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??? 3?? ?????????? 2019 (*1)

«????????????? ?????????? – ?????????? – ????? ?????????????? ????? (???) – ??? ?????? 77/388/?? – ?????????? – ?????? 13, B, ??????? ??, ?????? 3 – ??????? ??? ?????? ??? ?????? – ?????????? ?????????? ??? ??????? ?? ??????, ?????????? ??? ?????????? ?????????? ?????? ?????? ??????»

???? ?????? C?42/18,

? ?????????? ?????? ?????????????? ?????????? ?????????? ??? ?????? 267 ????, ??? ?????? ?? Bundesfinanzhof (????????????? ?????????? ??????????, ?????????) ?? ?????? ??? 28?? ?????????? 2017, ? ????? ?????? ??? ?????????? ??? 24 ?????????? 2018, ??? ?????? ??? ??????

Finanzamt Trier

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Cardpoint GmbH, ??????? ??? Moneybox Deutschland GmbH,

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

????????? ??? ??? A. Prechal (?????????), ?????? ???????, F. Biltgen, J. Malenovský, C. G. Fernlund ??? L. S. Rossi, ???????,

????????? ??????????: Y. Bot

?????????: A. Calot Escobar

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? Cardpoint GmbH, ?????????????? ??? ??? M. Robisch, Steuerberater, ??? ??? J. Habla, Rechtsanwältin,

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? ?????????? ??????????, ?????????????? ?????? ??? ??? T. Henze ??? R. Kanitz ??? ??? ?????? ??? ??? R. Kanitz,

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? ?????????? ???????, ?????????????? ??? ??? J. Jokubauskait? ??? ??? B.?R. Killmann,

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?????? 3, ??? ????? ??????? 77/388/??? ??? ??????????, ??? 17?? ????? 1977, ???
????????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?? ??? ?????? ??????
????????? – ??? ????? ?????? ????? ?????????????? ?????: ?????????? ?????????? ??? (??
???. ???.. 09/001, ?. 49, ??? ?: ??? ?????).

2

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(?????????? ??? Trier, ???????) ??? ??? Cardpoint GmbH, ??????? ??? Moneybox
Deutschland GmbH, ??????? ?? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ??? Cardpoint
????????? ??? ??? ????? ?????????? ??? (???) ??? ??? ?????????? ??? ?????????? ??
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3

?? ??? 13, ?, ??????? ??, ??? ?????? ??????? ??? ?? ???:

«?? ??? ?????????? ??? ?????????? ??????????, ?? ??? ?????? ??? ???????????, ??? ??
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4

???? ???? 1? ??????????? 2007, ? ????. ???? ?????????????????? ???. ?????????????????? ???. ????
?????? 2006/112/??. ??? ????????????, ??? 28???. ?????????? 2006, ??????? ???. ??. ??. ??.
?????? ???. ????????????????. ???? (?? 2006, L 347, ?. 1, ??? ???: ?????? ???.).

5

????????? 135, ??????????? 1, ?????????? ?, ??? ?????????? ??? ??????????? ??:

«?? ?????? ??? ?????????????? ??? ??? ??? ??? ??? ?????????? ????:

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«?? ????????, ?? ?????????????????? ???. ?? ??????????????????, ?? ?? ?????? ????????, ?? ??????????????????,
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6

???? ?? ?????? 4, ??????? 8, ?????????? ??, ??? Umsatzsteuergesetz (????? ???? ??? ?????? ?????? ?????? ??????), ?????????????? ??? ???:

«?? ??????? ?? ? ?????????????????? ?? ?????????? ?? ??????? ?????????? ?????????? ??????????????,
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7

? Cardpoint ??????? ???? ?????? ???, ??? ????????, ?????????? ??????? ?? ???
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8

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? ??????????. ? Cardpoint ?????? ?? ??????? ?????? ??? ?????? ??? ??? Bank-Verlag GmbH
??? ??????? ??? ?? ?????????????? ??? ?????????? ?????? ???????. ? Bank-Verlag GmbH
????????? ?? ??????? ?????? ??? ?????????????? ??????, ?? ?????, ?? ? ?????? ???, ??
????????? ??? ?????? ?????? ?? ??????? ?? ?????????? ?????? ?????? ???????. ? ??????? ???
????? ??? ?????? ?????? ?????? ?????? «????????» ???????????, ??? ?????? ???? ????
????????? ??? ?????? ?????? ?????? ???????. ?? ?????? ?????????, ? Cardpoint ?????????? ???
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????????? ??? ?????? ?????? ??? ?????????????? ?????? ?????? ?????? ?????? ??? ?????? ??? Deutscher
Bundesbank (????????????? ?????? ??? ?????????, ??? ????: BBK). ? Cardpoint
????????? ??? ?? ?????? ?? ?????????? ?? ?????????????? ?????? ?????? ??? ??????
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9

???? 7 ?????????? 2007, ? Cardpoint ?????? ?????????????? ?????? ??? ?? 2005
??? ?????? ?? ?????????? ? ?????? ?????? ??????, ?????????????? ??? ??
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10

????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?? ?????????? ??? ??? Trier, ??
Finanzgericht Rheinland-Pfalz (????????? ?????? ?????????? ?????????????????, ??????)
????? ??? ?? ?????????? ??? Cardpoint, ?? ?? ?????????? ??? ?? ?????? ?????? ?????? ??
????? ??? ?????? ?????? ?????? ?? ?????? «????????? ??? ?????? ?????? ??????», ???
??? ?????? ??? ?????? ??????, ???, ?? ?? ??????, ?????????????? ??? ??.

11

? ?????????? ??? Trier ?????? ?????? ?????????? (Revision) ?????? ??? ??????????
?????????. ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? 26?? ????? 2016, Bookit (C?607/14, ??? ????: ?????? Bookit,
EU:C:2016:355).

12

? ?????? ?????????? ?????????? ?? ?? ?????????? ??? ??? Cardpoint ?????????? ???
?? ?????????? ?? «????????? ??? ?????????? ?????? ?????? ??????», ?????? ?? ???
????? Bookit, ?? ?????? ??? ?????? ??? «????????? ??? ?????? ?????? ??????», ??? ??
????? ??? ?????? 13, ?, ?????? ?, ?????? 3, ??? ?????? ?????? ??? ?? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? Bookit, ?????????? ???
?? ?????????? ??? Cardpoint ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
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13

? ??????? ???? ???? ?????????? ??????????????, ??? ? ???? ???? ??????????, ??? ???
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????????? ?? ???? ?????? ??? ?????? ??? ????? ?????????? ??? ?????????? ???
????????????? ?????????? ??? ? ???? ?????? ??? ?????? ??? ?????? ??? ?????? ????.
? Cardpoint ?????????? ?? ???? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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14

???????, ??????? ???? ???? ?????????? ??? ?????????? ?? ?????????? ??? ??????????
Bookit, ? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ??????????
?????????????, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ???, ?????????? ? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ???, ??? ?????? ??? ?????? ???, ?????????? ???, ??? ?????? ???
?????????, ? ?????????? ?????? ?????? ???' ?????, ??? ?????? ???.
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15

??????, ?? ?? ??? ?????????? ?????????? ?? ?????? ?? ?????? ??? ?????? ?? ?????? ???,
???? ?????? ??? ?????? ???, ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
???????? Bookit, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??????, ??????, ??? ??? ??? ?????? Bookit ??? ?????? ??? ?? ?????????? ???
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16

???????, ??? ??? ??? ??????????, ? ?????????? ??? ??? ?????? ??? ??????????
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?????? ???, ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
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17

?? ?? ?????????? ???, ?? Bundesfinanzhof (????????????? ?????????? ???, ????)
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«????????? ??? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?? ??? 13, B, ??????? ??,
????? 3, ??? [????? ??????] ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??????
????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??
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????? ??? ??? [????? Bookit];»

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18

?? ?? ?????????????? ???????, ?? ?????? ??????????? ?????, ???' ??????, ?? ?????????????? ??
?? ?? ?????? 13, B, ??????? ??, ?????? 3, ??? ????? ?????? ????? ?? ?????? ?? ?????? ??
??? ?????? ???????, ?????????????? ?? ?????? ?????? ????? ?? ?????? ?? ?????? ??, ? ??????
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??????????, ??? ?????????? ?? ?????????? ?????, ??? ?????????? ?? ?????????? ??
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????? 13, B, ??????? ??, ?????? 3, ??? ????? ??????, ?? ?????? ?? ?????????? ??
????????? ratione temporis, ?????????????? ?? ??? ????? ?????? ?????????? ?? ?????? 135,
?????????? 1, ??????? ??, ??? ?????? ????. ???????, ? ?????????? ?? ?????????? ??
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20

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24 ??? ?????????? ??, ? ??????? ?? ?????????? ?????????? ?????????? ?????????? ??
«????????? ??????», ??? ?????? ?????? ?? ?????????? ?? ?????? .?????????, ??? ?????? ??
«????????? ??? ?????? ??????», ??? ?????? ?????? ?? ?????? ?????? ??????, ?? ?????????? ??
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????????? ??? 5?? ?????? 1997, SDC, C?2/95, EU:C:1997:278, ?????? 50).

21

????????????? ??, ??? ?????? ?????????? ?? «????? ??? ?????? ??????» ??
?????????, ?????????? ?? ?????????????? ?? «????? ??? ?????? ??????» ?? ??
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26?? ?????? 2016, Bookit, C?607/14, EU:C:2016:355, ?????? 40 ?? ?????? ??????????????
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22

? ? ??????, ?? ?????????????? ?? ?????? ?????? ?????????????? ?????????? ?????????????? ??
?????? ??? ??? ?????? ?????? ??????, ??? ??? ?????? ??? ?????? 13, ?, ?????????? ??,
?????? 3, ??? ?????? ??????. ?? ?????? ??? ?????? ?????? ?? ?????? ?? ?????????? ??
? ?????? ??? ?? ?????????? ?? ?????? ?????? ?????? ??? ??? ?????? ?????? ??
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??? ??? ? ?????????????? ??? ????? ??????????, ??? ????? ?????? ?????????? ? ??????????, ???
????????? ??? ?????????? ?????????? ???, ? ???, ???' ??????????, ?????????? ???
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????? 2016, Bookit, C?607/14, EU:C:2016:355, ??? 41, ????? ??? ??? 25?? ?????? 2018,
DPAS, C?5/17, EU:C:2018:592, ??? 38 ??? ????? ?????????????? ??????????).

23

????????? ?? ??????? ?? ? ?????????????????? ??????? ?????????? ??????? ???/? ?????????
????? ? ?????? ??? ??????????????, ? ?????? ?????????????? ??? ?????????? ?????? ??????????????
??? ??????????, ???????, ???????, ???????, ??????? ? ? ?????????? ??? ?????????? ??? ?????????? ??? ?
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????????? ??? ? ??????? ??? ?????????? ??? ?????????? ??? ?????? 21 ??? ?????????? ?????????? ???
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????? 42 ??? ????? ?????????????? ??????????).

24

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???????, ??? ?????????? ??? ?? ?????????? ??? ?? Cardpoint ?????????? ?????????? ??
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????????» ??? ??? ?????? ??? ?????? 13, ?, ????????, ??, ?????? 3, ??? ??? ?????? ??????.
???????, ?????????? ??? ??? ?????????? ??? ?????????? ? ?????????? ??? ??? ?????? ???????
? ??????? Bookit, ?? ?????????? ??? ??? Cardpoint ?????????? ??? ?????????? ???
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?????? ?? ?????? ??????? ????????. ??????, ? ??????? ?????????????? ??? ???
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27

?????????, ??? ?????????? ? ??????? ?????????? ?????????????? ??? ?????? 40 ??? ?????????? ???,
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????? ??? ?????????????? ??? ?????? ??? BBK. ??? ?????? ?? ?? ?????????? ??
????????????? ?????????? ?????? ??????????, ?? ????? ?????????? ??? ??? ?????????? ???
????????????? ??????, ?????????????? ??? ??? Cardpoint ??? ?????????? ??? ???,
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????????????? ???, ?? ?? ??????, ??? ?????? ?? ?????????? ??? ??? ??? ?? ?????????? ???
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28

? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ?????????? ??? ??? Cardpoint ??????????
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????????? ?????, ????? ?????????? ??? ?? ?????????? ?????? ?????????????? ?????? ??? ?????? ??? ??????
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??? ?????????? ??? ??? ??, ??? ?? ?????? ??? ?? ?????? ??? ?????? ??? ?????????? ?? ??????????
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??? ?????????? ??? ?????? 21 ??? 22 ??? ?????? ?????????? (????. ?????? ???
25? ?????? 2018, DPAS, C?5/17, EU:C:2018:592, ??? 43).

29

??? ?????? ?????????? ??? ?????? «????????? ??? ?????? ??????», ??? ?????????? ???
????? 13, ?, ??????? ??, ?????? 3, ??? ?????? ??????, ?????????? ?????? ??? ??? ???
??? ?????????? ?????, ? ??????, ??? ?????????? ??? ?? ?????????? ??? ????????????,
??????????, ?????? ?????, ??? ?????????? ??? ?? ?????????? ?????? ??? ?????????? ???
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????? (????. ??????? ??? 26? 2016, Bookit, C?607/14, EU:C:2016:355, ??? 55 ???
???? ?????????? ?????). ???????????, ??? ?? ?????????? ??? ??? ??? ??? ??????
??? ?? ?????????? ?????? ??? ? ?????????? ??? ??? Cardpoint ?????????? ??? ???
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?????? ??? ?????? ??????, ??? ?????????? ?????????? ?????? ??? ?????? ?? ?????? ?
?????? ??? ?? ??? 13, B, ??????? ??, ?????? 3, ??? ?????? ?????? ??? ??? ???
??? ?? ?????? ?????? ??? ?????? ?????? ??????, ?????????????? ??? ?? ??? ?? ?????? ???
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31

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

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

? ? ????? 13, B, ??????? ??, ?????? 3, ??? ????? ?????? 77/388/??? ??? ?????????? , ???
17? ??? 1977, ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? , ??? ?????????? ??
???? ?????? ?????? ?????? – ????? ?????? ?????? ?????? ?????????????? ?????: ??????????
????????? ???, ??? ??? ?????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ?????????? ,
????????????? ??? ?????? ?????????????? ?????? ?????? ?? ?????????? ???, ? ?????? ??????????
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????????? , ??? ?????????? ??? ?????????? ?????, ??? ?????????? ??? ?????????? ??? ??????????
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????? ?????????? , ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????????? ???
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(?????????)

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