

62016CC0038

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MANUEL CAMPOS SÁNCHEZ-BORDONA

??? ?? ?????? 2017 (1)

?????? C?38/16

Compass Contract Services Limited

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Commissioners for Her Majesty's Revenue & Customs

[?????? ?? First-tier Tribunal (Tax Chamber)

(???????????, ??? ?????????????? ????????, ??????? ????????)

?? ?? ?????? ?????????????? ???????????]

«?? — ??????????? ?????????????? ????? — ??????????? ?????????? — ?????? ??????????
????????? ?????????? ?????????? — ?????????????? ??? ??? ?????????????? ?????????? ???
??? ?????????? ??? ?????????????? ?? ?????????????? ?????????? — ?????? ??? ???
??????????????, ??? ?????????????? ?????????????? ??? ??? ?????????????? ???

1.

????????? ?? ?????? ??? ?????? ?? ??????????, ?? ???? ??? ?????? ?????????? ??????? ???,
?? ?????????? ??? ?????? ?????? ?????????? ??? ?????????? ?????????????? ?????????? ???
????????????? ?????? (???) ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ???; ??? ??????, ?? ??????, ?? ?????? ??? ?????? ??? ?????? ??????????
????????? ??? ?????? ?????? ?????? ??? ?????? Compass Contract Services (UK) Ltd.
(???: Compass) ??? ??? ?????????? ??? ?????? ??? ?????? ??????????.

2.

? ?????????? ??????, ?? ??? ?????? ??? ??? 11?? ?????? 2002, Marks & Spencer (2),
?? ?????? ?????????? ?????? [????? ? Finance Act 1997 (????? ??? 1997 ??? ??????
?????????????)] ? ?????? ????????, ?? ?????????? ??????????, ??? ??? ?? ??? ??? ??? ??
????????? ??? ?????? ??? ?????? ?? ?????? ? ?????????? ??? ?????????? ??? ?????????????? ???
????????? ??? ?????????? ??? ?????? 77/388/???, ?????????? ??? ?????? ???
????????????????? ??? ??? ??? ??? ?????????? ??? ?????????????? ??? ?????????????? ??? ?????????? (3).

3.

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

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

4.

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

I – ?????????? ???????

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5.

??? ??? ????? «?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??????», ?? ????? 17 ??????:

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

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

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

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

?)

??? [??], ? ?????? ?????????? ??? ?? ?????? 5, ?????????? 7, ?????????? ??, ??? ?? ????? 6,
????????? 3.

[...]»

6.

??? ??? ????? «?????? ?????????? ??? ?????????? ??? ??????», ?? ????? 18 ??????????:

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

?)

??? ??? ?????????? ??? ?? 17, ?????????? 2, ?????????? ??, ???????, ?? ??????

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

?)

??? ??? ??????????? ??? ??? 17, ?????????? 2, ?????????? ?, ???????, ?? ???????
?????????? ???????, ?? ?? ????? ?? ?????????? ? ?????????? ??? ?? ??????????????? ?
????? ?? ?????????? ? ?????????? ?? ??????? ????? ?????? ??? ?? ?????????? ?? ???
??? ?????????? ??? ?? ??????? ?????? ??? ?????????? ???.

?)

??? ??? ??????????? ??? ??? 17, ?????????? 2, ?????????? ?, ???????, ?? ??????? ???
?????????????? ??? ?? ????? ?????? ????? ??????????????

?)

???? ??????????? ?? ?????????? ??? ??? ??? ??? ??????? ??? ?? ??????? ? ?????????? ???'
????????? ??? ????? 21, ?????????? 1, ?? ????? ?? ?????????????? ??? ??? ????? ???
???????????.

2. ? ??????? ?????????? ??????? ??? ??? ?????????? ??? ??' ?????????? ??? ??
???? ??? ????? ??? ?????????? ??? ??? ??????? ???????, ??? ????? ??? ??? ???, ??? ???
????? ??????? ??? ???????, ??????? ??? ?????????? 1, ?? ??????? ??? ???????, ???
??? ??????? ??? ????? ???????.

[...]

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

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

[...]»

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

7.

??. ?????????? ?????? ??? ??? ???, ??? ??? Finance Act 1997 (????? ??? 1997 ???
????????? ??????????????), ?????????? ?? ?????????? ??? ?????? M&S I (4):

8.

??. ????? 11, ?, ?????????? 1, ??????? ??, ??? ????? ?????? ?????????? ??? ??
?????? ??????? ??? 1? ??????? 1992, ?? ??? Finance (????. 2) Act 1992 (???????)
????? ??? 1992 ??? ??????? ?????????????), ??? ?????????? ?? ????? 10, ??????????
3, ??? Value Added Tax Act 1983 (????? ??? 1983 ??? ???).

9.

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

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

10.

?????? ?? ?? ?????????? ??????? ??? ?????????? ?? ?????????? ?????????????? ??
???? ??, ?? ??????? ?????????? ??? ?????? 24 ??? Finance Act 1989 (????? ?? 1989 ???
????????? ??????????????) ????? ?? 1?? ?????????? 1990 ?? ???:

«1)

?? ?????????? ???, ??? ?????? ?????????? ??? ??, ?????????????? ?????????????? ??????
????? ??? Commissioners [(5)], ????? ?????????? ??? ?????????????? ???.

2)

????? ??? ?????????? ?????? ?? Commissioners ?????????????? ??? ?????????????? ???
????????? ??? ??, ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???.

[...]

4)

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

5)

?? ?????????? ?? ?????? ?????????? ?????????? ?????? ?????? Commissioners, ?????? ??
????????? ??? ?????? ?????? ??? ?????????? ?????? ?????? ?? ?????????? ??? ??????
????? ??? ?? ?????? ?????? ?????????? ??? ?? ?????????? ?????? ??? ?????? ? ??????
????????? ?? ?????? ? ?????? ?? ?????????? ?????????????? ?????? ?????? ??????????.

[...]

7)

????? ??? ?????????????? ??? ?????? ?????? ???????????, ?? Commissioners ???
????????????? ??? ?????? ?????????? ?????????????? ??? ?? ?????????? ??????????????.

[...]»

11.

?? ????? 24 ??? Finance Act 1989 (????? ?? 1989 ??? ?????? ??????????????)
????????????? ??? ?????????????? ??? ?? ?????? 80 ??? Value Added Tax Act 1994 (?????
?? 1994 ??? ???) ??? ?? 1? ?????????? 1994. ?? ?????? ?????? ??? ?????? 80
????? ?????? ??? ?????? ?????? ??? ?? 24.

12.

????? 18 ??????? 1996, ??? ????? ?? ?????????????? ??? ?????????? ????????????, ? Paymaster General (?????? ?????? ??? ??????) ??? ????? ??????????????, ??????????? ??? ?????????? ??? ?????????? ???, ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???, ?????????? ??? ?????????? ??? ?????????? ???, ? ?????????? ??? ?????????? ???, ?? ???????????, ?? ??? Finance Bill 1997 (????????? ??? 1997 ??? ?????????? ??????????????), ??? ?????????? ??? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???, ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???, ?????????? ??? ?????????? ??? ?????????? ???, ?????????? ??? ?????????? ??? ?????????? ???, ?????????? ??? ?????????? ??? ?????????? ???, ?????????? ??? ?????????? ??? ?????????? ???.

13.

???? 4 ?????????? 1996, ? ????? ??? ?????????? ?????????? ??? ?????????????? ???
??????????, ?????????????????? ??? ?????????? ??? ????? ?????????????? ??? 18 ??????
1996 ??? ??? ?????????? ??? ?????????? ??? 1997 ??? ?????????? ?????????????? ??
????? 47.

14.

? ?????? ??? 1997 ??? ?????????? ?????????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? 19
?????? 1997. ?? ?????? ??? 47, ?????????? 1, ?????????? ?? ?????? 80 ??? Value Added
Tax Act 1994 (????? ??? 1994 ??? ????), ?????? ??? ?????? ??????? ??? ??????
????????? ??? ?????????? ??? ?????? ???????, ??? ??????, ??????? ???
??????????, ?? ????:

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

15.

????????? 47, ??????????? 2, ??? ?????? ??? 1997 ????. ?????????? ?????????????????? ??????:

«[...] ? ??????? ?????????? 1 ?????????? ???????? ??? ?? 18? ??????? 1996 ?? ??????? ???
???????????, ??? ??? ?????? ??? ?????????????????? ?????????????? ?????????????? ??
?????? ? ?? ?????????????? ????????????, ?? ??? ??? ?????????? ??? ?????????????? ???
??? ?????? 80 ??? ??? 1994 ????, ?????????????????? ??? ?????????? ???
?????????? ??? ??? ??? ?????????? ??? ??? ?????????? ??? ?????????? ???
?????????? ??? ??? ??? ?????????? ???»

16.

???? ?? ?????? 25, ??????????? 6, ??? ?????? ??? 1994 ????, ? ??????? ??? ?????? ??? ??
?????? ?????? ??? ?????????? 2 ??? ?????? ??????, ?????? ??? ? ??????? ??? ???????
??? ??? ?????????????????? ??? ?????? ??? ?????? ?????????????? ?????????? ?? ??????
?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ?????????????? ??????.

17.

?? ?????? 29, ?????????? 1?, ??? Value Added Tax Regulations 1995 (?????????????)
????????? ??? 1995), ?? ?????? ?? ?????? ?????? ?????? 1?? ???? 1997
??? 31?? ?????? 2009 (6), ?????????? ??? ? ?????????? ??? ?? ?????? ?? ?????? ?? ?????
????? ??? ?????? ??? ?????? ??? ?? ?????? ?? ?????? ?????? ??? ?????? ?? ?????
????????? ??? ?????? ??? ?? ?????????? ??? ?? ?????? ?????? ?? ?????? ?? ?????? ??
????? ??? ?? ?????????? ??????.

18.

???? ?? ??? 121, ?????????? 1, ??? Finance Act 2008 (????? ??? 2008 ??? ??????
?????????????), ? ??? ?? ?????????? 80, ?????????? 4, ??? ?????? ???
1994 ??? ?? ??? ?????? ?????????? ?? ?????????? ?? ?????? ?????? ?????? ?? ?????
????????????? ? ?????????? ??? ?????????? ?????? ?????????? ?????? ?? ?????
????? ??? ?? ??? 4 ?????????? 1996, ?????? ?? ?? ??? ?????? ?????????? ??????????
????????? ??? ?? 1? ?????? 2009.

19.

?????? ?? ?? 121, ?????????? 2, ??? ?????? ??? 2008 ??? ??????
?????????????, ?? ??? 25, ?????????? 6, ??? ?????? ??? 1994 ??? ?? ?? ???
????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??????
????????? ?? ?????????? ?????? ?????? ??? ?????? ?????? ??? ?? 1? ?????? 1997,
????? ?? ?????????? ?????????? ?????????? ??? ?? 1? ?????? 2009.

20.

?????? ??? ?????????? 4 ??? ?????? 121 ??? ?????? ??? 2008 ??? ??????
?????????????, ?? ??? ?????? ??? ?????? ?? ??? ?????? 19 ?????? 2008.

II – ?????????? ??????????

21.

? Compass ?????? ?????????? ?????????? ?????? ?????? ???? , ??? ?????? ??? 2006,
?????? ?? ??? ?????????? ?????? ?????? ??? ?????? ?????? ??? ?? ?????? ???
????????? ??? ?????? ??? ?? ?????? ?????? ?????? ?????? ??? ?????????? ???
????????????? , ??? ??? ??? ??? .

22.

????????????? , ?? ?????????? ?????????? ?????? ??? ?? ?? ??? ?????? ?????????? ???
????????? ??? ?????? 28, ?????????? 2, ??? ?????? ??????. ?? Commissioners ?????????? ,
????????? ?????? , ??? ? Compass ??? ?????? ?? ?????????? ??? ?????????? ???
????????? ??? .

23.

?? ?????????? ??? 2008, ? Compass ?????? ?????? ??? ?? ?????????? ??? ??????
????????????? ??? ?? ?????? ?????? ?????? ??? ?? 1? ?????? 1973 ??? ?? ?? 2?
????????? 2002.

24.

?? Commissioners ?????? ??? ???? ?? ?????? ??? ?? ?????????? ?? ???? ?? ????
????????? ?????????? ??? ?? ?????? ?????? ??? 1?? ?????? 1973 ?? ???? 31
????????? 1996, ?????????? ??? ?? ?????? ??? ?????? ?? ??? ?????????? ??? ??
????????? ?????????? ??? ??????????.

25.

? Compass ?????? ??? ?? ?????? ??? Commisioners ?????? ??? First-tier Tribunal
(Tax Chamber) (?????????, ??? ?????????? ?????, ?????? ??????),
????????? ??? ?? ?????????? ?????? ??? ?????????? ??? ?????????? ??? ??????
????????? ??? ?????????? ?????????? ???, ??????, ??? ??? ?????? ?????? ??????
??? ??? ?????, ??????.

26.

? ?????????? ??? ?????????? ?????? ??? ?? ?????? ??? ?????? ??? ?????????? ?? ????
????? ??? ?????????? ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ??? ??? 4?
????????? 1996, ??? ? ?????? ??? ??? ?????? ?????????? ??? ??? 1? ??? 1997.

27.

??? ?????? ??? ?????? ??? ?????? ???, ?????????, ?????????, ?????????, ?????? ?????? ?? ???
????????? ??? ??? ?????? ?????? ?????????? ??? 1? ?????? 1996 ??? ??? 30
????????? 1997 (????????? ?????? 04/96 ??? 01/97).

28.

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

III – ?????????? ?????? ??????????

29.

?? ?????????? ???, ?????????? ??? 25 ?????????? 2016, ????:

«1)

????????? ? ?????????? ?????? ??? ?????????? ?? ?????? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? Fleming (?? ?????? ?????? ??
????????? ??? ?????? ??? ?????? ??? ??? 4 ?????? 1996) ??? ??? ??????
????????? ??? ??? ?????? ??? ?????? ??? Fleming (?? ?????? ?????? ??
????????? ??? ?????? ??? ??? 1? ??? 1997, ??? ?????? ??? ??? ??????
????????? ??? ??? ?????? ??? ?????? Fleming):

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(?)

?????????? ?????????????? ??? ????? ??????? ??? ??????? ??? ??????? ??? ???????;

2)

??? ? ??????? ??? ??????? 1, ??????? ?? ??? ?, ????? ???????????, ??? ??????? ??
?????????????? ?? ??????? ??????????? ??? ??? ??????? ??? ??????? ?? ??????? ??
???????? ?? 4 ??????????? 1996 ??? 30 ????????? 1997;»

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

30.

?? ??????????? ???????, ?????????????? ??????? ?????????????? ??? ??????????????? ???
??' ??????????? ??????? ??? 8?? ?????????? 2006, ? Compass, ? ?????????? ??? ???????
????????? ??? ? ???????.

31.

???? ??? ????? ??? Compass, ??? ????? ??????? ??????? ?????????? ?????????? ????. ?
????????????? ??????????? ?????????? ??? ??????? ?? ?????????? ?????????? ??? ??????? ?? ???
???? ??? ??? ???????????????, ????? ?? ??? ?????????????? ?????????? ?????????? ???
????????? «????????? ???». ??? ??? ????? ???, ? ?????? ? ????? ?????????? ???
????????? ??????? ??? ??? ?????????? ?????????? ?????????? ?????????? ??? ?????????? ???
Commissioners ??? ? ??????? ??? ??? ?? ?????? ?????????? ?????????? ??? ??????????
????????????? ???.

32.

???? ??? ??? ??? ???????????, ? Compass ?????????? ??? ?? ??? ???????????
????????? ??????? ?????????? ?? ??? ??? ?? ??? ?????? ??? ?????????? ?????????? ???, ?? ???
????????? ?? ??? ?????????? ?? ??? ??? ?? ?????????? ??? ?????????? ??????????.

33.

???? ??? ?? ??????? ???????, ? Compass ?????????? ??? ?? ??? ?????? ?????????? ??
??????, ??????? ?? ??? ??????? ??? 10?? ??????? 2008, Mark & Spencer (7), ?? ???
????????? ?? ??? ??? ??? ?????? ?????????? ?????????? ??? ?????? ??? ??????????
????????? ??? ???, ?? ?????????? ??????. ?? ?????? ??????????, ??????????, ??
????????????? ? ??? ??? ??? ??????????????.

34.

???? ??? ?????????? ??? ??????? ???????, ???????, ?????? ??? ??????????????
??????????, ????? ?? ??? ???? ?????? ??? ????? ?????????????? ??? ??? ?????????????? ???
??????????, ? ??? ??? ??? ??? ?????????? ??? ????? ?????????????? ??? ??? Compass
?????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????????? ?? ??? ???
????????? ??????? ??? ?????????? «?????????» ?????? ?????????? ???, ?? ??? ???
????????? ???????, ??? ??? ????? ???, ?????????????? ??? ?????? ??? ????????????

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

35.

????? ?????? ??? ??????????????, ? ??????????? ??? ?????????? ?????????????? ?????????????? ??? ?
????????????? ?????????????? ??????????? ??? ?? ?????? ??? ?? ?????????? ??? ?? (?)
?????????? ??? ??????????????, ?? ????) ?????????????? ?? ?????? ?????????????? ??????????
??????, ??? ????? ?????????????? ???????????, ?? ??? ?????? M&S I (8), ? ??????????
??? ??????? ??? ??????. ??? ????? ??? ?????????????? ??????, ?? ?????? 121 ??? ????? ???
2008 ??? ??????? ?????????????? ?????????? ??????? ?????????? ???????, ??????????? ??
?????????? ??????? ??? ??????? ??? ?????? ??? ?? ?????? ?? ??????? ?????????? ?? ?????????? ??
?????????? ??? ??????????? ??????????? ?? ?????? ???????????, ?????? ?????? ??? ??
?????????? ??? ??? ??????? ??? ?????? ?????? ?????????? ?? ?????????? ??????? ?? ?? ?????????? ??
?????????? ??????????? ??? ?? ??? ?????? ???.

36.

37.

? ?????????? ??? ??????? ?????????? ??????, ??????????, ??? ? ?????? «?????? ???», ?
????? ?????????????????? ??? ?????? M&S II, ??? ???????, ??? ???????????????, ?????
??????, ???, ?????, ?????, ????? ???

38.

39.

? ?????????? ?? ?????????? ?????????? ?????????? ??? ?????????? ??? ? ?????????? ??????
????????? ??? ?????????? ??? ?????? ??? ?????????????????????? ? ??? ??? ??? ??
???????????????, ???' ? ?????? ? ?????????????? ??? ?????? M&S I
????????????? ?? ?? ?????? ??? ?????? ??? ?????? ??? ?? ?????????? ?????????? ??????????.

40.

? ?????????? ??????????? ?? ?? ?????????? ?????? (???? ?? ??????????) ?????? ??

????????????????????????????, ????, ?? ??? ???? ?????, ?? ?????????????? ? ???
?? ?????????????? ? ? ? ?????? ????? ?? ?????? ??? ??????. ?? ?????? ?? ??? ?????
????, ? ?????????? ?????????? ??? ? ?????? ?? ?????????? ?????????? ?????? ???
????????? ??? ?????????? ?????????? ?????????? ?????????? ?????????? ?????? ???
????? ??? ?????? ??? ?????????? M&S II, ??? ??? ?????? ??? ?????? ?????? ??????.

41.

???? ? ? ?????? ?????????????? ?????????????? ?? ?????? ??? ?????????? ??? ??????
?? ??????????????, ? ?????????? ?????? ?????????????? ?? ?????????? ?????????????? ??
????????? ?? ?????? ?????????? ??? ?????? ??? ?????? ?????????????? ??? ??? ?????? ??????,,
??????, ??? ???? ?????? ?????????? ?????????????? ??? ?? ?????????? ?????????? ???????????:
????????? ??? ?????????? ?????????? ?????????? ?????? ??? ?????? ?????? ?????????? ?????? ???
????? ??? ???? ?????? ?????????? ?????????? ?????????? ??? ?????? ?????????? ?????????? ??????????
??? ?????????? ?? ?????? ?????????? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ??????????
??? ?? ?????????? ??? ?????????? ??? ?????? ?????????? ?????? Reemtsma
Cigarettenfabrike (9).

42.

???? ??? ???????, ????, ? ?????? ??? ?????? ??? ?????? ??? ?????????????????? ????,
????, ?? ???, ??????? ??? ?????? ??? Compass ??? ?????? ?? ?????????? ?? ??????
?? ?????? ??? ?????? ??? ?. ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???, ?????????? ???
????? ?????????? ?? ?????????? ??? ?????????? ???, ?????? ??? ?????? ??? ?????????? ??? ? ???
????? ??? ??????, ??????? ?? ???? ???????, ?? ?????????? ??? ?? ?????? ??? ?????? ??? ??????????
?? ?????? ??? ?? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ?? ?????????? ??? ?????? ??? ??????????.

V – ??????

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

43.

???? ?????????? ?? ?????? ?????????? (10) ??? ?????????? ? ?????????? ??? ??????????
????????? (11), ?????????? ?? ?????? ?????? ?????? ? ?????????? ?????????? ???
????????? ?? ?????? 121 ??? ?????? 2008 ??? ?????? ?????????? ?????????? ???
????????? ?????????? ??? ?????????? ?????????? ???, ??????, ??? ?????? ??????????
????????? ??? ???, ???????, ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
????????? ??????????.

44.

?????? ?? ??? ?????? ??? ?????????? ?????????? ??? ?? ?????????? ??? ??????????
?????????, ?? ??? 121 ??? ?????? 2008 ??? ?????? ?????????? ?????????? ???
????????? ?????? ?????????? ?????? ??? ?????? ?????? ?? ??? ?????????? ???
????????? ???, ??? 18 ?????? 1996, ?????? ?? ??? ?????? ??? ?? ?????????? ??? ?? ?????????? ???
????? 80 ??? ?????? ??? 1994 ??? (12). ? ?????? ??? ?????? ?????????? ?????????? ??? ??
????? ?????? ??? 4 ?????? 1996.

45.

?? Commissioners ?????, ???????, ??? ?????? ??? ? ??? ?????? ?????????? ??? ???
?????? ???. ?????? ?????????? ?????????? ??? ?????. ??????, ? ?????????? ?????? ??? 1995 ???
?? ???????????????, ?? ??? ???? 1?? ????? 1997, ????? ????? ? ?? ????? ?????????? ??
????????? ??? ?????????? ???.

46.

?????? ? ?? ?????????? M&S I (13), ?? ??? ????? ????? ????? ????? ???? ? ?????????? (??? ??? ?? ???? ??), ?? ?????????? ??????????, ?? ?????????? ????? ?? ?????? ?????? ?? ?????? ???? ?????? ???? ?????? ???? ?????? ???? ?????? ???? ?????? ???? ?????? (?? ??? ?????? «????????? Fleming») (14) ??? ? ?? ??? ????? ?????? ?? ?????? ?? ?????????? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ?????????? ?????? ??? ? ?? ?????? ?????? ?????? ?????? ??????.

47.

????? ???? ?????????? ??? ?????????????? ??????, ?? Commissioners ???????????;

48.

???? ??????????? ?????????? ? ?????????? ??????????, ? ?????? ??? 2008 ????
????????? ?????????????? ???????, ?? ?????, ?????? ?????? ????? ?????????????? ???,
????????? ??? ????? ?????? ?? ??? ????? ?????????? ??? ?????????????? ??? ??? 1?
????????? 2009.

49.

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

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

50.

?? ?????? ??????????? ???, ?? ???????, ?? ????? ?? ??????? ?? ?????? ?? ???????????
?? ?????? ???, ?? ?????, ???' ? ????? ??????????? ?? ??????????????? ?? ???????????

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

51.

???????????, ?? ?????? ?????????? ??????? ??? ?????? ??? ?????? ??????????????, ???
???????????, ?????????????? ??? ??? ??????????????????, ?????? ?????? «?????????????
???? ??????? ??? ?????? ??? ?????? », ?? ??? ?????????? ??? ?????? ??? ???????,
???????????, ?????? ?? ?????? ?????? ?? ?????? ??? ?????????? (16) ??? ??
???????????, ??? ?????????????????? ?????????????? (17).

52.

??????, ??????????????? ??? ?????? ??? ?????????????? ??? ?????????? ?????????? (18) ??? ?
????? ??? ??? ?????????????? (????? ?? ??? ? ??????? ??? ?????????????? ??????? ??
????? ?? ??? ?????? ??? ?????? ??????????) ??? ?????? ?????? ??? ?????????????? ??? ??? ??? ??
?? ?? ????????, ????????????, ????????????, ???, ??? ?????????????? ??????????? ??? ??? ??
?? ??? ????????????. ?? ?????? ?????? ??? ?????????? ?? ?????? ?????????? ??????????? ??? ??? ??
?????, ?? ????????????, ?????????????? ??? ?????? ???????.

53.

? ??? ?????? ???????????????, ??????????? ??? ?????? ??? ?????? ?????????? ??? (19),
?????????? ?? ??????????? ?????????????? ?????? ?????? ?????????? ? ?????????? -???, ???????
????? ??? ??????????? ????, ?????? ??? ?????? ??? ?????? ?? ?????? ?????????????? ?????? ???
(20)- ??? ?????? ??? ?????? (21). ???????, ?????????????? ?? ?????? ??? ?????? ??? ?????? ???
) ??? ??? ??????????? ??? ?????? ??? ?????????? (23), ???' ??? ?????? ?????????????? ??? ??? ??
????? ??? ?????? ?? ??????????.

54.

???????????, ??? ??? ?????????????? ??? ?? Commissioners ??????????? ??????????????
?????????? ??? ?????? ??? Compass ?? ?????? ?? ??? ?????????? ??????? ???
?????????? ????. ?? ?????? ??????, ?????????????????? ??? Compass, ??????????????
????? ??? ??? ?????? ?? ?????? ??? ?????????? ?? ?????????? ?? ?? ??? ??? ??? ??????????
????? (????????? ??? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??? ??????).

55.

??????, ? ??? ??? ??????????? ?????????????? ??? ?????? ??? ???????, ??? ??? ??? ???
??, ??? ?????? ??? ????? ?????????? (24). ? ?????????? ??? ?????? ??? ?????? ??? ??????????
????? ?????? ?????????????? ??????????????, ??? ??? ?????? ?????? ?? ??????, ?????? ??
????? ???' ?????? ??????????????, ?????? ?? ?????????? ?????????? ??? ?????? ?????????? (25
) , ?? ?????????? ? ?????? ?? ?????????? ??? ?????? ??? ?????? ??????????????.

56.

? ? ?????? ??????, ?????? ?? ??????????:

—

? ? ?????????? ??????, ??? ? Compass, ? ?????? ?????????? ??? ?????????? ???

? ?????????? ? ?????????? ???, ?????? ?? ?????????? ?? ??? ????? ?????????? ???????, ?
??????, ????? ?? ????? ???' ?????? ?????????? ?????????? ?? ?????, ????? ?? ?????????? ???
????? ????, ???

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

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

57.

? ?????????? ??? ?????????? ?????????? ??? ? ?????????? ?????????????? ??? ? ??????
????????? ??? ?????????? ?????????? ??? ? ????? ?????, ??????????????, ?????????? ??
??? ?????? ?????????? ??? ????? ?????. ??? ?? ?????? ???, ? ?????????? ??? ?????? ???,
???? ?????????????? ??, ??? ??? ? Compass ?????????? ??? ?????????? ?????????? ??????
????? ??? ??, ????? ?????? ??? ?????????? ??? ?????????? ?? ?????????? ??? ?????????? ???
????????? (26).

58.

?? ?????????? ??? ?????? ??? ?? ?????????? ??? ?????? ??? ?????????????? ??? ??? ??? ???
?????? ?????????? ??? ?? . ?? ?????????? ??? ?????? ??? «?????? ??? ?????????? ???
????????? ??? ?? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ???
??? ?????????? ? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
????????????? ». ???????????, ?? ??? ????? ???, «[?] ?????[?] ?????????? ?? ??? ??
????????? ?????????? ??? ?? ?????????? ??????????????, ?????????? ??? ?????? ??
??? ?????????? ???, ??? ?? ?????????? ??? ?? ?????????? ?????????? ?????? ??????????
???' ??? ?? ??? » (27).

59.

? ???????, ?????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????????? ??? –??
?????, ?? ?????????? ??? ?? ?????????? ???, ??? ?????? ??? ?????????? ??? ??? ??? ???
????????? ??? ??, ??? ?? ?????? ??? ?????? ??? ?????? (28) – «????? ?? ?????????? ??
????????? ??? ?????????? ??? ?? ?????? ??? ?? ?????? ??? ?????? ??? ?????, ?? ??? ??????????
??? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ???
??????, ??? ?????????? ??? ?????» (29).

60.

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

61.

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

? ?????????? ??? ??????? ???????????? ?????????????? ?????? ??? ??????? ???
????????????? ??? ?????????????? ?????????? ??? ?????????? (30), ?????????? ??? ??? ???
????????? ??? ?????? ??? ???.

62.

??? ?????? ?????? ?????????? ??? ??????? ??? ??????, ?????????? ?????????????????? ??????
?? ???? ?? ?????? ???, ?????????? ?? ??? ?????? ?????? ?? ?????????? ??? ?????? ??? ???
????????? ??????? ?? ?????????? ?? ?????????? ?????????? ?????, ?????? ?????????? ??
????? ??? ?????????? ??? ?????????????? (31). ??????????, ??? ?????? ??? ??,
? ??? ?????? ???, ??? ?????? ??? 20, ??? ?????????? ??? ?????? ?? ?????????? ?? ?????????? ??
?? ?????? ?????? ? ?????????????? ??? ?????????? ??? ?????? ??? ??? ?????? ??? ??????
????????? ? ?????????? ??? ?????????????? ?????? ??? ?????? ??? ?????????? ?????? (32).

63.

?????????????, ????????, ?????? ??? ??????? ???, ?? ?????????? ?????????????? ???
?????? ??? ?????? ??? ?????????????? ??? ?????? ??? ?????? ?????????????? ???, ???
?????????, ??? ?????? ?????? ?? ?????????????? ??' ?????? ?? ?????????? ??? ?????? ???
?????????????. ?? ?????? ??? ?????????? ?? ?????????? ?????????????? ?????? (?????)
?????, ?? ?????? ?? ??? ?????????? ?????????? ??? ?????????? ?????????? ??? ??? ??????
?? ?????????? ??????????) ??? ??? ?????????? ??? ?????????? ?????????????? ?????????? ???, ??
?????? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ?????????? ?? ?????? ?? ??? ??????
?? ??? ??? ??? ??? ??????. ?? ?????? ??? ?????? ??? ?????????, ?????????????, ?? ??????
????????? ?? ?????? ??????????????.

64.

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

65.

? Compass ?????????? ??? ?????????? ??? ?????????? ?????? ?? ?????????? ??????????????, ?????????????? ???
???????? «?????? ???», ? ?????? ?????????????? ??? ?????? M&S II (33). ? ??????????
??? ?????????? ?????????? (34) ?????????? ??? ?????????????? ??? ?????? ??? ?????? ???
??????, ???? ??? ?????? ???, ?? ?????????? ??? ?????? ?????????????? ?? ?????? ??? ??????
????? ?? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?? ?????????? ??? ?????? ??? ??????
???? ?????????? ??? ?????????? ??? ?????????? ?????????????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????????? ??? ?????? ??? (35), ?????????? ??? ?? ?????? ??? ??????????
?????????.

66.

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

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

67.

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

68.

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

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

69.

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

70.

????? ??? ?????, ? ?????????? ?????? ?????????? ??? ?????? ?????? ?????????? ???
????? ?????? ?????? ?????? ??? ?????? ??? ???? ?????????? ??? ?????? ??? 1996
????? ??? ?????? (??? ??? ?? ????) ??? ??? ?????? ?????????? ???
????????? ?????? ?????? ??? ?????? ?????? ???, ??? ??? ?????? ??? 1997, ??? ??????
????? ??? ??? (36).

71.

? ?????? ??? ?????? ?????????? ?????????? ??? ?????? ?????? ?????????? ??????????
????? ??? ??? ?????? ??? ?????? ?????? ??????. ?? ??? ?????????? ???, ??????????
??? ? ?????????? ??? ?????? ??? 1997, ??? ?????? 29 ??? ?????????? ??????????
??? 1995 ??? ??? ?????? «?? ?????? ?? ???? ?????? ?????? ??????» ? ???
????????? ??? ?????????? ?????? ??? ?????? ?????? ?????????? ??? ?????????? ???
«?? ?????????? ??? ??? [?????] ?? ?????? ??? ?????? ?????? ??????» (37).

72.

????????????? ?? ??? ??????? ?? ?????????????? ?? ?? ?????????? ????? ???? ?????? M&S I (38) ?????????? ?? ??????? ?? ??????? ?? ??????, ? ?????? ?????????? ?????????? ?????? ? ??? ??????

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

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

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

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

73.

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

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

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

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

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

74.

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

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

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

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

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

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

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

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

????????????? ??? ??? ?????? ?????? (???????) ??? ?????? ? ?????? (???????) ??????

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

75.

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

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

??????? ??? ?????????? ??? ?????? M&S I (39) ???, ????????, ?? ?????????????? ??

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

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

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

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

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

76.

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

????????? ??? (40) ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???

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

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

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

????????? ?????? ??? (??? ??? ?????????? ??? 1996 ??? ??? ??? 1997).

77.

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

? ?????????? ? ?????????? ??? ?? Compass ???, ? ?????? ??????????????, ?????? ??
????????? ??? ?????? ?? ?????? ?????????? ??????????, ?????? ?? ??????????
????????? ??? ?? ??? ?? ?????? ?????? ??? ?? ?????? ?????????? ??? ?? ??? ?? ??
????? ??? ?? ???, ??? ?? ??? ??, ?????????? ??? ?? ?????? ??? ?? ?????? ??? ?? ???,
?????:

? ???, ??? ?? ?? ???????, ?? ??? ?? ?????? ?? ?????? ?? ?????? ?? ?????????? ?
????????? ??? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??? ??, ?? ??
?????, ??? ?? ?? ?????? ?? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????????????????? (41), ??? ?? ?? ?????????? ?? ??????????, ???

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

78.

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

79.

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

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

80.

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

81.

?? ?????? ??????????? ???????????, ?? ??????, ??? ?????? ?? ??????????????? ??
????????? ?????????? ??? ??????????? ??????????????? ??? ??? ??????? ?? ???????
????????? ??????? (?? 4 ??????????? 1996 ?? 30 ?????????? 1997), ??? ?? ???????
????????? ??? ?????????? ?????? ??? ??????????? ??? ?????? ??? ?????? ??????? ?? ??????? ?
????????? ?????????? ??????????? ??? ??? ?????? ?????? ?????? (?????????? ? ??????????? ??
???).

82.

???? ??????????? ?? ?????????? ??? ??????? M&S II (42), «????????? ???????????
??????????, ??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ? ???????????
?? ?????????? ??????????? ??? ? ??????? ??? ??????????? ?????????????? ?????????? ?? ??
????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ?????????? ??
?????????? ??? ??????? ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??????».

83.

?????????, ???????, ??? ?????? ??????????? ?? ?????????? ?? ?????? ??????????????? ??
?? ?????????? ?????????? ??? ?????? ??? ?????? ???????????, ?????? ??? ???????????
?? ? ??????????, ??????? ??? ?????? ??????????? ??? ?????????? ?? ?????? ??? ??
????????? ?????????? ? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ??? ??????????
????? (43).

84.

??????????, ?? ?????? ?????????? ?????? «?? ?? ?????? ??? ?????????????? ???????
?????? ?????????? ???????????, ?????? ?? ??????????? ?? ?????? ?? ?????????? ??
?????????? ?????????? ?????? ??? ?????? ???????, ??? ?? ?????????? ?? ??? ??? ??
?????????? ?????? ?? ??? ?????? ??????? ?? ??? ??? ??? ?????????? ??? ?????? ???
?????????? ??????» (44).

85.

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

86.

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

?????????? ??? ??? ??????? ??????? (30 ??????? 1997) ??? ???????????? ??? ???
???? ??????? ??? ??? ??????? ??? ??? ??????? (4 ??????? 1996). ?? ??? ???
???? ?? ????????, ???????, ? ?????? ??????? ??????????? ????????????, ??? ?? ??? ??
?????????? ?? ??? ?? ??????????? ??????????? ??? ??? ??????? ??????????? ? ??????????
?? ??? ?? ??? ?? ??? ?? ??? ?? ??? ?? ??? ?? 1? ??? 1997. ??? ?????? ??? ??
?????????? ??? ??????? ??? ??????? M&S I (45).

VI – ??????

87.

?????? ??? ??????, ??????? ??? ??????????? ?? ??????? ??? ??????? ??? First-tier
Tribunal (Tax Chamber) (??????????, ????? ???????????, ????? ????????) ??
????:

«1)

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

2)

??????????, ??? ?? ??????????? ??????????? ??????????? ??? ?????? ???????, ?? ??????
?????????? ??????? ?? ??????????? ?? ?????? ??????????? ??? ??? ??????????? ??? ??????
??? ??? ???????????, ??????? ?? ??? ?????? ?????? ??? ??????????? ??????? ???
?????????? ???????????, ??? ?????? ??? ?? ?????? ?????? ??????????????? ??? ??????
????????? ?? ??? ??????????? ??? ??????? ??? ?????? ??????»

(1) ?????? ??? ??????????: ? ???????.

(2) ?????? C?62/00, ??? ????: M&S I, EU:C:2002:435.

(3) ?????? ??? ??????????, ??? 17?? ??? 1977, ??? ?????? ??? ??????????? ???
????????? ??? ?????? ???, ??? ??????? ?? ??? ?????? ?????? ?????? ?????? – ???
?????? ??? ?????? ??????????? ????: ?????????? ?????????? ??? (?? ????. ????. 09/001, ?. 49)? ??? ????: ??? ?????.

(4) ?? ?????? 8 ??? 15 ??? ??????? ?????????? ?????????? ?????? ?????? ??????? ??????? ???
?????? 4 ??? 11 ??? ??????? M&S I.

(5) ?????????? ??? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???????.

(6) ??????? ??? ?????? ??? ?????? ?????????? ? ??? ?????? ?????????? ?????? ??? Compass.

(7) ?????? C?309/06, ??? ????: M&S II, EU:C:2008:211.

(8) ?????? C?62/00, EU:C:2002:435.

(9) ?????? ??? 15?? ??? 2007, C?35/05, EU:C:2007:167.

(10) ??????? 8 ??? 26 ??? ?????????? ??? ???????????.

(11) ?????? 4 ??? ???????????? ?????????????? ??? ?????????? ??? ?????????? ???????????.

(12) ??? ?? ??????? ?? ?????? 12 ??? ??????? ??????????, ? ??????? ??????????
?????? ??? «?????? ??? ?????????? ?????? ??? ?????? ?????????? ??? ?????????? ?????????? ???
??? ?????? ??? ?????? ?????? ?????????? ?? ?????», ??????? ??? ?????????? ???
????????????? ??? ?? ?????, ??? ?? ??? ??? ??? ???, ??? ?????????? ?????? ??? ??????
?????? ?? ??? ?????? ??? ???????????.

(13) ?????? C?62/00, EU:C:2002:435.

(14) ??????? ?? ??? ??????????? ??? ?? ?????? ?????????? ??? ?????? 4 ??? ????????
???? ?????????? ???, ? ??? «????? ??? Fleming» ?????????? ??? ?????????? ???
House of Lords, Fleming ??? HMRC. ? «????? ?????????? ??? ??? ??? ?????? ???
Fleming» ?????? ??? ?????? ? ?????? ?????????? ?????? ??? ?????? 80 ??? ?????? ??? 1994
????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????????? ???
????????????? ?? ?????? ??? ?????, ?? ?????? ??? ?????? ?????? ?????????? ??? ??????????????
????????? ??? ?????? ??? ?????? ??? 4 ?????????? 1996. ? ??? «????? ??????????
????? ??? ?????? ?????? Fleming» ?????????? ??? ?????????? ??? ?????????????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ?????????? ??? ??????????????
????????? ??? ?????? ??? ?????? ?????? ??? 1? ?????? 1997.

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

(16) ??????? ??????????? ??? ???????, ?????? 34 ??? 36.

(17) ??????? ??????????? ??? ??????? ??????????, ?????? 28 ??? 34.

(18) ??????? ??????????? ??? ??????? ??????????, ?????? 8.

(19) ?????? ??? 19?? ?????????? 2000, Schmeink & Cofreth ??? Strobel (C?454/98,
EU:C:2000:469, ????? 59).

(20) ?????? ??? 10?? ?????????? 2011, The Rank Group (C?259/10 ??? C?260/10,
EU:C:2011:719, ?????? 33 ??? 34).

(21) ??? ??? ?????? ???, ?????? ??? 3?? ?????? 2011, ?????????? ??? ?????? ???
(C?41/09, EU:C:2011:108, ????? 66).

(22) ??????? ??????????? ??? ???????, ?????? 20.

(23) ??????? ??????????? ??? ??????? ??????????, ?????? 25 ??? 27.

(24) ?????? ??? 8?? ?????? 2006, L.u.P. (C?106/05, EU:C:2006:380, ????? 48).

(25) ?????? M&S II (C?309/06, EU:C:2008:211, ????? 49).

(26) ??? ??? ??' ?????????? ???????, ? Compass ?????????? ??? ?????????? ???
????????????? ?????? ???????, ???, ??? ??? ?????? ???, ??? ?????? ??????.

(27) ??., ?????? ?????? ??????, ??????? ??? 6?? ?????????? 2012, Bonik (C?285/11, EU:C:2012:774, ?????? 25 ??? 27 ??? ?????????????? ??????????).

(29) ???.?, ?????? 24.

(30) ??????? M&S II (C?309/06, EU:C:2008:211, ???? 41).

(31) ???? , ?????? ?? ??????????? ?????? ?????? ??? ????? ?????? ?????? ?????? ???
????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???
????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ? ??????
????? ????. ??., ?????? ????, ?????? ??? 15?? ?????? 2007, Reemtsma
Cigarettenfabriken (C?35/05, EU:C:2007:167, ??? 37).

(32) ??????? ?? 15?? ?????? 2007, Reemtsma Cigarettenfabriken (C?35/05, EU:C:2007:167, ????? 38).

(33) ??????? C?309/06, EU:C:2008:211, ????? 50.

(34) ?????????? ??????????????, ?????? 18 ??? 19.

(35) ?????????? ?? ??? ???? ????? ? ?????????? ??? ?????????? ?????????? ??????????,
?????? ?????, ??? ??????? ??? 8?? ????? 2008, Ecotrade (C?95/07 ??? C?96/07,
EU:C:2008:267).

(36) ? ?????????????? ??? ?????????????? ?????????????? ??? ?????????????? ??? ?????????????? ??? ?????????????? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????????????? ? ?????????????? ??? ?????????????? ?????????????? ?????????????? ?????????????? (??? 1? ?????????? 2009).

(37) ?????????? ?????????????? ??? ?????????? ??????????, ?????? 4, ?????????? ?.

(38) ??????? C?62/00, EU:C:2002:435.

(39) ??????? C?62/00, EU:C:2002:435.

(41) ?? . ?????? 62 ??? ???????????? 31 ??? ???????? ?????????.

(42) C-309/06, EU:C:2008:211, ????? 59.

(43) ??????? M&S II (C-309/06, EU:C:2008:211, ???? 61).

(44) ??????? M&S II (C?309/06, EU:C:2008:211, ????? 63).

(45) ??????? C?62/00, EU:C:2002:435.