

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

??? 12?? ?????? 2015 (*)

«????????????? ?????????? — ??? — ?????? 2006/112/?? — ?????? 132, ?????????? 1, ?????????? ?? — ?????????? ??? ?????????? ?? ?????? ?????????????? ?????? ??? ?????????? ?????? ??? ?????????? — ?????? “????????????? ?????????????? ?? ?????????? ?????? ?????????? — ?????? ?????????????? — ?????? ?????????????? ?????????? — ?????? — ?????? ??? ??????»

???? ?????? C?594/13,

?? ?????????? ?????? ?????????????? ?????????? ?????????? ??? ?????? 267 ????, ??? ?????? ?? Bundesfinanzhof (?????????), ?? ?????? ??? 21?? ?????????? 2013, ? ??? ?????? ??? ?????? ??? ?????????? ??? 21 ?????????? 2013, ??? ?????? ??? ??????

«go fair» Zeitarbeit OHG

????

Finanzamt Hamburg-Altona,

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

????????? ??? ??? K. Jürimäe (?????????), ?????? ???????, J. Malenovský ??? M. Safjan, ???????,

?????? ??????????: P. Mengozzi

?????????: M. Aleksejev, ??????? ??????????,

?????? ??? ?????? ?????? ?????????? ??? ?????? ???' ?????????? ?????????? ??? 8?? ?????????? 2014,

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

- ? «go fair» Zeitarbeit OHG, ?????????????? ??? ??? L. Gause, Rechtsanwalt,
- ? ?????????? ????????, ?????????????? ??? ??? T. Henze ??? ??? K. Petersen,
- ? ????????, ?????????????? ??? ??? E. Creedon ??? G. Hodge ????? ??? ??? M. Heneghan ??? N. J. Travers,
- ? ?????????? ????????, ?????????????? ??? ??? A. Cordewener, ??? C. Soulay ??? ??? B.?R. Killmann,

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

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

????????????????? ??????? ?????? ?????????????????? ??? ?????? ?????????? ?????????????? ??????????????
????????????? [????? ???? ?????????????? ???? (??? ????: ????)].»

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

8 ????. ?? .????? 4, ?????? 16, ??? ???? ???? ?????? ?????? ?????? ???????
(Umsatzsteuergesetz, ?? ????. ?????? ??? ?????? ??? 19?? ?????????? 2008, *BGBI.* 2008 I, ?. 2794, ??? ???: USG), ?????????? ??? ?? ???? ?????:

«?? ?????????? ?? ?????????? ?????? ?? ?????? ?? ?????????????? ?????????? ?? ?????? ??
????????? ? ?????????? ?? ?????? ?? ?????? ?????? ?????????, ?????????? ? ?????? ??
????????? ?? ?????????? ??

[...]

k) ??????????? ?? ??????? ?? ??????? ?????????? ? ??????????? ???????????, ??? ??
 ??????????? ??????????? ??, ??? ??????? ?? ?? ?? ?? ?? ???????, ??? ??
 ??????????? ?? 40 % ??? ???????????, ??? ??? ?? ?? ?? ?????? ??????????? ???????
 ??????????? ??????????? ? ???????????.

?? ??????? ?????????? ??? ???? ?????? ??? ?????? ??????????, ?? ??????
????????????????? ??? ???? ?????????? ??? ?????? ??? ?????? b ??? k,
????????????? ??? ???? ?????? ??? ??????, ?? ?? ??? ?????? ???, ??? ?????????? ??? ?????
????????? ??, ??? ?? ?????????? ???, ??????????, ??????? ? ?????????? ??? ??????..»

9 ?? ?????? 12, ??????????? 1, ??? ?????? ??? ??????????? ??? ??????????? ???????????
????????? ?????????? (Gesetz zur Regelung der Arbeitnehmerüberlassung, *BGBI.* 1995 I, ?. 158, ?? ??? ?????? ??? ?????? ??? 23?? ?????????? 2002, *BGBI.* 2002 I, ?. 4607),
????????? ?? ????:

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

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

10 ? «go fair» ?????? ?????????? ??????? (offene Handelsgesellschaft — OHG) ?? ????? ??
?????? ?????????? ??????? ??? ????? ?? ????? ?????????? ??? ?????????? ?????????? ??????????
????????? ??????????.

11 ?? ??????? ??????????? ??????????????, ? «go fair» ???????, ???? ?? ??? 2010, ??
????????????? ?????????? ??? ??????????, ???? ??? ?????? ?????????? ??? ?????? ??????????
????????????? ????, ?? ??????????? ? ?????????? ?????? ??????????????, ???? ??? ??????
??? ?????? 4, ?????? 16, ??? UStG. ?? ?????????? ??? «go fair» ???????????, ???
?????????? ??????, ???? ?????????? ?????? ?????????? ??????????????. ??????? ??? ?????????? ???
??? ??? ?????????? ??? ?????? ???, ???????, ???????? ?? ?????? ?????????? ???
?????. ? ?????????? ??? ?????? ??? ? ?????? ?????? ??? ?????? ??? ?????????????? ???
????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????????? ??? ?? ??? ??????

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

12 ?? ??????? ??? 18?? ?????????? 2010, ??? ?????????????? ??? ?????????????? ???
?????? ?????? ?????????? ??? ??? ????? ?????????? ??? 2010, ? Finanzamt Hamburg-Altona
?????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????????? ?
«go fair» ??? ?????????? ?????????? ??????????. ? ?????????? ??? «go fair» ??? ??? ??????????
????? ?????????? ??? ?? Finanzgericht Hamburg (?????????? ?????????? ??? ??????????).

13 ?? Bundesfinanzhof (????????????? ?????????? ??????????), ??????? ??? ??????
?????? ?????????? («Revision») ? «go fair», ?????????? ??? ?????????? ??? ?????? ???
????????????? ??? ?????? 4, ?????? 16, ??????? k, ??? UStG, ?????? ??? ??????????????
????? ? ?????? ?????? ?????? ?? ?????? ?? ?????? ?????? ??????????, ??????????????
????????? ??????????, ??? ?????? ?????? ?????????? ?????????? ?????????? ??????????
?????????, ?? ?????????? ??? ??? ?????????????? ??? ?????? ?????? ?????? ??? ?????????? ???
?????????.

14 ????????, ?? ?? ??? ?????????? ?????? ??? «go fair» ??????? ?????????? «?? ??????
????????? ??? ?? ??? ?????????? ?????? ??? ??????????», ??? ??? ?????? ??? ??????
132, ?????????? 1, ???????? ??, ??? ?????? 2006/112, ??? ??? ??? ?????? ?? ??????????
? ?????????? ??? ?? ?????????? ?????? ??? ?????? ??? ???, ??????, ?? ?????? ??? ???
????????????? ??????????.

15 ??? ??? ??????? ????, ?? Bundesfinanzhof ??????? ?? ?????????? ??? ??????
??? ?????????? ??? ?? ?????????? ??? ?????????? ?? ?????????? ?????????? ??????????:

«1) ??? ??? ?????? ??? ?????? 132, ?????????? 1, ??????? ??, ??? ??????
2006/112:

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

?) ??? ?????????? ??? ?? ?????????? ?????????????? ?????????? ??? ?????????? ???
????????????? ?? ?????????? ?????????? ??????????; ? ?????????? ?????????? ??????????
????????????? ? ??? ?????? ?????????? ?????????? ?????????? ?????????? ?????????????? ??
????????????? ?????? ?????????? (????????? ??????) ?????????? ??? ???
????????? ??? ?????????? ??????????;

2) ??? ??? ?? 134, ??????? ??, ??? ?????? 2006/112:

????? ? ?????? ?????? ?????????? ?????????????? ?????????????? ??? ?????????? ??? ??????
????????? ??? ?? ?????????? ?????? ??? ?????????? ??? ?????????? ?????????? ??? ??????
????????? ?????????? ??? ?? ?????????? ?????? (????? ??????), ?????????? ??????
??? ?????? ?? ?????????? ?????? ?????? ?????? ?????? ??????????;»

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

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

16 ?? ?? ?????? ??? ???????, ?? ?????? ?????????? ?????, ???' ??????, ??
????????????? ??? ?? ?????? 132, ?????????? 1, ??????? ??, ??? ?????? 2006/112 ???
??? ?????? ??? ?? ??????? ?????????? ?????????? ?????????? ??? ?????? ??????

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

17 ?????????????? ??????? ?? ??? ?? ?????? ??? ?????????????????? ??? ?? ??? ?????????? ???
????????? ??? ?????? 132 ??? ?????? 2006/112 ?????? ?? ?????????????? ??????,
????????? ??? ?? ?????????? ?????? ?????????? ?????????????? ??? ?? ??? ?????? ??? ?????? ??? ?????? ?
??? ?????????????? ??? ?????? ?????? ?????????? ??? ?????????????????? ?? ?????????? ?????? ??????
??? ?????????? ??? ?????? ?????. ??????, ? ???????? ??? ?????? ?????? ?????? ?? ?????? ?????? ?????? ??
???? ?????????????? ??? ?? ??? ?????? ?????????? ?????? ??? ?? ?????? ?????? ??? ?????? ??
????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???
???. ?????????? ?, ? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?? ??? ?????? ??? ?????? ???
????????????? ??? ??? ?????? ??? ?????? ?????? ?????? ??? ?? ??? ?????? 132 ?????? ??
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?? ??? ?????? ??? ?????? ??
????????? ??? (?. ?????????? Horizon College, C?434/05, EU:C:2007:343, ??? 16,
????????? ??? ??? ?????, C?79/09, EU:C:2010:171, ??? 49, Zimmermann, C?174/11,
EU:C:2012:716, ??? 22, ??? ??? Klinikum Dortmund, C?366/12, EU:C:2014:143, ???
26 ??? 27).

18 ??? ?? ?????? ??? ?????? 132, ?????????? 1, ?????????? ??, ??? ?????? 2006/112
????????? ??? ? ?????????? ??? ?????????? ?? ??? ?? ?????? ?????????? ?????? ??????
????????? ??? ?????????? ?????? ?? ??????, ??????, ?????????? ?????? ?? ??? ??????????
????????? ??? ?????????? ???, ????????, ?????????????????? ??? ?????????????? ??????
????????? ? ?????? ?????????? ??? ?? ?????????????? ?????? ?????? ?????????? ??
????????? ?????????? (?. ?????????? Kingscrest Associates ??? Montecello, C?498/03,
EU:C:2005:322, ??? 34, ??? ??? Zimmermann, C?174/11, EU:C:2012:716, ??? 21).

19 ??? ?????, ????, ??? ?????????? ??????????, ? ?????? ??????? ?? ?????????? ???
?????? ?????????????? ??????????, ?????????? ???' ?????? ??? ?????? ?????? ??? ??????
?????? ?? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ???
????????? ??? ?? ??????. ?? ?????? ??? ?????? ?????? ??? ?? ?????? ?? ?????? ???, ???
????????? ?????? (?. ?????????? Zimmermann, C?174/11, EU:C:2012:716, ??? 26).

20 ?????????, ??? ?????? ?????????, ?????????? ??? ?????? ?????? ?????? ?? ?????? ???
????, ??? ?? ?????? ??? ?????? ??? ?? ??? ?????? ??? ?????? ?????????? ??????????, ????
????????, ?????????? ?? ?????????????? ??? ?????????? ??? ?????? ? «?????????
?????????», ??? ?? ?????? ??? ?????? 132, ?????????? 1, ?????????? ??, ??? ??????
2006/112, ?????? ?? ?????????? ??? ?? ?????? ?????? ??? ?????????? ?????? ?????? ???,
????????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???,
????????? ? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???,
????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ? ?????? ?????? ?????? ?????? ?????? (?. ?????????, ?????????? Kügler, C?141/00,
EU:C:2002:473, ?????? 57 ??? 58, Kingscrest Associates ??? Montecello, C?498/03,
EU:C:2005:322, ?????? 53, ??? ??? Zimmermann, C?174/11, EU:C:2012:716, ??? 31).

21 ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ???
????????? ??? ?????????? ?????????? ?????????? ??? ?????? ? «go fair», ?? ?????? ??????????
????????? ?? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ??? ??? ???

?????? ???? ?????? 132, ?????????? 1, ??????? ??, ??? ?????? 2006/112.

22 ??? ??????? ????, ?? ?? ??? ?????????? ????, ???????, ?? ?????????? ????, ?? ?????????????? ????, ?? ???????????, ??? ??????? ????, ??? ??????? ????, ??? ?????????? ????, ?? ?????????? ????, ?? ??????? 132, ?????????? 1, ??????? ??, ??? ?????? 2006/112
?????????? ?? ??? ?????? ?????????? ? ?????????? ?????? ?????????? ???????????, ?? ?????? ?????????? ????, ?? ?????? ?????? ?? ??? ?????? ?????????? ?????? ?????????? ?????? ?????????? ???????, ?? ?????? ?????? ?????????? ??????.

23 ??????, ??? ?? ?????????? ???, ??? ?? ?????? 9 ??? ?????? ??????, ??????? ?? «????????? ???? ???» ?????????? ????, ??? ?? ?????? ??????????, ?? ?????????? ?? ?? ??????, ??? ?????? ??? ?????? 10 ??? ?? ?? ??????, ?? ?????????? ?? ?????????? ???? ?? ?????? ?????? ?????? ?? ?????? ??? ?????????? ?? ?? ?????????? ???? ?? ?????????? ?????? ?? ?????? ?????? ?????? ?? ?????????? ?? ?? ?????????? ???? ?? ?????????? ?????? ?? ?????? ?????? ?????? ?? ?????????? ?? ?? ?????????? ?????? ?? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ??????.

24 ??? ??????, ? ?????? ???? ?????????? ???, ??? ?????? ?????? 132, ?????????? 1, ??????? ??, ??? ?????? 2006/112 ??? ?????? ?? ?????????? ?????????? ??? ?????? «go fair».

25 ?? ??? ??????????, ??? ?????? ?????????? ? ?????????? ??????????, ?? ?????? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? «go fair», ??? ?????? ?????????? ?????????? ?????????? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????.

26 ???????, ??? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? 132, ?????????? 1, ??????? ??, ??? ?????? 2006/112, ??? ?? ?????????? ??? ?????? ?????????? ?????? ??? ?? «????????? ?????????? ??????».

27 ??????, ??? ?????? ??? ?????? ??? «?????????» ??? ?????????? ??? ?? ??? ??????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? (??, ?????? Kingscrest Associates ??? Montecello, C?498/03, EU:C:2005:322, ??? 35 ??? ?????? ??? ?????? ?????? ?????? ??????). ?? ?? ??????, ?????? ?????? ?????? ??? ?? «go fair», ??? ?????? ??? ?????? ??? «?????????» ??? ??? ?????? ??? ?????? ??????.

28 ???????, ??? ?????, ???????, ??? ?????? «????????? ??????????», ??? ?????????? ??? ? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??????.

29 ?? ?? ??????, ??? ?????? ?????? ?????? ?? ?????? ? ?????? ?????? ??? ?? ??? ?????? 132, ?????????? 1, ??????? ??, ??? ?????? 2006/112 ??? ?????? ??? ?????? ??? ?? ??????.

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

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

30 ??????? ??? ?????????? ??? ?????? ??? ?????? ??????, ?????????? ? ?????????? ???
?????? ??????.

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

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

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

? ???? 132, ?????????? 1, ??????? ??, ??? ?????? 2006/112/? ???? ??????????,
?? 28? ?????????? 2006, ??????? ?? ???? ?????? ?????? ?????? ?????????????? ???,
????? ??? ?????? ??? ?????? ?? ?????????? ?????????????? ?????????????? ?????????? ??
????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ?? ?????? ?????? ??????????
????????????? ??? ? ?????? ?????????? ?????????????? ?????????????? ???? ?????? ?????????? ??????????
????? ?????????? ?? ?????? ?????????????? ?? ?????????? ?????????????? ??????????
????????? ??? ?????? «????????? ?????? ?????????????? ?? ?????????? ?????????? ??????????»
??? ?????????????? ??? ?? ??? ??????.

(?????????)

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