

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

VERICA TRSTENJAK

??? 19?? ??????? 2007 1(1)

???????? C?73/06

Planzer Luxembourg Sarl

???

Bundeszentralamt für Steuern

[?????? ?? Finanzgericht Köln (?????????) ??? ?? ?????? ?????????????? ??????????] [?????????]

«???? ??????? ??? – ?????? 17, ??????????? 3 ??? 4 – ?????????? ??? ??? – ?????? ?????? ??? –
????????? ??? ??? ????? ?????????????? ??? ??? ?? ?????? ??? ?????? ??????????????????
????? ??? ????? – ?????? 3, ?????????? ?, ??? 9, ?????????? ?????? ?????????? ? –
????????????? ??? ? ?????????????? ?????????? ??? ??? ??? ?????? ?????? – ??????
????????????? – ?????? ?????? ?????? ??? – ?????????? ??? ??? ?????? ?????????????????? ???
??? ?????? ?????????????? ??? ?????? ??? ?????? – ?????? 1, ?????? 1 – ??????????
??? ?????? “????? ??? ?????????? ??? ??????????”»

I – ??????????

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

2. ?????????? ??? ??????????? ?????? ?????????????? ??? ?????????????????? ??? ?????????????????? ??? ??????????
????????????? ??? ?????? ??? ????????????????, ???????? ?? ? ? ?????????? ? ??? ?????? ?????????
79/1072/??? ??? ????????????, ??? 6?? ??????????? 1979, ??? ?????????????? ??? ??????????????
??? ?????? ??? ?????? ??? ?????????? ?? ?????? ?????? ?????? ?????????? – ?????? ?????????? ???
????? ?????????????? ??? ?????? ?????? ?????????????? ??? ?????? ??? ?????? ??? ??????
????????????? ??? ?????????? ??? ?????? (2), ?????? ?? ? ? ?????? ??? ?????? ??????????????
????????? ??? ?????? ??? ?????? ?????????? ?????????? ?????????? ??????????????.

4. ?? ??? ??? ????? ?????? ??? ?????? ?????????????? ???????????, ?? Finanzgericht Köln
????????? ??? ??????????? ?? ??????? ?? ???? ?? ????? ?????????????? ?????????? ???????????
??? ? ??????????????? ??????????? ?????? ?? ?????????? ??? ?????? ?????????????? ??? ??????
????? ?? ?????? ?????? ?? ??????????????.

5. ?? ?????????? ?????????? ???????????, ?? Finanzgericht Köln ?????? ??? ?? ?????? ??
????????????? ?? ? ?? ????? ?????????? ?????? ?????????????? ?????? ??? ?????? ??
??????????, ??? ???? ??????????, ??? ?? ?????????? ??????, ?????????? ??? ??? ???
????? ?????????? ??? ?? ?????? ?????? ?????????? ??? ??????, ??? ?? ?????? ?? ?????? ???
????? ?????????? ??? ?????????? ?????? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ??
????? ?????????? ??????????????», ??? ?? ????? ?????????????? ??? ????? 1, ??? 1, ???
????? ?????? ?????? 86/560/???, ??? ???????????, ??? 17?? ?????? 1986, ??? ??
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?? ?????? ?????? ???
????????? – ?????? ?????????? ??? ?????? ?????????????? ?????? ?????? ?????????????? ???
????? ??? ??? ?????? ?????????????? ?? ?????? ??? ?????? ??? ?????????? (3).

II – ?????? ???????

A – ?? ?????????? ?????????? ??????

1. ? ??? ?????? 77/388/???, ??? 17?? ?????? 1977, ??? ??????????????
??? ?????????? ??? ?????? ?????, ??? ?????????? ?? ??? ?????? ?????? ?????? – ???
????????? ??? ?????? ?????????????? ?????: ?????????? ?????????? ??? (???: ????: ??? ??????)
(4))

6. ??? ?? ?????? 4, ?????????? 1 ?? 2, ??? ?????? ?????? 77/388/???:

«1. ?????????? ?? “????????? ??? ??????” ?????????? ?????, ??? ?????? ??????????
??? ?? ?????????? ???, ??? ?? ?????? ?????????? ?????????????? ??? ??????????
????? ?????????? 2, ?????????? ??? ?????????? ?????? ??? ?????? ??? ?????????????? ???
????????????? ???.

2. ?????????? ??????????????, ??? ?? ?????? ??? ?????? ??? ?????????? 1, ??? ?????? ??? ??
????????????? ??? ??????????, ??? ?????? ? ?? ?????????? ??????????,
????????????? ??? ?? ?????????????? ?????? ??? ?????????? ?????????????? ???
????? ??? ?? ?????????????? ??? ?????????? ?????? ??? ?????????? ??? ?????????????? ???
????? [...].»

7. ??? ?? ?????? 17, ?????????? 2 ?? 4, ??? ?? ?????? ??????, ??? ?????? ??? ??
????? ??? ?????? ??? ?? ?????????? ?????????? (5):

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

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

[...]

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

?????? ???? ?? ???? ???? ???? ?????????? ???? ?????????????????? ??? ?? ???? ??????????????????;.

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

[...]

4. ?????????? ??? ????? ?????????????? ??? ????? ?? ?????????? ??? ?????? 3
???????:

– ????? ??? ?????????????? ????, ???, ???, ???, ???, ?????, ?????????????????? ???, ?????????????? ???
?????, ???, ??, ???, ?????, ?????, ?????, ???, ???, ?????????????? ?????????? ???, ???, ??
????????? ???, ???, ???, ?????, 79/1072/???, [...],

– ????? ??? ?????????????? ????? ??? ????? ??? ????? ?????? ?????????????????? ??? ?????? ???
???????????, ???????? ?? ??? ?????????????? ?????????? ??? ?????????????? ??? ??? ??? ?????
86/560/??? [...].

2. ? ?????? ?????? 79/1072/??? ??? ???????????, ??? 6?? ??????????? 1979, ???
????????????? ??? ??????????? ??? ?????? ?????? ??? ?????? ?? ??? ?????? ??????
????????? – ?????? ?????????? ??? ?????? ?????????????? ?????? ?????? ?????? ?????????????? ???
????? ?? ?????? ??? ?????? ?????????????? ??? ?????????? ??? ?????? (??? ????: ????
?????)

8. ??? ?????? 1 ??? ?? ??? ?????? ?????????? ????:

«???? ??? ?????????? ??? ?????????? ????????, ?????????? ?? ?????????????? ??? ???? ??? ??
????????????? ??? ?????????? ??? ?????? ? ?????????????? ? ?????????????? ??? ???? 4,
????????? 1, ??? ?????? 77/388/???, ? ?????? ??? ?????????? ??? ?????????? ???
????????????? ??? ?????? 7, ?????????? 1, ?????? ??????, ?????? ??? ?????? ??????????,
??? ??? ??? ??? ??? ??? ??? ??? ??? ??? ?????????????? ??? ?????????????? ??? ???
????? ?????????? ?????????? ??? ?????????????? ??? ?????????????? ???, ?????????? ??? ?????? ?????? ??? ???? ?
????? ?????? ??????????????, ??? ?????????? ? ?? ?????? ?????????? ??? ??? ???? ? ?????? ???
????????? ??? ??? ??? ?????????? ??? ?????? ?? ?????????? ?????? ? ?? ?????? ?????????? ???
????????? ??? ?????? ?????????? ??? ?????? ???, ??????????:

?) ??? ??????? ?????????? ??? ??? ?????????????? ???????? ?????????? ??? ??? ?????? ???
????????? ?????????? ?? ??? ?????? ?????????????? ???????? ??? ?????? 14, ?????????? 1,
????????? ?, ??? ?????? 15 ? ??? ?????? 16, ?????????? 1, ?????? ?, ? ??? ?, ??? ??????
77/388/???

[...]»

9. ????? ?? ?????? 2 ??? ?? ????? ????????:

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

10. ??? ?????? 3 ??? ?????? ??????? ?????????? ????:

«???? ?? ?????? ??????????? ??? ?????????????? ??? ???, ??? ??????????? ??? ?????? 2, ?
?????? ??? ??????????????? ??? ????? ?????????? ?????? ?????? ? ?????? ??????????
?????????? ?? ??????????? ??? ?????????? ??? ??????, ??????:

[...]

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

[...]»

11. ??? ?????? 5 ??????? ???:

«??? ??? ?????? ??? ??????? ??? ???????, ?? ?????????? ??? ?????? ?????????? ??? ??????
?????????? ??? ?????? ??? ?????? 17 ??? ?????? 77/388/???, ??? ??? ?????? ??????????? ???
????? ??? ?????? ??? ??????? ??? ????????. [...]»

12. ??? ?????? 6 ??? ?????? ??????? ??? ??????? ???:

«?? ??? ?????? ??? ??????? ?? ?????????? ??? ?????? ?????????????? ??? ?????? ??? ?????? 2,
????? ??? ??????????? ??? ?????????????? ??? ?????? 3 ??? 4, ??? ?????? ?????????? ??? ??????
??????????, ?? ??????? ???????????, ??? ??????? ??? ?????????? ??? ?????????? ???????????
?????????? ?? ?????????? ??? ??????? ??? ?????????? ??? ?????????? ????????????.»

13. ??? ?????? 9, ??????? ????, ??? ?????? ??????? ??? ??????? ???:

«?? ??????????? ??? ?????? 3, ??????? ??, ??? ??? ?????? 4, ??????? ??, ???????????
??? ??????? ??? ??????? ??? ??????????? ??? ?????? ??? ?????? ?? ?????? ??????? ?? ??
?????????? ??? ??????? ??? ??????????».

3. ? ?????? ?????? 86/560/??? ??? ???????????, ??? 17?? ?????????? 1986, ??? ???
?????????? ??? ??????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? – ?????? ??????????? ??? ?????? ?????????????? ??? ?????? ?????? ?????? ?????????????? ???
???? ??? ??? ?????? ?????????????? ?? ?????? ??? ?????????? (??? ????: ?????? ????
?????)

14. ??? ?? ?????? 1 ??? ??????? ????:

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

1) ?? «?????????? ??? ?????? ??? ?????? ??? ?????? ?????????????? ??? ?????? ???
??????????», ? ??????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 4, ?????????? 1, ???
?????? 77/388/??? ? ??????, ??? ?? ??????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????
?????????? 1, ??? ??????? ????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????? ??? ???????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?? ????????, ???, ?????? ?????????? ?????? ? ?????? ?????????? ?????? ??? ?????? ??? ??????
????? ??????? ???, ??? ? ??????, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ?????? ?????? ? ?????? ?????????? ??? ?? ?????? ??? ?????? ???
???? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? 2, ?? ??? ????????:

?) ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???
????????? ??? ???????, ??? ?????????????? ??? ?????? 14, ?????????? 1, ??????

??, ??? ?????? 15 ? ??? ?????? 16, ?????????? 1, ?????? ?, ? ??? ? ??? ?????? 77/388/??? [...]».

15. ????? ?? ?????? 2 ??? ??????? ??????? ????????

«1. ??? ?????????????? ??? ?????? 3 ??? 4, ??? ?????? ?????? ?????? ?????????????? ?? ???
????????????? ??? ?????? ??? ?????? ?????? ?????????????????? ??? ?????? ??? ??????????????, ??? ???
????? ??? ?????????? ??????????, ??? ??? ?????? ?????????????? ?????? ?? ??? ??? ??????
????????????? ?? ??? ?????????? ??? ??? ?????? ?????????? ? ?? ??????? ??? ??? ??? ??????
????????? ??? ?????????? ??? ?????? ??? ?????? ?????????????? ??? ???, ? ?? ??? ??? ??????
???? ?????????????? ? ?????????? ?????? ??? ???, ??? ?????? ??? ?????? ??? ?? ?????? ??? ?? ??????????
????? ?????????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?? ??????????
????? ?????????????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??? ??? 17,
????????? 3, ?????????? ?? ??? ?, ??? ?????? 77/388/??? ? ??? ?????? ?????????? ??? ??????
????????? ??? ?????? 1, ?????? 1, ?????????? ??, ??? ?????????? ??????.

2. ?????????????????????????? ?? ??????? ?? ?????????????????? ??? ?????????????????? ??? ?????????????????? ???
????????????? 1 ?? ?????????? ?????????? ?????????????????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??????????.

[...]»

16. ????? ?? ?????? 4 ??? ?????? ????????

«1. ??? ????? ????????, ?? ?????????? ????????, ?? ?????????? ?????????? ??????????????????
?????? ? ? ? ???? 17 ??? ?????? 77/388/???, ??? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????.

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

[...] »

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

17. ????? ?? ??????????? ??? ?????? 18, ??????????? 9, ??? ?????? ??? 1993 ??? ?? ?????
????????????? ??? (Umsatzsteuergesetz 1993, ??? ????: UStG) (6) ?? ?????????? ?? ???
????????? ??? ?????? 59 ??? ?????????? ?????????? ??? ?? ??? ????? ??????, ?????? ??? 1993
(Umsatzsteuergesetz-Durchfahrungsverordnung 1993, ??? ????: UStDV) (7), ?? ??????????
???? ??? ?? ?????? ??? ????? ?????????????? ??? ?????? ??? ?????????? ??? ?????
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ???
??? ?????? ???????.

18. ? ?????????? ???????? Planzer Luxembourg Sàrl (??? ????: Planzer Luxembourg) ??? ?? ?? ?? ?? Frisange (?????????????). ?????????? ?? ??????? ?????? ? ?????? Planzer Transport AG, ? ??? ?? ?????? ?????? ?????? ??? Dietikon (????????).

19. ???? ??? Planzer Luxembourg ? Henri Deltgen ?????????????? ??? ?????????
Helvetia House, ? ????? ?????????? ??? Planzer Luxembourg ??? ?????? ??? ? ??????????
????????????? ??? ? ?????? ??? . ?? ?????????? ??? ?????????? ?????? ??? Planzer
Luxembourg, ? H. Deltgen ?????? ??? ?????? ?????? ?????? ??? ?? ?????? ??? ?? ???
?????????. ?????????? ??? Planzer Luxembourg ??? ??? ?????????? ??? Planzer Transport
AG, ??? ??? ?????? ? ??? ?????? ??? ?????? ??? ?????? ??? ? ?????? ??? ??????. ???

?????????? ??? Planzer Luxembourg ????? ??? ??? ????? ??? ?????? 13 ????????, ?????? ???
????? ??? ????? ?????????? ?????? ?????? ?????????? ??????????.

21. ??? ?????????????? ??? ????? ?????????? ??? ? Planzer Luxembourg ?????????? ??? ???.
??? ??????? ??? ????? ?????????????? ??? ?????????? ??? ?????? ??? ??????????????.

22. ???????, ??????? ?????????????? ??? ?? ??????? ??? ?? ?????????? ?????????????? ??????????????
????????? ??? ?? ?????? ?????? ?????? ?????? ? Planzer Luxembourg ??? ???????
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? , ? ??????????
????????? ??? ?????? ??? ?????????? ?? ?????????? ??? ?? ??? ?????? ?????? ??? ?????????? ??? ?????????? ??? ??
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ?????????? ??? ?? ?????? ??? ?????? ???
????????? ??? ?????????? ??????????.

23. ????????, ? ????????, ?????????? ?????? ??? ?????? ?????? ??? ?????????? ??? ??????????
??? ?????? ??? ?? ???? 4, ?????????? 2, ??? ?????? ?????? ?????? ???, ??????????
?? ????? 18, ?????????? 9, ??? UStG, ?????????? ??? ?????????? ??? ??? ??? ???
????????? ??? ??? ?????? ?????? ?????? ?????? ?????????????? ??? ??? ??? ???
????????????? ??? ?????? ??? ??????.

24. ? Planzer Luxembourg ??????? ?????????????? ?????????????? ??? ?? ???? ????? ??????????.
?????? ?????? ??? ?????????????? ?????????????? ??? ?????????????? ??? ?????????????? ??????????
?????, ?? ????? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????-
????????????????? ??? ?????????? ??? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????????? ??? ?????????? ??? ??????. ?????????? ?????? ?? ??????????
?????????????: ?? ??? ?????????????? ???, ??? ? ?. Deltgen ??? ??? ????? ?????????? ??? ??????
???? ??? ?? ?????????? ??? ?????????? ??? ?????? ?? ?????????? ??? ?????????, ??????? ???
????????????? ??? ??? ???????????. ?????? ?????????? ?????????? ?? ?????????? ??? ?????????? ???
?? ?????? ??? ??? ????. ?????????? ?????????? ????, ??? ?????????? ??? ?? ?
????????????? ??? ???????????. ??? ?? ?????????? ?????????? ?????????? ??? ?????????? ???
????????????? ??? ?????????? ?????? ??? ?????????? ?????????? ??? ?????????? ??? ?? ?
????????????? ??? ??????????.

25. ?? ?????????? ?? ??????? ?? 1? ?????? 1999, ? ?????? ?????????? ??????????
????? ??????? ?? ???????, ???????, ??????? ???? ? ????? ?????????? ??? ??????
??? ??????? ?????????? ?? ?????? ?? ?????? ?? ???? ??????????.

26. ? Planzer Luxembourq ??????? ?????????? ?????? ??? ?????? ?????? ?????????????????? ??????????????.

27. ?? ??????? ?? 26?? ?????????? 2001, ?? Finanzgericht Köln ????? ????? ?? ??
????????, ????????? ?? ?? ? ?????????????? ????? ? ????? ?????????????? ?? ?????????? ??
????????????? ? Planzer Luxembourg ??? ?? ??????? ??? ?????????? ???????? ??? ??? ? ???
??? Planzer Luxembourg ?????????? ????? ?? ??? ?? ????? ?????? ?????.

28. ?? ??????? ?? 22?? ?? 2003, ?? Bundesfinanzhof ?????????? ?? ?????????? ?? ??????
?? ?????????? ?? ?????????? ?? ?????????? ?? Finanzgericht Köln, ?????????? ?? ??

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

29. ??? ?????? ??? ?????? ?????? ?????? ?? Finanzgericht Köln ?????? ??? ?? ??????
????? ??? ?? ??? ?????? ?????? ?????? ?? ? ?????? Planzer Luxembourg ???
????????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ???
????? ????, ?????????? ??? ??? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ???
????????? ??? ?? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ???
?? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
Planzer Luxembourg ??? ?? ??? ?????? ?????? ??? ?????? ?? ? ?????? ??? ?????? ???
????????? ??? ??? ?????? ?????? ?? Finanzgericht Köln ?????? ??? ?? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? «????? ??? ?????? ??? ?????? ???» ??? ?????? ???
1, ??? 1, ??? ?????? ??? ?????? ???, ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ??? ?????? ??? ?????? ??? (????? ??? ?????? ???) ? ??? ?????? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (????
????? ???).).

30. ??? ???????, ?? Finanzgericht Köln ?????? ?? ??? ?????? ??? ?????? ???
????????? ?????????? ??????:

«1. ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
B ??? ?????? ??? ?????? ??? ?????? ??? /??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
;»

2. ?? ?????? ??? ?????? ??? ?????? 1:

????? ? ?????? «????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
1, ??? 1, ??? ?????? ??? ?????? ???, ?? ?????? ??? ?????? ???
????? ? ?????? ??? ?????? ??? ?????? ??? ?????? ???;

? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?? ?????? ??? ??????;»

? ?? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?? ? ?????? ??? ?????? ??? ?????? ??? ?????? ???;»

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

31. ??? ?????? ?????????? ??? ?????? ? Planzer Luxembourg, ?? ?????????? ???
?????????, ??? ??????, ??? ?????? ??? ??? ??? ?????????? ???, ??? ??? ? ?????? ???
????????? ??? ??????.

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

32. ??? ??? Planzer Luxembourg ??? ??? ?????? ??? ?????? ???, ??? ???

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

33. ? Planzer Luxembourg ?????????? ?? ??? ???? ?????????????????????? ??? ??? ??? ??? ?
?? ?????????????? ?????????????? ?????????????? ?????? ? ?????????????? ?????????????? ??????
????????? ??? ???? ??? ?????? ??? ?????????????? ??? ??? ?????? ?? ?????? ?????????? ?? ??????????????.
?? ?? ?????????? ??? ?????? ?????? ?? ?????? ??? ?????????????????? ??? ??? ?????? ?????????? ???
????? ?????? ?????? ?????????????? ??? ?????? ??? ?????????????? ??? ?????? ?????? ?????????? ???
??? ?????????????? ??? ?????????????? ??? ?????????????? ??? ?????????????? ??? ?????????? ???

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

35. ? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? Planzer Luxembourg
??? ??? ?????????? ??? ???????????. ?????????? ??? ? ?????? ?????? ?????????? ???
????????? ??? ?????????? ??? ?????????? ?????????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????????? ??? ?????????? ?????????? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ???, ?????????? ???
????? ??? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ??? ?????? ?????????? ??? ?????? ?? ?????????? ?? ??? ?????? ???
????? ??? ?????? ??? ?????????? ??? ?????? ?? 1798/2003 ??? ?????? (???:
????????? 1798/2003) (8). ? ?????? ?????????? ??? ? ?????? ?????? ??? ?????? ??
????????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? ?????? ???, ?? ??
????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? ?????? ??? ?????? ???
?? ??? ?? ??????????, ?? ??? ?????? ??? ?????? ??? ?? ?????? ?????? ??? ?????? ???
????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??????.

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

37. ? ??????? ?????????? ?????????? ???, ?? ?? ?????? ?????? ??? ?????????? ??
????????? ??? ?????? ??? ?????? ?????? ??? ?? ? ?????? ?????????? ???
????????????? ??? ?????? ??? ?????? ?????? ??????, ?? ?????? ?? ??? ?? ????
????????? ?? ?????? ??? ?????? ?????????????? ??? ?????? ?????? ??? ?? ????
?????????????. ??????, ??? ?????? ?????????? ?? ?????? ?? ?????? ??? ?????? ???
????? ?????? ??? ?? ?????? ?????? ?? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ?????? ?????? (9).

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

38. ? Planzer Luxembourg ??????? ??? ? ???? ??? ?????????????? ?????????????????? ??? ??
?????? ??? ?????? 1, ?????? 1, ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????????????? ???? ??? ??????. ??? ?????????? ??? ?? ?????? ??? ?? ?????? ??? ??
????? ????, ????, ?? ???? ??? ?????????? ?????????????? ?? ?????? ??? ?? ?????? ??? ??

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

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

40. ?? ?????????? ??? ??????????, ??? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ??
????? «????? ?? ?????????? ?????? ??????» ??? «????????? ?????? ?????» ??? ?????? ??
????????? ?? ?????????? ?? ?????? ??? ?????????? ?? ?????? ?????? ?? ?????? ?? ?? ?????? 9,
????????? 1, ??? ?????? ?????? ??? (10), ?????? ?? ??? ?????? ?? ?????? «????? ??
????????? ??????» ??? «????? ?????? ??????» ??? ?????????? ?????? ???
????? 1, ?????? 1, ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? ??????.

41. ? ?????????? ?????????? ?????????? ?????? ??? 3, ?????????? 1, ???
????????? (?) 1346/2000 ??? ??????????, ??? 29?? ?????? 2000, ??? ???? ??????????
????????? (11) (??? ????: ?????????? 1346/2000). ??? ???? ?? ??? ?????? ???, ??? ??
????????? ?????????? ????, ??? ?????? ?????????? ??? ?????????, ??? ?????? ??? ??????
????????? ?????? ??? ?????? ??? ?????? ?????? ??????.

42. ? ?????????? ?????????? ?????????? ???, ??? ?????????? ?????? ???
????????? ??? ?? Finanzgericht Köln, ? Planzer Luxembourg ??? ?????????? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????? ???, ??? ???? ??? ???? ??? ?????? ??? ?????????? ???
????????? ????. ??? ?? ?????????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?? ??????????
?????????, ??? ?????? ??? ? ?? ??? ?????? ??? ?????? ??? ?????? ?????? ??????????
????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? (?????????). ?
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? (?????) ??? ?????? ???
?????????, ??? ?????? ??? ? ?????? ??? ?????? ??? ?????? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????.

43. ??? ??????, ? ?????? ?????? ?????????? ?????? ?? ?????? ? ?????? ??? ? ??????
«????? ??? ?????????? ??????» «????????? ??? ???? ?????? ?????? ??? ????»,
????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ????»,
????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??????.

44. ??? ?? ?????? ??????????, ?? ?????? ?? ?????? ? ?????? ??? ? ?????? «????? ??
????????? ??????» ?????? «????? ??? ?????? ?????? ??? ???? ?? ?????? ??? ???? ??
????? ??? ?? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ???
? ??? ?? ?????? ??? ?????? ??? ??????».

45. ? ?????? ?????? ?????? ??? ?????? ?? ?????? ? ?????? ??? ? ?????? ??? «????? ??
????????? ??????» ?????? ? ???, ?????? ?????? ?????? ??? ???? ?? ?????? ??? ???? ??
????????? ? ??? ?????? ??????, ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

46. ? ??????, ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ???? ?? ?????? ??? ???? ??
??????, ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ??????, ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? (Planzer Luxembourg), ??? ??? ???? ?????? ??? ???? ??
?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???.

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

V – ????????

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

47. ?????????? ???, ??? ?? ?????? 3, ?????????? ??, ??? ?????? ?????????, ??
????????????? ?????????? «??? ?? ?????? ??? ?????? ??? ?????? ?????? ?????????????? ???
[? ?????????? ??? ???]», ?? ?????? ??? ?? ??? ?????? ?????????? ?????? ??? ?????? ???
????????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ?????? ???.

48. ??????, ?? ?????????????? ??? ?????????????? ???, ??? ?????? ?????????? ???
????????? ??? ?? ??? ??????????????, ? ?????????????? «????????? ??? ???
????????????? ???», ??? ?? ??? ??? ? ?????????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ?????? ??????. ???????, ?????? ?????????? ??
?????????????, ? ?????? ?????? ??? ?????? ?? ?????????? ?? ?????? ?????? ??? ?????? ???
????????? ??? ?????????? ????. ???????, ?? ?????????????? ?????? ?????? ??? ?????? ???
??? ?????? ?????????? ??? ?????? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ???
?????? ??????.

49. ??????, ?????? ??????????????, ??? ?? ?????? ?????? ???, ? ??? ?????? ???
????????? ??? ? ??? ?????? ?????? ?? ??????????????. ?????? ?????? ??? ? ?? ??? ???
??? ?????? ?? ?????????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ???,
????? ??? ??? ??? ?????? ??? ?????? ??????????.

50. ?????? ??? ?????? ?? ?????????? ??? ?????? ?? ?????????? ??? ?????? ?????????????? ???
????, ??????, ??? ?????? ??? ?????? ??? ?????????? ?????????????? (12), ?? ??????
????? ??? ?????? ?????????????? ??? ?????? ?????? ??? ?????? ??? ??????????, ???
????????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? (13).

51. ??????, ?????? ?????????? ?? ?????????? ??? ?????? ??? 1? ?????????? 1993, ???
?? ?????????? ?? ?????? ?? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
?? ?????????? ?? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????????? ????, ? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????? (14).

52. ??? ?????? ?? ?????? ?? ?????????? ?? ?????????? ???, ??? ? ?????? ??????
?????????, ??? ?????????? ??? ?????? ?????? ?????????? ??? ??????, ?? ?????????? ???
????? «????? ??? ?????????? ?????????? ??? ?????? ?????? ??? ?????? ??? ??????, ??? ?????? ???
??? ??????????», ?????????? ????, ??? ?????????? ??? ?????? ?????? ?????? ??? ??????, ??
????????????? «????????? ??? ?????? ?????????? ??? ??????????».

53. ??? ?????? ???, ? ?????? ?????? ?????????? ??? ?????? ??? ?????? 6 ??? ?????? ??
????????? ??? ?????? ?????? «?? ??????, ?? ?????? ?????????, ??? ?????? ??? ?????? ???
????????? ?????????? ??? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???».

55. ? ? ?????? ? ?????????????????? ? ??????????????, ??? ? ? ?????????????? ??? ??????????????,
??? ?????????? ??? ?? ???????, ??? ?????????????? ??? ?? ??? ????? ??????????, ??????? ??? ??
????? ?????? ?? ??????? ??? ?? ??? ?????????? ?????????? ??????????, ??????????
??? ?? ??????? ??? ?????????? ??? ?????????? ??????????.

56. ?????????????? 1798/2003 ?????????? ??? ?????????????? ??? ??????????????. ??? ?
?????? ?????????????? ??? ??????? ?????????? ??? ? ??????? ?????????????? ???
????????????? ??? ????? ?? ?????????? ??? ?????? ??? ?????????? ?? ?????????? ??? ???
????????????? ??? ?? ?????????? ?????????????? ??? ?????? ??? ?????????? ??? ?????? ???
?????????????. ??? ??????????, ? ??????? ??? ?????????? ?? ?????????? ??? ?????????? ???
?????. ? ?????????????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??????????
????? ??? ?????????? ??? ?????? ??? ?????????????? ?? ????? ?????? ??? ??? ??????
?? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????????? ???.

57. ????? ??????????? ????? ?????? ??????????????? ??? ??????, ? ?????????????? 1798/2003
????????? ??? «????????? ????? ?????? ?????? ?????????????? ?????????????? ?????????????? ?????? ???
?????? ??????, ??????? ?? ? ? ?????? ?? ?????????????? ?????? ??? ?????? ?????? ?????? ?????????? ??
????????? ?????????? ?????????? ??? ?? ?????????????? ?? ??? ????? ??????????, ??? ??
?????????????? ? ??? ????? ??????? ??? ??? ????? ?????????? ?????? ??? ?????? ?????????? ??????????,
???? ?????????????? ??????? ??? ?????? ??? ????? ?????????? ??????» (15).

58. ? «?????? ?????????? ??????????» ?????????????? ??? ?????????? ?????????????? ???
????????? ??? ?????? ??????????????, ???' ??? ??? ??? ?????????? ?????????? ?????????? ??
????????? ??????????, ??? ??? ?? ??????????, ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??????????
??? ??? ?????????? ??? ??? ??????. ??????, ? ?????????? ?????????? ??? ?????? ?? ??????
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? (16).

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

60. ????????, ??? ?????? ??????? ?????????? ?? ?????? ? ?????????? ??? ?? ??????????????

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

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

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

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

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

61. ????????, ??? ?? ????????????, ???, ????????, ??? ?????????? ???, ??? ????????

??? ?????????????? ??? (18), ?????????? ??? ??????? ?????? ??? ?????? ???
????????????? ??? ?????? ??? ??????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ??????. ????????, ? ?????? ??? ?????????? ???
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? (19). ??????, ??????, ?? ?????????? ???, ?????? ?? ????
????????? ??? ?????????? ??? ?????? (20), ?????????? ??? ???? ?????? ???
???? ??? ?????? ?????? ?????? ?? ??? ?????? ??? ?????????? ??? ?????? ???
??? ?????? (21).

62. H ratio legis ??? ?????????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ?????? ??? ?????. ? ?????? ?????????? ???
????????? ?????? ??? ?????? ?????? ??? ?????. ? ?????????? ???
????????? ?????? ??? ?????? ??????, ??? ??? ??? ?????? ??? ??? ???
(22). ?? ?????????? ??? ?????? ?????? ?????? «? ?????????? ???
????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ?????????? ???
????????? ??? ?????? ???» (23).

63. ?????? ?????? ?? ?????????? ??? ?? ??? ??? «????????? ??????????» ???
????? ??? ?? ??????, ??? ?????????? ??? ??????, ??? ?????? ??? ?????????? ???
?????????, ??????, ?????, ??? ?????? ??? ?? 20?? ?????????? 1997 (24), ???, «????
????????? ? ?????? ?????????? ??? ?????? 32 ??? 34 ??? ?????? ??? (25),
????????? ?????? ??? ??? ??? ?????? ??? ?????? ?????????? ??? ???
????????? ??? ?????? ??? ??????????». .

64. ??? ??????, ? ??? ??? ?????? ??? ?????????? ??? ?????????? ?? ???
????????? ????. ??? ?????? ??? ?????? Berkholz ??? ??????????
??????, ? ?????? ?????? Mancini ?????? ???: «[?] ??? ??? “????? ???
????????? ?????????? [...] ??? ??? ?????? ??? ??? ?????? ??? ??????: ???,
?? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????» (26). ??????,
????? ?? ?????? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ??????, ?????????? ??
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ???.

65. ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ??????????, ?? ?????? ???
????????? ??? ?????? 9, ?????????? 1, ??? ??? ?????? ???, ?????? ?? ??????
????????? ??? ?????? «????? ??? ?????????? ??? ??????????». ? «????? ???
????????? ??????», ??? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? 1 ???
????? ?????? ??? ??? 1, ?????? 1, ??? ?????? ?????? ???, ??? ?? ???
????????? ??? ??? 9, ?????????? 1, ??? ?????? ??????, ?????? ??? ?????? ???
? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

66. ??????????????, ??? ?????????????? ??????? Berkholz, ?????????? ??? ? ?????? ???
???? ?????????????? ? ??????? ??? ?????????? ??? ?????? ??? ?????????????? ???
????????????????? ?????????? ?? ?????????? ?????????? ?????????? ?????????? ??? ?????? ? ??????????
??? ??????? ?????????? ?? ?????????? ?????????? ?????????? ??? ?????? ?????? ?? ??????????
????? ??? «? ?????????? ?????? ?????? ?????????? ??? ?????????? ?????????, ??? ?????? ??????
????????? ?????????? ??? ?????????? ??????????, ??? ?????? ?????????? ??? ?????? ?????? ???
????????? ?????????? ??? ??????????» (27).

67. ??? ?????????????? ?????? ARO Lease, ?????????? ?????? ???, ??? ? ??????
?????? ?? ??????? ??? ???????????, ??? ?????????? ??? ? ?????????? ??? ?????? ???
????? ??? ? ???????????????, ?? ?????? ??????? ??? ?????????? ??? ?????????????? ???
????, «????? ?????????? ?? ?????????? ?? ?????? ?????? ?? ?????? ??? ?????????? ??? ?????? ???
????? ??????????, ??? ??????? ?????????? ??? ?????????? ??????????, ??? ? ??????????
????? ? ?????????? ??? ?????? ?????????????? ?????????? (28)».

68. ??????, ?? ?? ?????? ?? ??? ?????? ??? ?????? ??? «????? ??? ?????????? ???
?????????????» ??? ??????? ??? ?????? 1, ?????? 1, ??? ?????? ?????? ???????, ???
?????? ? ??????? ??? ??????? ??? ?????????? ??? ?????????? ??? ?????? 9, ?????????? 1, ???
????? ???????, ??? ?????? ?????? ???????, ??? ?????????? ? ?????????, ??? ?????????? ? ?????????? ???????,
??? ?????????? ??? ?????????? ??? ?????????? 1346/2000 ??? ???? ??????????.
?????????????.

69. ??? ?????? 3, ?????????? 1, ??? ?? ?????? ?????????? ?????????? ??? «[?]?????? ??? ???
????? ??? ?????????? ?????????????? ??? ?????? ?? ?????????? ??? ??????? ?????? ???
????? ?????????? ?? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
?? ?????? ?????? ??????????, ??? ?????? ?????????? ??? ???????, ??? ?????? ??? ??????
????????????? ?????? ??? ?????? ??? ?????????? ?????? ». ???????, ? ?? ??? ?????????????? ???
????????? ?? ?????????? ??? ??? ?????????? ??? ?????????? ??? ??? ?? ?????? ???
????????? ??????????.

70. ? ?? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ? ?????????? ??? ?? ??????????.
?????????? ?? ??? ?????? ??? ? ?????????? ??? ?????? ?????????? ??? ?????? ? ???????????
????? ??? ?????? ?????? ??? ??? ?????????? ??? ?????? ??? ?????????? ??? ???????, ?? ???????????
?????? ??? ?? ??????? ?????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ? ?????????? ??? ???
????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
????. ?? ?????????? ??????????, ????, ???, ?????? ??? ?????? ??? ???
????????????? ??? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?
????????????? ??? ???, ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?
?? ?????????? ??? ?????? ??? ?????????? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? (29).

71. ???????, ?? ??? ?? «????? ??? ?????????? ??????????????» ???????, ???' ????, ?
?????????? ????. ????, ?????, ?????????? ??? ?????? ?????????? ???????????, ? ???????????
????? ?????? ?? ??????? ???????, ?????? ??? ?????????? ???????, ??? ?? ??? ??????????
????????????? ?????? ?? ??? ?????? ?????????? ?????????? ??? ?????? ??? ??????????
????????????? ??? ?????????? ???????, ?? ?????? ?? ?????????? ?????? ?? ???
????????????? ?????????? ?????????? ??? ?????? ?????????? ?????????? ??? ?????????? ???
??? ?????????? ?????????? ??????????.

72. ???????, ??? ?????? ?????? ?????? ?? ?????? ? ?????? ? ?????? «????? ???

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

73. ??????????, ??? ?? ???????? ??? ?? ?????? ??? Finanzgericht Köln
????? ?????????? ?? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???
????, ?????????? ??? ?????? ?????? ?????? , ?????? ?????? ?????? ??? ?????? ?????? ???
????? ?????? ??? ? ?????????? ??? ??? ? ??? ?????? ??? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ? ?????? ??? ?????? ??? ?????? ???
????????? ???.

74. ?? ?????? ??? ?????? ??? ?????? ???, ?????? ?????? ?? ?????? ?????? ??? ? ???
?? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ???, ?? ??? ?????? ???
????????? ??? ? ?????????? ?????????? ?????? ??? ?????? ???, ?????? ??? ?????? ???
??? ??? ?????? ?????? ??? ??? . ?? ??? ?????? , ?? ?????? ?????? ?????? ?????? ,
????????? ? ?????? ??? ? ?????? ?????? ?????? ??? ? ?????? ?????? ??? ?????? ?????? .

VI – ??????

75. ?????? ??? ?????????? , ?????? ??? ?????????? ?? ?????? ??? ?????? ???
????? ??? ?????? ??? Finanzgericht Köln:

«1) ?? ?????????? ??? ?????? ?? ?? ?????????? ??? ?????????? ??? ?????????? ? ??? ??????
????? ?????????? (????? 79/1072/??? ??? ?????? , ??? 6?? ?????? 1979,
????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? – ?????? ?????????? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ??????
????? ?? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????) ?? ?? ???
????????? ??? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???
????? ?????? ?????? ??? ??? ? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????? ???.

2) ? ?????? ??? «????? ??? ?????????? ??????????», ??? ?????? ??? ?????? 1,
????? 1, ??? ?????? ??? 86/560/??? ??? ?????? , ??? 17?? ??????
1986, ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? – ?????? ?????? ??? ?????? ?????????? ?????? ?????? ??? ??????
????????? ??? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? , ?????????? ?? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ??? ??? ?????? ??? ??? ?????? ?????????? ?????? . ? ?????? ??? ???,
????? ?????? ??? ?????? , ? ?????? ??? ?????? ?????? ??? ?????? ??? ??? ???
????????? .»

1 – ?????? ??? ??????????: ? ??????.

2 – ?? ????. ??? 09/001, ?. 111

3 – ?? L 326, ?. 40.

4 – ?? ??. ????. 09/001, ?. 49.

5 – ?????? 91/680/???, ??? ???????????, ??? 16?? ??????????? 1991, ??? ?? ??????????? ??? ?????? ??????????? ?????? ??????????? ?????? ??????????? ?????? ??????????? ?????? ?????? 77/388/???, (??. L 376, ?. 1).

6 – *BGB* 1. 1993, I, ?. 565 ??.

7 – *BGB* 1. 1993 I, ?. 600 ??.

8 – ?????????? (??) 1798/2003 ??? ???????????, ??? 7?? ?????????? 2003, ??? ?? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?????? (?? L 264, ?. 1).

9 – ??? ??????????? ???, ? ??????? ?????????? ??????????? ??? ?????????? (???) 218/92 ??? ???????????, ??? 27?? ?????????? 1992, ??????? ?? ?? ?????????? ??????????? ??? ?????? ??? ?????? ??? ?????? (???) (??. L 24, ?. 1). ??????, ? ?????????? ?????? ??? ?????? ?????? ???????????.

10 – ???????? ??? 4?? ??????? 1985, 168/84, Berkholz (?????? 1985, ?. 2251, ??????? 17 ??? 18), ??? 20?? ?????????? 1997, C-260/95, DFDS (?????? 1997, ?. I-1005) ??? ??? 17?? ??????? 1997, C-190/95, ARO Lease (?????? 1997, ?. I-4383, ????? 16).

11 – ?? L 160, ?. 1.

12 – ???. ?? ??????????? ??? 4 ??? ?????? ???????, ??? ??????? ? ??????? ??? ??????? ??? ??????? ??? ??????????? ??? ???.

13 – ??????, ?? ??????? «?????? ??? ??????????????».

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15 – ??., ??????????? ??? ??? ?????????? ??????????? ???????????, ?????, Terra Ben J.M., ??? Watte, Peter J., *European Tax Law*, ??????? ???????, Deventer, 2005, ?. 708 ??., Gormley, Laurence W., *EU Taxation Law*, Richmond 2005, ?. 11 ??., ??? Aronowitz, A.A. Laagland D.C.G. ??? Paulides G., *Value-added Tax Fraud in the European Union*, Kugler publications, ???????/???, ?????, 1996, ?. 19 ??.

16 – ???. Communier, J.-M., *Droit fiscal communautaire*, Bruylant, ???????, 2001, ?. 186.

17 – ???. Menjucq, M., «La notion de siège social: une unité introuvable en droit international et en droit communautaire», *Droit et actualité*, Études offertes à J. Béguin, ??????, 2005, ?. 499. ?? ??????? ?????? ??? ?????? ??? ?????? ??? ??? ?????????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 60, ?????????? 1, ??? ?????????? ?? 44/2001?? ???????????, ??? 22?? ?????????? 2000, ??? ?? ?????? ???????????, ??? ?????????? ??? ??? ?????? ?????? ?????????? ?? ?????? ??? ?????? ??? ?????? ?????? ???????, (??. L 12, ?. 1), ??????? ??? ?????? ?????? ??? «?????????» ??? ?????? ???????:

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

?) ??? ?????????? ??? ????,

?) ??? ??????? ??? ????????

?) ??? ??? ?????? ?????????? ???..»

18 – ??? ?????? ??? ??????? ???????????, ??????? ?? ?????????? ??????????? ???,
????????????? ????, ??? ??????? ?????????? ???????, ??? ?? ??? 1, ?????????? 1,
??? ?????? ??? ?????????? ??? ?????? (Körperschaftsteuergesetz), ? ??????????
????????? ??? ?????????? ??????? ?? ?????????????? ?? ??? ?? ?????? ??? ??????: ? ??? ?????? ???
(«Sitz»), ??? ???????????, ?????? ????, ??? ?? ?????????? ??? ?????? (????? 11 ???
????????? ??? Abgabenordnung), ? ??? ?????? «????? ?????????? ???
????????? ??????» («Ort der Geschäftsleitung») ??? ??????? ??? ?????? 10 ???
????????? ????. ??????? ?? ?? ??????? ?????? ??' ??? ?????????? ??? ?????? ???
? ?????????? («Mittelpunkt der geschäftlichen Oberleitung»), ?????? ? ?????? ??? ??????????
?? ?????????? ?????? [BFH-Urteil 1998 (I R 138/97), *BStBl.* 1999 II, ?. 437]. ??? ??????
????? ??? ?????????? ??? ????? ?????????? ??? ??????????: «? ?????? ??????
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ??????. ?
????????? ??? ?? ?????? ?? ?????? ??? ?????? ??????: ??? ?? ??? ?????? ??? ?????? ???
????????? ?????? ? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????» [????? 218
A, ?????? 1, ??? Code général des impôts (????? ?????????? ?????)]. ??? ??????
??????, ? ?????? ??????? ??? ?????? ???????????????, ??? ?? ??? 11 ??? ??????
????????? ?????????? ??? ?????? ?????? (Income and Corporation Taxes Act 1988), ??
????? ??? ??????: ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??' ??? ?????? ??????
????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? («place of central
management and control»).

19 – ?????????? ????, ??? ??????? ?????? ??? ?????? ??? ???????, ??? ?? ??? 5 ??? ???
????? ??????? ?????? (Aktiengesetz) ??? ?? 4 bis ??? ?????? ??? ??????
????????? ??? (GmbHG), ?? ?????? ??? ?????? ?????? ? ?????????? ??? ??
????????? ??? ?????? ?????????? ??? ?????? ??? ?? ?????? ??? ?????????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ??????
?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ?? ?????????? ????. ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?????? ??? ?????????? ??? ?????? ??? «????????? ???» («siège
statutaire») [Code de commerce (????????? ??????), ??? L 210-3, ?????????? 2, Code civil
(?????? ??????), ??? 1837], «????????? ???» («siège social») [?., Code de commerce,
??? L 210-3, ??? L 221-14, L 225-23, L 225-103, ??? Code civil, ??? 1835], «?????????
??? ?????? ???» [????????? 67-236, 23 ?????? 1967, ??? 59, 123 ??? 130] ? ???
«????? ??? ??????» («siège de la société») [????????? ??? 23 ?????? 1967, ??? 3, 206-6, 219,
231 ??? 295]. ??? ?????? ??? ??????, ? ?????? ??? «????????? ???» ???
????? ??? ?????? ?????????? ?? ??? «registered office». ??? ?? ??? 9, ??????????
2, ??? ?????? ??? ?????? (Companies Act 2006), ??? ?????????? ??? ?????? ??? ??????
????????? «?????????», ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? . ? ?? ??? ?????? «?????????» ??????? ??? ??????.

20 – ??? ?????? ??? 5?? ??????? 2002, ??? Überseering BV ??? Nordic Construction
Company Baumanagement GmbH (NCC), C-208/00, ??? 82, ?? ?????????? ?????? ???
????? ?????? ??? ?????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ??????

22 – ????????????, ?? ?????????? ?????? ?????????? ?????? ??????, ??????? ? ? ???????
?????? ??? ????? ?????? ?????? ?????? ?????????????? ??? ?? ?????????? ?? ??????
????????? «?????????????????» («Briefkastengesellschaft» ??? ??????????, «Družba poštni
nabiralnik» ??? ??????????), ?????????? ?? ?????????? ?? ?????????? ?? ??????????????????
?? ?? ??? ????? ???????? ?? ??? ????? ?????????????? ?? ?????????? ?????????????? ??????????
????? ??? ? ???.

23 – ??????? ?? 21?? ??????????? 2006, C-255/02, Halifax (?????? 2006, ?. I-1609, ??? 76). ??., ??????, ??? ???? ??? ?????????? ??????? ??? ???????, ??? ??????? ??? 12?? ??????????? 2006, C?196/04, Cadbury Schweppes ??? Commissioners of Inland Revenue (?????? 2006, ?. I-7995), ????? 51: «[...] ??? ?????? ?????? ??????????? ??? ?????????? ?????????????? ??????? ?? ?????????????? ?????? ??? ?????????????? ?????? ?????? ?????????? ?????????????? ?????????????? ?????????? ?????? ??? ?????????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ».

24 – C?260/95, Commissioners of Customs and Excise ??? DFDS (?????? 1997, ?. I-1005, ????. 23).

25 – ?????????? ??? ??????? ?????????? La Pergola, ??? ?????????????? ??? 16 ??????????
1997 ??? ?????? C?260/95 (?????? 1997, ?. I-1005), ?????? 32: «?? ?????? ??? ??
?????? ?? ?????????? ?????????? ??? ?? ?????? ?????? ??? ?????? ??????????».

26 – ?????????? ??? 6?? ??????? 1985 ??? ??????? 168/84, Berkholtz ??? Finanzamt Hamburg-Mitte-Altstadt (?????? 1985, ?. 2252, ????? 2).

27- ??????? 17 ??? 18.

28 – ????? 16.

29 – ??????? ?? 2?? ????? 2006, C?341/04, Eurofood IFSC (?????? 2006, ?. I?3813).