

?????? C-93/10

Finanzamt Essen-NordOst

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GFKL Financial Services AG

(?????? ??? Bundesfinanzhof

??? ??? ?????? ?????????????? ??????????)

«???? ?????? ??? – ?????? 2, ?????? 1, ??? 4 – ?????? ?????????? – ??????? ??? «??????
????????? ?? ??????? ?????» ??? ??? «????????????? ??????????????» – ??????
????????? ?????????? – ?????? ?????????? ?????????????? ??? ?????????? ?????? ???
????????? ?????? – ?????????????? ?? ?????? ??? ?????????? ??? ?????????? ?????????????? ??? ??
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????????????? ?????????? – ?????????? ??? ?????????? – ?????? ?????? ?????????? – ??????
????????? ?????? ?????????????? ??? – ?????? ?????????? ??? ?????????????? ???
????????? ?????? – ??????

(?????? 77/388 ??? ??????????, ??? 2, ??? 1, ??? 4)

?? ??? 2, ??? 1, ??? 4 ??? ?????? ?????? 77/388, ??? ?????????? ??? ??????????????
??? ?????? ??? ?????? ??? ?????????? ?? ??? ?????? ?????? ?????????, ??? ??? ?????? ???
????????????? ?????????? ? ?????? ???????, ??? ???????, ?????????? ?????????? ??
???? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???,
???? ??? ?????? ??? ?? ??? ?????? 2, ??? 1, ??? ??? ?????? ?????????? ??? ??????????
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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??????, ??? ??? ?????????? ???, ? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ?? ??? ?????? ??? ???????, ??? ? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????????? ??? ??? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????????? ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
? ??? ?????? ??? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ???.

(?. ??????? 22, 25-26 ??? ??????.)

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

??? 27?? ?????????? 2011 (*)

«???? ??????? ??? – ?????? 2, ?????? 1, ??? 4 – ?????? ?????????? – ??????? ??? “??????
????????? ?? ??????? ??????” ??? ??? “????????????? ??????????????” – ??????
????????? ?????????? – ?????? ??????? ?????????? ??? ?????????? ??? ?????? ???
????????? ??? – ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??
???? ?????????? ??? ??? ??????? ?????????????? ??? ??????»

???? ??????? C?93/10,

?? ??????????? ?? ?????? ?? ???? ?????? ??????????????? ?? ?????????? ?? ?????? ?? ???? 267
????, ?? ?????? ?? Bundesfinanzhof (?????????) ?? ?????? ?? 10?? ?????????? 2009, ?
????? ?????????? ?? ?????????????? ?? 17 ?????????? 2010. ?? ?????? ?? ???? ??

Finanzamt Essen-NordOst

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GFKL Financial Services AG,

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

?????????? ??? ??? K. Lenaerts, ?????? ???????, J. Malenovský, R. Silva de Lapuerta (??????????), ?. ?????? ??? D. Šváby, ???????,

?????? ??????????: N. Jääskinen

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

?????? ????? ?? ??????? ?????????? ??' ?????????? ??' ?????????? ?????????? ??' 12?? ????? 2011.

????????????? ?????? ??? ?????????????? ??? ?????????;

- ? GFKL Financial Services AG, ?????????????? ??? ?? A. Bartsch ??? B. Keller, Rechtsanwälte,
 - ? ?????????? ????????, ?????????????? ??? ??? T. Henze ??? C. Blaschke,
 - ? ????????, ?????????????? ??? ??? D. O'Hagan ??? G. Clohessy,
 - ? ?????????? ????????, ?????????????? ??? ??? ?, ??????????????.

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... 14 ...

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1 ? ?????? ??????? ?????????????????? ?????????? ?????? ??? ?????????? ??? ?????? 2,
22222221 4 11 2 22222222221 222222222 22 22222 222 222 222222212 3 222222222 22

?????? 2 ??? 3, ??? ?????? ??????? 77/388/??? ??? ???????????, ??? 17?? ????? 1977, ???
????????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??????
????????? – ??? ?????? ?????? ?????? ?????????????? ?????: ?????????? ?????????? ??? (?)
???. ??. 09/001, ?. 49, ??? ?: ??? ?????).

2 ?? ??? ?????? ?????????? ??? ?????? ?????????? ??? Finanzamt Essen-
NordOst (??? ?: Finanzamt) ??? ??? GFKL Financial Services AG (??? ?: GFKL) ???
????? ??? ?????? ??? ?????? ?????? ?????? ?????????????? ??? (??? ?: ???) ??? ???
?????, ??? ??? ?? ??? ?????????? ???, ?????????? ?????? ?? 70 ?????????????? ???
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3 ?? ?????? 2, ?????? 1, ??? ?????? ?????? ??????:

«???? [?] ??????????:

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

4 ?? ?????? 4, ?????????? 1 ??? 2, ??? ?????? ?????? ??? ?? ????:

«1. ?????????? ?? “????????? ????” ?????????????? ???, ??? ?????? ?????????? ??
?? ?????????????? ???, ??? ??? ??? ?????????? ?????????????? ??? ?????????????? ???
????????? 2, ?????????? ??? ?????????? ?????? ??? ?????????? ??? ?????????????? ???
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2. ?????????? ??????????????, ??? ?????? ?????? ??? ?????????? 1, ??? ?????? ??? ??
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????????????? ??? ??? ?????????????? ??? ?????????? ??? ?????????? ?????????????? ???
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??????, ??? ??? ??? ?????? ?????????? ?????? ??? ?????????? ??? ?????????? ???.

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5 ? GFKL ??? ? ?????? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??????????
????? ? ???, ??? 26 ?????? 2004, ?????? ??? ?????? ?????????? ??? ?????????? ???
??? ?????????? ?????? ?? 70 ?????????? ??? ?????? ?????????? ??? ?????????? ???.

6 ??? ??? ?????????? ???????, ??? 29 ?????? 2004, ? ?????????? ??? ??
????????? ??? ?????? ?????? ?? 15 500 915,16 ???.

7 ?? ?????? ?????? ?????? ?????????? ?????????? ???, ??? ?????? ??? ?????????? ??????????, ??
?? ??? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ??????????
??? ?????????? ??? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????????
????? ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
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8 ??????, ?????? ??? ?????? ??? ?????????? ?????????????? ?????????? ??? 3??
?????? 2004, ??? ??? ?????? ??? ?????????? ??? ?????????? ??? 26?? ?????? 2003,
C?305/01, MKG-Kraftfahrzeuge-Factoring (?????? 2003, ?. I?6729), ?? ?????????? ???
?????? ?????? ??? ?????? ???, ?????????? ??? ?????????? ??? ?????????? ??? ??????????.

???? ??????????? ?????????? ?????????, ?? ??? ?????????????? ?????? ??? ?????????? ?????????????
???? ??? ??????????? ?? ??? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
???? ??? ??? ??? ??? ??? 8 956 101 ????.

9 ???????, ?????????? ??? ? ??????? ??? ?????????? ????? ????? ?????????? ??
????????????? ?? ???? ?????? ?????? ???, ?? ??? ??????????, ???
????????????? ?????? ??? 5,97 %, ?? ??????? ?????????? ??? ??
????????? ??? ?????? ?????, ?????????????????? ?????? ????? 556 293, ?? ?????????? ??
????????, ??? ?????? ?????? ??? ?????? ???, ?????????? ?????? ??? ?? ??? ?????? ??????????
????? 8 399 808 ???.

11 ??????????, ?? ??? ?????????? ???, ?? ??? ?????? ??? ?????????????? ??????, ? ??????????
??? ??????? ??? ?????? ?????????? ?? ??? ????? ??????. ????, ??????, ?????????? ???, ??
????????? ?????????????? ?????????? ?? ??? ?????? ??? ?????????? ??????????, ? ?????? ???
364 925 ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?? ??? ?????? ?????????? ?? ??? ?????? ??? ?????????? ?? ??????????.

12 ????? ???? ?????????? ?????????????? ??????????? ??? ???? ????? ?????? ?????????? ?????? ???
????????????? ??? ? ?????????? ??? ?????????????? ??? ?????????????? ??? ?????????????? ??? ?????????????? ?? ???
?????? ??? ???? ?????? ??? ?????????? ??????????????, ? GFKL ?????? ?????? ??? ??? ????
????????????? ??? ??????????, ??? ?????? ?? Finanzamt ?????? ?? ???????.

13 ? GFKL ?????????? ?????? ?????????? ?????? ??? Finanzgericht, ? ?????? ?????? ???
?? ?? ?????????? ???, ?? ?????????????? ??, ?? ?????????? ?????? ?? ?????? ?????????? ??????????????
??????????, ? ?????????? ?????????? ?????????? ?????????? ??, ?? ?????????? ?????? ?????????? ??, ??
????? ?????????? ?????? ?????????? ?????????? ??, ?? ?????? ?????? ?????? ??, ?? ??????????.

14 ?? Finanzamt ?????? ?????? ??????????? ??? ?? ?????????? ?? Finanzgericht
?????? ?? ?? ?????????? ???????????.

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

«1) ??????? ?? ??? ??????? ?? ?????? 2, ?????? 1, ??? ?? ?????? 4 ??? ?????? ??????? [...]:

??????????, ?? ?????????? ?????????? (???????) ?????????? ?????????????? ??? ? ??????????
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????? ?? ?????? ?? ??????????, ?????? ?????????? ?? ?????????? ?????? ?????? ?? ??????
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- ???? ?????????????? ??? ?? ?????? ??? ?????????????? ?????? ??? ?????????????? ???????
????????????????? ???' ?????????? ?????????? ??? ?? ?????????? ??? ?????????????? ??? ??????????????
????????????? ??? ?????????? ??? ?? ?????????? ?? ?????????????? ??? ?????????????? ??? ?????? ??
????? ??? ??????????, ????

- ?????????????????? ??? ?? ?????? ??? ?????????????? ??? ?? ?????????? ?????????? ?????????
?? ?????????????? ???, ??? ?? ?????? ?????? ?????????? ??? ?? ?????????? ??????????????

????????????? ??? ??????? ?? ???? ?? ?? ?????? ??? ?????????? ??? ????? ??????? ??
????????????? ??? ??????????;

2) ??? ?????? ?? ??? ??????? ?? ??? ?????? 13, B, ??????? ??, ?????? 2 ??? 3, ??? ???
?????? [...], ?? ??????? ?????????? ?????????? ??? ??????? 1:

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

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

3) ??? ?????? ?? ??? ??????? ?? ??? ?????? 11, ?, [????????? 1], ??????? ??, ??? ???
?????? [...], ??? ??? ?????? 1 ?????? ?????????? ??????? ??? ??? ?????? ??????????
????????????? ??? ?????? ??????:

?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?? ??? ?????? ??? ??????????
????? ??????????;»

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16 ?? ?? ?????? ?????????? ???, ?? ?????? ?????????? ???' ???' ??
????????? ?? ?? 2, ?????? 1, ??? 4 ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ? ?????? ??????, ??? ??????, ?????????? ?????????? ???,
???? ?????????? ??? ?????????? ??? ?????? ??????, ?????????? ?????????? ???
????? ?????????? ??? ?????????? ??? ?????? ??????, ?????????? ?????????? ??? ?????????? ???
????? ?????????? ??? ??????????.

17 ??? ?????????? ??? ?????????? ???, ??? ?????? ??? ?????????? ???, ??
????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ???, ??? ?????? ??? ?????? ??????????
??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???, ??? ?????? ??? ?????? ??????????
????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ???, ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? (???. ?????? ??? 29?? ?????? 2009,
C246/08, ?????? ??? ?????? 2009, ?. I?10605, ??? 43).

18 ??? ?????? ???, ?????? ?????? ?????? «?? ?????? ??????», ??? ?? ?????? ???
????? 2, ?????? 1, ??? ?????? ??????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???, ?? ?????? ???
????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? (??., ?????? MKG-Kraftfahrzeuge-Factoring, ??????, ??? 47).

19 ??????, ??? ?????? ???????, ? ??? ?? ?????? 2, ?????? 1, ??? ?????? ???
????? «????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???» ??????????
??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? (???. ?????? ??? 29?? ?????? 2010, C?40/09, Astra Zeneca UK, ??

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

20 ????? ?????????????????? ???????? MKG-Kraftfahrzeuge-Factoring, ?? ?????????? ??????
???? ?? ??????? ??? ? ??????? ?????????????????? ?????????? ?????????? ??? ?????? ???
????????? ??? ??????????, ?????????????????? ??? ??????? ?????????????????? ??? ??????????,
?????? ?? ??????? ?????????????? ??? ?? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ???
????????? ??????????, ??? ?? ?????? ??? ?????? ??? ?????? 4, ?????????? 2, ??? ?????? ??????,
?????? ? ?????? ??? ??????????????, ?? ??????? ???????, ??? ?????????????? ?????? (?.
?????? MKG-Kraftfahrzeuge-Factoring, ??????, ???? 50).

21 ??????? ??????????????? ???, ??? ??????? ??? ??????????? ??? ?????????? ??? ?????????? ???????????
???? ??????? ??? ??? ?????? ??????? ? ?? ??? ?????? ???????, ? ??????? ??? ??????? ??? ??????? ???
?????? ??? ?????? ?????????? ??????????? ?????????????? ?????????????? ??????????? ??? ???????,
?????? ??? ?????? ?????? ???????, ??? ?????? ?????????????? ??? ???????

22 ?? ????? ?? ??????? ??, ?????? ?????? ??????, ??????? ?????? ?? ?????????????? ???, ??
????????????? ?? ?? ??????????? ?????????????? ?????? ??? ?????? ?????? ?????????? ?
????????????? ?????? MKG-Kraftfahrzeuge-Factoring, ? ?????????? ??? ?????????? ???
????????? ??? ????? ?????????? ?? ?????? ??? ?????????, ?????? ??? ?????????? ??????????????
????????????? ??? ?????? ??? ?????? ??? ?????? 4 ??? ????? ?????? ??? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? 2, ?????? 1, ??? ?????? ??????.

23 ???????, ?????? ?????? ?????? ?? ?????????????? ?????? ??? ??????????????
?????????? ?? ?????? ??? ?????? ?????? ?? ?????????????? ????.

24 ???????, ?? ?????????????? ??? ?????? ?????? ?????????????????? ??? ??? ?????? ??????
????????????? ??? ?????? ??? ?? ?????????? ???, ??? ?????????? ??? ??? ?????? ?????? ?????? ?
????????????? ?????? MKG-Kraftfahrzeuge-Factoring, ?????? ?????? ??? ??? ?????? ?,
????? ? ??????? ??? ???????, ??? ??????? ??? ?????? ??????, ??????????? ?? ??? ??????
????????? ??? ?????? ?????????????? ?????????? ??? ??? ??????? ??? ??????????
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25 ????????, ? ?????? ?????? ??? ?????????????? ?????? ??? ?????????????? ??????????
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????, ??? ?????????????? ??? ?????? ?????????????? ?????????????? ??? ??? ?? ??? ??? ?????????????? ???
??? ?????? ??? ?????????? ???, ? ?????? ?????????? ??? ??? ?????????? ?????????? ??? ?????? ???
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26 ????? ??? ?????????????? ??????, ??? ?????? ?????????? ??????? ?? ?????? ? ?????????? ??? ??
?????? 2, ?????? 1, ??? 4 ??? ?????? ?????????? ?????? ??? ?????? ??? ?????????????? ??????????????
? ?????? ??????????, ??? ??????, ?????????????? ?????????????? ?? ?????? ?????????????? ???
????????????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ?? ?????????? ??????, ??? ??? ?????? ???
?????? 2, ?????? 1, ??? ??? ?????? ?????????????? ?????????????? ?????????????? ??? ??????
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27 ??????? ?? ?????????? ?? ?????? ?? ?????? ?? ??????, ??????? ? ??????? ??
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?? ?????? 2, ?????? 1, ??? 4 ??? ?????? 77/388/??? ??? ??????????, ??? 17?? ????
1977, ??? ?????????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ?? ???
?????? ?????? ??????? - ?????? ??????? ?????? ?????????????? ????: ??????????
????????? ????, ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ? ??????
?????????, ??? ???????, ?????????? ?????????? ?? ??? ????? ?????????? ???
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????? ??? ?????? 2, ?????? 1, ??? ??? ????? ?????????? ??? ?????????? ???
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