

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

JULIANE KOKOTT

??? 11?? ?????????? 20071(1)

??????? C-146/05

**Albert Collée**

?????

**Finanzamt Limburg an der Lahn**

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

«????? ??????? ??? ??? ????? ?????????????? ????? – ?????? 28?, A, ??????? ?? – ?????????????? ????? – ?????? – ?????????? ?????? ??? ??????»

## I – ????????

1. ? ??? ????? ?????? ??? ??? ?????? ?????????????? ?????????? ??? ?? ?????????????? ?????????? ??? ?????? ??? ?????????????? ???  
????????? ??? ?????? ?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???  
(2), ?? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???  
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
???? ?????? ??? ?????? C-409/04 (Teleos ???.) ??? C-184/05 (Twoh International), ??? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

2. ??? ??? ?????? ???????, ??? ??????? ??????? ??? Bundesfinanzhof, ? ??????? ???  
?????? ??? ??? Albert Collée, ?? ?????? ??????? ??????? ??? Collée KG (???  
????: ???????), ??? ??? Finanzamt Limburg an der Lahn (??? ????: ????) ????? ???  
????????? ??? ?????? ?????????? ?????????? ?????? ??? ??? ?????? ????. ????? ???  
????????? ??? ?????? ?????????? ?????? ??? ?????? ???, ??? ? ?????????? ???  
????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ???  
????????? ??? ?????? ??? ?? ??? ?????? ???, ??? ?????? ???.

## II – ?????? ??????

? ? ????????

3. ?? ??? ?????? 91/680/??? ??? ?????????? ??? 16?? ?????????? 1991, ??? ??  
????????? ??? ?????? ?????????? ?????? ?????????????? ?????? ??? ??? ???????????,  
????? ??? ?????????? ??? ?????????? ?????? ??? ?????? ??? ?????? 77/388/??? (3), ??????????  
????? ??? ?????? ??? ?????? XVI? (????????? ?????? ?????? ?????????? ??? ??????????  
????? ??? ?????? ?????? ??? 28? ??? 28?). ?? ?????? ?????? ??? ?????? ?????????? ?? ???

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

4. ? ??????? ?? ?? ?????? 28?, A, ??? ?????? ???????, ?? ?????????????????? ?????????? ??????????  
?????? ?? ?????? ?????? ?????????????????? ??? ??????. ? ??????? ?????? ???, ??????????????,  
?? ???:

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

) ??? ?????????? ????, ??? ?????? ?????? ??? ?????? 5 ??? ?????? ??? ?????? ???  
?????? 28? ?????????? 5 ??????? ?, ?? ?????? ?????????????? ? ??????????????, ??? ???  
?????? ? ??? ?????????? ? ??? ?????? ??? ?????? ??? ?????????? ???, ?????? ??? ??????  
??? ?????????? ??? ?????? 3 ??? ?????? ??? ??????????, ??? ?????????????????? ???  
????? ?????????? ??? ?????? ??? ? ??? ?????? ??? ?????????? ?????? ???, ??? ?????? ??' ???  
??? ?????????? ???, ?? ?????? ??? ?????? ?????????? ??? ?? ?????? ??? ?????? ?????????? ???  
????????? ??? ?????? ?????????? ??? ??????.

[...]»

5. ?? ????? 22 ?? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ???  
????? ???, ?? ?? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? (4), ??????????,  
?????? ????, ?? ????:

«2. ?) ??? ?????????? ??? ?????? ?????? ?? ?????? ?????????? ?????? ?????? ??????????  
????????? ??? ?? ?????????? ?????? ??? ?????? ?????? ??? ?????? ?????????????? ??? ?????? ???  
?????? ??? ?? ?????? ??? ?????????? ???.

[...]

3. ?) ??? ?????????? ??? ?????? ?????? ?? ?????? ?????????? ? ?????? ??? ??  
?????? ??? ??????????, ??? ??? ?????????? ?????? ??? ?????? ?????? ?????????? ???  
?????? ??? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ???  
????. ??? ?????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ? ?????? ???  
?????? ??? ??????????, ??? ??? ?????????? ?????? ??? ?????????? ??? ?????????? ??? 28?  
????? ? ?????????? 1 ??? ??? ?????? ?????????? ?????? ??? ?????????? ??? ?????? ???  
??? ?????????? ??? ?????? 28? ?????? ?. ? ?????????? ??? ?????? ??? ?????? ??? ??????  
????????? ??? ??? ?????????? ???.

[...]

4. ?) ??? ?????????? ??? ?????? ?????? ?????? ?? ?????????? ?????? ??? ?????? ??????????  
????????????? ??? ?? ?????? ????. [...]

) ? ?????? ?????? ?? ?????????? ??? ?????? ?????? ?? ?????? ?????????? ??? ?? ?????????? ???  
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?? ?????????? ???  
????????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
??? ??? ?????? ??? ?? ??? ?????? ?????????? ?????? ??? ??? ?????? ??? ?????? ??? ??????.

? )    ??? ?????? ?????? ?????? ?? ??????????????????:

-    ?????? ???, ?? ??????? ?????, ???? ???, ??? ?????????? ?????? ??? ?????? ??? ?????? ??  
????? 28? ?????? ?, ?????? ??? ?????? ? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?? ?????? ???  
????????? ?????? ??????.

-    [...]

6.    [...]

)    ??? ?????????? ??? ?????? ????? ?????????????? ??? ?????? ??? ?????????????? ?? ??????  
????????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???  
????????? ??? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ???  
????? 28? ?????? ??? ?????? ?) ??? ?) [...]

7.    [...]

8.    ?? ?????? ??? ?????? ??? ?????????? ?? ?????????? ??? ?????? ?????????? ?? ??????  
????????? ??? ?? ?????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ???, ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???  
????????? ??? ?????? ??? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???  
????? ?????? ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???  
????????? ??? ?????? ???, ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?????.

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

6.    ?????? ?? ?? ?????? 4, ?????? 1, ?????? b, ??? ?????? Umsatzsteuergesetz  
(????? ???? ??? ?????? ?????? ??????, UStG), ??? ??? ?????? ??? ?????? ??? ?????? ???  
1, ?????? 1, ??? UStG ?????????? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
??? ?????? ??? ?????? 6a ??? UstG.

7.    ?? ?????? 6? ??? UStG ???????, ??? ?????? 1, ??? ?????? ??? ??????????????  
????????? ??? ???????, ??? ?????? 3, ??? ?????? ?????? ??? ?????? ??? ??????  
?????????:

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

8.    ?????? ?????????? ??? ?????? 6a, ?????? 3, ?????? ???, ???  
UStG ?????? ?? Umsatzsteuer-Durchfhrungsverordnung (????????? ??? ?????? ???  
????? ??? ?????? ?? ??? ??? ?????? ??????, ??? ????: UStDV). ?? ?????? 17a ???  
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
??? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

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

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

1. ??? ??? ?????????? ??? ?????????? (????? 14, 14a ??? ???),

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

3. ??? ?????????? ??? ?????????? ??? ?????????? ? ??? ?????????? ??? ?????? ?????????? ???

4. ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???  
??? ?????????? ? ??? ?????????? ??? ?????? ?????????? ?????????? ?? ?? ?????????? ???  
????????? ??? ?????????? ??? ?????? ??? ?????????? ?????????? ?????????? ???.

9. ????? ????, ?? ??? 17c ??? UStDV ?????????? ??? ?????????? ?????????? ???  
????????????? ??? ?????????? ??? ?????????? ???:

«1. ??? ?????????? ?????????????? ?????????? (????? 6a, ?????????? 1 ??? 2, ???  
?????), ? ?????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???  
????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ??????  
??? ???????. ? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?? ??????  
??? ?? ?????????? ???.

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

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

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

3. ??? ??? ?????????????? ??? ?????????? ??? ??????.

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

5. ??? ?????????? ??? ?????????? ? ??? ?????? ??????, ??? ?????????? ??? ?? ?????????? ???  
????????? ??? ?????? ?????? ?????? ???.

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

7. ?? ??? ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ???  
????????? ??? ??? ?????????? ??? ?????????? ??? (????? 6a, ?????????? 1, ??????)

8. ?? ?????????? ? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???.

9. ??? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???.

[...] »

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

10. ? Collée KG ????, ????. ?? 1994, ? ??????? ?????????? ????. ?????????????????? ????.  
????????? GmbH (????????? ?????????????? ????) ??????? ????????????, ? ??????  
????????? ?? ?????????????? ??????-????????? ????. ?????????? ?????????? ? (A-AG), ???  
????????? ????. ?????????? ????, ?????????? ?????? ?????????? ?????????? ??????. ? GmbH ????.  
????? ?????????? ?????????? ????. A-AG ????. ????. ?????????? ?? ?????????? ?????? ????.  
?????????.

11. ????? ?????? ??? 1994 ? GmbH ??????? ?? ??? ????? ?????? ?????????????? ? ????????  
????????? ?????????? 20 ?????????????? ?????????????? ??????? ?????????? ?????????? 1 018 200  
DEM. ? B ??????? ?? ?????? ??? ?????????? ?? ?????????? ??? ?????????? ??? ???? GmbH ??? ????????  
?? ??????? ?? ?????? ??? ?????????? ?? ??????????.

12. ??? ? ? ?????? ?? ??????? ?????? ??? A-AG ?????? ?????????? ??????????, ? GmbH  
????????? ?? ?????????????? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??????????  
??????? S, ? ?????? ??? ???????, ?????? ??????, ?? ?????? pro forma ?? ??????  
????????? ??? ??? ??????? ?? ?? ?????????? ??? ?. ??? ??? ?????? ??? ? S ??????  
???? GmbH ?????? ?????? ??????????, ?? ?????? ??? ?????????????? ??? ?? ?????? ???  
?? ? ?????????? ?? ??? ?????? ??? S ??? ??? ?????? ??? ?????????? ??? ?????????? ??????. ??????  
????, ? S ?????? ??? ??????? ?????? ?????? ?????? ?????????? ??? ??? ?????? ?????, ??????  
?? ?????????? 1994, ?? ?????????????? ???, ??? ??? ?????? ?????? 152 730 DEM  
?? ??? ?????? ?????????? ? GmbH.

13. ??????? ??????? ??????? ??? ?????????? ??? ?????????? ??? 1994, ?? ?????? ???????  
???? S ??? ?????? ??? ????, ?? ??? ?????????? ??? ? S ?????? ??? ??????????????  
?? ????? «?????????????». ??? ? ??????????, ? ?????? ?????? ?????? ??? ?????????? ???  
????? ?????? ??? ???????, ?????????? ????, ?????????? ????, ?????????? ??? 25  
????????? 1994 ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???  
????? ?????? «?????????????» . ??? ??????  
????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?????????? ??? 1994.

14. ?? ??????????????? ?????????? ??????? ?? ??? ??? ?????? ??????? ?? ?? 1994 ??  
?????? ??????? ?? 12 ?????????? 1998, ?? Finanzamt ?????? ?? ?????????? ??  
???? ??????? ?? ?????????? ?? 1 018 200 DEM. ??????? ?? ?????????? ??  
?????? ?? ?? ?? ?? ?? ?? ?????? ?? ?? ?????????? ?? ?????????? ?? ?? ?, ?? ?? ??  
???? ?? ?? ?? ?????????? ?? ?????????? ?? ?? ?????????? ?? ?????????? ?? ?? ??  
?????????? ?? ?? ?? ?? ?? ?????????? ??.

15. ?????????????? ??????? ??? ? ?????????? ??????????????. ??? ?????????? ??? ???????????  
???????????, ? ?????????? ????? ?? ?????????????? ? ?????????????? ??????? ??? ???  
???? ?????? ??????? ??? ??????? ?? 1998, ?????????? ?? ?????????? ??  
????????????? ??? ?????? ?????? ?????? 1 018 200 DEM. ??? ?? ??????? ?? ?????? ???  
???????????, ???' ??????, ??? ??? ?????? ??? ?????????? ??????? ??? ??????????????  
??? S ??? ??????, ??????, ?????? ?????????? ??? ??? GmbH ??? ??? ?, ??? ?? ??????  
??? ??? GmbH ??? ??? ??? ??? ?????? ??? ?????????? ?????????? ??? ?????????? ???  
??? ?????????? ??? ??? ?????????????? ?????? ??? ?.

16. ??????? ??, ?? Bundesfinanzhof ??????? ?? ??????????? ?? ??????? ???????, ??

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

1) ??????? ?? ??????????? ?????? ?? ??? ??????????? ?????? ?? ??? ??????????? ?????? ?? ??? ?????? ?? ???????????????  
?????????, ? ????? ?? ??? ?????????????? ??????????????????, ?? ?? ?????????????? ?? ??? ??????????? ?? ??? ?????? ??  
? ?????????????? ?? ??? ????? ?? ??? ?????????? ?????????????? ?? ?????????????? ?? ?????????????? ?? ??? ?????? ??  
??? ?????????? ???????;

2) ?????? ??????? ???? ??? ?????????? ??? ?????? ?????? ?????? ?? ?????? ?????? ??? ?????? ??????;  
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????;

## IV – ?????? ??????????

17. ?? ?? ?????? ??????????????? ???????, ?? ?????? ?????????????? ??????, ???' ??????, ???  
????? ??? ? ?? ?????? ?????????????? ??????? ?????????????? ??? ?? ?????????? ???  
????-?? ?????????? ??? ?????????????? ?????????????? ??? ?????????? ?????????? ??? ??  
????????- ?????? ?? ??????? ?? ??????? ?????????? ?????????? ?????????????? ?????????? ???  
?? ???. ?? ?????? ??? ?????????? ?????????? ??? ??????, ???????, ?? ?? ??????  
??????, ??? ?????, ??? ?????????????? ?????????, ??????? ?? ?????? ?????????????? ???,  
??? ??????? ?? ?????????? ?????????? ?? ?? ??????? ? ?? ?????? ?????? ?????????? ???,  
????? ?????????? ?????????? ??? ?????????? ?? ?? ?????? ?????? ?????? ? ?????????? ???  
????? ??? ?????????? ?????????? ?? ?? ?????? ?????????????? ??????????.. ?? ?????? ??????  
?????????????????, ???????, ?? ?????? ??? ?????????? ?????? ?? ????. ??????, ???????, ??  
????????? ??? ?????? ??? ?? ??? ?????????? ??? ?????? ?? Bundesfinanzhof, ???????  
?? ?????? ?????????????? ??????????.

18. ?? Bundesfinanzhof ??????, ???' ?????, ???? ????? ??????????? ?????? ???? ?????? ?????? ??  
????????? ??? ?????????????? ?????????, ??????? ?? ???? ?????? ?? ?????? ??? ?????? ??? ?????? ??  
????????????? ?????????? ?? ?????????? ?????????? ??? ?????????? ??? ?????????????? ??? ??? ?????? ??  
?? ?????? ?????????????? ?????????, ? ?????? ??? ?????????????? ???????????????, ?????? ??? ?????? ???

19. ? ????? ???? ?????????? ??? ?????????????? ?????????????? ??? ???? ???? ???? ???? ????  
????? 28?, ?, ????????, ??, ??? ???? ??????. ? ????????, ??? ?????????? ??? ???? ???? ???? ????,  
????? ?? ????????, ??? ?????????? ??? ???? ?????????? ??? ???? ?????????? ??? ???? ???? ???? ???? ????  
???????????, ? ????? ?????????????? ???, ?? ????? ????????????, ?????? ?? ?????? ???  
?? ????????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ? ?????? ?????? ?????? (????  
??? ?????? ??????????). ??? ?? ?????????? ? ?????? ??????????, ??????, ??? ??????????, ??  
???????????, ??? ?????? ??? ?????? ??? ?????? ?????????? ? ?????????????? ?????????? ???  
???????????, ??? ?????????? (5).

20. ??????????, ? ??? ?????? ??? ?????????? ?????????? ?????????? ??? ??? ?????????? ???  
????????????? ?????????? ??? ?????????? ??? ?????????? ?????? (6). ?? ?????? 22 ??????????  
????? ?????????? ?????????? ?????????? ??? ?? ?????????? ?????? ??? ?????????? ??? ???????,  
??? ??? ?????? ?????????? ??? ??? ??? ?????????? ??????. ??? ?? ??????, ?? ?????? 22,  
????????? 8, ?????????? ??? ?????? ??? «?? ?????????? ??? ?????? ?????????? ??? ??????  
????????? ??? ?? ?????????? ??? ?????????? ?????? ?????? ??? ?????? ??? ?????? ???  
?????????».

21. ??????????, ??????? ?? ?? ????? 28?, ?, ?? ?????? ????? ?????????????? ???  
????????????? ?????? ?????? ??? ?? ??? ???? «??? ?? ?????????????? ??? ?? ??? ???? ???  
????????? ??? ?? ?????????????? ???? ?? ??? ????? ?????????? ??? ?????????????? ???  
????????? ??? ?? ?????????????? ???? ?????????? ??????????????, ?????????????? ? ??????????».

22. ??? ?????? 28?, ? ??? ?? ?????? 22, ??????????? 8, ??????????, ??????, ?????? ???  
???????, ??? ?????????? ??? ?????? ??? ?????????????? ?????????? ?????? ?????? ???  
??????? ?? ?????? ??? ?????? ??? ???????????, ??? ?????? ?? ?????????? ?????????? ???  
????????????? ??? ?????? ??? ?????? ?????????? ???.

23. ??? ?????????? ??? ?????? ??? ???? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???  
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????. ??????????, «????? ??  
????????? ??? ?????????? ??? ?????????? ???, ?????????? ??? ?????????? ??? ?????????? ???  
????????? ??? ?????????? » (7). ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???  
BP Soupgaz, ?? ?????? ??? ?????????? «????? ?????? ?????? ?????? [...] ???  
?? ??? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? » (8). ? ?????? ?????????? ???  
Fenelly, ??? ?????? ??? ?????? ??? ?????? ??? ?????? Molenheide ??? ??? Schmeink &  
Cofreth, ????, ????, ???, ??? «????????? ??? ?????? ??? ?? ?????????? ??? ?????????? ???  
????????? ??? ?????????? ??? ?????? ???». (9)

24. ??? ?? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???  
????????? ???, ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
28?, ? ??? ?? ?????? 22, ?????????? 8, ??? ?????? ??????, ??? ??? ?? ??? ??? ??? ???  
??????????. ?? ?????????? ??? ?????? ??? ??? ???, ?? ??? ?????? Halifax, ??? «??  
????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ??????????, ?????? ??? ?????? 22,  
????????? 8, ??? ?????? ??????, ??? ?? ?????????? ??? ?????? ?????? ?????? ??? ?????? ???  
??? ?? ?????????? ??? ??????????, ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ?????? ?????? » (10).

25. ??? ????????, ? ?????? ??? ?????? ??? «??? ?????? ?? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?? ?????????? ??? ?????? ???, ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
(11). ? ?????????? ??? ?????? ??? ??????, ??? ?????? ??? ?????? ??? ?????? ???  
?????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? (12).

26. ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ??????????????, ??? ??????  
????????? ??? ?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ???  
??????. ?? ?????????? ???, ???, ??? ?????? ?? ?????????? ??? ?????? ???  
????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ?? ?????? ?? ?????? ???  
????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
??? ?? ??? ?????? ??? (13).

27. ?? ????????, ??? ?????? 17a ?? 17c, ??? UStDV, ??? ? ??????  
?? ?????????? ??? ?????? ?????????? ??? ?????? ?? ?????? ??? ?????? ???  
«????? ??? ?? ??????» ??? ?????? ?? ?????????? ??? ?????? ?? ?????? ???  
????? ?? ?? ?????? ??? ????? Bundesfinanzhof ?????? ?? ?? ?????? 13, ?????????? 1,  
????? ?? ??????, ??? UStDV, ??? ?????? ??? ?????? ??? ?????? ?? ?????? ??  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??  
????? ?? ?????? 17a ?? 17c ?? UStDV, ? ?????? ??? ?????? ?? ?????? ???  
????????? ??? ?????? ?? ?????????? «????? ?????? ?????????? ??? ?????? ???  
????????? ??? ??????».

28. ??? ?????????? ??? ??????????, ? ?????????? ??? ?????? ??? ?????????? ???  
????????? ??? ?????????? ??? ?????? ??? ?????? ???, ?????? ??? ?????? ???  
1994 ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???

????????? ??? 1994, ?????? ??? ?????? ?????? ?????? ??? ?????????? ????????, ???  
???????????, ?????????????? ??? ?????? ?????? ??????????, ?? ?????????????? ??? ???  
????????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ???  
????? ?????? ??? ?????? ??? ?????? ??? 1994. ?? Finanzamt, ?????????? ??  
????? ??? ?? ?????????? ??? ?? ?????????? ?????? ?????? ?????? ???  
????????????? ??? ?????? ?????? ?????? ??? ??????, ?????? ??? ?????? ?????? ???  
????????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???  
????????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???.

29. ? ?????????? ?????????? ?????????? ?????????? ??? ?????? ??? ?? ?????????? ???  
????? ?? ?????? ?????? ??? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ???  
????? ?????? ??? ?????? ??? ?????? ?????? ???????????. ?? ??? ?????? ??? ??? ??????????  
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ??? ????. ?  
????????? ??? ?????? 17a ?. ??? UStDV ?????? ?????? ?????? ??? ?????? ??????  
????????? ?????? ??? ?????? ??? ?????? ?????? ?????? 28?, ?, ??? ?????? ??????,  
????? ??? ?????? ??? ??? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ?????? ?????? ???????. ??? ?????? ??? ?????? ??? ??????????  
?????????, ?? ?????? 17a ??? 17c ??? UStDV ?????? ?????? ?????? ??? ???  
????????? ??? ?????? ??? ?????, ?????? ??? ?????? ?????? ??? ?????? ?????? ?? ??? ???  
????????? ?????? ??? ?????? ??? ?????? ?????? «carrousel» (????????? ???). ???  
????? ??? ?????? ??? ?????? ?????? ?? ??? ?????? ?????? ??? ?????? ??????  
????????? ??? ?????? ???.

30. ?? ??? ???? ?????? ???, ?????? ???' ?????? ?? ?????????? ??? ? ??? ????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ???  
????????? ??? ?????? 17a ??? 17c ??? UStDV ??????. ????????, ?????? ??  
????????? ??? ???? ? ?????? ??? ? ?????? ?????? ??? ?????? ??? ?????????? ???  
????????? ???, ?????? ?? ??? ?????? ? ?????? ?????? ?????? ?????? ???  
????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? «????? ??? ?????? ?????? ???  
????? ??? ??? ?????? ??? ?????? ??? ?????? ???.

31. ??? ?????? ??? ?? ?????? 22, ?????????? 8, ??? ?? ?????? 28?, ?, ??? ????  
??????, ?????? ?????? ?? ?????? ??? ?? ?????? ?????? ?????? ??? ?????? ?? ??????  
?? ??? ?????, ??? ?? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?? ??????  
?? ?????????? (14). ???????, ?? ?????? ??? ?????? ?? ?????? ?????? ???  
????????? ??? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ???  
????????? ??? ?????? ??? ?????? ?????? ?? ?????? ?????? ?????? ?????? ???,  
????????????????? ?????? ?????? ?????? ?????? ?????? ???, ?????????? ??  
????????????? ?? ?????? ?????? ?? ??? ?????? ?????? «carrousel» ?????? ?? ??? ???  
????????? ???.

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

33. ??? ?????? ???, ?????? ? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??????  
?????????. ?? ?????? 17a ??? 17c ??? UStDV ?????? ?????? ??? ?????? ??  
?? ?????????? ??? ?????? ?????? ?????? ?? ?????? ??? ?????? ?? ?????? ???  
????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? Bundesfinanzhof, ?????? ?? ??? ?????? ? ?????????? ???  
????? ??? ?????? ?????? ?????? ??? ?????? ??? ?? ?????? ?????? ??? ?????? ???.

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

34. ?????????? ????? ????? ?????????? ??????????????, ????? ?????? ??? ?????? ??? ??????????  
????????, ??? ????? ?????????????? ?? ?????????? ?????? ??? ???????, ??????? ?? ??  
????????? ??? ??????????????, ?? ?????? ?? ?????? ??? ?????? ??? ?? ?????????? ??? ?????????? ??  
????????? ?????? (15). ?? ??????????, ?? ??? ?????? ??? ??? ??? ?????????? Halifax,  
????? ?????? ??? ? ?????? ??? ?????????? ?????? ?????? ??? ?????????? ?? ?????????? ?? ??????????  
??????????, ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??????????  
????????? (16).

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

36. ? ??????? ??????? ?????????? ?????????? ?????????? ?????????? ?? ??????? ??????? ?????????? ??  
?????? ?????????? ?????????? ??????????, ?? ?????? ?????? ??????? ?? ??????? ?? ??????? ? ??  
??? ?????????????? ?????????? ?????????? ?????????? ??? ?????? ??? ?????????? ?????????? ?????????? ????.  
????? ??? ??? ?????????? ?????????? ?????????? ?????????? ?????????? ??? ?????????? ?? ?????????? ??????  
????? ? ?????????? ??? ?????? ?????????? Fenelly ?????? ?? ?? ??????????  
????????? ??? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ?????????? ?? ?????????? ???  
????? ?????? ?????? ?????????? ?????????? ?????????? ?????????? ?????? ?? ??? ?????? «? ?? ?????? ???  
????? ?????? ?????????? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ??????????  
?????????..» (17)

37. ????????????, ??? ?????? ??? ??? ?????????????? ?????????????? ??????????????  
????????????? ?????????? ??? ?????????? ?????????????? ?????????????? ?????????????? , ??????, ??  
???? ?????????????? ?????????? ?????????? ??? ?????? 17a ??? 17c ??? UStDV, ??  
????????? ??? ?????? ? ?????????? ?????????????? ?????????????? ?????????????? ??? ??????????????  
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????????.

38. ????? ?????????? ??? ?????? ?????' ?????? ?? ???????????????, ??? ?????? ?????????????? ?  
?????????, ??? ?????? ?????????? ?????????? ?????????????? ?????????? ???? . ??? ??????  
????????? ? ??? ?????? ?????????? ?????', ??? ?????? ?? ???????????????, ??? ??? ??????  
????????? ? ??? ?????? ??????????, ???' ?????, ?? ????. ??? ???????????, ?? ??????????  
????????????? ??? ??? ?????????? Transport Service NV, ??????? ??? «????????????? ???  
?????? ??????????? ?? ?????????????? ?? ?????????? ?????????? ??? ?????? ?????? ?????? ???  
????????????? ????. ?????? ?????????? ??? ??????, ??? ?????????? ??? ?????? ??? ?????? ???  
????????????? ????.» (18) ??? ? ?????? ??????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????  
?? ?????? ??? ?????????? ??? ?????????? ?? ?????? ????. ?????????, ?????????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????  
????????? ?? ?????????? ?????????? ??? ?????????? ??????. ??? ??????, ??????, ??  
????? ?????? ? ?????? ??? ?????????????? ??????????????, ?????????? ?? ??? ?????, ?????? ???  
????? ?????????????? ?????????? ??? ?????????? ??????????????, ?????????? ??? ?????? ??????  
????????? ?????????? ??? ?????????? ??????????.

39. ??? ?????????? ??? ?????????? ?????????? ?????????? ?????????????? ????????, ????  
???' ??' ????, ?? ?? ?????????? ??????????????, ?? ?????????? ?????????? ??? ?????? ???  
????????? ?? ?????? ?????????? ???????, ?????? ? ?????? ?????? ?????????? ??? ?????? ????  
????????? ? ??????, ?????? ??? ?????? ?????? ?????????????? ??? ?????? ??? ?????? ?????????? ???  
?????, ?????? ??? ?????? ??? ?????? ?????? ??? ??????????. ?????? ?????, ?? ??????  
????????? ??? ?????? ?? ?????? ?? ?????????????? ?? ?????? ??? ?????? ?????????? ??? ?????? ??????  
????? ??? ?????.

40. ??????, ??????, ?? ??? ?????????????? ?????????? ?? ?????????? ??? ?????????? ????  
????????? ??? ?????????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ??????  
????????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????????????  
??? ?????? ?? ?????????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????????????? ??? ?????? ??? ?????? 28c, ? ??? ??? ?????? 22,  
????????? 8, ??? ?????? ?????? ??? ??????????, ??????????, ? ?????????????? ?????? ???  
????????????? ?? ??? ?????? ?????????? ??? ?????? ?????????????? ??? ?????? ?????? ??? ??????  
?????????.

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

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

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

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

44. ??? ?????????????? ? ??? ???? ?????????? ??? ?????? Schmeink & Cofreth,  
?????? ?? ??? ?? ??? ?????? ?????????? ??? ?????????? ?????????????? ?????? ???  
????????????? ???-. ?? ??? ?????? ???, ?? ?????????? ?????? ???: «???? ?????????? ???  
???? ?? ?????? ? ?????? ??? ?????????? ?????????? ?????? ??? ?????? ??? ??????  
????????? ?????????? ???????, ? ??? ??? ?????????????? ??? ??? ?????? ??? ??????  
????????? ?????????? ??? ?????? ?????????????? ??? ?????????? ???, ?????? ?? ?????? ??  
????? ??? ?? ?????????? ??? ?????????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ??  
????? ??? ?? ?????????? [...] ??? ?????? ? ?????? ??? ?????????? ??? ?????? ??????  
????????? ??? ?????? ??? ?????????? ?????????? ??? ?????????????? ???????, ? ?????????? ??  
????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??  
??? ??? ??? ??? ?????? ??? ??????» (19).

45. ? ?????????????? ??? ?????? ??? ?????? ?? ?????? ??? ?????????? ??? ?????? ???  
????????????? ?? ??? ?????? ?? ?????????? ??? ?????????? ??? ?????? ??? ??????????  
????????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ??????????  
????????????? ??? ?? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ??????????  
????????????? ??? ?????? ??? ?????? ??? ?????????? ???, ?????????? ??? ?????? ??? ?? ??????????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???,  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??  
????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??  
????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??  
????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??  
??? ??? ?????? ???.

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

47. ?????? ???, ??? ?????? ???, ?? ?????? ?? ?????? ???, ??????, ??? ??????, ? ??????  
????? ?????? ?????? ???, ??? ?? ?????? ???????????. ???????, ??? ?????????? ??? ?????? ?  
????????? ???, ??? ?????????? ??? ?????? ?? ?????? ??? ?????? ?????????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????????  
?????, ???, ?? ?????? ???, ?? ?????? ???, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

49. ????? ?????? ??? ??????????? ?????????????? ??? ??? ?????????????? ??? ?????????????? ??? ?????????????? ???  
???????????, ?? ??????, ?????? ?????, ?? ?????????? ??? ?????? ?????? ? ?????????? ?????? ??  
????????? ??? ? ?????????? ??? S ?? ?????????? ??? ??? ?????????? ?????? ?? ?????????? ??? ????  
????????????? ??? ? S ?? ???????????. ??? ?????? ?????? ??? ?? ?????????? ??? ?????? ??? ? S  
??? ?????? ???? ???? ? ?? ?????????? ??? ?????? ??? ???? ???? ? ??????????  
????????? ?? ?????????? ??? ?????? ??? S ??? ?????? ?? ?????????? ??? ??? ???? «??????»  
????????? ??? ?????? ?? ?????????? ?????????? ????. ?????? ??? ?? ?????????? ???  
???????????, ? ?????? ?????? ?? ?? ??? ?????? ?????? ??? ?????? ?????? ??? ?????????? ???  
????????????????? ??? ?????? ?????? ?????????????? ??????????. ??? ?? ?????????? ??? ??????????  
??? ?????????? ??? ??????, ??????, ??? ??? ???? ? ?????????? ??? ?????????? ??? ???  
????? ? ?????? ??? ?????????? (22).

50. ??????????????, ??? ?????? ????????? ??????? ?? ?????? ? ?????????? ??? ? ?????????? ???  
????????? ?????????????????? ???????????, ??????? ?? ??? ?????? ??? ?????????????? ??? ??????  
??? ?????????????? ??????????, ? ?????? ??? ?????????????? ??????????????????, ?? ??  
????????????? ??? ?????? ??? ? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???  
????????????? ??? ?????? ??? ?????? ??? ? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???  
????????????? ???????, ?????????? ??? ?????? ??? ?????? ???.

51. ?????? ???? ?????????? ?????? ??? ?????? ?????????? ?????? ??? ?????? ?????? ? ?????????????? ???  
????? ?????? ?? ?????????? ??? ?????????????? ?????? ?????????? ?? ?????????? ?????? ?????????? ???  
????????? ??? ????????????, ?????????????? ??? ?????? ????????????, ?? ?????????? ? ?????????? ???  
????? ?? ??? ?????????? ??? ?????????? ??? ?????????? ?????? ????????, ?????????? ???  
????????? ?????????? (???????? ??????). ??? ?????????? ??? ? ?????????? ??? ??????  
????? ?? ?????????? ?????? ??? ??? ?????????? ??? ?????? ????????, ??????, ??????,  
?? ?????????? ????, ??? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??????  
????????????? ??? ?????????? ??? ??? ??? ???, ??? ?? ?????????? ?????????? ??? ?????????? ???  
?????????.. ?????????? ??? ?????? ?????? ?? ?????????? ??? ?????????? ??? ?????????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ?????????????? ?????????? ??? ?????????? ???  
??? ??? ?????? ??? ? ?? ?????? ?????? ?????????? ??? ?????????? ?????? ?????????? ???  
??? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????.

V - ???????

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

«1) ? ?????????? ??? ??????? ?????????????????? ??????????, ??????? ?? ?? ?????? ??? ?????? ???  
????????????? ??? ?????? ??? ?????????????? ??????????, ? ?????? ??? ??????????????  
????????????????? ?? ?? ?????????????? ??? ?????? ??? ? ?????????????? ??? ?????? ???

???????????? ????? ????? ??????????? ?????? ??? ?????????? ??? ?????????? ?? ?????????? ???????????????  
??? ??? ?????????? ??? ?????????? ??????????, ?????????? ??? ?????? 77/388/??? ???  
?????????? ??? 17?? ??? 1977 ??? ??????????? ??? ?????????? ??? ?????????? ??? ?????? ???  
????????? ?? ??? ????? ?????? ?????? ?????? – ????? ?????? ??? ?????????????? ????:  
????????? ?????????? ????.

2) ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???  
??? ?????????? ??? ??????????, ?????? ?? ?????????? ????, ??? ?????? ??? ??????  
????????? ??? ??? ?????? ?????????????? ?????????? ??? ??? ??? ???, ??? ?? ??????  
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1 – ?????? ??? ??????????: ? ??????????.

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

3 – ?? L 376, ?. 1 ??.

4 – ?? . ?? ????? 28?, ??? ?????? ?? ??? ?????? 91/680/??? ??? ?????????? ?? ???  
????? **92/111/???** ??? ??????????, ??? **14?? ??????????** **1992**, ??? ??? ??????????  
?? ?????? 77/388/??? ??? ??? ?? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????  
????????????? ??? (?? L 384, ?.47 ??.).

5 – ?????? ??? 6?? ?????? 2006, C-245/04, Handel Eder (?????? 2006, ?. I-3227, ???  
29), ??? ?????? 24 ?? 25 ??? ?????? ??? 10?? ?????? 2005 ??? ??? ??????  
?????. ?. ??? ??? ?????? ?????? ??? ?????? ??? ??? ?????? C-409/04, Teleos ?.?. (???  
?? ?????? ??? ?????? ?????? ??? ??????, ?????? 29)

6 – ??., ??? ?????? ???, ??? ?? ?????? ??? 3?? ?????? 2004, C-395/02, Transport service  
(?????? 2004, ?. I-1991, ?????? 27 ?? 28), ????? ??? ??? ?????? ??? 21?? ??????????  
2006, C-255/02, Halifax ?.?. (?????? 2006, ?. I-1609, ?????? 90 ?? 91).

7 – ?????? ??? 18?? ?????????? 1997, C-286/94, C-340/95, C-401/95 ??? C-47/96,  
Molenheide ?.?. (?????? 1997, ?. I-7281, ????? 42).

8 – ?????? ??? 6?? ?????? 1995, C-62/93, BP Soupergaz (?????? 1995, ?. I?1883, ???  
34).

9 – ?????? ??? 20?? ?????? 1997 ??? ??? ?????? Molenheide ?.?. (??????????  
???? ?????????? 7, ?????? 41) ??? ?????? ??? 13?? ?????? 2000, ??? ??? ??????  
C-454/98, Schmeink & Cofreth (?????? 2000, ?. I-6973, ?????? 18).

10 – ?????? Halifax ?.?. (????????? ??? ?????? 6, ?????? 92). ??., ??? ???  
??????, ?????? ?? ?? ?????? ?????? ??? ?????? ??? ?????? ??? 21?? ?????? 2000, C-  
110/98 ??? C-147/98, Gabalfrisa ?.?. (?????? 2000, ?. I-1577, ?????? 52), ??? Molenheide  
.?. (????????? ??? ?????? 7, ?????? 48) ????? ???, ?????? ?? ?? ?????? 21,  
????????? 3, ??? ????? ??????, ??? ?????? ??? 11?? ?????? 2006, C-384/04, Federation of

Technological Industries ??. (?????? 2006, ?. I-4191, ???? 29).

11 – ?????? Halifax ??. (????????????? ??? ?????????? 6, ???? 92).

12 – ?. ?????? Handel Eder (????????????? ??? ?????????? 5, ???? 29) ???? ???  
????? 24 ??? 25 ??? ???????? ??? ??? ??? ???????? ???.

13 – ?, ?????? ????, ?????? ??? 30?? ?????? 1995, C-55/94, Gebhard (?????? 1995,  
. ?-4165, ???? 19), ??? ?????? Molenheide ??. (????????? ??? ?????????? 7, ????  
49).

14 – ?. ?????? Gabalfrisa ??. (????????? ??? ?????????? 10, ???? 52).

15 – ?????? ??? ?? ?????? Federation of Technological Industries ??. (?????????  
??? ?????? 10, ???? 29).

16 – ?????? Halifax ??. (????????? ??? ?????????? 10, ???? 72).

17 – ?????? ??? ?? ?????? Schmeink & Cofreth (????????? ??? ?????????? 9,  
????? 18).

18 – ?????? ??? ?? ?????? Transport Service (????????? ??? ?????????? 6, ????  
19).

19 – ?????? ??? 19?? ?????? 2000, C-454/98 (?????? 2000, ?. I-6973, ???? 58 ???  
60).

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

21 – ?. ?????? ?? ?? ?????? ?????? ?????? ?????? ?????? ?????? Teleos ??.  
(????????? ??? ?????? 5).

22 – ?. ?????? Halifax ??. (????????? ??? ?????????? 10, ???? 56 ??? 60), ???  
12?? ?????? 2006, C-354/03, C-355/03 ??? C-484/03, Optigen (?????? 2006, ?. I-483,  
?????? 44 ??? 45), ??? ??? 6?? ?????? 2006, C-439/04 ??? C-440/04, Kittel ??? Recolta  
Recycling (??? ??? ??? ?????? ?????????? ??? ??????, ??? 41).