

?????? C-502/07

K-1 sp. z o.o.

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Dyrektor Izby Skarbowej w Bydgoszczy

(?????? ??? Naczelnego S?d Administracyjny
??? ??? ?????? ?????????????? ????)

«??? – ?????????? ??? ?????? ??? ?????????????? – ?????????? ???»

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1. ?????????? ?????????? – ?????????? ??? ?????????? – ?????? ?????? ?????????? –
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(????????? ??? ?????????? 67/227, ??? 2, ?? 1 ??? 2, ??? 77/388, ??? 2 ??? 10 §§ 1,
???????. ??, ??? 2)

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

3. ?????????? ?????? – ?????????? ??? ?????????? – ?????? ?????? ?????????? –
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(?????? 77/388 ??? ??????????, ??? 33)

1. ?? ??? ?????? ?????? ?????? ?????????????? ??????, ??? ?????????????? ??? ?????? 2, ???
??? ?????? ??????, ??? ?????? ?????? 67/227, ??? ??? ?????????????? ??? ?????? ??? ??????????
??? ?????? ??????, ??? ?????????? ?? ??? ?????? ?????? ?????? ??????, ??? ?????? ??? ??? ?????? 2
??? 10, ?????????? 1, ?????????? ??, ??? 2, ??? ?????? ?????? 77/388, ??? ??????????????
??? ?????????? ??? ?????? ??????, ??? ?????????? ?? ??? ?????? ?????? ?????? ??????????, ???
????????????? ?? ??? ?????? 2004/66, ??? ?????????? ?? ?????? ?????? ??? ?????? ?? ?????????? ??
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????????????? ??????, ??? ?????? «????????? ?????????? ?????????? ??????» ??? ??????????
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(?. ?????? 18-21, ??????. 1)

2. ?????????? ???, ?? ?????? ?????????? ?????????? ?????? ??? ?????? ??? ?????? ???
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????, ??? ?????? «????? ??? ?????????? ???» ?????????? ??? ???? ?????? ???
????????? ??? ? ??????????, ??? ???? ?????? ??? ?????? ??? ?????? 27, ?????????? 1, ??? ????
????? 77/388, ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ???, ??? ?????? ???
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????????? 1, ?????? ?????? ??? ?????? ?????????? ??? ???? 22, ?????????? 8, ???
???? ?????, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
???? ?????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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(?. ?????? 23-25, ??????. 2)

3. ?? ??? 33 ??? ?????? 77/388, ??? ?????????? ??? ???? ?????? ??? ???? ?????? ???
????? ???, ??? ?????? ??? ???? ?????? ??? ?????? ???, ??? ?????? ?????????? ???, ???
????????? ?? ?????? ??? ?????? ??? ?????? ??? ???? ?????? ??? ?????? ??? ???? ??? ???? ???
??? ?????? ??? ?????? ???, ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???? ??? ???? ???
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(?. ?????? 28-29, ??????. 3)

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

??? 15?? ?????????? 2009 (*)

«?? – ?????????? ??? ?????? ??? ?????????? – ?????????? ???»

???? ?????? C?502/07,

? ? ?????????? ??? ?????? ?????? ?????????? ?????? ??? ?????? ??? ?????? 234 ??,
??? ?????? ?? Naczelnny S?d Administracyjny (??????) ?? ?????? ??? 31?? ????????

2007, ? ?????? ?????????? ??? ?????????? ??? 16 ?????????? 2007, ??? ?????? ??? ????

K-1 sp. z o.o.

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Dyrektor Izby Skarbowej w Bydgoszczy,

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

????????? ??? ??? C. W. A. Timmermans, ?????? ???????, J.?C. Bonichot (?????????), K. Schiemann, J. Makarczyk ??? C. Toader, ???????,

?????? ??????????: J. Mazák

?????????: K. Sztranc-S?awiczek, ??????? ????????????,

?????? ??? ?? ?????? ?????????? ??? ??????? ??? ??????? ??? ???????????? ??? 20?? ????????,
2008,

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

– ? K-1 sp. z o.o., ?????????? ??? M. ?ukasik ??? ??? ?. Z?otopolska-Nowak,
radcy prawni,

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

– ? ??????? ????????, ?????????????? ??? ??? ?. ?????????? ??? ?. ???????????,
????? ??? ?? ?. ????????????,

– ? ??????? ????????, ?????????????? ??? ??? ?. ?????????? ??? ?. ????????????,

– ? ??????? ??? ????????, ?????????????? ??? L. Seeboruth ??? ?? C.
Gibbs, ?????????????? ??? R. Hill, barrister,

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

?????? ??? ????????, ??? ?????? ??? ?????? ????????????, ?? ??????? ???
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1 ? ??????? ?????????? ?????????????? ?????????? ??? ??????? ??? ??????? ??? ?????? 2,
????? ??? ??????? ??????, ??? ?????? ??????? 67/227/??? ??? ???????????, ??? 11??
????????? 1967, ??? ?? ?????????????? ??? ?????????? ??? ??????? ???, ??? ?????????? ??
????? ??? ?????? ?????? ?????? (?? ????. ????. 09/001, ?. 3, ??? ????: ?????? ?????? ???), ???
????????? ?????? ??? ?????? ??????? 77/388/??? ??? ???????????, ??? 17?? ????? 1977, ???
????????????? ??? ?????????? ??? ??????? ?????, ??? ??????? ?? ??? ?????? ?????? ??????
????????? – ??? ?????? ?????? ??? ?????????????? ????: ?????????? ?????????? ??? (??
???. ????. 09/001, ?. 49), ??? ?????????????? ?? ??? ?????? 2004/66/?? ??? ??????????, ???
26?? ??????? 2004 (?? L 168, ?. 35, ??? ????: ??? ?????? ???).

2 ? ??????? ??? ?????????? ??? ??????? ??????? ??????? ??????? ??? K-1 sp. z o.o.
(???: K-1) ??? ??? Dyrektor Izby Skarbowej w Bydgoszczy (????????????? ??? ???????
????????? ??? ??????? ??? Bydgoszcz) ??????? ?? ??? «????????? ?????????? ??????????»
?? ?????????? ??? ?????????? ??? ?? ?????? ??? ?????? ?????? ??? ?????????? ???
??????, ?? ?????????? ?????????? ??? ?????? ?????????? ?????? (???: ???) ? ??????
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3 ??? ?? ??? 2, ??? ?? ?????? ??? ???????, ??? ?? ?????? ??? ??????? ???:

«? ?????? ??? ?????? ??? ?????? ?????????? ??? [??] ?????????? ??? ?????? ??????? ??? ?? ???
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?????? ??? ?? ?????????? ??? ?????? ??? ?? ?????? ??? ??????? ??? ???????????, ?? ???
????????????? ??? ?????? ??? ?????? ??? [??], ? ?????? ?????????? ??? ?? ?????? ??? ???????
??????????, ?? ?????? ?????????? ??? ???.

? ????? ?????????? [??], ?????????????? ??? ??? ?? ?????? ??? ?????? ??? ??????? ??? ??
??? ?????????? ??? ?????? ??? ?? ?????? ??? ?????? ???????????, ?????? ?????????? ???'
????????? ??? ?????? ??? [??], ? ?????? ?????????? ??? ?? ?????? ??? ??????? ??? ???????
??????????, ?? ?????? ?????????? ??? ???.

4 ?? ??? 2 ??? ?????? ??????? ??? ?????????? ?? ???:

«???? [??] ??????????:

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

5 ?? ??? 10, ?????????? 1, ??????? ??, ??? ?????? ??????? ??????? ??? «?????????»
?????» ??? ?????? ?? ??? ?????? ??????? ?????????? ??? ?? «?? ?????? ?? ?? ???
????????????? ?? ?????? ?????????? ?? ?????? ?????? ?????? ?????? ??? ?? ???????
????????? ??? ??????». ? ?????????? 2 ??? ?? ??? ?????? 10 ?????? ?????? ???:

«? ?????????? ??? ?????? ?????????? ??? ? ?????? ?????????? ?????????? ??? ?? ???
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????????? ??? ?????? ?????? ??? ?????? ??? ?????? 5, ?????????? 4, ?????????? ??,
????? ??? ?? ?????? ???????, ?? ?????? ?????????? ?????????? ?????????? ????

? ?????????? ? ?????????? ???????, ?????????? ??? ?????????????????? ??? ?? ??? ?? ????
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6 ?? ????? 22, ?????????? 8, ??? ????? ??????? ??? ?????????? ?? ????:

«?? ??? ?????????? ??? ??????? ?? ??????? ?? ?????????? ??????? ??? ?????? 17,
????????? 4, ?? ????? ??? ????? ?? ?????? ?? ??????? ?? ?????? ??? ????? ??????????, ???
?????? ?????????? ??? ??? ?????????? ?????????? ?????????? ??? ?????? ??? ??? ???
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7 ??? ?? ??? 27, ?????????? 1, ??? ????? ??????? ????:

«1. ?? ?????????? ???????, ??????? ??? ?????????? ?? ?????????? ??????? ?? ???
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8 ?? ????? 33, ?????????? 1, ??? ????? ??????? ??? ??????? ?? ????:

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

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9 ??? ?? ??? 109, ?????????? 5 ??? 6, ??? ?????????? ??? ??? ??? ?? ??? ?? ??? ?? ???
?????? ??? ??? ?????????? (ustawa o podatku od towarów i usług), ??? 11?? ??????? 2004
(???. ????: ?????? ??? ?? ???):

«5. ??? ?????????????? ??? ? ?????????????? ??????? ??? ?????????? ??? ?????????????? ???
?????? ??? ?? ?????????? ??????? ?? ?????? ??????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ?????????? ???, ? ?????????? ??? ?????? ?????????? ?????????? ??? ??????????
? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ?????????? ??? ?????????? ??? ?????? ??? 30 % ??? ?????????????? ???.

6. ? ?????????? 5 ???&