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??? 5?? ??????? 2018 (\*1)

«????????????? ?????????? – ????? ?????? ????? ?????????????? ????? (???) – ?????  
2006/112/?? – ????? 2, ?????? 1, ??????? ?? – ?????????? ?????????? ??????? ?? ??????  
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???? ?????? C-544/16,

? ? ?????????? ?????? ?????????????? ?????????? ??????? ?? ?????? 267 ????, ???  
?????? ?? First-tier Tribunal (Tax Chamber) [????????????? ?????????? ??????????  
(????????? ???), ?????? ??????] ?? ??????? ?? 17?? ?????????? 2016, ? ?????  
????????? ?? ?????????? ??? 28 ?????????? 2016, ??? ?????? ?? ??????

Marcandi Ltd, ?????? ?????? ??? ?? ?????? Madbid,

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Commissioners for Her Majesty's Revenue & Customs,

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

????????? ?? J. L. da Cruz Vilaça, ?????? ???????, E. Levits, A. Borg Barthet  
(????????), M. Berger ?? F. Biltgen, ???????,

????????? ??????????: E. Tanchev

?????????: L. Hewlett, ????? ?????????? ??????????,

?????? ?? J. L. da Cruz Vilaça, ?????? ???????, E. Levits, A. Borg Barthet  
(????????), M. Berger ?? F. Biltgen, ???????, 13?? ?????????? 2017,

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? Marcandi Ltd, ?????????????? ?? J. Brinsmead-Stockham, barrister, ??? C. Van Zyl,  
solicitor, ??? ?? A. Brown, advocate,

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? ?????????? ?? ?????????? ??????????, ?????????????? ?? D. Robertson ??? ?? Z.  
Lavery, ?????????????? ?? P. Mantle, barrister,

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? ?????????? ???????, ?????????????? ?? R. Lyal ??? ?? L. Lozano Palacios,

???? ?????? ??? ?????? ??????????? ??? ??????? ??? ?????????? ??? ?????? ?? ???????????  
??? 7?? ??????? 2018,

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1

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?????? 14, 24, 62, 63, 65 ??? 73, ????? ??? ????? 79, ?????????? ?, ??? ??????  
2006/112/?? ??? ??????????, ??? 28?? ?????????? 2006, ??????? ?? ?? ????? ?????? ??????  
????????????? ????? (?? 2006, L 347, ?. 1, ??? ????: ?????? ??? ???).

2

? ?????? ??? ?????????? ??? ?????? ??????? ??????? ??? Marcandi Ltd,  
????????? ?????? ??? ??? ?????? Madbid, ??? ??? Commissioners for Her Majesty's  
Revenue and Customs (????????? ??? ?????????? ???????, ??????? ???????) (???:  
????????? ???????), ?? ?????????? ?? ??????? ????? ?????????????? ?????? (???) ???  
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?? ??? 2, ??????? 1, ??? ?????? ??? ?????? ??? ??????? ?? ???:

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[...]».

4

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

5

?? ?????? 24, ?????????? 1, ??? ?? ??? ????? ?????? ??????? ?? ???:

«?? “?????? ??????????” ??????? ??? ????? ? ?????? ??? ?????????? ?????????? ??????.»

6

?? ????? 62 ??? ????? ??????? ??? ?? ????:

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“????????????? ??? ????? ?? ?????”, ?? ??????? ?? ?? ????? ?????????????? ?? ??????  
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“????????? ??? ?????”, ?? ?????????? ??? ??? ????? ?????????? ??? ??????????, ??? ??  
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7

?? ????? 63 ??? ?????? ??? ?? ??????? ?? ????:

«? ?????????? ?????? ?????? ?????????? ??? ? ?????? ?????????? ?????????? ?????? ??? ??  
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8

?? ????? 65 ??? ?????? ??? ?? ????:

«?? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ?????? ? ??? ?????? ??????????, ?  
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9

?? ????? 73 ??? ?? ??? ?????? ?????????? ?? ????:

«??? ??? ?????????? ??? ?????? ??? ?????? ??????????, ?????? ?????? ??? ?????????? ???  
????? 74 ??? 77, ? ??? ?????? ??? ?????? ??? ?????? ?????????????? ?????????? ?????????? ???  
??????????, ??? ?????? ?????? ??? ?????????? ?? ?????? ??? ?????? ??? ?????? ?????? ? ?????????????? ?  
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10

?? ????? 79 ??? ?????? ??????? ??? ?? ????:

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11

? Marcandi ?????? ??????? ?????????????? ??? ??????? ??????????, ? ??????  
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????????? Madbid (??? ????: Madbid). ? ?????????? ??? ?????????????? ??? ?? Madbid ??????  
????? ??????? ?????? ?????????????? («high tech»), ??? ?????? ??????????, ??????????,  
?????????????, ??????????. ??????????????, ? Madbid ?????? ?????? ?????? ??????????????  
?????, ???, ?????? ?????, ??????????.

12

? ?????????? ??? Madbid ??????? ?????? ?????? ??? ?? ?????????? ?? ?????????? ??  
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13

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14

????? ?? ?????? 1.2 ??? ??????? ???, ? Madbid «????????????????? ?????????? ?????????? ???  
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15

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«????????? ??????». ?? ?????? ???, ??? 0,00 ??? ?????? ?????????? (GBP), ???????  
????? ?????? ??? ??? ??? ?? ?????????? ?? ?????????? ??? ?????????? ???  
????????? ? Madbid. ?? «????? ?????????? ??????» ?????? ?????? ?? ?????? ???  
????? 30 ??????, ??? ?? ?????????? ?????? ?????? «????????? ??????» ??????  
??? 180 ??????.

16

?? ????? ????????????, ? ??? ?????????? ???????? ?? 0,00 GBP, ?? ? ? ?????????? ?????  
?????????? ?? ?????? ?????? ?????? ??????? ?? ????????????, ? ?????, ??? ?????? ??????  
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??? ???, ??? ??? ?????? ?????????? ??? ???????, ?????? «????» ??? ??????  
«?????????», ?????????? ??? «????????? ??????» ??? ?????????? ??? ?????? ????. ?  
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17

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18

???????, ? ?????????? «????? ???» («Buy Now») ?????? ??? ?????? ?? ?????????? ??  
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19

?????, ? ?????????? «????????? ??????» [«Earned Discount»] ?????? ??? ?????? ???  
????? ?????????? ??? ?????????? ??? ?????? ??? ?????????????? ?? ?????????? «????? ???»  
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????????????? ????, ??? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ??????????  
????????????? ??? Madbid. ? «????????? ??????», ?? ??? ??? ?????? ?????????? ???  
????? ??? «????????? ??????» ??? ?????? ?????????? ??? ?????? ??? ?? ??????  
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????? 365 ?????.

20

? ? ?????? ??? ??? ?????? ?? ?????? ??? ?????? ??? ?????????? «????????? ??????» ?  
«????? ???» ?????? ??? ?????????? ???, ?????????? ??? ?????????? ??? ?????? ???  
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21

?? ??????? ?? 9?? ?????????? 2013, ? ?????????? ??? ?????? ??? ?? ??? ?? ??  
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????????? ? Madbid.

22

? Madbid ?????????? ??? ?? ??? ?????? ?????? ??? First-tier Tribunal (Tax Chamber)  
[????????????? ?????????? ?????? (????????? ???), ?????? ??????],  
????????????? ??? ? ?????? «????????? ??????» ?????? ?????? ??? ?? ??????  
????? ??????????, ??? ????? «????????? ?????», ??? ??? ?????? ??? ?????????? ???  
16?? ?????????? 2010, MacDonald Resorts (C?270/09, EU:C:2010:780, ??? 24). ?? ??  
????? ? Madbid ?????? ??? ?????? ?????? ??? ?????? ??? ?? ??? ?????? ??? ??????????  
«????????? ??????» ?????? ?????? ???, ??? ?????? ??? ?????? ??? ?????????? ??????. ?  
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?????» ??? ??? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ? Madbid  
????????? ??? ?????? ??? ?????????? ?????? ???, ?? ?????????? ??? ?? ??????????  
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??? ?????? 2, ?????????? 1, ?????????? ?, ??? ??? ?????? 73 ??? ?????? ???, ???.

23

?????? ??? ?? ??? ??????????, ? ?????????? ??? ?????? ?????? ???, ??? ? Madbid  
????? «????????? ??????» ??? ?????? ???, ??? ?????? ?? ???????, ??? ??????  
????? ??? ?? ?????? ??? ?????, ?? ?????????? ??? ?????? ?????????? ?????????? ???  
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?? «????????? ??????» ?????? ?????? ?????????? ?????? ?????? ??? ?????? ???  
????? ? Madbid ?????? ???????, ??? ??? ?????? ??? ?????? 79, ??????? ??, ???  
????? ??? ???, ??? ??? ?????? ?????? ??? ?????? ???.

24

?????????, ?? ?????? ?????????? ?????????? ???, ?? ?????? ??? 9?? ?????? 2014, ??  
Finanzamt Hannover-Nord (?????? ?????? ?????? Hannover?Nord, ????????)  
????????? ??? ? ?????? «????????? ??????» ??? ?? Madbid ??? ?????? ??? ??????  
????? ??? ?????? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ???, ? Madbid ???  
????? ??? ?????? ??? ???, ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ???, ??? ??????  
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«????? ???» ? ??? ??? ??? ?????? ?????? ??? «????????? ??????», ??? ??? ?????? ???, ???  
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????? ???, ??? ??? ??? «????????? ??????» ??? ?????? ???, ??? ?????? ???, ???  
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«????????? ???» ??? ?? ??? ?????? ?????? ?? ?????????? ?? ?????????????? ?? ??? ?? ??? ??  
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25

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??], ?? ??? ?????????? ?????????? ??? ??? ??? ?????????? ??? ?????? ??? ??????:

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"????????????? ????" ?? ?????????? ??? ?????? ?????????? ??? ?????? 1, ?????????? 1,  
[?? ?????? ???] ??? ? ?????? ??? ?? ?????????? ?????? ??? ?????? 23 ??? 42  
[?? ?????? ??? 16?? ?????? 2010, MacDonald Resorts (C?270/09, EU:C:2010:780)]? ?

ii)

????? ?????????? ??? ?? Madbid, ??? ???? ?????? ??? ?????? 2, ?????????? 1, ?????????? ?,  
[?? ?????? ???,] ?? ?????? ?????????? ??? ?????? ?????????? ?????????? ??? ?????????? ??  
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????? (??? ???? ?????? ??? ?? ??? ?????? ??? ?? Madbid ??? ???? ?????????? ??? ??  
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?? ? Madbid ??? ???????? ?? ?????? ?????????? ?? ??????;  
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????? ??? ??? ?????? 79, ?????????? ?, ??? ?????? ??? ??], ??? ??????, ?? ???  
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????? 2, ?????????? 1, ??????? ?, ??? ??? ?????? 73 ??? ?????? ?????? ??????];

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[??? ?????? ???], ??? ??? ? ??? ?? ?????????? “?????????” ??? ??? ?????? ???  
????????? ??? ? ??? ?? Madbid ?????? ??? ??? ?????? ?? ?????????? ?????????? ??? ???  
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i)

“?????” ??? ??? ?????? ??? ?????? 79, ??????? ?, [??? ?????? ????] ??? ??????  
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ii)

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

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26

?? ?? ?????? ??????? ??, ?? ?????? ??????????? ??, ???' ??????, ?? ??????????????? ?? ?  
????????? ??????????? ??, ??? ?? ??????? ?? ?????? ????? ??????? ??, ?????  
????????? ?????????? ?? «?????? ??????? ?? ?????? ??????», ??? ?? ??????  
?? ?????? 2, ?????????? 1, ??????? ??, ??? ??????? ??, ??? ??, ? ?? ?????? ??  
????????????? ?? «?????????????» ??? ?????????? ?????? ?????, ??? ?? ?????? ???  
????????? 24 ??? ?????????? ?? 16?? ?????????? 2010, Macdonald Resorts (C-270/09,  
EU:C:2010:780, ??? 24).

27

?????? ?? ??????????? ??, ?? ?? ??????? ??????, ?? ??????????? ??????? ?? ??  
?????????? ???????????, ??????? ?? «?????????? ?? ?????», ?? ?????? ?? ???????  
?????? ?? ??????? ?? ???????????, ?????? ?????, ?? ??????? ???????????????  
????????? ??????????? ??, ??? ??????????? ?????? ??????????????? ?? ?????? ??????????? ??  
????????? ??????????? ??, ??? ??????????? ?????? ???????????, ??? ??????? ?? ??????????? ??  
?????? ?? ??????? ??, ??? ??????????? ?????? ???????????, ??? ??????? ?? ??????????? ??  
«?????????? ?? ?????» ??? ??????? ??????????? ?? ??? ?????, ??? ?????? ??? ?????  
????????? ??? ?????? ??????????? ??? ?? ??????? ?? ?????? ?????, ??? ??????????? ??  
????????? ?? ??????????????? ?????? ??? ??????? ?? ?? ?????? ??? ?????? ??????????? ??  
????????? ?? ??????????????? ?????? (?????? ?? 16?? ?????????? 2010, MacDonald  
Resorts, C-270/09, EU:C:2010:780, ??? 24 ?? 32).

28

?? ??? ??????? ?? ?????????? ???????? ??? ? ?????????? ?????? ??? ??? ??? ?????  
????????????? ?? «????????? ?? ?????» ??? ? ?????? ??? ?????????? ??? ?????? ???  
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????? ??? ??? ?????? ??? ?????????????? ??? ?????????? ??? (?????? ??? 16??  
????????? 2010, MacDonald Resorts, C-270/09, EU:C:2010:780, ??? 27).

29

???? ??????? ??? ?????? ????, ??? ?????????????? ??? ?? «????????? ??????» ???????  
????? ??? ??? ?? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???  
????????? ? Madbid. ?? ?? ??????, ? ?????? ??? ?????? «????????? ??????» ??  
????? ???' ?????? ?? ?????? ?? ?????????? ??? ?????? ?? ????? ??????????.

30

? ??????? ??? ??? ??? ?????? ?????????? ?????????? ?? ?????? ?? ??? ??? ?????  
????? ??? ??? ?????????? ?????????? ??? Madbid (??., ??' ??? ??? ??? ?????, ???????  
?? 2?? ?????? 2010, Everything Everywhere, C?276/09, EU:C:2010:730, ??? 27).  
???????, ??? ?????????? ? ?????? ?????????? ?? ?? ?????? 39 ??? ?????????? ???, ?  
????????? ?? ?????????? ??? ?????????? ? Madbid ?????? ????? ?????? ??? ??????????  
?? ?????????? ?????? ?? ??? ?????????? ??? ?????? ??? ?????? ???.

31

?????????, ??????? ?? «????????? ??????» ??? ?????????? ??? ?? Madbid ???  
?????? ?? ?????????????? ?? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????? ???  
????????????? ?? ??????????????, ???, ??? ?????? ??? ?? 30 ??? ??????????  
?????????, ?? «????????? ??????» ????, ??? ??? ?????? ???, ?????????? ???  
????????? ?? ?????????? ??? ??? ?????? ??? ?????? ?????? ??? ?????? ?? ??????????  
????? ?? ?????? ?????????? ??? ??? ?????? ??? ?????? ??? ?? «????????? ??????»  
?? ?????? ?????????????? ??? ?? ?????????? ??? ?????????? ??? ?????????????? ?? ???  
????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???, ??? ??? ?????? ??  
????????????? ?? «?????????» ??? ?????????? ?????? ???, ??? ??? ?????? ??  
????? 24 ??? ?????????? ??? 16?? ?????????? 2010, MacDonalds Resorts (C-270/09,  
EU:C:2010:780).

32

???? ???????, ?? ??????? ?????????? ??? ?????? ?????????? ??? ?????????? ? Madbid, ??  
????? ?????????????? ??? ?????? ?????? ??? ?????? ?????????? ??? «????????? ??????» ????,  
????????? ?????? ?????? ??????????, ? ?????? ??? ?????? ?? ?????????? ?? ??? ??????????  
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33

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

34

?????????, ? Madbid ?????????? ???, ?? ?????? ??? ?????? ??? ???? ??? ????  
«????????? ??????» ?????? ?????? ?????????, ? ?????? ??? ?????? ??? ???? ??? ????  
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35

????????????? ?????? ???, ??? ?? ?????? 2, ?????????? 1, ??? ?????? ???, ???  
??? ?????????? ?? ?????? ?????????? ??? ?????????????? «?? ?????? ??????» ???  
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36

???? ?????? ??????????, ? ?????? ?????? ?????? ?????????????? «?? ?????? ??????», ???  
??? ?????? ??? ?? ??????????, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ???  
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????????? ??? ?????????? ??? ?????????? ??? ?????? (????????? ??? 16?? ??????????)  
2010, C-270/09, MacDonald Resorts, EU:C:2010:780, ??? 16 ?? ??? ??????????  
?????????, ??? ??? 20?? ?????? 2013, Newey, C-653/11, EU:C:2013:409, ??? 40).

37

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?? ??? ??? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ??????????????  
????????? ??? ?????????? ??? ?????? ??? ?????? ?????? (????????? ??? 3??  
?????? 1994, Tolsma, C-16/93, EU:C:1994:80, ??? 13 ??? 14, ??? 16?? ??????????  
2010, Macdonald Resorts, C-270/09, EU:C:2010:780, ??? 16 ?? 26, ??? 10??  
????????? 2016, Baštová, C-432/15, EU:C:2016:855, ??? 28).

38

???? ?????? ??? ?????? ???, ??? ?? ?????? 1.2 ??? ?????? ??? ??? Madbid ??????????  
?? ? ?????? ??? «????????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????.  
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39

??????????, ?? ?????? ??? ?????? ?? ?????????? ??? ?????? ?????????? ??? ??????????  
? Madbid ?????????? ?? ?????????? ??? ?????? «????????? ???» ?????? ??????????  
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?????.. ? ?????? ??? «????????? ???» ??? ?????? ??? ?????? ??? ?????? ??? ??????  
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«?????????? ??????» ??? ?????????? ????? ?? ?????? ?????? ??? ???? ????  
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?????????, ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? .? ???, ???, ???  
«????????? ??????» ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???  
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40

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41

??. ?????????? ??? ?????? ??? ?????? ??? ?? ?????? ???, ??? ???? ???? «????????? ???  
?????», ? ??? «????????? ??????» ??? ?????? ?? ?????? ?? ?????? ?? ?????? ???  
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42

?????, ??? ?????? ?????? ?????? ?? ?????? ??? ???? ???? ???? ???? ???? ???? ????  
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43

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

44

??????, ??? ?????? ??? ?????? ?? ?????? ??? ???? ???? ???? ???? ???? ????  
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?? ?????? ?????? ???, ??? ?????? ??? ???? ??? «????????? ??????» ??? ?????? ???  
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45

??????, ? ?????????????? ??? Madbid, ??? ?????? ?????? ???? «????????? ???  
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????? ?????????? ??? (??????? ?? 20?? ?????? 2013, Newey, C-653/11, EU:C:2013:409,  
????? 42 ??? ??? ?????????? ??????????).

46

?? ??? ?????? ?????? ?????? ??? ? ?????? ??? ?????????? ? Madbid ??? ?? ??????  
?? ?????? «????????? ?????» ?????? ??? ?????????? ?????????? ??? ?? ??????  
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47

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Madbid ?????????? ??? ?????? ??? ?? ?????????? ???, ?????? ??? ??  
????????? ??? ?????????????? ??? ????? ??????????. ???????, ? ?????????? ?? ??????????  
??? ?????????? ? Madbid ??? ?????????? ?????????? ?? ?????????? ???, ??? ??  
?????? ?? ??? ?????????????? ??? ?????????? ??? ?????????? ?? ??? ?????????? ?? ???  
??? ??? ?????????????? ??? ?????, ?? ?????????? ??? ????? ?????????? ?????????? ???  
???? ??? ?????????? «????? ???», ?????????? ?????? ??? ?????? ???.  
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48

??????, ??? ?????????? ? ?????? ?????????? ?? ?? ?????? 58 ??? ?????????? ???, ?  
?????? «????????? ?????» ??? ? ?????? ???, ??? ?????? ??? ?? ?????????? ???  
????????? ?????? ???, ??? ?????? ??? ?? ?????????? ??? ?????? ??? ??  
????? ?????? ???, ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????  
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49

????????????? ??? ?????? ??? ?????? ??? ?????? ??????, ??? ?????? ?????? ?????? ?? ???  
? ?????? ??? ?? ??? 2, ?????????? 1, ????????, ??? ?????? ??? ?? ??? ??  
????? ??? ? ?????? «????????? ?????», ??? ?? ?????? ??? ?????? ??? ??  
????, ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????????? ??? ??????????  
????????? ??? ?????? ??? ?????????? ??? ?????? ??????????, ?????? ?????? ??? ??????  
????????? ???, ??? ?????? ? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??  
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?? ??? ?????? ??? ??????????

50

? ? ?????? ?????? ???, ?? ?????? ?????????? ???, ???' ??????, ?? ?????????????? ??  
?? ?????? 73 ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ? ??? «????????? ??????»  
??? ?????????????? ??? ?????? ?????? ?????????? ?????? ??? ?????????? ???  
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«?????????? ???».

51

????? ?? ?????? 73 ??? ??????? ????, ???? ?????????? ??? ?????? ??? ?????????????? ??  
????????? ?????? ?????????? ?????? ? ?????? ?????????? ?????? «????????? ?????? ????  
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52

???????, ?????? ?? ?????????? ?????? ???, ??? ?????????? ??? ?????? ??? ?????? ??? ??????  
???????, ? ?????? ??? ?????????? ?? ?????????? ??? ?????????? ??? ?????? «?????????  
?????» ??? ? Madbid ?????? ??? ?????????? ??? ??? ?????? ??? ?????? ??? ??????????  
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53

????, ??? ?????????????? ? ?????? ?????????? ?? ?? ?????? 79 ??? ?????????? ???, ??  
????? ??? ?????????? ?? ?????????? ??? ?????????? ?????? ??? ?????? ?? ??????  
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54

?????????, ??????????, ?? ?????? ?????????? ??? ?????????? ??? ?????????? ?? ??????  
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«????????? ???» ??? ?????? ?? ?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ??????  
?????, ??? ??? ?????? ??? ?????? 65 ??? ?????? ???.

55

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

56

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

57

????? ?????????? ? ?????? ?????????? ?? ?? ?????? 92 ??? ?????????? ???, ? ???? ???  
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? «?????  
????» ? ??? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? «????? ???» ? «????????? ???».. ??????, ?????? ?? ?? ?????? 79,  
????? ??, ??? ?????? ???, ??? ?????? «????????? ???» ?????? ??? ?????? ??

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

58

? ?????????? ??? ?????? ??? ?????? ?????????? ???, ??? ??????? ??? ?????? ??? ?????? ???  
????? ??? ?????????? «????? ???» ? «????????? ?????», ? ???? ??? «????????? ???  
?????» ??? ?????? ?????????? ??? ??? ?????? ?????????? ?????????? ?? ?????? ???  
????? ??? ?????? ??? ?????????? ??? ?? ?????? ??? ?????????? «????? ???» ? ??? ?????? ???  
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59

???????, ??? ?????????? ? ?????? ?????????? ??? ?????? 102 ??? ?????????? ???, ??  
????? ??? ?????????? ???' ???? ??? ?????, ?? ?????? ??? ?????? ??? ??? ?????? ??? ???  
????????? ? ?????? ??? 27?? ?????? 1999, Kuwait Petroleum (C-48/97, EU:C:1999:203), ???  
????????? ?? ?????????? ?? ?????????????? ?? ?????????????? ??????, ?????????? ???  
????????????? ?????? ?????????? ?????????????? ??????????, ??? ??????????????  
?????????????, ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?? ?????? ??? ??????????????  
«????? ???» ? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??????????.

60

????????????? ??? ?????? ??? ?????? ???????, ??? ?????? ?????? ?????? ??? ?????? ?  
????????? ??? ?? ?????? 73 ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ??????????????  
????? ???? ??? ?????????? ??? ?????? ???, ? ???? ??? «????????? ??????» ???  
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61

? ? ?????? ?????? ???, ? ? ?????? ?????????? ???, ???' ??????, ? ? ?????????????? ?,  
? ? ?????????? ??? ???? ?????? ?????? ?????????????? ??? ?????? ??? ?????? ?????????????? ??????????????  
? ? ?????? ???, ? ? ?????????? ??? ?????? ??? ? ???? ?????? ??? ?????? ??????????????, ??? ????  
????????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??  
????????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????????? ??? ?????? ???  
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62

????????????? ?????? ??? ???? 267 ??? ?????? ?????? ?????????? ?????????? ??????????????  
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????? ??? ??????, ?? ?????? ?????? ?? ?????????? ?? ?????? ?????? ?????? (??., ??' ???  
?? ??????, ?????? ??? 21?? ?????? 2011, Kelly, C-104/10, EU:C:2011:506, ????? 60 ???  
????? ?????????? ??????).

63

???????, ?? ??? 267 ??? ?????? ?????? ??? ?????? ?????????? ?? ?????????? ???, ???

??????????, ??? ?????????? ??? ?????????? ?????????? ?????????? ?????????????????? ???????????,  
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??????, ??????? ??? 21?? ?????? 2011, Kelly, C-104/10, EU:C:2011:506, ??? 61 ??? ??  
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64

? ? ? ? ???? , ??? ?????????? ??? ?????? ?????? ?????????????? ??? ? ??? ???? ?????? ?????????? ??  
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65

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66

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???, ???, ??? ?????? ??????? ??? ??????? ?????????? ??? ??????? ??? ?????? ??? ?????? ??? ???  
????????? ???????, ?? ?????????? ?????? ?????? ?????? ?????????????? ??? ???? ?????? ???  
????????? , ??? ?????? ?????? ???????, ?? ?????????? ?????? ?????????? ??? ?????????? ???  
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67

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

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

1)

? ? ?????? 2, ?????????? 1, ??????? ??, ??? ?????? 2006/112/?? ??? ?????????? ??? 28??  
????????? 2006, ??????? ?? ?? ?????? ?????? ?????? ?????? ?????????????? ???, ??? ??  
????? ??? ? ??????? «????????? ??????», ??? ?? ?????? ?????? ?????? ?????? ??? ??????  
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2)

?? ????? 73 ??? ?????? 2006/112 ??? ????? ???, ??? ?????????? ????, ??? ?????? ?????? ???  
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3)

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

( \*1 ) ?????? ??????????: ? ??????.