

???????? C-188/09

## Dyrektor Izby Skarbowej w Białymostku

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**Profaktor Kulesza, Frankowski, Jó?wiak, Or?owski sp. j, anciennement Profaktor Kulesza, Frankowski, Trzaska sp. j**

[?????? ???? Naczelnego S?d Administracyjnego (???????) ??? ??? ?????? ?????????????????  
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«?????? ??????? ?????????????? ?????????? – ??? – ?????????? ?????????? – ?????? ???  
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1. ??????????? ?????????? – ?????????? ??? ?????????? – ????? ?????? ?????? –  
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(?????? ?? ?????????? 67/227, ???? 2 §§ 1 ??? 2, ??? 77/388, ???? 2, 10 §§ 1 ??? 2, ??? 17 §§ 1 ??? 2)

2. ??????????? ?????????? – ?????????? ??? ?????????? – ????? ?????? ?????? ?????????? –  
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(?????? 77/388 ??? ??????????, ??? 27 § 1)

3. ??????????? ?????????? – ??????????? ??? ?????????? – ?????? ?????? ?????? –  
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?? ?????????????? ?????? ?????? ?????? – ?????? ??? «????? ?????? ??????» – ??????

(?????? 77/388 ??? ????????????, ??? 33)

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

????? ??????. ????, ????????????, ????, ?????????????? ????, ?????????????? ????, ?? ?????????? ?? ?????????? ????  
????????? ????, ?????????????? ?? ?????????? ????, ?????????? ????, ?????????? ????, ?????? 30 %, ?? ??  
????? ?????? ??????? ?? ?????????? ?? ?????????? ????, ???????, ?? ?????????? ?????? ?????????? ????  
????? ????, ?????? ?? ?????????? ????, ?????????? ????, ?????????????? ????, ?????????? ????, ?????????? ????  
????????? . ???????, ?????????? ????, ?????????? ????, ?????????? ????, ?????????? ????, ?????????? ????  
????????? ?????????? ????, ?????????? ????, ?????????? ????, ?? ?????????? ????, ?????????? ????, ??????  
?????????????, ?????????? ????, ?????????? ????, ?????????? ????, ?????????? ????, ?????????? ????, ?????????? ????  
????????????? ? ?????????? ????, ?? ?????????? ????, ?? ?????????? ????, ?? ?????? ?????? ????, ??????  
????????? ????, ?????? ????, ?????? ????, ?????? ????, ?????????? ????, ?????????? ????, ????, ????, ????,  
??????????, ????, ?????? ????, ?????? ????, ?????????? ????, ?????????? ????, ?????? ????, ????, ??????????  
????????? ????, ????, ????, ?????????? ????, ?????????? ????, ?????????? . ???????, ????, ?????????? ?????????? ????  
????????????? ????, 30 % ????, ????, ????, ?????????? ????, ?????????? ????, ?????????? ????, ?????????? ????,  
????????????? ????, ?????? ????, ?????? ????, ?????????? ????, ?????????? ????, ?????????? ????, ?????????? ????  
????????? ?????????? ????, ?????????? ????, ?????????? ????, ?????????? ????, ?????????? ????, ?????????? ????  
????????????? ????. ???????, ? ?????????? ????, ?????????? ????, ?????? ????, ????, ????, ????, ????, ????, ????  
??? ?????????? ? ?????????? ????, ?????????? ????, ?????????? ????, ?????????? ????, ?????????? ????, ????, ????,  
??? ?????????? ????, ?????????? ????, ?????????? ????, ?????????? . ???????, ????, ????, ????, ????, ????  
????? ????, ????, ?? ?????????? ????, ????, ????, ?????????? ????, ?????????? ????, ?????????? ????, ????, ????  
????? ????, ????, ? ???' ?????????? ????, ?????????? ????, ?????????? ????, ????, ????, ?????????? ????, ????  
????? 30 % ????, ????, ?????????? ? ?????????? ????, ?????????? ????, ?????? ????, ????, ????, ????, ????, ????  
??? ?????????? ????, ?????????? ????, ?????????? ????, ?????????? ????, ?????? ????, ????, ????, ????, ????, ????  
????? ????, ????, ?????????? ????, ?????????? ????, ?????????? ????, ??????

(?. ??????? 27-28, 34-37, 39, ????????. 1)

(???. ??????? 41-43, ????????. 2)

(???. ???? 49, ??????. 3)

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

?? 29?? ?????? 2010 (\*)

«?????? ??????? ?????????????? ?????????? – ??? – ??????? ?????????? – ?????? ??  
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???? ?????? C188/09,

?? ?????????? ?????? ?????????? ?????????????? ?????????? ??????? ??? ?????? 234 ??,  
??? ??????? ?? Naczelnego S?d Administracyjny (??????) ?? ??????? ??? 21?? ????? 2009, ?  
????? ??????? ??? ?????????? ??? 28 ????? 2009, ??? ??????? ??? ??????

### **Dyrektor Izby Skarbowej w Bi?ymstoku**

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**Profaktor Kulesza, Frankowski, Jó?wiak, Or?owski sp. j.**, ????? Profaktor Kulesza,  
Frankowski, Trzaska sp. j.,

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

????????? ??? ??? J.-C. Bonichot (??????), ?????? ????????, C. Toader, K. Schiemann,  
L. Bay Larsen ??? D. Šváby, ????????,

?????? ??????????: J. Mazák

?????????: K. Malacek, ??????? ??????????,

?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???  
20?? ??? 2010,

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

– ? ??????? ????????, ?????????????? ??? ??? M. Dowgielewicz ????? ??? ??? ??? A.  
Rutkowska ??? A. Kramarczyk,

– ? ??????? ????????, ?????????????? ??? ??? ?. ?????????????? ??? K. Herrmann,

?????? ??? ??????? ??? ?????, ??? ?????? ??? ?????? ??? ?????? ???????????, ?? ??????? ???  
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1 ? ?????? ?????????? ?????????????? ?????????? ?????? ??? ?????????? ??? ??????  
????????? 67/227/??? ??? ??????????, ??? 11?? ?????????? 1967, ??? ??? ?????????????? ???  
????????? ??? ?????? ???, ??? ?????????? ?? ??? ????? ?????? ?????? ?????? ?????? (?? ????. ???.  
09/001, ?. 3, ??? ????: ?????? ?????? ???), ??? ??? ?????? ?????? 77/388/??? ???  
?????????, ??? 17?? ?????? 1977, ??? ?????????? ?? ??? ?????????? ??? ?????? ?????? ??????  
??? ?????????? ?? ??? ?????? ?????? ?????? – ?????? ?????? ?????? ?????? ??????????????  
?????: ?????????? ?????????? ???, ??? ?????????? ?? ??? ?????? 2004/7/?? ???  
?????????, ??? 20?? ?????????? 2004 (?? L 27, ?. 44, ??? ????: ??? ?????? ???).

2 ? ?????? ?????? ?????? ?????????? ??? ?????? ??????, ??? Profaktor Kulesza,  
Frankowski, Jozwiak, Orlowski sp. J, ??? Profaktor Kulesza, Frankowski, Trzaska sp. J (???  
???: Profaktor), ??? ??? Dyrektor Izby Skarbowej w Białymstoku (????????? ??????? ???  
Białystok) ??????? ?? ??? ?????????? ??? ?????????? ?????????? ??? ??????  
????????????? ??? (?? ????: ???) ??? ?????????? ??? ??? ?????? ???????, ?????? ?  
????????? ??? ??? ?????? ??? ?????????? ?????????????? ?????????? ?????????? ??????  
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3 ??? ?? ??? 2, ??? ?????? ??? ??????, ??? ?????? ??????? ???:  
«? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ?????? ?????????? ???  
?????? ??? ??? ?????? ??? ??? ?????? ??? ?????? ?????? ?????? ?????????? ???, ??????  
????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???  
????????? ???, ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
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?? ??? ?????????? ? ??? ?????? ?????????? ???, ?????????????? ??? ??? ??? ?????? ???  
????? ? ??? ???????, ?? ??? ?????????? ??? ?????? ??? ? ??? ?????? ??? ?????? ???  
?????????, ??? ?????? ?????? ???' ?????? ??? ?????? ??? ?????? ?????????? ???, ?  
????? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
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4 ?? ??? 2 ??? ?????? ??????? ??? ??????:

«????? ??? ?????????? ??? ?????? ??????????:

1. ?? ?????????? ??? ?????? ??? ?? ?????? ??? ?????????, ??? ?????????????? ???  
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2. ?? ?????????? ????.»

5 ?? ??? 10, ?????????? 1, ??????? ??, ??? ?????? ?????? ?????? ??? «?????????»  
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????? ??? ?????? ?????????? ?? ?? ?????? ?????? ?????? ??? ??????». ?? ????? 10, ?????????? 2,  
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«? ?????????????? ?????? ?????????? ??? ? ?????? ?????????? ??????????, ??? ???? ????  
????????????????? ??? ?????????? ??? ?????? ???? ?????? ???? ?????????? ??? ??????????. ??  
?????????? ??????, ?????? ??? ?????????????? ??? ?????? 5 ?????????? 4 ?????????? ?,  
????? ??? ?? ??????? ??????????, ?? ?????? ?????????????? ?????????? ?????????? ??????  
????????????? ? ?????????? ?????????, ?????????? ??? ?????????????????? ??? ??? ??? ??? ???  
????????? ???????, ??? ?????? ?????????? ??? ?????????? ?????????? ?????????? ??????  
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6      ????? ?? ?????? 17 ??? ?????? ????????:

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

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

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

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

[...]

4. ?? ?????????? ?? ?????????? ??????????? ?? ??????? ?????????? ??? ?? 31??  
?????????? 1977, ??????? ?? ??????????, ??? ?????????????? ?????????? ?????????? ???????????, ???  
??? ??????? ?? ?????????? ?? ??????????? ??????? ?? ??? ?????????? 3, ?? ?????????????? ???  
???? ?? ?????????????? ?? ?????????? ??? ?????????? ??? ?????.. ????? ?? ?????? ?? ?????? ??? ????? ??  
?????????? ???????, ?? ?????? ??? ??????????? ????? ?? ??? ?????? ??? ?????? ?? ??? ?????? ?? ???  
????? ?? ??????? ? ??????????. ??? ? ??????????? ????? ?? ??? ?????? ??? ???????????????  
?? ?????? ?? ??????????, ?? ?????? ??? ?????? ??? ??????????? ?? ?????????? ???  
?????????? ? ?? ??? ??????????? ?? ??????????????? ??????????????? »

7      ?? ?????? 22 ??? ?????? ??????? ?? ???? ??????? ?? ???? XIII, «????????????? ?? ???? ??????? ?? ????». ??????:

«[...]

2. ?????????????? ?? ???? ?????? ?? ???? ?????? ????????, ???  
?? ?????????? ?? ???? ? ?????? ?? [??] ??? ? ?????? ?? ?????????? ?? ???? ???  
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[...]

8.    ?? ?? ??????????? ???. ??????????, ?? ?????? ?? ??????????? ??????? ?? ?????? 17  
?????????? 4, ?? ?????? ???. ?????? ???. ?????????? ?? ?????????? ?? ?????????? ?? ?????? ???????????, ???.  
????????? ???. ?????????? ???. ???. ?????????? ???. ?????????? ???. ?????????? ???. ???. ???. ???. ???. ???.  
????????? ???. ?????????? ???. ???.

[...]»

8      ????? ?? ?????? 27, ??????????? 1, ??? ??????? ?????:

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

9      ?? ?????? 33, ??????????? 1, ??? ?????? ??????? ???. ??????:

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

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

10      ????? ?? ?????? 111, ??????????? 1 ??? 2, ??? ?????? ??? ?????? ??? ?????? ??? ???? ?????? ??? ?????? ???  
??? ?????????? (ustawa o podatku od towarów i usług, *Dz. U* ????. 54, 535), ??? 11?? ??????? 2004 (???, ????: ????, ??? 2004 ???, ???):

«1. ? ? ?????????????? ???? ???? ???? ???? ?????????????? ???? ?????? ?? ???? ???? ???? ???? ??  
????????? ???? ?????????? ???? ?????????????? [...] ?????????????? ?? ???? ?????????? ?? ???? ????  
????????? ??? ?? ??? ???? ??? ?????????????? ???? ?? ???? ?????????????? ???? ?????????? ???? ????  
??????????.

11     ?? ????? 87. ?????????? 1. ??? ????? ?????? ??????

«?? ?? ?????? ?? ?????????????? ?????? ???????, ????, ?? ?????? 86, ?????????? 2,  
??????????, ??? ??????? ?? ?????????? ???????????, ??? ?????????? ???, ? ???????  
????? ???, ?? ??????? ?? ?????????? ?? ?????????? ?? ??????? ?? ??? ?????? ?? ??????? ??  
????????? ??????? ?? ??????? ?? ?????????? ?? ??????? ?? ?????????? ?????????? »

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

12 ?? ??????? ?? 17?? ?????????? 2006, ? Dyrektor Urz?du Kontroli Skarbowej w Bia?ymstoku (?????????? ?? Bialystok) ??????? ?? ?? ?? ?? ?????? ? Profaktor ??? ?????????? ?? 2004 ??? 2005 ?? ??? ?????????? ?? ?? ?? ????????, ??? ?? ?????? ??, ??? ?? ??????? ?? ?? ?? ????????. ?????????? ??, ???' ?????????? ?? ?? ?????????? ?? ?? ?? 111 ??? ?????? ?? 2004 ??? ??, ??? 30 % ?? ??

????????? ??? ??? ??????? ??????? ??? ?????????? ??? ?????????????? ?? ??? ?????????????? ???, ?? ??? ?????????? ??? ? Profaktor ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????????? ???  
????? ??????? ??? ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ?????????? ??????????.

13 ? ??????? ?????????? ??? ???? ?????????? ??????, ? ?????? ??? ?????????? ?????? 7  
????????? 2007, ??? ?? Dyrektor Izby Skarbowej w Białymstku.

15 ? Dyrektor Izby Skarbowej w Białymostku ?????? ??????? ?? ???? ?????????? ?????  
?? ?????????? ?? ? ? ??????? ?????????? ?????? ?????? ?? ?????????? ???????, ? ??????  
?????? ?? ? ??????? ?????????? ?? ? ? ???? ?????? ?? ? ? ???? ?????????? ?? ? ????  
?? ? ???? ? ?????????? ?? ? ? ?????????? ?????? ?????? ?? ? ? ???? ?????????? ?? ? ????.

2) ??????? ?? “?????? ?????” ??? ?????? 27, ?????????? 1, ??? ????? ?????? [??],  
????????????? ????? ?? ?????? ??? ?????? ??? ??? ?????? ??? ?? ?????????? ?? ??????????  
????????????? ??? ?????????? ??????, ??? ?????????? ?? ?????? 111, ?????????? 2, ??  
????????? ?? ??? ?????? 1, ??? ?????? ??? 2004 ??? ?, ??? ?????? ??? ?????? ???  
????? ??? ??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ??????

????? ??? ??????????? ?????? ?? ???????? ?????????? ?????????? ???, ????????????,  
????????? ??? ?? ???????? ??? ?????? ?????? ?????? ?????? ?????????? ??? ?????????? ??? ??????  
27, ?????????? 2 ??? 4, ??? ????? ??????;

3) ??????????? ?? ??????? ??? ??????? ?????? ??? ?????? ?? ?????? 33, ?????????? 1, ???  
????? ?????? (??), ??? ?????? ?????????? ?????????? ??? ?? ?????? ?????????? ??????  
?? ??????????, ??? ??? ?????????? ?????? ??? ?? ?????? ?????????? ??? ?????????? ??????????  
?? ?????? ?????? ?????? ??? ?? ?????? ??? ?????????? ?????? ?? ?????????? ??????  
?????????, ?? ?????? ??? ?? ?????? ??? ?????????? ?????? ?????? 30 % ??? ???  
????? ??? ?? ?????? ?????? ??? ??????????, ??? ?????????? ?? ?????? 111, ??????????  
2, ?? ?????? ?? ??? ?????? 1, ??? ?????? ??? 2004 ??? ???;»

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18 ?? ?? ?????? ??????, ?? ?????? ?????????? ?????? ???' ?????? ?? ?????????????? ??  
?? ?????? ?????? ???, ??? ?????????????? ??? ?????? 2, ?????????? 1 ??? 2, ??? ??????  
?????? ?? ??? ?? ?????? 2 ??? 10, ?????????? 1 ??? 2, ?????? ??? ?? ?????? 17,  
????????? 1 ??? 2, ??? ?????? ?????? ???, ??? ?????????? ??? ?????? ??? ?????? ?? ??????????  
????????? ?? ??? ??? ?????? ?????????? ?????????? ??? ?????? ?????? ??? ?????? ??????????  
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19 ?????????????? ??? ?? ??????? ?????????? ??? ?????????? ?? ?????? 17 ??? 20 ???  
????? ?????? ?????? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???, ????????, ???  
????? ?? ??????????. ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????????? ???  
????? ??? ??? ?????? (??., ?????? ???, ?????????? ??? 13?? ?????? 2008, C-437/06,  
Securenta, ?????? 2008, ?. I?1597, ????? 24- ??? 4?? ?????? 2009, C-102/08, SALIX  
Grundstücks-Vermietungsgesellschaft, ?????? 2009, ?. I-4629, ????? 70, ??? ??? 29??  
????????? 2009, C-29/08, SKF, ??? ??? ?????? ?????????? ??? ???????, ?????? 55).

20 ???????????, ?? ?????? ??? ?????????? ?????? ?? ?????????? ?????? ???  
????????????? ??? ?? ?????? ??? ??? ?????? ? ?????????? ??? ?????????? ??? ?????? ???  
????????????? ?????????????? ????. ?? ?????? ?????? ??? ?? ?????????? ??? ?????????? ???  
????????????? ?? ??? ?? ?????????? ?????????? ??? ?????? ??? ?????????? ??????????????,  
????????????? ??? ?????? ??? ?????? ?????????? ???, ??? ??? ?????????? ??? ?? ??  
????????????? ?????? ?????????? ?????????? ??? (??., ?????? ???, ?????????? ???  
29?? ?????? 2004, C-137/02, Faxworld, ?????? 2004, ?. I-5547, ????? 37, ??? SKF,  
?????????., ??? 56).

21 ? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?? ??????????  
?? ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ??????????  
????????? ??? ?????? ?????? ??? ??????. ?? ?? ?????? 2 ??? 22 ??? ?????? ??????,  
????? ??? ??? ?? ?????? 10 ??, ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???  
??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ?????? (?????? ??? 17?? ?????? 2008, C-132/06, ??????  
????? ??????, ?????? 2008, ?. I-5457, ????? 37).

22 ??? ?????? ??? ?????? ?????????? ???, ?? ?????? ??? ?????????????? ??

????????????? ??? ?????? ??? ??????????? ??? ?????????????? ??? ?????? ?????????????? ???  
????? ??? ?????? ??? ????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????  
????????? ??? ?????? ??? ?????? (???????, ???????????, ???????????, ???????????,  
????? 38).

23    ??? ?????? ??? ??????????? ????, ?? ?????? 22, ?????????? 2, ??? ?????? ???????  
??? ?????????? ?????? ??? ????? ?????????? ??? ?????? ?????? ?????? ?? ?????? ???????  
????????? ?????????? ??? ? ?????????? ?????? ? ?????? ? ?????? ??? ? ?????? ??? ? ?????? ???  
??? ? ?????????? ???.

24    ???????, ??? ???? 22, ?????????? 8, ??? ?????? ??????? ???, ?? ?????? ???, ??  
??? ?????????? ??? ?????????? ??? ? ?????????? ??? ?????? ??? ?????? 17, ?????????? 4, ???  
???????, ?????? ??? ?????????? ?? ?????? ??? ?????? ?????? ?????????? ??? ??????  
????????? ??? ???? ?????????? ?????????? ?????????? ??? ?????? ??? ???? ??????  
?????????????????.

25    ??????? ?????????????? ??? ? ?????????????? ??? ?????????????, ??? ??????????????  
??? ??? ?????????? ?????????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ? ???  
??????? ??? (?. ???????? ??? 29?? ??????? 2004, C-487/01 ??? C-7/02, Gemeente Leusden  
??? Holin Groep, ??????? 2004, ?. I-5337, ????? 76- ??? 21?? ?????????? 2006, C-255/02,  
Halifax ?.., ??????? 2006, ?. I-1609, ????? 71, ????? ??? ?????? ??? ??????,  
??????????????, ??? 46).

26    ?? ?????, ???, ??? ???? ?????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????????? ???  
????????? ??? ???? ?????? ?? ?????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????????? ???  
????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ???????????????.  
???? ?????????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????  
??? ?????????? ?? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????????? ??? ?????? ???  
????? ?????????? ??? ??? (?. ???' ??? ???? ?????, ?????? ???, ?????????? ??? 18??  
????????? 1997, C?286/94, C-340/95, C-401/95 ??? C-47/96, Molenheide ?.., ??????? 1997,  
. I-7281, ????? 47- ??? 21?? ??????? 2005, C-25/03, HE, ??????? 2005, ?. I-3123, ????? 80,  
????? ??? ??? 8?? ????? 2008, C-95/07 ??? C-96/07, Ecotrade, ??????? 2008, ?. I-3457, ?????  
66).

27    ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ?? ?????? 111,  
????????? 1 ??? 2, ??? ?????? ??? 2004 ????, ??? ?????????????? ???, ?????????? ???  
???? ?????????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ??????????  
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???, ?????? ??  
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ???  
????? ??? ?????????? ??? ? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? 22,  
????????? 8, ??? ?????? ?????? ???.

28    ??? ?????? ???, ?? ?? ??? ?????, ?????????? ??? ?????????? ??? ?????????? ??? ?? ?????????? ??  
????????? ??? ?????????? ??? ?????? ???????????, ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???  
30 %, ?????? ?? ??????? ?? ?????????? ??? ??????, ?? ?????????? ??? ?????????? ??? ?????? ???  
????? ?????? ?? ?????????? ??? ?????????????? ??? ?????? ??? ?????? ??? ??????????.

29    ??????? ?????????????? ???, ??????? ?????????? ??? ?????????? ??? ?????????? ??????????  
????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???  
??? ?????????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???, ?? ?????? ???  
????? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? . ?????? ??? ?????? ???  
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

???, ???, ????? ????????, ??? ??? ???? ??? ?????????????????? (????????? ??? 12?? ??????? 2001, C?262/99, ???????????, ??????? 2001, ?. I-5547, ????? 67).

30      ????? ?????? ?? ??????????????? ?????????? ??? ?????? ??? ???????????????, ??? ??????  
?????????? ??????????? ?? ?????????? ?? ?????????? ??? ?????????? ??? ??????? ??? ?? ??????  
??? ??????, ?? ?? ??????????? ?????? ??????? ??? ?? ?????????? ??? ??????? ??????????? ???  
?? ??????? ?????????? ??? ??????? ?? ??????? ??? ??????? ?? ?? ?????? ?? ??????? ?? ??????? ??  
????? ?????????? ?? ?????????? ?? ?????????? ??? ??????? ??? (??., ?????? ?????, ?????????? ?? 30??  
????????? 1995, C-55/94, Gebhard, ??????? 1995, ?. I-4165, ?????? ??? Molenheide ?..,,  
??????????????, ??? 49).

31     ???? ??????? ????? ?????????????????, ???????, ??? ?? ?????????? ??? ?????? ??? 2004 ????  
???? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????????? ?????????? ??? ?????????????? ?? ???  
????? ?????????? ????. ?? ?????????? ??? ?????????????? ?? ??????? ??? ?????? ??? ?? ?  
????????????????? ?????????? ??? ?????????? ??? ?????????????? ??? ?????????????? ?? ?????????? ??????.

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

33      ???????, ? ???????, ??? ?????????????? ??? ?????????????? ??? ?????????????? ??? ?????????????? ???  
????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???  
????????? ??? ??? ??? ???????, ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ??????.

34 ???????, ? ??????????? ???, ??? ?????? ??? ??? ????? ??????? ??, ??? ???.  
??????????, ???????, ??????? ??, ??? ?????? ??? ??? ?????? ??? ???????????????, ??? ???.  
??????????, ??? ?????? ??? ???????????, ???????????????, ??, ????, ? ???????, ???????????????  
??? ?????? ??? ???????, ??? ??, ???????????, ??? ?????? ??? ?????? ???????????????, ???????????, ???  
??????????, ???????????, ??, ???????????, ???????????, ??? ???????????, ??? ???????????, ??? ???????????  
??????????, ??? ??, ???????????, ??? ??, ??? ?????? ???????????, ??? ???????????, ??? ?????? ???  
????? ??? ???????????, ???????????, ??? ??.

37 ????????, ??? ?? ?????? ??? ? ?????? ??? ?????????????? ??? ?? ??????????  
?????????? ?????????? ??? ?? ?????? ??? , ? ???' ?????? ?????????? ??? ?? ??????????  
??? ?? ??????? ??? ?? ??????? ??? ??????? 30 % ??? ?? ?????? ??????? ? ??????? ?? ??????  
????? ??? ?? ?????? ??? ?? ?????? ??? ?????????? ??? ?? ?????????? ?????????????? ? ??????????  
????? ??? ?? ?????? ??? ?? ?????? ??? ?????????? ??? ?? ?????????? ??? ?????????????? ???  
????????? ?????? ??? ?? ?????? ??? ?????????? ??? ?? ?????????? ??? ?? ?????????????? ???

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

38    ??????? ??? ??? ?????????? ??? ?????????? ? ??????????, ??? ?????? ? ??????????  
????????????????? ?????????? ?????????? ?????????? ?????????? ?? ?????????? ?????? ???  
??? ??????????????, ??? ?????? ?????? ?????? ?????????, ?????? ?? ?????????? ?????? ???  
????????????? ?????? ?????? ?? ?????? ?????? ?????????? ?????????? ?????? ??? ???  
??????? ??? ??????????, ?? ?????? ?????? ?? ?????????? ??? ?????????????? ?? ??????, ???  
????? ??? ?????????? ??? ?????????, ?? ?????? ?? ?????????? ?????????? ?????? ???, ??  
????????? ?????????, ?? ?????????? ??? ?? ??? ?????? ??????????.

39    ??? ?? ?????????? ?????????? ??? ?????? ?????? ?????????? ?????????? ??? ??  
????? ?????? ???, ??? ?????????????? ??? ?????? 2, ?????????? 1 ??? 2, ??? ??????  
??????? ??? ??? ??? ?????? 2 ??? 10, ?????????? 1 ??? 2, ?????? ??? ??? ?????? 17,  
????????? 1 ??? 2, ??? ?????? ?????? ???, ??? ?????????? ?? ?????? ??? ?? ??????????  
????????? ?? ??? ??? ??? ?????????? ?????????? ??? ?????????????? ?????? ?????? ??? ???  
????????? ??? ??? ??? ??? ?????????? ?? ?????????? ?????????? ?????? ??? ?????? ???  
????, ??? ??? ??? ?????????? ??? ? ?????????????? ?????? ?????? ??? ?????? ??? ??????????????.

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

40    ?? ?? ??????? ???????, ?? ?????? ?????????? ?????? ???' ?????? ?? ??????????????  
?? ?? ?????????? ??? ?????? 111, ?????????? 1 ??? 2, ??? ?????? ??? 2004 ??? ?? ??????  
?? ?????????? ?? «????? ??? ?????? ??????????» ??? ??? ?????? ?????????? ??????????  
????????????? ? ?????????????? ??? ??? ?????? ??? ?????? 27, ?????????? 1, ??? ??????  
?????? ???.

41    ???????, ??? ?? ?????????? ??? ?? ?????????? ??? ?????? ?????? ???, ???  
?????????? ??? ?? ?????? 111, ?????????? 1 ??? 2, ??? ?????? ??? 2004 ??? ??, ??????  
?????????? ??? ?? ?????????? ?????????? ?????? ?????????? ??? ? ?????????? ??? ?? ???  
??????? ??? ?????????? ?????????????? ?????? ?????? ?????????? ??? ?? ??????????  
????????? ??? ?????? ?????????? ??? ?? ?????? ??? ?????????? ??????. ?? ?????? ???, ???  
????????? ??? ?????? ??? ?????????? ?? ?????? 22, ?????????? 8, ??? ?????? ?????? ???,  
??? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????  
27, ?????????? 1, ??? ?????? ?????? (??., ???' ???? ??? ??????, ?????????? ??? 14?  
??????? 1988, 123/87 ??? 330/87, Jeunehomme ??? EGI, ??????? 1988, ?. 4517, ????? 15,  
????? ??? ??? 15? ?????????? 2009, C-502/07, K-1, ?????? 2009, ?. I-161, ????? 23).

42    ???????, ?????????? ??? ?????? ??? ?????? 111, ?????????? 1 ??? 2, ??? ?????? 2004  
????? ??? ??? ?????????? ??? ?????? ?????????? ??? ?????? 27, ?????????? 1.

43    ??? ???????, ??? ?????? ?????? ?????? ?????? ? ?????????? ??? ?? ?????????? ???  
????? ??? ?????? 111, ?????????? 1 ??? 2, ??? ?????? ??? 2004 ??? ?? ??????  
«????? ??? ?????? ??????????» ??? ?????? ??? ?????? ?????????? ??????????  
????????????? ? ?????????????, ??? ??? ?????? ??? ?????? 27, ?????????? 1, ??? ??????  
?????? ???.

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

44 ?? ?? ?????? ???????, ?? ?????? ??????????? ?????? ???' ?????? ?? ??????????????? ??  
?? ?????? 33 ??? ?????? ??????? ?? ?????????? ?? ?????????? ?????????? ?????? ?????? ??  
????????? ??? ?????? 111, ?????????? 1 ??? 2, ??? ?????? ??? 2004 ??? ??.

45 ?? ?????? 33 ??? ?????? ??????? ?? ?????????? ?? ?????????? ?? ??? ?????? ??? ??  
????? ??? ?????? ?????? ??? ?????, ?????????? ?? ?????? ??? ??? ?????????? ??????, ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??????  
(?. ?????????? ??? 3? ?????? 2006, C-475/03, Banca popolare di Cremona, ?????? 2006,  
. I?9373, ??? 24, ??? K-1, ???????????, ??? 27).

46 ?????????? ?? ?????? ?? ?????? ???, ??? ?????? ?? ?????? ??? ?????? ??? ??????  
????? ?????? ???????, ??? ??? ?????? ?? ?????? 33 ??? ?????? ???????, ??????, ???  
?????, ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??????  
????????? ???, ?????????? ??? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??????  
????????? ?? ?????? ?????? ?????? ??? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??????  
??? ??? (????? ??? 11? ?????? 2007, C-283/06 ?? C-312/06, KÖGÁZ ??., ??????  
2007, ?. I?8463, ??? 34).

47 ??? ?????? ?????? ?? ?????? ?????????? ?? ?????????? ?????????? ?? ?????? ???  
????????? ?? ?????? ?????? ?? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??????  
? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??????  
????? ??? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??????  
?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??????  
????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??????  
?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??????  
?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??????  
?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??????  
????????? ??? ?????? (????????????? ?????? Banca Popolare di Cremona,  
????? 28, KÖGÁZ ??., ??? 37, ??? K-1, ??? 17).

48 ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????????? ?? ?????? ???  
????? ??? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????  
?? ?????????? ??? ?????? 28 ?? ?????? ?????? ?? ??????, ?? ?????? ?????? ?? ??????  
????? ??? ?????? ??? ?????? ?? ?????? ?? ?????? ?????? ?????? ?????? ?????? ???  
????????? ??? ?????? ??? ?????? ?? ?????? ?? ?????? ?????? ?????? ?????? ?????? ???  
????, ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ?? ?????? ?????? ?????? ???  
????????? ?????? ??? ?????? ?? ?????? ??? ?????? ?? ?????? ?????? ??? ?????? ???  
????????? ??? ?????? ?? ?????? 33 ??? ?????? ??????.

49 ??? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?? ?????? ?? ?????? 33 ??  
????? ?????? ??? ??? ?????? ?? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??????  
????? 111, ?????? 1 ??? 2, ??? ?????? ??? 2004 ??? ??.

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

50 ?????????? ??? ? ?????? ?????????? ??? ?? ?????? ??? ?????? ?????????? ?? ?????? ???  
?? ?????????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ?? ??????  
????????? ?? ?????? ??? ?????? ?????? ?????? ?? ?????? ?? ?????? ?????? ??????????  
???? ?????? ?????? ?????????? ??? ?????? ?????? ?? ?????? ?? ?????? ?????? ???  
?????????.

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

1) ?? ??? ???? ?????? ??? ????? ?????????????? ????, ??? ?????????????? ???  
????? 2, ?????????? 1 ??? 2, ??? ?????? ?????? 67/227/???, ??? ??????????, ???  
11?? ??????? 1967, ??? ?? ?????????????? ??? ?????????? ??? ?????? ????, ???  
????????? ?? ??? ????? ?????? ?????? ?????? ??? ?? 2 ??? 10, ?????????? 1  
?? 2, ??? ?? ??? 17, ?????????? 1 ??? 2, ??? ?????? ?????? 77/388/???, ???  
?????????, ??? 17?? ????? 1977, ??? ?????????????? ??? ?????????? ??? ??????  
?????, ??? ?????? ?? ??? ????? ?????? ?????? ?????? – ??? ?????????? ????  
????????????? ????: ?????????? ?????? ???, ??? ?????????????? ?? ???  
????? 2004/7/?? ??? ??????????, ??? 20?? ?????????? 2004, ??? ?????????? ??  
????? ??? ?? ?????????? ?????? ??? ?? ??? ?????????? ??? ?????? ??? ?? ??? ??????  
????????? ?????????? ???, ??? ?????? ?????? ???, ??? ?? ?????????? ??? ?  
????????? ?????? ???, ??? ?????? ???, ??? ?????????? ???.

2) ?????????? ??? ?? ?????????? ??? ?????? 111, ?????????? 1 ??? 2, ??? ???  
??? ??? ?? ??? ?????? ??? ?? ?????? (ustawa o podatku od towarów i usług)  
?? 11?? ?????? 2004, ??? ?????? «?????? ?????? ??????????????» ??? ??????  
??? ?????? ?????????? ?????????? ?????????? ? ????????????, ??? ??  
????? ??? ?????? 27, ?????????? 1, ??? ?????? ?????? 77/388, ??? ??????????????  
?? ??? ?????? 2004/7.

3) ?? ??? 33 ??? ?????? 77/388, ??? ?????????????? ?? ??? ??? ??????  
2004/7, ??? ?????????? ?? ?????????? ?????????? ??? ?? ?????????? ???  
????? 111, ?????????? 1 ??? 2, ??? ?????? 2004 ????.

(?????????)

\* ?????? ??????????: ? ???????.