

@import url(../../../../css/generic.css); EUR-Lex - 61995C0258 - EL  
????????? ?????????? ??????? ??????????????

1

**61995C0258**

?????????? ??? ??????? ??????????? Léger ??? 16?? ?????????? 1997. - Julius Fillibeck Söhne  
GmbH & Co. KG ??? Finanzamt Neustadt. - ??????? ??? ?? ?????? ??????????????  
?????????: Bundesfinanzhof - ????????. - ??? ??????? ?? - ??????? ?????????? ?? ???????  
?????? - ?????? - ??????? ?????????? ?????????????? ??? ??? ???????. - ???????  
C-258/95.

????????? ??? ??????????? ??? ??????????? 1997 ?????? I-05577

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

1 ?? Bundesfinanzhof ?????????? ??? ?????????? ??? ?????????? ????? ?????????? ??????? ?? ??? ??????????  
????????? ?????????? ??? ????? ??????? ??? (1) (??? ????: ??????). ??? ??????, ?? ??  
????????? ??? ?????????? ??? ?? ?????????? ?? ?????????? ??? ?????????????? ??? ??????  
?? ???, ??? ??????? ??? ????? ?????????????? ???, ? ?????? ?????? ??????? ???????, ???  
????????? ??? ?????????? ????? ?????????? ???, ??? ??? ?????????? ??? ????? ????  
????????? ???.

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

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

3 ? Julius Fillibeck S?hne GmbH & Co. KG (?????????????? ??? ??????????????, ???:  
?????????????) ???? ?????????????? ??????????. ??? ??? ?????? ?????? ??? ???  
1980 ??? 1985 ?????????? ?? ?????? ?????????? ?????????? ?????????? ??? ??? ???  
????? ??? ?????? ?????????? ??? ?????? ??????????????. ?? ?????????? ???  
????????????????? ??? ?????? ??? ?? ?????????? ??? ?????? ??? ??????, ??????????  
????? ??? ?????? ?????????? ??? ??? ?????????? ?' ??? ??? ??? ?????????? ???, ? ?????? ???  
????????????????? ?? ?? ?????????? ??? ??????????. ??? ??? ??? ?????????????? ?? ??????????  
?? ?????? ??? ?????? ??? ?????????????? ?????? ??? ?????????????? ?? ?????????????? ???  
?????????????? ?? ?????? ??? ??????????

4 ?????? ?? ?????????? ?????????? ??????????????, ??????? ?? ??? ?????????? ??  
Bundesrahmentarifvertrag f?r das Baugewerbe (????????? ??????-?????? ?? ??  
????????????? ??), ?????? ?????? ?? ?????????? ?????????? ??????? ?? ?? ?????????? ??  
?? ?????????? (?? ??????????).

5 ?? Finanzamt (?????? ??? ??????????????, ??? ????: ?????) ??????? ??????? ??? ??????  
?????????? ??? ??? ??? ?????? ??? ?????????? ?????????? ??? ??? ??? ???  
????????? (2).

6 ?? ??? ??????? ??? ? ?????????? ?????? ??? ?????? ??? ?????? ?? ??????  
????????? ??? ?????????? ?????????? ?? ??? . ?????????? ?????? ??? ? ?????????? ???  
????????? ?? ??? ?????? ??? Bundesfinanzhof ??? 11?? ?????? 1988 (3) ??? ???  
????????? ??? ?????? ?????? ??? ? ??? ?????? ?????????? ??? ?????? ?????? ???  
????????? ?? ?????????? ?? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??  
????????? ??? UStG 1980 (4).

???? ?? ?????? ??? ??? ?? Finanzgericht, ?? ?????? ??????? ??? ??????? ???  
??????????, ?????????? ??? ? ?????? ?????? ??? ?????????? ??? ?????????? ?????? ??????????  
????? ?????????? ??? ??? ?????????? ??? ???????, ??? ?????? ??? ?????????? ? ??????????  
????? ??? ?? ?????????? ??? ?????????? ???, ??? ??? ?????? ??? ?????????? ???, ??  
????????????? ??????????, ?? ?????????? ?????? ??? ?????????? ??????????-????????? ???  
?? ?????????????? ???.

7 ?? ?????? ?????????? ??? «(...) ??????? ??? ??? ?????? ?????????? ??? ??  
????????? ?????????? ??? ?????? ?????? ?????????? ?? ?? ?????????? ??? ?????? ?????? ???  
????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ? ?????????? ???  
????????? ??? ?????? ?????? ?????? ??? ?????????? ?? ?????????? ?????????? ??' ?????? ??? ??? ???  
?????» (5). ??? ?????????? ?????????? ??? ?????????? ?? ?????????? ?????????? ??????????  
?????????:

«1) ?????????????? ??? ?????? ??? ?????? ??? ?????????? ?????????? "?? ??????? ??????", ??? ??????  
2, ?????? 1, ??? ?????? 77/388/??? - ?? ?????????? ??? ?????? ?????????? ?????? ???  
????????????? ??? ??? ?????????? ?????????? - ? ?????????? ?????????? ??? ?????????? ???  
?????????, ??? ??? ??? ?????? ?????????? ??? ? ?????????? ???' ?????????? ??????????  
????????? ?????????? ?????????? ??? ?????????? (????? ?? ??? ?????? ?????????? ?????????? ???  
????????? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ???  
????? ??? ?????? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ?????????? - ???  
?? ?????????? ?????????? ??? ?????? ?? ?????????? ?????????? - ??? ??? ?????? ??????????  
?? ?????????? ?????????? ??? ?????? ??? ?????????? ??????;

2) ??????? ??? ??? 6, ?????????? 2, ??? ?????? 77/388/??? ? ?????????????? ?????? ??  
????? ?????? ? ?????????? ???/ ? ??? ?????????? ?????? ?????? ?????????? ?????? ???  
???? - ??? ??? ?????????? ??? ?????? ?????????? ?????????? ?????? ??? ?????? ?????? ???  
????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? - ? ??? ??????????  
?? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???, ?? ?????????? ???  
????????? ?????????? ?????? ??? ?????? ??? ?????????? (?? ???? ?????? ?????????? ???)  
?? ??? ?????? ??????;

3) ?? ??????? ?????????? ?????????? ??? ?????? ??? ?????? ??????, ??????? ?????? ???  
????? 6, ?????????? 2, ??? ?????? 77/388/??? ? ?????????? ??? ??? ?????? ??????????  
?? ?????????? ??? ?????????? ?? ??? ??? ???, ???' ?????????? ?? ?????? ???  
????? ?????? (??, ??? ?????? ?????????? ???, ?? ??? ??? ??? ?????? ?????????? ???  
?????????);»

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

8 ?? Bundesfinanzhof ?????????? ?????????? ?? ??? ??? ?????? ??? ?????? ?????????? ??????????  
?? ?????????? ??? ?????????? ?????? ?????????? ? ?????????? ?????? ?????????? ??? ??????  
????? ?????????? «?? ?????????? ???» (?? ?????????? ??? ?????? ?????????? ??? ???

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

9 ??????? ?? ?? ??????? ????:

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

1. (...) ?? ??????? ??????????, ?? ?????????????????? ?? ??????? ?????? ?? ??????????  
?? ?????? ?? ?????????? ????, ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??????» (6)

10 ??? ?????????????? ???? ??? ?????????? ?????????? ? ?????? ?????????? ??????????  
????????? ?????? ?????????? ?????????????????? ??? ?????????? ?????? ??? ?????? ???  
????? ??? ???????- ?????? ? ?????? ?????????? ??? ?????? ?????????? ?????????? ?????????? ???  
????????? ??? ?????????? ??????????.

11 ?? ?????? ?? ?????????? ??? ?????????? ?????????? ??? ?????? ?????????? ??????????  
????????? ??? ?????? ??? ?????? ?????? ??????????.

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

13 ? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? 5?? ?????????? 1981,  
Co?peratieve Aardappelenbewaarplaats (7), ??? ?????? ??? ?????? ??? ?????? ???  
«????????? ?????? ???» (8).

14 ?? ??? ?????? ??? 8?? ?????? 1988, *Apple and Pear Development Council* (9), ??  
????????? ?????????? ?? ?????????? ???, ??? ?? ???? ??? ?????? ??? ?????? ??? ?????? ??????  
???, ?????????? ?? ? ?? ?????? ??????????, ?? ?????? ??? ?????????? ??? ?????? ??? ??????  
????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ??????????  
????????? ?????? ?????????? ?? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??????????,,  
?? ?????? ?????????? ?? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???  
????????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???.

????????? ?? ?????????? ??? ?????? ?? ?? ?????????????? ?????????? ?????????? ???  
????????????? ??? ?????? ?? ?????????? ?????? ??? ?? ?????????????? ??? ??????????  
????? ?? ?????? ??? ?????? ??? ???, ??????, ?? ?????? ??? ?????? ?????? ??? ?????? ???  
?? ?????????????? ??? ??? ?????????????? ?????????? ?????????? ??? ??? ?????????? ???  
Apple and Pear Development Council ??? ?? ?????? ??? ?????????? ?????????? ??? ???  
????????? ??? ??????.

15 ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? 3?? ?????? 1994, *Tolsma* (10), ???  
????? ?? ?????????? ??? ?????? ??? ?????? ?????????? ?????????????? «?? ??????  
?????», ??? ?? ?????? ??? ?????? 2, ?????? 1, ??? ??????,

«(...) ?????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???  
????? ??? ?? ?????????? ??? ?????? ?????????????? ?????????? ???????, ?? ?????? ???  
????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ???  
????????? ??? ??????» (11).

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

«(...) ?? ?????????? ??? ?????? ??? ??????, ?? ???? ??? ?????? ??? ?????? ?????????? ???  
????????????? ?? ?????? ???, ? ?????? ?????????????? ??? ?????? 2, ??????  
??, ??? ?????? ???, ? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? 2,  
????????? 1, ??? ?????? ???, ??? ?? ?????????? ?????? ?????? ?????????? ??? ??????

???? ??????????? ???, ??? ?????? ??????????? ?????? ??? ?????, ??????????????? ??????????  
????? ? ????????????. ??? ????????, ?? ?????????? ??????? ???, ??? ?  
?????????????? ??? ?????????? ?????????? ?????????? ?????????????? ??? ????? ??? ?????  
?????????????? ?????? ???????, ??? ?????? ??? ??? ?????? ?????? ?????????? ???,  
???????, ? ?????? ??? ??????? ?????? ??? ?????? ??? (?)?. ??? ?????? ??? 1??  
?????? 1982, 89/81, Hong Kong Trade Development Council, ?????? 1982, ?. 1277, ??????  
9 ??? 10)» (12).

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

«???? ?????????? ??? 5?? ??????????? 1981, 154/80, Co?perative Aardappelenbewaarplats  
(?????? 1981, ?. 445, ???? 12), ??? ??? 23?? ?????????? 1988, 230/87, Naturally Yours  
Cosmetics (?????? 1988, ?. 3665, ???? 11), ?? ?????????? ?????????? ??????? ??? ???  
????????? ??? ????? ??? ?????? ?????????? ?????????? ?????? ?????????? ?????????? ?? ??????????  
?? ?? ?????????? ?????????? ??? ???, ???????, ?????? ?? ?????????? ????? ?????? ?????  
?? ?????????? ?????????? ??? ??? ?????????? ?????????? ?????????? ?? ?? ?????? ??  
????????? ? ?????? ?????????? (?. ?????? ??? ?????? ??? 8?? ?????? 1988, 102/86,  
Apple and Pear Development Council, ?????? 1988, ?. 1443, ?????? 11 ??? 12).» (13)

16 ??? ?? ?????????? ????. ????? ??????? ?? ?????????? ?? ????. ????? ??????? ????????, ???  
 ?????????? ???. ??? ?????? ???. ?????????? ???. ?????????? «?? ?????? ??????» (14):

- ??????? ?? ?????????? ?????? ?????? ?????? ?????????????? ?????????? ??? ?????????????? ?????????? (15).

- ? ??????????? ?? ???? ?????? ?? ??????????? ?? ???? ?????????????? ?? ???? ?? ???? ?? ???? ?????????????? ?? ???? (17).

17 ????? ?? ?????? ?????? ?????????????? ??? ??????? ? ?????????? ??? ?????????????? ??? ??  
????????????? ?? ??? ?????? ?????????? ?????? ??????????, ??? ?? ?????????? ??? ??????  
?????????? ?? ?? ?????????????? ?????? ?????????? ?? ??????????.

18 ??? ?? «????? ??????? ???? ?? ???? ?????????? ?? ???? ?? ???? ?????? ?? ???? ?? ???? »,  
?????? ?? ?? ?????????? ?? ???? ??????? ????????????, ??? ?????? ?? ??????? ?? ???? ??????? ??  
????????? ?????????? ?? ???? ?? ???? ?????? ?????????? ?? ???? ?? ???? ??????? ?? ????  
?????????.

19 ??? ?????????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ??????????

20 ? ????????, ??? ?? ?????????? ?????????? ??? ????????, ?????????? ????????  
?????????? ??? ?????? ?????????? ??????????. ? ??????? ??? ?????? ?????? ???  
????????? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??????????  
?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ??????????  
??? ?????????? ??? ?????????? ??????. ??? ?????? ?????? ?????? ??? ?????????? ? ??????  
????????? ??? ?????????? ?????: ? ?????? ?????????? ??? ?????????? ??? ????.  
????????????? ???????.

???? ??????? ??? ??? ?????????????????? ??????? Apple and Pear Development Council, ???  
????? ??? ?? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ?????????????? ??? ??  
???? ??????????, ?????? ?? ??????? ?????? ?????? ?????? ??? ?????????????? ?????????????? ???  
??? ?????????????? ??????????????, ??? ?????????? ?????? ?????? ?? ?????????? ??? ??????  
????????????? ?? ?????????? ??? ?????? ?????? ??? ?? ?????????? ?? ??? ??????

? ??????????? ?? ??????? ??????????? ?? ?? ?????? ????????: ??? ??????? ???????????  
????? ??????????? ?? ??? ??????? ??????????? ??? ?????????? ? ???????????.

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

21 ?????????? ?? ?????? ?????? ?? ?????????? ?? ??? ??? ??????????? ?????? ??? ??????  
????????? ??? ?????????? ?????????? ?? (?????????) ??????????? ??? ??? ?????? ??? ????????????  
????????? ??? ??????????.

22 ??????????? ?? ?????? ??????? ?? ?????????? ????? ??????????? ?????? ??? ??????? ??????????, ??  
?????????? ??? ??? ?????????? ?????????? ??????????, ??? ?????????? ??? ??????? ???  
???? ?????????? ??? ??? ?? ?????????? ??? ??????????.

23 ??? ???????, ??? ?????? ??? ??? ?????? ?? ?????????? ?????? ?????? ??????????? ??????????? ??  
????? ??? ?? ??? ?????????? ???????, ??? ?????? ??? ?????? ?????? ?????? ??????? ???  
????????? ?????????? ?? ?????????? ?????????? «?? ???», ??? ??????? ?  
?????????????? ???????, ??? ?? ??? ?????????? ?????? «?????????????» ??? ??? ?? ???  
????????? ?? ??????????.

24 ?????????? ?? ??? ?????? ?? ??????????? ?????? ?????? ??????? ?????????? ?????????? ???  
????????? ? ?????????? ?????? ?????? ??????? «????????» ???????????, ??? ??? ?????? ???  
????? 6, ?????????? 2, ??? ??????, ? ???????? ?????? ??? ?????? ?????? ??? ?????? ??????????  
??? ?????????? ??? ??? ?? ??????, ?????? ???, ?? ?????????? ?? ??? ?????? ?????????? ???  
?????.

25 ??? ??? ?????? ??????? ??????? ?? ??? ?????? ??????? ???????.

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

26 ?? ?????????? ?????????? ?????????? ?? ??? ?????? ???????, ?? ?????? ?????????? ??????? ??  
?? ??????? ?????? ?????????? ?????????? ?????????? ??? ?????? ?????????? ???  
????????????? ??????? ??? ??? ?????? ??? ?????? 6, ?????????? 2, ??? ???????.

27 ? ??????? ??? ?????? ?????? ??????????? ?? ???:

«2. ??????????? ??? ?????? ?????? ??????? ?? ??????? ???????:

) ? ??????????? ???, ?? ?????? ??????? ? ???????????, ??? ??? ?????? ??????? ???  
?????????? ??? ?????? ??? ?????? ??? ??????????? ??? ?, ???????????, ??? ??????? ?????? ???  
??????????, ?????? ?? ?????? ??? ?????????????? ?????????? ??? ?????? ??? ?????? ???????  
??? ?????? ??????????? ???.

) ? ??? ?????????????? ??? ?????? ?????????? ?? ??? ??? ?????????? ?? ??? ?????? ???  
?????? ?????? ??? ?????? ??? ??????????? ??? ?, ???????????, ??? ??????? ?????? ??? ???  
?????????? ???.

? ???? ??? ?????? ??? ?????? ?? ?????????? ?? ??????????? ??? ??? ?????????? ??? ??????????  
??????????, ??? ??? ??? ??? ? ?????????? ??? ??? ?????? ?????????? ??????????? ???  
???????????.»

28 ??????? ?? ?? ????? 11 A, ?????????? 1, ??????? ??, ??? ??????, ??? ??????? ???  
????? ??? ??? ?????? ??? ?????????? ??? ??????? 6, ?????????? 2, ????? «(...) ?? ??? ???  
????? ??? ?????????? ??? ??? ?????????? ??? ??? ??????? ???, ??? ??? ?????????? ??? ???????.

??? ??????????».

29 ?? ?????????????? ??????? ??? ?? ??????????????, ?????? ?????????? ??????? ???  
«????????????????? ??????, ?? ?????? ??????? ? ??????????» (????? 6, ?????????? 2,  
???????) ?, ??? ??? «????? ?????????????? ?????? ?????? ??????» (????? 6, ?????????? 2,  
???????) ?).

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

30 ????????, ??? ?? ?????????????? ?? ??????, ??? ?????? ?????? ??? ?? ????????  
????????? ?????????????? ??? ?????? ?????? ??? ?????? ??? ??????????, ??? ??????? ??????  
???? ?? ??????????, ??? ?????? ?????? ??? ?????? ??? ?? ?????????? ?????? ??????????  
??? ?????? ??? ??????????, ?????? ?????? ?????? ??? ?????? ?????? ?????? ??????????  
6, ?????????? 2, ??? ??????.

31 ??? ?? ??? ?????? ?????????????? ??? ?? ??????????.

32 ? ??????????, ???????, ?????????? ??? ? ??????? ??? ?????????? ?????? ??????????  
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ?????????? ?????? ???  
????? ??? ?????????????? ??? ?????? ??? ??? «?????» ?????? ??? ??????.  
????????? ?????? ???, ??????, ???????, ?? ?????? ?????? ?????????? ??? «?????» ?????? ???  
??? ??????????, ? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????????????? ??? ?????? ???  
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???  
??? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? 6, ?????????? 2.

33 ?? ?????? ??????? ??????? ??? ? ?????? ?????? ??? ?????? ?????? ??? ??????? ??????????  
????? ?????? ??? ??????? ??? ?????? ?????? ?????? ?????? ?????? ??? ???  
????????? ??? ?????? ?????? ?????? 6, ?????????? 2.

34 ? ?????????? ??? ??????? ?????????? ??? ? ?????? ?????? ???????, ??????????, ??? ??????? ??  
?????? ?????? ?? ?????? ?????????? ??? ?????? ?????? ???????, ??? ?????????? ???  
?? ?????? ??? ??? ?????? ??? ?????? 6, ?????????? 2.

35 ??????? ?? ??? ?????? ???.

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

37 ????????, ? ?????????? ?????? ??????? ????? ?????? ??? ?????? ??? ?????????? ???,  
????????? ?????????? ?????? ??? ?????? ?????? ???, ??? ?????????? ?? ?????? ???  
????????? ??? ??? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ?????????? ??? ??????  
????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ??????  
????? ??? ?????? ??????????, ?????? ? ?????????? ??? ?????? ?????? ?????? ??? ??????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ??????  
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???  
????????? ? ?????? ??? ?????? ??? ?????? ?????? ????. ??? ?????????, ??? ??????????  
??????, ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??????  
«????? ?????? ??? ??????», ??? ?????????????? ??? «????? ?????? ??? ?????? ???, ???  
?????????». ?? ?????????? ??? ?????? ??? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ? ?? ???  
????????? ?????? ?? ?????? ?????????? ??? ??? ?????? ???, ? ?????? ?????? ??? ?????? ???  
??? ??? ?????????? ??? ?? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ??????.

38 ? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???  
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????  
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???  
?? ??? ?????? ??? ?????? 6, ?????????? 2, ??? ??????.

39 ??? ? ?????? ??? ?????? ?? ??? ?????? ?????? ?????? ?? ??? ?????? ??? ?????? ??? ?????? ???  
????? «(...) ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ? ?????? ??? ?????? ???  
????????? ?? ??? ?????? ?????????????? ??? ?????? ??? ?????? (...)» (18).

40 ?????? ??? ?????? ??? ?????? ???' ??????, ?? ?????? ???, ??? ?????? ???  
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?? ??? ?????? ??? ?????? ?????? ???  
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

41 ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ?? ??? ?????? ???, ???, ?????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
??? ?? ??? ??? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??  
????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

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

44 ??? ??? ?????? ???, ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??? ???

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

45 ?????????? ? ?????????? ??? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????????

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

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

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46 ?? ???????, ???????, ??? ??? ?????????? ??????? ?????????? ??? ?????? ?????? ???????????, ??

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47 ??? ??????????, ?????????? ??? ??????? ?????????, ?????? ???, ?????????, ? ?????????? ???

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?? ??? ?????? ?????? ?????????? ?? ??? ?????? ?????? ??? ?????? 6, ?????????? 2, ??? ??????,

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

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????????? ??? ?????? ?????????? ??? ?????? 6, ?????????? 2, ??? ??? ?????????? ??? ???.

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48 ?? ?? ??????? ????? ?? *Bundesfinanzhof* ????, ??? ?????????? ??? ?????? ??????????

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

????????? ?????????? ?????? ?? ?????????? ?' ??? ?????????????? ??? ???????????, ? ??????

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

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

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

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

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

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

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51 ??? ??? ?????? ?????? ?????? ?????? ?? ?????? ? ?????? ?????????? ?????????? ??? ?????????? ???

????? ?? *Bundesfinanzhof*:

«1) ?? ?????? 2, ?????? 1, ??? ?????? ??????? 77/388/??? ??? ???????????, ??? 17?? ??? 1977,  
???? ??????????? ??? ?????????? ??? ??????? ?????, ??? ??????? ?? ??? ????? ?????? ??????  
????????? - ????? ??????? ????? ?????????????? ?????: ?????????? ?????????? ????, ???  
??? ?????? ??? ? ??????? ??? ?????????? ?? ??????? ??? ?????????? ????  
????????? ??? ?? ??? ??? ??????? ??? ????? ?????? ?????, ?????? ??? ?????? ??  
????????? ????? ?? ??? ?????? ??????? ??? ?????, ??? ?????????? ?????? ??????????  
"? ??????? ??????" ??? ?????? ??? ?????? ??? ?????????? ????.

2) ?? ?????? 6, ??????????? 2, ??? ?????????????????? ???????? ??? ???? ?????? ???  
????????????? ??? ?????????? ??? ? ?????????? ?????????????? ?? ?????? ?????????? ???  
????????????? ??? ??? ?????????? ??? ?????? ??? ?????? ?????????? ???, ?????? ? ?????????? ???  
????????????? ?????????? ??? ?????? ?????????? ??? ?????????????? ??? ?????????? ?????? ???  
??? ??????????. ? ??????? ??? ??? ??? ?????????????? ???, ??? ?? ??????????, ??? ???  
????????????? ??? ?????????????????? ??? ??????????????, ? ?????? ??? ?????????? ???  
????????? ??? ?????????????????? ??? ?????? ?????? ??? ??? ?????????? ???  
????????? ??? ?????????? ???.

3) ? ??????? ???. ?????? ??????? ??? 2, ????? ??????, ?????? ??? ??? ?????????? ???  
??? ?????? ? ?????????? ??? ?????????? ??? ?????????? ?? ??? ??? ??? ??????, ???'  
????????? ?? ??????? ??? ?????? (???, ??? ?????????? ???????, ?? ??? ??? ??? ???  
?????????????).»

(1) - ????? ?????? 77/388/??? ??? ???????????, ??? 17?? ??? 1977, ??? ?????????????? ??? ?????????? ??? ??????? ?? ???? ??????? ?????, ??? ??????? ?? ??? ????? ?????? ?????? ?????? - ??? ?????? ?????? ????? ?????????????? ????: ?????????? ?????????? ??? (?? ????. ??? 09/001, ?. 49).

(2) - ?????? 1, ?????????? 1, ??. 1, ?????? ??????, ??????? b, ??? Umsatzsteuergesetz  
 ??? 1980 (?? ?????? ?? ?????? ?????? ?????? ?????? ??? 1980 - ??? ????: UStG 1980).

(3) - VR 30/84 ??? VR 114/83 (BFHE 153, 155, 162, BStBl II 1988, 643, 651).

(4) - ?? ?????? ??????????? ??????????? (?????? II.1 ??? ??????????? ??? ???????????) ???,  
?? ??? ??????????? ????, ?? Bundesfinanzhof ??????? ?? ??????????? ????. ?? ???????????  
?????????? ??? ??????? ??????? ??? ??????????? ??? ??????????? ??? ??????? ??????????? ?? ???????????  
??? ??? ??????? ??? ??????????? ??? ??????????? ?? ??????? ??? ???????, ?? ??????????? ???  
?????? ??? ??????? ??? ??????????? ??? ??????????? ?? ??????? ??? ??????????? ???, ???  
?????????? ?? ??????? ??????? ??????? ??? ??????????? ??.

(5) - ?. 9 ??? ??????? ?????????? ??? ?????????? ??? ?????????? ??? ??????????

(6) - ? ?????????????? ????.

(7) - ??????? 154/80, ??????? 1981, ?. 445 (?????? 12 ??? 13).

(8) - ??????? ?????? 67/228/E?? ??? ????????????, ??? 11?? ????????, 1967, ???  
????????????? ??? ????????????, ??? ?????? ??????, ??? ?????????? ?? ??? ????? ?????? ??????  
????????? - ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ?????????? ??????  
????????????? ??? (?? ???, ???, 08/001, ?, 5).

(9) - ??????? 102/86, ??????? 1988, ?. 1443.

(10) - ??????? C-16/93, ??????? 1994, ?. I-743.

(11) - ???? 14.

(12) - ???? 12.

(13) - ???? 13.

(14) - ?. ??????? ?? ??????? 14 ??? ?????????? ??? ??????? ?????????? Lenz ??? ??? ??????? Tolsma, ??? ??????????????.

(15) - ??????????????? ???????????, Co?peratieve Aardappelenbewaarplaats (????? 12), Apple and Pear Development Council (????? 11), ??? Naturally Yours Cosmetics (????? 11).

(16) - ??????????????? ???????????, Co?peratieve Aardappelenbewaarplaats (????? 13), ??? Naturally Yours Cosmetics (????? 16).

(17) - ??????????????? ??????????? Co?peratieve Aardappelenbewaarplaats (????? 13 ??? 14) ??? Naturally Yours Cosmetics (????? 16).

(18) - ??????? ??? 25?? ??? 1993, C-193/91, Mohsche (?????? 1993, ?. I-2615, ??? 8). ?? ??????? ??? ??????? ??? 27?? ??????? 1989, 50/88, K?hne (?????? 1989, ?. 1925, ??? 8).