

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

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

??? 20?? ?????????? 2017 (\*)

«????????????? ?????????? – ?????????? – ????? ?????? ?????? ?????????????????? ?????? (???) –  
?????? 2006/112/?? – ????? 135, ?????????? 1, ?????????? ?? – ?????????? – ?????  
????????????? ????? ?????????? ??? ??????? – ?????????? ??? ??? ??????????  
????????????? ?????????????? ??? – ????? 4, ?????????? 3, ??? – ????? ??? ??????????,  
??? ?????????????????? ??? ??? ?????????? ?????????? – ?????????? ??? ??  
?????? – ?????????? ??? ?????????? ?????????? ??? ?????????? ?????????? –  
????????????? ?????????? ??? ?????????? – ??? ??? ?????????? ?????????»

???? ?????? C?500/16,

?? ?????????? ?????? ?????????????? ?????????? ??????? 267 ????, ???  
?????? ?? Naczelnego S?d Administracyjnego (?????? ?????????? ??????????, ???????), ??  
?????? ??? 19?? ???? 2016, ? ????? ?????? ??? ?????????? ??? 16 ?????????? 2016,  
??? ??????? ??? ???

**Caterpillar Financial Services sp. z o.o.**

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

**Dyrektor Izby Skarbowej w Warszawie,**

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

????????? ??? ??? M. Illeši?, ??????? ???????, A. Rosas, C. Toader (??????????), A.  
Prechal ??? E. Jaraši?nas, ???????,

?????? ??????????: M. Campos Sánchez-Bordona

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

?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???  
23?? ??????? 2017,

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

- ? Caterpillar Financial Services sp. z o.o., ?????????????? ??? ??? M. Szafarska, radca  
prawny, ??? ??? M. Sobo?ska, adwokat,
- ? ??????? ???????, ?????????? ??? ??? B. Majczyna ??? ??? A. Kramarczyk-  
Sza?adzi?ska,
- ? ??????? ???????, ?????????? ??? ??? K. Herrmann ??? M. Owsiany-Hornung  
????? ??? ??? R. Lyal,

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

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

??????

1 ? ?????? ?????????????? ?????????? ?????? ??? ?????? ??? ?????? ??? ??????????  
??????????, ? ?????? ?????????? ?? ? ????? 4 ?????????? 3, ???, ?????? ??? ??? ?????  
??? ?????????????????? ??? ??? ??????????.

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ?????? ?????? ??? Caterpillar  
Financial Services sp. z o.o. (??? ????: Caterpillar) ??? ??? Dyrektor Izby Skarbowej w  
Warszawie (?????????? ??? ?????????? ?????? ??? ???????????, ????) (??? ????:  
?????????? ??? ?????????? ?????), ??????? ?? ???? ?????? ??? ?????????? ?? ?????????  
?? ?????? ??? Caterpillar ??? ?????????? ?????????? ?????????????? ??????  
????????????? ??? (???) ??? ?????????? ??? ?????????? ????? ?? ??????? ??? ??????  
??? ??????.

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

To ?????? ??? ??????

3 ?? ??? 135, ?????????? 1, ??????? ?, ??? ?????? 2006/112/??. ??? ??????????,  
??? 28?? ?????????? 2006, ??????? ?? ???? ?????? ?????? ?????? ?????????????? ??? (??  
2006, L 347, ?. 1, ??? ????: ?????? ???), ??? ?????????????? ??? ?????? 3, ?? ??????  
?????????? «????????? ?????? ?????? ??????????????», ??? ????? IX «?????????» ??? ??????  
????, ?????????? ?? ???:

«?? ??? ?????? ?????? ?????????? ??? ?????????? ???????:

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

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

4 ? ustawa ordynacja podatkowa (????? ???? ??? ?????????? ??????), ??? 29??  
????????? 1997 (Dz. U. ??? 1997, ??? 137, ?????? 926, ??? ????: ?????????? ???),  
????? ???? ??? ?????? ??? ?????? ?????????? ?????????? ??? ?????? ???, ????, ???  
????? 70, ?? ????:

«1. ? ?????????? ?????????? ?????????? ?? ???? ?????? ??? ?????? ??? ???? ???? ???  
????????????? ??? ?????? ??? ?????? ?????? ?????????? ??????».

[...]

6. ? ?????????? ?????????? ??? ?????????? ?????????????? ??? ?????? –???, ?? ??? ???  
??????, ??????????– ??? ?????? ??? ?????? ?????????? :

[...]

2) ?????? ?????????? ??????? ?????????????? ?????????????? ??? ?????????? ??? ?????? ??????  
?????????

[...]»

5 ?? ????? 72, ?????????? 1, ??? ?????????? ?????? ?????? ?? ???:

«?? ?????????? ?????????? ?????? ?? ??? ?????:

1) ??? ??? ?????????? ?????????? ???? ?????? ?????? ??????

[...]»

6 ?? ????? 74, ?????? 1, ??? ?????? ?????? ??? ?? ???:

«??? ??? ?????? ??? Trybuna? Konstytucyjny [????????????? ???????????, ??????] ? ???  
????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????????? ?????????? ?????????? ?????  
????? ?????? ?????????? ?????? ???, ??? ?????? ? ?????????? ?????????? ?????????? ?????  
????? ??? ?????????? ?? ?????? 21, ?????????? 1, ?????? 1 [...], ??? ?????? ??? ??? ???  
????????? ?????? ??? ?????? ?? ?????? 73, ?????????? 2, ? ??? ?????? ??????, ??? ???  
????????? ?? ??? ?????? ?????????? ?????????? ??????, ? ?? ??? ?????? ?????????? ?????  
????????? ?? ??? ?????? ?????????? ?????????? ?????? ?? ??? ?????? ?????????? ?????? ???  
????? ??? ?????? ??? ?????????? ?????????? ?????? ??? ?????? ?????????? ?????? ???

7 ?? ????? 75, ?????????? 1, ??? ?? ??? ?????? ?????? ??? ?? ???:

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

8 ??? ?? ????? 77, ?????????? 1, ??? ?????? ??????:

«?? ?????????? ?????? ?????????? ??? ?????? ?? ?????????? ?????? ??? ?????????? ??????????:

[...]

2) ????? 30 ?????? ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????????

[...]

4) ????? 30 ?????? ??? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?? ??? 74?

[...]»

9 ?? ????? 79, ?????????? 2, ??? ?????????? ??? ?????? ?????????? ?? ???:

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

10 ?? ????? 80, ?????????? 1, ??? ?????? ?????? ??? ?? ???:

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

11 ?? ????? 81, ?????????? 1, ??? ?? ??? ????? ?????? ????:

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

12 ?? ????? 240, ?????????? 1, ?????? 1, ??? ????? ?????? ????:

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

[...]

11) ??????? ?????????? ??? ?? ?????????? ??? ?????????? ?????? ?????????? ??  
????????? ??? ?????????? ??????????.»

13 ?? ????? 79, ?????????? 2, ??? ?????????? ??????, ??? ??????????????, ?? ???  
?? 1?? ?????????? 2016, ?????????? ?? ????:

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

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

14 ? Caterpillar, ??????? ??? ?????????? ??????? ? ??????, ?? ???????????, ???????  
????????? ?????????????? ?????????? ??? ?????? ??? ?????????? ??? ?????????????? ??? ??????????????  
????????? ?????? ?????????? ?? ?????????? ?????????? ?????????? ?????????? ??? ??????????????  
??? ?????????????? ??????????.

15 ??? ???? ???????, ?? ?????? ??? ???????, ??? ?????????? ?? ?????? ???  
????????? ????, ? Caterpillar ??????? ??? ?????????? ?????????? ?? ??????????  
????????? ??? ?????????? ?? ?????? ??? ?????????? ?? ?? ?????? ??? ?????????? ??? ??????????  
???? ???????, ?????? ??????? ??????????, ?? ?????? ??? ?????????? ??? ?????????? ????.  
??? ?????????? ??? ??????? ? Caterpillar ???? ??? ???????, ?? ?????????? ????.  
????????? ??? ??.

16 ??????? ?????????? ??? Naczelnego S?d Administracyjnego (????????? ??????????)  
?????????, ???), ??? 8?? ?????????? 2010, ?? ?? ?????????? ??????? ??? ??????????????  
??? ??????? ?????????? ?????????????? ?????????? ??????? ?? ??????????????, ??? ??  
????????? ??? ????? ??? ??? ?????????? ??????, ?? ?????? ?????????????? ?????????? ???  
????????? ??? ?????????? ??????????, ??? ?????????? ?????????? ??? Dyrektor  
Urz?du Kontroli Skarbowej (????????????? ??? ?????????? ?????????? ???, ???????) ??  
?? ????? ?????????? ??? Caterpillar ??? ?????????? ?????????? ??????? ??? ??  
?????? ?????? ??? ????? ?????????? 2005 ??? ?????????? 2006, ? Caterpillar ??????  
????????? ??????????, ??? ????? ?????????? ?? ??? ?????? ??? ?????????????? ??????? ???  
??????, ?????????? ?? ???, ??? ???????, ??? 30 ?????????? 2010, ??? ?? ???  
?????? ?? ?????????? ??????????.

17 ???? ??? ?????? ??? ?????????? ??? 17?? ?????????? 2013, BG? Leasing (C?224/11,  
EU:C:2013:15), ??????? ??? ?????????? ??? ?????????? ?????? ?????????????? ??????????  
??? ?? Naczelnny S?d Administracyjny (????????? ?????????? ??????????), ??? ??????  
????????? ??????? ?? ??? ?????? ??? ?????????? ?????????? ??? ?? ?????????? ??? ??  
??? ??? ?????? ?????? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?? ??????????  
?????????, ? Caterpillar ??????, ??? 11 ?????? 2013, ??? ??? Naczelnik Drugiego  
Mazowieckiego Urz?du Skarbowego w Warszawie (????????????? ??? ?????????? ??????????  
????????? ??? ?????????? ??? ?????????? ??? ?????????, ??????) ??? ?????????? ???  
????????? ?????????? ??? ?????????? ??? ??? ??? ?????? ?????? ??? ?????? ?????????? 2005 ???  
????????? 2011.

18 ? ?????????????? ??? ?????????? ?????????????? ?????????????? ??? ?????????????? ??? ?????????????? ??? ??????????  
??? ?????????? ??????????, ?? ??????? ??? 11?? ?????????? 2013, ?? ?????? ??? ?????  
????????????? ??? ?????????????? ??? ?????????????? ?????????????????? ??? ??? ??????????  
????????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ?????????????? 2005 ??? ?????????? 2007,  
????????????? ?? ?????????? ??? ?????????? ?????? ?????????? ?????? ?????????? ??? ?????? 70,  
????????? 1, ??? ?????????? ??????. ??????????, ?????? ??? ?????????? ???  
????????? ?????????? ??? ?????????? ??? ??? ??? ?????? ?????? ??? ?????? ?????????? 2007 ???  
????????? 2011.

19 ? ?????????????? ??? ?????????? ??????, ??????? ??? ?????? ?????????? ?????????? ??????  
????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ?????????? ???  
????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ???  
????? ??? ?????????? ???, ? ?????????? ??? ?????????? ??? ?????????? ?????? ?????? ?????? ???  
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ? ?????? ???  
Caterpillar ??? ?????????? ??? ?????????? ?????????? ?????????? ??? ?????? ?????????? ??? 31  
????????? 2011 (?? ??? ?????? ??? ?????? ?????????? ??? 2005 ??? ?????????? ??? 2006 ???  
????? ?????? ??? ?????? ??? 31 ?????????? 2012 (?? ??? ?????? ??? ?????? ?????? ??????????  
??? ?????????? ??? 2007 ??? ?????? ?????????? ??? ?????? ???)).

20 ?? ?????????? ?????????? ??? ???????? ??? ???? ?? ??? ????? ?????????? ??????? ??  
Wojewódzki S?d Administracyjny w Warszawie (?????????? ?????????? ??? ?????????? ??  
??????????, ???????), ? Caterpillar ???????????, ???' ??????, ?????????? ?????????? ??  
?????? 74 ??? ??????????? ????, ??? ?????? 9 ??? ?????????? ??????????? ??? ??  
?????? 4 ?????????? 3, ???.

Administracyjny w Warszawie (?????????? ?????????? ??? ?????????????? ??? ??????????)  
????? ??? ? Caterpillar ??? ?????????? ?? ?????? ??? ?????????? ??? ??????????  
????????????? ??? ?????? ??? ?????? 74 ??? ?????????? ??????, ??? ?? ?????????? ???  
????????? ?????????? ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ??  
????? 70, ?????????? 1, ??? ?????? ??????. ?? ?? ????? ?????????? ?????? ?????? ??? ? ?  
???? ?????????? ?????????? ??? ?????????? ?????? ??? ?????? ??? ?????????????????? ???  
????? ??? ??????.

22 ??? ? Caterpillar ??? ??? ? ?????????????? ??? ?????????? ?????? ?????? ??????  
????????? ??? ??? ?????????? ?????? ?????? ?????? ??? ?????????? ??????????, ??? ??  
Naczelnego S?d Administracyjny (????????? ?????????? ??????????).

23 ??? ??? ?????? ??? ?????????? ??????????????, ? ?????????? ?????????? ??????????  
??? ?????? ?? ??? 70, ?????????? 1, ??? ?????????? ??????, ?? ?????????? ?? ?? ???  
79, ?????????? 2, ??? ?????? ?????, ??? ??? ?????????? ?????????? ?????????? ???  
??? ??????, ??? ?? ?????? ??? ?????? ?????????? ??? ??????????, ?? ?????????,  
????????, ?? ?????????? ??? ??? ?????? ??? ??????????????????.

24 ??????, ??? ?? ?????? ??????????, ?? ?????????? ?????? ??? ?????????? ?????? ???  
????????? ?? ??????, ? ?????? ?????????? ?? ?????? ?????????? ?????? ?????????? ??  
??? ?????????? ?????, ?? ?????????? ?? ?????? ??? ??????, ? ?????? ??????????  
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????, ??? ?? ??????????  
??? ?????????? ?????????? ??? ?????????? ?????? ?????? ?????????? ?????????? ??????????.

25 ??? ??? ??????? ????, ?? Naczelnego S?d Administracyjny (????????? ??????????)  
????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?? ?????????? ???  
????????? ?? ?????????? ?????????? ????:

«????????? ?? ??? ?????? ??? ??????????????????, ??? ?????????? ?????????? ??? ??  
????????? ??? ?????????? ?? ?? ??? 4, ?????????? 3, ??? ? ?????????? ??? ??  
????? ??? ?????????? ??? ?????? ?????, ?????????? ?????? ??? ?????????? ??? ??  
????? ?? ?????????? ?? ??? ?????? ??? 17? ?????????? 2013, BG? Leasing [(C?224/11,  
EU:C:2013:15)], ??? ?????? ??? ?????? ??? ???, ?????? ?????? ?????????? ? ?????? ?????????? ???  
????????? ?????? ??? ?????????? ?????? ?????????????? ?????????????? ??? ?? ??? ??????????  
???? ?????????? ??? ?????? ??? ?????, ??? ?????????? ??? ? ?????????? ??? ?????? ???  
????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???  
????????? ??? ?????????? ??????????, ??? ??? ?????????? ??? ?????? ??? ?????????? ??? ??????;»

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

26 ?? ?? ?????? ???, ?? ?????? ?????????? ????, ???' ??????, ?? ?????????????? ???  
????? ?? ?????? ??? ?????????? ??? ??????????????????, ?????????????? ??? ??  
????? ?? ?????? 4, ?????????? 3, ???, ?????? ??? ?????? ??? ?????????? ??? ?????????? ????,  
????? ? ?????? ??? ?????? ???, ? ?????? ?????????? ??? ?????????? ??? ?????????? ???  
????????? ?????????? ???, ??? ? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??  
????? ??? ?? ?????????? ?????????? ?????????? ?????????? ??????????, ?????????? ??  
????????? ????, ??? ?? ?????????? ??? ?? ??? ?????? ??????????, ??? ??? ?????????? ???  
????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??  
?????????.

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

????? ??????? ??????? ?????? ?? ?????????? ??? ????? ??????????? ?? ?????? ????????????,  
????? ??? ?? ?????? ?? ?????????? ?? 17?? ?????????? 2013, BG? Leasing (C?224/11,  
EU:C:2013:15), ??? ?? ?????????? ?????????? ?????????? ?????? ?? ?????? ???  
????????? ?????????? ????.

28    ???????????????, ?????? ?? ?????????? ?? ?????????? ?? ?????? ??? ?????? ????,  
????? ??????? ?? ?????? ?? ?????????? ?????????? ?? ?????? ?????????? ?? ?????? 4,  
????????? 3, ?????? ??????, ???, ?? ??????????, ?????? ??? ?????? ???, ??? ???????  
??? ?? ?????? ??? ?????? ??? ?????? ???, ?????? ??? ?????? 4, ?????????? 3,  
????????? ??????, ???, ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? (??., ??????, ?????? ??? 14??  
????????? 2017, The Trustees of the BT Pension Scheme, C?628/15, EU:C:2017:687, ???  
47).

29    ?? ??? ?????? ??? 17?? ?????????? 2013, BG? Leasing (C?224/11, EU:C:2013:15),  
?? ????????, ??????????? ?? ?????? 2, ?????????? 1, ????????, ??, ??? ????????, ??,  
????????? ?? ?????????? ?? ?????? ?????????? ?? ?????? ??, ?????? ??? ??????  
????????? ?? ?????????? ?? ?????? ?????? ?????????? ?? ?????? ???, ? ?????? ???  
????????? ?? ?????????? ?? ?????? ?????????? ?? ?????? ?????????? ?????????? ??  
????????? ?? ?????????? ?? ?????? ?????????? ?? ?????? ?????????? ?????? ??? ?? ??????  
?? ?? ?????? ?? ?????????? ?? ?????? ?????? ?? ??, ??????????, ?????????? ?????? ??????????  
????? ??? ?????? ??????. ?? ?????????? ?? ?????? ?? ?????? ?????????? ?????????? ??????????  
????????? ?? ??????????, ?????????? ?? ?????? 28 ?? ?? ?????? 135, ?????????? 1,  
????????? ??, ??? ?????? ???, ?????????? ???, ?????????? ???, ??? ?????????? ??? ? ?????????? ???  
????????? ?????? ?????? ?????? ?????? ??? ?????? ?? ?????? ?????? ?????? ??? ?????? ???  
????????? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???  
????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???.

30    ?? ??????????, ??? ?????????? ?? ?????? ??? ?????????? ?? ?????? ??? ?????? ??? ??  
?????????, ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??? ?????????? ??, ? ????????  
????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??? ?????? ??? ?????????? ??  
????????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?????????? 2005 ??  
????????? 2007, ?? ??? ?????????? ?? ?????? ?????????? ?????????? ?????????? ??, ?? ??????????  
?? ?????? 70, ?????????? 1, ??? ?????????? ??????, ??? ???????????. ??????????  
????????? ?? ?????? ?? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ???  
????????? ?? ?????? ?? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ???, ???  
?? ?????? ?? ?????? ?????? ?????? ?????? ?? ?????? ?? ?????? ?????? ?????? 70,  
????????? 1, ??? ?????????? ?????? ?????? ??????, ??? ?????? ?????? ???  
????????? ??????????, ?? ?????????? ?? ?????? ?? ?????? 79, ?????????? 2, ??  
????? ??? ???, ??? ?????? ?? ?????? ?????? ?? ?????? ?? ?????? ?????? ??????.

31    ??? ?????, ????, ??? ?????????? ?????????? ?????????? ?? ?????? ??????????  
?????????, ?????? ?? ?????????? ???, ??? ?????? ?????????, ? ?????????? ?? ?????? ??  
????????? ?? ?????? ?? ?????? ?? ?????? ??? ??????, ??? ?????? ?? ?????? ???  
????????? ?? ?????? ?? ?????? ?? ?????? 267 ???, ?????????? ?? ?????? ?????????? ??  
????? ?? ?????? ?? ?????????? ?? ?????? ??? ?????? ?? ?????? ?? ?????? ?? ?????? ??  
????????? ?? ?????? ?? ?????? ?? ?????? ??? ?????? ?????? ?? ?????? ?????? ??  
????????? ?? ?????? ?? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?? ?????? ??  
????????? ?? ?????? ?? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??  
????????? ?? ?????? ?? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??  
????????? ?? ?????? ?? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??  
????????? ?? ?????? ?? ?????? ?????? ?????? ?????? ?????? (????? ??? 14??

????????? 2015, Manea, C?76/14, EU:C:2015:216, ????? 53 ??? ??? ????? ??????????????  
?????????).

32    ??????????????, ????? ???? ???' ?????????? ??????? ?? ???????????, ???' ?????????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????????? ???????, ??  
????????? ??? ?????????? ??? ?????????? ?????? ?????????? ?????????? ??? ?????? ???  
????????? (?????? ??? 14?? ??????? 2015, Manea, C?76/14, EU:C:2015:216, ????? 54  
??? ??? ?????????????? ??????????).

33    ?? ??????????, ?????????? ? ?????????? ??? ?? ?????????? ??? ?????????? ??  
????????? ?????????? ??? ?????????? ??? 17?? ??????? 2013, BG? Leasing  
(C?224/11, EU:C:2013:15).

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

35    ???????, ??? ?????? ???????, ?? ??????? ??? ?????????? ??? ?????????? ?????? ???  
????????? ??? ??????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???  
????????? ?? ??????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???  
????????? ??? ?????????? ??? ???????, ???????, ??????? ??? ?????????? ??? ?????????? ???  
????????? ?????? ?????? ?????? (?????? ??? 6??  
????????? 2011, Lady & Kid ?.?., C?398/09, EU:C:2011:540, ????? 17 ??? ???  
????????? ??????????).

36    ??????, ?? ?????????? ??? ?????????????? ?????? ?????????? ??? ?? ?????????? ???  
????????? ??? ?????????? ?????? ?????????? ?????? ?????????? ??? ?????????? ??? ?????????? ???  
????????? ??? ?????? ??? ??????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???  
????????? ??? ?????? ??? ??????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???  
????????? ??? ?????? ??? ??????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???  
????????? ??? ?????? ??? ??????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???  
????????? ??? ?????? ??? ??????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???  
????????? ??? ?????? ??? ??????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? (?????? ??? 17?? ??????? 2004, Recheio – Cash & Carry,  
C?30/02, EU:C:2004:373, ????? 16 ??? ??? ?????????? ??????????).

37    ??????, ?????? ?????????? ?????? ?????? ??? ?????????? ?????? ??? ?????????? ??????????  
????????? ??? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ???  
????????? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ???  
????????? ??? ?????? ???, ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????????? ???  
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??? ???  
????????? (?????? ??? 8?? ??????? 2011, Q-Beef ??? Bosschaert, C?89/10  
??? C?96/10, EU:C:2011:555, ????? 34).

38    ?????????? ?? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ???  
????? ??? ?????? ???, ?????? ?? ?????????? ??, ??? ?????? ?????????? ??? ?????? ???  
????? ??? ?????? ???, ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???  
????? ??? ?????? ??? ?????? ???, ??? ?????? ?????? ???, ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ???, ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???

???????????? ? ????? ?????????????? ??? ?????? ?????????? ?????????? ??? ?????????????? ?????????? ??? ??,  
????????????? ??? ?????? ??? ?????????????? ??? ?????? ?????????? ?????????? ??? ??, ?? ??  
????????? ??? ?????? ?????????????? ??? ?????? ?? ?????????? ??? ?????????? (????????? ??? 15??  
????????? 2010, Barth, C?542/08, EU:C:2010:193, ??? 20 ??? ??? ??????????????  
?????????).

39    ??? ?????????? ??? ??? ?????????? ?????????????? ??? ?????????? ?????????????? ??? ??  
????????????? ??? ?????????????? ??? ?????????? ?????? ??? ?????????? ?????????? ??? ??  
????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ??  
????????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ?????????? ??? ??  
????????? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ??, ???  
????????? ??? ??????, ??? ?????????? ??? ?????????? ??? ?????????? ?? ?????? ?? ?????? ??? ?????? ??? ??  
????? ??? ?????? ??? ?????????? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ? ??????????????  
????????? ??? ?????????? ?????? ?????????? ?????????? ??? ?????? ??? ? ?? ?????? ??? ?????? ??? ??  
????????? ??? ?????????? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?? 70,  
????????? 1, ??? ?????????? ?????? ?????? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ??  
????? ?????? ?????????? ??????????.

40    ?????????? ??? ?????? ? ?????? ?????????? ?????????? ?????????? ??? ??  
??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??  
????????????? ??? ?????????? ??? ?????????? ??? ?????????? ?? ?????? ?? ?????? ??? ?????? ??? ??  
????? ??? ??????, ??? ?????? ?? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??.

41    ??? ?????? ??? ?????? ??? ?????? ?????????????????? , ??? ?????? ?? ?????????? ??? ??  
????? ?????? ?????????? ?? ?????????? , ?? ?????? ?????????? , ?????????????? ?????????? ??? ??  
????????? ??? ?????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,  
????? ????, ?? ??? ?????????? ?? ?????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???  
? ?????????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
(??., ??????, ?????????? ??? 8?? ?????????? 2011, Q-Beef ??? Bosschaert, C?89/10 ???  
C?96/10, EU:C:2011:555, ??? 32, ??? ??? 14?? ?????????? 2017, The Trustees of the BT  
Pension Scheme, C?628/15, EU:C:2017:687, ??? 59).

42    ?? ?????????? ??? ?????? ?????????? ??? ? ?????????? ?????????? ?????????? ??????????????  
????????? ??? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ?????????? ?? ?? ?????? ??? ?????? ??? ??????,,  
????? ??? ?????????? ?????? ? ?????? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????????? ????, ??? ??? ?? ?? ?????? ? ?????????? ??? ?????? ??? ?????? ?????? ??????????  
????????? ??? ?????? ?? ??? ? ?? ?????? ??? ?????? ?????????? ?????? ?????? ?????????? (??.,  
??????, ?????? ??? 8?? ?????????? 2011, Q-Beef ??? Bosschaert, C?89/10 ??? C?96/10,  
EU:C:2011:555, ??? 36). ??? ?????????? , ?????????? ?????????? ??? ?????? ??? (???????)  
?? 15?? ?????????? 2010, Barth, C?542/08, EU:C:2010:193, ??? 28) ? ??? ??? (???????)  
15?? ?????????? 2011, Banca Antoniana Popolare Veneta, C?427/10, EU:C:2011:844, ???  
25) ?????? ?????? ?? ??? ??? ??? ??????????????????.

43    ??? ?????????? , ? ?????????? ?????????? ?????????? , ??? ?????????? ?? ?????? 70,  
????????? 1, ??? ?????????? ?????? , ?????? ?? ?????????? ?????? ?????? ?????? ??,  
????????? , ?????? ??? ?????? ??? ?????? ?????? ?????????????? , ??? ?????? ??? ?????? ??? ?????? ???  
????????? ?? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ?? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???  
?????.

44    ??? ?????? ??? ??? ?????? ?????? ?????????? ?????????? , ? ?????? ?????????? ??? ??  
4, ?????????? 3, ???, ?????????? ? ?????????? ???, ??? ?????? ?????? ??? ?????? ?????????? ?

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

45 ??????, ?????? ?? ??????????? ???, ??? ?? ???????????, ?? ?????? ??? ??????  
????????? ?? ??????????? ??? ?????? ??? ?? ??????????? ?? ??????????? ???????  
????????? ??????????? ??? ? ??????????? ??? ??????? ?????, ?? ??????????? ?? ???  
????? ??????????? ??? ???????????, ?????????? ??? ?? ?????????? ??????? ??? ??? ??????  
?? ??????????? ?? ??????????? ?? ??????????? ??? ??????? ??? ?????? ??????????? (??.,  
??????, ?????? ??? 8?? ??????????? 2011, Q-Beef ??? Bosschaert, C?89/10 ??? C?96/10,  
EU:C:2011:555, ????? 51 ????? ??? ????? ??????????? ??????????).

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

47 ??????, ? Caterpillar, ??????????? ?? ??????????? ??? ??????????? ?? ??????????? ??  
?????? ?? ??????????? ???, ???????????, ?????, ??? ?????? ??? Naczeln S?d  
Administracyjny (?????? ?????????? ??????????) ??? ?????????? ??? ?????? ??? ??? ???  
????????? ??? ??????? ???, ???????, ??? ?????????? ?????????? ??? ?????? ??? ??????????? ???  
????????? ??????????? ?????????? ?????????? ??? Caterpillar, ?? ?? ?????? ??? ?????? ???  
?????? ??? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???????????  
2005 ??? ?????????? 2006.

48 ??? ?????? ?? ?????????? ?????????????? ?????????? ??? ???????????, ? Caterpillar  
?????????? ?? ?? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ???????????  
?????????? ??? ???????, ? ?????? ??? ?????????? ??? ?????, ?? ?????????? ?? ???  
????????? ?????????? ?????????? ??? ?????, ??? ?????????? ??? ?????? ??? ?????? ??? ???  
????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ???????????  
?????.. ? Caterpillar ?????? ???, ??? ?????? ???, ??? ?????????? ??? «??? ??? ???»  
?? ??????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??? ???  
????????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?????????????? ??? ???????.

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

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

51 ??? ???????, ? ??? ??? ?????? ??? ?????????? ??? ??????????? ??? 17?? ?????????? 2013,  
BG? Leasing (C?224/11, EU:C:2013:15), ? ??? ??? ?????? ??? ?? ?????????? ???  
????????? ??? ???????, ??? ??? ?????? ??? ?????? ??? ?????? 70, ?????????? 1, ??? ??????????  
??????, ??? ?????????? ?? ??????? ??? ?????????? ??? ?????????? ??? ? ??????????? ??? ???????

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

52    ?????????????? ??? ????? ???? ??????????????, ??? ?????????? ??????? ??? ?????? ?  
????????? ??? ?? ?????? ??? ?????????????? ??? ??? ??????????????????, ?????????????? ???  
?? ?????? ??? ?????? 4, ?????????? 3, ???, ????? ??? ?????? ??? ??? ?????????? ???  
??????, ??? ? ?????? ??? ?????? ???, ? ????? ?????????? ??? ?????????? ??? ??????????  
????????? ?????????? ?????????? ???, ??? ? ?????? ??? ?????? ??? ?????????? ??? ???  
????????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ?????????? ?????????? ???, ???  
??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

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

?? ??? ?????? ??? ?????????? ??? ?? ??????????????????, ?????????????? ??? ??  
????? ??? ?????? 4, ?????????? 3, ???, ????? ??? ?????? ??? ?????? ??? ??????????  
????? ??????, ??? ? ?????? ??? ?????? ???, ? ????? ?????????? ??? ??????????  
????????? ?????????? ?????????? ?????????? ?????? ?????? ?????????? ??? ??????  
(??), ??? ? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ??  
????????? ?????????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ????  
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ????  
??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ???.

(???????)

\*    ?????? ??????????: ? ???????.