

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

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

??? 21?? ?????????? 2021 (\*)

«????????????? ?????????? – ?????????? ?????????????? ??? ?????????? – ?????? 63 ??? 65 ??? –  
?????? ??????? ??? ?????? ?????? ?????????????? – ??????? ??????? ?????? ??? ??????  
????????????? – ?????????????? ?????????????? ?????????? – ?????????????? ?????????????? ???  
????????? ?????????? ??? ??? ?????????? ?????????? – ?????????? ?????????? ?????? ??? ??  
????????????? ??? – ?????????? ?????? ?? ?????????? ?????????????? ?????????????? ??????????????  
????????? – ?????????? ??? ?? ?????? ?????? – ?? ??????? ?? ?????????? ?????????? ??????????????  
????????? ??????????»

???? ?????? C2394/20,

?? ?????????? ?????? ?????????????? ?????????? ?????????? ??? ?????? 267 ????, ???  
?????? ?? Finanzgericht Düsseldorf (?????????? ?????????? ???????????, ??????????) ??  
?????? ??? 20?? ??????? 2020, ? ????? ?????? ??? ?????????? ??? 18 ??????? 2020,  
??? ??????? ??? ???

**XY**

????

**Finanzamt V,**

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

????????? ??? ??? E. Regan (????????), ???????, K. Lenaerts, ??????? ??? ???????????,  
????????? ??????? ??? ?????? ?????????, ?. ???????, ??????? ??? ???????  
??????, I. Jarukaitis ??? M. Ilėši?, ???????,

?????? ??????????: J. Richard de la Tour

?????????: C. Di Bella, ?????????? ????????,

?????? ??? ?? ?????? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???  
9?? ??????? 2021,

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

– ? XY, ?????????????? ??? ??? R. Weller, Steuerberater,

– ? ?????????? ????????, ?????????????? ??? ??? J. Möller ??? R. Kanitz ??? ???  
??? ??? S. Costanzo,

– ? ?????????? ????????, ?????????????? ??? ??? M. J. Ruiz Sánchez,

– ? ?????????? ????????, ?????????????? ??? ??? W. Roels ??? B.?R. Killmann,

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

?? 16?? ?????????? 2021,

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

??????

1 ? ?????? ?????????????? ?????????? ?????? ??? ???????? ??? ?????? 63 ??? 65 ???.

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ?????? ?????? ??? XY ??? ???

Finanzamt V (?????????? ??? V, ???????), ?? ?????????? ??? ?????????? ??? ?????? ??? ?????  
????????? ??? ?????? ?????? ??? ??????.

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

3 ? Erbschaftsteuer- und Schenkungsteuergesetz (????? ??? ?????????? ??????????)  
??? ??????), ??? ?????????? ??? 27 ?????????? 1997 (BGBI. 1997 I, ? 378), ??? ???  
????????????? ??? Gesetz zur Bekämpfung der Steuerumgehung und zur Änderung  
weiterer steuerlicher Vorschriften (????? ??? ?????????? ??? ?????????? ???  
????????????? ??? ?????????????? ?????????), ??? 23? ?????? 2017 (BGBI. 2017 I, ? 1682)  
(??? ????: ErbStG), ?????????? ??? ????? 1, ?? ??? «????????????? ??????», ?? ??????:

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

1. ?? ?????? ??? ??????

2. ?? ?????? ?? ???

[...]».

4 ?? ??? 2 ??? ErbStG, ?? ??? ?????? ??? ?????? «????????? ?????????? ??????????»,  
????????? ?? ????:

«(1) ?????????? ?????????? ????????

1. ??? ?????????? ??? ?????? 1, ?????????? 1, ?????? 1 ??? 3, ??? ?? ?????? ???  
????????? ?????? (????????? ?????? ?????????? ??????????) ?? ? ?????????????? ???  
??? ?????? ??? ?????? ???, ? ?????? ??? ?????? ?????? ?????????? ??? ?????? ? ? ??????  
???? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ?????????? ?????????? ??????????  
(????? 9) ?????? ?????????? ??????. ?????????? ?????? ??????:

a) ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ? ?? ?????? ?????? ??? ???  
?????????

b) ?? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??? ??? ???  
????????? ??????, ??? ?????? ??? ?????? ?????????? ??? ??????,

[...]

3. ?? ??? ?????? ??????????, ?? ??? ?????? ??? ?????? 3, ??? ???  
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??? ???  
????? 121 ??? Bewertungsgesetz [????? ??? ??? ??????] (????????????? ??????????).

[...]»

5 ?? ?????? 3 ??? ErbStG, ?? ?????? ?????? ??? ????? «????? ?????? ???????», ?????? ????  
????????? 1 ?? ????:

«????? ?????? ?????? ????????

1. ? ?????? ??? ???????????? ???????? [...] , ?????????? [...] ? ??? ??????????????  
??????? ?????? ?? ?????? ?????????? ? ?????????? (????? 2303 ?? . ??? Bürgerliches  
Gesetzbuch [(?????? ??????), ??? ?????????????? ??? 2 ?????????? 2002 (BGBI. 2002 I, ?. 42, ??? ?????????? BGBI. 2002 I, ?. 2909, ??? BGBI. 2003 I, ?. 738), ??? ????: BGB]?

[...]»

6 ?? ?????? 9 ??? ErbStG ?????????? ???, ?? ?????????? ?????? ?????? ??????, ?  
????????????? ?????? ??? ?????? ?????? ? ?????? ??? ??????????????.

7 ?? ?????? 10 ??? ErbStG, ?? ????? «????????????? ?????? ??????????», ?????? ?? ???:

«(1) ?????????? ??? ?????? ?????????? ?????? ? ?????????? ??? ?????????? , ??? ???? ?? ?  
????????? ?????? ?????????????? ??? ??? [...] . ??? ?????????? ??? ?????? 3, ?  
????????? ?????????? ??? ??? ?????? ?????? ??? ?????? ??? [...] ??? ?????? ???  
????????? ?????????? , ?????? ??? ?????? ?????? ?? ?????????? ?????? ??? ?????? ???  
????????? ?? ??? ??? ?????? ?????????? 3 ??? 9 ?????? ?????? ??? ?????? ??? ?????? [...]

[...]

(5) ??? ?????? ??? ?????????? ?????? ??? ?????????? 6 ??? 9, ??? ??? ??????????  
????????? ?????????? ?? ?????????? ??? ?????????? ??? ??????????

1. ?? ??? ?????? [...]?

2. ?????????? ??? ?????????? , ?????? ??? ?????????? ?????? ?????????? ?????????? ??????  
????? ??? ?????????? ?????? ?????? ??? [...]

(6) ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ?????????? ??? ??????????  
??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ?????? ??? ?????????? ??????. ?? ?  
????????? ?????????? ??? ?????????? ?????? ?????????? ?????? ??? ?????????? (????? 2,  
????????? 1, ??? 3, [...]), ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ?? ????. [...]

[...]»

8 ?? ?????? 15 ??? ErbStG, ?? ?????? ?????????? «????????? ?????? ??????», ??????  
?? ????:

«(1) ??? ?????? ?? ??? ?????????? ?????? ??? ?????????? ?????? ??? ?????????? ??? ?  
??????, ?????????? ?? ?????????? ?????? ?????? ?????????? ?????? ???:

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

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

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

[...]».

9 ?? ?????? 16 ??? ErbStG, ?? ?????? «????????????? ???», ?????????? ?? ??????:

«(1) ??? ?????????????? ?????????????? ?????????????? ?????????????? (????? 2, ?????????? 1, ?????? 1, ??? ?????????? 3), ?????????????? ??? ??? ?????? ?????? ?????????? ?????????????? ??????????

1. ??? ??? ?????? ??? ??? ?????????? ??? 500 000 ????,

2. ??? ?? ?????, ??? ??? ?????? ??? ?????????? ?, ?????? 2, ??? ?? ?????  
????????????? ?????, ??? ??? ?????? ??? ?????????? ?, ?????? 2, ??? ?????? 400  
000 ????

[...]

(2) ??? ?????????????? ?????????????? ?????????????? ?????????????? (????? 2, ?????????? 1, ?????? 3), ?? ??? ??? ?????????? 1 ?????????? ??? ?????????? ??? ??? ?????????? ???  
?? ?????????? ??? ??? ?????????? ??? ?????????? ??? ??????, ??? ??????, ??? ?????????? ???  
????? ??? ??? ?? ??? ?????? ?????? ?????????? ?????????? ?, ?????? ??? ??????????  
????? ?????????? ?????? ?????????? ?????????? ??? ??????, ??? ??? ?????????? ?????????? ?? ?????? ???  
????????? ??? ?????????? ?????? ?????? ??? ??????, ??? ??????, ??? ?????? ??? ?????????? ?????????? ???  
?? ??? ?????? ?????? ??? ??????, ??? ??????, ??? ?????? ??? ?????????? ?????????? ???  
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ??????. ?? ??? ?????? ??? ?????????? ???  
????? ?????????? ? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???.

[...]»

10 ?? ?????? 37 ??? ErbStG, ?? ?????? ?????????????? «????????? ??? ???», ?????? ???  
????????? 14 ?? ????:

«?? ????? [...] ??? 16, ?????????? 1 ??? 2, ?? ?????? ??? 25 ?????? 2017, ?????????????? ??  
????????? ??? ??? ?????? ?? ?????????? ??? ?????????? ?????????? ?????????? ?????? ???  
????????????? ??? 24?? ?????? 2017.»

11 ?? ?????? 121 ??? Bewertungsgesetz [????? ??? ??? ??????????], ??? ??????????????  
??? 1? ?????????? 1991 (BGBI. 1991 I, ?. 230), ??? ??? ?????????????? ?? ??? ??? ????:  
4?? ?????????? 2016, ?? ?????? «????????? ??? ?????????? ??????», ?????????? ?? ????:

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

1. ? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??????????

2. ? ?????? ??? ?????? ?????? ??? ?????? ??????????

[...]»

12 ?? ?????? 2303 ??? BGB, ?? ?????? «????????? ?????????????? ??? ??? ?????? ?????? ????,  
????????? ??? ?????? 1 ?? ??????:

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



19 ?? ??????? ??????????? ??????????? ??? ? ??????? ??? ??????? ??? ??????? ??? ??????? ???  
?????????? ?????????? ??? ? ??????? ??? ???? 16, ?????????? 2, ??? ErbStG ??? ?? ???  
10, ?????????? 6, ??????? ???????, ??? ????? ?????, ?? ????? ????? ????? ??????? ??  
????????? ??????????? ?????????? ?????????? ?????????? ?? ??? ??? ??? ?????????? ???,  
??? ?????????? ??? ????? ??? ?????? ??? ?????? ?????, ??? ? ?????????????? ???  
? ?????????? ??? ????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ???  
?? ???????, ??????? ??? ??? 63, ?????????? 1, ??? ?? ??? 65 ???.

20 ??????, ?? ?????? ?????????? ?????????? ??? ?? ??? ?????? ??? ?????? 16, ?????????? 2,  
??? ErbStG ?????????? ??? ?? ??? ?????? ?????????? ??? ?????? ?????????? ??? ???  
?????? ??? 8?? ?????? 2016, Hünnebeck (C-479/14, EU:C:2016:412). ??????? ???  
????????? ??? ?? ?????? ??? ?????? ?? ??? ?????? 37, ?????????? 14, ??? ErbStG, ??? ?????? ???  
????????? ??? ?????? ??? ?????? ?? ??? ?????? ? ?????????? ?????? ??? ?????? ???  
????????? ??? 24?? ?????? 2017, ?? ?????????? ??? ?????? 16, ?????????? 1, ???  
ErbStG ?????????? ??? ?????? ?? ?????? ??? ?????? ?????? ?????????? ???' ?????????? ???  
????????? 2 ??? ?????? ??????. ?? ?? ??? ?????? ?????????? ?????????? ?????? ?????????? ??  
???? ?? ?????????? ??? ?????? ?????? ?????? ?? ?? ?????? 63, ?????????? 1, ??? ?? ??  
????? 65 ???, ??? ?????? ?????????? ??? ?? ??????????.

21 ???????, ?? ?????? ?????????? ?????????? ??? ?????? ?? ??? ?? ?????????? ???  
????? 10, ?????????? 6, ??????? ???, ??? ErbStG ?? ??? ?? ??? ???????.

22 ??? ??????? ?? ?????????? ?????????? ?????????? ??? ?????? ?? ???  
??????????, ? ?????????? ??? V ?????? ??? ??? ??? ??? ?????? ??? ?????? ???  
????????? ???????. ???????, ?? ?????? 10, ?????????? 6, ??????? ???????, ??? ErbStG ???  
????????? ??? ?????????? ??? ?????? ?????? ?? ?????????? ?? ???????, ?? ??????? ???  
????????? ?????? ???' ?????????? ??? ?????? 10, ?????????? 5, ??? ErbStG, ??? ???  
?? ?????????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???  
????????? ??? ?????? ??? ??????.

23 ???????????, ??? ?? ?????????? ??? ?????????? Bundesfinanzhof (?????????????)  
?????????? ??????????, ???), ? ?????????? ?????? ??? ?????? ??? ?????? ?? ???  
10, ?????????? 6, ??? ErbStG ??? ?? ??? ?????????? ?????? ??? ?????? ??? ?????? ???  
???? ?? ?? ??? ?? ??? ? ??? ?????? ?? ?????????? ?? ?????????? ?????????? ???  
????????????? ??? ???????????. ???, ??? ?? ?????????? ???, ?? ?????? ??? ????  
???? ???????????, ??????? ?? ?? ?????? 2311 ??? BGB, ????? ?? ?????? ??? ??????????  
?? ?????????? ??? ?????? ?????????? ???, ?? ???, ?????? ???.

24 ?? ?????????? ??? ?????????? ???, ?? ?????????? ???, ??? ?? ??? ?????? ??? ??????  
? ?????????????? ? ? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ???????, ? ?????????? ??? ?? ?????????? ??? ?????? ??? ?????? ???  
????????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?? ???  
????????? ?? ?????? ?? ?????????? ??? ??? ?????????? ??? ?????????? ??? ?????? ???  
?? ?????????? ??? ?? ?????? ??? ?????? ???, ?? ?????? ??? ?????????? ??? ?????? ??? 10,  
????????? 5, ?????? 2, ??? ErbStG.

25 ?? ?? ?????? ???, ?? Finanzgericht Düsseldorf (????????? ??? ??????????)  
????????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?? ?????? ???  
????????? ?? ??? ?????? ?????????? ???:

«1) ?? ?? ??? 63, ??????? 1, ?? 65 [?] ??? ?????? ??? ?????????? ??  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ? ???

?????????? ?? ??? ???? ?????????? ??? ???? ???, ?? ?????????? ?????????? ?????????? ??? ????  
?????? ????????, ??? ???? ??? ???? ??? ?????? ???? ?????????????????? ??? ???? ????  
????? ??? ??????? ??? ? ? ???? ??? ?????? ?????? ?? ??? ?????? ?????? ?????, ?? ???????????  
????? ??? ??????? ??? ?????????????? ?????? ?????? ?????????? ??? ? ???? ?????????? ???  
?? ?????? ?? ?????????????? ??? ???? ?????? ?????? ??? ???? ???? ???? ?????? ?????? ???  
??? ? ? ???? ?????? ?????? ??? ???? ?????? ?????? ?????;

2) ???? ?? ????? 63, ?????????? 1, ??? 65 [????] ??? ?????? ??? ?????????? ??  
?????? ??????? ??????? ?????? ??? ???? ?????? ??? ?????? ?????????????? , ????  
????????? ?? ??? ??? ?????????? ??? ?????? ???, ?? ?????????? ?????????? ?????????? ???  
?????? ???????, ??? ???? ??? ?????? ??? ?????? ???? ?????????????? ??? ? ????  
????? ??? ??????? ??? ? ???? ?????? ?????? ??? ???? ???? ?????? ?????, ??? ???????  
????????? ??? ???? ?????? ?????, ??? ???? ?????????? ?????? ?? ?????????? ?????? ???  
????? ??? ?????????? ?????? ?????? ?????? ?????? ?? ?????????? ?????? ??? ????  
????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ?????? ??? ????  
????? ? ?????????? ??? ???? ?????? ?????? ?????? ??? ?????????? ?????? ??? ????  
?? ?????? ?????? ??? ???? ?????? ?????;»

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

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

26 ?? ?? ??? ?????? ??????? ???, ?? ?????? ?????????? ?????, ???' ??????, ??  
????????????? ?? ?? ??? 63 ?? 65 ??? ?????? ??? ?????? ??? ?????????????? ?? ???  
?????? ?????? ?????? ?? ??? ?????????? ??? ?????? ?????????? ???? ?????? ?????????? ???,  
?? ?????????? ?????????? ?????????? ?????? ?????? ?????? ?????? ???, ???, ??? ???? ??? ???? ???  
??????, ??? ? ?????????????? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ?????? ? ????  
?????? ??? ??? ?????? ?????? ???, ?? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ????  
????????? ??? ???? ??? ?????? ?????? ???, ?? ?????????? ?????? ?????? ?????? ?????? ??? ????  
????????? ??? ???? ??? ?????? ?????? ???, ?? ?????????? ?????? ?????? ??? ???? ?????? ??? ????  
????????? ??? ???? ??? ?????? ?????? ??? ???? ?????? ?????? ??? ???? ?????? ??? ???? ????  
????????? ??? ???? ??? ?????? ?????? ??? ???? ?????? ?????? ??? ???? ?????? ??? ???? ????  
????????? ??? ???? ??? ?????? ?????? ??? ???? ?????? ?????? ??? ???? ?????? ??? ???? ????  
????????? ??? ???? ??? ?????? ?????? ??? ???? ?????? ?????? ??? ???? ?????? ??? ???? ????  
????????? ??? ???? ??? ?????? ?????? ??? ???? ?????? ?????? ??? ???? ?????? ??? ???? ????  
????????? ??? ???? ??? ?????? ?????? ??? ???? ?????? ?????? ??? ???? ?????? ??? ???? ????.

27 ???? ?????? ?????????? ??? ?????????? ?????? ?????? ? ???? ?????? ?????????? ?????? ???  
????????? ??? ?????? ???, ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ????  
????? ?????? ?? ?????? ??? ?????? ???, ???, ??? ?????????? ?????? ??? ???? ????  
????????? ? ?????? ??? [??., ?????? ???, ?????? ??? 23?? ?????????? 2006, van  
Hilten-van der Heijden, C?513/03, EU:C:2006:131, ??? 36 ??? ??? ??????????]  
????????? ??? 3?? ?????? 2021, Promociones Oliva Park, C?220/19, EU:C:2021:163, ???  
73 ??? ??? ?????????? ?????? ??? ???? ???? 29?? ?????? 2021, Veronsaajien  
oikeudenvontayksikkö (????? ??? ???), C?480/19, EU:C:2021:334, ??? 25 ??? ???  
????????? ?????? ??????].

28 ?? ????? 63, ?????????? 1, ??? ?????? ?????? ?????? ??? ?????????? ???  
????????? ?????? ?????? ?????? ???, ??? ???? ?????? ?????? ??? ???? ????  
?????.

29 ? ?????? ????????????, ? ?????? ?????????? ??? ?????????? ??? ?????????? ???  
????????? ? ?????????????? ??? ???? ? ?????????? ??? ??????, ?????????? ??? ??????????  
??? ?????????? ??????? ?? ??? ?????? ??????, ?????????????? ??? ?????????? ??? ?????? ???  
????????? ??????? ?? ??? ?????? ?????? ?????? ?????????????? ??? ?????????? ??? ?????? ???  
????? (????????? ??? 26?? ??? 2016, ????????, C?244/15, EU:C:2016:359,  
????? 25 ??? ??? ?????????????? ??????????).

30 ? ?????????? ??? ?????? ?????? ?????? ?????? ?????????? ??? ?????????????? ???  
????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???  
?? ??????? ?? ??? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?? ?????????? ? ?????? ?????? ?????? ?????????? ?????????? ??? ?????? ?? ?????????? ??  
????? ?????????? ???????. ??? ??????, ??? ?????? ?????????? ?????????? ?????????? ???  
????? ?????? ?????? ??? ?????? ??? ?????? 63, ?????????? 1, ???.

31 ???????, ?????? ?? ?????????? ?? ??? ?????? ?????? ?????? ??? ?????? ?????????? ???  
????????????? ??? ?????? ??? ?????????? ?????????????? ?????????? ??? ?????????? ?? ??? ???  
????? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ?????????? ??? ??? ?????? ???  
????? 63, ?????????? 1, ??? ?, ?? ?????????? ?????????? ?????????? ??? ?????????? ?? ?  
????????? ?????? ??? ?????? ??????????????.

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

32 ??? ?????? ??? ?????????? ??? ????????????, ??? ?????? ??? ?????????? ??????????????  
????? ?????????? ?????????? ?????????????? ??? ?????? ???, ??? ?????? ?? ?????????? ???  
????????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ?????????? ??? ?? ?????? ???  
????? ?????????? ?? ?????? ?????????? ?????????? (????????? ??? 17?? ??? 2013,  
Welte, C?181/12, EU:C:2013:662, ??? 23 ??? ??? ?????????? ??????????).

33 ?? ???????????, ? ??????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ???, ??? ?  
????????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ?????? ??? ? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
??????, ?? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ? ? ?????????? ???, ??? ??? ?????????? ???, ?????? ??? ?????? ??? ?  
????? ??????. ?????????? ???, ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ???  
?? ?????? ??? ?????????? ??? ? ??? ??? ?????? ??? ? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ??? ? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

34 ??? ???????, ??? ?????? ?????? ??? ? ?????????? ??? ?????? ??? ?????????? ???  
? ?????????? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?  
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ???, ?? ??  
??????, ??? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??????  
????????? ??? ? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? 63, ?????????? 1, ??? (??., ?????? ???, ?????? ??? 17??  
????????? 2013, Welte, C?181/12, EU:C:2013:662, ?????? 25 ??? 26 ??? ???  
????????? ?????? ???).

?? ???? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 65 ????

35 ??? ??? ?????????? 1 ??? ?????? 65 ???, ?? ?????????? ??? ??? ?????????? 3 ??? ???  
????? ????, ?????????? ??? ???? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ??? ?????? ???  
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

36    ?????? ?????????? ?? ?????? ?????????? ?????? ??? ?????? ?????????????? ???  
????????? ??? ?????? 65, ?????????? 1, ?????? ??, ??? ??? ??? ??? ??????????  
????????? ??? ?????????? ? ?????????? 3 ??? ?????? ?????? ??????. ???????, ???  
????????? ??? ?? ?????????? ??? ?????????? ??? ?????????, ??? ?? ?????? ??? ?????? ??????????  
????????? ?? ?????????? ??? ?????????? ?? ??? ?????????? ??? ?????? ??? ??????????  
????????? ??? ?????????? ??? ?????? ? ?????????? ?????????? ??? ?????? ??? ?????????? ???  
??? ?????? ?? ?????????? ?????????? ??? ?????????? ?? ??? ?????????? ??? ?????? ??? ??????????  
????????? ?????? (????. ?????? ??? 30?? ?????? 2016, Feilen, C?123/15,  
EU:C:2016:496, ??? 26 ??? ?????????? ?????????). ??? ?????????? ???  
????????? , ? ?????????? ?????????? ?????????? ?? ?????? ??? ?????? ??? ?????????? ???  
????????? ??? ?????????? ?????? ??? ?? ??? ?????????? ?? ?????? ??? ?????? ??? ??????????  
??? ?????? ?????? (????. ?????? ??? 22?? ?????? 2018, Huijbrechts, C?679/17,  
EU:C:2018:940, ??? 30 ??? ?????????? ??????????).

–    ??? ??? ?????????? ?????????? ??? ?????? ??????????

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

38    ?????????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? , ?? ??? ???  
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ??? ???  
??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????????? ?????????? ???  
????????? . ?????? , ?????? ??? ?? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???  
????????? ??? ?? ??? ?????? . ?????? , ??? ?????? ?????? ?????? ?????? ?????? , ??? ?  
????????? ??? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??  
????????? ??? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????????? , ??? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????????? , ? ?????????????? ???  
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????? . ? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? , ???  
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? , ???  
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????????? ??? ??? ?????? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??????.

39    ??? ??? ?????? ???, ?????? ?? ?????? ?????? ??? ? ?????? ?????????? ,  
????????? ??? ?????? ?????, ??? ?????? ?? ?????????? ?????? , ?????? , ???  
????????? ?????? ?????? ???, ?????? , ??? ?????????? ?????? ?????? ?????? ??? ?????????? ???  
????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???  
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???  
????????? ?????? ?????? ?????? ??? ?????? ?????? ?? ??? ?????? ?????? ?????? ???  
????????? ?????? ?????? ?????? ?????? , ?????? ? ?????? ???, ??? ?????? ??? ?????? ?????? ???  
????? ?????? ??? ?????? ?????? ?????? ?????? , ??? ?????? ?????? ?????? ?????? ?????? ??????  
?? ??? ??? ?????? ??? ?????? ?????? ?????? ?????? (????. ?????? ??? 17??

?????????? 2013, Welte, C?181/12, EU:C:2013:662, ???? 51).

40 ???????, ??? ??????????? ? ?????????? ??????????, ??????, ? ?????????? ???????????  
????????????? ??? ??????????? ?????????????? ?????????????? ?????????? ??? ??????  
????????????? ??? ?????????? ?????????? ?????????? ?????????? ?????????? ??????????  
????????????? ??? ?????????? ?????????? ?????????? ?????????? ?????????? ??? ?????? ??????????????  
????????? ?????????? ?????????? ??? ?????? ?????? ?????? ?????????? ?????? ?????????? ???  
????????? ??? ?????????? ?????????? ?????????? ?????? ?????????? ?????????? ? ?????????? ???  
????????? ??? ?????????? ?????? ?????? ?????????? ?????????? ?????????? ?????? ?????? ??????????  
????????? ??? 17?? ?????????? 2013, Welte (C?181/12, EU:C:2013:662), ?? ?????????? ???  
?? ?????? ??? ?????? ?????????? ?????????? ?????????? ?????????? ?????????? ??????????  
????????????? ??? ?????? ???' ???????, ???' ?????? ?????????? ??? ?????? ??? ?????? ???  
??? ?????? ?????????? ? ?? ??? ?????? ?????????? ?? ?????? ?? ??? ?????? ??? ?????? ???  
????????????? ??????????.

41 ???????, ?? ??????????? ?????? ??? ?????????? ?? ?????????? ??? ?????????????? ???  
?? ?????? 39 ??? ??????? ????????. ????????, ??? ?????????? ?????????? ?????????? ??????????  
??????????, ?? ??????????? ??? ?? ??????? ?????? ?????? ?????????? ? ??????? ?????????? ??????????  
????????????? ?????????? ??? ?????? ??? ?????????????? ?????? ??? ?????????? ??? ??????????  
????????????? ???????????. ??? ?????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ???  
??????????, ?? ?? ??? ?????? ?????????? ???, ?? ?????? ?????????????? ?? ?????????? ?? ???  
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???  
????????????? ?????????? ?? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???  
?? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????????  
??? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????  
????????????? ??? ?????? ??? ???????????. ??? ?????? ?? ?????????? ??? ?????????? ??? ?????? ???  
????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????????  
??????????, ? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???  
?????????? ?????????? ?? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????????  
??????????, ?????????? ??? ???, ??? ?????? ??? ?????? ? ?????? ??? ?????? ??? ?????? ???  
??? ?????????? ?? ??? ?????? ?????????? ???, ?????????? ???, ??? ?????? ??? ?????? ???,  
????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ? ??????  
????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ? ??????  
????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ? ???  
????? ?????? (????. ??????? ??? 17?? ??????? 2013, Welte, C?181/12, EU:C:2013:662,  
????? 53).

42 ???????, ??? ?????????? ?????????? ?? ?????? ? ?????????? ??? ?????? ??? ??????  
?????????? ??? ?????? ?????????? ?? ?????? ??? ?????? ?????????? ??? ?????? ???  
?????????? ? ?????????? ??? ?????? ??????, ? ??????????, ?????? ?????????? ??  
?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??  
?? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???  
??????????, ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???, ??  
??????????, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???  
?????????? ? ?????? ??????.

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

? ?????????? ? ???????? ? ???????? ???? ???? ? ?????????? ? ?????????? ? ??????????????????  
????????? ? ???????? ? ?? ??? ? ???????? ???? ? ?????????? ? ???????? ? ???????? ???? ????  
????????????? ? ???????? ? ?????????????????? ? ???????? ? ???????? ? ???????? ???? (????.  
??????? ??? 17?? ???????? 2013, Welte, C?181/12, ??? 55).

44 ??? ? ? ?????? ? ???????? ???? ? ? ?????????? ? ?????????? ???? ???? ? ? ? ??????????  
????????????? ???? ???? ? ? ?????? ???? ???? ???? ???? ???? ? ?????????? ? ??????????????  
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- ??? ??? ?????????????? ??? ?????????????? ??? ?????????? ????? ?????????????? ????? ??????????  
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45 ? ?????????? ? ???????? ? ?????????? ??? ??? ? ? ?????????? ? ?????????????? ? ?????????? ??  
?????????????, ?????? ????, ??? ??? ???? ?????? ?????????????? ??? ?????? ??? ???? ??????????  
??? ??????????.

46 ?????????? ???? ???? ? ? ?????????? ???? ???? ? ? ?????????? ???? ???? ? ? ?????????? ????  
????????? ???? ? ?????????? ???? ???? ? ? ?????????? ???? ???? ? ? ?????????? ???? ???? ?  
??? ? ?????????? ???? ???? ???? . ?????????? , ??? ? ? ?????????? ?  
????????????? ???? ???? , ?????? ? ? ?????????? ?????? ???? ???? ???? ???? ???? ???? ???? ?  
????? ? ? ?????? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?  
????????? ???? ???? , ???? ? ? ?????? ? ? ?????????? ??? ???? ???? ???? ???? ?  
????? ? ? ?????????? ???? ???? ? ???? ???? ???? ???? ???? ???? ???? ???? ???? (????? ? ? 17??  
??????? 2013, Welte, C?181/12, ??? 59 ??? ??? ??????????).

47 ?? ?????????? , ??? ???? ???? ???? ???? ???? 41 ??? ???? ???? ???? , ? ? ??????????  
????????? ???? ???? , ??? ???? ???? ???? ???? ???? ???? ???? , ? ? ???? ???? ???? ???? ???? ?  
?? ? ?????????? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? , ? ? ???? ???? ?  
??? ???? 16 ?? ErbStG ???? , ?? ???? ???? ???? ???? ???? ???? ???? , ? ? ???? ???? ?  
????????? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?  
??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?  
????? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?  
????? , ??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? , ???  
????? ? ? ???? ? ? ???? ???? ???? ???? ???? ???? ? ? ???? ???? ? ? ???? ???? ? ?  
????????? ? ? ???? ???? ???? , ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ? ? ????  
??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?

48 ??? ? ???? ???? , ??????? ???? ???? 16 , ?????????? 1 , ??? ErbStG , ??  
????????? ??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?  
????????? ??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?  
????????? ??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?

49 ??????? , ? ?????????? 2 ??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?  
????? ???? ? ? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?  
????????? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?  
????????? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?

50 ??????? , ??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?  
????? ? ? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?  
????????? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?  
??? ???? ???? ???? ???? ???? ???? ???? ?

51      ?????? ??????, ?????????????? ?????? ??? ?????? ??? ?????????????? ??? ?????? 36 ???  
????????? ????????, ??????????????, ??????, ??? ? ?????????? ?????? ?????? ?????????? ??  
????????? ??? ?????????? ??? ??????? ??? ?????????? ??? ?????????? ?? ? ? ??????? ????. ????????, ?  
????????? ??? ?????? ??? ?????? ?????? ?????????? ???, ??? ?????????? ?????????? ????????, ???  
?? ?????????? ?????????? ??? ?????????? ?????? ?????????????? ?????????? ??????? ??? ??????? ???  
????????????? ?????????? ??? ?????????? ?? ???, ?????????? ??? ?? ?????????? ??? ??????? ???  
????????? ??? ?????? ? ?????????? ?????? ?????????? ??????.

52      ????????, ? ?????? ?????? ?? ?????? ?? ?????????????? ?? ?????????????? ?? ?????????????? ??  
????????? ?????? ?????????????? ? ?????????????? ?????????? ?? ?????? ?? ?????????????? ?? ??????  
????????????? ?????? ?????????? ??????????, ???? ?????????? ?? ?????? ?????????? ?????? ?????? ????  
????????? ??? ?????????????? ?????, ???? ??? ?? ?? ?????????????? ?????? ???? ??? ?? ??  
????????? ?????????? ?????????? ?? ?????? ??? ?????? ?????????? ?? ?????? ?????? ??? ?? ??  
????????? ??????????.

54      ?? ?????? ??????? ???, ?????????? ??? ?? ?????????? ??? ?????????? ???' ???????  
?????????? ??? ???? ?????????? ?????????????? ?????????????? ?????????????? ??? ??????  
????????? ? ??????? ??? ??? ?????? ?????????? ? ??????? ??? 17?? ?????????? 2013, Welte  
(C?181/12, EU:C:2013:662), ? ?????????? ??? ?????????? ??????????, ??? ??? ??? ?????? ???  
?????? 63, ?????????? 1, ???, ? ?????? ??????? ??? ?????? ??????? ??????? ??? ? ?????? ???  
????? ???, ??? ?????? ??? ?????? ?? ?????????? ???, ?????????????? ??? ??? ??? ??????  
????????? ??? ??????? ??? ?????????? ??????????????.

55    ????????, ??? ????? ??????? ?????? ?? ??? ???? ? ?????????? ??? ?? ?????? 63 ??? 65  
????? ??? ?????? ??? ?????? ??? ?????????????? ?? ?????????? ?????????? ?????????? ?????????? ?? ???  
????????????? ??? ?????? ?????????????? ? ?????? ?????????? ???, ?? ?????????? ??????????  
????????? ?????????? ??? ???????, ????, ???? ??? ?????? ??? ???????, ???? ?  
????????????????? ??? ? ?????????? ?????? ??? ?????????? ??? ? ?? ?????? ?????????? ????  
??? ?????? ?????? ???, ?? ?????????? ?????? ??? ?????? ??????????, ?? ?????? ?? ?? ?????????? ????  
????? ??? ?? ?????? ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ?????????? ?????? ???  
????????? ??? ? ?? ?????? ??????? ?????? ??? ?? ??? ???? ?????? ??????, ???? ??? ??????????????  
????? ?? ?????? ??? ?????????????? ? ?????? ??? ?????????? ? ?????? ??? ?????????? ????  
????? ??? ?????? ??? ??????? ?????? ?? ?????? ??? ?????????? ??? ?????? ??? ??????????????  
??????????.

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56 ?? ?? ??????? ??????? ???, ?? ?????? ??????????? ??????, ???' ??????, ??  
?????????????? ?? ?? ????? 63 ??? 65 ??? ????? ?? ?? ?????? ??? ??????????? ?? ??????  
?????? ?? ?????? ??????? ?? ?? ??????????? ?? ?? ??????????? ?? ?? ?????? ??????????? ??,  
?? ??????????? ??????????? ??????????? ??????????? ?? ?? ???????, ????. ????. ????. ????

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

57 ??? ??? ?????????? ??? ?????????? ??? ?????? 27 ??? 30 ??? ?????????? ??????????  
????????? ??? ?????? ?? ?????????? ?? ??? ?????? ?????? ?????? ?????? ?????????? ??????????  
???? ?????????? ?????????? ??? ??? ?????? ??? ?????? 63, ?????????? 1, ??? ??? ??, ??  
????????? ?????????? ??? ??????????, ?? ? ?????????? ??? ?????? ?????? ??????????????.

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

58 ??? ?????????????? ??? ?????? 32 ??? ?????? ?????????, ?? ?????????? ?????????, ???  
????? ??? ?????????? ?????????????? ??? ?????? ?????????? ?????????? ?????????? ??????????  
?????, ??? ?????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ?????????? ??????????  
????????????? ??? ?? ?????? ??? ?????? ?????????? ?? ?????? ??? ?????????? ?????????? ??????.

59 ?? ??????????, ? ?????? ??? ?????? ??? ?????? ?????? ?????? ???, ?? ??????????  
??????, ??? ?????????????? ??? ???????, ??????? ?????? ?????? ??? ??????????, ??, ???  
??? ?????? ??? ???????, ??? ? ?????????????? ??? ? ?????????? ??? ?????? ??? ?????????? ???  
????????? ?????? ???, ? ?? ??? ?????? ?????????? ??? ?????? ?? ???????, ?? ?????????? ???  
????????????, ??? ?????????????? ??? ?? ?????? ???, ??? ? ?????????? ??? ?????? ??? ?????????? ???  
????????????? ??? ? ?????????????? ?? ?????????? ???, ??? ??? ?? ??? ??? ??????, ???  
????????? ??? ?????? ??? ?????? ??????????.

60 ??? ???????, ??? ?????? ??????, ? ?????? ?????? ??? ??? ?????? ?????? ??? ?????? ?????????? ???  
????????????? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????  
??? ?? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???  
????????? ?????????? ??? ???????, ??? ? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????  
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?? ?????? ?? ??????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?? ???????,  
???? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???, ???  
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?????? 63 ?????????? 1, ??? (??., ???' ???????, ?????? ??? 11??  
????????? 2008, Eckelkamp ??., C?11/07, EU:C:2008:489, ?????? 45 ??? 46).

??? ??? ?????????? ?????????????? ??? ?????? ??? ??? ?????????? ??? ?????? ???  
????????? ??? ?????????? ??? ?????? ??? ?????? 65 ????

61 ???????, ?????? ?? ?????????? ?? ? ?????????????? ?????????????? ??? ??????????  
????????? ??? ?????????? ?????? ?? ?????????????? ?????? ??? ?????? 65, ?????????? 1,  
????????? ??, ??? ??? ??, ??? ? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ???  
35 ??? 36 ??? ??????? ???????, ? ?????????? ?????????? ?????? ??? ?????????? ??? ?????? ???  
????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????????? ???, ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ????.

- ??? ??? ?????????? ??? ?????? ??? ?????? ??????????

62 ??? ?????????? ??? ??? ?????? 37 ??? 39 ??? ?????? ???????, ??? ?????? ??

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

63 ? ?????????? ??? ?????? ??? ?????????????? ??? ?? ?????????????? ??? ?????????????? ??? ?????????????? ???,  
?? ?????????? ??? ?? ?????????? ??? ??????????, ?????? ?????, ??? ??? ?????? ?????? ??? 11??  
????????????? 2008, Eckelkamp ??. (C?11/07, EU:C:2008:489), ??? ?????? ?? ??????????????  
????????? ??? ?????? ??? ?????????? ?????????? ?????????? ?? ??? ????? ??????????????, ?? ??????????????  
??? ?? ?????? ??? ?????? ??? ?????????????? ?????? ?? ?? ?????????? ??? ?????????????? ??? ??????????????  
????? ??? ?????? ?????????? ??? ?????? ??????????????.

64 ???????, ??????????? ??? ?????????????? ??? ?????? ?????? ?? ?????? ???????, ??  
????????????? ??? ?? ?????? ?????? ??????, ?????????????? ?? ??? ?????, ?? ?????????? ???  
????????????? ??? ?????????? ??? ??? ??? ?????? ? ?????????????? ?????????????? ??? ??????????????  
?????, ?? ?????? ??? ?????, ?? ?????????? ?????????????? ???.

65 ??? ?? ?????????? ?????????? ??? ? ?????????????? ?????????????? ??? ?????? ??? ??????????  
????????? ??? ?????????????? ??? ?? ?????? ??????, ??? ? ?????? ?????? ??? ?????? ??? ??????  
?????, ??? ????? ?????????????? ?????????????? ??????????????.

- ??? ?? ?????????????? ??? ?????????????? ??? ?????? ??? ?????????? ?????????????? ??? ??????  
????????? ??????????.

66 ? ?????????? ?????????? ?????????????? ??? ?????? ??? ? ?????????????? ?????????????? ??? ?????? ??  
?????????????, ????, ??? ?? ?????? ?????????????? ??? ?????? ??? ?????????? ??? ?????????????? ???  
?????????.

67 ??? ?????????????? ??? ?????? 46 ??? ?????????? ??????????, ? ?????? ?????????????? ???  
????????? ??? ?????????????? ?????????????? ?????? ?? ?????????????? ?????????????? ??? ?????? ???  
??? ?????????????? ?????????????? ??? ?????????????? ? ??????. ??????, ??? ?? ?????????? ?  
????????????????? ????, ?????? ?? ?????????????? ??? ?????????????? ??? ?????????????? ??????????????  
????? ??? ?????????? ?????????????? ?????????????? ??? ?????? ??? ?????????????? ??? ?????????????? ???  
????????????? ?????????????? ?????????????? ???, ?????? ?? ?????????????? ??? ?????????????? ??? ??????????.

68 ?? ??????????, ? ?????????? ?????????? ?????????? ?????????????? ??? ?? ?????????? ?????????? ?? ??  
????????? ?????????? ??? ?????????????? ??? ?? ?????? ?????? ??? ?????? ?? ?????? ??  
????????? ?????? ??? ?? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????????? ???  
?????????.

69 ???, ? ?????????????? ?????????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ???  
????????? ??? ?????? ?? ?????????????? ??? ?????? ?????? ?????????????? ??? ?????? ???  
????????????? ?????????????? ??????????????, ??? ?????? ???, ??? ?????????? ? ??????  
????????????? ??? ?????? 104 ??? ?????????? ???, ?? ?????? 10, ?????????? 6, ??? ErbStG  
????? ?? ?????????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???, ???,  
????? ??? ?????? ??? ??????, ??? ? ?????????????? ??? ?????? ??? ?????????? ??? ?????? ???  
????????? ?? ?? ?????? ?????? ??? ?????? ?????? ??????????????, ?????? ?? ?????? ??? ??,  
????? ?????????? ??? ?? ?????? 64 ??? ?????????? ??????????, ?? ?????????????? ???  
?????????????, ?????????????? ?? ????, ?????? ?????????? ?? ?? ?????????? ??? ??????????????  
????????????? ??? ?? ?????? ?????? ?????????????? ??? ?????? ??? ?????? ???

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

70 ? ?????????? ?????????? ??????????????, ?????????, ??? ?????????? ?????????????? ?????????????? ??? ?  
????????? ??? ????? ???? ?????? ?? ?????????????? ??? ??? ????? ???? ?????????? ?????????? ??? ????  
??? ?????? ?????????? ?????????? ?????????? ??? ?????????? ?????????? ?????????? ?????? ???  
????? ?????, ?????? ???? ?????? ??????, ??????, ?????? ?????? ?????? ?????????????? ??? ????  
????????? (?????? ???? 8?? ??????? 2016, Hünnebeck, C?479/14, EU:C:2016:412, ????? 65).

71 ??????????????, ??????????, ??? ? ?????????? ?????????????? ?????????? ?? ??  
????????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????? ?????????????? ??? ??  
?????? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????? ?????? ?????????? ??  
????????? ? ?????????? ?????????? ??? ?????????? ??? ?????????? ?????? ?????? ?????? ?????????? ?  
????????????? ??? ?????????? ??? ?????????? ??? ??????, ????? ?????? ?????????? ?? ?????????? ???  
??? ?????? ? ?????????? ?????????? ??? ?????????? ??? ?????????? ?????? ?? ?????????? ???  
????????????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???  
????????????? ??? ?????? ??? ?????? ?????? ?????? ?????? (????. ?????????? ??? 8?? ??????? 2016,  
Hünnebeck, C?479/14, EU:C:2016:412, ????? 66 ??? ?????? ?????????????? ??????????, ?????  
??? ??? 22?? ??????? 2017, Bechtel, C?20/16, EU:C:2017:488, ????? 70).

72 ??? ?????? ??? ?? ?? ?????? ?????? ?????? ?????? ?????????????? ??? ? ?????????????? ???  
????????????? ?????????????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ??????????  
??? ?????????? ?? ?? ?????? ?????, ??????????????, ?????????, ??? ??? ?????? ?????? ?????? ??????  
????????? ?????? ?? ?????????? ?? ?????????? ?????????? ?????????? ??? ?????????? ??? ?????? ???  
??? ??? ??? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????? ???  
????????? ??? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ?????????? ???  
??? 22?? ??????? 2010, Mattner, C?510/08, EU:C:2010:216, ????? 41 ??? ???  
????????????? ??????????).

73 ?? ????????, ??? ?????????? ? ?????????? ?????????? ?? ??? ?????? ?????????? ?????????? ???  
??? ??? ??? ??? ?????????? ??? ?????????? ??? ?????? ?????? ??????????, ??????? ???  
????????????? ?????????? ??? ?????????? ??? ?????? ?????? ?????????? ?????????? ??? ?????????? ???  
????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ?????????? ??? ??? ???  
????????? ??? ??????, ?? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ???  
????????? ??? ??????, ?????????? ?? ?????????? ??? ?????????? ??? ?????? ?????????? ???  
????????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ?????????? ???, ?? ?????????? ???  
??? –????????? ??? ?? ?????? ??? –????????? ??? ?????????? ??? ?????????? ??? ?????? ??????????  
????????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ?????????? ???, ??  
??? ? ?? ??????, ?? ?????? ??? ?????????? ? ?????????? ??? ?????? ??? ?? ?????????? ???, ??? ??  
????????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ???, ???  
??? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? (??., ?????? ???,  
????????? ??? 11?? ?????????? 2008, Eckelkamp ?.., C?11/07, EU:C:2008:489, ??????  
67 ??? 68? ??? 11?? ?????????? 2008, Arens-Sikken, C?43/07, EU:C:2008:490, ?????? 64  
??? 65, ????? ??? ??? 22?? ??????? 2010, Mattner, C?510/08, EU:C:2010:216, ????? 42).

74 ????????, ??? ?????? ?????? ??? ?????? ?? ??????????? ??????????? ???????????  
 ??????????? ??? ?????? ?????? ?????, ??????????? ?? ??? ??????????? ??? ??????????? ???  
 ?????? ??? ?? ??????? ???, ???????????, ??? ??? ?????????? ??? ??????????? ???????????  
 ??? ??????? (?).., ?????? ???, ?????? ?? 22?? ??????? 2010, Mattner, C?510/08,  
 EU:C:2010:216, ??? 43 ??? ??? ??????????? ???????).

75 ????????, ? ??????????? ??? ?????????? ???????????, ??? ??? ?????? ??? ?????? 63,  
 ??????????? 1, ????, ? ?????? ?????????? ??? ?????? ??????? ?????? ??? ?????? ??? ??????  
 ???, ??? ?????? ??? ?????? ??? ??????? ??????? ??? ?????????? ??? ??????? ??? ?????? ???,  
 ??? ?????? ?? ??????????? ??? ??? ??? ?????? ?????????? ??? ??????? ??? ?????? ???  
 ??????????? ??????????? ??? ??????? ??? ??? ??? ??? ??????????? ??? ??? ???  
 ?????? ??????????? ??? ??????? ??? ?????????? ??? ??????? ??? ?????? ??? ??????????? ??? ??? ???  
 ??????.

76 ?? ?? ??????, ??? ?????? ??????? ?? ??? ?? ?????? ?? ?? ??????? ?? ?? 63 ??  
 65 ??? ?????? ??? ?????? ??? ??????????? ?? ??????? ??????? ??????? ??????? ?? ???  
 ?????????? ??? ?????? ??????????? ???? ?????? ??????? ???, ?? ?????????? ??????????  
 ?????? ?????? ??? ???????, ???, ??? ??? ?????? ??? ??????? ??? ???????, ????  
 ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????? ??? ?? ??????? ??????? ????  
 ??? ?????? ???, ?? ?????????? ??? ?? ??????? ??? ?????? ??? ??????? ?? ???????, ??  
 ?????? ??? ???????, ??? ??? ??? ??? ???????????, ??? ?? ???????????, ??? ?? ??????????? ??????? ??  
 ?????????? ?? ??????? ?? ??????? ??, ??? ??? ??? ??? ?????, ??????????? ??? ?? ??????? ??  
 ??? ??? ??????? ??? ??????? ??? ??????? ??? ???????, ??? ??????? ??? ???????, ??????????? ??? ??.

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

77 ??????? ??? ?????? ?????????? ??? ?????? ?? ??? ?????? ?????? ??????? ??? ?????? ???  
 ??? ?????????? ??????????? ??? ?????? ?????? ?????? ??? ?????????? ???????????, ?' ????  
 ?????????? ?? ??????? ??? ?????? ?????? ??????. ?? ?????? ??? ?????? ??????????  
 ??? ?????? ?????? ??????????? ??? ???????, ??? ??? ??? ??? ???????, ??? ?????? ??? ???????, ???  
 ??? ?????? ???????, ?? ?????? ?? ?? ?????????? ??? ?????? ??? ??????? ??? ??????? ??  
 ??? ??? ?????? ??? ?????? ?? ?????? ??????? ??? ?????? ??? ??????? ??? ?????? ??? ??  
 ?????? ??? ??? ??? ??? ?????? ?????, ??? ??? ??? ??????? ??? ?????? ??? ??????? ??? ??  
 ?????????? ??? ?????? ??? ??????? ??? ??????? ??? ?????? ??? ??????? ??? ?????? ??? ??  
 ?????????? ??? ?????? ??? ??????? ??? ??????? ??? ?????? ??? ??????? ??? ?????? ??? ??  
 ?????????? ???, ??? ??? ??? ?????? ??? ???????, ??? ?????? ??? ??????? ??? ?????? ??? ??  
 ?????????? ???, ??? ??? ??? ???????, ??? ??????? ??? ??????? ??? ??????? ???, ?? ???????????.

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

1) ?? ??? 63 ??? 65 ??? ?????? ??? ?????? ??? ??????? ?? ?? ?????????? ?? ?? ???????  
 ?????? ?????? ???, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??????? ??? ?????? ???  
 ?????? ???, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???,  
 ??? ??? ?????? ??? ???????, ??? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ???, ???,  
 ?????? ??? ? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ??????????  
 ??? ?????? ???, ?? ?????? ?? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
 ??? ??? ?????? ??? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??  
 ?????? ??? ??? ??? ??? ?????? ?????, ??? ??? ??? ??????? ??? ?????? ??? ?????? ??? ??  
 ?????????? ??? ?????? ??? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??  
 ?????????? ??? ?????? ??? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??  
 ?????????? ???, ??? ??? ??? ?????? ??? ???????, ??? ?????? ??? ?????? ??? ?????? ??? ??  
 ?????????? ???, ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??.

2) ?? ??? 63 ??? 65 ??? ?????? ??? ?????? ??? ??????? ?? ?? ?????????? ?? ?? ???????  
 ?????? ?????? ???, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??????? ??? ?????? ???  
 ?????? ???, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???,  
 ?????? ??? ? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???,  
 ?????? ??? ? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ??????????  
 ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???  
 ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??  
 ?????? ???, ??? ??? ??? ?????? ??? ???????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??

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

(?????????)

\* ???? ???? ??????????: ? ??????????