

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

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

??? 12?? ?????????? 2018 (*)

«????????????? ?????????? – ?????????? – ????? ?????????????? ????? (???) – ??????????
????????? – ?????? ?????????????????? ??? ?????????????? ??? ????? ??????????
“?????????” ??? ?? ?????????? ??? – ?????? ?????????? ??? ?????????? ??? ?????????? ????? –
????? ??? ?????????? ??? ??? ?????????? ???»

???? ??????? C?69/17,

? ? ?????????? ?????? ?????????????? ?????????? ?????? ??? ?????? 267 ????, ???
?????? ?? Curtea de Apel Bucure?ti (?????? ???????????, ???????) ?? ??????? ???
16?? ?????????? 2016, ? ????? ?????? ??? ?????????? ??? 8 ?????????? 2017, ???
?????? ??? ???

Siemens Gamesa Renewable Energy România SRL, ????? Gamesa Wind România SRL,
????

**Agen?ia Na?ional? de Administrare Fiscal? – Direc?ia General? de Solu?ionare a
Contesta?ilor**,

**Agen?ia Na?ional? de Administrare Fiscal? – Direc?ia General? de Administrare a Marilor
Contribuabili**,

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

????????? ??? ??? A. Rosas (??????), ?????? ???????, C. Toader ??? A. Prechal,
???????,

?????? ??????????: P. Mengozzi

?????????: A. Calot Escobar

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

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

– ? Siemens Gamesa Renewable Energy România SRL, ?????????????? ??? ??? A.
St?noiu ??? O. Marian, avoca?i,

– ? ?????????? ????????, ?????????????? ?????? ??? ??? ?. R. Radu, ??? ???????
??? ??? C.-R. Can??r ??? ??? ??? R. I. Ha?ieganu ??? L. Li?u,

– ? ?????????? ????????, ?????????????? ??? ??? G.-D. Balan ??? R. Lyal,

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

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

???????

1 ? ?????? ?????????????? ?????????? ?????? ??? ???????? ??? ?????? 2006/112/?? ???
??????????, ??? 28?? ?????????? 2006, ??????? ?? ?? ????? ?????? ?????? ??????????????
????? (?? 2006, L 347, ?. 1), ??? ?????????????? ?? ??? ?????? 2010/45/?? ??? ??????????,
??? 13?? ?????? 2010 (?? 2010, L 189, ?. 1, ??? ????: ?????? 2006/112).

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ???????, ??????, ???
Siemens Gamesa Renewable Energy România SRL, ????? Gamesa Wind România SRL (???
????: Gamesa), ???, ????????, ??? Agen?ia Na?ional? de Administrare Fiscal? – Direc?ia
General? de Solu?ionare a Contesta?iilor (?????? ?????????? ?????????? ?????????? –
?????? ?????????? ?????????? ???????, ???????) ??? ??? Agen?ia Na?ional? de
Administrare Fiscal? – Direc?ia General? de Administrare a Marilor Contribuabili (??????
????????? ?????????? ?????????? – ?????? ?????????? ?????????? ?????????? ??????????????
????????? ??????), ??????? ?? ?? ??????? ??? Gamesa ?? ??????? ???
????????????? ??? (???) ??? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????????? ???
????????? ??? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???

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

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

3 ?? ?????? 1 ??? ?????? 2006/112, ??? ?????????????? ??? ?????? ??? I, ? ??????
?????????? «?????????? ??? ?????? ??????», ????????, ??? ?????????? 2, ??????
??????, ?? ???:

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

4 ?? ?????? 9, ?????????? 1, ??? ?????? ?????? ??? ?????? ?? ???:

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

?? “????????? ?????????? ???” ?????????? ??? ?????????????? ??? ??????????, ???
????????? ? ??? ?????????? ?????? [...] ?? ?????????? ?????????????? ??????????, ???,
? ?????????? ??? ?????? ???, ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????»

5 ?? ?????? 167 ??? ?? ????? ?????? ??? ?????? ?? ???:

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

6 ?? ?????? 168 ??? ????? ??????, ??? ?????????????? ??? ?????? ??? X ? ??????
?????????? «?????????», ??? ?? ???:

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

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

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

[...]».

7 ??? ?? ??? 178 ??? ?????? 2006/112:

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

?) ??? ??? ?????????? ??? ?????? 168, ??????? ?, ??????, ??? ?????? ???
????????? ?????? ??? ??? ?????? ??????????, ?? ?????? ??????????, ?? ?????? ???
?????? ?????? ?? ?? ?????? 3 ??? 6 ??? ?????????? 3 ??? ?????? XI,

[...]».

8 ??? ?? ??? 179, ?????? ??????, ??? ?????? ??????:

«? ?????? ?????????? ??? ?? ?????????? ??? ?????? ??? ?????? ?? ??? ????????, ??? ?? ??????????
???? ?? ??? ?????? ??? ?????????? ??? ?? ?????????? ??? ???????, ??? ?????????? ?????? ??? ??,
??? ?? ??? ?????? ?????????? ??? ?????????, ??????? ?? ?? ?????? 178, ?? ?????? ??????????,
???? ?? ??? ?????? ??? ?????? ??????»

9 ?? ????? 213, ?????????? 1, ?????? ??????, ??? ?? ??? ?????? ?????? ?? ????:

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

10 ?? ????? 214, ?????????? 1, ??? ?????? ?????? ?????????? ?? ????:

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

?) ??? ?????????? ???, ?????? ??? ?????? ??? ?????????? ??? ?????? 9, ??????????
2, ? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????????? ?????? ? ??????
????????? ??? ?? ??? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ??? ??
????? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ?????????? ??? ??
????? ?????????? ??? ?????? ?????????? ??? ?????? ?????? 194 ??? 197 ??? ?? ??? 199,

[...]».

11 ?? ????? 250, ?????????? 1, ??? ?????? 2006/112 ?????? ?? ???????:

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

12 ?? ????? 252 ??? ?????? ?????? ?????????????? ?? ????:

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

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

??????, ?? ?????? ??? ?????? ?? ?????????? ??? ?????????? ?????????? ??? ???????, ?? ??? ??????????
?? ??? ?????????? ?? ??? ????»

13 ??? ?? ????? 273, ?????? ??????, ??? ?? ??? ?????? ??????:

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

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

14 ?? ????? 11, ?????????? 1bis, ??? Legea nr. 571/2003 privind Codul fiscal (?????
571/2003 ??? ?????????? ????), ??? 22? ?????????? 2003 (*Monitorul Oficial al României*,
????? I, ????. 927, ??? 23? ?????????? 2003), ??? ?????? ??? ?????? ??? ?????? ??? ??????????
????????? ??? ?????? ??? (??? ????: ?????????? ????), ?????????? ?? ????:

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

15 ?? ????? 147bis, ?????????? 2, ??? ?????? ??? ?????? ?????? ?? ????:

«??? ??? ?????????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????????
????????? ??? ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
??? ?????? ?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? 146, ?
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????
?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?? 1? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?????????».

16 ?? ????? 153, ?????????? 9, ??? ?? ??? ?????? ?????? ?? ????:

«?? ?????????? ??????????? ?????? ??????? ?? ?????????? ??? ?????????????? ??? ??
?????? ???, ???? ?? ?????? ?????, ??????, ?????, ???? ?????????? ??? ?????????? ???, ?
????????????? ?????? ??? ?????? ?????????????? ?? ?????????? ??? ?????? ? ??? ?????? ??
????????? ?? ??????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? . ???????, ??
????????? ??????????? ?????? ?????? ?????????? ?? ?????????? ?????????????? ??? ???????????????
??? ?? ?????? ???, ???? ?? ?????? ???, ???? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????????? ??? ?????? ?????? ?????? ?????????? ?????????????? ???, ???? ?? ???
11, ???? ??? ?? ?????????? ?????????? ?????????????? ???, ??? ?????? ?????????????? ???
????????? ??????, ??????? ?? ??? ????. ? ?????????? ?????????? ?????????? ??? ?????? ???
????????? ?????????????? ??????. ???? ?? ?????????? ??? ?? ?????? ???, [?? ??????
????] ?????????????? ?? ?????????? ??? ?????????? ?????????? ?????? ?????? ?????????? ???
????? ???, ?????? ? ?????????? ??? ?????? ??? ?????????? ?????, ?????? ??? ?????????? ???
????????? ?? ?? ?????? ?????????? ??? ?????? ??? ?????????? ?????????? ???, ??? ?????????? ???
152, ?? ?????????? ??? ?????? ??? ?????? ?????????? ???»

17 ?? ?????? 158ter ??? ?????? ?????? ?????????? ?? ????:

«1. ??? 1?? ?????????? 2010 ?????????? ??? ???????????, ??? ?????? ??????????
????????????? ???????????, ?? ?????? ??? ?????????????? ?????? ??? ?????? ???????????????
????? ?? ??????????? ??? ?????? ??? ?? ?????????? ??? ?????? ??? ?????? ?????? ???
????????????? ?????????????? ???, ????:

a) ?????????????? ?????????? ??? ?????? ??? ?????????????? ??? ?????????? ???
?? ?? ??? 132, ?????????? 1, ??????? a, ??? ?????????? ??? ?????? ??? ?????? ??? ??
????? 143, ?????????? 2, ??????? a ?? d?

b) ?????????????? ?????????? ??? ?????? ??? ?????? ?????????? ?????????? ???
????????????? ??? ?????? 132bis, ?????????? 5, ?? ?????? ?????????????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????????? ?? ?????????? ?????? ??? ?????? ??? ?????? ?
??? ??????????

c) ?????????????? ??? ?????? ??? ?????? -??? ?????????? ??? ?????????? ???
?? ?? ??? 133, ?????????? 2- ??? ?????????? ??? ?????? ??? ?????????? ???
????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???, ???
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

d) ?????????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? 132bis?

e) ?????????????? ??? ?????? ??? ?????? -??? ?????????? ??? ?????????? ???
?? ?? ??? 133, ?????????? 2- ??? ?????????? ??? ?????? ??? ?????? ?????????? ???
????? ?????????? ??? ?????? ???, ?????????? ??? ?????? ??? ?? ?????????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
153 ? ?? ?????? 153bis, ??? ?????????? ??? ?????? ??? ?? ?????????? ??? ?????? ???
????????????? ??? ?????? ???, ??? ?????? ??? ?????? ? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? 150, ?????????? 2.

[...]

3. ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?? ?????? 153

??? ??? ?????? 153 bis ?????????? ?? ??????? ??? ??????? ??? ?????? ??? ?????? ??????????????????
??????, ??? ??????????? ?? ??????? ?? ??? ? ?????????????? ??? ??? ?????????????? ??? ??? ??????????????
????????????? ??? ?????????????? ??? ?????????? 1, ??? ??? ?? ??? ??? ??? ?? ?????????? ??? ??
???? ??????????.

[...]

10. ?? ?????? ?????????? ?????? ?????????? ?????????? ?????????????? ??? ?? ?????? ???
????????????? ????:

a) ?? ?????????? ??? ?????? ?????? ?????? ??? ?? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????????????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ??? ??????????
????????? ??? ?????? ?? ??? ???

[...]».

18 ?? ?????? 78bis, ?????????? 5, ??? ordonan?a Guvernului nr. 92/2003 privind Codul de
procedur? fiscal? (????????????? ?????????? 92/2003 ??? ?????? ??????????????
????????????), ?? ?????? ??? ??? ?????? ??? ?????????? ?????????????? ??? ?????? ???,
????? ??? ????:

«?? ?????????? ??? ?????? ?????? ?????? ? ?????????? ??? ?????? ?????????? ??? ?????? ???
????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
11, ?????????? 1bis ??? 1ter, ??? ?????? 571/2003 ??? ?????????? ??? ??????, ???
????????????? ??? ?????????????, ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????????:

a) ??? ??????, ??? ?? ??????? ??? ?????? ?????????? ??? ??????, ??? ?????? ??? ??
????????????, ??? ?????????????? ??? ??? ???, ?????? ?? ??? ?????? ??? ??????????

b) ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????????? ???

c) ?? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ? ??? ?????? ??? ?????????? ??? ?????? ???.

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

19 ? Gamesa, ?????? ?????????? ?????? ?? ??? ?? ?????????? (?????????), ??? ??
????????? ?????????? ?? ??? ?????????? ??? ?????????? ??? ?? ??? ?????????? ??? ??
????????? ????.

20 ??? ??? ?????? ??? ?????????? ??? ?????????????? ??? ?????????????? ??? ??????????
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
? Gamesa ?????? ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ??? ??? ?????? ??? ?????? ???.

21 ??? ??? 7 ?????????? 2010 ??? ??? 24 ?????? 2011 ? Gamesa ?????????? ??????????
????????????? ??? ?????? ??? ?????? ??? ?????? 11, ?????????? 1bis, ??? ?????????? ??? ??????,
??? ??? ??? ??? ??? ?????? ??? ??????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

22 ??? ??? 26 ?????????? 2014 ??? ??? 29 ?????? 2015, ? ?????????? ?????? ??? ?????? ??

???????????? ?????? ??? ??? ??????????? ??? ??????????? ??? ??? ?????? ??? ??? ??? ??? ???
???? ?????? ?? ??? ??? ??????????? ??? ?????????????????? ??? ??? 15 ???? 2009
??? ??? 31 ?????????? 2013. ?????? ??????? ?????????????? ?????? ??? ?? ??? ?????? ??????,
????????????? ??? Gamesa ?????? ??????? ?????? ?? ??? ?????? ??? ??? ?????? ??????????????
?? ??????? ??? ??????? ??? ??? ?????? 3 875 717 ?????????? ??? (RON) (?????? 890 000
????) ??? ??? ?????????? ?????? 2 845 308 RON (?????? 654 000 ???), ??????,
????? ????, ??? ??? ?????? ?????? ?????? ??? ??? ?????? ??? ?????? ?????? ?????????????? ???
????????? ??? ?????? ??? ?????? ??? ??? ?????? ??? ?????? ?????? ??????.

23 ?? ??????? ??? ?????? Gamesa ??? ?????? ??? ??????????? ??? ?????? ?????? ??????
?????????? ?? ??? ??? 15 ?????????? 2015 ?????? ??? ?????? ?????? ?????????? ??????????
????????? – ?????? ?????????? ?????? ??????.

24 ?? ??????? ??? ?????? ??? 10 ?????? 2016, ? Gamesa ?????? ??????? ???
?? ?????? ?????? ?????? – ?????? ?????????? ?????????? – ?????? ?????????? ??????????
????????? ??? ?????? ?????? ?????? ?????? ?????? – ?????? ?????????? ??????????
????????? ?????? ?????????? ?????? ?????? ?????? ?????? Curtea de ?pel Bucure?ti
(?????? ?????????? ?, ??????). ?????, ?????, ?? ?????? ?????? ??? ??????
????????? ???, ??? ?? ?????? ??? ?? ?????? ? ?????????? ?????? ?????? ?? ???
????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? 3 875 717 RON (?????? 890 000
????) ??? ?? ?????? ?????? ??? 15? ??? 2009 ??? ??? 31? ??? ?????????? 2013
??? ??? ?????? ?????? 2 845 308 RON (?????? 654 000 ???), ?????? ???,
??????, ??? ?????? ??? ??? 15 ?????????? 2015 ?????? ??? ?????? ??????????
????????? ?????? – ?????? ?????????? ?????? ?????? ??? ?????? ???.

25 ?? ?? ??????? ??? ?????? ???, ? Gamesa ?????? ?????? ??? ??????????
???? ?? ?????? ??? ?????? ??? ?????????????? ??? ??? ??? ?????????? ???
??, ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ??? ?????????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ???.
?? ?? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??? ?????? ???
?????????.

26 ??? ?? ??????? ???, ?? Curtea de Apel Bucure?ti (?????? ??????????)
????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????????? ??
????????? ?????????? ??????:

«1) ?????????? ? ?????? [2006/112] (????? ?? ?????? 213, 214 ??? 273), ??? ??????????
???? ?? ??? ?????? ???, ?? ?????? ?????? ? ?????? ??? ?????????? ?????? ??? ?? ???
????? ? ?????????????? ??? ?????? ?? ?????? ?????? ?????? ??? ?? ??? ?????? ?? ??? ?? ???
????????? ?????? ??? ?????? ??? ?????? ?????????????? ??? ?????? ?????? ?????? ?????? ???
??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ???
????????? ???;»

2) ?????????? ? ?????? [2006/112] (????? ?? ?????? 213, 214 ??? 273), ??? ??????????
???? ?? ??? ?????? ???, ?? ?????? ?????? ? ?????? ??? ?????????? ?????? ??? ?? ???
????? ? ?????????????? ??? ?????? ?????? ?????? ?????? ???, ??? ?????? ??? ?? ??? ?? ???
????????? ?????? ??? ?????? ??? ?????? ?????????????? ??? ?????? ?????? ?????? ?????? ???
??? ?????????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????????????? ??? ?????? ?????? ?????? ?????? ??? ???
????????? ???, ?????? ?????? ??? ?????????????? ??? ?????? ?????? ?????? ??? ???
????????? ??? ?????? ?????? ??? ?????????????? ??? ?????? ?????? ??? ??? ???;»

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27 ?? ?? ?????????????? ?????????? ???, ?? ?????? ??????? ?? ?????????? ?? ????????, ??
?????? ?????????? ???, ?? ?????????????? ?? ? ?????? 2006/112, ?? ?????? ?? ?????? 213,
214 ?? 273 ?????, ??? ?? ?????? ??? ?????????? ?? ?????????? ?? ????????, ??? ?? ??????
???? ??????? ?? ?????? ???, ? ?????? ?????????? ?? ?????????? ?? ?????????? ?? ??????? ?? ??????? ??
????????? ?? ??? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??

29 ????? ????? ?????????????? ??????? ?? ???????????, ?? ?????????? ??? ?????????? ??
????? ?????????? ??? ????? 167 ?. ??? ?????? 2006/112 ??????? ?????????? ???
??? ?????????? ??? ??? ??? ??? ??? ??????, ???????, ?? ???????????. ??????????, ??
????????? ??? ?????????? ??????? ??? ?? ?????? ??? ?????? ??? ????? ?????????? ???
?????? ?????? (?????? ?? 19?? ??????? 2017, Paper Consult, C?101/16,
EU:C:2017:775, ????? 36 ??? ????? ?????????? ??????????).

30 ?? ??????? ?? ?????????? ?????????????? ?????????? ?? ???? ?????????????? ?? ???? ??
????? ?? ???? ?? ???? ?????????? ? ?????????????? ?? ???? ?????? ?? ???? ?????????? ?? ???? ??????????????
???. ?? ?????? ??????? ?? ???? ?? ?????????????? ??????? ?? ???? ?????????????? ?? ???? ??
?????????? ?????????? ?? ???? ?? ?????????????? ??????????????, ?????????????? ?? ???? ?? ???? ?
?? ???? ?????????? ?? ???? , ?? ???? ?????????? ?? ???? ?? ?????????????? ?????? ??????????
????????? ?? ???? (?????? ?? ???? 19?? ?????????? 2017, Paper Consult, C?101/16,
EU:C:2017:775, ?? ???? 37 ?? ???? ?????????????? ??????????).

31 ??????????, ?? ??????? ?????????? ??? ?? ?????????? ??? ?? ?????? ???.
????????????? ?? ???? ?????? ?????????????? ? ??????????.

32 ????? ?????? ??? ?????????????? ?????????????? ? ??????????????, ??? ?? ????? 168, ??????????
??, ??? ??????? 2006/112 ?????????? ???, ??? ?? ?????? ??? ?????????????? ???????????,
???????, ? ?????????????????? ??????? ?? ?????? «????????????? ??? ?????» ??? ?? ??????? ???
?? ????? ??????? ???, ???????, ?? ?????? ? ?? ?????????? ??? ?????????????? ??? ???????????
??? ?? ??? ????? ??????????? ??????? ?? ?????????????????? ?? ??? ?? ??????? ??? ?? ???????????
???? ?? ??? ??? ?? ??????? ??? ?????? ??? ?????????????? ??????? ???, ?? ??????? ??? ???????,
?? ?? ??? ?????? ? ?????????? ??????? ?? ?????????? ??? ?????????????? ??? ??????????? ??? ??
(??????? ??? 19?? ?????????? 2017, Paper Consult, C?101/16, EU:C:2017:775, ??? 39).

33 ????? ?????? ??? ????? ?????????? ??? ?????????????? ???????????, ? ?????? ?????????? ??
??? ?????? ??????? ?????????? ?????????????? ? ??????????????, ?? ????? 178, ?????????? ??, ??? ??????
2006/112 ?????????? ??? ? ?????????????? ??? ????? ?????????? ?? ?????????? ?????????? ??????????
????????? ?? ?? ????? 220 ??? 236 ??? ?? ????? 238 ??? 240 ????? (????????? ??? 19??
????????? 2017, Paper Consult, C?101/16, EU:C:2017:775, ??? 40).

34 ????? ???? ???????????, ? ?????????????? ??? ?????? ?????????????????? ??? ??? ?????????? ??
????????? ? ?????? ??????? ?? ?????????????? ?? ?????????????? ?????????????????, ?????? ??? ?? ??
????????????? ??? ?????? ?????????????? ?? ?????????? ?????????? ?????? ??????????????
(????????? ??? 28?? ??????? 2016, Astone, C?332/17, EU:C:2016:283, ????? 45, ??? 19??
????????? 2017, Paper Consult, C?101/16, EU:C:2017:775, ????? 41, ??? ??? 26?? ??????????
2018, Zabrus Siret, C?81/17, EU:C:2018:283, ????? 44).

35 ???????????, ? ??????? ?????? ?????? ?????????????? ?????? ??? ?? ?????????????? ???
????? 214 ??? ??????? 2006/112 ??? ? ?????????? ??? ?????????????? ??? ?????? ??? ??
????? ??? ??????, ?? ??????? ??? ?????? ??? ?????? ??? ?????????????? ???, ??? ??????????
??? ????? 213 ??? ??????? ????, ?????????? ??? ?????? ?????? ?????? ?????????? ??? ??
????????? ??????, ?? ?????? ??? ?????? ?? ?????? ?? ??????, ?????? ???, ??
????? ?????? ???, ?????? ???, ?????? ?????????? ?? ?????????? ?????????? ??? ??
????? ??? ?? ??? ????? ?????????? (????????? ??? 9?? ?????? 2015, Salomie ??? Oltean,
C?183/14, EU:C:2015:454, ??? 60, ??? ??? ??? 7?? ?????? 2018, Dobre, C?159/17,
EU:C:2018:161, ??? 32).

36 ???????, ? ?????????? ????? ?? ?? ???? ?????? ?? ?????????? ?? ??????? ?? ???????
????? ?? ?? ???? ??????? ?? ?? ???? ?????? ?????? ?????? ?????? ?????? ?? ?? ????
????? ?????????? ?? ?? ???? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????????? ??? (????????? ??? 21?? ?????????? 2010, Nidera Handelscompagnie,
C?385/09, EU:C:2010:627, ??? 51, ??? ?? ?? ?? ?? 2018, Dobre, C?159/17,
EU:C:2018:161, ??? 33).

37 ??????????, ?? ?????????? ??? ????? ?????? ??? ? ?????????????? ??? ?? ?????????? ??????????
????? ?? ?????????? ??? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????????????? ??????? ?? ??? ?????
??? ?????????? ??????? ?? ?????? ?????? ?????????? ?????? ?????????? ??????? ?? ??? ?????? ??????????
?????? ?? ?? ?????????? ??? ?????? ??? ?????????? ?????? ?????????? ?????? ?????????? ??????? ?? ??? ?????
??????????, ??????? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????? ?????? ??? ?? ???????????,
????? ?????? ???????????, ??????? ? ?????? ?????????? ?????? ?????? ?????? ?? ?? ?????????? ???
????????? (????????? ?? 9?? ?????? 2015, Salomie ??? Oltean, C?183/14, EU:C:2015:454,
????? 63, ????? ?? ?? 7?? ?????? 2018, Dobre, C?159/17, EU:C:2018:161, ????? 34).

38 ????? ??????? ?????????? ?? ??? ?????? ?? ? ?? ?????? ??? ?????? ?????? ?????
????????????? ??? ?? ?????????? ?? ?????????? ? ?? ?????????? ? ?? ?????????? ?????? ???
????????? ??? ?? ?????????? ?????????? (????????? ?? 28?? ?????? 2016, Astone,
C?332/15, EU:C:2016:614, ??? 46, ??? ??? ?? 7?? ?????? 2018, Dobre, C?159/17,
EU:C:2018:161, ??? 35).

39 ???????, ?????? ?????????????? ??? ?????????????? ?????????? ?????? ?????? ??
????????????? ??? ?????????????? ?????? ?????????? ??? ?? ???? ?????? ??????????
????? ? ?????????? (????????? ??? 19?? ?????????? 2017, Paper Consult, C?101/16,
EU:C:2017:775, ??? 43, ??? ??? 7?? ?????? 2018, Dobre, C?159/17, EU:C:2018:161, ???
36).

40 ?? ???????????, ??? ??? ??????? ??? ?????????????? ??????????? ???, ??? ??? 7
????????? 2010 ??? ?? 24 ????? 2011, ? Gamesa ?????????? ?????????? ??????????????,
??? ??? ??? ??, ??? ?? ?????????? ??? ?????????????? ??????????, ??? ??? ??? ?????? ????
??? ??? ??????? ?? ??? ??????? ?????????? ?????????? ??? ?????????? ? ??????. ??????,
??? ??? 25 ????? 2011, ?????????? ?? ??? ????? ?????? ??? ??? ?????????? ??? ??????
????????? ?????? ???.. ??? ??? ?????????????? ???, ?????? ?? ?????????? ??? ?? ???
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41 ?????????????? ??? ? ?????????? ??? ???? ???? ?????????????? ? ?????? ??? ?
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42 ??? ?? ?????????? ??? ?????????? ???, ?????? ?? ?????????????? ?????????????? ???
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???? ?????? ??? ?????????? ?????? ? ??????????????, ?????? ?????????????? ??
????????? ??? ??? Gamesa ?????? ?? ?????????? ?? ?????????? ??? ?????????? ??? ??? ?????
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????????? ???.

43 ?????????? ??? ?????? ?????????? ?? ??????????, ?????? ????, ?? ? ??????????
???? ??? ??? ?????? ??? ?? ?????????? ?????? ??? ?????????????? ??? ?????????? ??
????????? ?????????? ??? ?????????? ?????? ?????????? ??? ?????????? ??? ?????????? ??
Gamesa ??? ??? ??? ??????, ?????????? ??? ??? ?????????? ??? ?????????? ??? ???
????????? ??? ??????????.

44 ?????????? ??? ?????? ??? ?????? ??????, ? ?????? 2006/112, ??? ?????? ?? ??????
213, 214 ??? 273 ????, ??? ??? ?????? ??? ?????????? ?? ?????? ??????, ??? ?
????????? ??? ?????? ??? ?????? ????, ? ?????? ?????????? ?? ?????? ?????????? ???
????????? ?? ?????????? ??? ?????? ??? ?????? ?? ?????? ??? ?????????? ??? ?????????? ???
??? ?????? ? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??????, ??? ?????????? ???
????????? ?????????? ??? ??????, ?? ?????? ?????? ??? ?????? ??? ??? ??? ?? ??? ???
???? ?????? ??? ??? ?????????? -? ?????????? ??? ?????????? -? ??? ???
????????????? ??? ?????? ?????????? ???, ??? ??? ??? ??? ?????? ??? ???
????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???, ??? ??
????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ??????????.

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45 ?????????? ??? ? ?????? ?????????? ??? ???? ???? ?????? ?????????? ??? ?????? ???
??? ?????????? ?????????????? ??? ?????? ?????? ?????? ??? ?????????? ?????????? ?, ?' ????
????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ?????? ??????????
???? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

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

? ?????? 2006/12/? ? ? ??????????, ?? 28?? ???????? 2006, ?????? ?? ? ? ????
?????? ???? ?????????????? ????, ??? ?????????????? ?? ??? ?????? 2010/45/??
?? ??????????, ?? 13?? ?????? 2010, ?? ?????? ?? ?????? 213, 214 ?? 273 ????,
??? ?? ?????? ?? ?????????? ?? ?????? ??????, ??? ? ?????? ??? ????????
?? ?????? ??????, ? ?????? ?????????? ?? ?????????? ??? ? ?????????? ??
????????? ??? ???? ?? ?????? ?? ?????? ?? ?????? ??? ?????????? ??? ?????????? ???
????? ? ?????? ?????????? ??? ?????? ?? ?????? ??????????, ??? ?????????????? ???
?? ?????? ?????????? ??? ?????? ?? ?????? ?????????? ??? ??? ?? ?? ?? ??
???? ?????? ??? ?????? ?? ?????? ?????????? -? ?????????? ??? ?????????? ???
?? ?????? ??? ?? ?????? ?????? ?????????????? ?????? ??? ?????? ??? ?????? ???
?????????????, ?? ?? ?????????? ?????????????? ?????????? ??? ?????????? ??? ?? ??????????
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(?????????)

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