

@import url(../../../../css/generic.css); EUR-Lex - 61988C0050 - EL

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61988C0050

????????? ??? ?????? ?????????? Jacobs ??? 2?? ?????? 1989. - HEINZ KUEHNE ????
FINANZAMT MUENCHEN III. - ?????? ??? ??? ?????? ?????????????? ??????????:
FINANZGERICHT MUENCHEN - ??????. - ??? - ?????? ?????? ??? ??? ??????
????????????? ?????????? ??????????????, ??? ?????????? ??????????????, ???
????????? ?????? ??? ?????????? ?????? ??? ???.. - ?????? 50/88.

??????? ??? ?????????? ??? ?????????? 1989 ?????? 01925

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

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

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

1. ?? ?????????? ?????????? ??? ?????? ?????????? ?????????? ?????????? ??? ??? ??????
????????????? ?????????? ?? ??? ??? ?????? ??? ?????? ?????? ?????? ??? ((?????
?????? ??? ?????????? (77/388/??)), ??? 17?? ????? 1977, ??? ?????????????? ???
????????? ??? ?????? ???, ??? ?????? ?? ??? ?????? ?????? ?????? ?????? - ????
????????? ??? ?????????????? ????: ?????????? ?????????? ??? ?? ????. ??? 09/001, ?.
49)). ? ?????? ??? ?? ?????????? ?????????? ?????????? ?????????? ?????? ??? ?? ????. ??? ??
????? ??? ? ?????????? ??? ?????????? ?? ?????????? ??? ?????????? ??? ?? ??? ?????????? ???
??????. ? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?? ??? ?????? ??? ?? ?????????? ???
????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?? ?????????? ??? ?? ???.

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

"?? ??? ?????????????? ??? ?????? ??????????:"

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

2. ?? ?????????? ??????"

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

"1. ?? '????? ?????? ?????????? ?????????? ??? ?????, ? ?????? ??? ?????? ?????? ?????? ??????
????? ??? ?????? ??? ?????? 5.

...

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

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

?) ...

??.????? ??? ?????? ?? ?????????? ?? ?????????? ??? ??? ?????????? ??? ??????????
???????????, ??? ??? ??? ??? ???? ?????????? ??? ??? ?????????? ?????????? ???
?????????."

3. ??? ???? 11, ??? ?, ?????????? 1, ????????), ??? ??????, ?? ?????? ?????? ??
???? ?????? ??? ?????, "???? ?????? ??? ?????: ... ??? ??? ?????? ???
????????? ??? ????? 6, ?????????? 2, ?? ??? ?????? ??? ?????? ??? ?????????? ??? ???
????????? ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????????".

4. ??? ?????????? ??? ?????????? ?????? ??? ??????????, ???? ?????? ?????? ???
?? ?????? ?? ??????? ?? ?????? ??? 1? ?????????? 1979 (????? 1, ???
????????????? ?? ??? ?????? 78/583/??? ?? ??? . ??? 09/001, ?. 96).

5. ?? ????? 1, ?????????? 1, ?????? 2, ????????), ??? ?????????? ?????? ??? 1980 ???
????? ?????? ?????? ("Umsatzsteuergesetz"), ????, ??? ??? ????? "?????????????
?????", ?? ????: "?? ??? ?????? ?????? ?????????? ?? ?????????? ??????: ... ?
????????????? ??? ?????? ?????? ?????????? ?????. ?????????????? ?????? ??? ???
????????????? ... ?????????? ??? ?????? ??? ?????????? ??? '????? ?????', ???
????? ??? ?????????? ??? ?????? 3, ?????????? 9, ??? ?????? ?????? ??? ???
????????? ???." ?? ?????? 3, ?????????? 9, ??????, ??? ??? ????? "????????, ??????
?????" ?? ????: " '????? ??????' ?????? ?? ?????? ??? ??? ?????? ?????????".

6. ?? ?????? ?? ?????????? ??? ?? ?????????? ??? ?????? 1, ?????????? 1, ?????? 2,
???????, ??? ?????????? ??? ?????? ???' ?????? ?????? ?? ??? ?????? 6, ??????????
2, ????????, ??? ??????, ??? ??? ??? ??????: ? ?????? ?????? ?? ?????????? ???
?? ?????????? ??? ? ?? ??? ??? ?????? ??? ?? ?????? ?????????? ??? ?????? ???
? ?????????? ??? ?????? ??? ?????? ??? ??????????.

7. ? Heinz Kuehne, ?????????? ??? ?????? ?????, ????? ??????????. ??????
????????????? ?????????? ??? ?????? ?? ?????????? ?? ????. ?? ??????????
????????????? ??? ??? ??? ?????? ??? ?????????? ??? ??? ??? ??? ??????????
?? ??????. ?? Finanzamt (????????? ???) Muenchen III, ????? ??? ?????? ???,
????? ????, ??? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????????? ??? Kuehne
?? ?? 1981, ??? ?????? ??? ?????????? ??? ?????????? ??? ???????????. ??? ??? ??? ??????
????????? ??? ?????? Kuehne ?????? ?????? ??????, ? ?????? ?????? ?? ?????? ???
?? ?? Finanzamt, ?? ?????? ?????? ??? ???' ?????? ??? ??? ?????????? ???
????????? ??? ?????????? ??? 40 ?? 25 % ??? ?????? ??? ?????? ??? ?? ????
?????????, ?????????? ?? ??? ?? ??? ?????? ?????? ???????. ?????????? ??? ??? ??? ?
????? ??????????, ? Kuehne ?????? ??????. ?????????? ??? ? ?????????? ???
????????? ??? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????????? ???
?? ??? ??????????, ?????? ??? ?????? ?? ?????? ?????? ??? ??????, ? ?????? ???
????????? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???

??? ??? ???' ?????????? ??? ?????????? ??????????, ??? ?? ??????????????? ???
?????????? ??? ?? Kuehne, ??? ?? ?????? ????? ?????? ?????? ?????? ?????? ???????,
????? ?? ?? ??? ????? ?????? ??? ?? ?????? ??? ??.

8. ?????????? ?? ??????? ??? ??????? ??? ?????? ?????????? ???????, ?? Finanzgericht
(????????? ?????????) ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ??
????????? ???????, ?? ?????? ??? 9?? ?????????? 1987, ?? ?????????????? ???
????????? ??? ?????????? ??? 16 ?????????? 1988. ?? ?????????? ??? ??? ?? ????:

"? - ??? ?????? ?? ?????????? ?? ?????? 6, ?????????? 2, ??? ?????? ??????? ????:;

1) ? ?????????? ?????????? ?????? "?????? ?? ?????? ??? ?????? ?????????????? ??????? ???
????? ?? ?????? ?????? ??? ?????? ?????????????? ????" ??????? ???:

?) ? ?????????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?? ??? ?????? ?
????????? ??? ?????????? ??? ?????? ??? ?????? ?? ?????? ?????? ??? ?????? ?? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? (?????
15, ?????????? 2, ??? Umsatzsteuergesetz) ? ?????? ?????????????? ??? ?????? ??? ??
????? ?????? ?? ??? ?????????????? ?????? ??? ?????????????? (????? 17, ?????????? 2,
??? ?????? ??????), ? ???

?) ?????????? ??? ??? ? ?????????? ?????? ?????????? ??? ?????? ??? ?????????? ?? ??????? ???
????? ??????, ?????????? ?????? ??? ??? ??? ?? ??? ?????? ?????????? ??? ?? ??????
?? ??? ?????? ?????????????;:

?? ?????????? ?????????? ?????????? ??? ?????? 1, ??? ?):

2) ??? ??? ?????? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??????????????
????? ??? ?? ?????? ??? ?????? 6, ?????????? 2, ??? ??????, ??????? ?, ??? ?
????????? ??? ???, ?????? ??? ?????? ?? ?????? ?? ?????? ?? ??? ?????? ?????????????? ????
?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?? ?? ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
(??????, ???????, ???.) ? ??? ?? ?????????? (??????, ???????, ???.) ??? ??????;

3) ?? ?????????? ?????????? ?????????? ??? ?????? 2:

?) ? ??? ?????????? ??? ?????????? ?? ?????? 6, ?????????? 2, ?????? 2, ??? ?????? ???
????? ?? ?????????? ?????? ??? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????????? ???, ??? ??? ?????? ??? ?????? ??? ?????? 1, ?????????? ?), ?

?) ?????? ??? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????????? ????
????????? ??? ?? ?? ?????????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??
????? ?????? ??? ?????? ?????????????? ???;

? - ?? ?????????? ?????????? ??? ?????? 3, ??? ?):

1) ?????? ? ?????????? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ??????
??????, ??? ?? ?? ??? 1, ?????????? 1, ?????? 2, ??????? ?, ??? ?????? ??? ??????
????? ?????? ??? 1980 ?????????? ??? ??? ??? ?????????????? ??? ?????? ???
??????????, ??? ??? ??? ??? ??? ??? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??
? ?????? ?????? ??? ?????? ?????????????? ???;

?? ?????????? ?????????? ??? ?????? 1:

2) ?????? ?? ?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????
?? ?????????? ??? ?????? ??? ?????? 6, ?????????? 2, ??? ??????,

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

?? - ?? ?????????? ?????????? ?????????? ??? ?????????? ?, 1, ??? ?), 2 ? 3, ??? ?), ? ??
????????? ?????????? ?????????? ??? ?????????? ??, 1 ? 2:

?? ?????? ?? ?????????? ?? ?????? 11, ????, ????, ?????????? 1, ??????? ?), ??? ????
??????; ?????????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? - ?, ???????????,
??? ?????? ??? ?????? - ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??????
??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??????;

9. ??????? ?????????? ?????? ? ???????, ???? ??? ???????????????, ??? ?
????????? ???????, ???? ??? ???????????, ???? ??? ??????????? ????. ?? ?????? ?????????? ???
????????? ??? ? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?? ?????????? ???
??? ?????? ??? ???? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????
????????? , ? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?. ? ?????? ?????? ?????? ??????
????? ? ?????? ???, ???? ??? ???????????, ??? ?????? ??? ?????? ??? ?????? ??? ? ??????
????? ? ?????? ?? ?????? ?????? ?? ??????????? ??? ???, ?? ?????? ?? ?????? ??? ??????
????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??
????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??????
????? ??? ?????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???
????? ???.

10. ??? ??? ??? ?????, ? ?????????? ?????? ?????????? ?????????? ??? ? ??????? ??????
??? ??? ???? ???? ???? ?????? ??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ????
????????? ???, ???? ?? ?????????? ??? ?????? ??? ?????? ?? ?????? ?????????? ??? ???? ???? ???? ????
????? ? ?????????? ??? ?????? ?? ?????????? ?????? ?????????? ?????? ???' ?????? ??? ???? ???? ???? ????
????? ? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ???? ???? ???? ???? ???? ????
????? , ??? ???????????????, ?? ?????? ?????? ???????????, ?? "?????????????"
?????????", ???? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ???? ???? ???? ????
????????? ??? ??. ?? ?????? ??? ?????? ??? ?????? ?? ?????????? ?? ??? ???? ???? ???? ???? ???? ???? ????
?? ??? 17, ?????????? 2, ? ?? ?????? ??? ?????????? ?? ?? ?????????? ?????? ?????? ?????? ?????? ?????? .
?? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? . ?
????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???

11. ???????, ?????? ?? ?????????? ??? ? ?????? ?????? ?????, ?????? ?????????? ?? ???
?? ??? ??????????, ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
?? ? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
?? ??????????. ? ?????? "????????????? ??? ?????? ??????" ?????????? ??? ??????
????? ??? ??? ?????? ?????? ?? ?????? 6, ?????????? 2, ?????????? ?????? ???
"????????????? ??????". ???????, ??? ?????? ??? ?????????????? ?????? ?????? ???
?? ?????? ?? ?????????? ? ??????????: ? ????