

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

??? 6?? ?????????? 2010 (*)

«????? 104, ?????????? 3, ????? ??????, ??? ?????????? ?????????? – ?????? 69/335/???–
?????? ????? – ?????????????? ?????? – ?????????????? ?????? ????? – ??????????
?????? ?????????? ??? ?????????? ??? ??????»

???? ?????? C?487/09,

? ? ?????????? ?????? ?????? ?????????? ?????????? ?????? 234 ??,
??? ??????? ?? Tribunal Supremo (??????) ?? ?????? ??? 24?? ?????????? 2009, ? ????
?????? ??? ?????????? ??? 30 ?????????? 2009, ??? ?????? ??? ????

Inmogolf SA

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Dirección General de Tributos de la Consejería de Economía y Hacienda de la Comunidad Autónoma de Murcia,

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

????????? ??? ?? C. Toader, ?????? ???????, ??? L. Bay Larsen ??? ?? A. Prechal
(?????????), ???????,

?????? ??????????: Y. Bot

?????????: R. Grass

????????? ??? ?????? ?? ?????????? ?? ?????????????? ???????, ?????? ?? ?? ?????? 104,
????????? 3, ????? ?????, ??? ?????????? ????????????????,

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

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

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1 ? ?????? ?????????? ?????????????? ?????????? ?????? ??? ?????????? ??? ?????? 11,
????????? ??, ??? 12, ?????????? 1, ??????? ??, ??? ?????? 69/335/??? ?? ???????????,
?? 17?? ?????? 1969, ??? ?? ?????? ?????? ??? ?????????????? ??? ?? ???????????????
????????? (?? L 249, ?. 25, ??? ????: ??????).

2 ? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? Inmogolf SA (??? ????:
Inmogolf) ??? ??? Dirección General de Tributos de la Consejería de Economía y Hacienda de la
Comunidad Autónoma de Murcia (?????? ?????????? ?????????? ??? ????????????)
????????? ??? ?????????? ??? ?????? ?????????????? ?????????????? ??? ??????????)
????????? ??? ?????? ??? ?????????????? ?????????????? ?????????????? ??? ??? ??? ???
????????????? ??? ?????????????? ?? ?????????? ??????????.

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

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

3 ?? ???? 11 ??? ?????? ??????????:

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

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

[...]».

4 ??? ?? ????? 12, ?????????? 1, ??????? ??, ??? ??????:

«1. ??? ??????????? ??? ?? ?????????? ??? ?????? 10 ??? 11, ?? ????? ??? ?????? ???
?????????:

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

[...]»

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

5 ? ?????? 24/1988, ?? 28?? ??????? 1988, ??? ??? ?????? ?????? (BOE ????. 181, ??
29?? ??????? 1988, ?. 23405), ??? ??? ?????????????? ??? ??? 18/91, ??? 6?? ??????
1991 (BOE ????. 136, ?? 7?? ??????? 1991, ?. 18665, ??? ????: ??? 24/1988), ??????????
?? ?????? 108:

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

2. ??? ??????????? ??? ?? ?????????? ??? ?????????? 1, ?????????? ??? ?????? ???
????????? ??? ?? ?????????? ?????????? ?????????? ??? ?? ??? ??? ??????????????
?? ?????????? ?? ?????? ?????? ?? "????????????? ?????????? ?????????? ??
????????? ???":

1° ?? ?????????? ??? ?????????????? ??? ?????????????? ??? ?????????? ??? ?? ?
???? ?????????? ????, ??? ?? ?????? ?????? ?????????????? ?????????? ??? ??????????
????????? ??? ?????? ?????? ??? ?????? ??? ?????????????? ?????????? ??? ??
????????? ? ??? ?????????? ????, ??????, ?????? ??? ?????? ?????????????? ??? ??
?? ?????????? ?????????? ??? ?????? ?????????? 50 % ??? ?????? ?????? ??? ??
?? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????? ?, ??????????, ??? ?? ???
????????? ?? ?????? ?????? ??? ?????? ??? ?? ??? ??????????.

???? ?????? ??? ?????????? ???????, ? ?? ??? ?????? ?????? ?????????? ??? ?????????? ???
?????????, ??? ?? ??????, ?????? ??? 50 % ??? ?????? ??????.

?? ??? ?????????? ??? 50 % ??? ?????????? ??? ?????? ?? ?????????? ??? ???????,
?? ?????????? ??? ?? ??????, ?????????? ??? ??? 50 % ??? ?????? ?????? ??? ??
?????????, ??? ?????????? ??? ??? ?????????? ?????? ?????????? ?????????? ??? ?????? ?

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

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

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

6 ??? ?? ?????? ?????????? ?? 108, ?????????? 2, ??? ??? 24/1988 ??? ??
????????? ?? ?????????? ?????? ?????????????? ??? ?????? ??? ??? ?????????? ??
????????? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ?? ?????? ??? ?????? ??
????????? ?????? ???.

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

7 ?? ?????????????? ??? 20?? ?????????? 1993, ? Inmogolf, ?????? ???
Inmobiliaria La Manga SA, ?????? ??? ??? ?????? 49 ?????? ??? ?????????? ?????? ???
????????? 49 000 ESP, ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ??
????????? ?????? ??? 50 %.

8 ? ?????????????? ??? ?????? ?????????????? ??? 22 ?????????? 1997 ??? Servicio
Territorial de Cartagena (????????? ??????) ??? Dirección General de Tributos de la
Consejería de Economía y Hacienda de la Comunidad Autónoma de Murcia, ?????????? ???
??? ?????????? ??? ??? ?????????? ??? ?????? ??? ??? ?????????? ??? ?????????? ???
????????? ??? ??? ?????????? ??? ?????? ??? ?????? 972 999 989 ESP, ??? ?????????? ???
????????? ??? ??? ?????????? ??? ?????? ??? Inmobiliaria La Manga SA, ??? ?? ???
????????? ??? ??? ?????? ??? ?????????? ??? 58 378 799 ESP, ?????? ?????????? ??? ??
????? ??? ??? ?????? ??? ?????? ??????????, ?????????? ??? ? ?????????? ??? ?????? ???
????????? ??? ??? ?????? ??? 108, ?????????? 1, ??? ??? 24/1988.

9 ??? 31 ?????????? 1997, ? Inmogolf ?????? ??? ?????? ?????????? ??? ?????? ???
????????? ??? ?????????? ???, ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
????? 108, ?????????? 1, ??? ??? 24/1988. ?? ??? ?????? ??? ?????????? ??? ??
????????? 1998 ?????? ??? Dirección General de Tributos de la Consejería de Economía y
Hacienda de la Comunidad Autónoma de Murcia. ?? ?????? ??? 30?? ?????? 1998, ? ??
????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? 28 910 297 ESP ???
????? ?????? ???.

10 ?????? ??? ?????????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????????
????, ??? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??????????, ? Inmogolf ?????? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? 11, ?????????? ??, ???
12 ??? ??????.

11 ?????????? ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?? Tribunal Supremo ?????????? ?? ?????????? ???

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

«1) ??? ??????? ?? ???? 11, ??????? ?, ?? [?????] ?????????? ?? ?????????? ?? ??????????
?? ?????? ?? ?????????? ??????, ??????? ???? ?????? ?????? ?????? ?? ?? ?????? ??
12, ?????????? 1, ??????? ?, ?????? ?????? ??? ?????? ??? ?????? ??? ?? ?????????? ??
????????? ?????? ??? ?? ?????????? ??????, ??? ?????????? ???' ?????? ? ???, ??
????????? ??? ?? ?????? 108 ??? ????? 24/1988 [...], ?????? ?????? ?????? ??????
????????? ??? ?????????? ??????, ??? ??? ??? ????? ?????????? ?????? ??? ?? ????
??? ??? ?????????? ?????? ?????????? ??????, ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ??? ?? ?????????? ?????? ?????????? ?? ?????? ?????? ??????
????????? ?????? ?????? ??? ?????????? ?????? ?????????? ?????? ?????? ?? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 50 % ??? ?????? ???
?? ??? ??????????, ??? ??? ??? ??? ?????? ??? ?????? ?? ??? ?????? ??? ?????? ???
????? ?? ?????????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ?????? ??????
?????????????, ?????????? [? ?????] ??? ?????? ?????? ?????? ??? ?????? ???
??? ?? ?????? ???, ??? ?????? ??? ?????? 108, ?????????? 2, ??? ?????? 24/1988 [...], ??
????? ?????????? ?? ?????????? ?????????? ?????? ?????? ??? ??????????
????????? ??????, ?????? ??? ?????? ?????? ??????????;»

2) ??? ?????????? ??? ?? ?????????? ???? ?????? ?????????? ??????????????, ?????????? [?
?????] ?? ?????????? ??? ?????? ??? [...] ??? 24/1988 ? ?????? ?????????? ??? ??
????????? ??? ?????????? ?????? ?????? ?????? ??? ?????? ?? ??????????
????????? ??? ?????? ??? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ??????????
??? ?? ?????? ??? ?????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ??????????
????? ? ??????;»

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

12 ??? ?? ?????? 104, ?????????? 3, ?????? ??????, ??? ?????????? ???????????, ??? ?
????????? ?? ?????? ?????????? ?? ?????? ?????? ?????????? ?????????? ?????????? ??
????????? ??? ?? ?????????? ?? ?????? ?????? ?????? ?? ?????? ?????? ?? ??????????
????????.

13 ?? ?????????? ?????? ??? ?????? ?????????? ?? ??????????.

14 ?? ?? ?????????? ???, ?? ?????? ?????? ?? ?????????? ??? ??????, ?? ??????
????????? ???, ???' ??????, ?? ???? ?????? ???, ??????????, ?? ?????? ??? 11, ?????????? ??,
?? 12, ?????????? 1, ??????? ?, ?????????? ?????? ?????? ?????? ??????, ??
????????? ??? ?????? 108, ?????????? 2, ??? ?????? 24/1988, ? ??????, ?? ?? ??????
?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
?? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 50 % ??? ?????? ???
?????????, ??? ??? ?? ??? ?????? ??????, ?????? ??? ??? ??? ?????? ?? ??? ??? ??
????? ?? ?????????? ???, ?????? ??? ?????? ?????? ?????? ?????? ??????, ??????, ??? ??????
????? ?????? ?????? ???, ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????
?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
?? ?? ??? ??????.

15 ??????, ?????? ?? ?????????? ??? ?? ?????? 11, ??????? ??, ?? 12, ?????????? 1,
????????? ??, ?? ?????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??????, ??
????? ?? ?????????? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????, ??
????????? ??? ?? ??? ?????? ?????, ? ?????, ???????, ?????? ?? ?????????? ??????????

????????????? ? ????? (??., ???????, ??????? ??? 1?? ?????????? 2009, C-569/07, HSBC Holdings ??? Vidacos Nominees, ??????? 2009, ?. I?9047, ????? 34).

16 ????? ??????, ??????, ?? ?????? 11, ?????????? ??, ??? ????????, ??? ??? ????????, ??? ?????? ????????,
????????????? ?????????? ??, ?????????? ??, ?????????? ??, ?????????? ??, ?????, ??? ?????? ??, ??????
??????, ?? ?????? ??????? ??, ?????, ??? ?????? ??, ?????????? ??, ??, ??? ?????? ??, ?????????? ??, ??, ??? ?????? ??,
?????????, ? ?????? ?????? ??, ??? ?????? ??, ??, ?????? ??, ?????????? ??, ??? ?????????? ??, ??, ??? ?????? ??.

17 ?????? ??????, ??? ??????????, ?? ???? ?????? ?????? ?????? ??? ?????? ?????? ??????
????????? ???? ???? ???? ???? ???? 12, ?????????? 1, ?????????? ?, ??? ??????,
????? ??????? ?????? ???, ???? ?????????????, ???' ??????, ? ??????? ?????? ??? ? ????????
?????????, ??? ?????????? ??????, ?????? ???? ?????? ?????? ??? ?????? ?????? ?????? ??
????????? ?? ??????, ???? ?????????????, ??? ?????????? ?????? ??? ?????? ?????? ?????? ??
????????? ??? ?????? ??????. ??????, ???? ?????????? ???? ??? ?????? ?????? ??? ??????????
????????? ???? ???? ?????? ?????? ?????? ? ?????????? ??????, ? ?????????? ?????? ????
????????? ?????? ???? ?????? ?????? ? ?????????? ?????? ??????. ????, ?????? ? ?????????? ????
?????, ???? ?????? ???? ?????? ?????, ?????????? ???? ??? ?????? ???? ?????? ?????? ??????,
????? ???? ???? ???? ???? ???? 12, ?????????? 1, ?????????? ?, ??? ??????, ?????? ??
????????? ???? ???? ???? ???? ?????? ?????? ???? ?? ?????? ?????? (??., ??????, ?????? ????
10?? ?????? 2005, C?22/03, Optiver ???., ?????? 2005, ?. I?1839, ?????? 32).

18 ????? ?????? ?? ?????? 12, ??????????? 1, ?????????? ?, ??? ???????, ?? ?????????? ???
?????? ???? ? ??????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????? ?????? ?? ???????
????????????? ??????? ????, ??????????? ??? ?????????? ?? ? ??????? ??? ?????? ??
?????? ????, ??? ?????? ??? ?????? ??? ??????? ?? ?????????????? ??? ?? ? ?????????? ??? ??????
?????? ????, ?????????????????? ? ?????????? ??? ??????? ??? ?? ? ?????????? ??? ??????
????? ???, ?????????? (?????? ?? 7?? ?????????? 2006, C?193/04, Organon Portuguesa,
?????? 2006, ?. I?7271, ??? 21 ??? ??? ?????????? ??????). ???????, ? ???????
???? ??????? ??? ?????? ??? ?? ?????????? ?? ?????????? ??????? ??? ?????????? ??? ?????????? ??
????? ???, (?????? Organon Portuguesa, ???????????????, ??? 24).

19 ???????, ??????? ?? ?????????? ???, ??? ????? ????? ??????????? ? ??????????, ? ?????????? ???
? ?????????? ?????????? ???, ??? ? ??????????, ?? ????? 12, ?????????? 1, ?????????? ?, ???
????????? ??? ?????????? ???, ??? ????? ?? ????? ?????????????? ?? ??? ????? ?????????? ???
????. ? ?????????? ??? ?????????????? ???, ??? ????? ?? ?????? ??? ?????????? ???, ? ??????
??? ?????????? ???, ??? ?????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????? ??? ?????????? ???, ??? ?????????? ???, ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ???, ??? ?????????? ???, ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ???, ??? ?????????? ???, ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ???, ??? ?????????? ???, ??? ?????? ??? ?????? ??? ?????? ???
Vidacos Nominees, ???????????, ??? 25). ??????, ??? ?????? ?????????? ?????????? ???
????? 12, ?????????? 1, ????????, ??, ??? ??????, ? ?????????? ?????? ???, ???
????????? ???, ??? ?????? ???, ??? ??????, ???????, ???????, ??? ?????? ?????????? ???
??? ?????? ??? ?????? ???, ??? ?????? ???, ??? ?????? ???, ??? ?????? ??? ?????? ???
??? ?????? ??? ??????.

20 ??????, ??????? ?? ???? 12, ?????????? 1, ??????? ??, ??? ?????? ??
??????????, ???????, ??? ???? ????? ?? ?????? ?????, ?????? ?????? ?? ??????????
???, ??? ???? ????? ?????????? ? ???????, ?? ?????? ???, ??? ??? ?????? ?? ??????????????
???, ?????? ?? ?????? ???, ??????? ?? ?????? ??? ?????????? ?????????? ??
????? ??????? ? ?????? ??? (??., ?????, ???????, ??????? ??? 5?? ?????? 2009,
C?222/07, UTECA, ?????? 2009, ?. !?1407, ??? 18 ??? ??? ?????????? ??????????).
?????, ?????? ?? ?????? ??????? ?????????? ?????????? ??? ?????? ?? ?????????? ??

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

21 ????????, ??? ?????????? ?????????? ??? ?????? ?? ?????? ? ??????? ??? ? ?????? ???,
??????????, ?? ????? ?? 11, ??????? ??, ??? 12, ??????? 1, ??????? ??, ???
????????? ?????? ??????? ?????, ??? ? ?????????? ??? ?????? 108, ?????????? 2,
??? ????? 24/1988, ? ?????, ??? ?????? ??? ?????????? ??? ?????? ?? ?????????? ??????
???? ?????????? ?????? ???????, ?????????? ??? ?????????? ??? ?????? ??? ????? ??
????????? ??? ?????????? ?????? ?????????? ?????????? ??? ?????? ?? ???? ??????????????
????????? ?????? ??? ?????????? ?????????? ?????????? ??? ?????? ?? ?????? ??????????
????????? ?????? ??? ?????????? ?????????? 50 % ??? ?????? ??? ?????? ?? ??????????, ??? ??
?? ??? ??????????, ??? ?????? ??? ??? ?????????? ?? ?????? ??? ?????? ??? ??????????,
????? ??? ??? ?????????? ??? ?????, ??? ?????, ??? ?????? ?????? ?????????? ???,
????????, ?? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ?? ?????? ??? ?????? ??
????????? ??? ??? ?????????? ?????? ?????????? ??? ?????? ?? ?????? ??????????.

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

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

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

? ?????? 69/335/??? ??? ??????????, ??? 17? ?????? 1969, ??? ??? ?????? ???
??? ?????????? ??? ?????? ?????????? ???, ?????????? ??, ??? ?????????? ??
??? 11, ??????? ??, ??? 12, ??????? 1, ??????? ??, ??? ?????????? ??
?????? ?????, ??? ? ?????????? ??? ?????? 108, ?????????? 2, ??? ??
24/1988, ??? 28? ?????? 1988, ??? ??? ?????, ??? ?????? ?????????? ???
??? ??? 18/91, ??? 6? ?????? 1991, ? ????, ??? ?????? ??? ??????????
???? ?? ?????????? ?????? ??? ?????? ?????????? ??? ?????????? ??? ??????????
????????? ??? ?? ?? ?????? ?????????? ??? ?????? ?????????? ??? ??????????
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ??????????
????????? 50 % ??? ?????? ??? ?????? ??????????, ??? ??? ?? ??? ?????? ??????????,
????? ??? ??? ??? ?????????? ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ??
???? ?????????? ??? ?????, ??? ?????? ?????? ?????? ?????????? ??? ?????????? ???,
????????, ?? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ?? ?????? ???
???????? ?? ?????????? ??? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ?? ??
???? ??????.

(?????????)

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