

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

M. POIARES MADURO

?? 16?? ?????? 2005 1(1)

?????? C-200/04

Finanzamt Heidelberg

????

iSt internationale Sprach- und Studienreisen GmbH

[?????? ??? Bundesfinanzhof (???????) ??? ??? ?????? ?????????????? ??????????]

«??? – E????? ???????? ??? ??????????? ????? – ?????? ?????? ?????? ???
?????»

1. ?? ??? ?????? ??? ?????? ??? ??? ?????? ?????????????? ?????????? ?? Bundesfinanzhof
(???????) ?????? ??? ?????????? ?? ??????? ?? ?? ?????? ?????????? ??? ??????????
????????? ??? ?????? 26 ??? ?????? 77/388/E?? ??? ??????????, ??? 17?? ????? 1977,
???? ?????????? ??? ?????????? ??? ?????? ???, ??? ?????????? ?? ??? ?????? ?????? ??????
????????? – ??? ?????? ?????? ????? ?????????????? ?????: ?????????? ?????????? ??? (2)
(?? ?????: ??? ?????) ?????????? ??? ?????????????? ??? ?????????? ?????????? ??????
?????????????, ?????????? ?????? ?????? ?????? ?????? ??????.

| – ?? ?????????? ?????????? ??? ???????, ?? ?????????? ?????????? ???
????????? ??? ??? ?????? ?????? ??? ?? ?????? ??? ?????????? ??? ?????????? ???
?????????

2. ? ?????? iSt internationale Sprach- und Studienreisen GmbH (?? ?????: ?????????????? ?
iSt) ?????? ?????? ?????????????? ?????? ? ?????? ?????????? ?????? ??????????????
????????? ??? ?????? ?????????? ?????? ?????? ??? ??????????, ?????? ???, ??
????????????? ?????????? «High School» ??? «College».

3. ?? ?????????? «High School» ?????????? ?? ?????? ?????? ??? 15 ?? 18 ???, ??
????? ??? ?????, ?????? ? ??? ?????? ?????????? ?? ?????????? ?? High School ? ??
????????? ?????? ??? ?????? – ?????? ?? ?????????? ??????. ?? ?????????? ??? ??
????????? ??? ?????? ?????????? ?????? ?????? ??????????, ? ?????? ??????????, ??????
?????????????, ??? ??? ?????? ??? ??????.

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

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

5. «High School» ??? ???, ?. ., ??????????? ???.
????? ?? ??????? ???. ?? ??????????? ???. ??, ?? ?????? ??????????, ???.
????????????? ???. ???. ?? ??????????, ???. ?? ?????????????? ???. ???. ???. ???.
????????? ???. ?? ??????????, ???. ?? ?????????? ???. ???. ?? ?????????????? ???.
????????, ?? ?????????? ???. High School, ?? ?????????? ???. ???. ?? ?????????????? ???.
???? ?????????? ???. ?? ?????????? ???. ???. ?? ?????????? ???. ???. ?? ?????????? ???.
??????????, ?? ?????? ?????????????? ???. ???. ?? ?????????? ???. ???. ?? ?????????? ???.
?????????. ???. ???. ???. ???. ???. ???. ???. ???. ???. ???. ???. ???. ???. ???.
?????, ???. ???. ???. ???. ???. ???. ???. ???. ???. ???. ???. ???. ???. ???.
?????? ???. ???. ???. ???. ???. ???. ???. ???. ???. ???. ???. ???. ???. ???.

6. ?? ?????????? «College» ??????????? ?? ?????????? ??? ??????????????
?????????. ? ?????? ?????????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ???
????????? ??? ?????? ??? ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ??? ?????? ??? ?
????????? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?? ?????? ???
????????? ??? ?????? ?????????? ??? ?? ?????? ??? ?????? ??? ?. ?? ?????????? ??? ?????? ???
«College» ??? ?????? ?? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? . ???
? ?????????? ?????? ??? ?????????? ?????? ?????????? ??? ?????????? ???' ?,? ??? ?????? ??????????
??? ?????????? ??? High School. ? ?????? ??? ?????? ? ?????? ??? ?????? ??? ??????
????? ??? ?????? ???.

7. ?? Finanzamt Heidelberg (???: ????: Finanzamt) ???????, ???????, ??? ??????? ??
????????????? ?? ?????????? ?????????? ??? ?????????? ??? ?????? 25 ??
Umsatzsteuergesetz 1993 (????????? ??? ?????? ??? ?????? ?????? ?????? ??? 1993, ???
????: UStG) ??? ?????????? ?? ?????????? ?????????? ?? ?????? ?????? ??? ??????
????????????? ??????????. ????, ??? ???????, ??????? ??????????, ?? Finanzamt ?????? ???
??? ??????? ?? ??????????? ???????, ??? ?????? ??? ?????? ?????? ?????? ???????
????????????? ?? ?????? ??????? ??? ?????? 4, ?????? 23, ??? UStG.

8. ??????? ?? ?????????? ??????, ?????????????? ??? ??? ??? ??? «? ??????? ????????,
????????? ??? ?? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ????????, ???
????????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ??????, ?????????? ? ?????????????? ? ??
????????? ??????, ??? ?????? ??? ?? ?????????? ?????????? ?????? ?????? ??? ? ??? ?????? ???
????????????????? ??? ??? ?????????? ???, ??? ?????????? ???, ??? ?????????? ??? ? ??? ?????????? ???
????????? ??? [...]».

9. ?? ?????? 25 ??? UStG ??????, ??? ?????? ?? ??????????? ??? ?????????????? ??????????:
«1. ?? ?????????? ?????????? ?????????? ??? ?????? ?????? ?????????????? ?????????? ?? ??????
?????????????, ?? ?????? ??? ?????????????? ??? ??? ?????? ?????????????? ??? ?????????? ???
?????????, ?? ?????? ??? ? ?????????????? ?????? ??? ?????????????? ??? ?????????? ??? ?????? ??
????????? ?? ?????????? ??? ?????? ?????? ??? ?????????????? ??? ?????????? ??? ??????????
?????????. ? ?????? ??? ?????????????? ?????? ?? ?????????? ?? ??? ?????? ??????????. ??? ?
????????????? ??? ?????? ??? ?????? ??? ??????????, ??? ?????? ??? ?????? ??? ??????????,
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ??? ?????? ??? ?????????? ??? ?

?????? ???? ?????? ??????? ???? ?????? ???? ?? ?????? 3?, ??????????? 1. ?? ???????????
????????? ?????? ?????? ?????????? ?????? ??? ?????? ?????? ??????, ??? ?????? ????
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??????.

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

3. ? ????? ??????? ?????????????? ?????? ??? ?????????? ?????? ??? ?????? ?? ?????? ?????? ?????? ?
????????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ?????? ?????? ?
????????????? ??? ??? ?????????? ?????????? ??? ??????????. [...]

4. ????? ??????????? ?? ???? 15, ?????????? 1, ? ?????????????????? ?? ?????????????? ??
?????????? ?? ??? ?????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????????????? ??
?? ?? ?????????? ?? ?????????? ?? ??????????. ????, ?? ?????, ?? ????? 15 ??????????
????????????? [...]»

10. ?? ?????? 25 ??? UStG ??? ?? ?????? ?? ?????????? ?? ?????????? ?????? ?? ?????? 26
??? ?????? ??????? ?? ?????????? ?? «?????? ?????? ?? ?????????? ?????????? ??????» ???
?????? ??????:

«1. ?? ?????? ???. ????? ??????????? ???. ????? ?????????????? ???. ????? ???. ????? ?????? ???. ?????????????? ???.
????????? ???. ??????? ???. ???. ????? ???. ?????, ???. ???. ????? ???. ???. ???. ?????????? ???. ????? ???. ?????????? ???.
????????? ???. ??????? ???. ??????????? ???. ????? ???. ??????????????, ???. ???. ?????????????? ???. ????? ???.
?????????, ???. ?????????? ???. ????? ???. ?????????? ???. ?????????? ???. ????? ???. ?????????? ???. ????? ???. ???.
????? ???. ????? ???. ??????????? ???. ?????????? ???. ??????????, ???. ???. ????? ?????????? ???. ?????????? ???.
???. ??????????? ???. ???. ???. ???. ????? ??????????? ???. ??????? 11, ???. ???. ???. ?????????? 3, ???. ??????????
. ???. ??????????, ???. ???. ???. ????? ?????? ???. ?????????? ???. ??????????, ???. ???. ?????????? ???. ?????????? ???.
????????? ???. ??????????.

2. ?????????? ?????????????? ?? ?????????????? ??? ?????????????? ??? ?????????????? ??? ?????????????? , ?????????????? ??
???? ?????? ?????? ?????????? ?????????? ??? ?? ?????????????? ?????? ??? ?????????? ??? ?????? ??? ?????????? . ? ??????
???? ?????????????? ??? ?????? ?????? ?????? ??? ?????? ?? ?????????????? ?????? ??? ?????????? ??? ??? ??? ??? ???
????????????? ??? ?????????????? ??? ? ?????? ?????????????? , ??? ??? ??? ?????? ?????????? ???
????? ??? ?????? ?????? . ??? ??? ?? ??? ?????? ?????? ?????????? ?????????? ?????????? ?? ??? ?????? ?????????? ???
????? ??? ??? ?????? ?????? , ??? ??? ?????? ?????? ??? ?????? 22, ?????????? 3, ?????????? ??, ??
????????? ?????? ??? ?????? ?????????? ?????? , ?????? ? ?????? ?????? ?????? ??? ?????????? ???
????????? ??? ??? ?????????? ?????? ??? ?????? ?????? ?????? ?????????????? ?????? ??? ??? ???
????????? ?????? ??? ?? ??? ?????? ?????????????? ?? ?????????? ?????????? ??? ?????? ??? ?????????? ???
??? ?????? ?????????? ??? ?????? ?????????? ?????? ???, ??? ?? ??? ?????? ??? ?

3. ??? ????????, ??? ?????? ?? ??????????? ?????????? ?????????? ?? ?????? ??????????????
????? ????, ?????????????? ?? ??? ??? ??????????? ?????? ??? ???????????, ? ??????
????????? ??? ??????????? ??????????? ??? ?????????????? ?????????????????? ??????????????????
????????????? ?????? ?? ?? ??? 15, ?????????? 14. ?? ?? ?????? ?????? ?????? ??????????????
????? ????, ??? ??? ?????? ?? ???????????, ?????? ?? ?????????? ?? ?????????????? ??? ??
????? ??? ?????? ?????????? ?? ?????????? ?????????? ?? ?????? ?????? ??? ?????? ??? ??
????????? ???????.

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

11. ?? ?????? 13, ??? A, ?????????? 1, ??? ?????? ?????? ??????:

«?? ??? ?????????? ??? ?????? ?????????? ??????, ?? ?????? ??? ?????????????? ??? ??
????????????? ??? ?????? ??? ?? ?????????????? ? ??? ??? ?????? ?????? ??? ??
????????????? ??? ?????? ?????????? ??? ?? ?????????? ??? ?????? ?????????? ??? ??
????????? ??? ?????? :

[...]

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

[...]»

12. ?? Finanzamt, ?????????? ??? ??? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ???
??? ?????? ??? ?????? 25 ?? UStG ??? ?????? ??? ?????? ??? ?????????????? ???
????????????? ?? ?????????????? ??? ?????? ??? ?????? 4, ?????? 23, ?? UStG ?? ???
??? ?????????? ??? ?????? ?????? ??? ??? ?????? ??? ??? ?????? ??? ?????? ?? ?????????????? ???
??? ??? ?????? ??? ?????????? ??? ?? ??? 1995 ?? 1997.

13. ? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? Finanzgericht,
?? ?????? ?????? ??? ?????? ????. ?? Finanzamt ?????? ??? ?????? ??? ?????????? ???
??? Finanzgericht ?????? ??? Bundesfinanzhof, ?? ?????? ?????????? ?? ?????????? ???
????????? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??
????????? ??? ?????????? ??? ??????:

«?????? ?? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? 26 ?? ??????
77/388/E?? ??? ??? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????????????? ???
????????? «High School» ??? «College», ?? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ???;»

II – ??????

14. ?? ?????? 26 ??? ?????? ?????? ??? ?????? ?? ?????? ?????????? ??? ??? ?????? ??? ??
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? (3).

15. ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ???
??? ?????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

16. T? ??? 26 ??? ?? ????, ????????, ?? ?????????? ??? ?????? ??? ?????? ???
?????? ??? ??? ?????? ?????????? ??? ?????????????? ??? ?????????? ??? (5).
??????????, ??? ???, ??? ?????? ?????????? ?????????????, ?? ?????? ?????? ???
????????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
?????????.

17. ???, ? ?????? ?????????? ?????????? ???' ??? ?????? ?????? ?? ?????????????? ??
?? ?????? ???, ????????, ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ??? ?????? ?????????? ???, ? ?????????? ??????????, ??? ??????
?? ? Finanzamt, ?????????? ?????????? ??? ? ?????????? ??? iSt ?????? ?? ??????
??? ?????? ??? ?????? ??? ??? ??? . ? ?????????? ?????? ?????????? ?????????? ???
????, ?????????? ??? ?? ?????? ??? ?????????? ??? ?????????? ??? ??? ??? ?????? ?? ?? ???
26.

18. ???, ??? ??? ?????? ?? ?????? ??? ?? ????????, ???' ???, ??? ?????? ??
????????? ???, ??? ????????, ??? ?????????? ???, ???' ???, ??? ?????? ?? 26
??? ??? ??? ??? ??? ?????? ??? ?????????? ??? ??? ?????? Van Ginkel ??? Madgett
??? Baldwin.

19. ??? ?????????? ??? ?? 26, ?????? ?????? ??? ?????? ?????????? ?????????? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ?? ?????????? ???
??? ??? ??? ??? ?????? ??? ??? ?????? ??? (6).

20. ???, ??? ??? Van Ginkel, ?? ?????? ??? ?????????? ??? ?????? ???
ratio ??? ??? 26 (7), ?? ?????? ??? ?????? ??? ?? ?????? ??? ? ?????? ???
??? ?????????? ??? ?? ?????? ??? ?????????? ???, ? ?????? ??? ?????????? ???
????????? ???, ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ???
????????? ?? ?????????? ??? ??? ?? ?????? ??? ?????? ??? ?????? 26 (8). ? ??????
???? ??? ??? 26 ??? ?????? ???, ??? ?? ?????????? ???, ?? ??? ?????? ???
????? ??? (9).

21. ??? ??? ?????? ??? ?????? ?? ?????? ??? ?????????? ???, ?? ??? ?????? ???
????? Madgett ??? Baldwin, ??? ?? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ?? ?????? ??? ?????????? ???, ??? ?????? ?? ?????? ???
«????????? ???» ? ??? «????????? ??? ?????????? ??? ?????? ???». ?????? ??????
??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ???, ?????? ??? ?????? ???, ??? ?????? ??? ?????? ???, ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (10).

22. ??????? ?? ?? ?????????? ????, ? ?????????????? ??? ?????????? ??????????????
????????? ??? ??????, ?????????????? ??? ????? ?????? ??? ?????????? ??????, ?????? ??
????????? ??? ????? ?????????? ??? ?????? 26 ??? ????? ??????. ??????????, ?? ?
????????????? ??? ????? ?????????? ??? ??????????, ??? ????? ?????????? ?? ?????? ???
????????? ??? ?????? 26 ??? ?? ?????????? ?????? ?????????? ?????????? ?????? ?? ??
????????? ?????? ??? ?????? ??? ?? ?????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ???
????????? (11).

23. ??????, ???????????, ?????????? ?? ??????? ????? ?????????? ??????? ??????? ??
?????????????? ?? ? ??????????????? ?? ???????, ??? ???????, ?????????? ??
?????????? ?? ???????, ?????????? ?? ??????? ?????????? ?? ??????? ???????????, ???????,
????????????? ???????, ?.?. ?????????????? ???????, ??????? ?? ?????????? ?? ????????
?? ??????? ?? ??????? 26 ?? ????? ???????.

24. ??????????, ?? ?????????????? ?????????? ??? ?????? ?????? ?? ??? ?????????? ????? ???????
Madgett ??? Baldwin, ? ?????? ?????????? ?????? ??? ?????????? ??? ?????????? ?? ???
????????? ??? ??? ?????? ?????? ? ?????? ? ?????????? ?????????? Léger, ?????????? ??? ??????
????? ??? ?????????????? ?????????? ??? ?????????????? ??? ??? ?????? ?????? ?????????? ??? ?
??? ?????????? ??? ?????? ?????????? ?? ??? (12).

25. ???????????????????????, ???????????????????????, ??? ?????????? ??????????????????? ??
????????? ??????????????? ???????????, ??????????????????? ??? ??? ?????? ??? ??????????????? ??
????????? ??? ???????, ??? ??? ?? ?????????? ?????? ?????? ?????? ?????????? ??????
?????????????. ???????, ? ??????? ?????????????? Léger ??????????? ?? ??? ?????????? ??,
??? ??????? ??? ????? ?????????????? ??? ? ??????? (13), ??? «? ?????? ?????? ?????? ??????????????
????, ??????, ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??????, ???????,
????????????? ?? ?????????????? ?????? ??? ?????? ??? ????' ?????????? ??????, ?? ?????? ?? ???
????? ??????. ??? ?????????? ?????? ??? ?????? ? ?????????? ??? ?????? ?????????? ??????????,
????? ???? ??? ?? ?????????? ? ??????? ?? ?????????? ??? ?????? ?????????? ??? ??????????
?????????» (14). ?????? ????, «??? ???????????, ? ?????????? ??? ?????????? ??? ??
????????? ?? ?????????? ?????? ??? ?????????? ??? ?? ?????? ??? ?????? ?????? ?????? ??? ??
?????????» (15).

26. ????????, ??? ????? ?????????????? ?? ?????????????? ?????????? ??? ??????
????????? ??????? ?? ?????????????? ??? ????? ?????????????? ??? ?????? ??? ??
????????? ??? ?????????? ??? ???????, ?? ?????? ??? ?????????????? ?? ?????????? ???
??? ?????????? ??? ?????? ??? ?????????????? ??? ??? ?????????? ???, ???, ??? ?? ??????????
??? ??? ?????? ?? ?????? ??? ?????????????? ??? ?????? ??? ?????????? (16).

27. ??????? ?? ?? ?????????? ????, ?? ??????????? ??????, ?? ??? ??????? ?????? ?????? ???????
Madgett ??? Baldwin, ??? «???? ?????????? ???, ??? ?????? ??? ?????? ??? ?????? ?????? ??????????
????????? ????, ??? ?????? ??????? ???, ??? ?????? ??? ???????, ?????????? ?????????? ???, ??? ???? ????
????? ?????????? ?????????? ?? ?????????? ??? ?????? ??? ?????? ? ?????????????? ??? ?????? ?? ???
????? ?????????? ?????????? ??? ?????? ???' ??????? ???, ??? ?????? ?? ?????? ??? ?????? ??? ??????
?? ?????????? ??? ?????????? ?????? ?????????? ??????, ? ?????? ?????? ??? ?????? ??? ?????????? ???
????? ?? ?????????? ?? ??? ?????? ?????? ?????? ?????? ?????????? ?????? » (17). ???????,
?? ?????? 26 ??? ?????? ??????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???, «?????
????????? ???' ??????? ???, ?????????? ?????? ?????? ?????? ?????? ?????? ???, ?????? ???
?????????, ??? ???' ?????????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????????? ??? ??????????
????????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????? ??? ??????????
?? ??????????, ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? » (18).

28. ??? ?? ??? ?????? ??? ?????????? ?????????????? ??? ?????????? ? ??????? Madgett ???
Baldwin, ?? iSt ?????? ?? ?????????? ?? ?????????? ?????????? ??? ??? ?????? ??? ?????? 26
??? ?????? ??????. ??????????????, ????? ?? ?? ?????? ?????? ??? ?? iSt ?????? ??????
????????????? ?????? ?????? ???, ? ?????????? ?????? ?????? ???, ? ?????????? ?????? ??????
???????? «?????? ?????? ???» ??? ?????? ?? ?????????? ? ???????, ??? ??
????????? ??? ?????? ?????? ?? ??? ?????? Madgett ??? Baldwin. ????????, ??? ??
??? ?? ?????? ??? ??????, ??? ?? ?????? ?????????????? ??? ?????? ??? ? ??????????
????????? ??? ??? ??????????, ??? ?????? ?? ?????????? ??? ?????? ?????? ?? ??????????
?????? ? ??? ?????? ?????????????? ?????? ??? ?????? ?? ??? ?????? ?????? ?????? ??????
??? ?????? ?????? ?? iSt ?????? ?????? ???.

29. ?????????? ??? ?????? ?? ?????????? ??? ?? ?????????? ??? ?????????? ??????????????
????? ??? ?? ?????????? ?? 26 ??? ?????? ?????????? ?????????? ??????????,
??????????, ??? ?? ?????????? ??? ?????????? ??? ?? ?????????? ?????????? ??????????
??? ?????? ??? ?????? 90/314/??? ??? ??????????, ??? 13? ?????? 1990, ??? ??
????????? ??? ?????? ??? ?? ?????????? ?????? ??? ?????????? (19). ?? ?????? ???
????????? ?????? ??? ?? ???????, ??? ?? ?????? ??? ??????????????, ???
????????????? ??? ?????????? ??? ?????????? ??? ?????? 26 ??? ?????? ?????? ?????? ??
????????????? ??? ?? ??? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ?????? ???
???? ?????????? ???, ?????????? ??? ??? ?????? ?????? ?????? AFS Intercultural
Programs Finland (20).

30. ?? ??? ?????? ???, ?? ?????????? ??? ?? ?????? ??? ?? ?????? ?? ??? ?????? ??????????
?? ?????????? ??? ?????????? ??? ?????????? ??? ?? ?????? ??? ?????? ??????, ??? ??
????? ??? ? ?????????? ??? ?????????? ?? ?????? ??? ?????? ??? ?????? ?????????? ??? ?
????????? ??? ?????????? ??? ?? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ?????????? ?? ?????????? ??????????, ?? ??? ??????????
????? ??? ?????????? ???, ??? ?????????? ?????????? ??? ?????? ??? ??? ?????? ???
????? 90/314 (21).

31. ?????? ?????????? ??? ? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ??????
?? ?????????? ??? ??????, ?? ?????? ?????? ???, ??? ??? ??????????, ???
??, ??? ?????? ??? ?????????????? ??? iSt, ? ?????? ?????????? ?????????? ???
????????? ?????? ?????????? ?? ?????? ?? ??? ?????? ?????????? ??? ??????.

32. ?? ?????? ???????????, ???????????, ??? ?? ?????? 26 ??? ?????? ????
????????????? ??? ?????? ??? ?????? 90/314, ?????????? ?? ??? ?? ??? ?? ??? ??
????????????? ? ?????? ??? ?????????????? ??? ?????? ?????????? ??? ?? ??? ??
????? ??? ???.

33. ??? ?????????????? ??? ?? 26 ?????????? ??? ?????? ??? ??
?? ??? ?????? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? «??????»
????? ??? ?????? ??? ?????? 90/314 (22). ????????, ??????, ??? ?? ?????? ??? ??
????? 26 ?????????? ??? ?????? ??? ?? ?????? Van Ginkel, ?? ??? ?????? ??
????????? ??? ?? 26 ??? ?????? ??? ?? ?????? ??? ?? ?????????? ??? ??
????? ??? ?????? ?????????? ?????????? ?????? –? ??? ?? ?????? ??????????, ???,
????? ??? ?????? –? ??? ?? ?????? (23).

34. ??????, ??? ?????? ???????, ??? ?? ?????? ???, ??? ?? ?????? ?????? ??? ??????????
?? ?????????? ?? ?????????? ??? ?????? ??? ?? ?????? ??? ?????? 26, ?? ??????????
?? ?????????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????

? ??????. ?? ??????? ???? ? ?????? ???? ?????????? ??? ?????????? ?????? ?????? ??????? ?? ???????, ??
?????????? ???? ? ??????? ???? ??????? ???????, ??? ?????? ?? ?????? ??????? ?????? ???.
????????????? ??? iSt ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? 26. ? ??????????
????????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?? iSt ??? ?????? ?????????? sui
generis ??? ??? ?????? ??? ?????? ?????? ??? ?????? 26, ??? ??? ?????? ?????? ???.
????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

35. ? ??????? ???? ?????????? ??? ?????????? ?????? ??? ?????????? ?????? ??? ?????????? ??? ???????
??? ?????? 26 ??? ??? ??????, ??? ?????? ?????? ??? ?????? ?????????? ?? ?????????? ???, ???
??? ?????? ??? ??? ?????? ??? ?????? ?????? ??? ???????, ??? ?? ?????? ??? ?????????? ?????????? ???.
????????? ??? ?? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??????????
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ???,
????? ??? ?? ?????? ??? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ???, ?? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ??????, ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? 26 ??? ?????? ???.

36. ?? ??????? ???? ??? ?????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? 26 (??
????? ??????? ?????????? ??? ??????? ??? ?????? ??? ?????? ??? ??????), ??? ?? ???
????? ??????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???.
?????, ??? ?????? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? 26. ???????, ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ???, ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 26, ??? ?????? ??? ?????? ???
????????? ??? ?? ?????? ??? ?? iSt ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
26 (24).

37. ? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? ???
????? ??? ?????? 26 ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (25).

38. ??? ?? ??? ?????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? Madgett ??? Baldwin, ?? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? (26).

39. ?????????? ???, ???, ??? ?? ??? 26 ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

40. ??? ???????, ? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? iSt ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? 13, ??? ?, ??? 1, ??? ?????? ??, ??? ?????? ???, ??? ?????? ??? ???.

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

41. ?? iSt ?????? ??? ?????????????? ??? ?????? ?????? ?????? ?? ??? ?????? ??? ??????

????? ?? ??? ?????? «????? ?????? ?????? ??????» ?? ??? ?????? ?? ??? ??????

????? ?????? ?????? 13, ?? A, ?????? 1, ?????? ??, ?? ??????

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

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

????????? ??? ?????? «?? ??? ??? ?????????????? ??? ?? ??? ?????????? ???

????????? ??? ?????? 13 ??? ?????? ?????? ?????? ?? ?????????? ???, ??????, ??? ?????? ???

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

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

????? ?????? ?????? ??? ?????????? ??? ?????? (27).

III – ??????

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

????? ??? ?????? ?? Bundesfinanzhof:

«?? ??? 26 ??? ?????? 77/388/??? ??? ??????????, ??? 17?? ??? 1977, ?????? ??

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

?? ?????????? «High School» ?? «College», ?? ?????? ???

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

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

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

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

2 – ?? L 145, ?. 54

3 – ??., ??????????, ??? ?????? ??? 12?? ?????? 1992, C-163/91, Van Ginkel (???????

1992, ?. ?-5723) ??? ??? 22?? ?????? 1998, C-308/96 ??? C-94/97, Madgett ??? Baldwin

(?????? 1998, ?. I-6229).

4 – ?????? Van Ginkel, ?????????? (????????? 3), ?????? 13 ?? 14- Madgett ???

Baldwin, ?????????? (????????? 3), ????? 18, ??? ??? 19?? ?????? 2003, C-149/01,

First Choice Holidays (?????? 2003, ?. I?6289, ?????? 23 ?? 24).

5 – ?????? Van Ginkel, ?????????? (????????? 3), ?????? 15 ?? 23-Madgett ???

Baldwin, ?????????? (????????? 3), ????? 18, ??? First Choice Holidays,

????????? (????????? 4), ????? 23.

6 – First Choice Holidays, ?????????? (????????? 4), ????? 22, ??? Madgett ???

Baldwin, ?????????? (????????? 3), ????? 34.

7 – ???. ??????, ?????? 15 ?? 16.

8 – ?????? ??? ?????? Van Ginkel, ?????????? (????????? 3), ????? 27.

9 – ?????? ?? ?? ?????????? Van Ginkel (????????? 3), ????? 23 «?

????????? ?? ?? ?????? ?????? ?? ?? 26 ??? ?????? ?????? ??? ?????? ???

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

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

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

????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????????. ??? ??????
????????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? »

11 – ?. ??????, ??? ????? ????????????, ??? ?????????????? ?????? ??? ?????????? ???
?????? ?????? ??? ?????????? ??? ?????????? ??? ?????? 77/388/??? ??? ?? ?????? ???
????? ?? ?????? ??????? ??? ?????????? ?????? [COM (2002) 64 ??????, ?? 2002, C
126 E, ?. 390]. ? ??? ????? ?????????????????? ?????? ?? ?? ??? ?????? ?????? ???
?????? ?????? 8 ?????????? 2002. ? ?????? ?????? ?? ?????????? ?? ?????????? ???
26, ??? ?????? ??? «????????? ?????? ?? ?????????? ?????? ?? ?????????? ???
?????????», ?? ?????? «??? ??? ?????? ?????? ?????????? ?? ??? ??? ?????? ?????????? ???
????????? ?? ??? ?????? ?????????? ???».

12 – ???. ?????????? ??? ??????? ?????????? Léger ??? ?????? Madgett ??? Baldwin,
????????????? (?????????? 3), ?????? 34 ??? 38.

13 – Madgett ??? Baldwin, ?????????????? (?????????? 3), ???? 24.

14 – ?????????? ??? ??????? ?????????? Léger ??? ?????? Madgett ??? Baldwin,
????????????? (????????? 3), ???? 36.

15 – ????? ??????????, ????? 37.

16 – ????? ??????????, ?????? 38.

17 – Madgett ??? Baldwin, ?????????????? (????????????? 3), ????? 26-? ?????????????? ????.

18 – ????? ??????????, ?????? 27.

19 - ?? L 158, ?. 59.

20 - ??????? ?? 11?? ???????????? 1999, C-237/97 (?????? 1999, ?. I?825).

21 – ????? ??????????, ?????? 34 ??? ?????????????.

23 – ???. ???????, ????? 24.

24 – ??????? ?? ?? ??????? ????? ???????????, ?? iSt ?????????? ??????? ?? ???
?????????? ?? ?? ??????? ?? ?? ??????? ?? ?? ??????? ?? ?? ??????? ?????????????? ? ?? ???????

????? ??? ????????, ? ??????? ?? ?????????? ??? ?????????? ?????? ??? ?????? ?????????? ??
iSt ??? ?????? ?? ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????? ?????????? ??? ??????, ??????, ?????? ?????? ?????? ?????? ??????
????????????? ??? ?????? ?????????? ?????? ??????, ??? ?????? ??? ?? ratio ???
????? 26, ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

25 – ??? ??? ??? ?????????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?? ?????????? ?????? ?????????? ??? ?????? ??? ?????????? ?? ?????? ???
????????? ??????. ??????, ??? ?????? ?????? ?????? ?????? ?????????? Léger ???
????? 32 ??? ?????? ??? ?????? ?????? ?????? Madgett ??? Baldwin
(????????? 3), ??? ?????? ?????? ?????????? ??? ?????? 22 ??? ?????????? ???,
«?? ?? ??? ????? ?????????? ??? ?????????? ??? ?????? ?? ?????????? ?? ??? ?????? ???
????? 26 ??? ?? ?????????? ??? ?????????? ??? ?????????? ?????????? ?????? ??
????????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ?????????? ?????? ???
????????????? ??? ?? ??? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ???
????????????? ??? ?? ??? ?????????? ??? ?????? ?????????? ??? ?????? ???
?????????»..? ?????????? ??? ???.

26 – ??., ??????, ?????? Madgett ??? Baldwin, ?????????? (????????? 3), ??? 22,
?? ?????? ??? ?????? ?????? Léger ??? ?? ??? ??????, ??? 32.

27 – ?????? ??? 15?? ?????? 1989, 348/87, Stichting Uitvoering Financiële Acties (??????
1989, ?. 1737, ??? 13), ??? 5?? ?????? 1997, C-2/95, SDC (?????? 1997, ?. I-3017, ???
20) ???, ???????, ??? 3?? ?????? 2005, C-472/03, Arthur Andersen (??? ??? ???
????????? ??? ??? 24).