

62017CJ0005

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«????????????? ?????????? – ????? ?????? ?????? ?????????????????? ?????? – ??????
2006/112/?? – ?????????? – ?????? 135, ??????????? 1, ?????????? ?? – ?????????? ??? ??????
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? ? ?????????? ?????? ?????????????? ?????????? ?????????? ??? ?????? 267 ????, ???
?????? ?? Upper Tribunal (Tax and Chancery Chamber) [????????? ?????????????? ??????????
(????? ??????????? ??? ??????????????), ??????? ??????????] ?? ??????? ??? 28?? ??????????
2016, ? ?????? ??????? ??? ?????????? ??? ?????????? ??? 6 ?????????? 2017, ??? ??????? ??? ??????

Commissioners of Her Majesty's Revenue and Customs,

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DPAS Limited,

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

? ? ?????????? ??? ??? M. Ileši?, ??????? ???????, A. Rosas, C. Toader, A. Prechal ??? E.
Jaraši?nas (?????????), ????????,

? ? ??????????: H. Saugmandsgaard Øe

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

? ? ?????? ??? ?????? ??? ??????? ?????????? ??? ??????? ??? ??' ?????????? ??? ?????????? ???
24?? ?????????? 2018,

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? DPAS Limited, ?????????????? ??? ??? J. Martindale, solicitor, ?????? ??? ??? ???
McDonnell, barrister, ??? ??? J. Walters, QC,

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? ? ?????????? ??? ??????? ??????????, ?????????????? ??? ?? Z. Lavery ??? ??? J. Kraehling,
????????????? ??? ??? S. Pritchard, barrister, ??? ??? K. Beal, QC,

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

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

??? 21?? ??????? 2018,

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? ?????? ???? ?????????? ??? ?????? ?????? ?????? ?????? ??? Commissioners for Her Majesty's Revenue and Customs (?????????? ?? ?????????? ?????? ??? ?????? ??? ??????) ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? DPAS Limited, ?????? ?? ??? ?????? ??? ?? ?????? ?????? ?? ?????? ??? ?????? ??? ?????? ??? (???) ?????? ??? ?????? ? DPAS.

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???? ? ? ?????? 2, ?????????? 1, ??????? ??, ??? ??????? ????? ??, ??? ?????? ?????
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4

????????? 135, ??????????? 1, ????????? ?? ??? ?, ?? ?????? ??????????????? ??? ?????????? 3
???? ??????????????? «?????????» ?????? ?? ??? ???? ??????, ??????????, ??
????????????? ???' ?????? ??????, ??? ?????????? ??? ?????????????? ?????????????? ???
????? 13, B, ??????? ??, ?????? 1 ??? 6 ???????????, ??? ?????? ?????? 77/388/??? ???
??????????, ??? 17?? ????? 1977, ??? ?????????????? ??? ?????????? ??? ?????????? ???,
??? ??????? ?? ??? ?????? ?????? ?????? ?????? – ?????? ?????? ??? ??????????????
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5

?? ?????? 135, ??????????? 1, ?????????? ?, ??, ??? ??????? ?????? ??? ???? ??, ?? ????;

«?? ?????? ????. ?????????????? ???. ??? ?????????? ???. ????????:

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6

?? ?????? 31 ??? Value Added Tax Act 1994 (????? ??? 1994 ??? ?????? ??? ?????? ?????????????????
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«[...]

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1, 2, 3, 4 ? 6 (?????????? ?? ? ? ?????????? ??? ????? ?????????? ?????) ??? ??????
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8

? DPAS, ?????????? ??? «Dental Plan Administration Services» (????????? ??????????????
????????????? ?????????????? ?????????????), ??????????, ?????????? ??? ??????????????
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??? ?????????????? ??? ??? DPAS ?? ????????????, ?????????????? ?? ?????????? ??? ???
DPAS ??? ?????, ?? ??????? ??? ?????????????? ???, ?? ?? ????? ??? ?????????????? ??? ??
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????? ??? ??????? ??? ???????????, ?? «????????? ?????????????? ??????????» ???????,
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??????, ? ?? ?????????? ?????? ?? ???? ??? ?????? ??? ?????????? ?????????? ??? ???'
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????????? ???», ??? ?????? ?????? DPAS.

10

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?? ?????? ??? DPAS, ??? ?????? ??????? ????????. ??? ???? ?????? ??? ?????? ???????????,
? ?????? ?? ??? ????? ?????????????? ? ?????????? ?????? «????? ? ?????? ??
?????? ??? ?????????? ??? ?????? 7 ??? 11 ??? ?????????? ??? 28?? ?????????? 2010,
AXA UK (C-175/09, EU:C:2010:646)». ?????? ??? ?????????? ?????? ?????????????? ?? ???
??? ?????? ? ?????? ??? ?????????? ?? ?????? ??? ?????????? ? ?????? ?????? ?????? ??????????
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????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ???
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11

????? ??? 1? ?????????? 2012, ?? ??????? ??? ?????? ?????????? ??????????????
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????????? . ? ?????????? ??? ?????? ??? ? DPAS ?????????? ?? ?????? ??? ??????
????????? ??? ?????????? ??????, ?? ?????? ?????????? ??? ??? ??? ?????? ??? ??????
13, B, ??????? ??, ?????? 3, ??? ?????, ???, ???????, ?????? ??? ?????? 135,
????????? 1, ??????? ??, ??? ?????? ???.

12

???? 28 ?????????? 2010, ?? ?????????? ?????? ??? ?????? Axa UK (C-175/09,
EU:C:2010:646), ? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ? Denplan
Ltd, ?????????? ??? DPAS ??? ?????????? ?????? ?????????? ?????????? ??? ?????????? ???
????????? ?????? ??? ?????????? ??? ?????????? ?????????? . ??? ?????? ???, ?? ??????????
????????? ??? ? Denplan ?????? ?????????? ?????????? ?????????? ??? ?????? ???
??? ?????? 13, ?, ??????? ??, ?????? 3, ??? ?????? ???????, ?? ?????????? ??? ??????????
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13

?????? ??? ??????? ??? ?????????? ???, ? DPAS ?????????? ??? ?????? ??????????
????? ??? ?????????? ??? ?????????? ?????? ???, ??? 1?? ??????????
2012, ?? ?????? ??? ??????? ??? ?????? ??? ?????????? ???, ??? ??? ???? ?????? ???.

14

??? ??????? ???, ??????, ?? ?????? ??? 8?? ?????????? 2011 ??? ??? ?????? ???

? ????????????, ? DPAS ??? ?????????? ???, ??????????? ?? ??? ?????? ??? ??????? ??? ??????? ???
????????? ??? ?????????? ??? 28?? ?????????? 2010, Axa UK (C-175/09, EU:C:2010:646), ??
????????? ?? ?????????? «????? ?????????? ??????», ?? ?????? ??? ?? ?????? ???????
??? ??? ??? ??? ?????????? ?? ??? ??? ??? ?????????? ?????? ?????? ?????? ??? ??
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?? ?? ?????? ??? ?????????? ??? DPAS, ?? ?????????? ???, ??? ??? ???????, ???
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????????? ???, ??? ??? ??? ?????? ??? DPAS ??? ??? ?????????? ??? ??? ??? ??????
????????? ?????????? ??? ?????? (dental payment plan
services) ?????????? ???, ??? ??? ??? ?????? ??? DPAS ??? ??? ??????
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????????? (dental payment plan facilities). ? DPAS ?????????? ??? ?? ?????? ??? ??
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16

? ???? ?????? ??? ?????? ??? ?????? ??? 1?? ?????????? 2012 ??? ?????????? ???
????????? ??? 8?? ?????????? 2011 ???????, ?????? ???, ??? ? DPAS ??? ??? ???
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17

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

18

? ???? ?????? ???, ??????? ??? ??? ?????? ?? ?????????? ??? ?????? ?????????? ?, ???
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?? «?????????????» ? DPAS ??? ?????? ??? ?????????? ??? ?? ?????? ?????????? ??????????

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19

? ? ??????? ?? 17?? ??????? 2012, ? ?????????? ?? ?????????????? ?? DPAS ???
?????? ??, ??? ?? ?????? ?? ??????? ?? ?? ?????????? ?????????????? ??????????????
???????????, ??? ?? DPAS ?????? ?? 1?? ?????????? 2012, ??????????
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??? ?? ??????? ??????????.

20

? DPAS ?????????? ?? ?? ??????? ?? DPAS ?? First-tier Tribunal (Tax Chamber)
[????????????? ?????????? ?????? (????????? ??????), ?????? ??????]. ?????? ??
?? ??? ???????????, ? DPAS ?????????? ?? ?????? ?? ?????????? ?????????? ??????????
???????????, ??? ?? ?????????? ?????????? ?????????? ?????? ?? ?????????? ?????????? ??????????
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1?? ?????????? 2012 ?????????? ?????????? ?????????? ??? ?? ?????? ?? ?????????? ??? ??
??? 21?? ?????????? 2006, Halifax ??. (C-255/02, EU:C:2006:121).

21

? ? ??????? ?? 22?? ??????? 2013, ? ? ?????? ?????????? ??, ?????? ??, ??? ?
DPAS ?????? ?????????? ??, ??? ?????????? ?????? ?????? ?????????? ??? ?? ?????????? ??
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22

? ? ?????????? ?? Upper Tribunal (Tax and Chancery Chamber)
[????????? ?????????? ?????? (????? ?????????? ?? ?? ??????????), ??????
?????????]. ?? ?????????? ??, ???' ??????, ??? ? DPAS ?????? ??????????
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73 ??? ?????????? ??? ?? 21?? ?????????? 2006, Halifax ??. (C-255/02, EU:C:2006:121), ? ?????????? ??
????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????????? ??
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????????? ?? 28?? ??????? 2010, Axa UK (C-175/09, EU:C:2010:646). ???????, ??
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23

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28?? ?????????? 2010, Axa UK (C-175/09, EU:C:2010:646), ?????????? ??? ????
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????????? ??? ?, ?? ?? ??????, ?????????? ??? ??? ??? ?????? ??? ?????? 135,
????????? 1, ????????, ??, ??? ?????? ???, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ????
????????? ??? 26?? ????? 2016, Bookit (C-607/14, EU:C:2016:355), ??? ??? 26 ????? 2016,
National Exhibition Centre (C-130/15, ?? ????????????, EU:C:2016:357), ?????????? ??? ???
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????? 2016, Bookit (C-607/14, EU:C:2016:355), ??? ??? 26 ????? 2016, National Exhibition
Centre (C-130/15, ?? ????????????, EU:C:2016:357), ??? ??? ?????? ?????????? ??? ?
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????????? 2010, Axa UK (C-175/09, EU:C:2010:646), ??? ??? ?????? ?????? ?? ??????????, ??
?? ??? ??? ? DPAS ?????? ?????????? ?? ?????? ??? ??? ?? ?????????? ???, ??
?????????, ?????? ??? ? DPAS ?????? ?????????? ?????????? ?????????? ?????????? ??????
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28?? ?????????? 2010, C-175/09, Axa UK (EU:C:2010:646), ??? ? ?????? ??? ??????????
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25

? DPAS ??????????, ????????, ???, ?????? ?? ?? ?????????? ??? ?????????? ??? ???
?????? ??? 28?? ?????????? 2010, Axa UK (C-175/09, EU:C:2010:646), ?? ???????
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?????????, ??????? ??? ??? 1?? ?????????? 2012 ?????????? ?? ??????????. ???????,
????????? ??? ?????? ?????????? ?????????? ??? ?????? ????. ?? ?????????? ??? 26?? ???
2016, Bookit (C-607/14, EU:C:2016:355), ??? ??? 26?? ????? 2016 National Exhibition Centre (C-
130/15, ?? ????????????, EU:C:2016:357), ??????, ?????? ??? ? ?????? ??? 28??
????????? 2010, C-175/09, Axa UK (EU:C:2010:646), ??????, ?????? ?????? ?????? ???,
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????? ?????????? ??? ??? ?????? ?????? ??????. ?? ?????????? ??? ?????? ? DPAS ???,
?????????, ?? ?????? ??? ?????? ?????? ?? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??? ???
????? ?????????? ? ?????? 13?? ?????? 2014, ATP PensionService (C-464/12,
EU:C:2014:139).

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????????? ?????? (????? ?????????? ?? ?????????????)] ?????????? ?? ??????????
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« 1)

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?????? 135, ?????????? 1, ??????? ??, ??? ??????? ???, ??????? ???, ?????????? ????? ??? ???? ??
????????? ??????? ? ??????????? ????? ???, ???? ?????? ?????????? ????? ??????? ?????? ???
??????, ????? ??????? ??????? ?????????? ???????, ?? ?????? ??? ?????????? ????? ?? ???? ???????
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?????????; ??????????, ?????????? ??? ??? ?????????? [?? 26?? ????? 2016, Bookit (C-
607/14, EU:C:2016:355), ??? ??? 26?? ????? 2016National Exhibition Centre (C-130/15, ??
??????????, EU:C:2016:357),] ??? ???? ?? ????? 135, ?????????? 1, ??????? ??, [??
?????? ??, ????] ??????? ??? ??? ??? ??? ??? ?????? ???????, ????? ??? ??? ??
????????? ??????? ? ?????????? ????? ???, ???? ?????? ??? ?????????? ??? ?? ??????????
???? ???, ????? ??????? ?????????? ??????? ???????, ????? ?????????? ??? ??? ??, ???
?????????; ? ????? ??? ??? ??? ?????? [?? 28?? ?????????? 2010, Axa UK (C?175/09,
EU:C:2010:646),] ??????? ?? ???????;

2)

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?? ??????????, ??? ?????? ?? ?????????? ?????? ?? ?????????????? ?????? ?? ?????????????? ??, ??????????
?? ?????? ?????????? ?? «????????????? ??????????» ??? ?????? ?????? ?? ?????? 135,
????????? 1, ???????? ?? [?? ?????? ???]; ??????????, ?? ??? ?????? ?????????
(???? ?????? ?? ?????????? ??? ?????? [?? 28?? ?????????? 2010, Axa UK (C?175/09,
EU:C:2010:646).] ??????? ?? ?????????????? ?? ????? ?????????? ?????????) ??????? ??????????
????????? ??? ?????????? ??? ?????? ?????????? (???? ?? ?????????? ???
???? ?????????????? ??? ?????? ?????? [?? ??? ?????? ?????????? ?? ?????? ???], ???????
? ?? ??? ?????? ?????????? ?????????? ?????????? ?????? ?????? ?????? ??? ?????????? ???
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27

?? ?? ?????? ???????, ?? ?????? ??????????? ??????, ???' ??????, ?? ?????????????? ??
????? ?? ?????? 135, ?????????? 1, ??????? ??, ??? ?????? ??? ?????? ?? ???? ??
? ??????????? ?? ??? ?????? ??????? ??? ?? ??? ?????? ??? ?????? ?? ???? ??
????????? ??????? ?????????? ?? ?????? ?????????, ??? ? ??????? ?????? ??
????? ????, ??? ?????? ??? ?????? ? ?????????? ?????? ??? ?????? ??? ??
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28

???? ?? ???? ?????????? ?? ??????????????, ?? ?????????? ?? ?????? 135, ?????????? 1, ???
?????? ??? ?? ?????????? ?????????? ?????? ??? ?????? ??? ??????, ?? ?????? ???
?? ?????????? ??? ?? ?????????? ?????????? ?????? ??? ?????? ??? ?????????? ??? ??
??? ?? ??? ?????? ??? ?????? (????????? ??? 25?? ?????????? 1999, CPP, C-349/96,
EU:C:1999:93, ??? 15, ??? 26?? 2016, Bookit, C-607/14, EU:C:2016:355,
????? 33 ??? ??? ?????????? ??????????).

29

???? ?? ???? ?????????? ??, ?? ??? ?? ?????????????? ?? ?????? 135, ?????????? 1, ???
????????? ??? ?? ?????? ?? ?????????? ?????, ?????????? ??? ??????????
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????????? ??? ?????????????? ?? ?????????? ?????? ??? ?????????? ??? ??
(????????? ??? 10?? ?????? 2011, Skandinaviska Enskilda Banken, C-540/09, EU:C:2011:137,
????? 20, ??? 26?? 2016, Bookit, C-607/14, EU:C:2016:355, ??? 34 ???
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30

?? ???? ???? ??, ??? ?? ?????????? ?? ?? ?????? 135, ?????????? 1, ?????????? ??, ???
?????? ??? ?? ?????????? ?? ?? ?????? ??? ?????????? ??? ?? «??? ???????,
????????????? ??? ?? ??????????????, ?? ?????? ?????? ??????????, ??????????
?????????????, ???????, ?????????? ???????, ??????????, ?????????? ??? ?? ?????? ??????????,
?? ?????????? ??? ?????????? ??????????».

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?????????, ?? ??????? ?? ?????????????? ?? ?????? ?? ?????????? ?? ?????? ?????????????? ??
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?? ?????????????????? ?????????? (??., ???????, ?????????? ??? 28?? ?????????? 2010,
Axa UK, C-175/09, EU:C:2010:646, ??? 26 ?? ??? ?????????????? ??????????, ??? 26??
??? 26?? 2016, Bookit, C-607/14, EU:C:2016:355, ??? 36).

32

? ? ??????????, ??? ?? ?????? ?? ?? ?????? ?? ?? ?????? ?? ?????? ?? ? ? ?????????? ??
?? 135, ?????????? 1, ??????? ??, ?? ?????? ?? ?? ?????? ?? ?????? ?? «?????? [...]
?? ?????? ?????? [...] ?????? [??] ?????? ?????? ??????».

33

? ? ?????????? ?? ?? ?????? ?? ?????? ?? ?? ? ?????????? ?? ?????? ?? ?? ?????? ??
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?? ????. ? ?????? ?? ?????????????? ?? ?????? ?? ?? ?????????? ?? ?? ?????????? ??
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34

??????????????, ?? ?????? ??? ?????????? ?????? ??? ??????????, ???' ?????, ?? ?? ?????????? ???? ?????? ?????? ?????? ?? ?????? ?????????? ???????, ?? ?????? ?????, ???? ?????????? ????, ?????????? «?????? ?? ?????? ??????» ?????????? ?????????? ??????, ???? ??? ?????? ??? ?????? ??? (????????? ??? 5?? ?????? 1997, SDC, C-2/95, EU:C:1997:278, ??? 64, ??? ?? 26?? ????? 2016, Bookit, C-607/14, EU:C:2016:355, ??? 39). ??????????, ? ?????????? ??? ?? ?????? ??????? ?????????? ??????? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (??., ???????, ??? 5?? ?????? 1997, SDC, C-2/95, EU:C:1997:278, ??? 66 ??? 68, ??? ?? 26?? ????? 2016, Bookit, C-607/14, EU:C:2016:355, ??? 39).

35

? ??? ??? ???????? ???. ??????????? ???. ?????????????? ???. ?????????? ???. ????????,
????????? ???. ? ???. ????????. ????????. ????????. ???. ?????????????? ???. ?????????? ???. ??????????
? ??? ?????????? ???. ????????. ????????. ?????????? (??., ???????, ??????? ???. 13?? ??????
2014, ATP PensionService, C-464/12, EU:C:2014:139, ??????? 80 ???. 81).

36

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?????? ??? ??????? ??? ?????? ??? ?????? ??? ?????? ??????, ??????? ? ???????????
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??????, ??????? ?? 5?? ?????? 1997, SDC, C-2/95, EU:C:1997:278, ??? 66, ??? ??
26?? ??? 2016, Bookit, C?607/14, EU:C:2016:355, ??? 40).

37

?????????, ??? ?????? ??????????? ?? ??????????????, ?? ?????????? ??? ?????????? ??????????
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??? ?????? 135, ?????????? 1, ??????? ??, ??? ?????? ??? ??, ??? ?????? ??? ??,
(??., ???????, ?????????? ?? 5?? ??????? 1997, SDC, C-2/95, EU:C:1997:278, ????? 50,
????? ??? ?? 26?? ????? 2016, Bookit, C-607/14, EU:C:2016:355, ????? 43 ??? ???
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38

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?? ??????? ?????? ??? ?????????? ??? ??? ?????? ?????????? ?????? ?? ?????????????? «?????
??? ?????? ?????????? ?????????» ? «????? ??? ?????? ?????????», ??? ??? ?????? ??? ??????
135, ?????????? 1, ??????? ??, ??? ?????? ???, ??? ?????? ???, ??? ?????? ??? ?? ??????????
?? ??????? ?? ??????? ??? ?????????? ?????? ?????????? ??? ?????????????? ?? ?????????? ???
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????????? (??., ?????? ???, ??????, ??????, ??? 26?? ??? 2016, Bookit, C-607/14,
EU:C:2016:355, ?????? 40 ??? 41).

39

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

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????? ??? ?????????? ??? ?????????? ??? ?????? 33 ??? 38 ??? ?????? ??? ????????,
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41

???????, ??? ?????????? ? ??? ? DPAS ??? ?????? ??? ? ??? ?????? ??? ?????? ??????????
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26?? ??? 2016, Bookit (C-607/14, EU:C:2016:355). ? ?????? ??? ?????? ???' ????,
????? ?????????? ??? ?????? ??? ?????? ? ?????????? ??? ?????? ??? ?????? ???
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??????, ?????? ??? 26?? ??? 2016, Bookit, C-607/14, EU:C:2016:355, ?????? 44 ??? 51
??? 53).

42

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????????? ??? ? ??????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ??? ???? ????
????????????? ??? ???? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???' ????
????? 135, ?????????? 1, ??????? ??, ??? ?????? ????.

43

??????, ?????? ??? ???? ?? ??????? ???, ??????, ? ?????? ??? ?????? ??? ????
????? ?????? ?????????? ???, ??? ?????? ??? ?????? ?????????????? ??????????????
??????????, ?????????? ??? ??? ?????????????? ??? ?????? ??? ?????? ??? ???? ????
?? ??????? ??? ?????????????? ??? ??? ?????????? ???, ?????????? ??? ? ??????????
??? DPAS ?????? ?????? ??? ?????? ?????????? ? ?????? ??? ?????? ??? ???? ????
????? ??????? ?????????? ???????, ?????????? ??? ?? ??? 135, ?????????? 1, ???????
??, ??? ?????? ??? ??? ?????? ?? ?????????? ???????????, ??? ?? ?????? ??? ????
??? ??? ?????? ??? ?????? ?????? ??? ?? ?????????? ?????? ?????????????? ??? ????
??? ?????????? ?? ?????????? ??? ? ?? ??? ?????? ?????????? ?????????????? ??? ????
(????????? ??? 13? ?????????? 2001, CSC Financial Services, C?235/00, EU:C:2001:696,
????? 32, ?????? ??? ??? 26? ????? 2016, Bookit, C-607/14, EU:C:2016:355, ????? 45 ???
????? ?????????? ??????).

44

??????, ??? ?????????? ??? ??? ?????? ?????? ?????? ??? ?????? ??? 1?? ??????????
2012 ??? ?????????? ??? ?????? ?????? ??? ?????? ?????????????? ??? 8?? ??????????
2011, ?? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??????????, ? DPAS ??? ?????? ??? ????
??? ??? ??????? ? ??? ?????? ??? ?????? ?????????? ??????????, ?????? ??? ?????? ?
DPAS ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ??? ????
?? ?????? ?????? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????.

45

????? ????, ???????????, ??? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ???? ???, ??????
?? ???????????, ??????, ??? ?? ?????? ??? ?????????????? ??? ??? ?????? ??? ???? ???? ????
135, ?????????? 1, ??????? ?? ??? ??, ??? ?????? ???, ?????? ??? ?????? ??? ????
?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????????? ??????, ??????????,
?? ??? ?????? ???, ?????????????? ?????? (??., ?????? ???, ?????? ??? 22??
????????? 2015, D. Hedqvist, C?264/14, EU:C:2015:718, ????? 37 ??? ????? ??????????????
????????, ????? ???, ??????, ?????? ??? 26? ????? 2016, Bookit, C-607/14,
EU:C:2016:355, ?????? 36 ??? 54). ??? ?????, ??? ?????????? ??? ?????? 40 ??? 41
??? ??????? ???????, ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ????
????? ?????????? ?????.

46

??????, ?? ?????????? ??? ?????????????? ??? ?????? 135, ?????????? 1, ??????? ?? ???
??, ?????????? ??? ?????????????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (??., ?????? ???,
????????? ??? 19?? ?????? 2007, Velvet & Steel Immobilien, C-455/05, EU:C:2007:232,
????? 24, ????? ??? ??? 22?? ?????? 2015, Hedqvist, C-264/14, EU:C:2015:718, ????? 36).
????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ????
????????? ??? ??? ?????? ??? DPAS ??? ??? ?????? ??? ?????? ??? ?????? ??? ????
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????? ??????????? ??? ??? ??????? ??? ?? ?????? ????????. ??? ??? ??????? ??? ??????, ?
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47

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48

?? ?????? ?????????? ?????????? ?????????? ?? ??? ?? ?????? ??? ??? ??? ??? ???
?????? ??????? ? ??????? ??? 28?? ?????????? 2010, Axa UK (C-175/09, EU:C:2010:646).
??????, ?????? ?? ???????, ??? ?????????? ??? ? ?????? ??????????? ??? ??????? 59
??? 63 ??? ??????? ???, ??? ??? ?? ??? ?????? ??????? ?? ?????????? ??? ??????? ???
????? ? ??????? ??? ?????? ?????? ?????? ?????? ?????????? ?????????? ?? ?????????? ??? ???
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????????? ?????? ?????? (??, ?????????? ??? 5?? ??????? 1997, SDC, C-2/95,
EU:C:1997:278, ??????? 53 ??? 66, ?????? ??? ??? 13?? ?????????? 2001, CSC Financial
Services, C-235/00, EU:C:2001:696, ??????? 26 ??? 28), ??? ??????? ??? ??????? ??? ???
????? ??? ? ?? ??? ?????? ??????? ?????????? ?????? «????????? ??????????» ???'
?????? 13, B, ??????? ??, ?????? 3, ??? ?????? ???????, ??? ?????? 135, ?????????? 1,
???????? ??, ??? ?????? TVA.

49

?? ??? ?????? ?????? ??? ??????? ?????? ??? ?? ?????????? ?????????, ??? ???,
?? ??????? ??? ?????? ??? «????????? [...] ?? ?????? ?????? [...] ??????? [??]
????????? ??????», ??? ??? ?????????? ?????, ??? ??? ?????? ??? ?????????? ?? ???
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50

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51

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??? ?? ??? 135, ?????????? 1, ??????? ??, ??? ?????? ??? ??? ??? ?????? ??? ?????? ???
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52

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53

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

? ? ?????? 135, ?????????? 1, ????????, ??? ?????? 2006/112/? ? ? ??????????, ???
28? ?????????? 2006, ??????? ? ? ? ?????? ?????? ?????? ?????????????? ????, ??? ??
????? ??? ? ?????????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
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????? ?????? ??? ?????? ??? ?????? ???, ??????, ?? ?????? ??? ?????? ??? ?????? ????, ??? ??
????????? ??? ?????????? ??? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ????, ??? ??
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(?????????)

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