

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

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

??? 4?? ??????? 2018 (*)

«????????????? ?????????? – ????? 49 ??? – ????? ?????????? – ?????? ?????????????? ??????? ?
????? ?????? ?? ??????? ??? ?????? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????????????? ?????????? ?????????????? ?? ??? ????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????? ??????? ??????? ??? ??? ?????????? ??? ??? ?????? ?????? ?????? ?????? ?????? ???
????? ??? ??????? ??? ??????? ?????????? ??????»

???? ??????? C-28/17,

?? ??????????? ?????? ?????????????? ?????????? ??????? ??? ?????? 267 ????, ???
?????? ?? Østre Landsret (?????? ??? ?????????? ???????????, ????) ?? ??????? ???
1?? ??????? 2015, ? ??? ?????? ??????? ??? ?????????? ??? 19 ??????? 2017, ???
?????? ??? ???

NN A/S

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Skatteministeriet,

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

????????? ??? ??? R. Silva de Lapuerta, ?????? ???????, C. G. Fernlund, J.?C. Bonichot
(??????), A. Arabadjiev ??? S. Rodin, ???????,

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

?????????: C. Strömholm, ?????????? ????????,

?????? ??? ?????? ?????? ?????????? ??? ??????? ??? ??' ?????????? ??? ?????????? ???
29?? ??????? 2017,

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

– ? NN A/S, ?????????????? ??? ??? A. Ottosen, advokat,

– ? ?????? ???????, ?????????????? ??? ??? J. Nymann-Lindgren ??? C. Thorning,
????????????? ??? ??? S. Riisgaard, advokat,

– ? ?????????? ???????, ?????????????? ??? ??? T. Henze,

– ? ?????????? ???????, ?????????????? ??? ??? W. Roels ??? R. Lyal,
????????????? ??? ??? H. Peytz, advokat,

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

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1 ? ??????? ?????????????? ?????????? ?????? ??? ??????? ??? ?????? 49 ????.

2 ? ??????? ??? ?????????? ??? ??????? ?????????? ?????????? ??? NN A/S,
????????? ??????? ???????, ??? ??? Skatteministeriet (????????? ???????????, ???),
????????? ?? ??? ?????? ??? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ?? ??????? ???
????????????? ??????? ??? ??? ?????? ??? ?????? ?????????????? ??? ?????????? ???
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3 ?? ?????? 7, ?????????? 1, ??? ?????????? ??? ?????????????? ?????? ??? ??? ??????
??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??????????, ??? ?????? ???
????????? ??? 23 ?????????? 1996 (BKI ????. 92 ??? 25.6.1997, ??? ????: ??????????????
????????), ?????? ?? ???:

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

4 ??? ?? ?????? 25 ??? ?????????????? ??????????, ?? ?????????????? ?????? ??????????????
?? ?????????????? ?? ??? ?????? ?????????? ??? ?????? ?????????????? ?????????????? ???
??? ?????? ??? «?????????». ??? ?????? ???, ?? ?????? ??? ?????? ??? ??????
????????????? ? ?????????? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???.

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

5 ??????? ?? ?? ?????? 31, ?????????? 1, ??? selskabsskattelov (????????? ???? ???
????? ???????), ?? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? ?????????? ??????????????
????????? ??? ??????. ? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? (?)
????????? ??????), ?????? ?????????? ??? ?????? ?, ?? ?????? ?????? ?????????, ???
????????? ?????? ??? ??????, ?? ?????? «????? ?????? ??????????».

6 ? ??? ?????? ?????????? ?? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ??????
????? ??? ?????????????? ??? ??????. ?????? ?? ??? ?????? ???, ?? ?????????????? ?????????? ???
????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????????????? ??? ??????,
????? ??? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ??????,
??????, ???' ?????????? ??? ?????? 31? ??? ?????? ??? ?????? ?????? ?????? ?????? ???, ???
?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???
?????? ?????????? ??? ?????? ???.

7 ? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ??????
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ???, ???
????????? ???, ? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ???

????????? ??????????? ?? ??? ????? ??????, ??? ????? ?????????????? ?????????????? ??? ?????
????????? ??? ?????????? ??????? ?? ?????????????????? ??? ?????? 31, ?????????? 2, ??????
?????????, ??? ????? ????? ????? ??????????, ??? ?? ?????:

«?????? ?? ?????? ?????????? ??????? ?????????????? ?????????? ?????????????? ?? ?????????????? ?? ??
????????? ?? ??? ?????????? ?????? ?? ?? ?????????????? ?????????? ?? ??? ?????? ?? ?????????? [...]
???? ???????? ? ??????? ??? ?????????????? ?? ??????? ?????? ?? ?????? ?????? ?????? ??? ??
????????????? ?? ?? ?????????????? ?????????????? ?? ??????? ?????? ?? ??? ?????? ?? ?????????? [...] ? ??
???? ?????????? ? ??????? ??? ?????????? ?? ?? ??????? ?????????????? ?? ?????????? ??????????,
????????? ?? ?? ??? ?????? 31? [...].».

8 ????? ?????????? ?? ???? ??????????? ?????? ?? ???? ?????? ?????? ?????? ?????? ??????, ???
????? ?????????? ?? ???? ?????? ???????????, ? ?????? ?? ???? ?????????? ?????? ?????? ?? ???? ??????
? ?????????? ?? ???? ?????? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ??????
?????????.

9 ?? ????? 5G ??? ligningslov (????? ??? ??????????????? ??? ?????????????? ??????)
?????? ?? ???;

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

10 ? NN ?????? ? ?????????? ??????? ?????? ?????? ?????? ??? ??????????????, ??????
?????, ??? ?????????? ??? ???????, ??? Sverige 1 ??? ?? Sverige 2, ?????? ?? ???
????? ??? ?????? ?????????? ??? ?????????????? ??? ?????, ???, ???, ???????????, ??? C ???
??? B. ?? ??? ??? ????? ?????????? ??? ?????????? ?? ??? ??? ????? ?????????? ?? ?? ??
????????? ??? ?????????????? ? ??? ????? Sverige 1 AB.

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

12 ??? ??????, ??????????, ? ?????????? ?????????????? ?? ?????????? ??????????
????????????? ??? ?????????? ???, ?????? ??? ?????????? ??? ?????????????? ? ?? ?????? ???
????????? ??? ?????????? ?????????? ??? ?????? ??? ??? ?????????? ??? ?????????????????? ? ??? ??? ??
????????????? ??? ?????????? ?????????? ?????????????? ?????????? ??? ?? ?????????? ??? 2008.

13 ??????????, ? ?????? ?????????? ??? ?????????? ?? ???????????, ?? ??? ???? ?? ?????
????, ??? ?????? ??? ?????????????? A ??? ?????????? ?????????? ?????????? ???
??????, ??? ?????? ? NN. ? ??? ????? ?????????? ??? ??? ?? ????? 31, ?????????? 2,
?????? ???????, ??? ????? ????? ?????????? ??? ?????????? ??? ?????????? ???

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

14 ? NN ?????????? ????. ??? ?????????????? ????. ??? ??????????, ??? ?????????????? ????.
Landsskatteretten (?????? ????. ?????????? ????. ???????, ????.), ??? ???. ?????????? ????.
?????? ????. Østre Landsret (?????? ????. ?????????? ????. ???????????, ????.).

15 ??? ??? ?????????? ????, ?? ?? ??? ?????????? ?????????? ?? ?????????? ?? ?????????? ??
????????? ?? ?? ?? ?????????? ?? ?? ?????????? ?? ?? ?????????? ?? ?????????? ?? ?????????? ??

«1) ?????????????? ??????? ?? ?????????? ?????? ??? ?? ??????????? ??, ?? ??? ??????????? ?????? ???? ??????? ?????? ?????? ???, ?? ?????????? ?????? ???, ?? ?????????? ?????? ??????, ?? ?????????? ?????? ???????????, ?? ?????? ?????? ??? ??????????? ???????, ?? “?????????? ???????????”, ????? ??? ??????? ??? ?????????? 20 ??? ??????????? ??? 6?? ??????????? 2012, Philips Electronics UK (C?18/11, EU:C:2012:532), ?? ??? ??????????? ??? ?????? ??? ?? ?????????? ??????????? ?????????? ??????????;»

2) ?????????????? ??? ? ?????? ?????????????? ?????? ??? ?????????? ?????????????
?????????????, ??? ???? ?????? ??? ?????? ??? ??? ?????? ?????? ? ?????? ??? 6??
????????????? 2012, Philips Electronics UK (C?18/11, EU:C:2012:532), ?????? ??? ??' ????
? ?????????????? ?????????? ?????????? -?? ??? ?????????? ??? ?? ?????? ??????
????????????? ??? ???? ?????? ?????? ?????? ?????? ??? ?????????? ?????????? ???
????? ??????- ?????? ??? ?????????? ?????????????? ?????? ?? ?????? 49 ???,
????? ?????? ?????????? ?????? ??? ?????????? ?????? ?????? ?????? ??????????;

3) ????????????? ?????????????? ????????????, ??????? ????? ?????????? ?????????????? ??
????????????? ??? ??? ????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ? ??? ???
????? ?????????????? ??? ?????????? ?????????? ??? ?????????? ?????????????? ?????????????? ???
????? ??? ? ??? ?????? ??? ?????????? ??? ??? ?????? ?????????????? ???;

4) ?? ???? ??????, ????, ??????????? ???, ?????????? ???????????;

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

16 ?? ?? ?????????? ???, ?? ?????? ??????????? ??????, ???' ??????, ?? ?? ????? 49 ????
?????? ?? ?????????? ?? ???? ?????? ?? ?????????? ?? ?????????? ?? ?????? ?????????? ??
????????? ?????? ?????? ?? ?????? ?? ???? ?????? ?? ?????????? ?????????? ?? ?????? ?????? ?????????? ??
????????? ?? ?? ?????????? ?? ?????????? ?? ?????? ?? ?????????? ?????????? ?? ?????????? ?? ?????? ??
????????? ? ??????? ?? ?????? ?? ?????? ?? ?????? ?? ?????????? ?????????? ?? ?????????? ?? ?????? ??
????? ?? ?? ?????????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?? ??
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18 ????????????? ? ?????????? ??????? ??????? ?? ??????? ??????? ??????? ??????? ??????????

????????????? ??? ?????? ??? ??????? ??? ?????? ??? ?????????? ????, ? ??????????????
????????????? ?? ??? ????? ?????????? ?????????????? ?????????????? ??? ?? ?? ??????????????
??? ?????????? ??? ?????? ?????????? ?????????? ?? ?? ??? ?????? ?? ?????????? ??? ?? ???
????? (??., ???????, ??????? ??? 25?? ?????????? 2010, X Holding, C-337/08, EU:C:2010:89,
????? 20).

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

19 ??????? ??? ?????? 31, ?????????? 1, ??? ?????? ??? ?????? ??????????, ?? ???????
????????? ??? ?????? ?????? ?????????? ?? ??? ?????? ??????????. ??????? ?? ???
????????????? ??? ?????? ?? ?????? ??????????, ??? ? ?????????? ?????????? ?????????? ???
?? ?????? ?????? ?????????? ??????????, ???' ?????, ??? ?????? ?????????? ?????????? ???
????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????.

20 ??????, ??????? ?? ?? ?????? 31, ?????????? 2, ??????? ???????, ??? ?????? ???
????? ???????, ?? ?????? ??? ?????????? ?? ?????? ??? ?????? ?????????? ??? ?? ?????????? ???
????????? ???????, ?????? ??? ?????, ??? ?????? ?? ?????????? ?? ?????????? ??? ?? ?????????? ???
????? ??? ?????? ?????????? ??? ?????, ??? ?????? ??? ?????????? ??? ? ?????? ??? ???
????? ?? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ??????????
????????, ??????? ?? ?? ?????????? ??? ?????????? ??? ?????????? ??????????????. ? ???
???????? ?????????? ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ?????????? –??? ???
???????? ?????????? ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ?????????? ???
????????? ??? ?????? ??? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ??????.

21 ?? ??????? ??? ?????? ?????? ?????????????? ?????????????? ??????????? ?? ??? ??
?????? ?? ? ??????? ??? ?????????????? ??? ?????? 31, ?????????? 2, ??????? ???????, ???
????? ??? ?????? ??????? ??????? ?????????? ??????????, ??????? ??? ??? ??????
??? ?????????? ??????????.

22 ??? ?? ?????? ??????????, ?? ??? ?????? ?????? ?????????? ?????????? ??????????, ???
????????? ??? ??? a contrario ?????????? ??? ?????????? ??? 6?? ?????????? 2012, Philips
Electronics UK (C?18/11, EU:C:2012:532).

23 ??????, ??? ?????? ??? ?????? ??? ?????? ?????????? ? ?????? ???, ?? ??????
????????? ?????????? ?? ??? ?????? ??? ?????? ?????????? ?? ??? ?????? ?????????? ??????????????
????????? ??? ?????? ??? ?????? ?????????? ?? ??? ?????? ??? ?????? ?????????? ?? ??? ??????????
?????????, ??? ?????????? ?????????? ?????????? ??? ?????, ??? ?????? ?????? ?????????? ??????
????????, ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??????????
????????? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????? 31, ?????????? 2,
????????? ???????, ??? ?????? ??? ?????? ??????.

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

25 ??????, ? ?????? ?????????? ?????????? ??? ? ?????? ?????????? ?????? ??????????
????????? ?????????? ??? ??? ?????? ??????. ??????????, ?? ?????? 5 G ??? ???
????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?? ?????? ??? ?????????? ???
????????? ?? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?? ?????? ??? ?????????? ???
????????? ?????? ?????? ??????, ??? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ??
????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ???
????????? ??? ?????? ?????? ??????.

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

26 ??? ??????????, ? ?????? ?????????? ??? ?????? ?????? ??? ?? ?????? ?????? ??? ??????,
?????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
?????? ?? ?????? ??? ?????? ?? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????????????? ??? ?????? ??? 6?? ?????????? 2012, Philips Electronics UK (C-18/11,
EU:C:2012:532).

27 ? ?????????? ??? ?????? ?????? ?????? ???????????, ??????, ??? ?? ?????? 31, ??????????
2, ?????? ???????, ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????????
??????????.

28 ? NN ???????????, ???????????, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??????
????????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???, ? NN
????????? ???, ??? ? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???
?? ??? ?????? ?????????? ???, ?? ?????? ??? ?? ?????? ???, ?? ?????? ?????? ???, ??
????????? ??? ?????? ?????? ??? ?????? ???.

29 ??????, ?????????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????
????????? ??? ?????? ?????? ?????? ?????? . ??????, ? ?????? ?????? ?????? ?????? ???
????? ?????? ? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ???, ?????? ??? ?????? 31, ?????????? 2, ?????? ??????, ??? ??????
????? ?????? ??????, ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ??????.

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

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31 ??? ?? ?????????? ???, ??? ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ??????
(????????? ??? 25?? ?????????? 2010, X Holding, C-337/08, EU:C:2010:89, ??? 22, ???
12?? ?????? 2014, SCA Group Holding ?.??., C-39/13 ??? C?41/13, EU:C:2014:1758, ???
28, ??? 22?? ?????? 2017, Bechtel, C-20/16, EU:C:2017:488, ??? 53, ??? ??? ??? 12??
?????? 2018, Bevola ??? Jens W. Trock, C?650/16, EU:C:2018:424, ??? 32).

32 ?? ??????????, ??? ?? ?????? ??? ?????? ??? ?????? 31, ?????????? 2, ?????? ??????
??? ??? ?????? ??? ?????? ?????? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ???
?? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??????.

33 ?? ?????????? ??????, ??? ????? ?? ????? ?? ????? ?????????? ?????? ??? ??
?? ?????? ? ?? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ?????? ??????,
??? ?? ?????? ??? ?????? ?????? ?????? ?????????? ?? ??? ?????? ?????? ??? ??????
???' ????, ?? ?????? ?????? ?????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
????????? ??? (????? ??? 12?? ?????? 2018, Bevola ??? Jens W. Trock,
C?650/16, EU:C:2018:424, ??? 37).

34 ???' ????????, ??? ?????? ?? ?????? ???, ??? ?????? ?? ?????? ??? ?? ?????? ???
????? ?????? ??? ??????, ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
?????.

35 ?????? ?????? ?????????? ?? ?????????? ?????????? ?????? ?????? ??? ?????????? ???
?? ?????? ??? ?????????? ??? ?????? ?????? ?????????? ?? ????????, ??? ?????? ???
????? ?????????? ??? ????????, ?? ?????? ??? ?????????? ?????????? ??? ??????????
??? ?? ?????? ??? ?????? ?????? ???????????. ????????, ??? ?????????? ???, ?
????? ??? ?????? ?????? ?????????? ?? ?????? ??? ?????? ?????? ??? ?????? ?? ??????????
????????? ??? ?????? ?????? ?????? ????????, ??? ?? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????????? ??? (??., ????, ????, ??? 12?? ?????? 2018,
Bevola ??? Jens W. Trock, C?650/16, EU:C:2018:424, ??? 38).

36 ??????, ?? ??? 31, ?????????? 2, ?????? ??????, ??? ?????? ??? ??????
????????? ??? ?????? ?? ?????????? ?????? «?? ?? ?????????? ?????? ??? ??? ??
????????? [...] ??? ?????? ??? ????????, ?? ?????????? ?? ?????? ?????? ? ??? ???»,
?????????, ??? ?????????? ???, ??? ?????????? ??? ?????? ??? ?????? ??? ??????
????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

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

38 ???????, ? ?????????? ?????? ?????? ??? ?????? ??? ?????? ?????? 29 ???
????????? ?????? ??????, ?????????? ???, ??? ?????? ??? ?????? ???, ?? ?????? ??????????
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??? ??? ?????????????? ????

39 ?? ?????? ?????????? ???? ?? ? ?????????? ??? ?????? ?????????? ??????????
????? ?? ?????????? ???? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ???.

40 ???????, ?????????? ???? ?? ?????? ?????????? ?????? ??? ?????? ??? ??????
??????????, ?? ? ???? ??? ?????? ??? ?????? ?????? ?????????? ?????? ??? ?????? ???
?? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ???? ??? ??? ?? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ???, ??? ? ?????????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

? ??????? ? ?? ?????????? ?????? ?????? ?? ?????? ?????? ?? ?????? ? ? ??????. ? ???????
????? ?????? ??? ?????? ??? ?????? 31, ?????????? 2, ?????? ??????, ??? ?????? ???
????? ?????? ?? ?????????? ?? ?????????? ?????? ?????? ?????????? ?????? ??? ?? ??? ?? ????
?????.

41 ? ??????? ?????????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ??????
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

42 ??????, ?? ?????????? ??? ?????? ??? ?? ?????? ??? ?????? ?????? ?? ?????? ??
????????? ??? ?????? ?????? ?????????????? ??? ?????? (????????? ??? 13??
????????? 2005, Marks & Spencer, C?446/03, EU:C:2005:763, ??? 47, ??? ??? 15?? ???
2008, Lidl Belgium, C-414/06, EU:C:2008:278, ??? 35).

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

44 ??????, ? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ?? ?????????? ??? ??
????????? ??? ??? ?????? ??? ?????? ?????? ?????????? ?? ?????????? ??? ?????? ?????? ??? ??
????????????? ??? ?????? ??? ?????? ?????? ??????????????, ??? ??????????, ??? ??????????
?? ?????? ???, ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??? ?????????? ???
?????????.

45 ??????, ??? ?????? ?? ?? ?????? ?????? ?????? ?????? ?????????????? ?????????? ??????
????? ???, ?? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ??????????????.
?????, ??? ?????????? ??? ??? ??? ?????? ?????????????? ??? ?????????? ?????? ??????????
?? ??? ??? ?????????? ??? ?????? ?????????? ??? NN ??? ?????????? ??? ??? ??? ??????????
????? ??? ??' ?????????? ??? ??????, ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ??
????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??????.

46 ?? ??????????, ?????? ?? ?? ?????? 25 ??? ?????????????? ??????????, ?? ??
????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????????????? ?? ??????
????????????? ???, ?? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ??? ??? ??
????????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????????? ??? ??? ??? ??????.

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

48 ?? ??? 31, ?????????? 2, ?????? ??????, ??? ???? ??? ?????? ?????? ?????? ?????? ???
????????? ?? ??? ?? ?????????? ??? ?????? ?????? ?? ?????????? ??? ?????? ??? ?????? ???
?????. ?????????? ?????? ??????????, ??? ?????????? ? ?????? ?????? ?????????? ??? ?? ??? ??
75 ??? ?????????? ???, ? ?????????? ?????? ?????? ??? ?????? ?????? ?????????? ??? ??????????
?? ??? ??? ?? ??? ?????????? ?????????? ??????????, ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?????? ??????. ? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????????
????????? ?????? ?????? ??????.

49 ???????, ? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??? ???

????? ???, ??? ??????????? ??? ??? 18 ??? ?????? ?????????.

50 ?? ??????????, ?????? ??? ???? ??? ?????? 31, ?????????? 2, ?????? ??????,
??? ??? ???? ??? ?????? ?????? ?? ?????? ??? ?????? ?????? ?????? ??? ??? ??????
??? ??? ???? ?????? ?????? ??? ?????? ?????? ??? ?? ??? ?????? ??? ?????? ???
??? ??? ???? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

52 ??????????, ?????? ??? ???? ??? ?????? ?????? ? ?????? ?????????? ???
????? ??? ?????? ?????? NN ??????, ???' ?????, ?? ?????? ??? ??
????????? ??? ?????? ?????? ??? ?????? ??????, ??? ?????? ?? ?????? ??? ??
????????? ??? ?????? ?????? ??? ??????, ??? ?????? ??? ?????? ??? ??
????????? 2, ?????? ??????, ??? ?????? ??? ?????? ??????.

53 ??????, ??? ?????? ??? ?????? ???, ? ?????? ?????? ??? ?? ??????????
??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? – ??? ?? ?????? ??? ?????? ?????? – ?? ?????????? ??? ??????????
????????? ??? ??? ?????? ?? ?????????? ??????????????, ? ?????? ??? ??????????
??? ??????. ??? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
??? ?????? ?????? ??? ??? ?????, ??? ?????, ??????.

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

55 ??????, ? ??? ??? ?? ?????? ?? ?????? ??? ?????? ? ?????????? ??? ?? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? 31, ?????? 2, ?????? ???, ??? ?????? ??? ?????? ???,
????? ? ??? ?????? ?????? ??? ? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ???.

56 ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ???, ??? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? NN.

57 ??????, ??? ?????? ?????????? ??? ?? ?????? ? ?????? ??? ?????? ??? ??
????? ??? ?????? ??? ?????? ??????, ???' ?????, ?? ?????? ?????? ??? ?? ??????
????? ??? ???, ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??
????????? ??? ? ?????????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
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????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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???? ?? ????? ?????? ?????????????? ?????????????? ?????????????? ?????????????? ??? ?? ??? ????? ?????? ???
?? ?????????????? ?????????????? ?????????? ???, ??? ? ?????????????? ??? ?????? ?????? ?????? ???
????????????? ?????????? ??? ?? ??? ????? ?????????????? ?????? ?????????? ??? ?????? ?????? ???
????? ??? ?????? ????? ??????????????, ??? ????? ?????????? ??? ?????? ?????? ?????????? ??
?????????.

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

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

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

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

* ?????? ??????????????· ? ??????