

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

DÁMASO RUIZ-JARABO COLOMER

??? 22?? ?????????? 2005 (1)

?????? C-498/03

Kingscrest Associates Ltd

Montecello Ltd

???

Commissioners of Customs & Excise

(?????? ?? VAT & Duties Tribunal ??? ?? ?????? ?????????????? ??????????)

«???? ??????? ??? – ?????????? – ??????? ?????????? ??? ?????????? ?????? ?????????? ?????? ?????????? ?????? ?? ???? ?????? ?????????? ?????? ??? ?????? ?????????? ?????? ??? ?????? ?????? – ?????????? ?????? ??? ?????? ?????? „????????? ?????? ??????????“ – ?????????? ?????????? ?????? ?????? ?????? – ?????????? ??? ?????? ?????? 13, ?, ?????????? 1, ?????????? ?? ??? ???»

1. ??? ?????????????? ?????????????? ????????, ?? ?????????? ?????????? ?? ?????????? ???
?????? ??? «????????? ?????????? ??????????», ??? ?????????? ?? ?????? 13, A,
????????? 1, ??????? ?? ??? ?, ??? ????? ?????? ?????? ??? ?????? ?????? ?????????????? ???
(??? ????: ???) (2), ?????????? ?? ?????????? ?? ?????? ?????????? ??? ??????????, ??
????? ?????????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ???
????????? ??? ?? ??? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????????
??? ?????? ??? (3).

| - ?? ?????????? ?? ?????? ?? ?????? ?? ??????? ? ?? ??????

3. ?? ?????????? ??????????? ??? ?????? ???? ?????? ?????? ?????? . ??? ?????? 13, ??? ?????

? ?????? ??????????, ?????? ??? ?????????? ??? ?????? ??? ?????????????????????? ???
????????? ??? ????? ??????????????????, ?????? ??? ?????????????? ?? ??????????
????????????????? ?????? ?????????? (????? A, ?????????? 1), ?????????????? ?? ????:

«[...]

) ??? ?????? ?????????? ??? ??? ?????????? ??????, ?? ?????? ?????????????? ?????? ?? ???
????????? ??? ?????? ??? ??????, ?????????????? ??? ??? ?????????? ??? ??????
????????? (4), ??? ? ? ?????? ?????????????? ??? ?????????? ?????? ?????? ?
????? ?????????? ??? ? ?????????? ?????? ?????? ?????? ?????????? ?? ??????????
?????????.

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

[...]»

4. ? ?????????? 2, ??????? ?, ??? ?????? ?????? ? ??? ?????????????? ??????????
????? ???, ??? ?????????? ??? ?????????? ?????????? ??????, ? ?????????? ??? ??????????
????????? ??? ??? ? ?????????? ??? ??? ?????????? ??????????:

– «?? ?? ??? ?????????? ??? ?????? ?? ?????? ?? ?????? ??? ?????????? ?????????? ???
????????, ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ?? ?????? ?????????? ?? ??????????,,
????? ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ?? ?????? ?????????? ?? ??????????,,

– ? ???????? ??? ?????????? ?????? ?????? ?? ?????? ?????????? ?????????? ?????? ???,
????? ??? ??? ???, ??? ??? ?? ???, ??? ??? ?????? ?????? ??????, ??? ? ??? ??
????????? ??? ?? ?????????? ??? ?????????? ?????? ?????????? ?????? ?????????? ??,

– ?? ???? ??? ?????? ?????????? ?????? ?? ?????? ?????????? ??? ??? ?????????? ??????
?? ??? ?????????? ?????????? ?????????? ?????? ?, ?????????? ?????? ??? ?????? ?????????? ???
????? ??? ?????????? ?????? ???, ?? ?????? ?????? ?? ?????? ?????????? ???
????????????? ??? ?????? ?????? ??? ?????????? ?????? ?????????? ???, ?? ?????? ??????????
????? ??? ?????? ?????????? ???, ???,

– ???????? ??? ?????? ?? ?????????? ?????? ?????????? ?????????? ??? ?????????????? ??
????? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????????????? ????.

|| – ?? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?? ??????
?????

5. ???? 22 ?????????? 1997 ?? ???????? Kingscrest Associates Limited ??? Montecello Limited
?????????? ??? «partnership» [?????????????] ?????????????? ?????????? ?? ??? ?????
«Kingscrest Residential Care Homes» (??? ????: Kingscrest), ??? ??? ?????????????? ??????
????? ??????? ??? ??? ?????? ??? ??????, ?? ?????? ?????????????? ??? ??????
????? ??????? ?? ??? Registered Homes Act 1984 (????? ???? ?????????????? ????)
?????????) ??? ??? Children Act 1989 (????? ???? ?????????? ??? ??????). ??? ??? 1?
????????? 2002, ?????????? ??????? ??? ?????? ??? Care Standards Act 2000 (????? ????
????????? ??????? ?????????? ???????????, ? ?????? ?????????? ??? ??????????????), ?? ???
????? ?????? ?????????????? ??? ?????? ?????? ??? ???, ?????? ??????, National Care
Standards Commision.

6. ? Charities Act 1993 ?????? ??? ?????????????? ??????????????, ??? ?????? ?????? ?????? ???
????? 96 ?? ????????, ?? ? ?????? ?????? ??????????????, ??? ?????? ?????????????? ??
????????? ?????? («charitable purposes») ??? ?? ?????????? ??? ?????? ??? High Court.
?????? ?? ?? ????? 97, ?? ?????? ??? ?????????????? ??????? ?? ?? ?????? ??? ??????
?? ?? ?????? (5).

7. ????? ?? 21? ??????? 2002, ?? ?????????? 9, ????? 7, ?????? 9, ??? Value Added Tax Act 1994 (????? ???) ?????? ?? ?????????????? ?? ???? ?? ???? ?? ???? ?????????????? ?????? ?? ???? ?????????? ?? ???? ?????????? ?? ???? ?????????? ?? ???? ?????????? ?? ???? ?????????? ?? ???? ?????????? ?? ???? ?????????? ?? ???? ?????????? ?? ???? Kingscrest ??????? ?? ???, ?????? ?????? ?????? ?????? ?? ????.

9. ???? ? ? ?????? ??? ?????? ??? ???????, ????, ?????????????? 6 ??? ?????? 7 ?? «????????? ??????» ?????????? ?? ? ?????????? ??? ?????????? ?????? ?? «??? ?????? ??????????????, ?????????? ? ?????????????? ??? ?????????? ??? ?????????? ??? ?????????? ? ?????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????», ?????? ??? ? «??? ?????????? ? ??? ?????????? ?????? ? ?????? ? ?????? ??????». ????, ??, ?? ?????????? ????. ?????? ?????????? ??? ?????? «????????????? ??? ? ?????? ?????? ?????? ??????», ?????????? ????. ?????? ?????? ? ?????????????? ??? ?????? ??? ?????? ?????? ??????????????.

10. ???????, ??? ?????????? 8, ? «????????????? ??? ?? ?????? ?????????» ???????
?? ??? ?????????? ??????????????, ??????????????, ?????????????? ? ?????????????? ???
?????????????, ??? ?????????? ?????? ? ??? ???, ??? ????? ?????? ?????? ??????
??? ?????????? (6).

11. ??? ?????????????? ??? ? Kingscrest ?????? ??? ?? ??? ??????????????, ??????? ??????
????????? ?????????? ???, ??? ??? 21 ?????? 2002, ?????????????? ??? ??? ???- ??? ???
???? ????, ?? Commissioners of Customs and Excises (????????? ?????? ????) ??
????????? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ??????, ?? ?????????????? ??? ??? ??
??? ??????????

||| - ?? ?????????????? ??????????

12. ? Kingscrest ?????????? ??? ??????? ??? ?????????? ?????? ??? VAT & Duties Tribunal.

????????????????? ??? ? ???????? ??? ??? ??? ?????????????????? ??? ? ???????? ??? ??????
?? ???? 13, A, ?????????? 1, ???????? ?? ?, ??? ??? ????? ??????. ?????? ??????????,
?? ? ? ? ? ?????????? ?????? ??? ?????????? ?? ?????? ?????? ?????????? ?????????? ??????????:

«1) ? ?????????? ? ???????? ?? ?????? ?????????? ?????????? ??? ??? ???? ??????
77/388/??? ??? ?????????? ?????????? ?? ?????????? ??? ?????? ??? ??? “??????????"
????????? ??????????" ??? ?????????? ??? ??? 13, ?, ?????????? 1, ?????????? ?? ??? ??,
? ?????? ? ? ?????????? ??? ??? ??? ? ??? ?????? ??? ??? ???? ?????? ??? ?????? ??? ??????
????????;»

2) ?? ??? ??? ??? ?????? ??? ?????? 13, ?, ?????????? 1, ?????????? ?? ??? ??, ??
????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ??
????????? ?????? ??? ?????? ?????? ??? ??? ?????? ??? ?????? ?????? ?????? ?????? Kingscrest Residential
Care Homes;

3) ???? ?? ?????????? ??? ?????? 13, ?, ?????????? 1, ?????????? ?? ??? ??, ??
????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ??
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????????
????? ??? Care Standards Act 2000 (? ??? Registered Homes Act 1984 ? ??? Children Act
1989), ??? ? ?????? ??? ?????? ?????? ?????? ?????? ??? ??? ???? ??? ?????? ??? ?????? ?????? ??????
??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??????
??? ?????????? ??? ?????? ??????;»

IV – ? ?????????? ?????? ??? ??????????

13. ? ?????????? ??? ???????? ??????????, ? Kingscrest ??? ? ???????? ?????????? ??????????
????????????? ??? ?????? ??? ?????????? ??? ?????? 20 ??? ?????????? ?? ??? ??????????????,
??? ?? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ?????????? ??? 27? ??????????
2005, ?????????? ?? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???.

V – ?????? ??? ?????????????? ??????????

A – ?????????????? ??????????????: ?? ?????????? ?????? ??? ?????????? ??? (7)

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

15. ? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ???, ??????
????????? ??? ?????? ??? ?????? ?????? ?? ?????? ??? ?????? ?? ?????? ??? ?????????? ??
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ???, ??? ??????
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ????
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ????
????????? ??? ?????? ??? ?????? ?????? ?????? ??? «????????? ?????? ??????» ??????
????????? ??? ?????? ?????? ?????? ??? ??????.

16. ?????????????? ?????? ?????? ?????? ?????? ??? ? ?????? ??? ?????? ??? ??????
?? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? (8) ??? ???
?? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

?????????? ?????? ?????, ?? ?????? ?? ????? ?????????? ?????????? ??? ?????? ?????? ????????,
????? ??? ???? ?????????? ?????????? ??? ?????????? (9).

? – ?? ??????? ??????????. ??????????, ?? «????????? ?????????» (????? ????????)

17. ?? ??????? ?????????? ?????????? ???' ?????? ??? ?????????? ??? ?????? ?????? ??
??? ??????? ??? ?????? ??? ?????????????? ??? ?? ??????????. ?? ?????? ?????? ?????? ??
?? ? ?????? «????????? ?????? ?????????? ??????», ?? ?????????? ?? ?????? 13, ?,
????????? 1, ?????????? ?? ??? ?, ??? ?????? ??????, ?????? ?? ?????????? ??? ?? ??????
?? ?????? ?????? ?????? ?? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? - ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??????
?? ?????? ?????? ?? ?????????? ??????????, ???? ??? ?????????? ??????????, ?? ??????
????????? ?????? ??? ??????.

18. ??? ?? ?????? ??? ?????????? ??? ???????, ?? ??? ?????? ??????, ??? ?????????? ???
????????? ??? ?? 12?? ?????? 2001 ?? ?? 25?? ?????? 2004 ?? ?? ?????? CSC
Financial Services ?? Cimber Air (10), ?? ?????????? ??? ?????? ?????? ?? ??????
????????? ??? ?? ?????????? ??? ?????? ?????? ?????? ?????????? ?????????? ??????
????????? ??? ?? ?????? ???.

19. ?????????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????????? ???
????? 2, ?????????? 1, ??? ?????? ??????, ??? ?? ?????????? ?????????? ??? ?????? ???
??????, ??? ?????? ???????????, ?? ?????????? ?????? ???????, ??? ?????? ?????? ? ??????????
(11), ?? ??? ? ?????????? ??? ?????? ??? ?????? ?? ??? ?????? ?????? ?????? ??????????
?? ?? ?????????? ??? ?????? ??? ?????????? ?????? ?????????? ?????? (12).

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

21. ??? ?? ?????? ??? ?????????? ??? ?????? ?????????? ??????????, ?? ?????? 13 ?? ??
????????? ??????????, ??? ?????????? ??? ?????? ?????? ?????????? ??? ??????, ???
????? ??????????, ?? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ?? ??
????, ?????? ??? ?? ?????? ?????????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? Temco Europe (????? 16) (13).

22. ??? ???????, ?? ??? ?????? 13 ?????? ?? ?????????? ??? ?????? ??? ??????
????????? ??? ?????? ?????? ???, ??' ?????? ??? ??, ?????????? ?????? ??? ?????? ???
?? ?????????? ?? ??? ?????? ?????? ?? ??? ?????? ??? ?????? ??? ?????????? - ?? ??? ??????
?????????, ?????? ?????? ? ?????? ??? ?????? ???, ?????????? ??? ?? ?????? ??? ??????????
?????????, ?????????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ?????? ???, ?? ?????? «????????? ??????» ?????? ??? ??????????
????????, ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ???, ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????????? ???, ?????? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? (14), ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

23. ????????, ????????, ??? ??????????? ?? ???? ??? ????? ?????????????? ??????? ???
???????, ???, ??????????? ?? ?????????????? ? ?????? ??? ?????? «?????????
?????????? ?????????» («charitable» ??? ??????), ??? ?????????? ??? ????? 13, ?,
????????? 1, ??????? ?? ??? ?, ??? ????? ??????, ??????? ?? ????? ???
????????? ??? ??????? ?? ????? ?????? ??? ???????????, ?? ??? ?? ???? ?????????? ???
????????????? ???????, ??? ??? ??? ?????? ?? ??? ?????????? ? ?????? ??? ?????????? ???
?? ?????? ??????, ???, ?? ??? ????? ???, ?????????????? ?????????????? ??????????.

24. ? ?????????? ??? ?????????????? ?????????? ?????????? ??? ?????????? ?????? ??? ?????? ???
????????????? ??? ?????????????? ??????????, ?????????? ??? ?? ?????? ??? ?????????????? ???
????????????? ??? ?????????????? ??? ?????????? ?????????? ?????????? ??? ??????????, ??
?????, ??? ?? ?????????? ?????????? ??? ?????????? ??????????????, ?? ?????? ?? ??????????
???? ?????? ??????? ??? ? ?????????????? ???????, ??? ?????????? ?? ??????????
«????????? ??????????» («organizations recognized as charitable» ??? ??????) ??????, ???
????????? ? ??????? ??? ?????? ?????????? ?????????? ???, ??? ?????? ??? ??????
????????? ??????????.

25. ?????? ?????? ?????????????? ??? ?????? ?????? ?????? ?????? ?????????????? ??? ???????????
????????? ??? ?????? (15) ?????????????????? ?????????? ?????????? ?? ??? ??????
«carácter social» (????? ?????? «social nature») (16), ???? ??? ?????? ?????????? ??????????????
?? ??? ????. ??? ?????? ??? ?????? 13, ?, ?????????? 1, ?????????? ?
????????? ?????????? ??? ?????? ??? ?????? ?????????????? ???, ?????? ??? ?????? ?????? ???
?? ?????? ?????? ??? ?????? ?????????? ??? ?????????????? ?????? ?????? (17),
????????????? ?? ?????? ?????????????? ??? ?????????????? ??? ?????????????? ???
????????? ??? ?????????????? ??? ?????????? ???, ?????? ??? ?????? ?????? ?
????????? ?????? (????????? ?????????? ??? ?????????? ??? ??????????????, ??????????)
?????????, ??????????, ?????????? ?????????, ?????????? ?????????? ??? ???, ?????? ???
????????????? ??????????, ?????? ??? ?????? ?????? ??????????, ?????????? ??? ??????????). ??'
????? ??? ??????, ?????? ?????????????? ??? ? ?????? ?????? «charitable» ??? ??????????
????? ??? ??? ?????????????? ? ??? ??????????, ??? ?????????????? ?? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? (18), ???? ?? ??? ?????? ?????? ???
????????? ??????????, ? ??? ?????? ???, ??????, ?? ?????????????? ??? ?????????????? ???
??????, ??? ?????????????? ??? ?????? ??? ?????? ?????? ?????????????? ??? ??????????????
??????.

26. ?? ??????? ??????? ?????????? ?? ?????? ?? ?????? ?? ?????????????? ?? ?? ?? ?????
?????????? ?? ??????????? ?? ???????????.

? – «????????????? ???????????» ??? ?????????????? ??????????; (????????? ????????)

28. ????? ?? ?????????? ?????????????? ??? ?? ??? ????? ?????? ?????????????? ??? ??????????????: ??
????? ?????? ?????????????? ?????? ??? ?? ?????? ?????? ?? ?????????? ??? ?????????? ??? ??????
????????? ?????? ??? ?????????? ??? ??????.

29. ?????????? ?? ??????????? ???, ??? ?????? ??? ?????????????????? ?????????? ??
??? ??? ?????????? CSC Financial Services (?????? 18), ?? ?????????? ?????????? ??????????
????????????? ??? ?????????? ?? ????? ?????????? ?????????? ?????????? ??????????
?????????. ?? ????? 13, A, ?????????? 1, ??? ????? ?????? ?????????? ?????????? ??????????

????????? ?????? ??? ??????? ?????????????????? ??? ?????? ?????????? ?????????? ???, ??????, ??
????????? ?? ?????, ?? ?????? ??? ??????? ??? ?????????? ??? ?????????? ??????. ????????, ? ????????
????? ??? ??????? ??????? ??? ??? ?????? ??? ??? ???????????????, ?????? ??? ??
????????????? ??? ?????? ??? ?????? (19). ?? ?? ??????, ??? ?????????????? ? ?????????? ???
????????? ??? ??????? ?????????? ?????????? ??? ?????? ??? ?????????? ?????? ??? ???
????????? «????????? ??????????», ??? ??? ?????? ??? ?????? ?????????? ??? ? ?????? ?????? ???
?? ??????. ??????? ??? ?? ??????? ??? ?????????? ?? ?????????? ?? ?????? ?????? ??? ???
?? ?????????? ?????????? ??? ?????? ??? ???????????????, ???????? ?? ?????????? ??
????????? ?????????? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ?????????? ???
?????? ??????.

30. H ?????????? ??? ?????????? ? ?????????? ?????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????????? ??????????????, ?????????????? ?? ??? ??????????????. ??????? ?? ??
????? ????????????, ??? ?????????????? ??? ?? ?????? 13, ?, ?????????? 1, ??? ?????? ??????
????????? ??? ??? ?????????? ??? ?????????????? ??? ?????????????? ??? ?????????? ??????????????
?????????, ?? ?????????? ????, ??? ??? ?????????? ??? ?? ?????? (20). ??????? ?? ??
????????? ????????????, ??? ?? ?????????? ??? ?? ?????? 13, ?, ?????????? 2, ?????????? ??,
????????? ??? ?????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????????? ???
????????? ?? ??? ?? ??? ?????????? 1 ?? ?????????? ?????????? ??? ??? ?????????? ??? ??
????????????? ?????????? ??????????, ?????????? ??? ?? ?????????????? ??? ?????? ??????
????????????? ?????? ?????????? ??? ?????? ??? ?????? 13, ?, ?????????? 1, ??????, ?
????????? 2 ??? ?? ??? ?????.

31. ?????? ?????? ?????????????? ?????? ?????????????? ?????????? ? ??????????. ????????????, ???
??? ??????? Bulthuis-Griffioen (21), ? ?????? ??? ??????????? ??? ??? ?????????? ?????? ???
????????? ??? ?? ?????????? ??? ?????????????? ?????? ??? ?????????????? ??? ?????? ???
????????, ?????????? ???, ??' ?????? ??? ????????, ??? ?????????? ?? ?????????? ??? ???
????????? ?????????????? ??????????, ? ??????? Gregg (22) ??????? ??? ??? ?????? ???
??? ??????????, ?????????? ??? ?? ?????????? ?? ?????????????? ?? ?????? ??? ?????? ???
????? ??? ?????????????? ??? ?????????????? - ?? ?? ??????, ? ?????????? ?????????? ???
???? ?????????????? ??? ?????????????? ??? ?????????? ?????????????? ??????????, ??? ?
«????????? ??? ??????????????» ?????????? ??? ??? ?????????? ??? ?????????? ??? ??????????
??? ?????????????? ??? (23). ???????, ? ??????? Hoffmann (24) ?????? ???, ??? ??????
??? ?????? 13, ?, ??? ?????? ???????, ? ?????????? ?????????? ??? ?????????????? ???
?????????, ??? ??????? ??? ?????? 13, ?, ??? ?????? ???????, ??? ?? ?????????????? ???
??? ?????????? ?????????????? ?????? ?????????? (????? 38 in fine), ?????? ? ??????
????????? ??? ??????? ??? ?????????????? ??? ?????????? ?????? ?????? ??? ??????????
??????, ?????????????? ??? ?????????????? ??? ?????????? ?????? ??? ?????????.

32. ?? ??????????, ?? ??????? ??? ??? ????? ?????????????????? ?????? ?????? ???
????????????????? ??? ???????? ?? ??? ?? ??? ?????? 13, ?, ?????????? 1, ??? ????
???????, ?????????? ?????????? ?????? ??? ?????????? ?????? ??? ?? ?????????????? ??
«????????? ?????????? ??????», ??? ???????, ???' ?????, ?????? ??? ?????????? ???
?????? ??? ?????????? ?????? ??? ??? ?????? ??? ? Kingscrest.

? – ? ??????????? ???????? ?? ?????? ?????? ?? ?????????????????? ?? ?????????? ???????
?? «?????????? ??????????? ??????????» (????? ???????)

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

??? ?????????? Kügler (25) ??? ? ??????? ??? ?? ?????????? Dornier (26). ??? ??????????
????? ?????????? ??? ?? ??????? ??? ?? ?????? ?????? ?? ??? ?? ??????????????
????????- ??????????, ? ?????????? ??? ?????????????? ?????? ?????????? ?? ??? ?? ?
????????? ??? ?????? ?????? ?? ??? Care Standards Act 2000 (??? ??? ?????? ?????? ???
?? ??? Registered Homes Act 1984 ??? ??? Children Act 1989) ?????????? ??? ?????????? ???
??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ?????? ??????????
?????????????.

34. ?? ?? ??? ?????????? ??? ??????? ??? ?????? ??? ?????? ?????? ?????? ??? ?? ??????
??? ?????????? ???, ??? ?? ?????? ?????????? ??? ?????? ?? ?????? ?? ?????????????? ??
????????? ???, ??? ?????????? ??? ?????? ??? ?????? ?????????? (????? 56 ???
????????? Kügler), ??? ?? ?????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ???,
???? ?? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
????, ?? ?????? ??? ? ?????????? ?????? ??? ?????? ?????? ?????? ??? ?? ??????
????????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?? ?????? ??? ?????? ???
??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ??? ?????? (????? 58 ??? ?????? Kügler ??? 72 ??? ?????? Dornier).

35. ???????, ??? ?????? ? ?????? ? ?????????? ??? ?????? ??? ? ??????????????
????????? ?????????? ?????????? ?? ?????????? ?? ?? ?????????? ?????? ?????? ?????? ??
????????? ??? ?? ?????????? ?????? ?????? ?????? ?? ?????? ?? ?????? ?????????? ?? ??????
?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?? ?????? ??? ?????? ???
?? ?????? ??? ?????? ?????? ?????? ??????.

36. ???' ????, ?????????? ? ??????? ???, ??? ?????? ??? ?? ??? ?????????? ???
????????? ???, ?? ?????????? ?????? ??? ?????? ?????? ?? ?????? ??? ?????? ??? ??????
???? ?? ??? ?? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?? ??? ?????? ??? ??????
?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ?????? ??? ??????????
????. ???????, ???????, ??? ??? «?????», ??? ??? ?????? ??? ?????? ??? ?????????? ?? ??????????:
?? ??? ?? ??? ?????? ??? ?????? ??? ??????????????, ? ?????? ?????? ?? ?????? ??????
?????????, ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????
??? ?????????? ??? ?????? ??? ?????? (27), ??? ?? ??? ?????? ??? ?????? ??? ?? ?????? ???
??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ???.

37. ?? ??? ?????????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ? ???
????????? ??? ?????? 13, ?, ??? ?????? ??????: ? ?????????? 1 ?????????? ?? ??? ??? ????
?? ?????????? ??? ?????????????? ??? ?????????? ??? ?????? ?? ??? ?????????? ?????? ???
????????, ?????? ??? ?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? «?????», ??? ??? ?????? ??? ?????? 2, ?????? ??,
????????????? ??? ?? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????.

38. ??? ?????? ??? ?????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? «?????», ??? ?????? ??? ?????? ?? ?????? ???, ??? ??????
????????? ? ??????, ??? ?????? ?????????? ? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ???, ???, ?? ?????????? ??? ??????, ??? ?????? ?? ?????? ??? ?????? ???
????????? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????

????????? ?? ?????? ??????. ??? ???????????, ?? ?????? ????? ??????????? ?? ?????????????? ??? ??
 ????? ?? ????????????????, ??? ??? ??? ??????????? ??? ?? ??? ??? ????? ?????????? ??? (28).

VI – ???????

40. ??????? ?? ??????? ???????, ??????? ?? ??????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? VAT & Duties Tribunal ?? ???:

«1) ??? ?? ??????????? ?? ?? ??????? ?? “?????????? ?? ?????????? ?? ??????????” (“charitable”
????? ???????), ? ?????? ??????????? ?? ?? ?????? 13, A, ??????????? 1, ?????????? ?? ??? ??, ???
????? ??????? 77/388/??? ??? ???????????, ??? 17?? ?????? 1977, ??? ??????????????? ???
?????????? ??? ?????? ??????, ??? ?????????? ?? ?????? ?????? ?????? ?????? – ???
????????? ??? ?????? ?????????????? ????: ?????????? ?????????? ???, ?????????????? ?
????????? ?? ?????? ?????????? ?????????? ??? ?? ??? ?????? ?????? ??? ??? ?????? ?? ??????????
???? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???????, ?? ?????? ??
????????????? ??????????.

2) ?? ??????? ?? ???? ?????????? ?? ???? ?????? ?? ???? ?????????????? ?? ???? ?????????? ??
?????? 13, ?, ?????????? 1, ??????? ?? ??? ??, ??? ????? ?????? ?????? ?????? ?????? ??
?????????, ???' ????, ?????? ??? ?? ?????????????? ?? «????????? ??????????
?????????».

3) ?? ?????? ??? ??????????? ??????????? ?????????? ??? ?????????? ?? ???? ?????????????? ??
???. ?????????? ??????????? ??? ?????????? ??? «?????????? ?????????? ??????????», ????. ???
?????? ??? ?? ??? ??????????, ????????, ????, ?? ??? ??????, ??????, ?????????? ??? ??????
??? ??????????? ??? ?? ??? ??? ??? ?????????????? ??? ?????????????? ??? ?????????????? ???,
?????????, ?????????? ?? ??????????? ??? ??????????? ??? ??? ?????? ??? ??????????????, ????. ????.
????? ??? ?? ??? ??? ??????????????, ?????????????? ??? ?????????? ??? ?????????? ?????? ??? ??
????????? ????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????????
?????????. ????. ?????? ?????? ?????? ?????????? ??? ?????? ?????????? ?????????? ??? ??????????
??? ?????? ?????..»

1 – ?????? ?? ????????????: ? ?????????.

2 – ??????? 77/388/??? ??? ????????????, ??? 17?? ????? 1977, ????? ?????????????? ???
?????????? ???. ???? ?????? ??????, ??? ?????????? ?? ????? ?????? ?????? ?????? – ??????
?????? ????? ?????????????? ?????: ?????????? ?????????? ??? (???. ????. 09/001, ?. 49).

3 – ????? ??? ??????? ?????????? ?????????? ?????????? «????????? ??????»,
«????????? ??????», «????????? ?????????? ??????» ??? ?????? ????????, ??????????????
???? ?????? ?????? ??? ?????????????? ?????? ?? ??? ??????.

5 – ?????????? ????. ??????????? (?????? 17) ?????????? ???, ?? ??????? ??? 1891
(Income Tax Commissioners ??? Pemsel [1891] AC 531), ?? House of Lords ?????? ??? ?
?????? ?????? ?????? ??? ?? «????????????» ??? ?????????? ?? ??? ?????? ??? ??????
???? ?????????? ?????? ??? ?? ?????????? ?????????????? ?????? ??? ?? ??? ??????
????? ? ?????????? ??? ?? ???????, ? ??????? ??? ???????, ? ??????? ??? ???????
??? ?????????? ??? ?????? ??????? ??? ?? ??????? ??????.

6 – ??????????? ?? ?????????? ??? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ??????? ??????? ???????
????? ?????? ?????????????? ?????????? ?????????????? ??? ??????? ??????? ???????.

7 – ?????????? ??? ??????? ????. Ibáñez García, «Las exenciones en el IVA. Pecado original del impuesto comunitario», ?????? ??? ???????????? ??? Noticias de la Unión Europea, 2003, nº 226, ???. 103 ???. 115.

8 – ?. L. M. Pérez Herrero, La Sexta Directiva Comunitaria del IVA, ??????? Cedecs, ??????? 1997, ?. 201. ? ?. Ibáñez García ?????? ?? ??? ?????????? ???. (?. 103 ?? 104) ??? ? ??? ?????? ?????????????? ??? ?????????? ?? ??? ?????? ??? ?????????? ??? ?????????? ?? ??? ?????? 17, ?????????? 5, ??? 19 ??? ????? ??????, ?????? ? ?????????? ?????????? ??? ?????????? ?? ?????????? ?? ??????: ? ?????? ??? 11?? ?????? 1996, C-306/94, Régie Dauphinoise (?????? 1996, ?. I-3695), ?????? ?? ?? ??? ?????????? ?????????? «??? ?????????? ??? ?????? ??? ?????? ?????????? ?????????? ??? ?????? ?????? ??? ???».

9 – ???? ?????????? ???. Ibáñez García, ??., ?. 105.

10 – ?????????? ??? 13?? ?????????? 2001, C-235/00, CSC Financial Services (?????? 2001, ?. I-10237), ??? ??? 16?? ?????????? 2004, C-382/02, Cimber Air (???. ??? ?????????????? ?????? ??? ??????).

11 – ?????????? ??? 26?? ??????? 1990, C-185/89, Velker International Oil Company (???????)
1990, ?. I?2561), ????? 19, ??? 5?? ??????? 1997, C-2/95, SDC (???????) 1997, ?. I-3017),
????? 20, ??? 12?? ??????????? 2000, C-359/97, ??????? ??? ?????????? ??????????
(???????) 2000, ?. I-6355), ????? 64, ??? 8?? ??????? 2001, C-240/99, Skandia (???????) 2001,
. I?1951), ????? 32. ??? ?????????????? ?????????? ??????? ?? ?????????? ?????? ??????????
??? 20?? ??????? 2003, C-8/01, Assunrandør-Societetet, C-212/01, Margarete Unterpertinger,
??? C-307/01, Peter d'Ambrumenil, ??????? 36, 34 ??? 52, ?????????? (????? ??? ??? ???
??? ??? ?????????? ??? ?????? ??? ??????). ??????????, ?? ?????????? ?????????? ??? ???
??? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? 18?? ?????????? 2004, C-284/03,
Temco Europe (???, ???, ?????????? ???, ???, ??????), ????? 17.

12 – ????? ?????????????? ??? ?????? 37 ??? ?????????????????? ?????????? ??? ??? ??? ???
????????? Temco Europe- ? ?????? ?????????? ?? ??? ????? ?????????? ??? ?????? 17.

13 – ????? ??????? ????? ?????????????? ?? ?????????? ??? 12?? ?????????? 2000, C-358/97, ?????????? ??? ?????????? (??????? 2000, ?. I-6301), ????? 51, ??? 16?? ?????????? 2003, C-315/00, Maierhofer (??????? 2003, ?. I-563), ????? 25, ??? ??? 12?? ?????? 2003, C-275/01, Sinclair Collis (??????? 2003, ?. I-5965), ????? 22. ??? ???? ??? ?????? ??????? ??????? ?? ?????????? ??? 12?? ?????????? 2000, C-359/97, ?????????? ??? ?????????? ?????????? (??????? 2000, ?. I-6355), ????? 63, ??? 4?? ?????????? 2001, C-326/99, «Goed Wonen» (??????? 2001, ?. I-6831), ????? 47, ??? ??? 8?? ????? 2003, C-269/00, Seeling (??????? 2003, ?. I-4101), ????? 46.

14 – ? ?????????? ?????????? ??? ?? ?????????? ??? ?????????????? ??? ?????? ??? ??????????.
??? ?? 1605 ? M. de Cervantes, ??? ??? ?? ?? ??????? [???. ??? ??????????, ??????????
???????, ??????, 1994, ?????? ??????, ?????????? 2, ?. 56], ??????: «?????? ??? ?????? ?????? ??
'??? ?????????? ??? ?? ?????????? ??? ??????? ??? ?????? ?????? ?????? ??? '?? ??? ??
???? ??????? ?? ??? ??????????, ??? ?????????? ?????????? ??? ?' ??? ??
????????? ? ??????????».

16 – ?? ??????? ??? ??????? («caractère social»), ??????????? («carácter social»), ??????? («carattere sociale»), ?????????? («sozialem Charakter»), ?????????? («sociale aard»), ?????????? («?????????? ???????????») ??? ?????????? ?????? («luonteeltaan yhteiskunnallisiksi») ??????? ?????????? ?????????? ?? ??? ??????? «carácter social». ??????, ? ??????? («välgörenhetsorganisationer») ??? ? ?????? («almennyttig karakter») ??????? ??? ??????? ?????????????? ??? ?????????????? ??? ??????????????.

17 – ? ?????? ?????? ??? ?? ??????? ?? «??????? ??????» (??, L. M. Pérez Herrero, ??., ?, 204).

18 – Ch. Dickens, *The Life and Adventures of Martin Chuzzlewit*, ???, Penguin Books, 1968, ?, 515, ???, ???? ? ????? Tigg, ??????? ??? ?????????? ?????????? ??? ??????????????, ????????: «charity begins at home, and justice begins next door».

19 – ? Kingscrest ??????? ?? ?????? ?????????? ??? ?????????????? ??? ?? ??????????? ??
????????????? ??? ?????????? ?????????????? ?? ??? ?????? ?????? ??? ?????? ??? ??????????,
????????? ??? ??? ?????????? ??? ?????????????? ?????????? . ? ?????????? ??? 21?? ??????
2002, C-174/00, Kennemer Golf (?????? 2002, ?. I-3293), ??? ?????????? ??????????????,
????? ??????? ??? ? ??????? ??? ?????????? ??? ?????????? ?? ??? ?? ??? ?????? 13, ?,
????????? 1, ??? ?????? ??????? ??????? ?????????? ?????????????? ?????????????? ??????????
????????? ??? ?????? ?? ?????????????? ?????????? ?? ?????????? ??? ??? ?????? ?????? ??????????
(????? 19)- ??? ?????????????? ??????, ????, ?????????? ??? ? ?????? ???, ? ??????
????????? ?????? *obiterdictum*, ?????????? ?? ??? ?????????? ???, ?????????? ? ??????????
????? ??? ?????????? ?????????? ??? ??? ??? ??? ?????????????????? ??????????????. ???
??? J. F. Pont Clemente, ??? La exención tributaria (análisis jurídico general con especial
aplicación al Impuesto sobre transmisiones patrimoniales y al IVA, ??????? EDERSA, 1986, ??.
26 ??? 27), ??? ? ?????? ?????????? ?????????? ??????? ??? –??? ?? ?????? ???
????????? ???' ??? ?????? ???, ??? ?????? ??? ?????? ? ?????? ? ?????? – ??? ?????????? ???
?? ?????????? ???????, ??? ?????? ?? ?????? ?????? ?????? ??? ?????? ??? ?????????????? ??????????.
?????????, ??? ? ?????????? ?????? ?????? ? ?????? ??????????, ?? ?????? ?? ?????????? ??
????????? ???????–, ?????????????? ?????? ?????? . ?? ?????????? ?? ??????????????
????????? ?????????? ?? ??????? ??? ?????? ?????? ?????? ??? ?????????????? ?? ??

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

20 – ?? ?????????? ??? ?????????? ??? «????????????? ?? ?????????????? ??????????????, ???
????????? ?????? ?????????? ?????, ?????????????????, ?????????????? ?????, ??????????????,
?????????????, ?????????????? ? ?????????? ??????», ??? ?? ?????????? ??? ?????????? ??
????? «????????????? ??? ?????????? ?? ?????????? ?????????????? ?????????? ?? ??????
????????? ?? ??? ?????????? ?? ??? ?????????? ??????».

21 – ??????? ??? 11?? ?????????? 1995, C-453/93, Bulthuis-Griffioen (??????? 1995, ?. I-2341).

22 – ??????? ??? 7?? ?????????? 1999, C-216/97, Gregg (??????? 1999, ?. I-4947).

23 – ????? ?????????????? ?? ??????? ??? ?????? ?????????? ?????? ??? ?????? 24 ??.
??? ?????????? ??? ??? ??? ?????????? Gregg.

24 – ??????? ??? 3?? ?????????? 2003, C-144/00, Hoffmann (??????? 2003, ?. I-2921).

25 – ??????? ??? 10?? ?????????? 2002, C-141/00, Kügler (??????? 2002, ?. I-6833), ???
54.

26 – ??????? ??? 6?? ?????????? 2002, C-45/01, Dornier (??? ??? ?????????????? ?????? ???
????????), ????? 69.

27 – ??? ?????????? ?? ??????? ??? ? ?????????? ?????????? ??? ?????? 13, ?, ?????????? ??,
??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?? ??????????, ??? ?? ?????? ???
????????? ??? ??????????, ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????????
????????? ??? ?????????? ??? ?????? ???.

28 – ?? ?????????????? ?????? ??? ?????????? ??? ?????? ?????????????? ?????????? ???
?????????, ? ?????? ?????????? ?? ?????????? ??? ?????????? ??? ?? ?????? ??? ??????????????, ???
????????? ?? ?????? ?? ?????? ?????????? ?????????????? ?????????, ??????????????
????????? ?????????????? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????????????? ??????????,
????????? ?? ?????? ?? ?????? ??????????.