

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

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

??? 17?? ??????? 2021 (*)

«????????????? ?????????? – ????? ?????????????? ????? (???) – ?????? 2006/112/?? – ?????? 135, ?????????? 1 – ?????????? – ?????????? ?????????? ?????????? – ?????? ?? ?????? – ?????? ?????????? ??? ?????»

???? ?????????????? ?????? C?58/20 ??? C?59/20,

?? ?????????? ??? ??????? ?????????????? ?????????? ??????? 267 ???, ??? ?????? ?? Bundesfinanzgericht (????????????? ?????????? ??????????, ?????????), ?? ?????????? ??? 29?? ?????????? 2020 (C?59/20) ??? ??? 30?? ?????????? 2020 (C?58/20) ?? ?????? ?????????? ??? ?????????? ??? 4 ?????????? 2020, ??? ?????? ??? ???

K (C?58/20),

DBKAG (C?59/20)

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Finanzamt Österreich, ???? Finanzamt Linz,

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

????????? ??? ??? J.?C. Bonichot (?????????), ?????? ???????, R. Silva de Lapuerta, ?????????? ??? ???????????, ?????? ??????? ?????? ??? ?????? ???????, L. Bay Larsen, C. Toader ??? N. Jääskinen, ???????,

????????? ??????????: P. Pikamäe

?????????: D. Dittert, ?????????? ???????,

?????? ?????? ??? ?????? ?????????? ??? ??????? ??? ??' ?????????? ?????????? ??? 3?? ?????????? 2021,

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

– ?? K ??? DBKAG, ?????????????? ??? ??? G. Aigner, Steuerberater,

– ? ?????????? ???????, ?????????????? ??? ??? A. Posch ??? F. Koppensteiner ??? ??? J. Schmoll ??? S. Zolles,

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

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

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

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

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1 ?? ??????? ?????????????? ?????????? ?????????? ??? ?????????? ??? ?????? 135, ?????????? 1, ??????? ??, ??? ?????? 2006/112/?? ??? ???????????, ??? 28?? ?????????? 2006, ?????? ?? ?? ????? ?????? ????? ?????????????? ????? (?? 2006, L 347, ?. 1, ??? ???: ?????? ????.).

2 ?? ??????? ????? ?????????????? ??? ?????? ?????????? ?????????? ??????? ???????, ??? K (?????? C?58/20) ??? DBKAG (?????? C?59/20) ???, ????????, ??? Finanzamt Österreich, ????? Finanzamt Linz (?????????? ?????????????? ????, ????? ?????????????? ????? Linz, ??????) (?? ????: ?????????? ???), ??????? ?? ??? ?????? ??? ?? ??? ?????? ?? ?????? ?? ?????????? ??? ?? ?????????????? ?? ?????????? ??? ?????????? ??? ?????? 135, ?????????? 1, ??????? ??, ??? ??????? ????.

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

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

3 ?? ????? 135, ?????????? 1, ??????? ??, ??? ?????? ??? ???????????, ??? ?????? ???' ?????? ?????? ???????????, ??? ?????? ??? ?????????? ??? ?????????????? ?????????????? ??? ????? 13, ?, ??????? ??, ?????? 6, ??? ????? ?????? 77/388/?? ??? ???????????, ??? 17?? ??? 1977, ??? ?????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?? ??? ????? ?????? ?????? ?????? – ????? ?????? ?????? ????? ?????????????? ?????: ?????????? ?????????? ?????? (?? ????. ????. 09/001, ?. 49, ??? ????: ??? ??????).

4 ?? ????? 135, ?????????? 1, ??? ?? ?????? ??? ?????? ??? ?????????? ?? ????:

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

[...]

?) ?? ?????????? ??? ?????????? ???????????, ??? ?????????? ??? ?? ?????? ???,

[...]».

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5 ? ?????? 2009/65/?? ??? ?????????? ?????????????? ??? ?? ???????????, ??? 13??
?????? 2009, ??? ?? ?????????? ??? ??????????, ?????????????? ??? ??????????
????????? ??? ?????? ?? ?????????? ?????????? ?????????? ?????????? ?? ?????? ???
(?????) (?? 2009, L 302, ?. 32, ??? ????: ?????? ???), ?????????? ??? ?????????? ??
????? 85/611/??? ??? ??????????, ??? 20?? ?????????? 1985, ??? ??? ?????????? ??
?????????, ?????????? ??? ?????????? ?????????? ?????????? ?? ??????????
????????? ?????????? ?????????? ?? ?????? ??? (?????) (?? 1985, L 375, ?. 3) ???
???? ??????????, ?????? ???, ??? ??? ?????? 2001/107/?? ??? ??????????
????????? ??? ??? ??????????, ??? 21?? ?????????? 2002 (?? 2002, L 41, ?. 20) (??
????: ?????? 85/611).

6 ?? ?????? 2 ??? ?????? ?????? ?????????? ?? ????:

«1. ?? ?????? ?????? ??? ?????????? ??????, ??????? ?? ?????????? ??????:

[...]

?) “????????? ??????????”: ??? ?????????? ??? ?????? ?? ?????????? ??????????????????
????????????? ??? ?????????? ??? ?????? ?? ?????? ?? ?????? ?????????? ?????????? /??/
????????? ?????????? (????????? ?????????? ?????????? ?????????????? ???)?

[...]

2. ??? ??? ?????? ??? ?????????? 1 ??????? ?, ?? ?????????? ?????????????? ???
????????? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
??.

[...]»

7 ?? ?????????? || ??? ?????? ??? ?????????????? ?????????? ?????????? ???
????????????? ??? ?????????????? ??? ?????????????? ??? ?????????????? ??? ??????????
?????????????:. ??? ?????? ???, ? ?????? ??? ?????????????? ?? ??? ?????????? ???
????????????? || ??? ?????? 85/611, ?????????????? ?? ??? ??????????????:

«— ?????????? ??????????

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

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????????? ?, ??? ??????? ????, ?????????? ??? ?????????? ??? ?????????????????? ??? ????
????? ? ?????????? ??? ????????????, ???? ?? ?????? ??? ?????????????? ??? ??? 72 ???
????????? ??? 4?? ??? 2006, Abbey National (C?169/04, EU:C:2006:289), ???? ??? ????,
???? ?? ?????????? ??? ?????????? ???, ?? ?????????? ??? ?????????? ?????? ????
????????? ???????, ?????????? ?????????? ???, ???? ?? ?????? ?????????????? ????
????????? ??? ?? ?????????? ??? ?????????? ?????????? ????. ???? ??? K, ?? ?????? ????
????????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ????
????????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ????
??? ?????????? ??? ???????, ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ????
????????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ????
??? ?????????? ??? ???????, ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ????
?? ??????.

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

13 ? K ?????? ?????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? 9??
????????? 2014, ?????? ?? ??? ?? 2008 ??? 2012, ??? 25?? ?????????? 2015,
????? ?? ??? ?? 2013 ??? ?? 23?? ?????????? 2019, ?????? ?? ??? ?? ??? ??
????? 2014 ?????? ?? ?????????? ???????????, ?? ?????? ?????? ??? ??????????
????????? ?? ??? ?? ?????????? ??? ?????? ??? «????????????? ?????????? ??????????»,
????? ?? ??? 135, ?????????? 1, ??????? ??, ??? ?????? ????.
????????? ??? ?????? 135, ?????????? 1, ??????? ??, ??? ?????? [????? ???] ??? ?????? ??? ??

14 ??? ?? ?????? ??, ?? Bundesfinanzgericht (????????????? ??????????)
????????? ??? ??????) ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ??
????????? ??? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ????:
«????? ?? ??? 135, ?????????? 1, ??????? ??, ??? ?????? [????? ???] ??? ?????? ??? ??
?? “????????? ?? ?????????? ??????????” ?????????? ?????? ?? ?????????? ??? ??????????
????????? ?? ?????? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ????
????????? ?????????? ??? ?????????? ?????????? ??? ??????????;»

????? C?59/20

15 ??? ?????? ?????????? ?????????? ??? ?????? ?????? ? ??? ?????? ?????? ??? ?? 11
????????? 2008, ? DBKAG, ? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??
SC GmbH, ?????????? ?????????? ??? ?????? ???, ?? ?????? ??? ?????? ??? ?????? ??? ??
?? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??????
????????? ??? ?????? ?????? (?? ????: ?????? SC).

16 ?? ?????????? SC ??? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ??? ??
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??

17 ?? ?????????? SC ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ??
????????? ??? DBKAG. ??????????, ? DBKAG ?????????? ?? ?????????? ??? ??????.

? ?????????????? ??? ??? ??????? ??? ?????????? SC ??? ?? ?????????? ??? ??????????????
(????? ??? ??????? ??????????) ??? ?????? ?? ?????????? ?? ? ? ??? ??????????.
????? ??? ?????????? ?? ??? ?????????????? ??? DBKAG, ?? ?????????? ??????? ?? ???
????????? ??? ??? ??????, ?? ????? ?????????? ??? DBKAG ??? ?? ?????? ???
????????? ??? ??? ?????????????? ??? ?????????????? ??? SC, ?????????? ???????
??? ?????????? ?????????? SC ?? ?????????? ??? . ???????, ?? ?? ??? ????? ???????
????????? ??? ?????????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ?????????? ???
????????? ? DBKAG. ??? ???????, ?? ?????? ?????????? ??? ?????????? ??? ?????????? ???
??? ?? ?????????? SC ?????????????? ??? DBKAG ??? ?? ?????? ?????????? ??? ??
????????? ??? ??? ?? ??? ????? ?????????? ?????????? ?????????? ??? ?????? ???
????? ?????????? ??????? ?? ?? ?????????? ??? ?????????? ??? ?????? ??? ??????????.

18 ?? ?????? ?????????? ??? 11?? ?????????? 2008, ?????????? ??? ? SC ?? ??????
???? DBKAG ??????? ?????????? ????????????. ??????????, ? SC ?????? ??? ????????
?? ?????????? ?? ?????????? ??? DBKAG ?? ??? ?? ?????? ??? ?? ?????? ?? ????????
?? ?? ?????????? ?? ?????????? SC ??? ??? ?? ?????? ?????????? ?? ?????????? ???
????? ?????? ??? ?? ?????????? ??? ?? ?????? ?????? ??????????. ? SC ?????? ?????? ???
????????? ?? ?????????? ?? ?????????????? ??? ?????????? ??? ?????? ??? ?? ?????????? ???
????? ?????????? ???.

19 ? SC ?????? ?? ??????? ??? ?????? ?????? ??? ??? ?????? ?????? ?????????? ???
?????????? ??? ?? ?????? ?????????? ??? ?????? ??????????, ??? ?? ?????????? ???
????????, ??? ?? ?????? ???, ??? ?? ?????? ??? ?????????? ??? ?????????? ???
???? DBKAG ?????? ??? ?????????? ?????????? ??? ??????????.

20 ???????, ? DBKAG ?????? ??? ?? ?????????? ??? ?????? ? SC ?????? ??
????????? ??? ??????? ??? ?????? 135, ?????????? 1, ??????? ??, ??? ?????? ???
???. ???????????, ? DBKAG ?????? ??? ?? ?????? SC ?????? ?????????? ???????????
??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?? ??????????
??? ?????????? ??????????. ??? ?? DBKAG, ?? ?????? ??? ?????? ? ??? ??????????
????????? ??? ?????????? SC ??? ?????? ?? ?????? ?????? ??? ?????????? ???
????????? ??? ?????? ?? ?????????????? ??? ??? ??? ??????.

21 ? ?????????? ??? ??????, ???????, ??? ? ??????? ??? ?????????? ??? ?????????? ???
????????? SC ?????? ?????? ?????? ?????????? ?? ??? . ???' ????, ? SC ?????? ???
????????? ?????? ? ?????? ??? ?????? ??? ?????? ?????? ??? ?? ?????????? ???
????????? ???????. ???????, ? ?????????? ??? ?????? ?????????? ???, ?????????? ??? ??
????????? SC ??? ?????? ?? ?????????????? ??? ?????? ?????? ?????????? ??? ??
????????? ??? DBKAG, ? ?????? ??? SC ??? ?????? ?????????? ?????????? ??? ??
????? ?????? ??? ??? ???.

22 ? DBKAG ?????? ??????? ??? ?????? ??? ?????????? ?????????? ??? ?? ??? ??????????
?? ?????????? ??? 24?? ?????? 2014 ??? ?????????? ??? ?????????? ??? ??
????????? ??? ?? 2009 ?? 2010, ??? ?? ??? ?????? ??? ?????? ??? ??
?? 2009 ?? 2010.

23 ??? ?????? ??? ?????? C?58/20, ?? ?????? ?????????? ?????? ???
????????? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? «????????? ?????? ???
????????» ??? ?? ??? 135, ?????????? 1, ??????? ??, ??? ?????? ??? ?? . ??
????? ?????????? ???, ??????, ??? ?? ?????? ?????? ?????????? ??? ?????? ???
????????? ??? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?? ??????????
????????? ???????. ???????, ?? ?? ??? ?????? ?????????? ?????????? ??? ??
????? ?? ?????????? ? SC ?????? ??? ?????? ?????????? ??? ?? ??? ?????? ???

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

24 ??? ??? ?????????? ????, ?? Bundesfinanzgericht (????????????? ??????????)
????????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????????? ?? ?????????? ?????????? ????:

«????? ?? ????? 135, ?????????? 1, ????????, ??? ?????? [????? ???] ??? ?????? ???, ???
????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???, ??? ?????? ???
“????????????? ?????????? ??????????” ?????????? ??? ??????????, ??? ?????? ??????????
?? ?????? ?????????? ??????????, ?????????? ?????? ?????????? ?????????? ??????????
????????????? ?????? ??? ?????????? ?????? ?????????? ?????????? ?????????? ???, ???, ??? ?????? ??????
????????????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ?????????? ??? ?????? ??????????
????????????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ??????????
????????????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ??????????
????????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??????????
????????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??????????
????????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??????????
????????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??????????
????????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??????????
????????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??????????
????????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??????????
????????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??????????;»

25 ?? ?????? ??? ?????????? ??? ?????????? ??? 3?? ?????? 2020 ?????????? ??
????????? ??? ?????????? C?58/20 ??? C?59/20 ??? ?????????? ??? ?????? ??? ??
????????? ??? ?????????? ??? ?????? ?????? ?????? ??????.

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

26 ?? ?? ?????????? ????, ?? ?????? ?????????? ????, ???' ??????, ??
????????? ?? ?? 135, ?????????? 1, ????????, ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ?????????? ??? ?????? ?? ?????????? ?????????? ??? ??????????
????????? ??? ?????? ?????????? ?????????? ??? ?????????? ?????????? ??? ??????????
?? ?? ?????? ?????????? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ??????????
????????? ?????????? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ??????????
????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??????????
????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??????????,
????????? ??? ?????? ?????????? ??? ?????? ?????????? ???.

27 ???' ????, ?????????? ???, ??? ?????? ??? ? ?????? ??? ???? ?????? ??? ?????? ???
????????? ??? ?????? ??????, ? ?????? ??? ?????? ??? ???? ?????? ??? ???? ?????????? ??? ?????? ???
??? ?????????? ??? ?????? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???,
????? ??? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ??????????.

28 ??? ??????, ? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ???? 13, ?,
????????? ??, ?????? 6, ??? ?????? ?????? ?????? ??? ?????? ??? ???? 135, ?????????? 1,
????????? ??, ??? ?????? ???, ?????? ???, ?????????? ???, ??? ?????????? ??? ?????? ??? ???? 3 ???
????????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???' ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ???.

29 ??????, ?????????? ???, ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ???
?? ?????? 135, ?????????? 1, ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ??????, ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? [????????? ??? 2??
????????? 2020, Blackrock Investment Management (UK), C?231/19, EU:C:2020:513, ??? 21
??? ?????? ?????????? ??? ??????].

30 ?????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???? ???

????????????????? ??? ?????????? ??? ?????????? ??? ?????? 135, ?????????? 1, ???
?????? ??? ?????? ?? ?????????? ?? ?????????? ???, ?????????? ??? ?? ?????????? ???
????????? ?????????? ??? ?? ?????? ??? ? ??? ?????????? ?? ??? ?????? ???
????????? ??? ?????????? ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? [???????
?? ?? ?????? 2020, Blackrock Investment Management (UK), C?231/19, EU:C:2020:513,
????? 22 ??? ??? ?????????????? ??????????].

31 ???????, ??? ??? ??? ?????? ?????????????? ?????????????? ?????????? ??? ??
????????????? ??? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ?????? ?? ??????, ???
?????? ?????????? ???, ??? ?????????? ???????, ????? ?? ?????????? ??? ?????? ???
?? ?????????? ?? ?????? ??? ??? ?????? ?????? ??? ?????????? ??? ?????? 135,
????????? 1, ???????? ??, ??? ?????? ??? [??????? ??? ?? ?? ?????? 2020, Blackrock
Investment Management (UK), C?231/19, EU:C:2020:513, ??? 50 ??? ??? ??????????????
?????????].

32 ???????, ?? ??????? ?????????????? ??? ?????? ??? ?????? ?????????????? ??????????,
???' ????, ??? ?????? ?????????? ??? ?????? 135, ?????????? 1, ???????? ??, ??? ??????
????? ??? (??????? ??? 4?? ??? 2006, Abbey National, C?169/04, EU:C:2006:289, ??? 69).

33 ???????, ??? ?? ?????????????? ?? ?????????????? ?????????? ??? ?? ??????? ???
????? 135, ?????????? 1, ???????? ??, ??? ?????? ???, ?? ?????????? ??? ?? ??????
?????? ?????? ?????????? ??? ?????? ?? ?????????? ???????, ???????, ??????????
??????????, ?????????? ?? ?????????? ?????????????? ??? ?????????? ?????????????? ???
????????????? ?????????? ?????????? [??????? ??? ?? ?? ?????? 2020, Blackrock Investment
Management (UK), C?231/19, EU:C:2020:513, ??? 47 ??? ??? ?????????????? ??????????].

34 ?? ?????????? ??? ?????????? ??? ?????? ?? ?????? ??? ?????????? ?????? ??
????????? ??? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????? 29 ??? 33 ???
????????? ???????.

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

35 ???????, ?????????? ?? ?????? ?? ?????????? ?????????????? ??? ?????? ???
????????? ?????????? ?????????? ?????????? ?????????? ??? ?????? ?????? ??? 135,
????????? 1, ???????? ??, ??? ?????? ???, ?????? ?? ?????????? ??? ?? ?????????? ??? ??
????? ?????????? ?????? ???????, ?????????? ??????.

36 ???????, ?????????? ??? ?????????? ??? ? ?????????? ??? «?????????» ?????????? ??? ??????
????????? ??? ??? ?????? ???, ??? ?? ?????? ??? ?????? ?????? ??? ?????? 135,
????????? 1, ???????? ??, ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ?????????? ?????????? ?????? ?????? ?????? ?? ?????? ?????????? ??
????????? ?? ???????.

37 ???????????, ?????????? ???, ??? ?? ?????????? ??? ?????????????? ?????? ???
????????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?????????? ??
????????? ?? ?????? ??? ?????? ?????? ??? ?????? ?????? ?? ?????? ?????? ?????? ?? ??
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?? ?????? ?????? ?????? ??
?? ?????? ??? ?????????????? ?????????? ??? ?????? ?????? ?????? ?? ?????? ?????? ??
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??
????????? ??? ?????? ?????? a priori ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??

????????? ?????? ?? ?????????????? ????. ?????????? ?????????????? ?????????????? ??????????. ? ?????? ???
????????????? ??????????????, ????, ?????????? ?? ?????????????? ??????????, ????, ?????? ????. ?????????? (????.
?????? ?? 13?? ?????? 2014, ATP PensionService, C?464/12, EU:C:2014:139, ?????? 43
??? 44 ??? ??? ?????????????? ??????????).

38 ????????, ?????? ? ?????????????? ??? ??? 135, ?????????? 1, ??????? ??, ???
?????? ??? ?????? ?????? ?????? ?? ?????????? ??????, ? ??? ?? ??????????
????????????? ?????? ??? ?? ?????? ??? ?? ????? ?????????? ?????????? ??? ??
????????? ? ?????? ??? ?? ?????? ?????????????? (????. ??????? ?? 9?? ??????????)
2015, Fiscale Eenheid X, C?595/13, EU:C:2015:801, ???? 68).

39 ???, ????, ?????? ?? ?????????? ??? ???? ?? ???? ?????? ?????? ??? ?????? ??
?????????? ?????????? ?????????? ?????? ??? ???? ?? ???? ?????? ??? ?????? ??
?? ??????????, ?????? ?? ?????????? ??? ?????????? ?????????????? ?? ?????? ?????? ??
???? ?????????? ?? ??????, ?????? ??? ?????? ?????????? ?? ?????? ?????????? ?????? ??
????? ?? ??????? ?????? ?? ?????????????? ??? ?????????? ?????????????? ?????????? (????).
?????? ?? 13?? ??????? 2014, ATP PensionService, C?464/12, EU:C:2014:139, ????? 72
??? ??? ?????????????? ??????????).

40 ????????, ?????????? ??? ?????????????? ??? «?????????» ???????????, ??? ????
??????, ?????????????? ?? ?????? ??? ?????????? ??? ?????? 135, ?????????? 1, ?????????? ?,
??? ??????? ???, ?????? ?????????? ? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ???
????????? ?????????? ?????????? ?????????? ??? ?????? ??? ?????????? ?? ?????????? ?? ?????????? ??
????? ?? ?????????? ??? ?????????? ??? ?????????? ?????????????????????? ??? ??????????????
??? ?? ??? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ???.

41 ???????, ?? ?????????? ????? ?????? ?? ?????????????????? ?????????? ??
????????? ?? ??????? ?????? ?? ?????? ?? ?????????? ?????? ?? ?????????? ??????????????
????????? ?? ?????????? ?? ?????? ?? ?????????? ?????????????? ?????????? ?? ??????????, ??
????? ?????? ?????? ?? ?????????? ?? ?????????? ?? ?????? ?? ?????????? ?? ?????? ?? ?????????? ??????????,
????? ?? ?????????? ?? ?????????? ?? ?????? 135, ?????????? 1, ?????????? ??, ???
????? ??? (????. ?????? ?? 7?? ?????? 2013, GfBk, C?275/11, EU:C:2013:141,
????? 33).

42 ??????????????, ?? ?????????? ????? ?????? ??? ????? ?????? ?????????? ??????? ??
?????? ?? ? ?????? ?????? ?????????? ?????????????? ?????? ?? ?????????? ??? ?? ??? ????? ??????????
????? ?????? ?????????????? ??? ?????? ??? ?????????? ?????? ?????? ?????? ?????????? ??? ?????? ???
??? ?????????? ??? ?????? ??? ?? ?????????? ?????????? ??? ??? ? ?? ??? ????? ???????
????????????? ???????, ???????, ??????? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ??
????????? ??? (????. ??????? ??? 7?? ?????? 2013, GfBk, C?275/11, EU:C:2013:141,
????? 27).

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

44 ??????, ??? ?????? ?? ??????? C?59/20, ?????????? ?? ?????? ?? ???? ???????
?? ?????? SC ??? DBKAG, ??? ? ?????? ??? ?????????? ?? ?????? 135, ?????????? 1, ??? ??????
SC, ?????????? ??? ?????????? ?? ?????? 135, ?????????? 1, ??? ?????? ??, ??? ??????
????? ??, ?????????? ?? ?????? ?????????? ?? ?????? ?????????? ?? ???? ?????? ??, ??? ??????
?? ?????????? ?? ?????? ?????? ?? ?????? ?????????? ?? ?????? ?????? ??, ??? ??????
????????? ??????. ?? ?????? ?? ?????? ?????? ?????????? ?????? ?? ?????????? ??????
????? ??? ?????? ?????? ?? ?????? ?????????? ?????????? ?????????? ?? ?????? ??, ??? ??????
?? ?????????? ?? ?????? ?? ?????? ?????? ?????? ?????? ??, ??? ?????? ??, ??? ??????
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
?? ?? ??? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

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

45 ??????, ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?????????? ?? ?????? ??,
????????? ?????????? ?????????? ?????????? ??, ??? ?? ?????????? ?????????? ??, ???
????????? ?????????? ?????????? ?? ?????????? ??, ??? ?????????? ?????????? ?????????? ??,
????????? ?????????? ?? ?????????? ??, ??? ?????????? ?????????? ??, ??? ?????????? ??,
????????? ??, ??? ?????????? ??, ??? ?????????? ??, ??? ?????? ?? ?????????? ??, ??? ??????
?? ?? ?????? ??, ??? ?????????? ??, ??? ?????????? ??, ??? ?????? ??, ??? ?????? ??, ???
135, ?????????? 1, ?????????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ???
????????? ??, ??? ?????????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ???.

46 ??????, ??? ?????? ?? ?????????? ??, ?????????? ??, ??? ?? ??????????
?? ?? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? 135, ?????????? 1, ???
??, ??? ?????? ??, ???, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ???, ??
????????? ?????????? ??, ??? ?????????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ???
????? ??, ??? ?????????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ???
Abbey National, C?169/04, EU:C:2006:289, ??? 64).

47 ??????????, ?? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ???
?? ?????????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ???, ???
????????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ???
?? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ???
(????????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ???).

48 ??????, ?? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ???
????????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ???
????????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ???
135, ?????????? 1, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ???
?? (?????? ??, ??? 7?? ?????? 2013, GfBk, C?275/11, EU:C:2013:141, ??? 25).

49 ??????, ?????????? ?? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ???
????????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ???
????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ???
????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ???
????????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ???
????????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ??? ?????? ??, ???
(????. ?????? ??, ??? 7?? ?????? 2013, GfBk, C?275/11, EU:C:2013:141,
???? 23).

50 ??????, ?????????? ??, ??? ?????? ??, ??? «?????????» ?????????? ?????????? ??, ???

?????? ???? ?????? 135, ?????????? 1, ?????????? ??, ??? ?????? ?????? ??? ?????? ?????? ?
????????? ??????????, ?????????????? ??? ?????????? ??? ???? ?????????? ??? ??????????
????????????? ?????????? ?? ?????? ?????????? ?? ?????????? ??? ?????????? ??? ??????
???? ??? ???? ?????? ?????????? ?????????? ??? ??????????, ??? ???? ?????? ??? ??????
????????? ?????? ?, ??????????, ? ?????????? ?????? ??? ?????????? ??? ?????? ???
??????, ? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ???? ?????????? ???
????????? ??? ???? (????. ?????? ??? 7?? ?????? 2013, GfBk, C 275/11,
EU:C:2013:141, ??? 27).

51 ??????????, ?????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ??????
????????? ??? ?? ?????? ?????? ??? ?? ?????? ?????? ??? ?????????? ??? ?????????? ??? ??
????????? ??? ?? ??? ?????? ??? «????????????» ?????????? ?????????? (????. ??????
??? 9?? ?????????? 2015, Fiscale Eenheid X, C?595/13, EU:C:2015:801, ??? 78).

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

53 ????????, ??? ?????? ?? ?????????? ?????????? ??? ?????? ??????????, ????????,
??????, ??? ??? ??? 71 ??? ?????????? ??? 4?? ??? 2006, Abbey National (C?169/04,
EU:C:2006:289), ?? ?????????? ?????????? ??? ?????? ??? 5?? ??? 1997, SDC
(C?2/95, EU:C:1997:278), ??? ?????????? ??? ?????? ?????? ? ?????????? ??????????, ??? ?
????????? ?????????? ??????????, ??? ?????????? ??? ??? ?????????? ??? ?????????? ??? ??????
????? 13, B, ??? ??, ?????? 6, ??? ?????? ??????, ?? ?????? ?????????????? ??? ?? ??
????????? 1, ?????????? ??, ??? ?????? ??? (????. ?????? ??? 9?? ?????????? 2015,
Fiscale Eenheid X, C?595/13, EU:C:2015:801, ??? 74).

54 ??????????, ? ?????????? ??? ?? ?????????? ?? ?????????? ??? ?????? ??? ??????
?? ?????????? ?? ?????????? ??? ?? ?????? ?????????? ??? ?????????? ??? ?????????? ???
????? 135, ?????????? 1, ??????? ??, ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????????
??? ?????? ?? ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ???.

55 ????????, ?? ?????????? ??? ??????????????, ??? ?????? 37 ??? ?????????? ??? 5??
?????? 1997, SDC (C?2/95, EU:C:1997:278), ??? ?????? ??? ?????? ?? ?????????? ??? ??
????????? ?????????? ?? ?????????? ?? ?????????? ??? ?????? ??? ?????????? ??? ??????
????????? ??? ?????? ??? ?????????? ???.

56 ??????????, ??? ?????? ??? 2?? ?????? 2020, Blackrock Investment Management
(UK) (C?231/19, EU:C:2020:513), ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?? ?????????? ?? ?????? ?????????? ??? ?????? ??? ?????????? ??? ??????????
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? 135,
????????? 1, ?????????? ??, ??? ?????? ??? ?????? ??? . ??????????, ?? ?????????? ??? ?????? ??? ??
????????? ??? ?????? ??? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ???, ???
????????? 48 ??? 49 ??? ?????????? ???, ??? ?????? ??? ?????? ??? ?? ??? ?????? ??? ??????
????????? ??? ?????? ?? ?????????? ?????????, ?????????? ??? ?????? ??? ??????????
??? ?? ?????????? ?????????? ?????????? ??? ?????? ??? ?????????? ?? ?????????? ???
????????? ??? ?? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???

?????????.

57 ????????, ??? ???? ??????, ??? ? ?????? ?????????????? ??????? ????????????,
????????? ?????????????? ??? ? ?????????? ?????? ?????????? ?????? ??? ?? ??????
????????? , ??? ???? ?? ?????? ??? ????? «?????» ??? ????? ????.

58 ??? ?? ?????????????? ?????????? ??? ?????? ?????????? ??? ?? ??????????????
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?? ??? ?? ?????? ??????????
????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????????
????????? ??? ?????????? ??? ?????? 135, ?????????? 1, ?????????? ?, ??? ?????????? ???
??? ?????? ?????????? ??? ?????? ?? ?? ?????????? ?????????? ?????????? ??? ??????????
????????? ??? ?? ?????????? ??????????.

59 ?? ??????????, ??? ?????? ?????????? ?????????? ?? ?????????? ?? ?? ??????????
?? ?????? ? K ??? ? SC ??? ?????? ??? ?????? ??? ?????? ?????????? ??????????
????? ??? ?????????? ???.

60 ??????????, ??? ?????? C?58/20, ?? ?????? ?????????? ?? ??????, ?????? ???,
?? ?????? ?? ?? ?????????? ?????? ??? ?????????? ??? ?????????? ? K ?????????? ??
????????? ??? ?????????? ? ?????????? ?????????? ??? ?? ?????? ?????? ?????? ??
????????? ?????? ???, ??????, ?????????? ??? ?????????? ??? ?? ?????????? ??? ??????????
??? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ?????????? ??

61 ??? ?????? C?59/20, ??? ??? ?????? ??? ?????? ?????????? ?????????? ??? ?? ??????
????????? ?????? ??? ?? ?????????? ?????????? ?????????? ??? ?????????? ??? ??????????
????????? ?????? ?????????? ?????????? ??? ?????????? ??? ?????????? ??????????
?????????. ??????, ?? ?? ??? ?????? ?????????? ?????????? ??? ?? ?????????? ??? ??????????
???? ?????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ?????????? ??? ??????????
DBKAG ?? ?????? ?? ?????????? ?? ?????????? ?????????? ?????????? ??? ?????????? ??? ??????????
????????? ??? ?????? ? ?????????? ?????????? . ??????, ??? ?? ?????? ??? ?? ??????
????????? ?????????? ??? ??? ?????????? ?????????? ?????????? ??? ?????????? ??? ??????????
????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ???
????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ??????????
????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ???
????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ???
????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ???
????????? ?????????? ??? ?????? 58 ??? ?????? ??????????.

62 ?????? ??? ?????? ??????, ??? ?????????? ?????????? ?????????? ??? ?????? ??
????? ? ?????????? ??? ?? ??? 135, ?????????? 1, ?????????? ?, ??? ?????? ??? ?????? ???
??? ?????? ??? ?????????? ?????????? ??? ?????? ?????????? ?????? ?????????? ??? ??????????
?????????, ??? ?? ?????????? ?????? ??? ?????????? ?????? ?????????? ??? ?????????? ??? ??????????
???? ?? ?????? ?????????? ?????????? ??? ?????? ?????????? ?????? ?????????? ??? ??????????
??? ?????? ?????? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ??????????
??? ?????? ?????? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???
????????? ??? ?????? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ??????????
????????? ?????? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?? ?????????? ???
????????? ??? ?????? ?????????? ?????????? ??? ?????? ??????????.

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

63 ?????????? ??? ? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???

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

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

? ? ????? 135, ?????????? 1, ??????? ??, ??? ?????? 2006/112/? ? ? ??????????,
?? 28?? ??????? 2006, ??????? ?? ?? ?????? ?????? ?????? ?????????????? ???,
???? ?? ?????? ??? ?????????? ?????????????? ??? ??????? ?? ??????????
????????????? ?????????? ??????????, ??? ?? ?????????? ?????? ??? ?????? ?????????? ???
????????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????? ??? ?????? ??????????
????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ? ??????????
????????????? ?????????? ??? ?????????? ?? ?????? ?????????? ?????????????? ??? ??? ??
????????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??
????????? ??? ??????????, ?????????? ??? ?????????????? ??? ?? ?????????? ??? ?????????? ???
????????? ??? ?????????? ??? ?????????? ?? ?? ?????????? ?????????? ?????????? ?????????? ???
????????? ??? ?????????? ??? ?? ?????????? ?????????? ?????????? ?????????? ?????????? ??? ??
????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ?????????? ??? ?????????? ???.

(?????????)

* ?????? ??????????: ? ??????????.