

?????? C-285/10

Campsa Estaciones de Servicio SA

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Administración del Estado

(?????? ??? Tribunal Supremo ??? ??? ?????? ?????????????? ????)

«???? ?????? ??? – ??? 11, A, ?????????? 1, ??? 27 – ??? ?????? ??? – ??? – ???
??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????????? ?????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ???
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????????????? ?????????? – ?????????? ??? ?????????? – ??? ?????? ?????? ?????? – ???
????????? ??? ?????????????? ??? – ??? ?????????? ??? ?????? – ??? ?????? ???
?????????????

(?????? 77/388 ??? ??????????, ??? 5, 6, 6 § 2, 11, ? § 1, ??????? ?, ??? 27)

? ??? ?????? 77/388, ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????, ??? ??????
?? ??? ?????? ?????? ???????, ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??
?????????, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????, ???
????????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 11, ?,
????????? ??, ??? ?????? ??? ??????, ?????????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
???? ???, ??? ??? ?????? ??? ?????? 5, ?????????? 6, ??? 6, ?????????? 2, ??? ?? ???
??????, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?? ?????????? ??? ?????? 27
??? ?????? ?????? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ??? ?????? ????.

(??, ??? 40 ??? ??????.)

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

??? 9?? ?????? 2011(*)

«???? ?????? ??? – ??? 11, A, ?????????? 1, ??? 27 – ??? ?????? ??? – ??? – ???

???? ??????? ????? ?????????? ?????? ?????? ?????? ?????? ?????????????? ?????? ?????? ????
????????????? ?????? ?? ?????????? ?????? ?????? ?????????? ?????????????? ??? ?? ?????????? ??????
??? ??????»

???? ??????? C2285/10,

??. ?????????????? ?????? ?????????? ?????????????? ?????????? ?????? ?????? 267 ????,
??? ??????? ?? Tribunal Supremo (???????) ?? ??????? ??? 26?? ?????????? 2010, ? ??????
????????? ??? ?????????? ??? 7 ??????? 2010, ??? ??????? ??? ??????

Campsa Estaciones de Servicio SA

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Administración del Estado,

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

????????? ??? ??? K. Schiemann, ?????? ???????, A. Prechal ??? E. Jaraši?nas
(???????), ????????,

?????? ??????????: J. Mazák

?????????: C. Strömholm, ?????????? ????????????,

?????? ??? ?? ?????? ?????????? ?????????? ??? ?????? ??? ??' ?????????? ?????????????? ???
31?? ??????? 2011,

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

– ? Campsa Estaciones de Servicio SA, ?????????????? ??? ??? F. Bonastre Capell,
abogado,

– ? ?????????? ??????????, ??????????????, ????????, ??? ??? B. Plaza Cruz ???, ???
???????, ??? ??? S. Centeno Huerta,

– ? ?????????? ????????, ?????????????? ??? ??? I. Martínez del Peral ??? ??? R. Lyal,
?????? ??? ?????????? ??? ?????, ??? ?????? ??? ?????? ?????????? ??????????, ?? ?????????? ???
?????? ??? ?????? ?????????? ??????????,

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

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1 ? ?????? ?????? ?????????? ?????????????? ?????????? ?????? ??? ?????????? ??? ?????? ??????
77/388/??? ??? ??????????, ??? 17?? ??? 1977, ??? ?????????? ??? ?????????? ??? ?????????? ???
?????? ????, ??? ??????? ?? ??? ?????? ?????? ?????? ?????? – ??? ?????? ?????? ????
????????????? ????: ?????????? ?????? ????? (?? ??? . ??? . 09/001, ? . 49, ??? ????:
???? ??????).

2 ? ?????? ?? ??????????? ??? ?????? ??????? ??? ?????? ?? Campsa Estaciones de Servicio SA (??? ?: Campsa) ??? ?? Administración del Estado ??? ?????? ??? ?????????????? ??? ?????? ?? ?????? ?????? ? Oficina Nacional de Inspección (?????? ??????? ??????????), ?????? ?? ??? ?????????????? ??? ?????? (??? ?: ???) ??? ?????? 1993.

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

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

3 ????. ?? ?????? 2, ?????? 1, ??? ?????? ???????, ????. ?? ?????????? «?? ??????????
????? ?? ???? ?????? ?????????? ?? ?????????????????? ?? ?????????? ?? ?????? ??
????????? ?? ?????? ?? ?????????? ?? ?????????? ??, ??? ?????? ?? ?????? ?? ?????? ?? ?????? ».

4 ?? ?????? 5, ??????????? 6 ??? 7, ??? ?????? ?????????? ?????????? ?? ??????????;

«6. ?????????????? ??? ?????????? ?? ?????????? ??????? ? ?????????? ??? ??? ?????????????? ???
????? ?????? ??? ?????????????? ???, ?? ?????? ?????????????? ??? ?????? ?????? ?????? ? ???
????????? ??? ?????????????? ??? ? ?? ?????? ?????????????? ??????? ?, ????????????, ?????????? ???
????????? ?????? ??? ????????????, ??? ? ?? ?????? ??? ? ?? ?????????? ??? ?????? ???
????? ?????????????? ?????????? ??? ?????? ? ?????? ?????? ?????? ??? ??? [??]. ???
???????????????, ????, ?? ?????????? ??? ?????? ??? ??? ?????? ??? ?????? ??? ??????????????
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

7. ?? ?????? ?? ??? ?????????? ?? ?? ?????????????? ?? ?????? ?? ?????????? ?? ?? ?????????? ?? ??????????; ??

?) ??? ??????? ???. ?????????????? ????. ???, ??? ???. ??????? ???. ?????????????? ???.
?????? ????????????, ????????????????, ????????????????, ????????????????, ????????????????, ????????????????
????????????? ???. ??????? ???. ????????????????. ???, ????. ????????????. ??? ? ?????????? ???.
?????? ??????? ???. ?????? ????????????. ????. ????. ??? ???. ?????????????? ??????? ???.
????? ??????? ???. [??]:

?) ??? ??????? ??????? ??? ?????????? ????? ???, ?? ?????? ?????????????????? ??
????????? ????, ????, ??? ???? ?????? ???, ??? ?????????? ?????? ?????? ???, ??? ???? ?
????? ?????? ??? [??] ??? ???? ?????? ? ??? ?????? ?????, ?????? ??, ??? ?????? ??
??.

?) [...] ??? ?????? ?????? ??? ???????????? ??? ?????? ??? ? ???????? ??? ?? ??????????
??????? ??? ???????????? ??? ?????? ??? ???????????? ??? ????????????????, ??? ?????? ???
????? ??????? ? ?????????? ??? ?????? ???, ??????? ?? ??? ?????????? ?? ??????????????
????????? ??? ?????? ??? ?????? ?????? »

5 ?? ?????? 6. ??????????? 2 ??? 3. ??? ????? ??????? ??????? ?? ????:

«? ?????????????? ??? ?????? ?????? ?????????? ?? ?????????? ??????»

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

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

[...]

3. [...] ?? ?????? ??? ?????????? ?? ?????????????? ??? ?????? ?????? ?????????? ?????????? ??????
??? ?????????? ??? ??? ?????????????? ??? ?????? ?????????? ??? ??? ?????? ???
????????????? ???, ??? ?????????? ??? ? ?????????? ??? ?????? ?????? ?????????? ??? ?????
????????? ??? ??? ??? ?? ??? ?????????? ??? ?????? ?????? ??? [??].»

6 ?? ?????? 11, A, ?????????? 1, ??? ?????? ??????, ??? ?????? ?? ??? ?????? ?????????? ???
??? ??? ?????????? ??? ?????, ?????????? ?? ??????:

«????? ?????????? ??? ?????? ??????:

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

?) ??? ??? ?????? ??? ?????????? ??? ?????? 5, ?????????? 6 ??? 7, ? ?????????? ???
????? ??? ?????? ??? ? ?????? ??? ?, ?????????? ??? ?????, ?? ?????? ??? ?????.
????? ??? ??? ?????? ?????????? ??? ?? ??? ?????? ???.

?) ??? ??? ?????? ??? ?????????? ??? ?????? 6, ?????????? 2, ?? ??? ??? ?????? ???
????????? ??? ??? ?????? ??? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

?) ??? ??? ?????? ??? ?????????? ??? ?????? 6, ?????????? 3, ? ?????????? ??? ??? ???
????? ????.

[...]»

7 ?? ?????? 27 ??? ?????? ?????? ??? ?????? ?? ???:

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

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

3. ? ?????????? ?????????? ??? ?????? ?? ?????? ??? ?????? ?????? ?????? ?????????? ??? ???.

4. ? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??????, ?????? ?????? ?????? ?????? ??? ???
????????????? ??? ?????? ?????? 3 ??????????, ??? ? ?????? ??? ?????? ?????? ?????? ??????
?? ?????????? ??? ?????????? ?? ??????????.

5. ?? ?????? ????, ?? ?????? ??????????? ??? 1?? ??????????? 1977 ?????? ????,
????? ?? ??????????? ??????? ??? ??????????? 1, ??????? ?? ???? ???????????, ??? ?? ?? ??
??? ?? ?? ??????????? ????? ?? ??????? ??? 1?? ??????????? 1978 ??? ?? ??
?????????? ???, ??????????? ??? ?????? ??????????? ??? ?? ?? ??????????? ???
?????????? ??? ?????, ?? ?????? ??? ?????? ?????? ?????? ??? ?? ??????????? ?? ??????????? ???
?????????? 1.»

8 ?? ??? ??????? 2006/387/?? ??? ???????????, ??? 15?? ??? 2006, ??? ??????????? ???
????????? ??? ??????? ?? ??????????? ?????? ??? ??????????? ??? ??????? 11 ?? ??
?????? 28? ??? ?????? ??????? (?? L 150, ? 11), ??????????? ??? ??????????? ??? ???????,
????????? ?? ?? ??????????? ??? ??????? 27, ??????????? 1 ??? 4, ??? ?????? ???????, ??
????????? ??? ?????? ????? ??????????? ??? ??? ?????? ?????? ??????????? ??? ?????? ???????
??? ?????, ??? ?????? ??????????? ?? ????? 11, A, ??????????? 1, ??????????? ??, ??? ??????
???????. ?? ????? 1 ??? ?????? ?????? ??? ?????? ?? ???????:

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

?? ?? ??? ?????? ?????? ?? ??????????????? ??? ??? ??? ??????????? ??? ??????????? ??? ???????????
? ??? ??????????? ??? ??? ? ??????????? ??? ??? ??? ?????? ?? ??????????? ??? ??????????? ? ???
????????? ??? ?????? ??????????? ??? ? ???????????????, ???????????????, ???????????????,
?????????? ? ?????? ??? [...]».

9 ?? ??? 11, ?, ??? ?????? ??????? ??????????????? ??? ??? ?????? 2006/69/?? ???
??????????, ??? 24?? ??????? 2006, ??? ??????????? ??? ??????? 77/388 ??? ???
????????? ??? ?????? ??? ??????????? ?? ??????????? ??? ??????????? ??? ??????????? ??? ??????
?????????????? ??? ?????? ?? ??????????? ??? ?????? ??? ??????????? ??? ??????????? ? ???????????????,
??? ??? ??? ??????????? ??? ??????? ??? ??????????? ??? ??????????? ??? ??????????? (?? L 221, ? . 9). ?
?????? 2006/69 ???????, ?????? ?????, ??? ????? 11, ?, ??? ?????? ??????? ??? ???
????????? 6. ??? ??? ??????????? ???, ??? ??? ?????? ??? ??????????? ??? ??????????? ? ???
??????????, ?? ??? ??? ?????? ??? ?????? ??? ??????????? ??? ??? ??? ??????????? ??? ? ???
????????? ??? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ??????????? ??? ? ??? ???????
???? ??? ???????, ??? ? ??????????? ???, ?????? ??? ??????????? ??? ???????????, ???????????
????????? ??? ??? ?????? ??? ?????? ??? ??????????? ??? ??????????? ??? ??????????? ???.

10 ??? ??? ?????? ??? ?????? ??? ?????? 2006/69, ? ??????????? ??? ??????????? ???
????????? ??????? ??? ??????????? 2006/387 ?????? ???.

11 ? ??????????? ??? ?????? ?????? ?? ???????????, ??? ??????????????? ??????? ???
?????????? ??? ?????? ?????? ??????????? ??? ?????? ??? ?????? ??????????? ??? ??????????? ??? ???
??????????????, ??? ?????? ?? ??? ?????? ??????? ??? ?????? ?? ??????????? ??? ??????????? ??? ???
????????? ??????????? ??? ??? ?? ?????? 80 ??? ??????? 2006/112/?? ??? ???????????, ???
28?? ??????????? 2006, ??????? ?? ??? ?????? ?????? ?????? ??????????????? ??? (?? L 347,
. 1), ? ?????? ?????? ???.

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

12 ?? ?????? 78, ??????????? 1, ??? ?????? 37/1992 ??? ?????? ??????????????? ???

«? ????? ?????????? ??? ????? ?????????????? ??? ?? ?????????? ??? ????? ?? ?????????????? ??? ?????
?????????? ? ?????? ? ????? ?????? ??? ??? ?????????????? ??? ????? ????? ????? ??????»

13 ???????, ?? ?????? 79, ??????????? 5, ??? ?????? 37/1992 ?????????? ?? ????:

«???? ?????????? ?????????? ??????? ?? ??????????????? ?? ??????? ?????????????? ??? ??????? ???? ???

14 ?? ?????????? 3 ??? 4 ??? ????? 79 ??? ????? 37/1992 ?????????? ?????????? ??????????
?????????? ?? ?????? ??????? ?? ?????? ??? ?????? ??? ?????? ?????????????? ?????????? ?
????????????????? ??????? ?? ?????? ?????????? ?????????? ??? ?????? ?????? ?????? ??? ?????????? ???
????. ?? ?????????? ?????? ?????????????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ??????????
?? ??? 5, ?????????? 6, ??? 6, ?????????? 2, ??? ?????? ??????.

15 ??????? ??? ??????? ??? ??????? 2006/69, ? ????? 36/2006 ??? ????? ?????????? ??? ?????????? (Ley 36/2006 de medidas para la prevención del fraude fiscal), ??? 29?? ??????? 2006 (BOE ????. 286, ??? 30?? ??????? 2006, ?. 42087), ?????????? ?? ??? 79, ??????? 5, ??? ??? 37/1992. ? ??????? ??? ??????? ????? ?????????? 2006/69 ??? ??? ?? ?????????? ??? ?????????? ??? ????? 6 ??? ????? ?????.

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

16 ????. 31 ?????????? 1993, ? Campsa ?????? ??? Repsol Combustibles Petrolíferos SA
?????? ?????? ?????? ?????? ?????? ??????, ?????? ??????? ??????? ?????? 1
732 419 313 ??????? ?????? (ESP). ??? ?????????? ??? ?????? ??? ?????? ??? ?????? 79,
????????? ????. ??? ?????????? ????. ??? ?????? 5, ??? ????. 37/1992.

17 ????? 7 ??????? 1998, ? ??????? ?????????????? ????? ?????????????? ??? Campsa ???
??? ??????????? ?? ?? ??????? ??? ?? ??? 1993, ?????????? ??? ??? ?????? ???
?????? ?? ?????????? ? ??????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????
????????? ?? ?????? 79, ?????????? 5, ??? ????? 37/1992, ??????? ?? ?? ????? ??????
????????????? ?? ??? ????? ?????? ??? ?????????? ??? ?????????????? ???, ?? ?? ??????????????
????? ?????????? ??? ????? ?????? ?????????? ??? ?????????? ??? ??????. ?? ?? ??????, ?
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? 4 076 112 060 ESP. ???
11 ?????????? ?????? ?????? ?????? ?????????????? ??? ??? ??? ?? ??? 1993 ?????????? ??
???? ?? ??? ???' ??????? ??? ?????? ??? ??????.

18 ?? Tribunal Económico-Administrativo Central ?????????? ??? ?? ????? ?????????????
??? ?????? ?? ??????? ??? 21?? ??????????? 2001. ? Campsa ?????? ??? ?? ??????????
????? ?????????? ??????? ??? ??????? ?????????????? ?????????? ??? Audiencia Nacional, ???
??? ?????????? ?? ??????? ??? 30?? ??????? 2004. ? Campsa ?????? ??????? ??? ??
????????? ??? ?????????? ??? ?????????? ?????????????? ??????????????.

19 ?? Tribunal Supremo ?????? ??, ??????????? ?? ?????????? ?? ??????? ?? ?????? ?? ?? ?? ??

??????????, ??????? ?? ?????????? ????? ?????? ?????????? ?????????? ?????????????? ??? ???????
????????? ??? ?????, ??? ????? ?????????? ?? ?????? 11, A, ?????????? 1, ?????????? ?, ???
????? ???????, ?????? ?????????? ?? ?????????? ??? ?????????? ?????? ?????????? ??????????
????? ??? ?????????? ?????? ?????, ?????????? ??? ?????? ??? ?????? ??? ?????? ??????????
????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??????.

20 ?? Tribunal Supremo ?????? ??? ? ???????? ??? ?????????? ??? ?????? ?????????? ???????????
?????? ??????????. ?????????? ??? ? ?????????? ??? ?????????? ?????????? ?? ??????????
????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??????????
????? ??? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????? ?????????? ?????????? ???, ??????, ??? ??? ?????? ??? ?????? ??? ?????? ??? ??????
2006/69, ?? ?????? ??? ?????? ?? ??????????, ?????? ?? ?????? ?? ?????? ??? ?????? ???, ??
????????? ?????????? ??? ?????? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????????? ??? ?????, ??? ?? ?????? ??? ?????????? ?? ??? ?????? 2006/387, ???
??? ? ?????????? ??? ?????? ??? ?????????? ?? ??? ?????? 2006/112. ??????, ? Abogado del
Estado (?????? ?????????? ??? ??????) ?????????? ?????? ??? ?????????? ?????????? ??? ??????????
??? ? ?????????? ??? ?????? 79, ?????????? 5, ??? ?????? 37/1992 ??? ?????????? ??? ??????
??? ??????, ??? ?? ?????? ??? ?????? ??? ?????????? 2006/387, ?????? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ??????????
????????????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????
????, ??? ?? ?????? ??? ?????? 5, ?????????? 6, ??? 6, ?????????? 2, ??? ?????? ???,
????????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???.

21 ??? ?? ??????? ????, ?? Tribunal Supremo ?????????? ?? ?????????? ??
????????? ??? ?? ??????? ??? ?????????? ?? ?????????? ?????????????? ????:

«????????? ? [????? ??????] ??? ?????? ??? ? ??????????, ??? ?????? ?????? ??????????
????? ??? ?????????????? ????, ??? ? ?????????? ??? ?????? ?????? ?????????? ??????????
??? ?????????? ??? ?????? ????, ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????
????????????? ??? ?????? ??? ?????? ??? ?????? 11, ?, ?????????? 1, ?????????? ?, ???
??? ??????????, ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??????????
????? ??? ?????? (????? ?????????? ?? ?????? 79, ?????????? 5, ??? ?????? [37/1992],
????? ??? ?????? ?????????? ??? ?????? 36/2006 [...]], ?????? ?? ?????????? ??? ??????
????????? ??? ?????? 27 ??? ?? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????
????????? ??? ?????? ??????, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? [2006/387];»

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

22 ?? ?? ?????? ??, ?? ?????? ?????????? ?????? ?? ? ??? ?????? ?????? ??? ??????
??? ?? ?????????? ?? ?????? ??? ?????? ?? ??????????, ??? ?????? ?????? ??????????
?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ??????
????????? ??? ?????? ??? ??????, ??? ?????? ?????????? ??? ?????? ?????? ?????????? ??? ??????
??? ?????? ??? ?????? ??? ?????? 11, ?, ?????????? 1, ?????????? ?, ??? ?????? ??????,
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 5,
????????? 6, ??? 6, ?????????? 2, ??? ?????? ????, ??? ?? ?????? ??? ?????? ??? ??????
????????? ?? ?????? ?????? ?????? ?????????? ?????? ?????????? ??? ?????? ??? ??????
????????? ?? ?????? ?????? ?????? ?????????? ?????? ?????????? ??? ?????? ??? ??????
????? ??????.

23 ? ?????????? ?????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?? ???????,

??? ??????? ??? ?????? ??? ?????????????? ??? ?????? 79, ?????????? 5, ??? ?????? 37/1992,
????? ??????? ??? ?????? ?????????????? ??? ?? ?????? ??? ?????? ?????????? ??? ?????? ??????????
?? ?????? 11, ?, ?????????? 1, ?????????? ?, ??? ?????? ??????. ??? ???? ?? ???? ???????????,
? ?????? ??? ?????? ?????? ?????????????? ??? ?????? ??? ?????????? ?????????????? ???
??? ?????? ?????????????? ??? ?????? ?????? ?? ??? ?????? ??????, ?????? ?????????????? ???
?????? ??? ??????????????. ? ?????????? ?????????? ???????, ???????, ??? ???? ?????????? ???
?????? ??? ?????? ?? ?????????? ?????????????? ?????? ?????? ??? ?????? ?????????? ??? ???
?????? 2006/69 ??? ?????????? ??? ??? ?????? 2006/112.

24 ??????????, ? Campsa ??? ? ?????????? ?????????? ??? ?????? ??? ?????? ??? ???? ??????,
????? ??? ?? ?????????? ??? ?? ??? ?????? 2006/69, ??? ?????????? ??? ?????? ???
?????????, ??? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ?? ?????? 79, ?????????? 5,
??? ?????? 37/1992, ?????? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ???
??? ?????????????? ??? ?? ?????? 11, ?, ?????????? 1, ?????????? ?, ??? ?????? ?????? ??????
?? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? 27 ??? ?????? ?????? ??? ?? ??????
?????? ?????????????? ??????.

25 ???????, ?????? ?? ??????????, ??????, ??? ? ?????????? ?????????????? ???
?????? ?? «??????? ?? ???????? ??????» ??? ???? ?????? ??? ?????? 2 ??? ?????? ???????
????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ?????? ? ???
?????? ?????????? ??? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ?????? ???
??????????. ???????, ?? ?????? ??? ??? ?????? ?????????? ??? ?????? ?????????????? ?? ???
????????? ? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? (??., ??? ?? ?????? ???, ??????? ??? 20?? ?????????? 2005,
C?412/03, Hotel Scandic Gåsabäck, ?????? 2005, ?. I?743, ?????? 22). ?? ??? ?????? ???
????? ??? ?????? ??? ?????????? ??? ?????????? ?????????? ??? ?????? ?????????? ???
????? ??? ????.

26 ???????, ?????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 5, ?????????? 6 ??? 7, ???
6, ?????????? 2 ??? 3, ??? ?????? ??????, ??? ?????????? ?????????? ?????????? ??? ?????? ???
????? ? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ?? ?????? ???
????????? ????, ?? ?????? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ???
????????? ?? ?????? 11, ?, ?????????? 1, ??????? ?? ??? ?, ??? ?????? ?????? ???
?????? ?? ?????????? ??? ?????? ?? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ???
(??., ??? ?? ?????? ???, ?????????? ?????? Hotel Scandic Gåsabäck, ?????? 24).

27 ???????, ?????? ?????????? ??? ?????? ?????????? ?????????? ???
????????? ??? ?????? ?? ?????? ?????????? ??? ?? ?????? ??? ?????? ?????????? ??? ?????? ???????
??? ??????????, ? ??? ?????? ??? ?????? ?? ?????????? ??? ?? ?????? ?? ?????? ???
????? ??? ?? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ???
??? ?? ???? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ?????????? ???
??? ?????? ??? ?????? ??? ?????? . ? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ???????, ?? ?????????? ??? ?????? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ??????? 11, ?, ??????? 1, ?????? ??? ?????? ??????.

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

Hotel Scandic Gåsabäck, ????? 21 ??? ??? ?????????????? ?????????).

29 ???????, ??? ???? ??, ?????? ???, ??? ??????????? ? ?????????? ??????????, ? ??? ???? ????
???? ??????????????, ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???,
?????????, ??? ?????? ??? ?????????? ?????? ? ??? ?????? ??? ?????????? ?????? ??????????????
????????? ?? ??? ?????????????? ??? ?????? ?????????? ?????? ?????????? ?????? ??????????
????? ?? ? ?????????? ?????? ?????????? ?????? (????????? ?? 10?? ??????)
2008, C?309/06, Marks & Spencer, ?????? 2006, ?. I?2283, ?????? 49 ?? 51, ?????? ??? ??
29?? ??????? 2009, C?174/08, NCC Construction Danmark, ?????? 2009, ?. I?10567, ?????
44).

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

31 ???????, ?????? ?????? ?? ?????????? ?????? ??? ? ?????????? ??? ??????
????????? ???, ?????? ?? ??? ?????????? ??? ?????? 27 ??? ????? ??????, ?? ?????? ???
??????, ?????? ?????????? ???, ?? ?????? ?????? ?? ?????????? ??? ?????? ??????
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 11, ?, ?????????? 1, ??????? ??,
??? ?????? (??., ?????? ???, ?????????? ?????? Hotel Scandic Gåsabäck, ?????? 26).

32 ???????, ?? ?????????? ????? ?????? ??? ???? ?????? ?????, ?????????????? ??? ??
????? ??????, ????? ?????? ?? ? ???? ?????? ??? ?????? ?????? ??? ??? ?, ??????, ???
?????????? ????? ?? ?????? ?????? ?????? 27, ?????????? 1, ??? ?? ???
?????? ??, ???????, ??? ?????? ??????????? ??? ?????? ?????? ??? ?????? ??????
?????? ? ?????? ?? ??????????, ??????? ?? ??? ?????????????? ??? ?????????? 1 ??? 4
??? ?????? ?????? (????????? ??? 13?? ?????????? 1985, 5/84, Direct Cosmetics, ??????
1985, ?. 617, ??? 24, ??? ?? 6?? ?????? 1995, C?62/93, BP Souergaz, ?????? 1995, ?.
I?1883, ????? 22). ???????, ??? ?????? ?????? ??? ?????? ?? ?????????? ?? ?????????? ???
???? ?????? ?????????????? ??? ?? ?????? ??? ?????? ?????? ?????? ??? ?????????? ???
????? ??? ?????? ?????????? ?????? ??? ?????? ?????? ??? ?????? ?????? 27, ?????????? 2,
??? ?? ??? ??????, ????? ?????????? ?? ?????? ?? (?? ?????? ???) (??., ??? ??
????? ???, ?????????? ?????? Direct Cosmetics, ??? 37, ??? ?????? ??? 15??
????? 2006, C?494/04, Heintz van Landewijck, ?????? 2006, ?. I?5381, ??? 48).

33 ??????????? ? ?????????? ??? ?????????? ??? ??????? 79, ?????????? 5, ??? ???
37/1992 ??????? ??? ?????????????? ??? ????? ?? ?????? ??? ?????? ??? ?????? 27, ?????????? 1,
??? ????. ???????, ??? ?? ?, ??? ?????????? ? ?????????? ?????????? ???
??? ??' ?????????? ???????, ??? ?? ??? 79, ?????????? 5, ?????????? ?? ??????
??? ?????????? ??? ?????????? ?????? ?? ??? ??? 30/1985 ??? ?? ????? ??????????????
????? (Ley 30/1985 del Impuesto sobre el Valor Añadido), ??? ?? ?????? 1985 (BOE ????.
190, ??? 9?? ?????? 1985, ?. 25214), ?? ??? ?????? ?? ?????????? ??? ???????, ??????
??? ?????????? ??? ??? ?????????? ??????????, ?????????? ??? ?????????? ?????? ??????
??? ??? ??????, ? ?????? ??? ?????????? ?????? ??? ?????? ?? ????? ?????????????? ???
1?? ?????????? 1977.

34 ????. ????. ????????????. ????????????????. ? ????????. ?? ???????????. ???????????????. ????. ??

?????? ?? ??????, ?? ??????? ?????????? ?????????? ??? ?????? ?????????????? ? ?? ???
????? ?? ??????, ?????? ??? ?? ?????? ??? ?????? ??? ??????????, ??? ?? ?? ? ?????????? ???
????? ?????????? ??? ?????????? ?????????? (?????? ?? 21?? ?????? 2007,
C?366/05, Optimus – Telecomunicações, ?????? 2007, ?. I?4985, ??? 32). ?????????? ??
?? ??????? ?? ??????, ??? ? ?????????? ?? 1?? ?????????? 1977 ?? ??????
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????????? ?? ??????????
??? ??????? ?? ?????? ?????????? ??? ?????????? ??? ??? ?? ?????????? ??? ??????????
(?? 1985, L 302, ?. 23) ??? ?? ????. ???????, ??? ?????? ?? ?????? ??? ??
?????? ?? ?? 79, ?????????? 5, ??? ??? 37/1992 ??? ?????? ?????? ?? ?????? ???
????? 27, ?????????? 5, ??? ??? ??????

35 ???????, ?? ??? 79, ?????????? 5, ??? ??? 37/1992 ?????? ?? ?????????? ??? ??
?????? ?? ???? ?????? ??????? ?? ?? ?????????? ??? ?????? 27, ?????????? 1 ??? 4 ???
????? ??????? ???, ?? ?? ??????, ?????? ?? ?????????? ??? ?? ?????????? ??????? ?? ???
?????? ????. ????, ??? ?????????? ???, ??? ??? ?????????? ??? ?? ?????????? ???
?????????? ?? ???? ?????? ??? ?????, ? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? 30/1985. ???
??????, ?? ?????? ???, ??? ??? ?? ??? ??????????, ??? ?????? ?????????? ???
?? ?????????? ??? ?????? ??? ?????? ??? ?? ?????????? ??? ?????? ??? 27, ?????????? 1
?? 4, ?? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???.

36 ???????, ??? ?????? ? ??????? ???? ?????????? ???' ?????????????? ???????, ??
?????????? ????, ??? ?????? 50 ??? ?????????????? ??????? Heintz van Landewijck,
??? ? ?????????? ?????????? ??? ?????????? ?????? ??? ?????? ?? ??? ??? ?? ???
?????????, ??? ?????? ??????????, ?? ??? ?????? ??????????????. ??????, ? ?????
????, ??????, ?????? ?????????? ??? ?????? ?? ?????? ?????????? ??????, ??????,
????????? ??? ?????????? 5 ??? ?????? 27 ??? ?????? ??????, ?????????? ??? ??????
????????? ??? ?????? ??? ?????????? ?????? ?????????? ?????? ?????????? 1 ??? ?????
?????, ???, ???????, ??? ?????????? ??? ?????? ?????????? ??? ?????? ??????????
????????????? ??? ?????? ?? ?????? 27, ?????????? 5, ??? ?????? ??????, ??? ?????? ??? ??
????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ??????, ???,
?????????, ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ?????? ????
????????? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ?????? ?????????? (??.
????????? ??? Heintz van Landewijck, ?????? 47 ??? 51).

37 ?? ??????????? ?????? ??? ????? ?????????????? ?? ??? ????? ?????????? ??? ?????? ??? ?????? ???
?????? ??????. ?? ?? ??????, ??? ??? ?? ??? ????? ?????? ??? ?????? ?? ?????? ??? ?????? ???, ??????
??? ?????? ?????? ??? ?????????? ??? ?????? 27, ?????????? 1, ??? ?????? ?????? ?????????? ??????????
????????????? ?????????????? ??? ?????????? ??? ?????????? ?? ?????? ??? ?????? ??? ?????????? ??
????? ?????????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???, ?
????? ??? ?????? ?????? ??? ?????? ?? ?????????? ?? ?????????? ?????????? ?????????? ?????????? ???
????????????? ???.

38 ??????, ??????, ?? ??????????? ??? ? ?????????? ??????????????, ??? ?????????? ??
????? ??????????, ??? ?? ?????????? ??????????, ?? ??? 79, ?????????? 5, ??? ??
37/1992, ??????? ????? ?? ?????????? ??? ?????????? ??????????, ??? ?? ?????? 27 ??
????? ??????, ??? ?? ?????? ?????????????? ?????????????? ?????? ??? ?? ?????????????? ??????
????? ?? ?????? ??? ?????????? ?????????????? ?????????????? ? ?????????????? (??., ??? ??
????? ???, ?????????????? ?????? Hotel Scandic Gåsabäck, ??? 26), ?????????? ? ???
????????? ????. ??? ?? ?????? ?????????????? ??? ?????????????? ??? ?????????????? ?????????????? ???

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

39 ??????, ?? ???????, ??? ?????????????? ?????? ?? ?????? ?????????????? ??? ? ???????
??????????, ???, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? 2006/69, ?? ?????? ??? ?????? ??
??????????, ????? ?? ?????????????? ?? ?????????? ?? ??? ?????? ???????, ??? ??? ??
????? ??? ?????????? ?????????????? ?????????????? ? ??????????????, ?? ?????????? ?????? ???
? ??? ?????????? ??? ?????? ?? ?????????????? ??? ??? ?????????? ??? ??? ?????????? ???
????????? ???????????, ??? ?????????? ?????????? ?????????? ??? ?????? ??? ?????????????? ???
?????, ??? ?????? ??????? ??? ?????? ???, ??? ?????? ?????? ??? ?????????????? ??????????????
??? ?????????? ??? ?????? ???, ? ??? ?????? ?????? ??? ?????? ?????????? ?????? ?????????? ???
??? ?????????? ??? ?????????? ??? ?????? ??? ?????? 27, ?????????? 1 ??? 4, ??? ?????? ???.

40 ??? ?? ??????? ?? ??????? ?? ??????? ?? ?????????? ?? ???? ?? ????? ?? ????? ?? ????? ?? ?????
???? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????????, ?? ??????? ?? ????? ?? ??????? ?? ?????
???? ?????? ?? ???, ?????? ?? ?????????????? ?? ?????? ?? ?????????? ?? ?????? ?? ????? ?? ?????
?????????? ?? ??? ??????? ?? ?????????? ?? ??? ?? ??????? ?? ??? ?? ??????? ?? ??? ?? ?????, ??????
?????????? ?? ??? ??????? ?? ?????????? ?? ??? ?? ??????? ?? ??? ?? ??????? ?? ????? ?? ???
?????? 11, ?, ?????????? 1, ??????? ??, ??? ??????? ??, ?????, ?????????????? ?? ??? ?? ???????
????? ?? ??????? ?? ??? ??????? ?? ?????????? ?? ??? ??????? ?? ??? ??????? ?? ??????? ?? ??? ??
???????? ?? ??? ?? ??????? ?? ?? ?????????????? ?? ?????? ?? ??? ?? ??????? ?? ?????????? ?? ??? ??
???????? ?? ??? ?????????? ?? ??? ??, ??? ?? ??? ??????? ?? ??? ??????? ?? ??? ?????? 5, ?????????? 6, ??? 6,
?????????? ?? ??? ??, ??? ?? ??? ???????, ??? ?? ??? ??????? ?? ??? ?? ??? ??????? ?? ??? ?? ?????????? ??
?????????? ?? ??? ?????? 27 ??? ?????? ??????? ?? ??????? ?? ??? ?? ??? ?????? ??????? ?? ??? ??
???? ??????? ?? ?????? ?????????????? ?? ??? ?? ??? ?? ?????? ??????? ?? ??? ?? ???????.

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

41 ?????????? ??? ? ??????? ?????????? ??? ?? ??? ????? ????? ?????????? ??? ?????? ?????
??? ??????? ?????????????? ??? ??????? ??????? ??? ??????? ?????????? ?????????? , ?' ????
?????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ????? ??????????????
???? ??????? ?????????? ??? ?????????? , ??? ??? ?????????? , ??? ?????????? , ??? ??????????.

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

? ????? ?????? 77/388/??? ??? ????????????, ??? 17?? ????? 1977, ??? ??????????????
??? ?????????? ??? ?????? ?????, ??? ?????????? ?? ??? ????? ?????? ?????? ?????? -
????? ?????? ?????? ?????? ?????????????? ?????: ?????????? ?????? ?????????? ???, ??? ????
????? ??? ??? ?????????? ?? ?????? ?????? ?? ??????????, ?? ?????? ??? ???? ?
????????? ??? ?????? ??? ?????? ??? ?????? ?????, ?????? ?????????????? ?????? ???
????????? ?????? ??? ?? ?????? ?????? ?? ?????? ?????????? ?????? ?????? ???
??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? 11, ?, ?????????? 1, ?????????? ?,
??? ?????? ???, ?????????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ?? ?????? ?????? ?????? ??? ?????? ???
?? ?????????????? ??? ?????? ??? ??? ?????? ?????????? ??? ?????? ?????? ?????? ???
????????? ??? ???, ??? ?????? ?????? ??? ?????? 5, ?????????? 6, ??? 6,
????????? 2, ??? ?? ??? ?????? ??????, ??? ?? ?????? ?????? ??? ?????? ??? ??? ???
????????? ?? ?????????? ??? ?????? 27 ??? ?????? ?????? ?????? ?????? ??? ??? ?? ???
????? ??? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ??? ??? ?? ???
????? ??????.

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

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