??? ?????? ?????????? ??? Luxembourg 1, ? ?????? ?????????? ?? ??????????
??? ?????? ??? ?????? ??? N Danmark 1.

33 ??? ??? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ??????????
?????????, ? N Danmark 5, ??????? ??? T Danmark. ??? ?????? ??? 2006, ? N Danmark 5
????????? ??? ??????? ??? T Danmark ??? ?????? ??? C Luxembourg, ? ?????? ???' ???
??? ?????? ?????? ??? ?????? ??? T Danmark.

34 ??? 27 ??????? 2006, ?? ?????????? ??????? ??????? ?? ?? ?????? ??? ??????????
??? ??? ??????? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ??? A
Luxembourg Holding, ? ?????? ?? ?? ?????? ??? ?????? ?????????? ?????????? ??? C Luxembourg,
?? ?????? ?????? ??? T Danmark.

35 ??? ??? ?????????? ???, ? C Luxembourg ?????? ?????????? ??? Luxembourg
Holding ??? ??? ?? ?? ??? ?????? ??? N Danmark 1 ??? C Luxembourg.
????? ?? ?????? ??????????, ?? ??????? ??? ?????? ??? N Danmark 1 ??????? ?? 10 %,
??? ?? ?????? ??? ??? ?????? ??? C Luxembourg ??? ??? A Luxembourg Holding
????????? ?? 9,96875 %. ??? 9 ?????? 2008, ? ?????? ??? ?????? ??? ??????????
????? ??? C Luxembourg ??? ??? A Luxembourg Holding ??????? ?? 10 %. ??????????, ?
????? ??? ?????? ??? ?????????? ??? ?????? ??? A Luxembourg Holding ??? ??? ??????
????????? ?????? ??? 9,96875 %.

36 ??? ?? ??????? ??? 2006, ? C Luxembourg ?????????? ?? ??? «??????
????????? ??????» ??? 8 701 ???, ?? ??? ?????? 7 810 ??? ?????? ??????????.
????????, ? ?????? ??? ?????? ?????? ?????? ?? ?????? ??? «?????? ?????????? ??????»
????? 209 349 ???.

37 ??? ?? ??? ?????? 2006, ? A Luxembourg Holding ?????????? ?? ???
«?????? ?????????? ??????» ??? 3 337 ???, ?? ??? ?????? 2 996 ??? ??????
?????????. ???????, ? ?????? ??? ?????? ?????? ??? «?????? ?????????? ??????»
?????» ??? 127 031 ???.

38 ??? ??? ?????? ??? ?????? ??????????, ?????? ?????? ?????????? ??? C Luxembourg
??? ?? ??? 2007 ??? 2008 ?????????? ??? ? ?????? ??? ?????? ?????? ?????? ??? ??
????????? ?? ?????? ?????? ?????????? ??? ?? ?????? ??? «?????? ?????????? ??????»
????? ??? A Luxembourg Holding ??? ??? ??? ?????? ?????? ??? ?????? ???
?? ?????? ??? ?? ??? ?????? ?????????? ??? ?????? ??? ??? ?????? ??? ?????? ???
????????? ?????????? ??? ?? ??? ??? ???.

39 ?????? ??? ??? ?????? ?????????? ??? N Danmark 1, ? ?????????? ??? C
Luxembourg ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ??? ??
????? ???.

40 ? C Luxembourg ??? A Luxembourg Holding ?????? ??? ?????? ???

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

41 ?? ??????? ?????????? ???, ???, ??? 2011, ? SKAT ??????? ????
????????? ??? ???? ??? ???? ???? ???? 2006 ??? 2008 ?????????? ??? 925 764 961
????????? ?????? (DKK) (????????? 124 ?????????? ???). ? SKAT ?????????? ??? ???? ???? ?
C Luxembourg ??? ? A Luxembourg Holding ??? ??? ?????????? ??? ???? , ???
????????????? ??? ???? ????-?????? ??? ???? ???? ???? ?????????? ??? ???? ???? ???? ???? ???? ???? ???? ?
????? ??? ???? ???? ???? ???? ???? ???? ?????????? ?????? ??? ???? ???? ???? ???? ???? ???? ?
????????? ?????? . ?? ???? , ? SKAT ??????? ??? ?????????? ??? ???? ?
????????? ??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?

42 ?? ?????????? ??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
????????? ??????.

43 ? N Luxembourg 1 ?????????? ?? ??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
????????? ??? ???? ???? ???? . ?????????? ???, ?? ??? ?????????? , ?????? ??? ???? ?
????????? ??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
????? ?? ?? ???? 5, ?????????? 1, ??? ?????? ?????, ????? ???? ???? ???? ???? ???? ?
????????? ?????? ?????? ????? ???? ???? ???? ???? ???? . ????? ???? , ?? ???? ???? ???? ?
????????? ??? ???? ????.

44 ?? ??????? ???? ? C Luxembourg ??? ??????? ?????????? ??? ???? , ?
????????????? ??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
????? ?? ??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
????? ?????? ?????? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
??? ?????? ???, ?????????? , ??? ?????? ?????? ?????? ?????? , ??? ???? ?????????? ,
????? ?????? , ?????? : ?????? , ? ?????? ?????? ??? ?????????? ?????? ????? ???? ???? ?
????? ?? ?????????? ?????? ?? ?????? ?? ??? ?????? ?????? ?????? ?????? , ?????? , ??
????? ?????????? ??? ???? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????? ?? ??? ???? ???? ???? ???? ???? ???? , ?????? , ? ?????? ?????? ??? ???? ???? ?
????? ?? ?????????? ??? ???? ???? ???? ???? ???? , ?????? , ? ?????? ?????? ??? ???? ???? ?
????? ?????? ??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
????? ?????? ??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
????? ?????? ??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?

45 ??? ??? ?????? ????, ?? Østre Landsret (????????? ??? ???? ???? ???? ???? ???? ,
?????) ?????????? ?? ?????????? ?? ?????????? ??? ???? ???? ???? ???? ???? ?
????????? ?????????? ??????:

«1) ?) ?????? ?? ??? 1, ?????????? 1, ?? ?????????? ?? ?? ???? 1, ?????????? 4, ??
????? [2003/49], ?? ?????????? ?? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
????? ???? ???? ???? ???? ???? 3 ??? ?????? ???, ??? ???? ?????????? ??? ???? ?
????????? , ?????????? ?????? ??? ?????? ?????? ?????????? ?? ??? ???? ???? ???? , ???
? “?????????” ??? ???? ???? ???? ???? ???? ???? ;
?) ?????? ???? ???? “?????????” ??? ???? 1, ?????????? 1, ?? ?????????? ??
?? ??? 1, ?????????? 4, ?? ???? [2003/49], ?? ?????????? ?????? ?? ??? ???? ???? ?
????????? ??? ???? ???? ???? ???? ???? ???? 11 ??? [????????? ?????? ?????????? ?
????????? ??? ???? ???? 1977];
?) ?? ?????????? ?????????? ?????????? ??? ???? ???? ???? , ?????????? ?? , ?????? ?

? ?????? ???? ?? ?????????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? 11 ???
[????????????? ??? ?????????? ??? ?????? ??? ??? 1977] (?????? 8), ? ?????? ??? ??
????????? ?? ?????? ??? ?????? ?????? ?????????? ???, ??? ?? ?????????? ???
????????????? ?? 2003 ?????? ?? ??? “????????? ??????” (?????? 8.1, ??? ??????
10.1) ??? ?? 2014 ?????? ?? ??? “????????? ??? ?? ??? ?????? ??????????” (?????? 10.2);

?) ?? ?? ?????? ??? 2003 ?????? ?? ?????? ?????? ??? ??????, ???????
?????????, ??? ?? ?????? ?? ?????? ?? ?? ?????? ?? ? “?????????” ??? ?? ?????? ???
?????? [2003/49], ?? ?????? ??? ?????? ?????????? ??? ?????? ??? ?? ?????? ??
????????? ?? ?? ?????? ?????? ??? ?????? ??? ?????? ?? ? “?????????” ???
????????? ???, ?? ??, ?????? ?????? ?????????? ?? ?????????? ?? ?????????????? ?
????????? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?? ?????? ???
?? ?????? ???/? ?? ?????????????? ?? ?????? ???; ;

?) ??? ?????? ??? ?????? ?? ?????? ??? ?????? ?????? ?????????????? ??? ??
??????, ??? ?? ?????? ??? ?????? ?????? ?????? ?????? (“roll-up”), ??? ?
?????? ?? ?????? ?????? ?? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ???
?? ??? ?????? ?????? ?????? ??? ??????, ?? ?????? ??? ?????????? ??? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
????????? ???, ??? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?? ??? ?????? ?????? ???
???? ?????? ?? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?? ?????? ??? ?????? ???
?? ?????? ?????? ??? ?????? ??? ?????? ?? ? “?????????” ??? ?????? ??? ?????? ???
????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ??? ?????? ??? ?????? ?????? ???, ?????? ??? ?????? ?????? ??? ?????? ???
?? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ? “?????????” ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ?????? ???, ?????? ??? ?????? ?????? ??? ?????? ???
?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???; ;

??) ??? ???, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? “?????????” ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??
????? ??????????, ?????? ?????????? ??? ?????? ?????? ?????????? ??? ??????????,
?? ?????????? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?? ??? ??????
????????? ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? “????’ ??????”
????????? “????????? ??? ??????????” (“use and enjoy”) ??? ?????? ??? ?????? ???
??? 2014 ??? ??? [????????????? ??? ?????? ??? ?????? ??? ?????? ??? 1977];

2 ?) ?????????? ? ??? ?????? ?????? ?????? ?????? ??? ?????? 5, ?????????? 1, ???
?????? [2003/49], ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?? ?????? ???
????? ??? ?? ??????????, ?? ??? ?????? 5, ?????? 2, ??? ?????? ??? ?? ???
????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? 5 ???
??????, ? ??? ?? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
?? ?????? ??? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?? ??? 5;

?) ?? ?????????? ??????????? ?????????? ??? ?????? ???????, ??????? ??, ???????
?? ?????? 2, ?????????? 2, ??????? d, ??? [????? ???? ??? ?????? ?????????? ??????
?????????], ?? ?????? ?????? ??? ? ?????????? ?????? ?????????? ?????????? ??? ??
????????? ??? ?????? ??? ?????????? ?????? ??? “????? ??? ?????????? ?????? ??? ??
[...] ???' ?????????? ??? ?????? [2003/49] ??? ??? ?????????? ?????? ??????????
????????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ?????? ?????? ??????????
????????? ?????????? ?????? ???”, ?? ?????? ?????? ?????? ?????? ?????? ?????? ???
?? ?????? 5 ??? ??????;

3) ??????? ?????????? ??????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ???
????? 5 ??? ?????? ? ?????? ?? ?????????? ??? ??? ?????? ??? ?????? ?????? ??? ??
??? ?????? ?????????? ??? ?????? ?????? ?????? ??? [????????? ??????????]
????????? ??? ???], ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ??? ??
????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??;
4) ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? [2003/49] ?? ?????? ??? ??
????? ?????????? ??? ?????? ??? ?????? ?????????? ? ?????????? ?????? ??? ??,
?? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??;
5) ?????? ?????? ??? ?????? [2003/49] ? ??? ?????? 10 ?? ??? ?????? ??????, ?? ???
????????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ??? ?????????? ??? ? ?????? ?????? ?????? ?????? ?????? ?????? -?????, ??
????? ?????? ??? ?????? ?????? ??????;

6) ???, ???????????, ?????? ?????????? ?? ?????? ?????? (?????? ??????) ???
????? ?? ??????? ?? ???????, ???' ??????? ??? ?????? [2003/49],
????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????????? ??? ??
????????? ??? ?? ?????? ??? ?????? (????????? ??????) ??? ??? ?? ?????????? ???
????? ?????? ??? ? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ??? ??
??? ?????? ???, ?????????? ?? ?????? 43 ??, ?? ?????????? ?? ?? ?????? 48 ??, ??
????????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????????? ??? ?? ?????? ??? ?????? (?? ?????? ??????) ?? ?????? ??? ?????????? ???
????????? ?? ?? ?????????? ?????????? ?????? ?? ??? ?????? ??? ?? ?????? ?????? ???
????? ???, ??? ?????? ?? ?????? ?????? ??? ?? ?????? ??? ?? ?????? ??? ??
????????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? (?? ?????? ??????)
????? ?? ?????????? ??? ??????) ??? ?????? ?????? ??? ?? ?????? ?????????? ??? ??
????? ??????;

7) ???, ???????????, ?????? ?????????? ?? ?????? ?????? (?????? ??????) ???
????? ?? ??????? ?? ???????, ???' ??????? ??? ?????? [2003/49],
????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ??
????????? ??? ?? ?????? ??? ?????? (????????? ??????) ??? ??? ?? ?????????? ???
????? ?????? ??? ? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ??? ??
??? ?????? ???, ?????????? ?? ?????? 43 ??, ?? ?????????? ?? ?? ?????? 48 ?? (??/?? ??
????? 56 ??), ?????? ?? ?????? ??? ?????? ??? ?????? ??? ??????:

- ?? ?????????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?? ?????????? ???
????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?? ?????? ?????? ??? ?????? ???
????????? ??? ?? ?????????? ??? ?????? ???, ??? ?????? ?????? ??? ??????
????????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????
?????;

- ??????? ??????? ?? ?????????? ?????? ?????? ?? ?????????????? ?????? ?????? ?????
?? ?????????????? ?? ?????? ?????????????? ?????? ?????? ?????? ?? ?????? ?????????????? ???,
????? ? ??????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????? ?????? ?????? ?????????????? ??????
????????? ?? ?????? ?? ?????? ?????? ?????????????????? ?? ?????? ?????????????? ?? ?????? ?? ?????? ??????
????????? ?? ?????????????? ?? ?????? ?????? ?????;

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

2) ??????? C?118/16, X Denmark A/S

46 ??? ??? ??????? ?????? ??? ?????????????? ?????????????? ??? ? ??????? ? ?????? ?????????????
?????? ??????????????, ??? ?? ?????? ?????? ?????? ? ?????????????? ??? ??????? ?????? ??????. ??? ??
?????? ??? 2005, ? ?????? ?????? ?????????? ??? ??????? ?????????? ?????????????? ???????????, ? ??
????????????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???.

47 ?? ?? ????? ??????? ?????? ?????? ??????? ?????????? ?? ?????????? ?? ?????? ???????
???????, ???? ?? X SCA, SICAR, ?????????? ?? ?? ???????????, ? ?????? ?????????? ??
?????????? ?? ?? ??????? ?????? (SCA) ??? ?? ?? ??????? ?? ?????????? ?? ?????????? ??????????
????????? ?? ?? ?????? (SICAR).

48 ? ?????? ?????????? ??? ?????????? ??? ? ? SCA, SICAR ??? ?????? ?????? ???
?????? ? ? ?????? ??????, ??? ? ? ? ?????? ?????????? ?? ?????????? ??? ? ? ????
?????.

49 ????? ???. ????????. ?????? ????????????, ?? ?????????????? ??? X SCA, SICAR
????????????? ???. ?????????? 100 % ???. ?????????? ??? X Sweden Holding AB, ????????
????????????? ???. ????????, ???. ??? ?????? ?????????? ?????? ????. ????. ????. ????. ????.
???. ????????. ????. ????. ????????. ??????, ? X SCA, SICAR ????. ????????. ????. ??????. ??????????????.

50 ? ????? ?????????????? ??? X Sweden Holding ????? ??? ?????????? ??? ??????
????????????? ??? X Sweden, ??????? ?????????????? ??? ??????, ? ?????? ?? ???? ????
??? ??????? ?? ??????? ??????? ??? X Denmark, ??? ???? ?????????????? ??? ??????
?????. ? X Sweden Holding, ??? 27 ?????????? 2006, ?????? ?? ?? ??????? ??? ??????, X
SCA, SICAR, ?? ??????? ??? ?????????? ??? ??????, ??? ??? 498 500 000 ????. ? X
Sweden Holding ???????, ??? ??? ?????????? ??? ?????????? ?????????? ???, ???
????? ??? ?????????? ??? ?, SCA, SICAR.

51 ? X Sweden ?????? ??? X Sweden Holding ??? ??????? 97,5 % ??? ??? ??????? ???
?????? X ??? ??????? 2,5 %. ??? ??? ??????? ??? ????? ?? ??????????, ? X Sweden ???
?? ??? ?????????? ?????????? ?? ??? X Sweden Holding ??? ??? ??????? ??????? ??
????????? ??? ??? X Denmark.

52 ?? ?????? ?????????? ?????????? ???, ??? ?????? ??? 2007, ? X Sweden ????
????????? ?? ?????????????? ??? ?????? ????????, ?? ?????????? ??? X AB, ?? ??? ??
???????, ??? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?? ???????
?????????? ?????? ??? ?????? ?? ?????? ??????. ? X Sweden ?????????? ??? ??
????? ?????????? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? X AB,
????? ?????? ?????????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

??? ?????? ??? ??????? ??????? «????? ????». ? X Sweden ??? ???
????? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ??????? ??? X Denmark, ??
????? ?????? ?????? 501 ?????????????? ????, ???????????, ??? ???? ?? ?????? ???
????? ?????? 50 ??? ??????? ???????, ??? 27 ?????????? 2006. ??? ???? ?? ???
2007, 2008 ??? 2009 ?? ?????? ?????????? ?? 98,1 %, 97,8 % ??? 98 % ?????????? ??
????? ?????? X Sweden, ?? ???? ?????? ??? ?????? ??? 1,9 %, 2,2 %
??? 2 % ?????????? ?? ?????????? ?????????? ?????? ??? ?????? ??? ?????? ???
????? ?????? X Denmark ?????????? ??? ?????? ??? ?????? ?????? ??? ??????????????
????? ?????? X Sweden ??? ???? ?? ?????? ??? . ? X Sweden, ??? ???? ?? ???? ???, ???
????? –?????? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? 35 ??? ?????? ??? ?????? ?????? ??? ?????? – ?? ?????????? ??? ??
????? ??? ??????, ??? X Sweden Holding ?????, ??????????, 60 468 000 ????, 75 621
000 ??? 60 353 294 ??. ? ?????????? ??? ?????? ?????? ?????? ??? ? Sweden
????? ??????, ??? ???? ?????????? ???, ?????? ???, ?????????, ?????????? ??? X
Sweden Holding.

54 ? X Denmark, ??? ???? ?????? ???, ??? ???? ?????????? ??? ??????????????
????? ???, ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? X Sweden ??
????? ??? 501 ?????????? ??? ???? ???? ?????? ?? ??? ???? ?? ?????? ??? ?????? ???
27 ?????????? 2006. ?????????? ??? ? ? Sweden ??? ? ?????????? ??? ??????, ???
????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

55 ? SKAT, ?? ??? 13? ??????? 2010 ?????? ???, ?????? ??? ? Sweden, ? X
Sweden Holding ??? X SCA, SICAR ??? ?????? ??? ?????????? ??? ?????????? ??? ?????,
????? ??? ?????? ??? ?????? 2003/49 ??? ??? ?????????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????????????
?????, ??? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? X SCA, SICAR. ??? ??
????? ?????? ???, ? X SCA, SICAR, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????? ?????? ??? ?????? ??? ?????? ??? ?????? 3, ?????? ??, ?????? i, ??? ?????? 2003/49
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???,
????? ??? ?????? ??? ?????? ??? ?????? 3, ?????? ??, ?????? iii, ??? ?? ????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? . ?? ??? ?????? ???, ? X SCA, SICAR ??? ?????? ?? ?????? ? ?????????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ?????? ??? ?????? ??? ?????? ??? ? X Denmark ??? ?????? ??? ?????? ???
??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ? X SCA, SICAR ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ??? ?????? ??? ?????? ??? ?????? . ? SKAT ?????, ?? ?? ??????, ??? ? X
Denmark ?????? ?? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ? Sweden.

56 ? X Denmark ??????? ??? ?????? ??? SKAT, ?? 13? ??????? 2010, ??????
??? ?????? ??????????.

57 ??? ??? ?????? ???, ?? Østre Landsret (????? ??? ?????????? ???????????,
?????) ?????????? ?? ?????????? ?? ?????????? ??? ?? ?????????? ??? ?????????? ??
????? ?????? ?????????? :

«1) ?) ?????? ?? ????? 1, ?????????? 1, ?? ?????????? ?? ?? ?????? 1, ?????????? 4, ??

? ??????? [2003/49], ?? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????????????????? ?? ???????
????? ? ?????? ?????????? ??? ????? 3 ??? ?????? ???, ?? ?????? ?????????????? ?? ?????? ??????????
??????????, ?????????? ??? ?????? ??? ?????????? ?????????????? ?? ?????? ?????? ?????, ??????
? "?????????" ??? ?? ?????? ??? ?????? ??? ?????;

?) ?? ?????? ? ?????? ??? ??? "?????????" ??? ????? 1, ?????????? 1, ?? ?????????? ??
?? ????? 1, ?????????? 4, ?? ?????? [2003/49], ?? ?????????? ?????? ?? ??? ?????? ???
????????? ??? ? ?????? ?????????????? ??? ????? 11 ??? [????????????? ??????????]
????????? ??? ??? ??? 1977];

?) ?? ?????????? ?????????? ??? ?????????? ??? ?????? ??????, ?????????? ??, ?????? ?
????? ??? ?? ?????????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? 11 ???
[????????? ?????? ?????????? ??? ?????? 1977] (????? 8), ? ?????? ??? ??
????????? ?? ?????? ?????? ?????????? ??????, ??? ?? ?????????? ???
????????????? ?? 2003 ?????? ?? ??? "?????- ??????" (????? 8.1, ?? ??????
10.1) ??? ?? 2014 ?????? ?? ??? "????????? ? ?? ??? ?????? ??????????" (????? 10.2);

?) ?? ?? ?????? ?? 2003 ?????? ?? ?????? ?????? ??? ?????? ??? ??????????, ??????????
?????????, ??? ?? ?????? ?? ?????? ?????? ??? ?? ?????????? ?? "?????????" ??? ?? ?????? ???
????? [2003/49], ?? ?????? ?????? ?????????? ?????? ??? ?? ?????? ?? ?????? ?? ??????
????????? ??? ?? ?????? ?????????? ??? ?????? ??? ?????? ?? ?? "?????????" ??
????????? ???, ?? ???, ?????? ?????????? ?????????? ?? ?????????? ?? ?????????????? ??
????????? ?????? ?? ?????? ??? ?????? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?????? ???/? ?? ?????????????? ?? ?????? ???;

?) ??? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ?????????? ?????????????????? ??
??????, ??? ?? ?????????? ??? ?????? ?????????? ??? ?????????? ?????????? ("roll-up"), ??? ?
????? ??? ?????? ?????? ?? ?????? ??? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ?????? ?????? ?????????? ??? ??????, ?? ?????? ??? ?????????????? ??? ?????? ???
????????????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?? ??? ?????? ?????? ??? ??????, ??? ??
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
?????????, ??? ?? ?????? ??? ?????? ?????? ?????? ??? ?? ??? ?????? ?????? ??? ?????? ??? ??????
???? ?????? ?? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ???
?? ?????? ?????????? ??? ?????? ??? ?????? ?? ?? "?????????" ??? ?????? ??? ?????? ???
???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???;

??) ??? ???, ??? ?? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? "?????????" ??? ?? ?????? ??? ?????? ??? ??????, ? ?????? ??? ?????????? ??? ??
????? ??????????, ?????? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ??????????,
?? ?????????? ?? ?????????? ??? ?? ??????, ?????? ?? ?????? ?????????? ??? ?? ??? ??
????????? ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ??????????, ??? ?? "??' ??????"
????????? "????? ??? ??????" ("use and enjoy") ??? ?????? ??? ?????? ??? ?????? ???
?? 2014 ??? ??? [????????????? ??? ?????? ??? ?????? ??? ?????? ??? 1977];

2) ?) ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 5, ?????????? 1, ???
????? [2003/49], ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?? ??????????, ? ??? ?????? 5, ?????????? 2, ??? ?????? ??? ?? ??? ??
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 5 ???
??????, ? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ??????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

?? ?? ?????? 5;

?) ?? ?????????? ?????????? ?????????? ?? ?????? ???????, ??????? ??, ???????
?? ?????? 2, ?????????? 2, ??????? d, ??? ?????? ?????? ??? ?????? ?????? ??????????
?????? ???????, ?? ?????? ?????? ??? ? ?????????? ?????? ?????? ?????? ??????????
????????? ??? ?????? ??? ?????????? ?????? “????? ??? ?????????? ??? ??????
[...] ???' ?????????? ??? ?????? 2003/49/?? ??? ??? ?????????? ?????? ??????????
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????????
????????? ?????????? ?????? ?????”, ?? ?????? ?????? ?????? ?????? ?????? ?????? ???
?? ?????? 5 ??? ??????;

3) ?????? ?????? ?????????? ??????? ?? ?????? ??? ?????? ?????? ?????????? ?????? ???
????? 5 ??? ?????? ?? ?????? ?? ?????????? ??? ??? ?????? ?????? ?????? ?????? ??? ??????
??? ?????? ?????????? ??? ?????? ?????????? ?????? ?? [????????? ??????????]
????????? ??? ???], ??? ?????? ?????? ? ?????????? ??? ?????? ?????????? ??? ?? ??? ?????? ???
????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ??????;

4) ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? [2003/49] ?? ?????? ??? ?? ??????
????? ?????????? ??? ?????? ??? ?????? ?????????? ? ?????????? ?????? ??? ??????, ???
?? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????;

5) ?) ?????? ??? ?????? ?????????? ??? ?????? [2003/49] ?????? ??????????????
?? ?????????? ? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ?? ?? ??????
????? ??? ?????????? ?? “société en commandite par actions” (“????????? ???
????? ??????”? SCA) ??? ?????????? ??? “société d’investissement en capital à
risque” (“????????? ?????????? ?????????? ?????? ?????? ?????? ??????”? SICAR) ???
?? ?????? ??? ?????????? ??? 15?? ?????? 2004 ??? ??? ?????? ??????????
????????????? ?????? ?????? ??????;

?) ?? ?????????? ?????????? ??? ?????? ??? ?????? ???????, ??????? ??, ???????
?? ?????????? “SCA, SICAR” ?? ?????? “?????????” ?????? ?????? ??? ??????
[2003/49], ??? ?????? ?? ?? ?????? ???, ??? ?????? ?????? ?????????? ??? ?????? ???
????????? ??? ?????? ??????, ??? ?????? ??? ?????? ?? ?????????? ??? ?????? ?? ?? ?????? ???
????????? ??????;

?) ?? ?????????? ?????????? ??? ?????? ??? ?????? 1, ?????? ??, ?????? ??? ?
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? “?????????” ??? ??????
????, ?????? ??? ? ?????????? SCA/SICAR, ??? ?????????? ??? ?????? ??? ??? ???
????? ?????? ???, ?? ?????? ?? “?????????” ??? ?????? ??? ?????? ??? ??? ?????? ???
?????;

6) ?????? ??? ?????? [2003/49] ? ??? ?????? 10 ?? ??? ?????? ??????, ?? ??????
????????? ?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ??? ?????????? ??? ? ?????? ??? ?????? ?????? ?????? ?????? -?????, ?? ??????
????? ?????? ??? ?????? ??? ??????;

7) ???, ?????????? ???, ?????? ?????????? ?? ?????? ?????? (????????? ??????) ???
????? ?? ?????? ?? ?????? ?? ??????, ???' ?????? ??? ?????? [2003/49],
????????? ??? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ??????
????????? ??? ?????? ?????? (????????? ??????) ??? ?????? ?? ?????????? ??????
????? ?????? ??? ? ?????? ?????? ??? ?????? ?????? ?????????? ?????????? ???
?? ?????? ???, ?????????? ?? ?????? 43 ??, ?? ?????? ??? ?? ?????? 48 ??, ??
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ???

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

8) ???, ???????????, ??????? ?????????????? ?? ?????? ?????? (??????? ??????) ???
?????? ?? ??????? ?? ??????? ?? ??????, ???' ?????????? ??? ?????? [2003/49],
????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????????????? ??? ??????
????????????? ?? ??? ?????? ?????? (????????? ??????) ??? ??? ?? ?????????? ??????
????? ?????? ?? ? ?????? ?????? ?????? ??? ?????? ?????????????? ?????????? ???
??? ?????? ???, ??????????? ?? ?????? 43 ??, ?? ?????????? ?? ?? ?????? 48 ?? (??/? ?? ??
????? 56 ??), ??????? ? ??? ?????, ?? ?????????? ?????? ??? ??????:

– ?? ?????????? ?????? ?????? ?????????????? ?? ?????? ??? ?????? ?? ?????????????? ???
???? ?? ??? ?????? ?? ?????? ?????? ??? ?????? ??? ?? ??? ?????? ?????? ?????? ???
????????? ?? ??? ?????? ?? ?????????????? ?????? ???, ??? ?????? ?????? ??????
????????????? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??????
?????;:

– ?????? ?????? ??? ?????????? ?????? ??? ?????? ?????? ??? ?? ??? ?????????? ??? ?????? ??????
?? ?????????????? ??? ?????????????? ?????? ?????? ?????? ??? ?? ??? ?????? ?????????????? ???,
???? ? ?????? ??? ?? ?????? ?? ?????? ??? ?????? ??? ?????? ?????? ?????????????? ???
????????? ?? ??? ?????? ??? ?????? ?????? ?????????????? ??? ?????????????? ??? ?? ??? ?????? ??????
????????? ?? ?????????????? ??? ?????? ??? ?????? ???;:

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

3) ?????? C?119/16 C Danmark I

58 ??? ?????????? ??? ?? ?????? ??? ?????????? ???, ? C USA, ?????????? ???
????????? ???????, ??????? ?? C Cayman Islands, ?????????? ??? ?????? ?????? ??????, ???
????? ????, ??? ?? ?????? ??? ????? 2004, ? ?????????? ??? ????? C Danmark II, ? ??????
????????? ?????? ??? ?????? ?????? ??????. ??? ??? ?? 2004 ?????? ??? ?????????????? ???
??????, ??? ?????? ??? ?????? ??? ?????? ?????? ??????, ? C Sverige I ??? ? C Sverige II,
????? ??? ?? ?????? ???????, ? C Danmark I, ?????????????? ??? ?????? ??? C Cayman Islands
??? ??? C Danmark II. ? C Danmark I ??????, ??? ??? 1? ?????????? 2005, ? ??????
????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??????
????? ??? ? C USA.

59 ?? ??? ?????? ??? ?????? ?????????????? ? ?????????????? ??? ?????????????? ???
?? ?????? ?????????? ??? ??? C Danmark I ?? ?????? ?? ??? «2004 European
Restructuring Process» (2004 ?????????? ?????????? ??????????????), ?? ?????? ??????,
????? ???, ?? ???:

«???? ?? 2004, [...] ? ?????? ?????? ?? ?????????? ??? ?????????? ??? ?????????? ???
????????? ?? ?????????? ?????????? ?????? ?????? ?????????? ??? ?????????? ?????????? ???
????????? ?? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??
????????? ?????????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????.

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

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

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

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

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

60 ?? ?????????? ??????????? ?????? ??? ? ?????????? ??? ?????????? ?????? ??? ?????? ?????? ?? ???
????????? ??? ??? ?????? ?????? ? ?????? ?????? ??? ?????? ??? ?????????? ??? ??????
????????? ??? ?????? ?????????? ??????. ??? 30 ?????????? 2009 ? SKAT ??????
????? ?? ??? ?????? ?????????? ??? ? C Sverige II ??? ? C Sverige I ??? ?????????? ??
????????? ?????????? ??? ?????? ??? ?????????? ??? ?? C Danmark I, ??? ??? ??????
?? ??????? 2003/49 ??? ??? ?????????? ??? ?????????? ??? ??????????.

61 ?? ??????? ?? 25?? ??? 2011, ? Landsskattereten (?????? ??????????? ????????,
?????) ?????????? ??? ?????? ??? SKAT ?????????? ??? ?? ?????????? ??????? ??? ??????
????????-???????. ? ?? ??? ?????????? ???????, ?????? ?????, ?? ????:

«?????? ??? ?????????????????? ??? ?????????????????? ??? ?? ??? ???? ?? 2004/????? ??? 2005, ?
?????? ??????? ??????? ??? ?????? ??? ?????, [? C Danmark II], ????? ????? ?? [C Cayman Islands].

?? ?????????? ?? 75 ?????????????? ??? [C Cayman Islands] ??? ?? [C Sverige I]
????????????? ??? ?????????????? ??? ?? ??? ?????????????? ??? ?? ?????????? ??? 75
????????????? ??? [C Sverige II] ??? ?? [C Danmark I]. ?? ??? ?????? ?? ???
?? ???????? ??? 825 ?????????? ??? [...]. ??? ??? ??????????????????
????????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??????, ? [C Sverige II], ?????????? ???
????????? ??? ?????? ??? ??? ?????????? ??? ??????????, ?????????? ??? ?????? ??? ?????? ???
????????? ??? [C Danmark I] ??? [C Sverige I], ??? ? [C Sverige I] ??????
????????? ?? ??? ?????? [C Cayman Islands] ?? ?????? ?????????? ???.

???????, ???? ???? ?????????? ???? ?????????? ???? ?????????? ???? ????????, ??? ?????? ???? ?????????? ???? ????????, ???? ???? ?????? ???? [C Danmark I] ?????????? ??? ?????? ???? ??? [C Cayman Islands] ???? ??? ????????, ????

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

[? C Sverige II] ??????????, ????????, ??? ??????? ??????-????? ??? ?????????? ???
????????????? ?????????? ??? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?? ??????????
????????? ??? ?????? ??? ?????????????? ??? [?? C Danmark I], ??? ?????? ??? [?????????????
????????? ?????? ??? ?????????????? ???] ??? ?????? ??? ?????? 2003/49. ??????, ???
????? ?????? ?? ??? ???? ?????? ?????? ??? ?????????? ?????? ?????? ??? ?? ??????
????????????? ?????????????? ??? ??? ???? ?????? ??? ?????????? ?????? ??? ?? ??????.

62 ? ?????????? ??? ?????? ???, C Danmark I, ?????? ??? ? ??? C Sverige II ???
C Sverige I ?????? ??? ?????? ?? ?????????? ?? ??? ?????????? ??? ?????? ??? ?????? ???
?????, ? ?????? ?????????? ?? ?????? ?????? ??? ?????? ??? ?????????? ??????. ??? ??
????????????? ??? ?????? ???, ? C Sverige II ?????? ? «?????????», ??? ??? ?????? ???
????? 2003/49, ??? ??? ??? ??? ??????.

63 ??? ??? ?????? ?? Østre Landsret (?????? ??? ?????????? ??????????)
????????? ?? ?????????? ?? ?????????? ??? ?? ?????????? ??? ?????????? ?? ??????????
????????????? ??????:

«1) ?) ?????? ?? ?????? 1, ?????????? 1, ?? ?????????? ?? ?? ?????? 1, ?????????? 4, ??
????? [2003/49], ?? ?????????? ?? ?????? ??? ?????? ??? ?????????? ?????????? ?? ??????
????? ? ?????? ?????????? ?? ?????? 3 ??? ?????? ???, ??? ??? ?????????? ??? ??????
?????????, ?????????? ?????? ??? ?????????? ?????????? ??? ?????? ?????? ???, ???
? “?????????” ??? ???? ?????? ??? ?????? ??? ??????;

) ?????? ? ?????? ??? ??? “?????????” ??? ?????? 1, ?????????? 1, ?? ?????????? ??
?? ?????? 1, ?????????? 4, ?? ?????? [2003/49], ?? ?????????? ?????? ?? ??? ?????? ???
????????????? ??? ? ?????? ?????????????? ??? ?????? 11 ??? [????????????? ??????????
????????? ??? ??? ??? 1977];

) ?? ?????????? ?????????? ??? ?????????? ??? ?????? ??????, ?????????? ??, ?????? ?
????? ??? ???? ?????????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? 11 ???
[????????????? ?????????? ??? ?????? ??? ?????? 1977] (????? 8), ? ?????? ??? ??
????????? ?? ?????? ?????? ?????????? ???, ??? ?? ?????????? ???
????????????? ?? 2003 ?????? ?? ??? “?????- ??????” (????? 8.1, ?? ??????
10.1) ??? ?? 2014 ?????? ?? ??? “????????? ? ?? ??? ?????? ??????????” (????? 10.2);

) ?? ?? ?????? ??? 2003 ?????? ?? ?????? ?????? ??? ?????? ??? ??????????, ??????????
?????????, ??? ??? ?????? ?? ?????? ?????? ??? ? “?????????” ??? ??? ?????? ???
????? [2003/49], ?? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?? ?? “?????????” ???
????????? ??? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?? “?????????” ???
????????? ???, ?? ???, ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ??
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??? ?????? ???
??? ?????? ???/?? ??? ?????????????? ?? ?????? ???;

) ??? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ?????????? ?????????????? ??? ??
?????, ??? ?? ?????? ??? ?????? ?????????? ??? ?????????? ?????? (“roll-up”), ??? ?
????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?????? ??? ?????????? ??? ?????? ???

????????????? ??????? ??????? ?? ??? ?????????????? ??? ?? ??? ?????? ?????? ???????, ??? ??
????????? ??? ?? ??????? ?????? ?????????????? ?? ??? ?????? ?????? ??? ?????? ??????????????
?????????, ??? ? ?????? ??? ?????? ?????? ?????????????? ?? ??? ?????? ?????? ?????????????? ?? ??????????
???? ?????? ?? ?????? ?????? ?????, ??? ?? ??? ?????????????? ??? ?? ??? ?????? ?????????? ?? ??????????
?? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?? ?? "?????????????" ??? ?????? ?????? ??????????
????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????? ?????? ??????
????????? ??? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
?? ?????? ?????? ?????????????? ??? ?????????????? ??? ?????? ?????? ?????? ??? ?? ?? ??? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????;

??) ??? ?????, ??? ?? ?????????? ??? ?????????? ?? ? ?????? ??? ?????? ?????? ?????? ??
????????? ?? "?????????????" ??? ?? ?????? ?????? ??? ??????, ? ?????? ??? ?????????? ?? ?????????? ??
????? ??????????, ??????? ?????????????? ??? ?????????? ?????????????? ??? ?????????? ??
?? ?????????? ?? ?????????????? ??? ? ??????, ?????? ?? ?????? ?????????? ?? ?? ??? ??????
????????? ?? ?????????? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? "???' ??????"
????????? "????????? ??? ??????????" ("use and enjoy") ??? ?????? ?????? ?????????? ??? ??????
?? 2014 ??? ??? [????????????? ?????????? ?????? ?????? ??? 1977];

2) ?) ?????????? ? ??? ?????? ?????? ?????? ?????? ??? ?????? 5, ?????????? 1, ???
?????? [2003/49], ?? ?????? ?????? ??? ?????????? ?????? ?????????? ??? ?? ?????????? ??
????? ??? ?? ??????????, ? ??? ?????? 5, ?????????? 2, ??? ?????? ??? ?? ?? ???
????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? 5 ???
??????, ? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???
?? ?????, ??? ?????????? ??? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
?? ?? ??? 5;

) ?? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ???, ?????????? ??, ??????
?? ????? 2, ?????????? 2, ??????? d, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????
????????? ??????, ?? ?????? ?????? ??? ? ?????????? ?????? ?????????? ??? ?????? ??? ???
????????? ??? ?????? ??? ?????????? ?????? ??? "????? ??? ?????????? ??? ??????
[...] ???' ?????????? ??? ?????? [2003/49] ??? ??? ?????? ?????? ??? ?????? ??????????
????????? ??? ?????? ??? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ???", ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
?? ?????? 5 ??? ??????;

3) ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????? 5 ??? ?????? ? ?????? ?? ?????? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ???
??? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? [????????? ??????????]
????????? ??? ???], ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?? ??? ?????? ???
????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??????;

4) ?????? ?????? ??? ?????? [2003/49] ? ??? ?????? 10 ?? ??? ?????? ??????, ?? ???
????????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ??? ?????????? ??? ? ?????? ??? ?????? ?????? ?????? ?????? ?????? -?????, ?? ??????
????? ?????? ??? ?????? ??????;

5) ???, ??????????, ?????? ?????????? ??? ?????? ?????? ?????? (??????? ??????) ???
?????? ?? ?????? ?? ?????? ?? ??????, ???' ?????? ??? ?????? [2003/49],
????????? ??? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????????? ??? ??????
????????????? ?? ??? ?????? ?????? (????????? ??????) ??? ?????? ??? ?????????? ??????
????? ?????? ??? ? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ?????? ???
?? ?????? ???, ?????????? ?? ??? 43 ??, ?? ?????? ??? ?? ??? 48 ??, ??
????????? ??? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ???

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

6) ???, ??????????, ?????? ?????????????? ?? ?????? ?????? (?????? ??????) ???
????? ?? ?????? ?? ?????????? ?? ??????, ???' ?????????? ??? ?????? [2003/49],
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ??? ??????
????????????? ?? ??? ?????? ?????? (????????? ??????) ??? ??? ?? ?????????? ??????
????? ?????? ??? ? ?????? ?????? ?????? ?????? ?????? ?????????? ?????????? ???
??? ?????? ?????, ?????????? ?? ??? 43 ??, ?? ?????????? ?? ?? ??? 48 ?? (??/?/? ?? ??
????? 56 ??), ?????? ? ??? ?????, ?? ?????????? ?????? ??? ??????:

– ?? ?????????? ?????? ?????? ?????????????? ?? ?????? ??? ?????? ?? ?????????????? ???
???? ?? ??? ?????? ?? ?????? ?????? ??? ?????? ??? ?? ??? ?????? ?????? ?????? ???
????????? ?? ??? ?????? ?? ?????????????? ?????? ???, ??? ?????? ?????? ??????
????????????? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??????
?????;

– ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?? ??? ?????????? ??? ?????? ??????
?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?? ??? ?????? ?????? ???,
???? ? ?????? ??? ?????? ?? ?????? ?? ?????? ??? ?????? ??? ?????? ?????? ???
????????? ?? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??????
????????? ?? ?????????? ??? ?????? ??? ?????? ???;

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

4) ?????? C?299/16, Z Denmark

64 ??? ?? ?????? ?????? ??? ?????????? ??? ? Z Denmark ?????? ??????
????????? ??????.

65 ??? ?????? 2005, ? ?????? ?????????? ?????? ? Fund ?????? ?? 66 % ???
????? ?????? ?? ?????? ?????? (?? ?????????????? ?? 64 % ?????? ???
????????????? ????) ??? ??? ?????????????? ??????, ??? ?? ?????? ?????? ??????????
????????? ?? ??? ?? ?????? ?????????????? ?????? C, ??? o D ?????????? ?? ??????
????? ??? ?????? ?????? . ??????, ?????? ?????? ?????? ??? Z Denmark
????????? ?????? ????.

66 ? A Fund ?????????? ??? ?????? ?????? ?????????? ??????????, ?????? ?? ???
????? ?????? ?????? ??? ?? ?????? ?????????? ?????? (Limited Partnership) ??? ???
??????, ??? ?? ?????? ?????? ?????????? ?????? ?????? ??? ?? ?????? ??????????
????? . ? ?????? ?????? ?????? ?????? , ? A Fund (No. 5) Limited, ?????????? ???
??????, ??? ?? ?????? ?????? ?????? ??? ?? ?????? ?????????? ?????? ??? ??????
????? ?? 0,5 % ??? A Fund. ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????, ??
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ????.

67 ??? ?????? ??? ?????? ??? ?????? ??? ?????? 65 ??? ?????? ??????????, ? A
Fund, ?????? ??? Z Denmark, ??? 27 ?????? 2005, ?????? ??? 146 010 341 DKK

(?????? 19,6 ?????????? ????). ?? ??????? ??? ??????? ?????????? ?? 9 % ???????.

68 ??? 28 ??????? 2006, ? A Fund ??????? ?? ?????? ??? ?????????? ??? ??? ?????? ??? ??? Z Denmark ??? ??????? ??? 146 010 341 DKK (?????? 19,6 ??????????) ??? Z Luxembourg, ??????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ???????????.

69 ? ?????? ??? ?????????? ?????????? ?? ?? ??????? ??? ??? ? Fund ??? Z Luxembourg ?????? ?? ??? ?????? ???????, ??????, ?? 146 010 341 DKK (?????? 19,6 ???o????? ???). ?? ??????? ??? ?????? ??????? ?? 9,875 %, ? ?? ??????? ?????? ??? ?????? ??? ?????? ??? ??????.

70 ??? 21 ??????? 2006, ? A Fund ??????? ??? Z Luxembourg ??? ??????? ??? ??? Z Denmark.

71 ??? ??? ?????? ?????????? ?????????? ??? Z Luxembourg ??? ?? ??? 2007 (??? ??? ?????? ?????????? ?????????? ??? 2006 ?????????? ??????????) ??? ?????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? Z Denmark. ?? ?????? ??? ?????? ?????? ?????????? ?????????? ??? ?????????? ???, ??? ?? 2006 ? Z Luxembourg ??? ?????? ?????????? ?????????? ??? 23 588 ???, ?? 2007 ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? 15 587 ????. ?????????? ?????? ??? ??? ?? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?? ??? ???, ?? 1 497 208 ??? 1 192 881 ??? ?????????? ??? ?? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?? ??? ???, ?? 1 473 675 ??? 1 195 124 ??? ?????????? ??? ?? ??? ?????? «????? ??? ??? ??????» (Tax on profit) ???????, ??? ?? ??? 2006, ??? ?????? 3 733 ???, ??? ?? ??? 2007, ??????? ???.

72 ? Z Denmark, ??? 1 ??????? 2007, ??????? ?? ??????? ??? ??? ? Fund ??????, ?? ?? ?????????? ??? ?????? ?????????? ??? ?????? ?? 21 241 619 DKK (?????? 2,85 ?????????? ???). ? Z Luxembourg, ??? ??? ?????, ??????? ??? A Fund ??? ?????? ???, ? ??? ?????? ?????????? ??? ?????? ??? ??????.

73 ?? ??? ??? 10 ??????? 2010 ???, ? SKAT ??? ??????? ??? Z Luxembourg ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

74 ?? ?????? ??? 31?? ??????? 2012, ? ?????? ?????????? ?????????? ?????????? ??? ?????? ??? SKAT. ? ?????? ?????? ?? ?????? ??????????:

«[? Z Luxembourg] ??? ?????? ?? ?????????? “?????????” [beneficial owner] ??? ?? ?? ?? ?????? ??? [?????????] ??? ?????? ??? ?????? ??? ?????? ??? [2003/49].

????? ?? ?????? ???, ??????, ? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? [Z Luxembourg] ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? Z Denmark ??? ?????? ??? ?????? ???.

?? ??? ???????, ??? ?? [Z Luxembourg], ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? [Z Denmark] ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? [Z Denmark] ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? [Z Luxembourg] ??? ?? ?????? ??? ?????? ??? ?????? ???.

????????? ?? ?????????????? ?? ??? ?????????? ?????? ??? ?????????? ?????? ??? ?????????
?????????? ??????????, ??? ?????????? ??? ?? ?????? ??? ?????????? ??? ?? ?????????? ??? ?? ??????????
????? ??????????? ?????? ??? ?? ?????? ?? ?????????? ??? ?? ?????????? ??? ?? ??????. ??????????, ?
????????????? ?????? ?????? ?? ?????? ?????? ?????-????? ?????? ?????????? ?????? ??????
????????? ? ??????????? ?????? ?????? ?????? ?????? ?? ?? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??????.

???? ???????, ??? ?????????????? ??? [Z Luxembourg] ?? ?????????? ??? ?????????? ???
??? ?????? ??? ?? ???, ??? ?????????? ??? ??? [????????? ?????? ?????? ??? ??
????????? ??? ?? ??? ?????] /??? ?? ??? ????? [2003/49].

????????????? ??? ?? ?????? ??? ?????????????? ??? ?? [Z Luxembourg] ??? ??????
????????? ???????, ? ?????? ?????? ?? ?????????? ???????, ?????????? ???????
????? ?????????? ??? ?? ??? ?????? ??????. ?????? ?????? ?? ??????? ?????? ??? ??
????? ?????????? ?? ??? ?????? ?????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ??? ??
????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?? ?????????? ??? ?????????? ?????? ??? ??
??? ?????? ?? ??? ?????? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??????????
?? ?????? ?? ??? ?????? ??????, ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ???
?????????..»

75 ? Z Denmark ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ???
?????? ??? ?????? ??????????.

76 ?????? ??? ?????????? ???????????, ? Z Denmark ???????, ?????? ???, ??? ?
???? ??? ?????? 2003/49 ?????? ??? ??? «?????????» ?????? ?????? ??? ??????? ???
????? ??? ?????? ?? ?????????? ?????????? ??? ??? ?? ??? ?? ?????????? ???????????
????????? ??? ????. ?? ??? ??????????, ? ?????????? ?????? ?? ?????? ??? ??? ?? ???????
??? ?????????? ?????????? ?????????? ??? ??? ?? 1977 ??? ??? ?????????? ??????.
??? ?????????? ?????????? ?????????? ??? ??? ?? ??? ?????????? ?????????? ??? ???????, ? Z
Denmark ?????????? ?? ???, ?? ??????????, ?????? ?????????? ??? ??? ??? ?????? ???
?????? 2003/49.

77 ?????, ? Z Denmark ?????? ??? ?????? ??? ?????????? ??? ?? ??? 43 ?? ?????????? ???
????????? ??? ?????????? ??? ?????????? ??? ?????? ???????, ? ?????? ?????? ???
???? ?????? ??? Z Luxembourg ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ??? ?????? ??? ?????????? ?? ?????????? ?? ?????? ??? Z Denmark.
?????????, ?? ? Z Luxembourg ??? ?????? ??? ?????, ?? ??? ?? ?????????? ?? ?????? ??
????? ?? ??? ?????? ??? ??? ?? ??? ?????????? ??? ?????? ??? ??????.

78 ??? ?????? ?? ?????????? ??? ???, ? Z Denmark ?????????? ??? ??????????
????????? ?????????? ??? ?????? ?? ??? ?? ?????????? ??? ?????????? ??? ??????????
??????, ? ?????? ??? ?????? ??? ?????????? ??? ??????? ??? ?? ?????? ??????????
????????? ??????. ???????, ?? ?????? ?????????? ??? ??? ?? ?????? ??? ?????? ???
????????? ?????????? ??? ?? ??? ?? ?????????? ??? ?????? ?????????? ??? ?????? ??? ??????
??????, ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
??????, ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????? ???.

79 ??? ??? ?????? ??? Vestre Landsret (?????? ??? ?????? ???????????, ????)
????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ?????????? ??? ?????????? ??
????????? ?????????? ??? ??????:

«1) ?) ??????? ?? ?????? 1, ??????????? 1, ?? ?????????? ?? ?? ?????? 1, ??????????? 4, ??? ??????? [2003/49], ?? ?????????? ??? ?? ?????? ?????? ??? ?????? ?????????????? ?? ?????? ?????? ???? ? ?????? ?????? ???? ?????? ?????? 3 ??? ?????? ???, ??? ??? ?????????????? ??? ??????, ?????, ?????????? ??????, ?????, ????? “??????????” ??? ?? ??? ?????? ??? ?????? ??? ??????;

?) ?????? ? ?????? ??? ??? “??????????” ??? ????? 1, ?????????? 1, ?? ?????????? ??
?? ????? 1, ?????????? 4, ??? ?????? [2003/49], ?? ?????????? ??????? ?? ??? ????? ??
????????????? ??? ? ?????? ?????????????? ??? ????? 11 ??? [????????????? ??????????
????????? ??? ??? ??? ??? 1977];

) ?? ?????????? ??????????? ?????????? ??? ?????? ???????, ?????????? ?, ?????? ?
?????? ?? ???? ?? ??????????? ??? ?? ?????? ?????? ??? ?????? ??? ??????? ?? ???? 11 ??
[????????????? ??????????? ?????????? ??? ?????? ??? ?????? ??? 1977] (?????? 8), ? ??????? ????? ??
????????? ?? ??????? ????? ?????????????? ???????, ????? ?? ?????????? ???
????????????????? ?? 2003 ??????? ?? ??? “????????-??????” (?????? 8.1, ??? ??????
10.1) ??? ?? 2014 ??????? ?? ??? “?????????? ? ?? ??? ????? ??????????” (?????? 10.2);

?) ??? ??????? ?? 2003 ??????? ?? ??????? ?????? ??? ?????????????: ??? ???????
?????, ??? ??? ?????????? ??? ?????????? ?? ??? ?????????? ?????? ?? ?????????? ??? ??? ??? ???
"?????????????" ??? ??? ????? ??????? ?? ?????? [2003/49], ?? ??????? ??? ?? ?????????? ???
?????????? ??? ?????????? ?????? ("roll-up"), ??? ? ?????? ??? ?????? ??? ?????? ?????????? ?
?? ??? ????? ?????????? ?? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??? ??
????????????? ??? ?? ??????? ??? ?????? ?????????????/????????????? ?? ?????? ??? ?? ?????
????????? ??? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?? "?????????" ??? ??
????? ?????????? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????
????? ?????????? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ???????????, ?????? ??? ??????????
????? ??? ?? ?????? ??? ?????????????? ??? ?????? ?????????? ?????? ??? ?? ??? ?? ??? ??
????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ?????????? ??? ?????;

?) ???? ??????, ??? ?? ?????????? ??? ?????????? ?? ? ?????? ??? ?????? ?????? ?????? ??
????????? ?? “????????????” ??? ?? ?????? ??? ??????, ? ?????? ??? ?????????? ??? ??
????? ??????????, ??????? ?????????? ??? ?????????? ?????????????? ??????????????, ??? ??????????,
?? ??????? ?? ?????????? ??? ?? ??????, ????? ?? ??? ?????? ?????????? ?? ?? ?? ?????
????????? ?? ?????????? ?? ?????? ??? ?????? ??? ??????, ??? ?? “??’ ??????”
???????? “?????? ?? ??????????” (“use and enjoy”) ??? ?????? ??? ?????????? ??? ??????
?? 2014 ??? ??? [????????????? ?????????? ?????????? ??? ??? ?? 1977];

2) ?) ??????????? ? ?? ?????? ?????? ?????? ?????? ?????? 5, ?????????? 1, ???
?????? [2003/49], ?? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ??? ???? ?????? ???
????? ??? ??? ???????????, ? ??? ?????? 5, ?????????? 2, ??? ?????? ??? ?? ???
????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??? ?????? ??? ?????? 5 ???
??????, ? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ? ?????? ?????? ???
?? ?????, ??? ??????????? ??? ?? ?????????? ??? ?????? ?????? ?? ?????????? ?? ?????? ???
?? ??? ?????? 5;

?) ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??, ?????????? ??, ??????????
?? ?????? 2, ?????????? 2, ???????? d, ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??????????
????????? ??????????, ?? ?????? ?????? ?? ? ?????????????? ?????????????? ?????????????? ??? ???
????????????? ??? ?????? ??? ?????????? ??? ?????????????? ??? “?????? ?? ? ?????????????? ??? ???
[...] ???' ?????????? ??? ?????? 2003/49/?? ??? ??? ?????????? ?????? ?????? ??????????
????????????? ??? ?????? ??? ??? ?????????????? ??? ?????????????? ?????? ?????? ??????????????

????????? ?????????????? ?????? ?????", ?? ??????? ?????? ?????? ?????? ?????? ?????? ?????? ??
?? ???? 5 ??? ??????;

3) ??????? ?????? ?????????? ??????? ??? ?? ??????? ??? ?????????????? ?????????????? ???
????? 5 ??? ?????? ? ??????? ?? ?????????? ??? ?????????? ??? ??? ?????? ??? ?????? ??? ??????
??? ?????? ?????????? ??? ??? ?????????? ?????? ?? ?? [?????????] ??????????
????????? ??? ???], ??? ???? ?????? ?????????? ??? ?????? ?????? ?????????? ??? ?? ??? ??????
????? ??? ?????? ?????????? ?? ? ?????????? ??? ??????;

4) ?????? ?????? ??? ?????? [2003/49] ? ?? ?????? 10 ?? ?? ?????? ??????, ?? ??????
????????? ?? ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????????? ???
????? ??? ?????????? ??? ? ?????? ??? ?????? ?????? ?????? ??????????-?????, ?? ??????????
????? ?????? ??? ?????? ??????????;

5) ?? ?????????? ??? ? ??????? ??? ?????? ?????? ?????? ?????????? ?????? ??? ? ??????
?? ?????? ?????? ??????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ??????????
??? ?? ?????? ?????? ??? "?????????" ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? [2003/49] ???, ???????, ?????????? ??? ?????? ?????????????? ?????????? ???
?? ?????? ?????? ??? ?????? ??? ?? ?????? ?????? ?????, ?????????? ?? ?????? 43 ??, ??
????????? ?? ?? ?????? 48 ??, ?? ?????????? ?????? ??? ?????? ?? ?????? ?????? ?????? ???
????????? ??? ?? ?????? ?????? ?????, ??? ?????????? ?????? ??? ?????? ??? ?????? ???
?????????, ?????????? ??? ?????? ??? ?????, ??? ?????? ?? ?????????? ??? ?? ??? ?????
????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????????? ?????? ?????? ???
????? ?? ?? ?????? ?????? ?? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???
????? ?????? ?????? ??????;

6) ???, ??????????, ?????? ?????????????? ?? ?????? ?????? (????????? ??????) ???
?????? ?? ??????? ?? ??????? ?? ??????, ???' ?????????? ??? ?????? [2003/49],
????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ??????
????????????? ?? ??? ?????? ?????? (????????? ??????) ??? ?????? ?? ?????????? ??????
????? ?????? ??? ? ?????? ?????? ??? ?????? ?????????????? ?????????? ??? ??????
??? ?????? ?????, ?????????? ?? ?????? 43 ??, ?? ?????????? ?? ?? ?????? 48 ??, ??
????????? ?????? ??? ?????? ?? ?????????? ?????? ?????? ?????????? ??? ?????? ??? ??
????????????? ??? ?????? ??? ?????? ?????? (?? ?????????? ??????) ?? ?????????? ??????
????????????? ?? ?????? ?????? ?????? ?????? ?????? ?? ??? ?????? ??? ??????????????
????? ???, ??? ?????? ?? ?????????? ?????? ??? ?? ?????????? ??? ?? ??? ?????? ??????
????????? ??? ?? ?????????? ??? ?????? ?????????? ?????? ?????? (?? ?????? ??????)
????? ?? ?????????? ??? ?????? ?????? (????????? ??????) ??? ?????? ?????? ??? ??
????? ?????? ?????; ??

7) ???, ??????????, ?????? ?????????????? ?? ?????? ?????? (????????? ??????) ???
?????? ?? ??????? ?? ??????? ?? ??????, ???' ?????????? ??? ?????? [2003/49],
????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ??????
????????????? ?? ??? ?????? ?????? (????????? ??????) ??? ?????? ?? ?????????? ??????
????? ?????? ??? ? ?????? ?????? ??? ?????? ?????????????? ?????????? ??? ??????
??? ?????? ?????, ?????????? ?? ?????? 43 ??, ?? ?????????? ?? ?? ?????? 48 ?? (????/?? ?? ??
????? 56 ??), ??????? ? ??? ?????, ?? ?????????? ?????? ??? ??????:

- ?? ?????????? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?? ?????????????? ???
????? ??? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ???
????????? ??? ??? ?? ?????????????? ?????? ???, ??? ?????? ??????????
????????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??????

??????;

– ??????? ??????? ?? ?????????? ?????? ?????? ?? ???? ?????????? ?????? ?????? ???????????
?? ?????????????? ?????? ?????????????? ?????? ?????? ?????? ?????? ?????????????? ???,
????? ? ??????? ?????? ?? ?????? ?? ?????????? ?? ?????? ?????? ?????? ?????????????? ???,
????????? ?? ?????? ?????? ?????? ?????????????? ??? ?????????????? ??? ?????? ??? ??????
????????? ?? ?????????????? ??? ?????? ???;

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

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

80 ??? ??? ?????? ??????? ?? ?????????? ?????? ?????? ?????? ?????, ?? ?????? ???????
?????? ??? ??????? ?? ??????? 2003/49 ??? ??? ?????????? ??????????? ???
????????????? ??? ?????? ???????, ?? ?????????? ?????? ?????? ?? ?????????????? ???
?????? ??? ?????? ???????.

81 ?? ??????? ?? 2?? ??????? 2017, ? ?????? ?????????? ??????, ??????? ?? ?? ?????
16, ??? ??????, ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???, ??? ???????
??? ?????????? ??? ?? ?????? ??????? ?????????? ?????????? ??? ?????????? ???, ??? ???????,
????????????? ??? ?? ?????????? ??????? ?????????? ??? ?????????? ?????? ??? ?? ??????????
C?116/16 ??? C?117/16, ?? ?????? ?????????? ?????????? ??? ?????????? ??? ?????????? ???, T
Danmark ??? Y Denmark Aps (C?116/16 ??? C?117/16, EU:C:2019:135), ? ?????? ???????
????????? ?????? ?? ?????????? ?? ?????????? ???' ?????????? ??? ?????? 77 ???
????????? ?????????? ??? ?????? ??' ?????????? ?????? ??? ?? ?????? ??? ?????? ??? ???????
?????. ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???.

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

82 ?? ?????????? ?????? ??? ?????????? ?? ?????? ?????????? ?????????? ??????? ???
?????????. ?? ?????? ?????? ??? ?????? ??? ?????? 2003/49 ?????? ??? ???
«?????????», ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ?? ???????, ??? ?????????? ?????????? ?????????? ??? ?????????? ??? ???????
??? ?????????? ??? ?????? 1, ?????????? 1, ??? ?? ??? ?????? ???, ?? ?????? ??? ???????
????? ?? ?????? ?????????? ?? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ??????
????? ???, ?? ?????? ?????? ??? ?????? ?? ?? ??? ?????? ?????????? ?????? ?? ???????
??? ?????????? ?????? ?????????? ?????????? ?????????? ??? ?????? ?????????? ??????
????????? ????. ????, ?? ?????? ??????, ??? ?????? ?? ?? ?????????? ?? ??????
????????? ???? ?? ?????????? ??? ?????? ?????? ?????????? ?????? ?????? ?????? ???
????? ?? ?????????? ?? ??? ?????? ?????? ?????????? ?? ?????????? ??? ?????? ?????? ???
2003/49, ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????
????????????? ??? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????
????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
??? ?????????? ???.

??? ??? ?????? ??????????, ??????? ?? ???, ??? ?????? ?????????? ??????????,
????????? ?? ??? ??, ??? ??? ?????? ?????????? ??? ?????????? C?115/16, C?118/16,
C?119/16 ??? C?299/16

83 ??????, ?? ?? ?????? ?????????? ??????????, ?????????? ?? ??? ??, ??? ?????? ??????
C?115/16, C?118/16, C?119/16 ??? C?299/16, ?? ?????? ?????????? ?????????? ???
????? ?? ?????????? ?? ?????? ??? «????????? [?] ??? ?????, ??? ?? ??? 1, ?????????? 1

??? 4, ??? ??????? 2003/49. ????????, ?? ?? ?????? ?????????????? ??????????, ?????????? ??
??? ??, ??? ?? ????? ?????????? ??? ?????????? C?115/16, C?118/16, C?119/16 ???
C?299/16, ?? ??????? ?????????? ?????????? ???' ?????? ??? ? ?????????? ??? ??????? ?
??? ??????????, ??? ????? ?????????? ?? ????? 5 ??? ?????? 2003/49, ?????????? ???
????? ?????????????? ??? ?????? ?????? ? ?? ?????? ?????? ?????????? ??? ???
????????? ??? ?????? ??? ?????? ??? ?????????? 1 ??? ?????? ??????. ?? ?????????? ???
?????? ??? ?????? ??? ?????????? ??? ?????? ?????? ? ?? ?????? ?????? ?????? ???
????????? ??? ?????? «?????????» ?????? ?? ?????????? ??? ?????????? ?????? ???
??? ?????????? ??? ?????? ??? ?????? ?????????? ??????????.

??? ??? ??????? ??? «?????????? ??? ???»

84 ??????? ?? ??????????? ??????? ??? ? ??????? ??? «?????????? ??? ???», ???
?????????????? ??? ??? 1, ??????????? 1, ??? ??????? 2003/49, ??? ?????? ??
?????????? ?? ??????? ??? ??????? ??????? ??? ??????? ?? ??? ?? ??????? ?? ???????????.

85 ???????, ??? ?????? ?? ???? ?????????????? ??????? 2 ??? 4 ??? ?????? 2003/49
????????? ??? ? ?????? ??? ?????????? ??? ?????? ?????? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ???
??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????, ?? ??? ?????? ??????, ? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ???
????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
??? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
(?????? ??? 21?? ?????? 2011, Scheuten Solar Technology, C?397/09, EU:C:2011:499,
????? 24).

86 ?? ?????? ?????????? ??? ??????? 2003/49, ??? ?????????????? ??? ?????? 1,
????????? 1, ??????, ???????, ??? ??????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????????????? ??? ?????? ???, ??? ? ?????????? ???
????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???, ??????????????
?? ????? ?????? ???, ? ?????? ?????? ?? ?????? ?????? ?????? ?????? (??????? ??? 21??
??????? 2011, Scheuten Solar Technology, C?397/09, EU:C:2011:499, ??? 25).

88 ? ????? ???? ?? ????? ??????? ??????? ?? ???? «????????????? ??? ?????» ??????? ????
????????? ?? ?????????????? ?? ?????????????????? ?????????? ??? ?????????? ?????????????? ???
?????? ?? ???? ??????????????. ?? ?????? 1, ?????????? 4, ?? ???? ?????? ?????? ?????????? ???
????????? ??? ???? ????? ?????????? ??????????????, ?????????????????? ??? ?????????? ???
????????? ?????? ?????????? ?? ?????????? ?????? ? ?????????? ?????? ?????? ?????? ?????????? ???
????????? ??? ???? ??? ?????????? ??? ??? ???? ??? ?????? ?????? ??? ??????????????, ??? ???? ???
????????????? ??? ?????? ??? ?????????? ??? ???? ?????????? ?????? ??????????????, ??? ???? ???
?????????.

89 ????? ?????????? ??? ?? ????? 10 ??? ?????????? ??????????, ??? ?????????? ??????????
????????? ??? ?????? 1, ?????????? 1, ??? ?????? 2003/49, ??? ???? ???? ?????????? ???
??????????, ???????, ?????????? ??? ?????????? ??????, ?????????????? ??? ??? «????? ???
?????????», ?? ?????? ?????????? ?????????? ?????????????? ?????? «????? ???
????????? ??????????» (????????? ??? ??????????, ??????, ??????, ??????, ??????, ??????, ??????,
?????, ??????)

???????????, ??????????, ?????????????? ??? ?????????????? ??????) ? «??????»/«????? ???
?????????? ?? ?????????????» (????????? ??? ??????????, ??????, ????????, ????????,
?????????, ????????, ????????, ?????????? ??? ?????????? ??????), ? «?????? ??????????»
(?????? ??? ?????????? ?????). ? ?????? ?????? ??? ?????????????? ??????
????????????? ??? ? ??? «?????????» ??? ?????? ??? ?????????? ?????????????????? ???
???? ??? ??????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????????????? ???,
?? ?? ??????, ??? ??? ??????? ?? ?????????? ???????? ??? ?? ???????????????. ???
????????????? ??? ?????? 86 ??? ??????? ??????????, ??? ??? ??????? ??????????????
???? ?????? ??????? ?? ?????????? ?????????? ??????, ? ?????? ?????? ?? ?????? ???
????????? ??? ?????????? ??? ?????? 1, ?????????? 1, ??? ?????? 2003/49.

90 ????????, ??? ?????????? ??? ?? ?????? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ??
????????? ?????? ?????? ?????????? ?????????? ??? ?????? ??? ?? ?????????? ??? ??
????????????? ?????? ?????? ?????????? ?????? ?????????? ?????????? ?????? ???, ???
????????? ??? 6 ?????? 1998 [COM(1998) 67 ?????], ??? ?????? ?????????? ? ?????
2003/49, ? ?? ??? ?????? ?????????? ??? ?? ??? 11 ??? ?????????? ??????????
????????? ??? ??? 1996 ??? ?????????? ??? ??? ?????, ??? ??? ?????? ??? ??????
????????? ??????. ? ?????? ??? ??? «?????????», ??? ?????????? ??? ??????
????????? ??? ?????????? ??? ?????????? ???, ??? ??? ?? ?????????? ??????????????
??? ?????? ??? ?? ??? ?????? ??? ?? ?????? ??? ?????? ???, ???, ???, ??? ??
??? ?????? ??? ?? ??? ?????? ??? ?? ??????.

93 ?? ?????????? ?????????? ???. ?????????????? ??? ?? ?????? ??? ?????? ?? ?????? ?????? ?? ?????? ???.
????? ?? ?????????? ?????????? ?????? ??? ??????, ??? ? ?????? ?????????? ??????????
???????, ?????????? ?????? ???. ????????, ?????????????? ??? ?? ??????
?????????, ?? ?????? ?????????? ??? ?????? 16 ???. 18 ???. ?????????? ??????????,
????????? ??? ???. ?????? «?????????» ????. ????. ?????? ??? ???. ?????? ??????????.

94 ?????????????????? ?????? ??? ?????????? ??? ?????? ??? ? ?????????? ??? ??????????
????? ?????? ?? ??? ?????? ?????? ??? ?????? ? «??????????» ???? ??? ?????????? ???' ??????
??? ??? ?????????????? ? ?????????? ??? ?????????????? ??? ?????? 1, ?????????????? 1, ??? ??????
2003/49. ????????, ?????? ?????????????? ?? ?????? ?????? ?? ?????????????? ?????? ???
?????? ??????, ??? ?????? ??? ?????? ??????????????, ?????? ? ?????????? ??? ????? ??????????
????????? ?? ??? ?????? ??? ?????????????? ?????????????? ??? ??????, ? ?????? ??????
????????? ??? ?????? ??? ?????????????? ??? ?????? ? ?????? 2003/49 ???? ?? ?????????? ???

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

??? ??? ?????????????? ??? ?????? ?????????? ?????????????? ??? ?????? ?????? ? ?? ??????
?????? ??? ?????????? ?? ??????? ?? ?????? 5 ??? ?????? 2003/49

95 ?? ?????????? ?????????? ???, ??? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????????? ??? ?????? ??? ?????????? ??? ?????? 2003/49, ??? ?????? ??? ?????? ???
???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ???
???? ?????? ??? ?????? ??? ? ?? ?????? ?? ?????????? ?? ?????????????? ??? ??????
????? ? ?? ?????? ?????? ?????? ?????? ??? ?????????? ??? ?????? ??? ??????????.

96 ??????, ??? ?????? ????????, ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????????????? ???
? ?????????????? ??? ?????? ??? ?????? ??? ?????? (????????? ??? 9?? ?????? 1999,
Centros, C?212/97, EU:C:1999:126, ??? 24 ??? ??? ?????????????? ??????????, ??? 21??
????????? 2006, Halifax ?., C?255/02, EU:C:2006:121, ??? 68, ??? 12?? ??????????
2006, Cadbury Schweppes ??? Cadbury Schweppes Overseas, C?196/04, EU:C:2006:544, ???
35, ??? 22?? ?????????? 2017, Cussens ?., C?251/16, EU:C:2017:881, ??? 27, ??? 2??
11?? ?????? 2018, ??????? ??? ???????, C?356/15, EU:C:2018:555, ??? 99).

97 ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????????? ??? ?????? ??????.
???????????, ? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ???
????? ??? ?? ?????? ??? ?????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ?
????????????? ?????????????? ??? ?????????????? ??? ?????????????? ??? ?????? ??? ??????
(???. ?????????? ??? 5?? ?????? 2007, Kofoed, C?321/05, EU:C:2007:408, ??? 38, ???
22?? ?????????? 2017, Cussens ?., C?251/16, EU:C:2017:881, ??? 27, ??? 2?? 2??
11?? ?????? 2018, ??????? ??? ???????, C?356/15, EU:C:2018:555, ??? 99).

98 ?? ?? ??????, ?????????? ??? ??? ??? ??? ??? ??? ?????? ??? ?????? ?????? ?????? ???
????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

99 ????? ??????, ??? ??????????, ??? ? ?????????? ??? ?????? ?????? ?????????????? ???
????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? (???. ?????????? ??? 27?? ?????? 1981, Schumacher ?., 250/80,
EU:C:1981:246, ??? 16, ??? 3?? 3?? 1993, General Milk Products, C?8/92,
EU:C:1993:82, ??? 21) ? ?????????? ??? ??? ?????? (???. ?????? ??? 14??
????????? 2000, Emsland-Stärke, C?110/99, EU:C:2000:695, ??? 59).

100 ???????, ? ??? ??? ?????????????? ??? ?????????? ?????????????? ?????????????? ???
????????? ???, ??? ? ?????? ?????????? ??? ?????? ??? ?????????? (????????? ??? 10??
????????? 1985, Association des Centres distributeurs Leclerc ??? Thouars Distribution,
229/83, EU:C:1985:1, ??? 27), ? ?????? ??? ?????? ?????? (????????? ??? 3??
????????? 1993, Veronica Omroep Organisatie, C?148/91, EU:C:1993:45, ??? 13), ??
????????? ?????? (????????? ??? 11?? ?????????? 2014, Azienda sanitaria locale
n. 5 «Spezzino» ?., C?113/13, EU:C:2014:2440, ??? 62), ? ?????????? ?????????? ???
(????????? ??? 9?? ?????? 1999, Centros, C?212/97, EU:C:1999:126, ??? 24), ?? ?????? ???
????????? (????????? ??? 23?? ?????? 2000, ????????, C?373/97, EU:C:2000:150, ??? 33),
? ?????????? ?????? (????????? ??? 2?? ??? 1996, Paletta, C?206/94, EU:C:1996:182,
????? 24, ??? 6?? ?????????? 2018, Altun ?., C?359/16, EU:C:2018:63, ??? 48, ????

??? ?? 11?? ??????? 2018, ??????? ??? ???????, C?356/15, EU:C:2018:555, ????? 99), ?? ??????? (?????? ?? 6?? ??????? 2006, Agip Petroli, C?456/04, EU:C:2006:241, ??????? 19 ?? 25), ? ??????? ??????? (?????? ?? 28?? ??????? 2016, Kratzer, C?423/15, EU:C:2016:604, ??????? 37 ?? 41), ?? ?????????????? ????? (?????? ?? 21?? ??????????? 2011, C?72/11, Afrasiabi .??., EU:C:2011:874, ????? 62), ? ????? ? ????? ?????????????? ????? (???) (?????? ?? 21?? ??????????? 2006, Halifax .??., C?255/02, EU:C:2006:121, ????? 74).

101 ????? ?????? ??? ????? ??, ?? ?????????????? ??? ????? ?????????????????? ?????????????? ???,
????????? ? ?????????????? ??? ??????????????, ??? ?????????????? ??? ?????? ??? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? 77/388/???
??? ??????????, ??? 17?? ????? 1977, ??? ?????????????? ??? ?????????? ??? ??????????
?????, ??? ?????? ?? ??? ????? ?????? ?????? ?????? – ??? ?????? ?????? ???
????????????? ????: ?????????? ?????????? ??? (?? ????. ???.. 09/001, ?. 49), ? ???? ???
????????? ??? ?????????????? ?????????? ?????????? ?????????? ?????? ??? ?????? ??? ??????
??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????????????? ???
????? ?????? ?????? ?????????? ?????????? ??, ?? ?????????? ? ?? ?????? (???.
????? ??? 22?? ??????? 2017, Cussens ??., C?251/16, EU:C:2017:881, ?????? 30 ??
31).

102 ????????, ? ?????? ??? ?????????????? ?????????????? ?????????? ?????? ??
?????????? ?? ?????? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ??
????????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?? ?????? ?????? ??? ?????? ??
????? ?????? ???. ?? ?? ??????, ?? ?????????? ?????? ??? ? ?????? ??? ?????? ??
????????? ?? ?????????? ??? ?????? ?????????? ?? ??? ??? ???????????, ?????? ???,
?? ?????? ?????? ??? ??? ???, ?????? ??? ?????? ?????????? ??? ?????? ??? ??????
??? ?? ?????????? ?????? (???. ?????????? ??? 18?? ?????????? 2014,
Schoenimport «Italmoda» Mariano Previti ???., C?131/13, C?163/13 ??? C?164/13,
EU:C:2014:2455, ????? 62, ????? ??? ??? 22?? ?????????? 2017, Cussens ???., C?251/16,
EU:C:2017:881, ????? 33).

103 ????? ?????????? ??? ?????? ??????, ?? ??????? ??? ?????? ???????, ??? ???? SKAT,
????????????? ??? ?????? ?? ?????????? ??? ?????? 2003/49, ??? ??????? ??? ?? ??????????
??? ??????? ??? ?????? ?????? ??? ?????? ?? ?????????????? ?????????? ?????? ???
????????? ???????, ??? ?????? ?????? ?????? ?????????????? ??? ?????, ??? ?????? ???
????????????? ?? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??????. ???
????????? ??? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? 90 ??? ??????
?????????, ?????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????? ?????? ??????????
??? ??????? ??? ?????? 11 ??? ?????????? ?????? ?????????? ??? ?????? ??? 1996.

104 ?????????? ?? ???? 5, ??????????? 1, ??? ??????? 2003/49 ?????????? ?? ???? ????
????? ??? ?????????? ??? ??????? ??????? ?????????? ?????????? ? ?????????? ??? ?????????? ??
??????????, ??? ????? ?????????? ??? ??? ?????? ??????? ???? ?????? ???????, ? ?????????? ???
??? ?????? ?? ?????????? ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???
??? ?????? ??? ?????? ??? ?????????????? ??? ?????????????? ??? ?????????????? ??? ??????????, ???
?????????? ??? ?????? 96 ??? 98 ??? ??????? ??????????. ????????, ?? ??????? ??
????? ??? ?????? ?????????? ??? SKAT ??????? ?????????? ?????????? ?????????? ??????????
??? ?????? ?????????? ??? ??????? ??? ?????? (?????. ??????? ??? 22?? ?????????? 2010,
Weald Leasing, C?103/09, EU:C:2010:804, ??? 42) ??? ??? ????? ?????????? ??????????
????? ??? ?????? ??? ?????????? ? ??????? ???.

105 ????????, ??????? ?? ??? 5, ?????????? 2, ??? ?????? 2003/49 ??????? ?? ??

????? ???? ???????, ?? ??????????? ???????????, ??????????? ? ???????????, ?? ???
?? ?????????? ??? ?????? ????? ? ?? ??????? ??? ??????? ???, ??? ? ?????? ???
????? ?? ?????????? ??? ??? ?????? ??? ??????? ??? ??????? ??? ?????? ??? ??????
??? ?????? ??? ?????????? ??? ?????? ?????????? ?????, ?????? ? ??????? ??? ??
????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ???, ??? ??
????????? ??? ?????? ?????? (????. ?????? ??? 22? ?????? 2017, Cussens ???.,
C251/16, EU:C:2017:881, ?????? 28 ??? 31).

106 ??? ??????????? ??? ??? 85 ??? ??????? ??????????, ??? ??? ???????????
?????? 2 ??? 4 ??????? 2003/49 ??????? ??? ? ?????? ??? ?????????? ??? ??????????
??? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????????? ?????? ?????? ??? ?????? ?????? ?????????? ???
????????? ???, ??????????, ???, ?? ?????????? ?????? ?????? ?????????? ???
????????? ??? ?????? ??? ?????????? ?????????? ??? ??? ??? ?????????? ???, ???, ???,
????????? ??? ? ??? ?????????? ?????? ?????? ?????? ??? ?????? ??? ??????????
?????????.

107 ??? ???, ?? ?? ?????????? ? ?????????? ?????????????? ?????????????? ??
????????? ??? ?????? ??? ?????????? ?????????? ?????????????? ??? ?????????? ??? ??
????????? ??? ?????? 2003/49 ??? ?????? ?? ?????? ?????? ???, ????????, ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ???, ????????
????? ??? ??? ??????????. ??? ??????????, ?? ??????, ? ?????? ?????????? ???
????? 63 ??? ?????????? ??? ?????? C2115/16, ??? ?????? ?????? ??? ??? ??
????????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ?????, ?? ?? ??????????
????? ??? ??? ??? ?????? ?????????? ??? ?????????? ?????? ?????? ?????, ?? ??
????????? ???, ??? ? ?????? ?????? ?????????? ?????????? ?????? ?????? ??? ??
????? ??? ?????? ?????? (????. ?????? ??? 21? ?????? 2008, Part Service,
C425/06, EU:C:2008:108, ??? 45, ??? ??? 22? ?????? 2017, Cussens ???.,
C251/16, EU:C:2017:881, ??? 53).

108 ??? ?? ???, ??? ?????? ?? ?????????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????????? ?????? ??? ?????????? ?? ?????? ??? ?????????? ??? ??
????????? ??? ?????? ?????? ??? ?????? ?????????? ?? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ?????? ?????? ???, ?????????? ??? ?????? ??? ?????? ???
????? 2003/49 ??? ? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??? ??
????????? ??? ?????? ?????????? ??? ?????? ?????????? ?? ?????????? ??? ??? ??
????? ??? ??? ?????????? ??? ?????? ?????????? ??? ???, ????????, ? ??????????
????? 6 ??? ?????? ??? ?????? ?????????? ??? ??? ?????? ?? ?????????? ?? ??? ??
?? ?????????? ?? ?????????? ?????? ?????? ?????????? ??? ?????? ??? ??????????.

109 ??? ? ??????? ? ??????????, ??? ??? ???????????, ??? ?????????? ??? ??
????????? ?????????? ??? ??????, ??? ???????, ?? ?????????? ?????? ???????
????? ? ?????????? (????. ??????? ??? 12? ?????? 2006, Cadbury Schweppes
??? Cadbury Schweppes Overseas, C196/04, EU:C:2006:544, ??? 50, ??? 29? ???????
2011, National Grid Indus, C371/10, EU:C:2011:785, ??? 84, ??? ??? 24? ???????
2016, SECIL, C464/14, EU:C:2016:896, ??? 60), ?????? ?????????? ??? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ???
????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????? (????. ??????? ??? 12? ?????? 2006, Cadbury Schweppes ??? Cadbury
Schweppes Overseas, C196/04, EU:C:2006:544, ??? 51, ??? 7? ?????? 2013, K,
C322/11, EU:C:2013:716, ??? 61, ??? ??? 25? ?????? 2017, Polbud –

Wykonawstwo, C?106/16, EU:C:2017:804, ??????? 61 ??? 63).

111 ?? ?? ???????, ??? ?? ??????? ??? ??????? ?????? ??? ??????? ??? ??????? ??? ??????? ???
????????????? ??? ?????????????? ??? ?????????? ??? ?????? ??? ??????? ?? ?????????? ? ??? ?????? ???
????????? ??? ?????????? ??? ??????? ??? ??????, ? ??????? ??????? ?????????? ??? ?????????? ? ??????????
????????? ?????????? ??? ??????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? 2003/49, ?? ?????
????????????? ?????? ? ??????????????.

114 ???????, ?? ?????????? ??????????, ??? ???? 42 ??? ?????????? ??? 5?? ??????
2007, Kofoed (C?321/05, EU:C:2007:408), ??? ???? ??? ?????????? ??????? ?????????? ??
????????? ?? ???????, ??' ??????, ?????????? ?? ??????? ???, ???????, ?? ???????
?? ??????? ?? ???????????, ????? ???????, ??? ???? ?????? ????? ?????? ???.

117 ??????, ????, ?? ? ???????????????, ???, ?????????? ?? ???? ??????, ???, ??
????? ?????? ?? ???? ?????? ?????? ?????? ?? ???? ?????? ?? ???? ?????? ??????
????? ?? ???? 5 ??? ?????? 2003/49, ??? ?????? ?? ???? ?????? ?? ???? , ?????????? ??

118 ????????, ????, ?????????????? ?? ?????????????? ??? ?????? ?????? ?????????????? ???
?????? ?????? ???, ?????????? ???, ?????????? ???, ?????? 114 ??? ?????? ??????, ??????
????? ?????? ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???,
????????? ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???,
????????, ???, ???, ???, 18?? ?????????? 2014, Schoenimport «Italmoda» Mariano Previti ?.,
C?131/13, C?163/13 ??? C?164/13, EU:C:2014:2455, ?????? 55 ??? 56 ????? ??? ???
????????????? ??????????).

119 ?? ?? ???????, ??? ????? ??, ??? ?????????????? ??? ?????? 96 ??? ??????????
??????????, ??????????? ?????????? ? ?????? ?????????? ?????????????? ??? ?????? ?????? ??
?????????? ??????? ?????????? ?????????????? ??? ??? ?????? ?????? ??? ??????, ? ?????? ??????? ??
????????????? ?????? ???????, ??? ?? ?????????? ??? ?????? 2003/49, ??? ??????????
?? ??????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????, ??? ??????????
????? ?? ??????? ??? ?????????? ??? ?? ?????????? ?????? ?????????????? ?????????????? ???
????????? ?????????? ?? ?????????? ?? ?????????? ?????????????? ??????????????, ?? ??????
????????? ??? ??? ?? ??? ?????? ??? ?????? ?? ?????? ??? ?????????? ???, ?????????? ????
????? (?.., ???' ???????, ??????? ??? 18?? ?????????? 2014, Schoenimport «Italmoda»
Mariano Previti ???., C?131/13, C?163/13 ??? C?164/13, EU:C:2014:2455, ??? 57 ??? ???
????????????? ??????????).

120 ??? ??????? ??????????, ?? ?????? ??? ??????????, ?? ?? ??????, ?? ??????????? ??
?????????? ?? ?????????????? ?? ?????????? ?? ?????????? 2003/49, ??????? ?? ?? ??????
???? ??????????? ?? ?????????????? ?? ?????????? ?? ??????? ?? ?????? ?? ?????? ?? ??????
??? ?????? ?? ??????? ?? ?????????????? ?? ?????????? ?? ?????????? ?????? (????. ??????)
??? 11?? ?????? 2018, ??????? ?? ???????, C?356/15, EU:C:2018:555, ????? 99 ????
??? ??? ?????????????? ??????????).

121 ?????????????? ??? ?????? ??? ?????????????? ??? ?????????????? ??? ?????? 111 ??? ??????????
?????????, ?????????? ? ?????????? ??? ?????? ?????????????? ??? ?????????????? ??????????????, ??
????? ?????????, ???' ??????, ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ???
????????? ??? ?????? ?????????????? ? ?????? ?????????????? ??? ?????? ?????? ??? «????????????» ??????
?? ?????? ?????? ??? ??? ?????????????? ??? ?????? ??? ?????????????? ??? ?????????? ??????????????
??? ?????? ??? ?????? 2003/49.

122 ?????????????? ?????? ??? ??????? ??? ?????????? ??????, ??? ?????? ??????????????
?????????, ???????? ?? ??? ?, ??? ??? ?????? ?????????????? ??????????, ?????????? ?? ???
??, ??? ?????????? C?115/16, C?118/16, C?119/16 ??? C?299/16, ?????? ?? ?????? ????
?????????:

– ?? ?????? 1, ?????????? 1, ??? ??????? 2003/49, ?? ?????????? ?? ?? ?????? 1,
????????? 4, ??? ?????? ??????, ?????? ?? ?????????? ??? ?? ?????? ??? ?
????????????? ?? ??? ?????????? ?????? ??? ?? ?????????? ?????? ??????????????
????????????? ?????? ?????????????? ???????, ??? ?????? ?????????? ??? ??????????
????????????? ??? ?????????????? ??????? ??? ?????? ?????? ??? ?????????? ?? ?? ??????
?? ??????? ?? ?????????? ??????? ??? ?? ?????????????? ?? ?? ??????.

- ? ?????? ??? ?????? ??? ??????? ?? ??????, ???? ??? ?????? ?? ??????? ??? ??????? ??
????????????? ???? ??? ?????????????? ???? ??????? ?? ??????? ??? ???????, ???? ????
????????????? ???? ??? ?????? ???? ?? ??????????? ???? ?????????? ???? ??????? ???? ???
??????, ?? ???? ?????????????? ???? ?????? 1, ??? ?????????? 1, ??? ?????? 2003/49, ????, ??
????????? ???? ???? ?????????????? ???????????, ?? ???? ?????????? ?? ?????????????? ????
??? ?????? ???? ???? ?? ?????? ???????????, ???? ???? ?????????? ?? ?????????????? ????
????? ???? ???? ?????? ???? ?? ?????? ???????????, ???? ???? ?????????? ?? ?????????? ????
????? ???? ???? ?????? ???? ?? ?????? ???????????, ???? ???? ?????????? ?? ?????????? ????
????? ???? ???? ?????? ???? ?? ?????? ???????????, ???? ???? ?????????? ?? ?????????? ????
????? ???? ???? ?????? ???? ?? ?????? ???????????, ???? ???? ?????????? ?? ?????????? ????
????? ???? ???? ?????? ???? ?? ?????? ???????????, ???? ???? ?????????? ?? ?????????? ????

**??? ??? ?????? ???????????, ?????????? ?? ??? ???, ???? ?????????? C?115/16, C?
118/16 ??? C?119/16, ??? ??? ?????? ???????????, ?????????? ?? ??? ???, ???? ??????? C
?299/16, ??? ??? ?????? ??????????? ???? ?????????? C?115/16 ??? C?118/16, ???
??? ?????? ?????????? ???? ?????? C?115/16, ??? ??? ?????? ?????????? ???? ?????? C?118/16
??? ??? ??? ?????? ?????????? ???? ?????? C?119/16 ??? C?299/16**

123 ?? ? ? ?????? ???????????, ?????????? ?? ??? ???, ???? ??????????
C?115/16, C?118/16 ??? C?119/16, ?? ??? ?????? ???????????, ?????????? ?? ??? ??,
??? ?????? C?299/16 ??? ?? ?????? ???????????, ?????????? ?? ??? ??, ???? ??????????
C?115/16 ??? C?118/16, ?? ?????? ???????????, ???' ??????, ???? ?????? ??
????????? ???? ???????????, ?????????? ?? ??? ??, ???? ?????? ?? ?????????? ???? ??????
?? ??????????. ?????????? ????, ??? ?????? ????, ???? ?????? ?? ??????????
????????? ???????????, ???? ?? ?????? ??? ???????????, ???? ??????-?????? ????
????? ?? ?????????? ??????? ?? ?????? ?????? ?? ??? ??, ???? ?????? ?? ??????
????? ???? ?????? ???????????, ???? ?? ?????? ??? ?????? ???? ?????? ??????????. ?? ??
????? ?????? ???? ?????? C?115/16, ?? ??? ?????? ???? ?????? C?118/16 ??? ??
????? ?????? ???? ?????? C?119/16 ??? C?299/16, ?? ?????????? ???? ??????,
???' ??????, ?? ???????????, ?? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??
????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?? ??????
????????? ???? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?? ??????????.

??? ??? ?????????? ??? ?????????? ?????????? ???? ??? ?????? ?????????? ??????????
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124 ??? ?????????? ???? ?? ?????????? ???? ???????????, ?????????? ?? ??? ??????????
????? ???????????, ?????????? ?? ??? ?????? ???? ?????? ???? ?????????? ???? ??????
????????????? ???? ?????????? ???? ?? ?????? ?? ?????????? ???, ???? ??? ?????? ????
??? ?????????? ???? ?????????? ???? ?????????? ???? ??????, ???? ?????????? ????
????????????? ?? ?? ?????????? ???? ??????, ?????????? ?? ? ?????? ???? ??????????????
?????????, ?? ???? ?????? ?????????? ???? ?????? ??? ?????????? ?? ?????????? ????
??? ?? ?????????? ???? ?????? ???????????, ???? ?????? ??? ?????????? ????
????????? ???? ?? ?????????? ?? ?????? ???? (????????? ???? 14?? ?????????? 2000, Emsland-
Stärke, C?110/99, EU:C:2000:695, ?????? 52 ??? 53, ?????? ??? 12?? ?????? 2014, O.
??? B., C?456/12, EU:C:2014:135, ?????? 58).

125 ? ???????, ???????, ??? ?????? ?????????????? ?????????????? ??????? ??
????????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??
????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ??????????
????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? (????. ?????????? ?? 20?? ??????
2013, Newey, C?653/11, EU:C:2013:409, ?????? 47 ?? 49, ??? 13?? ?????? 2014, SICES
??., C?155/13, EU:C:2014:145, ????? 33, ????? ?? ?? 14?? ?????? 2016, Cervati ???
Malvi, C?131/14, EU:C:2016:255, ????? 47).

126 ??? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??
?????? ??????. ??????????, ?? ??????????, ?????????????? ?? ?????????????? ?? ??????????,
??????, ?????? ?????? ?????? ??????, ?? ?????????? ?????????? ?? ?????????? ?? ?????????? ??
????????????? ?? ?????? ?? ?????????? ?? ?????????? ?????????? ?? ?????????? ?? ?????? ?? ??
????????????? ?? ?????? ?? ?????????? ?? ?????????? ?????, ?????? ?? ?? ?? ?????????? ?? ?? ??
????????? ?? ?????? ?? ?????????? ?? ?????????? ?????????? ?????????? ?? ?????????? ?? ?? ??
????????? ?? ?????? ?? ?????????? ?? ?????????? ?????????? ?? ?????????? ?????????? ?? ?? ??
????????? ?? ?????? ?? ?????????? ?????????? ?? ?????????? ?????????? ?? ?????????? ?? ?? ??
????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?? ??
????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?? ?? ??.

127 ?????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ??
????? ?????????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ?????????????? ?? ??????? ??
????????? ?? ?????????? ?? ??? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ??
????????? ?? ?????????? ?? ?????????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ??
????????? ?? ?????????? ?? ??????? . ?????? ?????????? ?????????? ?? ??????? ??, ???
????????? ?? ?????????? ?? ??????? ?? ??????? ?? ?????????? ?? ??????? ?? ??????? ??
????????? ?? ?????????? ?? ??????? ?? ??????? ?? ?????????? ?? ??????? ?? ??????? ??
????? ?? ???????, ?????????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ??.

128 ?? ?? ?????, ??????? ??????? ?? ??????? ?? ??????? ?? ?????????????? ?? ?? ?????????? ??
????????????? ?? ??????? ?? ?????????????? ?? ??????? ?? ?????????? ?? ?????????? ?? ?? ?? 1,
????????? 1 ?? ?????? 2003/49 ?? ??????? ?? ?? ?? ?? ?? ?? ?????? ??????????????
?????????, ?? ?????? ?? ?????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????????
????????????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ?????????? ?? ??????????
?? ?? ?? ??????? ?? ?????????????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ??
????????????? ?? ?? ?????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ?? ??
?????? ?? ?????????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ??
?????? ?? ?????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ??
?????? ?? ?????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ??, ??????? ??, ??????? iii, ?? ?? ??
?????? ?? ?????? ?? ?????????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ??
?? ?????????? ?? ???????, ?? ??????? ?? ??????? ?? ??????? ?? ??????? ??, ?? ?? ?? ??
??????.

129 ????????, ?? ??????? ?? ?????????????? ?? ?? ?? ??????? ?? ?? ??????? ?? 2003/49
????????? ?? ??????? ?? ?????????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????????
????????? ?? ?????????? C?119/16 ?? C?299/16 ?? ??????? ?? ?????????? ?? ?????????? ??
????????? ?? ?????????? C?115/16 ?? C?299/16. ?? ??????? ?? ?????????? ?? ??????? ?? ??????????
????? ?????????? ?? ??? ?? ?????????? ?? ??????? ?? ?????????? ?? ??????? ?? ?????????? ??, ???
?? ?????????? ??????????, ?? ??? ?? ?????????? ?? ??????? ?? ??????? ?? ??????? ?? ??????????
?? ?????????? ?? ?????????? ???????, ?? ??? ?? ??????? ?? ??????? ??, ?? ??????? ?? ??????? ??
?? ?????????? ?? ?????????? ???????, ?? ??? ?? ??????? ?? ??????? ??, ?? ??????? ?? ??????? ??

130 ??????, ? ??????? ?????????? ?? ??????? ?? ?????????????? ?? ??????? ?? ?????????? ??
?????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ?????????????? ?? ??????? ?? ??????? ??
??? ?????????? ?? ??? ?? ??????? ?? ??????? ?? ?????????? ?? ??????? ?? ??????? ?? ?? ??

???? ? ? ?????????? ?????????? ?????? ?????? ?????? ?? ??? ?????? ??????? ?????? ??? ???? ?????? ????
????????????? ?????????? ??? ?????? 2003/49, ?????? ??? ?????? ?? ?????? ??? ?????? ???? ????
????????????? ??? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?? ??????????????,
????????????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ?????? ???
??? ?????? ??? ?????? ? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ????.

131 ?? ?????? ??? ?????? ?????? ?????? ?? ?????????????? ?????? ?? ?????????? ?? ?????????? ???
????? ??? ?????? ??? ?????? ?????? ?????????????? ??? ?????? ??? ?????? ??? ???? ???? ????
????? ??? ?????? ??? ?????? ?????? ?????? . ? ?????? ?????????? ?????? ?????????? ??????????
????????????? ??????, ??????, ??? ?? ?????? ??? ?????????????? ??? ?????? ?????????? ???
????? ?????? ?????????? ?????????????? , ?? ?????? ?????? ?????? ?????? ?????? ?????? ??? ???? ????
????????? ?????? ??? ?????? , ?????? ?????, ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ???, ?? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ???
????????? , ?? ?????? ??? ?????? ??? ?????? , ?????? ??? ?????? ?????????? ??? ??? ?????? ?????? ???
??? ??????.

132 ?????? ?? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??????
?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????????????? ?????? , ?? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????????
????? ?????? , ?? ?????? , ??? ?????? ?????? ??? ?????? 4 ??? ?????? 2003/49, ??????
?? ?????? ?? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
????? ??? ?????? ?????????? ?????? ?????? ?????? ?? ?????? ?????? ?? ?????? ?????? ??? ??????
????????? ?????? ?????? . ??????, ?????, ?? ?????????? ?????? ?? ?????? ?????? ?????? ?????? ??
??? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? , ?
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? , ?????? ??? ???? ?????? ??????
??? ??????-?????? ?? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??????.
??????, ?????? ?? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ? ?? ???
????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??????
?? ?????? , ??? ???? ?? ?????? ???, «???' ??????», ??? ?????? ?? ?????? ?????? ??????
????? ?????? C?115/16, C?118/16 ??? C?119/16, ? ?????? ???, ?????? ??? ?????? ??? ??????
????? ?????? ??? ? ?? ??? ?????? ?????? , ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ?????? ??? ?????? ???.

133 ?????? , ?????? ?????? ?????? ?????? ?? ?????? ?????? ??? ???? ?????? ? ?? ?????? ? ?? ??????
????????? ?????? , ?????? , ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????
????????? , ??? ???? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? , ??? ????
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? , ?????? ,
??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ???? ?????? ?????? ?????? ???
??? ?????? ??????.

134 ?? ?????? ?????? ?????? ?????? ?????? , ???' ?????? , ??? ?????? ?? ?????? ?? ??????
????????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? -?????? ?? ?????? ??
????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?? ?????? ??? ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? , ?????? ??? ?????? ??? ?????? ???
????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????
????? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

135 ?????? , ??? ???? ?????? ??? ?????? ?????? ??? ?????? , ??? ?????? ?????? ??
????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???
????? ???? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ???
????? ?????? ???? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ???.
????????? ???? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???' ?????? ??

? ?????????? ? ?????????? ? ???????????. ?? ?? ??????, ??? ?????? ?????? ??? ?????? ???
?????? ?? ?????? ??? ?????????? ??? ?????? ?????????? ?????????? ??????, ??? ??????????????
?????? ?????? ??? ?????? ?????????? ?????????? ?????? ?????????? ??? ?????????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? 1, ?????????? 1, ??? ??????
2003/49.

136 ??? ?????????? ?, ??? ? ?????????? ?????? ?? ?????????? ?? ?? ??? ??????????
????????????? ?, ? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ??? ???
????????? ??? ?? ?????????? ?? ?????? ?????? ??? ?????? ?????? ?? ?????????? ??? ??????
??? ?????? ?????? ?? ?? ?????? ?????? ?????? ?????? ??? . ??? ? ?????? ??? ?????? ??
????????? ??? ?????? ?????? ?????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
?????????, ??? ?? ?????????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???.

137 ??? ?????? ??? ?????? ?? ?????????? ?? ??????????, ?? ?????????? ??? ?? ?????? ??
????????????? ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????, ?
?????? ??? ?????????? ??? ?????? ?? ??? ?????????? ?? ?????????? ??? ?????????? ???
????????? . ?? ??? ?????? ??????????, ??? ?? ?????? ?? ?????????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
?????????.

138 ????, ??? ? ?????????? ??? ?????????? ?????? ?????? ?????? ?? ??????????
????????? ??? ?? ?????? ????, ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ??????
1, ?????????? 1, ??? ?????? 2003/49 ?????? ?????? ??? ?? ?????? ??? ?????? ??? ??????
????????? ?????????? . ????????, ??? ?????????? ???' ??????, ??? ?????? 86 ???
????????? ??????????, ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? , ?????????? ?? ??? ?????? ?????? ??? , ??? ?????? ?????? ?? ?????? ?????? ???
?????.

139 ?????????? ??? ?????? ??? ?????? ??? ?????????? ????, ??? ?????? ??????????
????????? , ?????????? ?? ??? ???, ??? ?????? C?115/16, C?118/16 ??? C?119/16, ???
????? ?????????? , ?????? ?? ???, ??? ?????? C?299/16 ??? ??? ???
????????? ?????????? , ?????? ??? C?115/16 ??? C?118/16, ??? ??? ???
? ?????? ???, ?????????? ?? ?????? ??? ?????? ?????? ?????????? ??? ??????
????????? , ?????? , ? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ???
????? ?? ?????????? ???, ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ??? ?????? , ??? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? , ? ?????? ??? ?????? ?????? ??? ?????? , ?? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.
????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? , ??? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? . ?????? ?? ?????? ??? ?????? ??? ?????? , ?????? ???, ? ??????
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ? ??????
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????

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

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

140 ?????????????? ???, ??? ?????????? ??? ?? ??? 1, ?????????? 11 ??? 12, ?????? ???
??? ?? ??? 1, ?????????? 13, ??????? ??, ??? ?????? 2003/49, ?? ?????? ???
????????????? ??? ?? ?????? ?????? ?? ?????????? ??? ?????? ?????? ??? ?????????? ???
????????? ??? ?? ?????? ? ?????????? ???, ??? ?? ?????? ??? ?????????????? ???
122, ??? ??????, ??? ?????? ??????.

141 ?? ??????????? ???, ?????? ??????? ??????? ???, ???????????, ??????? ??? ??????????? ???
?????? ??????? ??????????? ???, ?? ??????? ??????? ??? ???? ??????????????? ??? ??????????? ???
?????? ??????? ??????????? ???, ?? ??????? ??????? ??? ???? ??????? ??????? ??? ??????????? ???
????????????? ???, ???????????, ?? ??????????? ?? ??????????? ?? ??????????? ??? ??????????? ???
?? ??????????? ???, ?? ?????????????? (???. ??????? ?? 28?? ??????????? 2013,
Petersen ??? Petersen, C?544/11, EU:C:2013:124, ????? 51 ????? ??? ??? ???????????????
?????????).

142 ???????????, ?? ?????????? ??? ??????????? ??? ?????? ?? ??????? ?????? ??
????????????? ??? ????? ????? ??????????, ??? ????? ??? ?????? ??? ?????? ??????????????
?????????, ?? ??????? ?? ??????? ??? ?????? ?????????? ??????? ?? ??????? ??????????????
?? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????? ??? ?????? 1, ?????????? 1, ???
??????? 2003/49, ?? ?????? ??????????? ?? ?????????? ??? ?????? ?????????? ??? ????????
?? ?????? ???????????, ?????????? ?????? ??? ?? ?????? ?????????? ???????, ?????? ??
?? ?????? ??? ? ?????? ??? ?????? ?????? ?????????????? ?? ?????? ??? ?????? ? ?????? ??

144 ???????, ??? ?? ?? ?????????? ??????????? ?????? ???????, ??? ??????????????
???' ??????? ?? ?????? ?? ?????? ?????? ? ?? ?????? ?? ??????????? ??????????. ????????, ???
??? ??????? ?? ??????????? ?????? ?????? ?????? ???????, ? ?????? ?? ?? ?????? ???
????? ??????? ?? ???????, ?? ??????????? ?????? ??? ?? ??????????? ??? ??????? ?????? ???
????????????? ??? ?????? ?????? ??????????, ??? ?????? ???????????, ?? ?????????????? ??? ???
??? ??? ?????? ?????????? ?????????? ?????? ? ?? ?????? ? ??????????? ??? ??????. ????????, ?
????????? ??? ?????? ?????? ?? ?????????? ?? ?????? ??????????? ??? ??????? ??? ?????????? ???
?????????? ?????? ?????? ???????.

145 ????? ????????, ??? ?????? ??????? ?????? ?????? C?115/16, ??? ???? ?????? ?????? ???
?????? C?118/16 ??? ?? ?????? ?????????? ??? ?????? ?????? C?119/16 ??? C?299/16,
?????? ?? ?????? ? ??????? ?????? ??? ?????? ??? ?????????? ?? ?????????? ???
????????? ? ?? ?????????? ??? ?????? ??? ?????? ?? ?????????? ??? ??????, ?????????? ???
????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????? ???
????????? ?? ?????????? ??? ?????? ?????????? ??????.

??? ??? ?????? ??????????, ?????? ??, ??? ?????? C?118/16

146 ?? ?? ?????? ?????????? ???????, ??????? ?? ?? ?, ??? ?????? C?118/16, ??
?????? ?????????? ???' ?????? ??? ?? ??????? ??? ?????? 2003/49 ????????
????????? ?? SCA ? ?????? ??? ?????? ?????? ?????????? ?? SICAR ??????????????
???????. ?????????????? ??? ?? ?????? ??? ?????????? ?????????????? ??? ??
????????? ??? ? X SCA, SICAR ?????? ?????????? ??? ?????? ??? ?? ?????????????? ???
??? X Denmanrk, ?????? ??? ?????????? ?????????? ??? ?????? ?????????? ???
?????????.

147 ?????? ?? ?????????????? ???, ?????? ?? ????????, ??? ?????? ?????????? ? ????????
??? ?????? ?????????? ??? ????????, ??? ?????????? ???, ??? ?? ??? 3, ????????, ??, ??
?????? 2003/49 ?????? ??? ????????, ?? «????????? ?????? ??????», ? ?????? ??????????
????????? ??? ?????????????? ??? ????????, ?? ?????? ?????? ??? ?????? ?????? ???, ?? ??
????????? ??? ?????????????? . ??????, ? ?????? ?????? ?? ?????? ?????? ??? ?????? ?????????? ??? ??
??? ?????? ?????? ??? ?????????? ??? ????????, ?? ?????? ?????? ??? ?? ?????? ?????? . ???????,
????? ?? ????????, ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ????????, ?? ??
??? ?????? ??? ?? ?????????? ??? ?????? ??? ?? ??? ?????? ????????, ??? ?????? ?????? ??????????
??? ??? ?????? ??? ?????? ?????????? ???, ??? ?????? ?????????? ??? ?????? ?????? ???
????????? ??????, ??????, ?????? ?? ?????????? ?? ?????? ??? ?????? ?????? ???
????????? ??? 3, ????????, ??? iii, ??? ?????? 2003/49 ?????? ??
????????? ??? ??????, ? ?? ??? ?????? ?????????? ??? ????????, ? ?????? ??????????
??? ??? ?????????? ?????? ??? ?????? ??? ????????, ?????????? ??? ??
????????? ??? ?????? ??????.

148 ????? ?????? ??? ?????? ??????????, ?????? ?? ????????, ??? ??? ?????????? ???
????????? ??? ?? ?????? ??????????, ??? ??? ?????? ?????? ??? ?????? ?????? ??? X SCA,
SICAR, ????????, ??? ?????????? ? ?????????? ?????? ?????????? ?????? ??? ??'
????????? ??? SCA ??? ??? ?????? ?????? ?????????? ?? SICAR ????????
??? ??? ??? ?????????? ?????? ??? ?????? ?????? ??? ????????, ?????????? ??? ??

149 ????? ?????? ?? ?????? ??????????, ??? ??? ?????? ?????? ??????????, ??? ??? ??
?????????, ?????? ?? SCA, SICAR ??? ?? ?????????? ??? ??? ?? ?????? ??????????.

150 ????? ?????? ??? ?????? ??????????, ??? ?????????????? ?? SCA, SICAR ??????????
????? «impôt sur les revenus des collectivités» (????? ?????????? ?????? ??????) ???
????????? ?, ? ?????? ??? ??? ??? ?????? ??? ?????? ??? ?????????? ??? ?? 3,
????????? ??, ??? iii, ??? ?????? 2003/49.

151 ?????????, ?? ?????????? ??? ?????????? ???, ??? ?????????? SKAT ???
????????? ??? ?????? ?????? ??? ?????? C?118/16, ?? ?????? ??? ?????????????? ??? ?? X
SCA, SICAR ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??
????????? ??? ?????????? ???, ??? ?? ?????? ?? ?????????? ??? ?????? ??? ?? ?????? ??? ??
????? ??? ?????? ?????????? ??? ?????????? ??? ?????? 147 ??? ?????? ?????? ??? ??
??? ??????, ??? ???????, ?? ?????? «????????? ?????? ??????» ??? ?? ?????? ???

?????? 2003/49. ????????, ?????????? ?????????????? ??? ?????? ?????????? ??
??????, ??? ???????, ??? ?????? ?????? ?? ?????? ?? ?????? ???.

152 ? ??????? ??? ?????? ?????????????? ??? ?????? ?????????????? ??? ?????????????? ???
????? 147 ??? ??????? ?????????? ??????????, ??????, ??? ?? ????? 1, ?????????? 5,
?????? ?, ??? ?????? 2003/49, ??? ?? ?????? ?????????? ??? ?? ?????? ?????????? ??????
?????? ?? ??????? ?????????? ??? ?????, ??? ?? ?????? ??? ?? ?????? ??????, ???
«?????? ?? ??????? ??? ????? [??? ??????????] ?????????????? ??????? ??? ?? ?????? ?
?????? ?????????? ??????????, ??? ?????? ?????? ??? ??????????, ?? ??? ?? ??? ???
?????? ?? ?????????? ??? ????? 3 ??????? ?) ?????? iii) [??? ?? ??? ??????] », ???,
??????, ??? ?? ?????? ??? ?????? ??????, ? ??????, ??? ??????????, ?? ???????, ???
????? 85 ??? ??????? ????????, ?????? ?? ?????????? ??? ?? ?????? ??????? ?????
?? ?????????? ??? ?????? ??? ?????, ?? ??? ?????? ?????.

153 ???????, ??? ?????? ???????, ?????????? ?? ??? ??, ??? ?????? C?118/16, ??????
?? ?????? ? ??????? ??? ?? ?????? 3, ?????????? ??, ??? ?????? 2003/49 ?????? ??
????????? ??? ?? ?????? ??? SCA ? ?????? ??? ?????? ?????? ?????????? ?? SICAR
????????????? ??? ?? ?????? ??? ?????? ?? ?????????? ?????? ?????? ???????, ???
?? ?????? ??? ?? ?????? ??????, ?????????? ?? ?????? ??? ?????????? ??? ?????????? ???
????? 1, ?????????? 1, ??? ?????? ?????, ??? ?? ?????? ??? ?????????? ??? ?? ??? ?? ???
SICAR, ?? ??? ?????? ??? ?????? ??? ?????? ?????, ?????????? ??? ?????????? ??? ?? ??? ??
????????? ??? ?????? ?????????? ??? ?????? ?????, ?????????? ??? ?????????? ??? ?? ??? ??
????????? ?? ??????????.

?? ??? ?????? ??? ?????? ?????????? ??? ?????? C?115/16, ?? ??????
?? ??? ?????? ?????????? ??? ?????? C?118/16, ?? ?????? ?? ??? ?? ??? ??
????????? ??? ?????? C?119/16, ?????? ?? ??? ??????, ?????? ?? ??? ??????
????????? ??? ?????? C?299/16

154 ?? ?? ??? ?????? ??? ?????? ??????? ??? ?????? C?115/16, ?? ?????? ?? ??? ??
????????? ??? ?????? C?118/16, ?? ?????? ?? ??? ?????? ?????? ?????? C?119/16 ??
?? ?? ??????, ??? ?? ?????? ?????? ??? ?????? C?299/16, ?? ?????? ?? ??????????
?????? ??, ?? ?????????? ??? ?? ?????? ?????????? ?? ?????????? ??? ?????? 1 ??? ??????
2003/49 ??????? ?????????? ??? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?? ??? ??
????????? ??? ?????? ?????????? ?? ??? ?????? ?????? ?? ?????? 49 ??? 54 ??? ? ?? ?????? 63 ??? ??
?? ?????????? ??? ?? ?????? ?????? ??? ?????????? ?? ?????? ??? ?????? ??? ?????????? ???
?????? ??????? ??? ?????, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????, ?????? ?? ??? ?????????? ???
????? ???.

155 ???????, ?????? ???' ?????? ?? ?????? ?????????? ?????? ??? ??????????. ? ????
????????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ?????? ?????????? ??? ??????
2003/49 ?????????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? 5 ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????? ??, ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

156 ? ??????? ?????????? ??? ?????? ??? ?????? ??? ?????? ? ?? ?????????? ??? ??????????????
???? ?????? 2003/49 ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?? ?????? ??? ?? ?????????? ??? ?????????? ??? ?? ??? ?????? ??? ??????

?????????? ??? ??????????, ???? ????? ??????? ?? ??? ????? ??????????? ?????? ? ??????????? ????
??? ?????? ??? ????? 5 ??? ???? ??????. ?? ??? ????? ??????? ????????, ?????? ??
?????????? ?? ?? ??? ????? ??? ??????? ??? ??? ??????????? ??? ?????? 154 ??? ???????
?????????? ??????? ?? ??????????? ??? ??? ??????? ??? ??????????? ?? ?????? ???????,
???? ? ??????? ??? ???????, ??????? ?? ???? ??????????? ??? ?? ??? ???????.

157 ??????, ??????, ?? ?? ??????? ??????? ??? ?????? C?115/16, ?? ?????? ???????
???? ?????? C?118/16, ?? ??? ?????? ?????? ??? ?????? C?119/16, ?????? ??? ?? ??????
?????? ??? ?????? C?299/16, ?? ??????? ??????????? ???????, ???' ??????, ??? ??
????? 49 ??? 54 ??? ? ?? ??? 63 ??? ????? ?? ?????? ??? ??????? ??? ??????????? ?? ???????
?????? ??? ??? ?????? ?????????? ??? ?????? ??????? ??? ??????? ??? ??????? ??
????????? ??? ?????? ?????? ?????????? ?????? ??????? ??? ?????????? ?????? ?????? ???
??? ??? ?????? ????, ??? ? ?????????? ??? ?????? ??? ??????? ??? ?? ??? ?????? ??????? ???
?????? ???????, ??? ? ??????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??????????
???? ?????? ??????. ???????????, ??????, ?? ?? ??? ?????? ?????? ?????? ??????? ?? ???????????
??? ??? ?????? ??? ??????????? ?? ?????? ??????? ??? ?????? ??? ?????? ??????????? ???
????????? ??? ?????? ?????????? ?????? ?????? ?????????? ?????? ?????? ?????? ??????? ???
????????? ??? ??? ?????? ?????????? ???, ?? ?? ??? ?????, ??????????? ?? ???????????
??? ??? ?????? ??? ?????????? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????? ??
????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????? ??
????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???????.

158 ???????????, ???????????, ??? ??????????? ??? ? ???????, ??? ? ???????
????? ??????? ?? ?????? ??? ?????? ??? ??????? ??? ??????? ?? ??????????? ?????? ???
????????? ??? ?????????? ??? ?????? ?????????? ?????? ??????????? ??? ???????, ??? ?? ??? ??????
??? ?????? 63 ??? (????. ???????? ??? 3?? ??????? 2006, Fidium Finanz, C?452/04,
EU:C:2006:631, ?????? 41 ??? 42, ??? ???? 3?? ??????? 2013, Itelcar, C?282/12,
EU:C:2013:629, ????? 14). ?? ?? ??????, ?? ??????? ??? ?????? ??? ?????? ?? ??????????? ??? ??
????? ??? ?????? ????.

159 ??????, ??? ?????????? ??? ??????? ??? ? ?????????? ??? ?????? ??????? ??
???? ?? ?? ?????????? ??? ??????? ??? ??????? ??? ?????????? ??? ?????? ???????, ? ??????????
??? ??????? ??? ??? ?????? ??? ??????? ?? ??????? ??? ?????????? ??? ?????? ??? ??????? ??
???? ? ??????? ??? ??? ?????? ??? ??????? ??? ?????? ??????? ??? ???????, ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ??????? ??? ?????? ??????? ??? ?????? ??? ???????, ??? ??
?? ?????? ??? ?? ?????? ??? ?????? ??? ??????? ??? ?????? ??? ?????? ??? ???????, ??
????????? ??? ?????? ??? ?????? ??? ??????? ??? ?????? ??????? ??? ?????? ?? ?????? ?? ??? ??
????????? ??? ?????? ??? ?????? (????. ??????? ??? 18?? ??????? 2012, X,
C?498/10, EU:C:2012:635, ?????? 28 ??? 32). ??? ?? ??? ?????? ???, ??? ?????? ??????? ???
?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????? ??? ??

160 ??????????, ? ?????? ??????????? ??? ?????????????? ?????????? ??? ?????
????????? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ???
????????? . ????????, ? ?????????? ?????????? ?????? ??? ?????????? ???
????????? ??? ?????????? ?? ?????? ??? ?????????? ?????? ?????? ?????? ???
????????? ??? ?????? ??? ???? ?????????? ? ?????????? ?????????? ???
????????? ?????? ??? ?????? ?????? ?????????? . ??????, ??? ?????? ?????? ???
?? ?????????? ??? ?????? ??? ?????? ?????? (????. ?????????? ??? 18??
????????? 2012, X, C?498/10, EU:C:2012:635, ?????? 39 ??? 43 ??? 52, ?????? ??? ??? 13??
????????? 2016, Brisal ??? KBC Finance Ireland, C?18/15, EU:C:2016:549, ?????? 21 ??? 22).

161 ??? ?????? ?? ??????? ??? ? ??????? ??? ?????? ?????? ?????? ?????? ??????
??? ?????????? ??? ??????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???
????????? ?????? ??? ?????? ?????? ?????????? ??? ???, ?? ?? ??????, ?????????? ??
????????? ??? ?????? ??? ?? ??? ?????? ?????????? ??? ?????? ?????????? ???
??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ???
?? ?????? ?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??
????????? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ???, ??
????? ?????????? ???, ??? ?? ?????? ??? ?????????? ??? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ?????????? ?? ?????? ??? ?????? ?????????? ???, ??
????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?? ?????? ?????????? ???
????????? ??? ?????????? ?? ?????? ??? ?????? ?????? ??? ?????? ?????????? ???, ???'
????? ?? ??? ?????? ?????????? ?????? ?????? ?????? ??? ?????? ?????????? ???
????????? (????. ?????? ??? 22?? ?????????? 2018, Sofina ???., C?575/17, EU:C:2018:943,
????? 28).

162 ??? ???, ? ?????? ?????? ?????????? ?????????? ?? ?????????? ??????????
????????????? ??????????, ??? ?? ?????????? ??? ?????? ?????????? ?? ?????????? ???
????????? ?????? ?????????? ??????, ?????????? ?????????? ??? ?????????? ?????????? ???
????????? (????? ??? 22?? ?????????? 2018, Sofina ???., C?575/17, EU:C:2018:943, ???
29 ?????? ??? ?????? ?????????? ??????).

163 ? ?????? ?????????? ?????????? ??????, ?????????? ?????? ??? ?????? ??? 22??
????????? 2008, Truck Center (C?282/07, EU:C:2008:762), ??? ?????? ?????? ???
????????? ?????????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ???
????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ???
????????????? ??????????.

164 ??????????, ????????, ??????????, ????????, ??? ?? 41 ??? 46 ??? ??????????
??? 22?? ?????????? 2008, Truck Center (C?282/07, EU:C:2008:762) ??? ??????????
????????????, ?????????? ??? ?????????? ?????????????? ?????????? ? ?????? ?????????? ???
????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ?? ?????? ??????????, ???
????????????? ??? ??? ????? ?????????????? ??????????, ??? ?????, ?? ??????????
????????????, ?? ??? ?????? 43 ??? 44 ??? ?? ??? ??????, ??? ?? ?????? ?????????? ??????????
???? ?????? ??? ??? ?????? ?????????? ? ??????? ?????? ????? ??????????, ?? ??? ?????? ??????????, ??
????????? ??? ????? ?????????? ??? ?????????? ??? ?????????? ????? ?????????? ?????? ???
????????? ??? ?????????? ?????? (????. ??????? ??? 22?? ?????????? 2018, Sofina ?..?,
C?575/17, EU:C:2018:943, ????? 51). ?? ?????????? ???????????, ?????? ?????, ??? ?????
49 ??? ?????????? ??? 22?? ?????????? 2008, Truck Center (C?282/07, EU:C:2008:762), ???
?? ?????????? ??? ?????? ?????? ????? ?????????? ?? ?????????? ?? ?????????? ?? ??????????
?? ?????? ?????? ?? ??? ?????? ????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??????
??????.

165 ????, ?? ???????????, ? ??????? ???? ?????? ?????? ?????? ?????? ?????? ??? ???????????
????? ??????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ?????????????????? ??? ?????????? ??? ?????? ?????? ??????, ????
????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????? ?????? ???, ??? ?????? , ? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?????????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????? ??? ?????? . ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ?????????????? ??? ?????? ?????? ?????? ??? ??????, ??????????
(????. ?????????? ??? 2? ?????? 2016, Pensioenfonds Metaal en Techniek, C?252/14,
EU:C:2016:402, ??? 41, ??? ??? 22? ?????? 2018, Sofina ?.., C?575/17,
EU:C:2018:943, ?????? 30 ??? 52).

166 ?? ?? ??????, ???. ?????????? ???. ? ?????? ?????????? ???. ?????????????? ???. ?????????????? ???.
?????????? ???. ?????? ?????? ?????????? ???. ?????? ???. ?????????? ???. ?????????? ???. ?????????? ???.
????????? ???. ?????????? ???. ?????? ???. ?????? ???. ?????? ???. ?????????? ???. ?????????? ???.
?????????, ???. ???. ?????? ???. ???. ???. ???. ?????? ???. ?????????? ???. ?????????? ???. ???. ???. 162 ???.
?????????, ???. ???. ?????? ???. ???. ???. ???. ?????? ???. ?????????? ???. ?????????? ???. ???. ???. 63 ???.

167 ??????????? ?????? ??? ?????????????? ??? ?????? 158 ??? 166 ??? ???????
?????????, ?? ????? 63 ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ???? ???????????,
???' ??????, ?? ?????? ??????? ?????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ???
????????? ?????? ?? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ??? ??
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????, ??? ?????? ?????????? ??? ??????
??? ?? ??? ?????????? ??? ?????? ?????? ??????, ??? ? ?????? ??? ?????????? ??? ?????? ???
????? ?????? ?????????? ??? ?????? ?????? ??????. ?? ?????? ??? ????????????, ??????????, ??
????? ?????? ??? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ??? ?????????? ??? ?????? ?????? ?? ?????????? ??? ?????? ?????? ??????????, ??? ??????????
????? ?????? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ???
??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ???
?? ??? ?????? ?????????? ??? ???, ?? ?? ??????, ?????????? ?? ?????????? ??? ?????? ??? ???
??? ??? ?? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?? ??? ??? ??
??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???

168 ???????, ?? ?? ??? ?????? ?????? ?????? C?115/16, ?? ?????? ?????? ?????? ??
?????? C?118/16, ?? ?????? ?????? ?????? ?????? C?119/16, ?????? ?? ???? ?????? ??????
????? ?????? C?299/16, ?? ?????? ?????? ?????? ??????, ???' ??????, ??? ?? ?????? 49 ??
54 ??? ?????? ?? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ?? ?????? ?????? ?
????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?? ?????? ???
??????, ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??
????????? ?? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????
????????? ? ?????? ??????????, ?????? ?????, ?????? ?????? ??? ?????? ?????? ?????? ??????
????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

169 ??? ?????????????? ??? ?????? 158 ??? ?????? ??????????, ?? ?????????? ???
????? ?? ?????????? ??? ?? ?????? ??? ?????? 63 ???.

170 ??????, ?????????? ??? ?????? ?????? ?????? ??? ? ?????????????? ??? ?????? 168
??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?? ??????
?????????, ?????? ??? ?? ? ?????????? ?????? ?????? ??? ?????? ?????? ?????? ??? ??
????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ??????
????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????
?????. ? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??????
??? ?,? ?? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??????
??? ?????? ??? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
??? ??? ?????? ?????? ??? ?????? ?????? ???, ??????, ?? ?????? ??? ?????? ??? ??????
????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ?????? ?????? ?????? . ?? ?????? ?????? ?????? ?????? ??? ??????
????????? ??? ??????.

171 ??? ?????? ?? ?????????? ??? ??????, ??? ?????? ?????? ??? ? ???????, ??
????????? ??? ?? ?????? ???, ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ??????
????????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ??????. ??? ???
????????? ??????, ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??????
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? 63 ???.

172 ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????? 169 ??? 171 ??? ??????
?????????, ?? ?????? 63 ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????
????? ?????? ? ??? ?????? ?????? ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ??????
?? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ? ??? ??
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
??? ?????????? ??? ?????? ???, ?? ?????? ??? ?????? ?????? ?????? ?????? ??? ??????
????????? ??? ??? ?????? ??? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ??? ??????
????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???, ?????? ???, ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????.

173 ???, ?? ?? ?????? ?????? ??? ?????? ?????? C?299/16, ?? ?????? ??????????
?????, ???' ??????, ??? ?? ?????? 49 ?? 54 ??? ?????? ??? ?????? ?????? ??? ?? ?????? ???
????????? ?? ?????? ?????? ??? ?????? ???, ??? ?????? ?????? ??? ?????? ?????? ???.

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

174 ??? ?????????????? ??? ?????? 158 ??? ??????? ??????????, ?? ??????? ???
?????? ?????? ?? ?????????? ??? ?? ?????? ??? ?????? 63 ???.

175 ???????, ??? ???????, ??? ???????, ??? ?????? ???????????, ??????? ?? ?? ???????
??? ?????????? ?? ??????? ??????????, ?? ?????????? ??????????? ??? ?????? ??? ??????? ???
????????? ?? ??????? ?????????? ?????????? ??? ?????? C?299/16, ??? ??
?????? ?? 13?? ?????? 2016, Brisal ??? KBC Finance Ireland (C?18/15, EU:C:2016:549,
?????? 23 ?? 55), ??????? ?? ?????? ?????? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?? ??????? ?????? ??????? ??? ?????? ?????? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ?????? ?????? ?????????????? ??? ?????? ??? ??? ?? ??? ?????? ?????? ???
????????? ??????, ??? ?? ?????? ?????????? ?????? ??? ?????? ??? ?????? ?????????? ???,
????? ?? ?????? ??? ??????, ??? ?????????? ?????? ??? ?????? ?? ??? ?????? ?????????? ???, ??? ??
????? ?????????? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???.

176 ? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ??????????
????????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ??
?????? ?? ? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????,
??????, ?? ??? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?? ?? ???,
??? ?? ?? ?????????? ??? ? ?????? ?????? ??? ?? ??? ?????? ?????? ?????????????? ??? ??
????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
?????.

177 ???????, ?????? ?? ?????????? ???, ??? ?????? ?????? ??? ?? ?????? 155 ??? ???????
?????????, ? ?????????? ?????????? ?????????? ??? ?????? ?????????? ???
????????? ?? ?? ?????????? ??? ?????? 2003/49 ??? ?????? ??? ?????? ?? ?? ?????? ?? ??
??? ?????????? ?????????? ??? ?????????? ??? ?????? ???.

178 ???????, ??????? ?????? ?????? ???????????, ? ?????????? ??? ?????????? ???
????? 175 ??? ??????? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ???
????????? ?? ?????? ?????????? ??? ??????, ???????, ?? ?????? ??? ?????? ???
????? 63 ????. ??????????, ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ???
????? ?? ?????? ?? ?????????? ?? ?????? ??? ?????? ??? ?? ?????????? ??? ?????? ???
????? ??? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ???.

179 ?? ?? ???????, ?? ????? ???. ?????? ???. ?????????????? ???. ??? ???. ?????? ???. ??????????????,
????? ???. ?????????????? ?????????????? ?????? ? ??????????????, ???. ?????? ???. ?????? ???.
????????? ???. ???. ???. ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???. ?????? ???.
????????? ???. ???. ???. ?????? ?????? ?????? ???. ???. ?????? ?????? ?????? ???. ?????? ???.
????? ???. ???. ?????? ?????? ?????? ???. ???. ?????? ?????? ?????? ???. ?????? ???.
????? ???. ???. ?????? ?????? ?????? ???. ???. ?????? ?????? ?????? ???. ?????? ???.
????? ???. ???. ?????? ?????? ?????? ???. ???. ?????? ?????? ?????? ???. ?????? ???.
????? ???. ???. ?????? ?????? ???. ???. ?????? ?????? ?????? ???. ?????? ???.
????? ???. ???. ?????? ???.

180 ?????????????? ?????? ??? ??????? ??? ??????????????, ??? ??? ?????? ??? ?????? ?????
????????????? ?????? ??? ?????? C?115/16, ??? ?????? ??? ??? ?????? ?????????????? ??????
????? ??? ?????? C?118/16, ??? ?????? ??? ??? ?????? ?????????????? ?????? ???
????? C?119/16, ?????? ??? ??? ??????, ??? ?????? ?????? ?????????????? ?????? ???
????? C?299/16, ?????? ??? ?????? ??? ?????? ??????:

- ?????????????? ??? ??????????? ??????, ?? ????? 63 ??? ?????? ?? ?????????? ???
??? ?????? ???:

- ?????????????????, ???' ?????, ?? ?????? ??????? ????? ?? ?????? ?????? ?????????? ????
????????? ??????? ?? ?????????? ??????? ?? ?????????? ?????? ?????? ??????? ?????? ?????????? ?????
?? ??????? ?? ?????????????? ????? ?? ??? ?????? ??? ?????? ??? ?????, ??? ? ?? ???
????????? ????? ?? ?????? ?????? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ? ?????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????
?? ??????? ??????? ? ?????? ?????????? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?? ??????????
????????? ?????? ??? ?????????? ?????? ?????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? , ???
????????? ?????? ?????? ?????? ?????? ??? ?????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????
????????? ??? ?????????? ?????? ?????????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????
????????? ?????? ?? ??? ?????? ?????????? ??? ??, ?? ?? ?????? , ?????????? ?? ?? ??????????
?? ?????? ?????? ??? ?? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????
?? ?????? ?? ??? ?????????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????

– ??????????? ?? ?????? ??????? ? ?????? ?????????? ????? ??????????? ????? ??????????? ????? ???????????
????????? ??? ?????????????? ?? ??????? ???? ?????????????? ????? ????? ?????? ??? ?????? ??? ?????? ???
????????????? ? ??? ?? ?????????? ??? ?????? ?????????? ?????????? ??? ??????????, ?? ??????????
????????????? ?????? ??? ?????????????? ?????? ?????, ?? ?????????? ??????
????????????? ?? ??????? ?????????? ??? ?????? ??? ?????????????? ?? ?????????? ??????????
????????????????? ?????????? ??? ?????? ?????????????? ?????????? ?????????? ? ??????
?????????????, ?????? ?????, ?????? ?????? ??? ?????????? ?????????? ?????????? ??? ??????????
????????? ??? ??? ?????? ?????????? ??? ?????? ?????? ??? ??????????

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

181 ?????????? ??? ? ??????? ?????????? ??? ?? ??? ????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
??? ?????????? ?????????????? ??? ?? ??????? ?????????? ??? ?? ?????? ?????????? ??? ?????? ?????????? ?????????? ?? ???
????????? ?? ?????????? ??? ?? ??????? ?????????? ??? ?? ?????? ??????. ?? ?????? ??? ?????? ?????????? ??????????
????? ?????????? ?????????????? ??? ?? ?????????? ???, ?????? ??? ?? ??? ?????????? ??? ?????? ??????????.

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

1) ??????????? ?? C?115/16, C?118/16, C?119/16 ?? C?299/16 ???
?????? ?? C?115/16, C?118/16, C?119/16 ?? C?299/16 ???

2) ?? ?????? 1, ?????????? 1, ??? ??????? 2003/49/?? ??? ???????????, ??? 3??
?????? 2003, ??? ??? ?????????? ?????? ?????????? ?????????? ??? ?????? ???
??? ??????????? ??? ?????????????? ?????? ?????? ?????????????? ?????????? ??????????????
?????? ????, ?? ?????????? ?? ?? ?????? 1, ?????????? 4, ??? ?????? ????,
?????? ?? ?????????? ??? ?? ?????? ??? ? ?????????????? ?? ??? ?????? ?????????? ???
??? ??? ??????? ??? ?????????????? ?????????????? ?????? ?????????? ??????
?????, ??? ??? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ??????
????? ?????? ?????? ??? ?????????? ?? ?? ?????? ??? ?????? ??? ?????? ?? ??????????
????????? ??? ?? ?????????????? ?? ??????.

3) ??????????? ?? ?????????? ? ?????? ?????????????? ?????????? ??????????????,
??????, ? ??????? ?? ?????? ?????? ?????????? ?????????????? ?????????? ??? ???? ?????? ??
????????? ???, ??? ???? ?????? ?????? ??? ?????????????? ??? ?????????? ??? ?????????? ?
????????? ??? ??????, ??? ?????? ?????? ?????????????? ?????????? ?? ?? ?????? ?????? ??? ??????
??, ???????, ? ?????? ??? ?????????????? ?????????, ?? ?????? ?????????? ??? ??????
????????? ??? ?????????????? ?? ?????????? ?????? ??? ?????? ??? ?? ?????????? ??? ??????
????????????? ?????? ??? ?????? ?????????????? ??? ?????? ?????? ?????? ??? ?? ??????????
?? ?????? ????. ? ??????? ?????????? ?????????? ?????????? ?????? ?? ?????????? ???
?????? ?????????????? ??????????????, ??? ??? ?????????? ?????? ?? ?????????? ??????
????? ?????????????? ??? ??????????????. ?????? ?? ?????????? ??????
?????????, ?????? ????, ? ?????? ??????-????????? ??? ??? ??????????????
??? ?????????? ?????? ??? ???? ?????? ?????? ?????? ?????????? ?????? ??????????
??? ?????? ??????, ??? ?????????????? ?????? ?????? ?????????? ?????? ??? ?????? ??????. ??
????????? ??? ?? ?????? ?????? ??? ?? ?????? ?????????? ?? ?????? ??? ??????
????????? ?? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????

4) ?????? ?? ???? ?? ???? ??????????? ?? ?????????????? ?? ?????????? ? ?? ???? ??????????
 ??? ?????? ?? ???? ?? ???? ?? ?????????? ?? ????????, ?????????? ?? ??????? ??
 ??????????? ?? ?? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ??????? ??
 ??????????? ?? ?????????? ?? ?????? ?????????? ?? ??????????.

5) ?? ?????? 3, ??????? ??, ??? ?????? 2003/49 ?????? ?? ?????????? ??? ??
????? ??? ?? ?????????? ??? ?????? ?????? (SCA) ? ?????? ??? ?????? ???
????????? ?? ?????? ?????????? ?????? ?????? (SICAR)
????????????? ?????? ??? ?????? ?? ?????????? ?????? ?????? ?????? ???,
????? ??? ?????? ??? ?? ?????? ??????, ???????? ?? ?????? ??? ?????? ???
????????? ?? ?????? 1, ?????????? 1, ??? ?????? ???, ??? ?? ?????? ???
????????? ??? ??? ?? ??? SICAR, ?? ??? ?????? ??? ?????? ??? ??????
?????, ?????????????? ??? ??? ?????? ?????????? ?????? ?????? ???
?????????, ?????? ??? ?????? ??? ?????? ?????? ?????????? ?? ??????????.

6) ?? ?????????? ?? ?? ?????????????? ?? 2003/49 ??????? ?? ?????????
?? ?? ?????????? ?? ?? ?????????? ?? ?? ?????????? ?? ?? ?????????? ?? ??
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?? ?? ?????????? ?? ?? ?????? ?? ?????? ?? ?? ?????????? ?? ?? ?????????? ?? ??
?? ?? ?????????? ?? ?? ?????? ?? ?????? ?? ?? ?????????? ?? ?? ?????????? ?? ??
?? ?? ?????? 5 ?? ?? ?????? ?? ??????, ? ?? ?????? ?? ?? ?????????? ?? ?? ??????????????
?? ?? ?? ?????? ?? ?? ?????? ?? ?? ?????????? ?? ?? ?????????? ?? ?? ?????????? ?? ??
????? ?? ?????? ?? ?? ?????? ?? ?? ?????? ?? ?? ?????????? ?? ?? ?????? ?? ??.

????????????? ??? ??????????? ?????, ?? ????? 63 ????? ?????? ?? ?????????? ???
??? ?????? ???:

- ???????????????, ???' ?????, ?? ?????? ??????? ????? ???? ????? ?????? ?????????
????? ??????? ??????? ?? ?????? ??? ??????? ?????? ?? ??????? ?????? ?????? ?????? ??????
?????????? ?? ?????? ?? ??????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????,
??? ? ?? ??? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ???
????? ? ??????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ?????
????????, ???? ?????????? ?? ?????? ??????? ? ?????? ?????????? ??? ?????? ?????????? ???
?????????? ???? ?????? ??? ?????? ?? ?????????? ??????? ?????? ?????? ??? ?????????? ???
????????? ?? ?????????? ??? ?????? ?????? ???????, ??? ?????????? ??? ?????? ??????
????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?? ??? ?????? ?????????? ??? ?????? ?? ?????? ?????? ?????? ?????? ?????? ??????

