

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

JULIANE KOKOTT

??? 20?? ???? 2015 (1)

?????? C?595/13

Staatssecretaris van Financiën

????

Fiscale Eenheid X N.V. c.s.

[?????? ??? Hoge Raad der Nederlanden (???? ???) ??? ??? ?????? ?????????????? ???]
[????????]

«?????????? ?????????? — ??? ?????????????? ??? — ??? 13, B, ????????? ??, ?????
6, ??? ????? ?????? 77/388/??? — ??????? ??? ?????????????? ?????????? ?????????? —
???????? ?? ?????????????? ?????????? ?????????? — ?????????? ?????????????? ?????????? ??
????????? ??? ?????????? ??????????»

I – ????????

1. ??? ??????? ??? ??????? ??? ?????? ??? ?????? ??? ?????? ??? 40 ??? ??????
????????????? ??? ?? ?????????? ?????????????? ??????????, ??? ?????? ??? ??????
????????????? ?? ?????????? (2). ??????, ?????? ??? ?????????? ??? ??????????, ??
??? ??? ????? ?????? ?????????????? ?????????? ??? ??? ?????, ?? ?????????? ?? ???
???? ?????? ? ??????? ??? ?????? ?????? ?????????? ?????????? ?????????? ?? ?????? —??
???? ?? ??????? ?????.

II – ?????? ???????

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

2. ??? ?????? ??? ??????? ??? ?? ?????? ??? ?????? ??? ?????? ??????????, ?? ??????????????
????????? ??? ??????? ??? ?????? ?????????? ?? ??? ??? ?????????????? ??? ?????? ???
77/388/??? ??? ??????????, ??? 17?? ??? 1977, ??? ?????????????? ??? ?????????? ???
?????? ?????? ?? ??????? ?? ??? ?????? ?????? ?????? ?????? — ??? ?????? ?????? ???
????????????? ????: ?????????? ?????????? ??? (3), ??? ?????? ?? 1996 (???: ????: ???
?????).

3. ??? ?? ????? 2, ?????? 1, ??? ?????? ???????, ??? ??? ???????????, ?????? ???
«?? ?????? ?????????? ??? ?????????????? ?? ??? ?????????? ?????? ??? ?????????? ???
????? ??? ?????????? ???, ??? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ???

4. ?? ?????? 13, ?, ????????, ?, ?????? 6, ??? ?????? ??????? ?????????? ??? ???? ?? ?
????? ??? ???? ?????????? ??? ?????????? ???:

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

5. ? ??????? ??? ?????????? ??? ?????? 135, ?????????? 1, ??????? ??, ??? ??????
2006/112/?? ??? ??????????, ??? 28?? ?????????? 2006, ??????? ?? ?? ?????? ??????? ???
????????????? ??? (4). ???????, ?????? ?? ?????? ?????? ??? ?????????? ???
? ?????????? ??? ?????????? ?????? ?? ?? ?????????? ?????? ??? ?????? ??? ????????

6. ? ?????????? ??? ??? ?????, ??? ??? ?????????? ?? ?????? 11, ?????????? 1,
????????? i, ?????? 3, ??? Wet op de omzetbelasting (????? ??? ?? ?????? ?????? ??????)
??? 1968, ?????? ??? ? ?????????? ?????????? ?????????? ??? ?????????? ???
????????? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ?????????? ???
????????? ??? ??? ??? ?????? ???????.

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

7. ?? ?????? ?????????? ??? ?????? 85/611/???, ??? 20?? ?????????? 1985, ??? ??
????????? ??? ??????????, ?????????? ??? ?????????? ?????? ?????????? ?????????? ??
????????? ?????????? ?????????? ??? ?????? (?????) (5), ?? ?????? ??
1996 (??? ????: ?????? ???), ?????????????? ??? ?????? ?????????????? ?????? ??? ?? ???
?????? ?? ????????:

«[...] ? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????????? ?? ??????????
????? ?????????? ?????????? ??????????, ?????? ??? “????????” ?????, ?? ??????
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??? ??????
????????? ?????? ??? ?????? ??? ?????? ??? [...]? ? ?????? ??? ??????????
????????? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??????
????????? ?? ?????? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??? [...] ??????, ??
????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? [...]»

8. ? ?????? 2011/61/?? ?????? ?? ??? ?????????????? ?????????? ??????????????
????????? (6) (??? ????: ?????? ???) ????, ?????? ?? ?? ??? 1, ?? ??? ????????????:

«? ?????? ?????? ?????? ?????????? ??? ?????? ?????? ?????????? ??????, ?????? ?????? ?????????? ???
????????? ??? ?????????? ?????? ?????????? ?????????? ?????????? (?????) ???
????????????? ???/? ?????? ?????? ?????? ?????????? ?????????? ?????????? ?????????? ???
????????? (???) ??? ?????..»

9. ?? ?????????? | ??? ?????? ??? ??????, ?????? ???, ??? ?????????? ????:

«1. ?????????? ?????????? ?????????? ??? ?????? ???' ?????? ?????? ?????? ????:

?) [...] ?????????? ????????????,

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

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

) ????????:

[...]

) ????????,

) ?????????????????? ?????????? ?? ?? ?????????????? ?????????? ??? ???, ?????? ?????????????
????????????? ??? ??? ?????????? [...] ??? ?????????? ?????????????, ??? ??????????????
????????????? ??? [...]»

III – ? ??????? ??? ?????? ??????

10. ? ??????? ??? ?????? ?????? ??? ??? ??? ?????? ? Fiscale Eenheid X N.V. c.s.
(??? ????: X) ??? ?? ??? 1996.

11. ? X ??????? ??? ?????? ?????????? ?????????? ?????????????? ??? ?????????????? ??????????
?? ??????, ??? ?????? ??? ?????? ???, ?????????????? ??? ?????? ?? ??? ?????? ??????????
???? ????. ??? ? ?????? ??? ? ?????? A Beheer N.V. (??? ????: A).

12. ?? 1996 ? A ??????? ??? ?????????? ?? ?????? ?????????? ??? ?????? ?????????? ??? ??????????
?????? ?????????? ?? ?????? ??? ?????????? ?????????? ??? ??? ?????????? ????.
????????? ??? ?? ?? ?????? ?????? ??? ?????????? ?????????????, ? A ??????, ????
????????? ?????????, ?? ?????? ?????????:

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

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

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

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

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

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

13. ? X ?????????? ??? ?? ?????? ??? ?????? ?????????? ?????????? ??? A ?????? ???
?????? ??? ?????? ??? ?????? ?? ?????? 11, ?????? 1, ?????? i, ?????? 3, ???
Wet op de omzetbelasting ??? 1968 ??? ?????? ?? ?????????? ?????????? ??????????
?????????, ? ?????????? ?????? ?????? ??? ? ?????? ?????? ?????? ??? ??? ???
????????? ?????? ??? ? ?????? ?????? ?????? (????????? ?? ??? ???).

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

14. ?? Hoge Raad der Nederlanden, ?? ?????? ??? ?????????? ??? ???????, ??????? ???
? ??????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ?????? ??? ???????
????? ???, ?? ?? ??????, ??? 21 ??????? 2013 ?????? ??? ?????????, ??????? ???
????? 267 ???, ?? ?????? ?????????? ??????????.

1. ???? ?? ?????? 13, B, ??? ?? ?????????? ??, ?????? 6, ??? ?? ?????? ??????? ?? ????
?? ???????, ? ?????? ?????????? ?? ?????????????? ?? ?????? ?????????? ?? ?????????? ??
?? ??????? ?????????? ?? ?????????? ?????????? ?????????????? ??????????, ??????? ??
????????? ?????????? ?????????? ?? ?????? ?? ?????? ?? ?????????? ?? ??????;

2. ?? ?????????? ?????????????? ?????????????? ?? ?????? ??????: ??? ?? ?????? 13, B, ???
?? ???????, ??? ?????? 6, ??? ?? ?????? ?????? ?? ?????? ?? «?????????»
????????? ?????? ? ?????????? ?? ?????? ?? ?????? ?????????? ?????????? ?????????? ??
????????? ?? ??????;

15. ??? ?????? ??? ?????????? ?? ?????????? ?? ?????? ?? ??????????, ? X, ?? ?????? ??? ??
?????, ?? ?????? ??? ?????????? ?? ?????????? ?? ?????????? ?????????? ?????????? ??
????????????? ?? ?????? ?? 2014. ??? ??' ?????????? ?? ?????????? ?? 4?? ?????? 2015
????????????? ?? ?????? ?????????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ?????????? ?? ?????? ??????????.

V – ?????? ????????

16. ?? ?????? ?????????? ?????????? ?? ?????????? ?? ?????? ?? ?????? ??
????????????? ?????????? ?????????? ?? ?????? 13, B, ??????? ??, ?????? 6, ??
????? ??????. ?? ?????? ?????? ?? ?????? ?? «????????? ??????????» (??????, ??? A)
?? ?? ?????? ?? «?????????» (??????, ??? B).

? — ??? ?? ?????? ?????????????? ??????????: «????????? ??????????»

17. ????? ?? ?????? 13, ?, ??????? ??, ?????? 6, ??? ?? ?????? ???????, ? ?????????? «??
????????? ???????, ??? ?????????? ?? ?????? ?? ?????? ??» ?????????????? ?? ??? ???. ?? ??
????? ???????, ?? ?????? ?????????? ?? ?????? ?? ?????????????? ??' ???. ?? ???.
????????? ??????? ?? ?????? ?? ??????????.

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

18. ?? ?????? ??? ?????? ?? ?????????? ?? ?????????? ?? ?????? ?? ?????? ??, ??????????
????? ??? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????????? ??, ??? ?????????? ??
?? ?????? ??? ?????? 13, ?, ??????? ??, ?????? 6, ??? ?? ?????? ??????. ???????????,
????? ??? ?????????? ?? ?????????? —????? ?????????? ?????????? ?? ? ??????
????????? P. Cruz Villalón (7) — ?? ?????? ??? ?????????? ?? ?????? ?????????? ??????
????? ??? ?????? ?? ??? ?? ??????.

19. ???????, ?? ?????????? ??? ?????????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ?? ?????? ?????? ?? ?????? ?? ?????????? ?? ?????????? ?? ?????? ??
????????? ?? - ?????? ?? ?????? ?? ?????????? ?? ?????????? ??, ??? ?????????? ??
????? ?????? ?? «????????? ??????» (8).

20. ??? ?? ??????????, ?? ?????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????? ??, ???
????? ??????. ? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????????? ?? ??????: ??????, ?
????????? ?? ?????? ??, ???????, ? ?????????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ?? ?????? ? «????????? ?????? ?????????? ??????», ?????? ?? ??? ?? ??
????????????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????? ?? ?????? ??
????????????? ?? ?????????? ?? (9).

21. ??? ?? ?????? ?????????? ?????????????? ?? ?????????? ?? ?????? ?? ??? ?????????? ??
????????? ?? ?????????? ???????, ? ?????????? ?? ?????? ?? ?????????? ?? ?????? ??
????????? ?? ?????? ?????????? (10). ???????, ?? ?????? ?? ?????? ?? ?????? ??

?????????? ?? ?????? ?????? ?????????????? ?? ??????????? ?? ?????? ?? ???? ?? ???????????
?????????? ?? ?????? ?? ??????????? ?? ?????? ??????? ??????? (11). ??????, ??????,
????? ?? ?????? ??? ??????????? ?? ?????? ??????????? ?? ?????? ??????? ?? ??????????? ?? ??????????
????????? ??????, ?????????? ?????? ?? ?????????? ??????? ?????????? ?????????????? ?? ??????????,
????? ?? ?????? ??? ?????????? ?? ??????????. ??? ?????? ?????? ?????? ?????? ??? ?????? ??
????????? ??????? ?? ?????????????? ?? ?????? ???????, ?? ?????? ??? ?????? ?????????? ???????
????????? ??????? ?? ?????? ??? ??????? 13, ?, ??????? ??, ?????? 6, ??? ?????? ???????.

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

23. ??????????????, ??? ??????????? ?? ??????? ??????? ?? ??????? ?????? ??????? ???????
????????? ?? ??????????? ?????? ?? ?????? ?? ?????? ?????, ?? ??????????? ?????????? ??
????????? ?? ?????? ?????? ?????? ?? ?????? ?? ?????? ?????? ??????????? ?????????? ??
??? ?????? 13, ?, ??????? ??, ?????? 6, ??? ?????? ??????: ?? ?????? ??? ?????? ?????? ???
?? ?????????????? ?? «????????? ??????» ??? ?? ??????? ?? ?????????? ?? ?????????? ??
????? ?? ?????? ?????? (12). ??? ???????, ? ?????? ??? ??????? ?? ?????? ??? ?????? ???
?? ?????? ??? ?????? «????????? ??????» ?????????????? ?? ??? ?? ?????????? ??
????? ?????? (13).

25. ????? ??????? ?????? ?? ????????, ??? ??????? ?????????? ??????????. ??????, ?
????????? ?????????? ?? ??????? ?????????? ?? ??????? ?????????? ?? ??????? ?????? ?? ?????? ??
????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??????
????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? 1996.

26. ???????, ??????? ?? ?? ?????????????? ?????? ???????, ? ?????? «???????

??????» ??? ? ???? 13, ?, ??????? ??, ?????? 6, ??? ?????? ??????? ?? ???????, ??

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

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

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

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

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

??????.

27. ??? ?????? ??? ?????? ??????? ?? ?????????? ??? ? ?????????? ??? ?????????? ??? ?????????? ???
??? ?????? ?? ?????? ??? ?????? ?? ?????????? ??? ???? ?????? ?????? ??? ?? ?????? ???
??????, ????, ????, ?? ?????????? ?????????? ?????????? ?????????? ?????? ??? ?????? ???
????????? ??????, ????, ?????? ?????????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ?????????? ?????? (15). ?????????? ?????? ??? ?????? ??? ?????? ???
????????? ??????, ????, ?????? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ???
????????? ??????. ?????? ?????? ?????????? ?????? ??? ?????? ?????? ??? ?????? ???
????? ?????? ?????? ?????????? ??? ?? ?????????? ??? ?????? ??? ?????? ?????? ???
????? ?????? ??????.

28. ? ?????? ATP PensionService, ?? ??? ?????? ?? ?????????? ??? ?????? ??? ??
????????? ?????? ?????????? ?????? ?????? ?? ?????????? ??? ?????? ?????? ??? ?????? ???
????????? (16), ?????? ?????? ?? ??? ?????? ?????? ?????? ?????? ?????? ?????? . ????, ??
????????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? , ?????? , ?? ?????? ??????
????????? , ???? ?????? ?????? ??? ?? ?????? 2003/41/? ?? ??? ?????? ?????? ??? ??
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? (17).

29. ?????, ? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ??? ?? ???
????????? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? , ???? ??? ??
????????? ?? ??? ?????? ?????? ??? ?????? ?? ?????????? ?????? ?????? (18). ?????? , ??? ?
????????? ?????? ??? ?? ?????? ?????? ?????? ?????? , ?? ?????? ?????? ?????? ??? ?? ???
????????? ????. ???? ?????? ?????? ???, ?? ?????? ?????? ?? ?????? ?????? ?? ?????? ??????
????????? ???, ??? ?????? ??? ?????? ?????? ?? ?????? ?????? ?????? ?????? [Holding]
??? ?????? , ???? ?????? ?????? ?? ?????? ?????? ?????? ?????? ??? ?? ??' ?????? ???
??????.

30. ??? ?????????? ?????????, ?????????? ? ?????????? ??? ?????????? ??? ?????????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ???
????? ??? ?????? ?? ?????? ?????? ?? 1996. ??? ?????????? , ?????? ??? ?????? 1,
????????? 1 ?? 2, ???? ?????? , ??? ?????? ???, ??? ?????? ???, ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ???.

31. ?????? , ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? 13, ?, ?????? ??, ?????? 6, ??? ?????? ???,
????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? . ?? ?? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?? ?????? ?????? ?? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ?????? ???.

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

32. ??? ?? ?????? ?????????? ?????????? ??? ?? ?????? ?????? ??? ?????? ???
????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? , ??????
????????? ?? ?????? ?? ?????? ?????? ?????? ?????? , ?? ?????? ?????? ?????? ?? ??? ??
????? ?????? ?????? ?????? ?????? , ?????? ?? ?????? ?????? ?????? ?????? ??? ?? ??? ??
????? ?? ?????? ?????? ?????? ??? ?????? 13, ?, ?????? ??, ?????? 6, ??? ??????
??????.

33. ?????? , ? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??
?? ?????? ??? ?????? ?????? ?????? . ?????? ? ?????? ?????? ??? «????? ?????? ???»
????? ??? ?????? ?????? ?????? ??? ?????? ?????? , ???? ??? ?????? ?????? ?????? ??????

? ??????? ? ?? ?????????? ??????????? ??????, ??? ?????? ?? ? ??????????? ? ????????.
??????, ???????, ?? ?????????? ??? ?????????? ??? ?? ?????????? ??? ?????? «??????»
????????? » ??? ???????????????? ??? ????? 13, ?, ??????? ??, ?????? 6, ??? ???
?????? ??? ?? ??????? ?? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?? ??? ?????? ??? ?????????? ?????????? (19).

34. ????, ????, ???, ?? ? ?????????????? ??? ?????? ?????????? ??? ?????? ?????? ??
?????? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ???????, ? ??????????????
????? ?? «??????» ??? ?????? ??? ?????? 13, ?, ??????? ??, ?????? 6, ???
????? ?????? ?? ??????? ?? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

35. ??? ???? ?????? ????, ? ?????????? ??? ?? ?????? ?? ? ?????????? ??? ?????? ?????? ??
????????? ?? ?????? ??? ?????? ?????? ?????? ?????????? ?????????? ?? ?????? ?????? ????
??? ???, ??? ???? ???? ?????????? ??? ?? ?????? ?????? ??? ?????? ?????????? ??????
?? ??? ???? ?????? ?????? ??? ?????? ?????????? ?? ?????? ?????? ?????? ??? ?????? ??????
?? ?????????????? ??? ?????? ?????? ?????? ?????????? ?????????? ?????????? . ??????, ?? ??????????
???? ?????????? ??? ???? ?????? ???, ? ?????? ?????? ?????? ?????? ?????? ??? ??????
?????, ??? ?????? ???? ?????? ??? ?????? ??? ?????? (20).

36. ??? ???? ?????? ??? ?? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??
?? ?????? 13, ?, ??????? ??, ?????? 6, ??? ?????? ??????. ?????? ?????????? ?? ?????? ??
«??????» , ??? ???? ???? ?????????? ?????? ?????? ?????? . ??????, ?? ??????
???? ?????????? ??? ???? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
?????, ??? ???? ?????? ?????? ??????.

37. ????, ?? ?????? ?????????? ?????????? ?? ? ?????? ??? ?????????? ??? ?????? ??
?????? ?? ???? ?????????? ?????? ?? ?????????? ??? ?????? ?????????? ?? ?????? ?????? ??
????? . ?????????? , ? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?? . ?
????????? ???, ????, ?????? ?????? ?? ?????? ???, ?????????? , ? ?????? ?????? ??
????????? ??? ?????????? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? 13, ?, ??????
??, ?????? 5, ??? ?????? ??????. ?????? ??? ???? ?????? ?? ?????? ??? ?????? ??? ??????
????????? —???? ?????? ?????? ?? ?????? ?????????? —, ??? ?????? ??? ???? ??????
????? ?? ?????????? ??? ??? ??? ???? ?????? ?????????? ?????????? ??? ?????? ??? ??????
????? ??? ???? ?????????? ? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??????????
?? ?????? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

38. ???????, ?? ?? ? ?????????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??????????
? ?????????? ??? ???? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??
????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? . ?
????????? ??? ???? 13, ?, ??????? ??, ?????? 6, ??? ?????? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ??? ???? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
—? ??? ???? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? , ???
????????? ??? ???? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? , ??? ?????? ?????? ??? ???? ??
??? ? ?????? ??? ?????? ?????? ?????? ??? ?????? , ??? ?????? , ??? ?????? ?????? ??? ???? ??
????? ??? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? , ??? ?????? ??? ?????? ??? ??
????????? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
?????????.

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

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

40. ??? ?????? ?????????? ?? ?????? ?????????????? ????, ?? ?????? 19, ?????????? 1,
????????? ?? ??? ?? ?????? 24 ??? ?????? ????, ? ?????????? ??? ?????????????? ??? ??????
????? ?????????? ?????? ?????????? ?? ??????? ????, ???? ??? ??????
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????? ???, ? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????? ?????? ??? ?????????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????? ?????? ?????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ??????
????? ?????? ?????? ?????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? 34.

41. ??? ??? ?? ??????, ? ?????? ??? ?? ?????????? ??? ?????????? ?????????? ???
????????? ?????????? ??? ?????????? ?? ?????? 13, ?, ??????? ??, ?????? 6, ??? ???
????? ?????? ?????????? ?????? ?????? ??? ?????? ??? ?????????? ?????????? ???????????.
?????????, ?????? ?? ?????????? ?????? ?????? ?????????? ?? ?????? ?????? ?????? ?????????? ?,
????? ?????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????? ?????? ?????? ??? ?????????? ?????? ?????? . ?? ??????, ??????, ??? ??? ??????
????? ?????? ??? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ??????
????? ??????????, ? ??? ??? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ???, ?????????? ?????? ?????? ??? ?????? ???, ?????? ?????? ?????? ?????? ?????? ?,
????? ??? ?????? ?????? ?????? ?????? (21).

42. ?????, ?????? ??? ?? ?????? ?????????????? ? ?????????? ??? ?????????? ???
????????, ? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ???
????????? ?????????? ??? ?????? ??????, ?????? ?? ?????????? ?? ?????????? ??????????
????? ?? ?????????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?? ?????????? (22).
????????? ??? ?????????? ?????? ?????? ?????? ?????? ?? ?????????? ??? ?????????? ??
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????? ?????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??????
????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??????.

43. ???????, ?? ?????????? ??????? ?????? ?? ?????? ?????????? ?? ??????
????????? ??????? ?? ??????? ?????? ?? ?????? ?? ?????? ??????, ?????? ?? ??????????
????????? ??????? ?? ?????? ?? ?????? ?? ?????? 13, ?, ??????? ??, ?????? 6, ??? ????
?????.

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

44. ???????, ??? ??? ?????????????? ?????? ?????? ?? ?????? ?? ?????????? ??? ??????
? ?????? ?????????? ??? ?????????????? ??? ?????? ?????????? ?? ?????????? ?????? ???
????????? ??? ?????????????? ?????? ?????????? ?? ?????????? ?????? ?? ??????????
????????? ?????????? ??? ??? ?????? ??? ?????? 13, ?, ??????? ??, ?????? 6, ??? ????
??????, ?????? ?????? ?????? ?? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??????.

? — ??? ??? ???????? ?????????????? ??????????: «??????????»

45. ?? ??????? ?????????????? ??????? ?????? ?? ??????? ?????? ?? ??????? «??????????» ???
?????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????? 13, ?, ??????? ??, ?????? 6, ??? ?????
???????. ?? ?????? ?????????? ?????? ?? ?????????????? ?? ?????? ?????? ?????? ?????? ??????
????? ?????????? ?????????????? ?????????? ?????????? ?????????? ? ?????? ?????? ?????? ??????
?????. ?? ??? ?? ?????? ?????? ??????????, ? ?????????? ?????????? ?????????? ??? ??????
????????? ?????? ??? ?????? ?????????? ???, ?? ?????????? ??? ?????????? ?????? ??????????
?????????, ?????? ??? ??? ?????? ??? ?????? ?????????? ?????? ?????????? ??????????.

46. ??? ?? ??????? ?? ?????????? ?? ?????????? ?? ?????? ?????????? ?? «??????» ??????
?? . ?????????? ?? ?? ?????? ?????????? ?? ?????? ?????? ?????????? ??????????????,
????????????????? ?? ?????? ?????? ?????????? ?????????? ?????????? ??????????, ??? ?? ?????
?????????, ??? ?????? ?? ?????????? ?? ?????? ??? ?????? ?????? ?????????? ?????????????? ??
?????????, ?????? ??? ?????? ?????????? ?????????? ?????????? ??? ??? ??? ?? ??????????
????????? ?????????? ??? ?????? ?????? ?????????? ?????????? ?? ?????????? ??? ?????????? ??
????????? ?????????? ?????? ?????? (23).

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

48. ??? ??? ?????????? ?? ??????????, ?? ?? ?????????? ?? ?????? ?????? ??
????????????? ??? ?? ?????? 13, ?, ??????? ??, ?????? 6, ??? ?????? ?????? ?????????? ??
????????????? ?? ??? ?? ?????? ??? ?????? ?? ?????? ?? ?????????? ??? ?????? ??? ?????????? ??
????????? ?????????? ??' ??? (24).

49. ??????, ??? ?????? ??? ?????????? ?? ?????????? ?? ?????? ??? ??????????
?? ??? ?????? ??????????????. ??? ?????? ?????? ??? ?? ?????? ??? ?? ?????? ??? ?? ??????
????? ? ?? ??? ?????? ?????? ?? «??????????» ??? ?????????? ??? ?? ??????????
????????? ??? ?????? (25).

50. ? ??????? ?????? ?? ?????? ?? ?????? ?????? «??????????» ??? ?????????? ??????????
????????? ?????????? ?? ?????? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
?????????. ???????, ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ???,??
????????? ?? ?????? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????????? ?? ?? ?????? ?????????? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ??
????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ??
????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ??
????????? ??? ?????? ??? ?????????? ???.

51. ?????? ?????????? ?? ???????, ??? ???????, ???????, ?? ?????????? ??? ??
????? ??? ?? ?????? ?????????? ??? ?????? ?????? ?????????? ??????????????. ??
????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??????.

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

53. ???????, ? ??????? ?????????????? ??? ?????????????? ??? ???????????,
????????????? ??? ?????? ??? ?????????? ?????? ?????? ?????? ??? ??????????? ???
??????, ??????????? ??? ?????? ??? ?????? ??? ?????????? ??? ???????????, ??? ??
????????? ????. ???????, ? ?????????? ??' ?????? ??? ?????? ?????? ??????????
????????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ?????? ???
???? ???, ??? ?????? ??????? ??? ?????? ??? ?????????? ?????????? ?????????? ???
??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???
????????????? ?? ?????????? ?????? ??????, ??? ?? ?????? ?????? ?????, ??? ?? ?????? ???
????????????? ??? ?????? ?? «?????????» ??? ?????? ?????? ??? ?????????? ??? ?????????? ???
?????? 13, ?, ??????? ??, ?????? 6, ??? ?????? ??????.

54. ??? ???????, ??? ??????? ??? ???????, ? ?????????? ?????? ?????????? ??????????
?????? ?? ???????????, ???' ????, ??? ?????? ?????? ?????????? ???????, ??????????
?? ??????? ??, ??? ?????? ??? ?????, ??? ?????? ??? ?????, ??? ?????????? ??? ??????????.

55. ??? ?????????? ??? ?????????????? ?? ?????? ?????? ?????????? ?????????? ???
?????? ??? ??????????. ???????????, ?? ??????? |, ??? 2, ??????? ??, ??? ???????
???? ?????????? ??? ?????? ?????? ?? ?????? ? ?????? ?????????? ?????????? ???
????????????? ???????, ?? ?????, ?? ?? ?????, ?????????? ??? ?????? ?????? ???
????????? ???, ???????????????, ?????? ?? «?????????», ? «????????? ??????????»
??? ? «????????? ??????», ?????? ? ?????????? ?????????? ??? ????????. ?? ??? ??
????????? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ????????. ?? ???????
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??
?????????, ????, ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???, ?? ?????????? ???
?????????? ?? ?? «?????????» ??? ?????????? ??? ?????????? ?? ?? ?????????? ??
????????? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
??? ?????????? ?????????? ??? (26). ?????????? ? ?????? ??? ?????? ??? ?????? ??
????????? ??? ??? ?????? ??? ?????? ??? ?????, ?? ?????????? ??? ?????????? ???
????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??????.

56. ???, ?? ?????? ??? ? ?????????? ??? ??????? ??? ?????? ?????????? ??????????
????????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? «?????????». ???????, ??? ?????? GfBK, ?? ?????????? ?????????? ???
????????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? (27). ??????????, ??? ?????? ?????? ??? ?????????? (28), ?????? ??????
????? ? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ?? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????????? —?????? ?? ??? ?????? ??? ?????? ???
?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???.

57. ???????, ??? ?????? ?????????? ??? ?????? ??? ?????? ? ?????????? ??? ? ???

«??????????» ??? ? ?? ?????? ?? ?????? 13, ?, ??????? ??, ?????? 6, ??? ?????? ??????? ?????????? ??? ? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??.

VI – ???????

58. ??? ? ?? ??????, ??????? ?? ?????????? ?? ?????????? ??? ?????? 6, ??? ?????? ?????? ??? ?????????? ??? ?????? ?? Hoge Raad der Nederlanden ?? ????:

?? ????? 13, ?, ??????? ??, ?????? 6, ??? ?????? ?????? ??? ?????? ??? ?????? ???

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

– ??? «??????????» ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ? ?????????? ?????????? ??? ??????.

1 — ?????? ??? ??????????: ? ???????.

2 — ???????? Abbey National (C?169/04, EU:C:2006:289), JP Morgan Fleming Claverhouse Investment Trust ??? The Association of Investment Trust Companies (C?363/05, EU:C:2007:391), Deutsche Bank (C?44/11, EU:C:2012:484), GfBk (C?275/11, EU:C:2013:141, ??? 30), Wheels Common Investment Fund Trustees ?.?? (C?424/11, EU:C:2013:144, ??? 19), ????? ??? ATP PensionService (C?464/12, EU:C:2014:139, ??? 43)- ??., ??????, ??? ?????????? ??? ?????? ?????????? L. M. Poiares Maduro ??? ?????? BBL (C?8/03, EU:C:2004:309) ??? ??? ?????? ?????????? E. Sharpston ??? ?????? PPG Holdings (C?26/12, EU:C:2013:254).

3 — ?? L 145, ?. 1.

4 — ?? L 347, ?. 1.

5 — ?? L 375, ?. 3- ?? ?? ?????? ?????? ?? ??? ? ?????? 2009/65/?? ??? ?????????? ?????????? ??? ?? ?????????? ??? 13?? ?????? 2009, ??? ?? ?????? ?????????? ??? ??????????, ?????????? ??? ?????????? ?????? ?????????? ??? ?????????? ?????? (?????) (?????????????) (? L 302, ?. 32), ? ?????? ??? ratione temporis ??? ?????? ?? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ???.

6 — ?????? 2011/61/?? ??? ?????????? ?????????? ??? ?????????? ??? ?????? 8?? ?????? 2011, ?????? ?? ??? ?????? ?????????? ?????????? ?????????? ?????????? ??? ??? ?? ?????????? ??? 2003/41/?? ??? 2009/65/?? ??? ??? ?????????? (??) 1060/2009 ??? (??) 1095/2010 (?? L 174, ?. 1).

7 — ?. ???????? ??? ?????? ?????????? P. Cruz Villalón ??? ?????? ATP PensionService (C?464/12, EU:C:2013:840, ?????? 34 ??? 36).

8 — ???????? Wheels Common Investment Fund Trustees ?.?? (C?424/11, EU:C:2013:144, ??? 17) ??? ATP PensionService (C?464/12, EU:C:2014:139, ??? 41)- ??., ??????, ?????? JP Morgan Fleming Claverhouse Investment Trust ??? The Association of Investment Trust Companies (C?363/05, EU:C:2007:391, ??? 41 ??? 43).

9 — ??? ? ?? ?????? 1, ?????????? 3, ??? ?????? ??????, ?????? ?????????? ?????? ???

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

10 — ???. ?????????? Abbey National (C?169/04, EU:C:2006:289, ????? 55), ????? ??? JP Morgan Fleming Claverhouse Investment Trust ??? The Association of Investment Trust Companies (C?363/05, EU:C:2007:391, ????? 32).

11 — ???. ??? ?????????? ??? ??? ?????????? Abbey National (C?169/04, EU:C:2005:523, ????? 41), ????? ??? JP Morgan Fleming Claverhouse Investment Trust ??? The Association of Investment Trust Companies (C?363/05, EU:C:2007:125, ????? 16).

12 — ?????????? Wheels Common Investment Fund Trustees ?.?. (C?424/11, EU:C:2013:144, ????? 23) ??? ATP PensionService (C?464/12, EU:C:2014:139, ????? 46).

13 — ???. ??? ?????????? ??? ??? ?????????? Abbey National (C?169/04, EU:C:2005:523, ????? 38), ????? ??? ??? ?????? JP Morgan Fleming Claverhouse Investment Trust ??? The Association of Investment Trust Companies (C?363/05, EU:C:2007:125, ????? 32).

14 — ?????? JP Morgan Fleming Claverhouse Investment Trust ??? The Association of Investment Trust Companies (C?363/05, EU:C:2007:391, ?????? 34, 35 ??? 37).

15 — ?????????? Wheels Common Investment Fund Trustees ?.?. (C?424/11, EU:C:2013:144, ????? 24) ??? ATP PensionService (C?464/12, EU:C:2014:139, ????? 47).

16 — ???. ?????? ATP PensionService (C?464/12, EU:C:2014:139, ????? 59).

17 — ?????? 2003/41/?? ??? ?????????? ?????????????? ??? ??? ???????????, ??? 3?? ??????? 2003, ??? ??? ?????????????? ??? ??? ?????????? ??? ?????????? ??? ??????????? ?????????? ?????????????? (?? L 235, ?. 10).

18 — ???. ????? ?????????? Velker International Oil Company (C?185/89, EU:C:1990:262, ????? 19), Stockholm Lindöpark (C?150/99, EU:C:2001:34, ????? 25) ??? Granton Advertising (C?461/12, EU:C:2014:1745, ????? 25).

19 — ???. ?????? JP Morgan Fleming Claverhouse Investment Trust ??? The Association of Investment Trust Companies (C?363/05, EU:C:2007:391, ????? 53). ??., ???????, ??? ?????? ATP PensionService (C?464/12, EU:C:2014:139, ????? 42).

20 — ???. ?????????? Abbey National (C?169/04, EU:C:2006:289, ????? 62), JP Morgan Fleming Claverhouse Investment Trust ??? The Association of Investment Trust Companies (C?363/05, EU:C:2007:391, ????? 45), GfBk (C?275/11, EU:C:2013:141, ????? 30), Wheels Common Investment Fund Trustees ?.?. (C?424/11, EU:C:2013:144, ????? 19) ??? ATP PensionService (C?464/12, EU:C:2014:139, ????? 43).

21 — ???. ?????????? ?????????? ??? ?????? (C?481/98, EU:C:2001:237, ????? 22), Marks & Spencer (C?309/06, EU:C:2008:211, ????? 47) ??? Pro Med Logistik (C?454/12 ??? C?455/12, EU:C:2014:111, ????? 52).

22 — ?????? ATP PensionService (C?464/12, EU:C:2014:139, ?????? 51 ??? 59).

23 — ??., ???????, ?????????? Abbey National (C?169/04, EU:C:2006:289, ????? 67), GfBk (C?275/11, EU:C:2013:141, ?????? 20 ??? 21) ??? ATP PensionService (C?464/12,

EU:C:2014:139, ??????? 63 ??? 65).

24 — ???. ??????? Abbey National (C?169/04, EU:C:2006:289, ??????? 40 ??? 43).

25 — ?????????? Abbey National (C?169/04, EU:C:2006:289, ?????? 63), Deutsche Bank (C?44/11, EU:C:2012:484, ?????? 31) ??? ATP PensionService (C?464/12, EU:C:2014:139, ?????? 65).

26 — ?????????? GfBk (C?275/11, EU:C:2013:141, ??????? 22 ??? 25) ??? ATP PensionService (C?464/12, EU:C:2014:139, ??????? 66 ??? 67)- ?. ?????? ???????? Abbey National (C?169/04, EU:C:2006:289, ?????? 64).

27 — ?. ??????? GfBk (C?275/11, EU:C:2013:141, ??????? 29 ??? 30).

28 — ??., ???????, ??????? 35.