

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

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

??? 9?? ??????? 2020 (*)

«????????????? ?????????? – ????? ?????????????? ????? (???) – ?????? 2006/112/?? –
????????????? ??? ?????????? – ???????? ??? ?????????? ?????????? – ????? ??????????
??? ?????????????? ?????? ??? ?????????????? ??? ?????????????? ??? ?????????????? ??? ?????
?????? – ????? ??? ?????????????? ? ????? ?????????? ?????? ?????????????? – ??????????????
??? ?????????????? ?????? ??? ?????????????? ??? ?????? ??????»

???? ??????? C374/19,

? ? ?????????? ?????? ?????????????? ?????????? ?????? 267 ????, ???
?????? ?? Bundesfinanzhof (????????????? ?????????? ??????????, ???????) ?? ??????
??? 27?? ?????? 2019, ? ????? ?????? ??? ?????????? ??? 13 ????? 2019, ??? ??????
??? ????

HF

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Finanzamt Bad Neuenahr-Ahrweiler,

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

????????? ??? ??? L. S. Rossi, ?????? ???????, A. Prechal (??????????), ?????? ???
????? ???????, ??? N. Wahl, ???????,

?????? ??????????: G. Hogan

?????????: ?. Calot Escobar

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

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

- ? HF, ?????????????? ??? ??? M. S. Thum, Steuerberater,
- ? ?????????? ????????, ?????????????? ??? ??? J. Möller ??? ??? S. Eisenberg,
- ? ?????????? ????????, ?????????????? ??? ??? L. Lozano Palacios ??? J.
Jokubauskait?, ??? ??? ??? R. Pethke,

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

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

??????

1 ? ??????? ?????????????? ?????????? ?????? ??? ??????? ??? ?????? 185 ??? 187 ???
?????? 2006/112/?? ??? ???????????, ??? 28?? ?????????? 2006, ??????? ?? ?? ???
?????? ??? ?? ?????????????? ?????? (?? 2006, L 347, ?, 1, ??? ????: ?????? ????).

2 ? ??????? ??? ?????????? ??? ??????? ??????? ??????? ?????? ??? HF ??? ???
Finanzamt Bad Neuenahr-Ahrweiler (?????????? ??? Bad Neuenahr?Ahrweiler,
???????) (?? ????: ?????????? ???) ??????? ?? ??? ?????????? ??? ?????????? ???
????? ?????????????? ?????? (???) ??? ????? ???????? ? HF ??? ??? ?????????? ??????????
?? ?????????? ??? ????? ?????????? ??? ????? ?????????????? ?? ?????? ?? ??????????
?????? ?????????????? ??? ??? ??? ???.

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

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

3 ?? ????? 167 ??? ??????? ??? ?????? ??? ?? ??????? ?????????? ?????????? ???
?? ?????? ??? ??? ?????? ??? ????? ?????? ?????? ?????? ?????? ??????.

4 ?? ????? 168 ??? ??????? ??? ?????? ??? ????:

«??? ??? ?? ??? ?? ?????? ??? ?? ?????????? ?????????????????? ??? ??? ?????? ???
????????????? ???, ? ?????????? ??? ?????? ??? ?? ??????????, ??? ??????
????? ??? ??? ????? ?????????????? ??? ?????? ???, ?? ?????? ??? ??? ?????????? ??? ??
????????? ???:

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

[...]».

5 ?? ????? 184 ??? ?? ??? ?????? ??? ????:

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

6 ?? ????? 185 ??? ?????? ??????? ??? ????:

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

2. ??? ?????????? ??? ?? ?????? 1, ??? ?????????? ?????????????? ??? ?????? ???
????????? ???, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ???, ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 16.

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

7 ?? ????? 187 ??? ?????? ??? ?????? ??? ?????? ??? ??????:

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

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

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

???? ???? ?? ??????? ?????? ?????? ??????????, ? ?????????? ?? ?????? ?????? ?? ???? ?
????????? ?? ??? ?????????????? ?? ??? 20 ???.

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

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

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

8 ?? ?????? 15a, ?????????? 1, ??? Umsatzsteuergesetz (????? ???? ?????? ??????
?????????), ??? ?????? ??? ?????? ??? ?????????? ?????????????? ??? ?????????? ???
????? ?????? (??? ????: UStG), ?????? ?? ???:

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

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

9 ?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ?????? ??? ??????
????????????? ??? ?????? ??? ?????? ?????????????? ??? ?????? ?????? ?? ??? ?????? ??
????????? ??? ?????????? ??? ?????? ?? 2003, ? ?????? ?????????? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????
?? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????.

10 ?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?? ?????????????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? . ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? 2006, ? ??????????
???? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?? ?? ??
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????

????????????????? ??? ?? ???? ????? ??????? 10 %. ????? ???? ?? ?????????????? ?? ???????????
????????????? ??? ?? ???? 15a ??? UStG ??? ?? ??? ?? ?? 2003 ??? ?????.

11 ??????? ?????????? ???????, ? ?????????? ????? ?????????????? ??? ? ???????
????????????? ??? ?????? ??? ?????? ????? ? ?????? ??? ?????? ??? ?????? ??????????????
?????? ??? ?????????????? ?????? ?? 2009 ?? 2012, ?? ?? ??????
????????????? ??? ?????? ?????? ?????????? ??? ?? ?????????? ?????? ??? ?????????? ??? 2003.
????????? ??? ?????????? ?????, ? ?????????? ?????? ?????? ?????? ?????? ??? ?????????? ???
??? ?????? 15a ??? UStG ??? ?? ??? ???, ??????? ??? ?????? ?????? ??? ?????? ??? ?????????? ???
?? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
??????.

12 ??? ?????? ?????? ?????????? ?????????? ?????????? ??? ?? ?????????? ??? ??????????
????? ?? ?? ?????? ?????? ?????????? ??????????????, ? ?????????? ??? ?????? ??? ?????? ???
????? ?????? ?????? ??? ?????? Finanzgericht (????????????? ??????????,,
????????), ? ?????? ??????????. ?? ??? ?????? ???, ?? ?????? ?????????? ??????????
?? ? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ?????? ??????????
????? ???????. ?????? ?????? ?????????? ?????????? ?????? ???, ? ??????
????????? ?????? ??? ?????? ??? ?????? ??? ? ?????????? ?????? ?????? ?????????? ?????
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ???, ?? ?????????? ??? ?????? ???
????? ??? ?????? ??? ?????? 100 % ??? ?????? ?????????? ??? ???.

13 ? ?????????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??????
????????? ??? ?????????? ?????????? ???, ?????????? ???, ?????? ? ?????? ?????? ??????????,
? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??????????
??????, ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?? ?????? ?? ?????????? ?? ?????? ??? ?????? 15a ???
UStG. ? ?? ??? ?? ?????? ??? ?????? ?? ?????? ?? ?? ?????????? ?????????? ?????????? ???.
????????? ??? ? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ????
????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? 2009 ??
2012. ? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
?????. ? ?????? ??? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???.

14 ?? ?????? ??????????, ?????????? ?????? ??? ?????? ?????? ?????? ?????? ??? 28??
????????? 2018, Imofloresmira – Investimentos Imobiliários (C-672/16, EU:C:2018:134),
????????? ??? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??????
?? ??? ? ?????????? ???, ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???, ???
????????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?? ?????? ??? ?????? ??? ??????
?? ?? ?????? ?????? ?? ?????? ?? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????.

15 ?? ?????? ?????????? ?????????? ??? ? ?????? ??? ?????????? ??? ?????? ???
????????? ?????????? ?? ?? ?????????? ?????????? ???, ?? ?? ??????, ?? ??????
?? ?????????? ??? ?????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
185, ?????????? 1, ??? ?????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

16 ??? ?? ????????????, ?? Bundesfinanzhof (????????????? ??????????)
???????????, ???????) ?????????? ?? ?????????? ??? ?????? ??? ?????????? ??? ??
????????? ??? ?????????? ?? ?????????? ?????????? ??????:

«????? ?????????? ??? ??, ? ?????? ?????????? ?????????? ?????? ??? ??
????????? ??? ?????? ?? ?????? ?????? ?????????? ??? ?????? ??? ?? ?????? (??
????????? ?????? ?? ?????? ?????? ?????????? ??? ?????????? ??????????), ?? ?????? ?? ??????????
??? ?????? ??? ?????? ??? ?????? ??? ?????? 185, ?????????? 1, ??? ?? ?????? 187 ??
????? [????? ???], ??? ?????????? ??? ?????????? ?????????? ?????????? ??? ?????? ??? ??
????? ?????????? (?? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??
????? ??? ?????????? ?????? ??? ?????? ??? ?????????? ?????????? ?????????? ??? ??????;»

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

17 ?? ?? ????????????, ?? ?????? ?????????? ???, ???' ??????, ??
????????? ??? ?? 184, 185 ?? 187 ?? ?????? ??? ?????? ??? ?? ?????? ??? ??
????????? ?? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ??, ?? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?????? ?? ?????? ?? ?????????? ?????? ??? ?????????????? ??? ?? ?? ?? ?? ??
????????? ?? ?????????????? ??? ?????? ??? ?????????????? ??? ?? ?? ?? ?? ?? ??
??? ?? ?? ??????, ?????????? ?? ?????????? ??? ?????????? ?????????? ??? ?? ?????? ??? ??
??? ??, ??? ?? ?? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??
????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ??.

18 ??????, ?????????? ??? ?? ?????? ??? ?????? ??? ?????????? ?????? ??? ??
??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ?????????? ???, ?????????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ??
????????? ??? ?? ?? ?? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??
(????? ??? 25?? ?????? 2018, Gmina Ryjewo, C-140/17, EU:C:2018:595, ??? 29).

19 ?????????? ?? ??? ? ?????????????? ?????? ?????? ??????, ???, ?? ??
«????????? ???» ??? ?????? ?????? ??? ?????? ??? ?????? ???, ???, ??, ??, ?? ??
????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ???, ???, ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??????, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? 28?? ?????? 2018, Imofloresmira – Investimentos Imobiliários, C-672/16,
EU:C:2018:134, ??? 33 ??? 39).

20 ? ?????????? ?????????? ??? ?????? ??? ?????? 184 ?? 187 ?? ??????
??? ?? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?? ?? ?? ??????????
?? ?? ?????? ????. ? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??
?????????, ??? ?? ?????????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ??
??? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ??

?????????? ?????? ??? ?????? ?????? ?????? ??? ?????????????? ?????????? ??? ??? ??? ??? ??
????? ??? ??? ?????? ??? ?????? ?????? ?????? ? ?????????? ??? ?????? ??? ??? ??????
????????????? ??? ??? ??? ?????? (????. ?????? ??? 27?? ?????? 2019, Mydibel, C-
201/18, EU:C:2019:254, ??? 27 ??? ????? ?????????????? ??????????).

21 ??????????????, ??? ????? ??? ?????? ?????????? ???, ?????? ?? ?????????? ?????? ??
????? ??? ??? ?????? ?? ?????? ?????? ?????? ?????? ??? ?????? ???? ?????????? ??? ??
????????? ??? ??? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????????? ?????? ??? . ?
????? ??? ??? ?????? ??? ??? ?????? ?????????? ?? ??? ?????? ?????? ??? ?????? ??? ??? ??????.
????? ?? ?????? ??? ?????????? ??? ? ?? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ???
????? ?????????????? ??? ??? ?????? ?????? ??? ?????? ?? ?????? ?????????? ??? ??? ??? ??? ?
??? ?????????? ??? ?????? ?????? ??? ???, ??? ?????? ?????? ??? ? ?????????? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? (????. ?????? ??? 11?? ?????? 2018,
SEB bankas, C-532/16, EU:C:2018:228, ??? 38).

22 ?? ??????????, ??? ?????????? ??? ? ?????????????? ??? ?????? ?????? ?????? ??????
?? ?????? ??? ?????? ??? ??? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ?????? ?????? ??????????. ?? ?????? ??? ?????? ?????? ?????? ??????????
????? ?????? ?????????????? ?? 2006, ?? ??? ?????? ? ?????????? ??? ?????? ?????? ??? ??????
??? ?????????? ??? 90 % ??? ?????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ???, ??? ?????? ??? ?????????? ??? ?????????????? ??? ?????? ???
?????, ??? ?????? ??? ?????? ?? ??? ?????? ?????????? ?? ?????????????? ??? ?????? 10 % ???
????????????? ??? ??? ??? ?????.

23 ??? ?????? ??? ?????????? ??? ? ?? 2009 ??? 2012, ? ?????? ?????? ??
????????? ??? ?????? ??? ?????? ???, ??? ?? ?????????? ??? ?????? ??? ?????? ??? ??????
?? ?????????? ??? ?????? ??? ? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ???
????? ??? ?????????? ???, ??? ?????? ??? ?????? ???, ??? ?????? ?????????????? ???
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ??????
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ??????
??? ?????????? ???, ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???
????? 185 ??? ?????? ???, ? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? ??? ???.

24 ??????????, ?? ?????? ?????????? ?????????? ?? ??? ??? ?????? ?????? ?????????? ??????????
????? ??? ?????? ??????, ?????? ?????? ??? ? ??? ?????? ??? ?????? ??? ??????????????
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ??????
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

25 ??????, ??????????, ??????, ??? ??? ?? ?????????? ??? ?????????????? ??? ??? ??
20 ??? ?????? ?????? ?????????? ??? ?????? ??? ?? ?????? ?????? ?????? ??? ??????, ??? ??????, ??
????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????????
????????? ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? 187 ?????????? 1, ??? ?????? ???, ??? ?????? ???, ??? ?????? ???, ??? ?????? ???, ??? ??????
?? ?????????? ???, ??? ?????? ???, ??? ?????? ???, ??? ?????? ???, ??? ?????? ???, ??? ??????
????? ??? ?????? 185 ??? ?????? ???, ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
??? ??????.

26 ???????, ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ??????

????????????? ??????? ?? ????????, ?????? ????, ?????? ??? ? ?????????????? ????
???? ?? ?????? ?????? ?? ????????, ?????? ?????????? ?????????? ??? ?????????? ???,
?? ?? ??? ?????? ?????? ? ????????, ?? ?????? ?????????????? ?????? ??? ??????????
????????????? ?????? (?????? ?? 28?? ?????????? 2018, Imofloresmira –
Investimentos Imobiliários, C-672/16, EU:C:2018:134, ??? 40 ??? ??? ??????????????
?????????), ???????, ?? ?????????? ??? ?????????????? ???, ??? ??? ?????????? ???, ???
????????? ???, ??? ?????????? ?? ?????????? ? ?????? «?????????» ??? ?? ?????? ???
????? 185 ??? ?????????? ??????, ?????? ?? ?????? ?? ?????????? ??? ?????? ???
????????? ??? ?????? ?????? ?????????? ???, ??? ?????? ?????????? ??? ?????? ???
????? ???, ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?? ??
????????????? ??? ?????? ?????? ?????????? ??? ?????? ?? ?????????? ??? ?????? ???
??? ??? ?????? ???, ?????? ?? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? (?????? ?? 28??
????????? 2018, Imofloresmira – Investimentos Imobiliários, C-672/16, EU:C:2018:134, ???
47).

27 ??? ??, ?? ??????????, ? ?????? ??? ?????? ??? ?????? ??? ??????????, ??? ?? ?????????? ??
?? ?????? ??????????, ??????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?? ??
?????????.

28 ????, ?????????? ??? ?????? ?? ?? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ???,
????????? ?? ?????? ?????? ?????? ?????? ?????????????? ?? ?????? ?? ??????????
????????????? ?????? ??, ?? ?????????? ??? ?????? ?????????? ??, ?? ?????????? ?? ?? ?? ??
????????????? ?????? ??????. ??? ?????????? ???, ?? ?????????? ?????? ??? ?????? ??? ?? ??
????????????? ??? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????????? ?????? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????????? ??? ?????? 20 ??? ?????? ?????? ??????.

29 ????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????, ??? ?? ?????????? ??? ??????
?? ?????? ?????????? ?????????? ???, ??? ?? ?????? ??? ?????? ??? ?????? ??????, ??? ?????? ???
???? 2003 ?? 2008, ? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??????????
????????? ??? ?? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??????, ???
?????????, ?????????? ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? 90 % ?? ??
????????? ??? ?? ?????????? ???, ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????????
????????? ??? ?? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????????
??? ?????????? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????????? ??? ?????? ???
????????????? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ?????????? ??? ??????????.

30 ????, ??? ?? ?????? ??? ?????? ??? ?????? ???, ??? ?? ?????????? ???
????????? ??????, ?????? ??? ??? 2009 ?? 2012, ? ?????? ?????? ?? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ???, ?? ?????????? ?????? ?????? ??? ??????, ???
????????? ???, ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?? ??
???. ??? ?????? ?????????? ???' ?????? ???, ?????? ??? ?????? ??? ?????? ?????????? ??? ?? ??
??? ??? ?????? ?????? ??? ?????? ??? 28?? ?????????? 2018, Imofloresmira –
Investimentos Imobiliários (C-672/16, EU:C:2018:134), ? ?????? ??? ?? ??? ?????? ??????????, ?
????? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ?? ?????? ??
????????? ?????? ?????????? ??? ?? ??, ??? ?????? ?????? ??????, ???
????????????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ???.

31 ? ?????????? ?? ??? ?????????? ???, ??? ?????? ?????? ?????????? ? ??????????
????????? ??? ? ?????????? ?????? ???, ? ?????????? ??? ?????? ?????? ??? ?????? ???
?? ?? ??? ???, ??? ??? ?????? ???, ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ?????? ??? ??? ???, ?????? ?????? ???, ?????? ?????? ??? ?????? ??? ?????? ???

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

32 ?? ?? ??????, ??????? ?? ?? ?????????? ??? ?????????????? ??? ?????????????? ????? ??????? 20 ??? 21 ???
????????? ???????, ??? ????? ?? ?? ?????????? ??? ?????????????? ??? ?????????? ? ?????????????? ??? ??????
????? ? ?? ?????????? ??? ??? ?????????????? ??? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????????
??? ?????? ?????? ?????????????? ??????????????????, ??? ?? ?? 2009 ??? 2012,
????????????? ??? ??? ?????????? ??? ?????????????? ??? ?????????????? ??? ??? ?????????? ???, ?????? ???
????????????? ??? ?????? ??? ?????? ?????????? ?? ????????????, ?? ?????????? ???
????????????? ??? ?????????? ??? ?????????? ?????????? ??? ?????????????? ??? ?????????? ??? ??????????
????????????? ??? ?????????? ???, ?? ?? ??????, ?????????? ??? ?????????? ?????????????? ??????????????
??? ??????????. ????????, ??? ??? ?????????? ???, ? ?????? ??? ?????? ?????????? ?????????? ??????
??? ?????????? ??? ?????????? ??? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ???
????????????????? ??? ??? ?????????????? ?????????????????? ??? ?????????????????? ??? ?????????????????? ???
????????? ? ?????????? ??? ?????, ?????????? ?????? ?? ?????????? ?????????? ???????, ??? ??????
?????????.

33 ???????, ??? ??????????? ?? 25 ??? ??????? ??????????, ??? ??
???????????, ??? ???????, ???????, ???????, ???????, ???????, ??? ??????? 185 ???
?????? ???, ? ?????? ??????? ??????? ?? ?????????? ?????????????? ?????????????? ??? ???????????.
?? ??????? ??? ?????? ?????????? ?? ?????????? ?????????? ??? ?????????? ??? ?? ??????? ???
?????????? ??? ??? ?????? ?????????, ??? ???????, ??? ?????????? ??? ?????????? ??? (????. ???????
??? 29?? ??????? 2004, Gemeente Leusden ??? Holin Groep, C-487/01 ??? C-7/02,
EU:C:2004:263, ????? 55).

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

35 ??????????? ??? ?????? ??? ??????????????, ??? ?????????? ?????????????? ???
?????? ?? ??? ? ??????? ?? ?? 184, 185 ??? 187 ??? ??????? ??? ?? ???????, ?
?????? ?? ??? ?????????? ?? ?????? ??????? ??? ?????? ??? ?????? ?????????? ??? ???????, ?
?????? ?? ??? ?????????? ??????? ??? ?????? ??? ?????? ?????????? ??? ???????, ?
????????? ??? ?????????? ??? ?????? ?????????? ?? ?????????? ??? ?????? ?????????? ??? ??????
????????? ?? ?????????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ?????????? ??? ??????
????????? ?? ?????????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??????
??? ??? ??? ??????, ?????????? ?? ?????????? ?????????? ?????????? ??? ?????? ?????????? ??? ??????
????? ??? ??? ?? ??? ?????? ??????????, ?????? ?????????? ??? ?????? ?????????? ??? ??????
????????????? ??? ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????
????? ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????.

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

36 ?????????? ??? ? ??????? ?????????? ??? ?? ??? ????? ????? ?????????? ??? ?????? ???
??? ?????????? ?????????????? ??? ??????? ?????????? ??? ?????? ??? ?????????? ??????????, ?' ????
????????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ????? ??????????????
???? ?????????? ?????????????? ??? ??????????, ??? ??? ?? ??? ?????????, ??? ??????????.

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

?? ??? 184, 185 ?? 187 ?? ??????? 2006/112/?? ?? ???????????, ?? 28??
?????????? 2006, ??????? ?? ?? ????? ??????? ?????? ??????????????? ???, ???.
?? ??????? ?? ?? ??????????????? ?? ?????? ??????? ????? ?? ?? ????? ???????????
???? ???, ?? ??????? ?? ??????????? ?????? ??????? ??????? ?? ?? ????? ???????????
????? (???) ?? ??????? ?? ??????? ?? ??????? ??????? ??????????? ?? ?? ???.
?????????? ?? ??????????? ?? ??????? ??????? ?? ??????? ??????????????? ?? ?? ???.
?????????? ?? ??????? ??????????????? ?? ?? ?? ?? ? ?????? ??????????? ??
?????????????? ?? ?? ??????????????? ?? ?? ?? ?? ?????? ??????????????? ?? ?? ???.
?? ???????, ??????????? ?? ??????????? ??????????????? ?? ?? ??????? ???????????
?? ??, ?? ?? ?? ?? ?? ??????????? ?? ?? ?? ?????? ??????? ?? ?? ???????????
????? ?? ?? ?? ?? ?? ???????????, ?????? ??????????? ?? ?? ???????????
????? ??????????? ?? ?? ?? ?????? ??????? ??, ?? ?? ???????, ???.
?????????????? ?? ?? ?? ?? ?? ??????????? ??????? ??, ?? ?? ???????.

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

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