

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

?? 20?? ?????? 2014 (*)

«????????????? ?????????? — ??? ?????? ??? — ?????????? — ??????? ?????????? ??
?????? ?????? ?? ?????????? ?? ?????????? ??? ?????????? ?????????? — ??????? ??
?????? ???, ???????? ?? ??? — ????? 49 ??? ?? 63 ??? — ?????????? ??????
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???? ?????? C?139/12,

?? ?????????? ?????? ?????????????? ?????????? ??????? ?? ?????? 267 ????, ??
?????? ?? Tribunal Supremo (??????) ?? ?????? ?? 9?? ?????????? 2012, ? ??
?????? ?? ?????????? ??? 19 ?????? 2012, ??? ?????? ??? ????

Caixa d'Estalvis i Pensions de Barcelona

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Generalidad de Cataluña,

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

????????? ?? ??? ??? E. Juhász, ??????? ????????, A. Rosas (?????????) ??? C. Vajda,
???????,

?????? ??????????: M. Wathelet

?????????: V. Tourrès, ??????? ??????????,

?????? ?? ??? ?????? ?????????? ?????????? ??? ??????? ?? ??' ?????????? ?????????? ???
12?? ??????, 2013,

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

– ? Caixa d'Estalvis i Pensions de Barcelona, ?????????????? ??? ??? C. Gómez Barrero,
J. Buendía Sierra ??? E. Zamariego Santiago, abogados,

– ? Generalidad de Cataluña, ?????????????? ??? ??? N. París,

– ? ??????? ????????, ?????????????? ??? ??? N. Díaz Abad,

– ? ?????????? ????????, ?????????????? ??? ??? J. Heliskoski,

– ? ?????????? ????????, ?????????????? ??? ??? L. Lozano Palacios,

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

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

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1 ? ?????? ?????????????? ?????????? ?????? ??? ???????? ??? ?????? 13, B, ?????????
??, ?????? 5, ??? ????? ?????? 77/388/??? ??? ??????????, ??? 17?? ????? 1977, ???
????????????? ??? ?????????? ??? ?????? ?????, ??? ?????????? ?? ??? ????? ?????? ??????
????????? — ??? ?????? ?????? ?????? ?????????????? ?????: ?????????? ?????????? ?????? (EE
???. ???.. 09/001, ?. 49), ??? ?????????? ?? ??? ?????? 91/680/??? ??? ??????????, ???
16?? ?????????? 1991 (EE L 376, ?. 1, ??? ????: ??? ?????), ????? ??? ??? ?????? 49
???? ??? 63 ???.

2 ? ?? ??? ?????? ?????????????? ?????????? ?????????? ??? ?????? ?????????
????????? ?????? ??? Caixa d'Estalvis i Pensions de Barcelona (??? ????: Caixa) ??? ???
Generalidad de Cataluña, ?? ?????????? ?? ?????? ??? ?????????? ??? ?????? ???
????????????? ??? ??? ?????????? ?????????? ?????????? ??? ??? ??? ?????????? ???
????????? ?????? ?????????? (??? ????: ??? ??? ?????????? ?????????? ???
????????? ???).

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

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

3 ??? ??? ????? V ??? ????? ??????, ? ?????? ?????? ??? ?????????? «?????????????
?????», ?? ?????? 5 ??? ?????? ?????? ?????? ????:

«1. ?? “????????? ??????” ?????????? ? ?????????? ??? ?????????? ?? ?????????? ??????
????????? ?????? ?? ??????.

[...]

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

[...]

?) ?? ?????? ??? ??? ??????, ??? ?????? ? ?????? ?????????? ?????? ? ??????????
?? ?????????? ??? ?????????? ? ???' ????????, ?????????? ? ?????????? ??????????»

4 ??? ??? ????? X ??? ?? ??? ??????, ??? ?????? ??? ?????????? «?????????», ??
????? 13 ?????, ?? ?????? ?????????????? «????????? ??? ?????????? ??? ??????»,
????????????? ?? ?????? A («????????? ?????? ?????????? ?????????? ??????»),
B («????? ??????») ??? ? («????????? ??????»).

5 ??? ?? ????? 13, B, ??? ?? ??? ??????

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

[...]

?) ??? ?????????? ??????:

[...]

5. ??? ????????, ?????????????? ??? ??? ??????????????, ???' ?????????? ???
????????? ??? ??? ????????????, ?? ?????? ?????? ?????? ??? ?????? ?????? ?
???????, ?????????? ??? ?????? ??????, ??????????:

- ?????? ?????????????????? ????????????,
- ?????????? ???? ?????? ?????????????? ??? ?????? 5, ?????????? 3?

[...]

?) ??? ?????????? ??? ?????? ?????? ??? ??? ?????????? ?? ??? ?????? ???,
???? ??? ?????????? ??? ?????? 4, ?????????? 3, [?????????] ???

?) ??? ?????????? ?? ?????????????? ??????, ??? ??? ?????????????? ??? ?????? 4,
????????? 3, [?????????] ??, ?????? ??? ??????????..»

6 ?? ?????? 4, ?????????? 3, ??????? ?? ??? ?, ??? ?????? ?????? ??????????,
??????????, ??? «????????? ?????? ???? ?????? ?????? ??? ??? ?????????? ???????,
??? ?????????????? ??? ??? ?????? ??????????» ??? ??? «????????? ?????? ???
?????????».

7 ?? ?????? 13, ?, ??? ?????? ?????? ??????????:

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

[...]

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

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

8 ?? ?????? 28, ?????????? 3, ??? ?? ??? ?????? ?????? ??????:

«???? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????? 4 ?????????? ??? ?????? ??
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[...]

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

[...]».

9 ?? ?????????? ?? ??? ?? ??? ??????, ??? ?????????? «?????? ?? ??????????????
??? ?????? 28, ?????????? 3, ??????? ??, ??????», ??????????, ??? ?????? 16 ????, «??
????????????? ??? ?????? 4, ?????????? 3, ?????????? ??? [?? ??????]».

10 ?? ?????? 33, ?????????? 1, ??? ?????? ?????? ??????????:

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

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

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

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

11 ?? ??? 8 ??? 30/1985 ??? ?????? ?????? ?????????????? ??? (Ley 30/1985 del
Impuesto sobre el Valor Añadido), ??? 2?? 1985 (BOE ????. 190, ?? 9??
???????, ?, 25214), ????????:

«??? ??? ??? ?????????????? ??? [(??: ???: ??)] ??????????????:

[..]

18. ?? ?????????? ?????????????????? ??????????, ?????????? ??? ?? ??????? ? ??
????????? ??? ?? ????????:

[..]

?) ?? ?????????? ??? ?? ???????, ?????????? ??? ?????????? ??? ??? ??????????????, ??
?????? ??????? ??? ???????, ?? ??????? ???????, ?? ??????? ??? ??? ??????? ???????
??? ??? ?????????????? ??? ?????????? ??? ?????? ??? ?????? 18, ??????????????:

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

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

[...]»

12 ?? ??? 13, ?????????? 1, ?????? 18, ??????? k, ??? ?????????? ???????????
2028/1985 ??? ?????????? ??? ?????????? ?????? ??? ??? ?????? ??????????????
????? (Real Decreto 2028/1985 por el que se aprueba el Reglamento del Impuesto sobre el Valor
Añadido), ??? 30?? 1985 (BOE ????. 261, ?? 31?? 1985, ?, 34469),
????????????? ??? ?????????????? ?????? ??? ?????? 8 ?? 30/1985,
????????????? ??? ?????????? ??????????:

«?? ?????? ? ?? ?????? ?????? ? ??? ?????? ?????????? ??? ?????????? ??? ?????? ?????????? ???.

[...]»

13 ?? ??? 20, ?????????? 1, ?????? 18, ??????? k, ??? ?????? 37/1992 ??? ??
????????????? ??? (Ley 37/1992 del Impuesto sobre el Valor Añadido), ??? 28??
1992 (BOE ????. 312, ?? 29?? 1992, ?, 44247), ??? ??????????
????????????? ?? ??? ??? ?????????????? ?????????????? ??? ?????????? ??????????????
2028/1985.

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

14 ? ?????? 24/1988 ??? ?????? ?????? (Ley 24/1988 del Mercado de Valores), ??? 28?? ??????? 1988 (BOE ????. 181, ??? 29?? ??????? 1988, ?. 23405), ??? ??????????????? ?? ??? ?????? 18/1991 ??? ?????? ?????? ?????????????? ??????? (Ley 18/1991 del Impuesto sobre la Renta de las Personas Físicas), ??? 6?? ??????? 1991 (BOE ????. 136, ??? 7?? ??????? 1991, ?. 18665, ??? ????: ?????? ??? ?????? ?????? ??????), ??????????, ??? ?????? 108 ????, ?? ????:

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

2. ??? ??????????? ??? ?? ??????????? ??? ??????????? 1, ??????????? ??? ?? ??? ?? ??????????????? ??? ?? ?????????????? ??? ?????????????? ?????? “????????????? ?????????????? ?????????????? ?????????????? ?? ?????????????? ?????????????? ?? ?????????????? ?? ?????????????? ?? ?????????? ??????”:

1. ?? ??????????? ??? ??????????????? ??? ?????????????? ??? ?????????????? ?????? ??? ? ??????????? ????, ??? ?? ?????? ?????????????? ?????????????? ?????????????? ?????????????? ??? ?? ?????????????? ??????????? ??? ?????????? ?? ?????????? ?????????????? ??? ?????????????? ?????????????? ?? ?????????????? ??? ?????????????? ?????????????? ?? ?????????????? 50 % ??? ?????????? ?????????? ?????????, ??? ?? ?????????????? ???, ??? ?? ?? ?? ?? ?????????, ??? ?????????????? ???, ??? ?????????????? ???, ??? ?????????????? ???, ??? ?????????????? ???, ??? ?????????????? ???, ??? ?????????????? ???, ??? ?????????????? ???.

???? ?????? ??? ?????????? ?????????, ? ?? ??? ?????? ?????????? ?????????? ??? ?????????? ??? ?????????, ??? ?? ??????, ??? ?????? ??? 50 % ??? ?????????? ??????????.

??? ?? ??????????? ??? 50 % ??? ??????????? ??? ?????????? ?? ?????????????? ??? ?????????, ??? ?????????????? ??? ?? ???????, ?????????????? ??? ?????????? ??? ?? ??? ?? ??? ??????????? ?????????, ??? ?????????? ??? ??????? ?? ?????????????? ?????????????? ?????????????? ?????????????? ??? ?????????? ?????????????? ?????????????? ?????????????? ??? ?????????? ?????????????? ?????????????? ??? ?????????? ?????????????? ??? ??????????.

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

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

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

15 ?? ?????? 7, ?????????? 5, ??? ?????????????? ??????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????

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

19 ?????? ??????? ????? ?????? ?????? ??? ?????????????? ??? ?? ???? ????
??????????, ? Caixa ?????? ?????????? ?????? ??? ?????? ??? ?????????? ?????????? ???
????????? ??? ??? ??????????. ?? Tribunal Económico-Administrativo Regional de Cataluña
????????? ??? ?????? ??? ?? ?????? ??? 30?? ?????????? 1998, ? ?????? ??????????
?? ? Tribunal Económico Administrativo Central ??? 14 ??? 1999.

20 ? Caixa ?????? ?????? ?????????? ?????? ??? ?????? ?????????? ?????????? ???
Tribunal Superior de Justicia de Cataluña, ?? ?????? ??? ?????? ??? ?????? ??????, ??? 28
????? 2004, ?????? ?? ??? ?????? ?? ?????? ?????? ?????? ??? ?????? ??? ??? ??? ???
??? ? ?????????? ??? ?????? ??? ?????? ?? ?????????? ?????? ??? ?????? ?????? ???
?????? ??? ?????? ?? ?????? ?????? ?? ?????? ?????? ?????? ??? ?????? ??? Inmobiliaria
Colonial, ??? ?????? ??? ?????????? ?????? ??? ?????? ?????? ??? ?????? ??? ??????, ?? ???
????????? ?????? ??? ?????????? ??? ?????????? ?????? ??? ??????????.

21 ???????, ?? ??? ?????????? ??? ?????? ? Caixa ?? ??? ??????? ???
??????????. ?? ?????????? ??? ?????? ??????, ??????, ??? ?????????? ??? ?????? 108
??? ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 13, ?, ????????, ??,
????? 5, ??? ??? ?????? ???, ??? ?????? ??? ?? ?? ??? ?????? 108 ?????????? ??? ?
????????? ??? ?????? ?????????? ???' ?????? ?? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??? ??? ?? ?????????? ??? ?? «?
????????? ??? ??? ?????? ??? ?????? ??? ?????? ??????????, ?????? ? ?????? ???, ???
????????? ??? ?????? ??? ?????? ???' ?????? ?????? ??? ?????? ??? ?????? ??? ??????».
?????????, ? Caixa ?????? ??? ?????? ??? ??????, ??? ?????? ???, ??????, ???, ??? ??
????? 108 ???, ??????, ??? ?????? ??? ?????? ??? ?????? ??? ??? ?????? ??? ??????,
????? ? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????
????????? ??? ??????, ??? ?? ??? ?????? ??? ?? ?????? ??? ?????? ?????????? ??? ?????? ???, ??
????????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ??????.

22 ? Caixa ?????? ??????? ??? ?????? ??? ?????????? ??? Tribunal Superior de Justicia de
Cataluña ?????? ??? ??????? ???????????, ?????????? ??? ?????? ??? ?????? ???
?????????, ? ?????? ???, ???, ?????? ??? ?????? 13, B, ?????? ??, ?????? 5,
????? ??? ??? ?????? 5, ?????????? 3, ??? 27 ??? ??????.

23 ??? ? Caixa, ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???? ???? ???? ?
?????? ??? ???? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??????????,
??? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ???, ?????? ?????????? ??? ??? ???
?????. ??? ???? ???? Caixa, ??? ???? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??????, ? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???
??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 27 ??? ?????? ???
????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??? ???
????????? ??? ??????.

24 ??? ???? ?????? ??? ?????? ??? ?????? ?? ??? ?????? ?? ?? ?????? ??? ?????? 13, B,
?????? ??, ?????? 5, ?? ?????? ??? ?? ?? ?????? 5, ?????????? 3, ?????? ??, ??? ???
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????

???? ?????????????? ????????, ?? ?????????????? ????????, ??? ???????, ?????????????? ???????, ??? ????
?????? ??? ???????, ??? ?? ??? ???? ?? ???? ?????? ??? ?????????? ?? ?????????? ??? ???????, ??? ????
?????? ??? ?????????????? ??? ?????????? ??? ?? ??? ?????? ?????????? ???????, ??? ???????, ??? ???????
?? ???, ??? ?????? ?? ?????? ??? ?? ?????????????? ??? ?????????? ???????, ??? ???????, ??? ???????
????????? ?????????? ?? ?????????? ?? ?????????? ??? ?????????? ??? ?? ???????, ??? ???????, ??? ???????
????????? ?????????? ?????????? ?????????:

«1) ??????? ?? ?? ??? 13 ?, ??????? ??, ?????? 5, ??? [?????] ??????? [...]
????????????? ? ?????????? ???????, ??? ?????????? ???????????, ??? ?????? ?????????????? ???
????? ??? ??? ?????????? ??? ?????????? ??? ?? ?????? ??? ?????????????? ??? ?????? ??? ??????
????????, ?????????? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ???????, ??? ??????
??? ?? ??? ??? ?????????????? ??? ?????????? ??? ??????, ? ?????? ??? ?????? ??????????????
???? ?????? ?? ??? ????? ???????, ??? ?????????? ??? ?????? ?????? ???' ?????????? ????????
? ?????????? ???????.

2) ??????? ?? ? [????] ?????? [...] ?????????? ??? ?????? ???????, ??? ??????? ?? ??????
108 ??? ????? [...] ??? ?????? ??? ?????? ???, ?????? ? ?????? ?????????? ??? ? ?????? ???
????????? ??? ?????? ?????????? ??? ???????, ?? ?????? ?????????? ??? ???????
????????? ??? ?????? ??? ???????, ?????????? ?? ?????? ???, ?????????? ??? ??,
????????? "???? ?? ??? ??? ?????????? ?????????? ??????????", ?????? ?? ??????????
????? ? ?????? ?????????? ??? ?????????????? ?? ?????? ??? ?????????? ??? ??????????, ???
??? ?????? ?? ?????????????? ?????????? ?? ?????????? ???, ??? ??? ?????????? ??????????????
????????, ??? ??? ??? ???????, ? ?????????? ?? ?????????? ??? ?????????? ?? ?????????? ?? ???
???.

3) ??????? ?? ?????????????? ??? ?? ?????????? ???????, ??? ?????????? ?????????????? ??? ??????
????????? ?? ??? [49 ???] ??? ??? ??? ??????? ?????????? ??? ??????????, ???
????? ?????????? ?? ?? ??? [63 ???] ??????? ???????, ??? ?????? ?? ?????? 108 ???
????? [...] ??? ??? ?????? ???, ?????? [...] ?????? ?? ??? ?????? ?????????? ???
????? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????????
????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???
????? ?????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
????????? ?????????? »

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

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

25 ?? ?? ??????? ??????? ???, ??? ?????? ?? ?????????? ??? ???????, ?? ??????
????????? ??? ?????? ?? ???????????????, ???' ??????, ?? ?? ??? ?????? ??????? ??????????
????????? ??? ?????? ?? ??????, ? ?????? ?????????? ??? ? ?????????? ??? ?????????? ??? ??????????
?? ?????????? ??? ???????, ?? ?????????? ?????????? ??? ??????? ?????????? ??? ?????????? ??? ??????
??? ???????, ?????????? ?? ?????? ???, ?????????? ??? ???, ??? ?? ??? ??? ??? ??? ???
????????? ?????????? ???????????, ?????? ?? ?????????? ??? ?????? ?? ?????? ???, ?? ??
????????? ??????? ?? ?????? ?? ?????????? ??? ?????? ?? ?????????? ??? ?????? ?? ?? ??? ???????,
????? ??? ?????????? ??? ?????? ?? ?????????? ??? ?????? ?? ?????????? ??? ?????? ?? ?? ??? ???????,
????? ?? ?????????? ??? ?????? ?? ?????????? ??? ?????? ?? ?????????? ??? ?????? ?? ?? ??? ???.

26 ?? ??????????, ?????? ?? ?????????? ???, ?? ?????? ?????, ? ??? ??????
????????? ??? ??? ??? ?????? ??? ?????? ?????? ?????? . ??????, ?? ?????? 13, B,
????????? ?? ??? ??, ??? ?????? ?????? ?????? ?????? ??? ??? ??, ?????, ??? ?????????? ??
????????? ?????? ??? ?????? ?????????, ?????????? ??? ?????? ??? ?????????? ??? ??
????? 4, ?????????? 3, ??????? ?? ??? ??, ??? ?? ??? ?????? ?????, ???, ???, ???

???????????? ?????????? ??????? ? ?? ?????????????? ??????? ?????????????? ?????? ?????????????? . ??????????, ??
????????????? ?????? ?????????? ?????? ?? ?????? ?????? ?? ?????????????? ??? ?????? ??????, ? ??????
????????????? ?' ???? ?????? ?????? 28, ?????????? 3, ?????????? ?, ??? ?????? ??????,
?? ?????????? ?? ?? ?????????? ?, ?????? 16, ?????, ?? ?????????????? ?? ?????????? ?? ?????????????? ??
??? ??? ??? ??? ??? ?????????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ?????? 4,
????????? 3, ?????.

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

28 ?? ???????, ??? ?????? ?? ?????????? ?? ?????????? ?????????? ?????????? ??????????
????????? ?????????? ??? ?????????? ?????? ?? ?????????? ?????????? ??? ?????????? ?????????? ?? ??
??, ?????? ?? ?????????? ??? ? ??? ?????? ??? ?????????? ??? ?????????? ?? ?? ?????? ??????
????? ?????????? ? ?????? ?????????? ?????????? ?????, ?????????? ? ?????? ??? ?????? ??
????????? ?????? ?????? ???????, ??? ?????????? ??? ?? ?????? 33, ?????????? 1, ??? ??
???? ??????. ???????, ?????????? ??? ?? ?????? ??? ?????? ?????? ?????? ??? ??????
????????????? ?????????? ?????????? , ????? ?????? ?? ?????????? ?????????? ?????? ???
????? ??? ??? ? ?????? ??? ?????????? ?? ?????????? ?? ?????????? ?? ??? ??? ?? ??? ??? ??
??? ??? ??? ?????? (??., ??? ?? ?????? ???, ?????????? ??? 8?? ?????? 1986, 73/85,
Kerrutt, ?????? 1986, ?. 2219, ????? 22, ??? ??? 11?? ?????? 2007, C?283/06 ???
C?312/06, KÖGÁZ ?.., ?????? 2007, ?. I?8463, ????? 33).

29 ??? ?????? ??? ?????? ?????????? ?????? ??? ?????? ?????????? ?????? ??? ?????? ?????????? ???
????, ?????? ?? ??o?????? ?????? ?? ?????????? ?????? ??? ?????????? ??? ?????? ?????????? ???
?? ?? ??? ?????????? ?????? ?? ?????? 33, ?????????? 1, ??? ?????? ??????
??? ?????? ??? ?????????? ??? ?? ?????? ?????????? ? ?????? ??? 27?? ?????????? 2008,
C?151/08, Renta. ?? ???????, ??? ?????????? ?? ?????? ?????????? ??? ?????? ??? ?? ??
????????? ??? ?? ?????????? ??? (??., ?????? ???, ?????? ??? 3?? ?????? 2006,
C?475/03, Banca popolare di Cremona, ?????? 2006, ?. I?9373, ????? 28 ??? ??
????????? ?????), ??????, ?? ??? ?? ?????? ??????, ??? ?????? ??? ??
????????????? ??? ?? ?????? ??? ?????? ??? ?????????? ?????????? ?????????? ??? ??
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 33, ??????????
1, ??? ?????? ??????.

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

31 ?????? ??? ?????? ??????, ??? ?????? ?????? ?????? ??? ?????? ?? ?????? ? ?????? ???
? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????, ??? ?????? ?? ??????
108 ??? ?????? ??? ?????? ??????, ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? , ?? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
??????, ?????????? ?? ?????? ???, ?????? ???, ??? ?????? ???, ??? ?????? ? ?????? ???

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

32 ?? ?? ?????? ??????? ??, ??? ?????? ?? ?????????? ??? ?????? ???????, ?? ??????
????????? ??? ?? ???????????, ???' ??????, ??, ?????? ??? ?????? ???????, ???
????? ??? ?????? 13, ?, ??????? ??, ?????? 5, ?????? ???????, ?????, ?? ??????
????????????? ??????, ?? ?????? ?????????????? ?? ?????? ??? ?????????????? ????
??? ?????????? ??? ?????? ??? ?????????? ?????, ?????? ?????????? ??? ??????
?? ??? ???.

33 ?? ??? ?????? ?????????? ???, ? ?????? ?????? ??? ? ?????? ??? ?????? ???
?????? ??? ?? ?????? ??? ?????????? ?????? ?????????? ??? ???????, ??? ?? ??? ??,
????? ??? ?????????? ?? ?????? ??? Caixa, ??? ?? ? ?????? ??? ??????? ???
????? ??? ?????? ?? ?????????? ?? ?????????? ?? ?? ?? ??? ?????? ???????, ? ???,
?? ?????????? ?? ?????? ??????, ??? ?? ???.

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

35 ???????, ?????? ?? ??o?????? ?? ? ?????????? ?????? ???????????, ??? ??????
????????? ??? ?????? ?? ?????? ?????? ?? ?????? ?????????? ?????? ??? ?????????? ???
????????? ??? ?????????? ???????, ?????????? ?? ?????????? ?????, ?????, ??????? ?? ???
????????? ???, ?? ?????? ?? ?????? ?????? ???????, ??? ?????????? ??? ??????
????????? ?????? ?? ?????? 5, ?????????? 3, ??? ?????? ??????, ?? ?????????? ?? ??
????? 13, B, ??????? ??, ?????? 5, ?????? ???????, ?????, ?????? ??? ?????? ???
????? 13, ?, ??????? ??, ??? ?? ?????? ??????.

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

37 ?? ??? ???????, ??? ?????? ??? ? ?????? ??? ?????? ??? ?????? ??? ??????
??????, ?? ?? ??? ?????? ?? ?????????? ?? ???????, ?? ?????? ?????????? ???????,
???? ?????? ?? ?????????? ??, ?????? ?????? ?????, ?????????? ??? ???, ??? ?????? ??
????????? ??? ?????? ????. ???????, ??? ?????? ??? ?????? ??? ?????? ??? ?? ??? ?????? ???,
????????? ??? ?? ?????? ?????? ?? ??????, ?? ???, ?? ?????????? ?? ??? ???, ??????? ???
?? ??? ??????.

38 ???????, ?????????? ??? ? ?????? ??? ?????????? ?????? ??? ?????? ??? ??????
??????.

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

39 ? ??????? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ??? ?????? ?????????? ???
?? ?????????? ???, ?? ?? ???????, ?? ?????? ?????????? ??? ?????????? ??? ??????
?????? ??? ?????? ???, ?????????? ?? ?? ?????? ??? ?????? ??? ?????? ?????? ???

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

40 ?????????????? ???, ?????, ?????????????? ??? ?????? ??? ?????????? ?????????????? ???
????????? ??? ?????????? ?????? ?????????? ?????????? ?????????? ?? ?????? ??????????
????? ?? ??? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ??????????
?? ?????????? ??? ?????????? ?????, ?? ?????????? ?????????? ?? ?????????? ?? ??????????
????? ??? ?? ??? ?????????? ?????, ?? ?????????? ??? ?????????? ?? ?????????? ?? ??? ??????
????????? ?? ?????? ??? ?? ?????? ?????????? (??., ??? ?? ??? ?????? ???, ?????????? ??? 9??
????????? 2010, C?92/09 ??? C?93/09, Volker und Markus Schecke ??? Eifert, ??????? 2010,
. I?11063, ??? 39, ??? ?? 21?? ?????? 2012, C?84/11, Susi Salo ?.., ??? 16).

41 ??????, ?????????????? ??? ?? ?????????? ??? ?????? ?????? ?????? ?? ?????? ?????????? ??
????????? ??? ?????? ??? ?????? ?????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? (??., ??? ?? ??? ?????? ???,
????? ??? 1?? ?????????? 2009, C?567/07, Woningstichting Sint Servatius, ??????? 2009, ?.
I?9021, ??? 43 ??? ??? ?????????? ???????).

42 ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ? ?????????? ??
?? ?????? ????, ??? ?? ?????????? ??? ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ??
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?????? ??? ?????? ?????? ??? ?????? (??., ??? ?? ??? ?????? ???, ??? ?????? ???
????????? ?????????? ???, ?????? ??? 17?? ?????? 2008, C?389/05, ??????? ???
??????, ??????? 2008, ?. I?5397, ??? 49 ??? ??? ?????????? ???????, ??????? ??? 5?? ??????? 2002,
C?515/99, C?519/99 ??? C?524/99 ??? C?526/99 ??? C?540/99, Reisch ?.., ??????? 2002, ?.
I?2157, ??? 24 ??? ??? ?????????? ???????).

43 ??????, ?????????????? ???, ??? ?????????? ?????? ??????????????, ? ??????
????????? ?????????? ??? ?????????? ?????? ?????????? ??? ?????????? ?? ?????????? ?? ???
????? ?? ?????? ?????????? ?????? ??? ?????? 267 ???.

44 ??? ??????????, ????, ?? ?????????? ??? ?? ?????? ?????? ?????????? ??? ??????
????????? ?? ?????????? ??? ?????? ?????? ??? ?????? ??????, ??? ?????????? ???
????? ?????? ?? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ?? ?????? ?? ?????? ??????
????? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? (??.,
?? ?? ?????? ???, ?????? ???, ?????? ??? 5?? ?????????? 2000, C?448/98, Guimont,
?????? 2000, ?. I?10663, ??? 23? ??? 30?? ?????? 2006, C?451/03, Servizi Ausiliari Dottori
Commercialisti, ??????? 2006, ?. I?2941, ??? 29, ??? 5?? ??????? 2006,
C?94/04 ??? C?202/04, Cipolla ?.., ?????? 2006, ?. I?11421, ??? 30), ? ?? ? ??????
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
?? ?????? ?????? ?????? ??? 18?? ??????? 1990, C?297/88 ??? C?197/89, Dzodzi,
?????? 1990, ?. I?3763, ??? 36? ??? 16?? ?????? 2006, C?3/04, Poseidon Chartering,
?????? 2006, ?. I?2505, ??? 15? ??? 7?? ??????? 2013, C?313/12, Romeo,
????? 21).

45 ?? ??????????, ?????????? ? ??????????, ??? ?????? ?????? ??? ? ??????
?????????, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????

???????????? ?????????? ?????????????? ?? ??? ??????? ?????????? ?????????????????? ??? ?????????? ?????? ??????,
?? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????????????????? ??? ?????? ?????? ?????? ??????
????????????? ?????? ??? ? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ??????
????????????? ??? ?????? ?????? ?????????????? 50 % ??? ?????? ?????? ?????? ??? ?????? ??????
?????????.

46 ??????, ??? ??? ?????? ?????????????? ?????????? ??? ?????????? ??? ???? ?????? ??? ????
????????? ?? ?????? ?? ?????? ?????? ?????? ?????????? ??? ?????? ??????, ?????? ??? ??????
?????????, ?????????? ??? ???? ?????????? ?? ?????????? ??? ?????? ??? ??????????, ??????
??? ?????? ??? ??????, ?? ?????????? ?????? ?????? ?????? ??????, ? ?????? ??????????
???? ???? ??????????. ??????, ??? ?????????? ??? ???? ?????? ?????????? ??? ?????? ??
????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????
????????????? ??? ?????????? ??? ?????????? ?????? ??????.

47 ?? ?????, ?????????? ??? ? ?????? ?????? ?????? ?????????????? ??? ?????? ?? ?????? ??????
????????????? ?????????? ?? ?????? ?? ?????? ?????? ??? ?????????? ??? ?????????? ???, ???
????????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ??????
????????????? ??? ??? ?????? ??? ?????? ?????, ?????? ??? ?????? ???, ??? ?????? ?????? ??? ??????
??? ?????????? ??? ?????? ?????, ??? ???? ?????? ?????????? ?????????? ?????????????? ???
????????? ??? ?????? ?????? ?????, ?? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ?? ??????
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? Tribunal Supremo.

48 ?????? ??? ?????? ??????, ?????? ?? ?????? ?????? ??? ???? ?????? ?????? ?????? ?????? ??????
?????????o.

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

49 ?????????? ??? ? ?????? ?????????? ??? ???? ???? ?????? ?????????? ??? ?????? ??????
??? ?????????? ?????????????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ???, ?' ???
????????????? ?? ?????????? ??? ??? ?????????? ??? ?????? ?????? ??? ?????? ??????????????
???? ?????????? ?????????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??????????????.

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

? ??? ?????? 77/388/??? ??? ?????????? , ??? 17? ??? 1977, ??? ??????????????
?? ?????????? ??? ?????? ???, ??? ?????? ?? ??? ?????? ?????? ?????? ?????? ??????
— ?????? ?????? ?????? ?????? ?????????? ?????: ?????????? ?????????? ???, ???
????????????? ?? ??? ?????? 91/680/??? ??? ?????????? , ??? 16? ??? 1991,
???? ??? ?????? ??? ??? ?????????? ?????? , ??? ?????? ?? ??? ?????? 108 ???
????? 24/1988 ??? ??? ?????? ?????? (Ley 24/1988 del Mercado de Valores), ??? 28??
????? 1988, ??? ?????????? ?? ??? ??? 18/1991 ??? ??? ?????? ??????????
????? ?????? (Ley 18/1991 del Impuesto sobre la Renta de las Personas Físicas), ???
6?? ?????? 1991, ??? ?????????? ??? ? ?????? ??? ?????????? ??? ?????????? ???
???? ???????, ?? ?????? ?????? ?????? ??? ?????? ?????? ?????????? ??? ??????
??????, ?????????? ?? ?????? ???, ?????? ??? ?????? ?????? ?????????? ?????? ???,
???? ?????? ? ?????? ??? ?????? ???.

(?????????)

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