

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

??? 26?? ??????? 2015 (*)

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

????? ??????? C?499/13,

? ? ?????????? ??? ?????? ?????????????? ?????????? ??? ?????? 267 ????, ???
?????? ?? Naczelnego S?d Administracyjnego (???????) ?? ??????? ??? 21?? ?????????????? 2013,
? ??? ??????? ??? ?????????? ??? 16 ?????????? 2013, ??? ??????? ??? ???

Marian Macikowski

?????

Dyrektor Izby Skarbowej w Gda?sku,

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

????????? ??? ??? A. Tizzano, ??????? ????????, S. Rodin, A. Borg Barthet (?????????), E.
Levits ??? F. Biltgen, ????????,

????? ??????????: J. Kokott

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

????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???
4?? ?????????? 2014,

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

- ? . Macikowski, ?????????????? ??? ??? M. Kalinowski, radca prawny,
- ? Dyrektor Izby Skarbowej w Gda?sku, ?????????????? ??? ??? T. Tratkiewicz ??? J.
Kaute,
- ? ??????? ????????, ?????????????? ??? ??? B. Majczyna ??? ??? A. Gaw?owska,

– ?????????? ???????, ?????????????? ??? ??? M. Owsiany-Hornung ??? L. Lozano Palacios,

???? ?????? ?? ?????? ?????????? ??? ???????? ??? ?????? ??? ??? ?? ?????????? ??? 6?? ??????? 2014,

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

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1 ? ?????? ?????????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ??? ?????????? ?????????? ??? ??? ??? ??? 9, 193, 199,
206, 250 ??? 252 ??? ?????? 2006/112/?? ??? ??????????, ??? 28?? ?????????? 2006,
?????? ?? ?? ????? ?????? ?????? ?????????????? ??? (?? L 347, ?. 1, ??? ????: ??????
??).

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??? M. Macikowski,
????????? ???????, ??? ??? Dyrektor Izby Skarbowej w Gdansk?sku ?? ?????????? ?? ??
????????? ??????? ??? ????? ?????????????? ??? (?? ????: ???) ? ?????? ??????????
?? ?? ?????? ?????? ??? ?????? ?????????? ?????????????? ?????????????? ??????????.

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

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

3 ?? ?????? 9, ?????????? 1, ??? ?????? ??? ?????? ?? ???:

«?????? ?? “????????? ????” ?????????? ????, ??? ?????? ?????????? ??? ??
????????? ????, ?????????? ?????????????? ????, ?????????? ??? ?? ?????????? ????.
?? ?? ?????????? ??? ?????? ?????? ?????? ???.

?? “????????? ?????????? ????” ?????????? ??? ?????????????? ??? ??????????, ??
?????? ? ??? ?????????? ??????????, ?????????????? ??? ??? ?????????????? ???
?????????, ??? ?????????? ?????????????? ??? ??? ??? ?????????????? ??? ??????????
?????????????. ?? ?????????? ?????????????? ??????????, ??????, ? ??????????????
????????? ? ?????? ?????, ?? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ??????????..»

4 ?? ?????? 193 ??? ?? ?????? ?????? ??? ?? ???:

«? ??? ?????????? ??? ?? ?????????? ??? ??? ? ?????? ?????????????? ?????????? ???
????????? ?????? ? ?????? ??????????, ?????? ??? ?????????? ??? ? ??? ?????? ?????????? ???
???? ?????? ?????? ?? ?? ?????? 194 ??? 199 ??? ?? ?????? 202.»

5 ?? ?????? 199, ?????????? 1, ?????? ??, ??? ?????? ?????? ??? ?? ???:

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

[...]

?) ?????? ?????? ?????? ??? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ?????????? ???
?????????..»

6 ?? ?????? 204 ??? ??????? ??? ?????? ?? ????:

«1. ???, ???' ?????????? ??? ?????? 193 ??? 197 ??? ??? ?????? 199 ??? 200, ? ??????????
??? ?????? ?????? ?????????????? ??? ?????? ?? ?????????????? ??? ?????? ?????? ??? ??????
????????? ? ???, ?? ?????? ??? ?????? ?? ??? ?????????? ?? ?????? ?????? ??????????
????????? ?? ??????.

???????, ??? ? ?????????? ??? ?????? ?????????????? ??? ?????????? ??? ?????? ???
????????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ? ??? ??? ??? ??????, ?? ?? ???
??? ?????? ? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???, ?????? ?????? ??????
???? ?????????? ?????????? ?????????? ?? ?????? ??? ?????? ??? ?????????? ??? ??? ??????
76/308/??? [...] ??? ??? ??? ?????????? (??) 1798/2003 [...], ?? ?????? ??? ?????????? ??
????????? ?????????? ??? ?? ?????????? ??? ? ?????????? ??? ?????? ?????? ???
????????? ?????????? ?????????? ??? ?????? ?????? ?? ?????????????? ?????????? ??? ???.

?????????, ?? ?????? ??? ?????? ?? ?????????? ?? ?????????? ??? ?????? ??? ?????????? ???
????????? ?????? ??? ?????? ?????????????? ??? ?????? ??? ??? ?????? ?????????????? ???
?????????, ??? ?????????? ??? ?????? 358, ?????? 1, ?? ?????? ?????? ?????? ?????? ???
????? ?????????? ?????????? ??? ?????? ??? ?????????? ???.

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

7 ?? ?????? 205 ??? ?????? ??? ?????? ?? ????:

«???? ?????????? ??? ?????????? ??? ?????? 193 ??? 200 ??? ??? ?????? 202, 203 ??? 204,
?? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ???.

8 ?? ?????? 206 ??? ?? ??? ?????? ?????? ?? ????:

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

9 ?? ?????? 250, ?????????? 1, ??? ?????? ?????? ??? ?? ????:

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

10 ?? ?????? 252, ?????????? 1, ??? ?????? ??? ?? ????:

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

11 ?? ?????? 273 ??? ?? ??? ?????? ??? ?? ????:

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

? ?????? ????

12 ?? ???? 15, ?????????? 6, ??? ????? ???. ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???.
????????? (ustawa o podatku od towarów i usług), ??? 11? ?????? 2004 (Dz. U ????. 54,
???? 535, ??? ????: ?????? ????) ?????? ???.

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

13 ????? ?? ?????? 18 ??? ?????? ??????:

«?? ??????? ??? ???????????? ??? ?????????????????? ??? ????? ??? 17?? ??????? 1966 ????

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

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

????????? [(ustawa Kodeks post?powania cywilnego), ??? 17?? ??????? 1964 (Dz. U. ????. 43, ??? 296), ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??? ?????????? ??? ?????? ??? (??? ????: ??????? ?????????? ??????????)]], ?????????????? ??? ?????????? ???

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

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

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

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

14 ?? ?????? 8 ??? ?????? ??? ?????????????? ?????? (ustawa – Ordynacja podatkowa), ???
29?? ?????????? 1997, ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??? ?????????? ???
?????? ?????? (Dz. U 2005, ????. 8, ??? 60, ??? ????: ?????????? ??? ??????), ??????? ??
?????:

15 ?? ?????? 30 ??? ?????????????? ??????? ??????? ?? ????:

«1. ? ?????????? ??? ???????? ??? ?????? ? ?????? ??? ??????????? ??? ?????????????? ??? ?????????????? ???
?? ????? 8 ??????????? ??? ?????????? ??? ?????? ?? ??????????? ??? ?????? ??? ?????? ???.
????????????? ??? ?? ?????????? ???.

[...]

3. ? ?????????? ??? ???????? ??? ?????? ? ?????? ??? ?????? ?????? ?????? ?????? ??????
????????? ??? ??? ??? ??? ?????????? 1 ??? 2 ?????????? ?? ?????????? ??? ?????????? ??? ??????????
???.

[...]

4. ? ?????????? ???, ??????, ??? ?? ???????? ??? ?????????? ??? ?????????????? ??????????????,
????????????? ??? ?????????? ?? ?????????? ??? ?????????? 1 ??? 2, ?????? ????
????????? ?? ?? ?????????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ? ?????????? ???
???? ?????? ??? ??????????, ?? ??? ??? ????? ?????????? ?? ??? ??? ??? ?????????? ??? ??? ???
????????????? ??? ? ??? ??? ?????????? ??? ?? ?????????? ???.

[...]»

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

16 ?? ????? 808, ?????????? 1, ??? ?????? ?????????? ???????????, ??? ?????? ????:
????? ??? ?????????? ??? ?????? ???, ??? ?????? ???, ??? ?????? ???, ??? ?????? ???:

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

17 ?? ????? 998, ?????????? 1, ??? ?????? ?????????? ??????????? ?????? ?? ????:

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

18 ?? ????? 999, ?????????? 1, ??? ?? ??? ?????? ?????? ??? ?????? ?? ????:

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

19 ?? ????? 1023, ?????????? 1, ??? ?????? ?????? ??? ?????? ?? ????:

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

?????????? 2009 ? ??????????? ??????? ??????????, ?????????????????????? ??? ??, ??? ??
????????? ??? ?? ??? ????? ??????? ???, ??? 2 ??????????? 2009, ?????????? ?? ??????????
???? ?? ??? ????? ??????? ??? ?????.

29 ??????????? ??? ??????? ?????????? ?????????? ??? Chojnice, ????? ????? ???.
?????? 18 ??? ????? ????, ?? ?????????? ?? ? ? ?????? 8 ??? 30, ?????????? 1, 3 ??? 4
??? ?????????? ????, ?????? ??? M. Macikowski ????? ?????? ?? ?????????? ???
????????? ??? ????? 256 823,13 PLN, ? ?????? ?????????? ??? ??? ?????????? ??? ??????????
??? Royal ??? ??????????, ??? ??? ??? ?????????? ??????????. ? ??????
????????? ?????? ??? Chojnice ?????? ??? M. Macikowski, ? ?????? ?????? ???
????????? ????, ??? ??? ??????????, ??? ?????? 2007, ?? ?????? ??? ?????? ???
????????? Royal ?????? ?? ??? ??? ?????????? ??? 1 424 201 PLN ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? 25? ?????????? 2007 ??? ??????
????????? ??? ?????? ?????????? ?????????? ??????????.

31 ? M. Macikowski ??????? ???????? ??? ?? ?? ?? ?????????? ?????????? ?????????? ??
Naczelnego S?d Administracyjny. ?? ??? ?????????? ?????????? ?? ? ??????????????????
????????? ?????????? ?? ?????????? ?????????? ?? ?????? 18 ??? ?????? ??? ??, ??????
?? ?????? ?????? ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??,
????? ??? ?????????? ?? ?????? ???.

32 ??? ??? ????????, ?? Naczelnego S?d Administracyjnego, ?????????? ??? ? ??????
??? ?? ??? ?????????? ?????????? ?????????? ?????????? ??? ?????????? ?????????? ??? ??????
??? ??????, ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??
????????? ?????????????? ??????????;

«1) ??????????? ?? ???? ?? ??????? ?? ??????????? ?? ???? ?? ???? ?? ??????????? ?? ????
?????? ??, ?? ???? ??????? ?? ???? ?? ??????? ?? ???? ?? ?????? 9 ?? 193 ?? ??????????? ?? ???? ?? ????
199, ??????????? 1, ????????? ??, ? ??????? ??????????? ?? ???? ??????????? ?? ???? ???????????, ?? ????
?????? ?? ???? 18 ?? ??????? ?? ???? ??, ? ??????, ?? ????? ?? ???? ??????? ?? ???? ?? ???? ?? ????
?????????? ??????? ?? ???? ????? ??????????? ?? ???? ??????????? ?? ???? ??????????? ?? ???? ???????,
????????? ??????????? ?? ???? ????? ??????????? ?? ???? ??????????? ?? ???? ??????????????? ?? ????
?????????????? ?? ???? ????? ?? ???? ????? ??????????? ?? ???? ??????????? ?? ???? ??????, ? ??????? ??????????? ?? ????
?????????????? ?? ???? ????? ?? ???? ????? ??????????? ?? ???? ??????????? ?? ???? ????? ?? ???? ???????????????
???? ??, ?? ?? ???? ??????????? ?? ???? ????? ?? ???? ?? ???? ??????????? ?? ???? ????? ?? ???? ???????????????
?????;

2) ?? ?????????? ?????????? ?????????? ??? ?????? ??????:

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

????? ??? ??????? ???? ??????, ? ??????? ?????????? ??? ?????????????? ???????, ?????? ????
??? ?????? 18 ??? ????? ????, ???? ??? ?????, ?????, ? ???????????, ? ?????????? ???
????????? ??? ????? ??? ?????? ?????? ?????????? ?????????? ??? ?????????? ??????????????
????????? ??? ?????? ?????? ?????? ?????????? ?????? ?????????? ??? ?????????? ??? ??????????
????? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ?????????? ??????????
??? ?????????? ?????????? ???? ?????? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ??
????????? ??? ?????????? ??? ?????, ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????;
?) ? ???????????, ??? ?? ?????? ??? ?????? 206, 250 ??? 252 ??? ??????? ??? ??? ??? ??
????????? ??? ?? ?????? ??? ?????? ??? ???????????, ? ?????????? ?????????? ???
????????? ??? ??????, ???? ?????? ??? ?????? 18 ??? ?????? ????, ??? ?????????? ???
????????? ??? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???
?????????, ??? ?????? ??? ?????? ??? ?????? ?????????? ?????? ??? ?????? ???
????????????? ??? ?????? ??? ?????? ?????????? ?????? ?????????? ?????????? ??????????
??????, ?? ?????? ?????????? ??? ?????????? ??? ?????????? ?????? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ?????????? ??? ??????????
??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
??????, ?????????? ??? ?????? ??? ?????? ?????????? ?????????? ?????????? ??? ?????? ???
?? ?? ????, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???;»

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

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

33 ?? ?? ?????? ?????? ???, ?? ?????? ?????????? ???' ?????? ?? ???????????, ?? ???????????
?? ?? ?????? 9, 193 ?? 199, ?????????? 1, ??????? ??, ??? ?????? ??? ?????? ??? ??????
??? ?????????? ?? ?????? ??? ?????? ???????, ??? ?????? ??? ?????? ??? ?????? ???,
????????? ??? ??????, ??? ?????? ?????? ???????, ??? ?????? ?????? ?????????? ??????????????
?????????, ? ??????, ??? ?????????? ? ?????? ?????????? ?????????? ??? ?????? ??? ??????
?????????, ?????????? ?? ??? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ???
????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ???, ?????? ???
????????? ??????.

34 ?????????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??????, ??????
?? ?? ?????? 199, ?????????? 1, ??????? ??, ??? ?????? ??? ?????????? ??? ?????? ???
?? ??????, ?? ?????????? ?????????? ???????, ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ??????
????????? ??????????, ??? ? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ??????, ??? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???.

35 ???????, ??? ?? ?????? 273 ??? ?????? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??
????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?? ?????? ??? ?????? ??? ??????
????????? ??? ??? ?????? ??? ?????? ??? ??????.

36 ???????, ?? ?????????? ??? ?????? ???, ?????????? ???, ?????? ??? ?????? ???
??????????, ?? ?????????? ??? ?????? 90, ?????????? 1, ??? 273 ??? ?????? ??? ?????? ??? ??
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ?? ?????? ???, ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? (??, ?????? Kraft Foods Polska, C?588/10, EU:C:2012:40, ??? 23).

37 ???????????, ?? ????? ?? ?????? ?? ?????? ?? ?????? ?? ??????????? ?? ???????????, ????? ??
?????? 273 ??? ??????? ???, ??? ?? ?????????????? ???? ????? ??????? ?? ?????? ?? ?????? ?? ???? ??
?????????? ?? ?????, ??? ?????? ?? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????????? ?? ???? ??
????????? ?? ?????? ?????? ??? ?? ?????? ?? ?????? ?? ?????? ?? ??????????? ?? ?????????????? ?? ?
????????????? ??? ??? (?. ?????????? Nidera Handelscompagnie, C?385/09, EU:C:2010:627,
????? 49, ??? Klub, C?153/11, EU:C:2012:163, ????? 50).

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

40 ???????, ??? ???? 193 ??? ?? ????? 199, ?????????? 1, ??????? ??, ???
 ??????? ?? ?????????? ?? ??? ????? ?????? ?????????? ???????.

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

42 ??????????, ??? ???? 18 ??? ????? ??? ????? ??? ?????? ??? ?? ?????? ??? ?? ???? ??
?????????, ? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????
????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ? ?????? ?????????? ??? ??????
??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ???? ???
?????? ??????????, ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??? ???, ?
?????? ??? ??????. ??? ?????? ???, ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ???
??? ?????????? ?????????? ??????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ???
????.

43 ?????????? ???' ???? ?? ???? , ?????? , ?????????? ? ?????????? ??
????????????? ?? ???? ?????????? ? ?????????? ?? ? ?????????? ?? ???? ?? ???? ??
????????? ?? ???? ?? ???? ?????? ?? ???? ?? ???? ?????? ?? ???? ?? ???? ?? ???? ??
?? ???? ?? ???? ?????????? ?? ???? .

44 ????????, ? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ???
????????? ??? ? ?????????? ?????? ?????????? ?????????? ?????????? ?????? ?? ?????????? ??? ???
??? ?????? ?? ??? ?????????? ????. ????????, ??? ?????? ?????????? ?????????? ??????????
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 204 ??? ?????? ???.

45 ???, ???, ???, ???????, ???????????, ???????????, ???, ??, ???, ???, 9, 193, ???, 199, ???????????, 1,
??????????, ??, ???, ???????, ???, ?????, ???, ?????, ???, ???, ???, ???????????, ??, ???????, ???
??????, ???????, ???, ???????, ???, ???????, ???, ???????, ???, ???????, ???, ???????, ???, ???????, ???
??????, ???, ???????, ???????????, ???????????, ???????????, ???????????, ? ???????, ???, ???????, ???

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

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

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

47 ?????????? ???, ??? ?????? ??????, ??? ?????? ??????????, ??? ???? ??? ?????? ??? ??????????
?? ???? ?????? ?? ???? ??? ??????, ?? ?????? ??? ?????????? ?? ?????? ??? ?????? ??
????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ??? ??? ??????????????
(??., ??' ????, ?????????? Schloßstrasse, C?396/98, EU:C:2000:303, ??? 44, ??? «Goed
Wonen», C?376/02, EU:C:2005:251, ??? 32).

48 ??? ?????? ?????? ???, ??? ?????? ??? ?????? ??? ?????????????? ???, ?????????? ???, ???, ???
????? ?????? ?? ???? ??? ?????????? ?? ?????? ???, ?????? ??? ?????????? ??? ?????? ??
??, ?? ?????????? ??? ?????? ???, ?? ??? ?????????????? ??? ?????? ???, ???
????????? ??? ?????? ???, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
????? ??? ??? ?????? ??? ?????? ??? (??., ??' ????, ?????????? Molenheide ??.,
C?286/94, C?340/95, C?401/95 ??? C?47/96, EU:C:1997:623, ??? 47, ??? ??? Federation
of Technological Industries ??., C?384/04, EU:C:2006:309, ??? 30).

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

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

51 ??' ????, ?????????? ???, ??? ?????? ??? ?????? ??? ?????????? ?????????? ??????????
?? ??? ?????? ?????????? ?? ???? 267 ???, ??? ?????? ?????? ??? ?????????? ?? ???? ??
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?? ?
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??
?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??
????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????????? ??? (????????? Fundación Gala-Salvador Dalí ??? VEGAP, C?518/08,
EU:C:2010:191, ??? 21 ??? ??? ?????????? ??? ?????? ??? Logstor ROR Polska,
C?212/10, EU:C:2011:404, ??? 30).

52 ??????????, ?????????? ??? ?????? ?????? ?????????? ?? ?????? ?? ?? ??????????
????????? ?????????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??

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

53 ??? ??????????, ??? ?????? ?????????????? ???????, ?????????? ??, ?????? ?? ?????? ?
????????? ??? ???? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ??????
??? ??????? ???????, ??? ? ?????? ??? ?????? ???, ?????? ??? ?????? ??? ?????? ??? ??????????
?????????? ?????????? ?? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ???
????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ??????
????????? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?
????????? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ???, ?????? ?? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????.

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

54 ?? ?? ??????? ??????? ???, ??????? ??, ?? ?????? ?????????? ???' ?????? ???' ?????? ??
????????????? ?? ?? 206, 250 ?? 252 ?? ?????? ??? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????? ??? ?????? ?? ?????? ??? ??????
??????, ??? ? ?????? ??? ?????? ???, ???' ?????? ??? ?????? ? ?????????? ?,
????? ?????? ??? ?????? ???, ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ???, ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ????
????????????? ??? ?????? ?????????? ??? ?????????? ?????????? ?????????? ??? ?????? ?? ??????
?? ?????? ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????? ??? ?????? ??? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???.

55 ?????????????? ???, ??? ?????? ??????????, ?? ?????????? ??? ?????? ?????? ???
????????? ?? ?????? 167 ?. ??? ?????? ??? ?????????? ??? ?????????? ?????? ??? ?????? ??? ??????????
??? ??? ??? ??? ?????? ??? ?????? ?? ???????????. ?? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? (??., ?????? ????,
????????? Gabalfrisa ??., C?110/98 ?? C?147/98, EU:C:2000:145, ????? 43? Kittel ??
Recolta Recycling, C?439/04 ?? C?440/04, EU:C:2006:446, ????? 47? Mahagében ??? Dávid,
C?80/11 ??? C?142/11, EU:C:2012:373, ????? 38, ????? ??? Gran Via Moine?ti, C?257/11,
EU:C:2012:759, ????? 21).

56 ??????, ??? ?? ?????? 206 ?? 250 ?? ?????? ??? ?????????? ??? ?? ?????? ??? ??
?? ?????????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ???, ?????? ?? ?????? ??? ??????
????????? ??? ?????? ?? ???????????????, ??? ??? ?????? ?? ?????????? ??? ?????? ?? ??????
????????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ??????
????? ??????????.

57 ??? ?????? ??? ?????? ???, ? ?????????? ??? ?????? ???, ? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ??
? ??????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? . ??????, ? ?????????? ??? ?????? ???,
??? ??? ? ??????????, ??? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ??? ??? ??
????????? ??? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????? ???.

59 ????? ?????????? ??? ?????????? ??? ?????????? ?? ?????? 18 ??? ?????? ????, ?
????????? ??? ?????????? ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ???
????????? ?????????? ??? ?????????? ??? ??????????. ??? ?????? ??? ?????? ???, ??? ?????? ??
????????? ??? ?????? ??? ?????????? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??
????????, ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ????. ??????????, ?? ? ??? ???? ???
????????? ??? ?????? ??? ?????????? ?? ?????????? ??? ?????? ???, ?????? ??? ?????? ???
????????? ???????????, ?? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??
????????? ???????, ??? ??? ?????? ?????????? ?? ????????, ?????? ?????????? ??? ???
?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????, ? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

60 ????????, ????????????, ??? ? ?????????? ?????? ?????? ?????? ?????? ???
????????? ??? ???????, ??? ????????????, ??? ????????????, ??? ?????? ??? ?????????? ???
????? 250 ??? 252 ??? ???????, ??????.

61 ????? ????????, ??? ?????? ?????????????? ????????, ????????? ??, ??????? ? ? ?????? ?
????????? ?? ? ?????? 206, 250 ??? 252 ??? ??????? ?? ???? ???? ? ???? ? ???? ??????????
????????????? ?????? ??? ?????? ??? ??? ?????????????? ?? ?????????? ??? ?????????? ??????????
????? ? ??????? ??? ?????? ???, ???' ??????? ??? ??????? ? ??????????, ? ??????
????????? ??? ??????? ???, ??????????? ?? ?????????? ??? ?????????? ??? ??????????, ??? ??????
??? ????? ??????? ??? ?????? ??? ??? ??? ?????????? ??? ?????????? ??? ??????
????????????????? ??? ?????? ?????????? ?????????? ?????????? ??????????, ??? ????? ?? ??????
?? ??????? ??? ??? ??? ??? ?????? ? ?????? ??? ?????????? ??? ??? ?????????? ??? ????? ??
????????? ??????? ??? ??? ?????? ??? ?????????? ?????????? ??? ??????????
????????? ??? ?????? ??? ?????? ? ?????????? ?????????? ??? ??????????

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

62 ?????????? ??? ? ??????? ?????????? ??? ?? ??? ????? ?????????? ??? ?????? ???
??? ??????? ?????????????? ??? ??????? ?????????? ??? ??????? ??? ??????? ??????????, ?? ???
?????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ????? ??? ????? ??????????????
???? ??????? ?????????????? ??? ??????????, ??? ??? ?? ??? ???????, ??? ??????????.

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

1) ?????? 9, 193 ??? 199, ??????????? 1, ???????? ??, ??? ??????? 2006/112/??
???? ????????, ??? 28?? ?????????? 2006, ??????? ?? ???? ?????? ?????? ???
????????????? ????, ????? ??? ?????? ??? ??? ??????????? ?? ??????? ???
?????? ????, ??? ? ??????? ??? ?????? ???, ??????? ??? ??????, ??? ???
????????? ??????? ??? ??????? ??????????? ??????????? ???????????, ? ??????,
??? ??????????? ? ??????????? ??????????? ??? ??? ?????? ??? ???????,
????????? ?? ??? ??????????? ???????????, ??????????? ??? ??????????? ??? ??? ?
?????? ??????? ??? ??? ??????????? ??? ??? ??????? ??? ??? ??????? ???, ???
??? ??????????? ???????.

2) ? ????? ???? ?????????????????? ??? ???? ???? ?????? ??? ???? ?????????????? ?? ???? ??????
???? ??????? ???? ??????, ??? ? ???? ?????? ??? ?????? ???, ??????? ???? ?????? ?
?????????? ???? ??????? ???? ?????? ?? ???? ???? ?????? ??? ???? ??????? ???? ???? ?? ???? ?
??? ???? ???? ???? ??????? ??? ???? ??????? ??? ???? ???? ??????? ??? ???? ???? ???????

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

3) ?? ?????? 206, 250 ??? 252 ??? ??????? 2006/112 ?????? ??? ? ??? ???? ??
????????????? ?????????????? ?????? ??? ?????? ??? ??? ?????????? ?? ???????
??? ?????? ???????, ??? ? ?????? ??? ?????? ???, ???' ??????? ?? ??????? ?
??????????, ? ?????? ??????? ??? ?????? ???, ??????????? ?? ?????????? ???
??????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??? ??? ?????? ???
????????? ?????? ?????????????????? ??? ?????? ?????????? ?????????????? ???
??????????, ??? ? ?? ?????? ?? ?????? ??? ?????? ??? ??? ?????? ?? ?????? ???
?????????? ??? ??? ?????????? ??? ?? ?????? ?????? ??? ??? ?????? ??? ?????? ???
?????????? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ??? ?????? ???
?????????? ??? ??? ?????? ???.

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

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