

62019CJ0346

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??? 17?? ?????????? 2020 (*1)

«????????????? ?????????? – ????? ?????????????? ????? (???) – ?????????? ??? ?? – ??????
2008/?? – ????? 8, ?????????? 2, ??????? ?? – ????? 15 – ?????????? ?? ??????? ??
????????? – ?????? ??????????»

???? ?????? C?346/19,

?? ?????????? ?????? ?????????????? ?????????? ??????? ??? ?????? 267 ????, ???
?????? ?? Bundesfinanzhof (????????????? ?????????? ??????????, ?????????) ?? ??????
?? 13?? ?????????? 2019, ? ????? ??????? ??? ?????????? ??? 2 ?????? 2019, ???
?????? ??? ???

Bundeszentralamt für Steuern

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Y?GmbH,

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

????????? ??? ??? M. Ileši?, ?????? ???????, E. Juhász (????????) ??? I. Jarukaitis,
???????,

?????? ??????????: E. Tanchev

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

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

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

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? Y?GmbH, ?????????????? ??? ??? G. Thurmayr, Steuerberater, ??? ??? S. Ledermüller,
Steuerberaterin,

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? ?????????? ????????, ?????????????? ??? ??? J. Möller ??? ??? S. Eisenberg,

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? ?????????? ????????, ?????????????? ??? ??? J. Jokubauskait? ??? ??? R. Pethke,

?????? ??? ?????????? ??? ?????, ??? ?????? ??? ?????? ?????????? ???????????, ?? ?????????? ???
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1

? ?????? ?????????????? ?????????? ??? ?????????? ??? ?????? 8, ?????????? 2,
????????? ?, ??? ??? ?????? 15 ??? ?????? 2008/9/?? ??? ??????????, ??? 12?
????????? 2008, ??? ??? ?????????? ?????????? ?????? ??? ?????? ?? ??? ?????????? ???
????? ?????????? ????, ??? ?????????? ??? 2006/112/??, ?? ??????????
??? ??? ???? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????? ???
????? ??? (?? 2008, L 44, ?. 23), ??? ?????????? ?? ??? ?????? 2010/66/?? ???
?????????, ??? 14? ?????? 2010 (?? 2010, L 275, ?. 1) (??? ????: ?????? 2008/9).

2

? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??? Bundeszentralamt für
Steuern (????????? ?????????? ?????????? ???, ??????) ??? ??? Y?GmbH,
?????? ?? ??? ?????? ?????????? ??? ?????? ?????????? ??? (??) ??? ?? ???
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? ?????? 2006/112

3

?? ?????? 170 ??? ?????? 2006/112/?? ??? ??????????, ??? 28? ?????? 2006, ??????
?? ?? ?????? ?????? ??? ?????? ?????????? ??? (?? 2006, L 347, ?. 1), ??? ??????????
?? ??? ?????? 2008/8/?? ??? ??????????, ??? 12? ?????? 2008 (?? 2008, L 44, ?. 11)
(?? ????: ?????? 2006/112), ?????????? ?? ???:

«????? ?????????? ??? ?, ? ?????? [...] ??? ?????? ?????????????? ??? ?????? ???
????? ?????????? ??? ?????? ??? ?????? ? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?
????????? ?????????? ??? ??? ??????:

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?????? ? ?? ?????? 169,

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?????? ? ?? ?????? ?????? ?????? ??? ?????? ?????? ?????????????? ? ?????? ?? ?
????? ??? ?????? ??? ?????? ?? ?? ??? 194 ??? 197 ??? ?? ??? 199.»

4

????? ? ?? 171, ?????????? 1, ??? ? ? ? ?????:

«? ?????????? ??? ? ? ?????? ?????????? ??? ???, ??? ? ? ? ?????? ?????????????? ???
????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

?????????????? ?? ????, ???? ????, ??????????????????? ?? ????, ???? ?????? ??????,
?????????????????? ????, ????, ????, ????, ????, ????, ????, ????, ????, ????, ????, ????, ????,
?????, 2008/9/??..»

5

?? ?????? 178, ??????? ??, ??? ? ???? ?????? ?????????? ???, ??? ? ???? ? ? ???????????
????????? ??? ?????????? ?????????, ? ?????????? ??? ???? ??????, ??? ???? ????
????????? ??? ???? ??? ???? ?????? ?????????, ?? ?????? ?????????? ?? ?????? ???
????????? ?????? ?? ??? ?????????? ??? ?????? XI, ?????? 3, ?????? 3 ??? 6, ???
?????? ????.

6

?? ?????? 226 ??? ?????? 2006/112, ?? ?????? ?????????????? ??? ?????? 4 ??? ?????? 3
??? ?????? XI ?????, ??? ? ? ????:

«?? ??? ?????????? ??? ?????? ?????????? ??? ?????????????? ??? ?????? ?????? ??????, ??? ?
????????? ?????????? ??? ?????? ?????????????? ??? ?????? ?????? ??? ???, ??? ?????? ???
????????? ??? ?????????? ???' ?????? ??? ?????????? ??? ?????? 220 ??? 221:

[...]

2)

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

[...]».

? ?????? 2008/9

7

?? ?????? 1 ??? ?????? 2008/9 ?????? ?? ????:

«? ?????? ?????? ?????? ?????????? ??? ?????????????? ?????? ?????? ?? ??? ?????????? ???
[??] ??? ?????????? ??? ?????? 170 ??? ?????? [2006/112]».

8

?? ?????? 2 ??? ?????? ?????? ?????????? ?? ????:

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

[...]

5.

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

9

?? ?????? 3 ??? ??????? 2008/9 ?????????? ?? ????:

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

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

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

i)

?????? ?????????? ?????????? ??? ??????? ??? ?????? ??????????, ??? ??????????????
?????? ??? ?????? 144, 146, 148, 149, 151, 153, 159 ? 160 ??? ?????? [2006/112]?

ii)

????????? ?????? ??? ?????? ?????????? ?? ??????? ??? ?????? ?????????? ??????????
????? ?????????????? ??? ?????? ??????? ?? ?? ????? 194 ??? 197 ??? ?? ????? 199 ??? ??????
[2006/112].»

10

???? ?? ????? 5 ??? ?? ??? ??????:

«???? ?????? ?????? ??????????? ?? ??? ?????? ??????????? ??? ??? ?? ?????????????? ??? ???
????? ?????????? ??? ??? ?????? ?????????????? ??? ??? ?? ?????? ?????????? ??? ???
??? ?????????? ??? ?????????? ??? ?????????????? ?? ?????? ??? ?????? ?????????????? ???
???? ??? ?? ??? ?????? ?????? ??? ??? ??? ?????? ?????? ??? ?? ??? ?????? ?????? ???,
?????? ?? ?? ??? ?????? ??? ?????????? ?????????????? ??? ?????? ??? ?????? ??? ??????
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?????? ??? ??????????? ??? ?????? 169 ??????? ?) ??? ?) ??? ?????? [2006/112]?

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?????? ??? ??????????? ?? ?????? ?? ??? ?????? ?????? ?????? ?????? ?????? ??????
????????????? ??? ?????? ??????? ?? ?? ????? 194 ??? 197 ??? ?? ????? 199 ??? ??????
[2006/112], ??? ??????????? ??? ?????? ?????? ?????? ???????????.

? ? ?????????? ??? ?????? 6, ??? ?? ?????? ??? ?????????? ???????, ? ?????? ?????? ????
????????? ??? ?????? ??? ??? ?????? ?????????????? ??????? ?? ??? ?????? [2006/112],
???? ?????????? ??? ?????? ?????? ?????? ???????????.»

11

?? ?????? 7 ??? ?????? ???????? ?????????? ?? ????:

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

12

?? ?????? 8, ?????????? 2, ??? ?????? 2008/9 ?????? ?? ????:

«????? ??? ?????????? ??? ?????????????? ??? ?????? ?????????? 1, ? ?????? ?????????? ?????? ??
?????????????, ??? ??? ?????? ?????? ?????? ?????????? ??? ??? ?????? ?????????? ? ??????????
?????????, ?? ?????? ??????:

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?? ?????????? ??? ?????????? ??????????, ??? ?????? ?????? ?????? ?????? ?????????????? ??????
??? ?????? ?????????? ?????????? ??? ??????????, ??? ?????? ??? ?????? ?????????? ??
????? ?????? ?????????? ?????? ?? ?? ?????? 239 ??? 240 ??? ?????? [2006/112]?

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?? ?????????? ??? ?????????? ??????????, ?? ?????? ??? ?????? ?????? ?????? ??????????
?????? ?? ?? ?????? 215 ??? ?????? [2006/112]?

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?? ??? ?????? ??? ?????? ?????????? ?????? ??? ?????? ?????? ?????????????? ??????, ?????????????? ???
5 ??? ?? ?????? ?????? ??? ?????? 6, ?????????? ??? ?????? ??? ?????? ?????????? ??????

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????? ??????????, ??? ?????? ?????? ??? ?????? ??? ?????????????? ?????? ??? ?????? 6,
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?? ??? ? ?? ?????????? ?? ?????? ?? ???? ??????, ?????????? ?? ?????? ?? ???
?????? ?? ???? 9.»

13

?? ????? 10 ??? ? ?? ?????? ?????????? ?? ????:

«?? ?????? ?? ?????? ?????????? ?? ??????, ?? ?????????? ?? ??? ?????? ?? ?????? 20 ?????????? ???????
?????????, ?? ?????? ?? ??? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????, ?? ??? ?? ???
?????? ??, ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ?? ???
????????????? ?? ?????? ?? ??? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ?? ???
????????????? 1000 ??? ? ?? ?????? ?? ??? ?????? ?? ??????. ?????? ?? ?????????? ?? ???
?????????, ?? ??? ?? ?????????? ?? ??? ?????? 250 ??? ? ?? ?????????? ?? ??? ?????????? ?? ???»

14

?? ????? 15 ??? ? ?? ?????? ?????????? ?? ????:

«1. ?? ?????? ?????????? ?????????? ?? ??? ?????? ?? ?????? ?? ?????????? ?? ??? 30
????????? ?? ??? ?????????? ?? ??? ?????????? ?? ??? ?????????? ?? ??? ?????????? ?? ??? ?????????? ?? ??? 30
????????? ?? ??? ?????????? ?? ??? ?????????? ?? ??? ?????????? ?? ??? ?????????? ?? ??? ?????????? ?? ??? ??
????????? ?? ??? ?????????? ?? ??? ?????? 8, 9 ?? 11.

[...]

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

15

????? ?? ????? 20 ??? ?????? ??????:

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

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

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

2. ?? ?????? ?????? ?????????? ?? ??? ?????? ?? ??? ?????? ?? ??? ?????? ?? ??? ?????? ?? ??? ??????

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

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

16

?? ?????? 61, ?????????? 1, ??? Umsatzsteuer?Durchführungsverordnung (?????????????
????????? ??? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??????????), ?? ??? ?????? ??
??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? 2012, ?????????? ??
?????:

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

17

?? ??? ?????? ??????????, ??? ?????????? 2, ??? «? ?????? ?????????? ?????????????? ???
????? ??? ?????? ??? ?????? ??? ?????????????? ?????? ??? ?????? ?????? ?????????? ? ??????
?????????»..

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

18

????? 29 ?????????? 2012, ? Y, ?????? ?????????????? ??? ?????? ???????, ?????? ???
????????? ?????????????? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ??? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????????? 2012, ??? ????
????????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ???.

19

??? ?????? ??? ?????????, ?? ?????? ?????????? ? Y, ?? ?????? ??? ?????????????? ??
????????? ?????????? ??? ???, ?? ?????? ??? ??? ?????? ?????? ?????????? ? ?? ?????? ???,
????????????? ??? ?????? ??? ?????????? , ??? ?????? ???, ? ?????? ?????????? ???
?????????.

20

? ???? ? ? 25? ?????????? 2013, ? ?????? ?????????? ?????????? ??? ?????? ???
??? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ???.

21

????? 8 ?????????? 2013, ? ? ?????? ?????????? ?????? ??? ?????? ??? ?????? ???
?????.

22

? ??????? ???? ??????????? ??? ?? ??????? ??????????? ??????????? ??? ?? ???????
??? ?? ?????????? 2014.

23

???? ??????????? ??? ??????????? ??? ????????, ? ??????? ??????????? ???????????
???? ??????? ??? ? Y ??? ?? ????? ??????? ??????? ????????, ??????? ?? ??? ???????
??? ???, ??? ?? ??????????? ????????, ??? ?? 30 ?????????? 2013.
??????, ? ??????? ??????????? ????????, ??? ?? ??????? ???, ??? ?? ??????? ??? ??
?? ?? ?? ??????????? ??????, ??????????? ??? Y ??? ?? ??????? ??????????? ???
?????????? ??? ?? ??????? ??? ?? ??????? ??? ?? ??????? ???????????.

24

????????? ??? ??????? ??? ?????????? ????? ?? ???????????, ?? Finanzgericht Köln
(????????? ??? ???????, ???????), ?? ??????? ??? 14?? ?????????? 2016,
????? ??? ?? ??????? ??? Y ?? ?? ???????, ???????, ??? ?? ???????, ??? ?? ???????, ???
?????? ??????? ??? ??????? ??????? ?? ???????, ??????? ??? ?????????????? ???????
????, ??????? ??? ??????? ??????????? ??? ??????????? ??? ?? ??????? ??? ?? ???????
?????????? ???, ???????, ??? ?? ??????? ??????? ??????????? ??? ?? ??????????? ???
????? ?????????? ??? ??, ??????? «?????????».

25

? ??????? ??????????? ??? ?????????? ??? ?????????? ??? Bundesfinanzhof (??????????
?????????? ???, ???????), ?????????????? ??? ?? ??????? ??? Finanzgericht Köln
(?????????? ???, ???????) ??????? ??? ?? 8, ?????????? 2, ??? 2008/9.

26

?? Bundesfinanzhof (?????????? ??? ?????????? ??? ??????????) ???????????, ???????, ?? ?
??? «?????? ??? ???????» ??? ?? 8, ?????????? 2, ??????? ??, ?? 2008/9
????? ?? ?????????? ??? ?? ??????? ??? ??????? ??? ??????? ?????????? ??????????? ?
????? ?????????? ?? ??????? ??? ??????? ???????????, ????? ?? ??? ??????? ??? ???????????.

27

??????, ?? Bundesfinanzhof (?????????? ??? ?????????? ??? ??????????) ??????????? ?? ?
???? ?? ??????????? ??? ?? ??????? ?? ?????????? ?? ?????????? ?? «?????? ???
?????????» ??? ?? 8, ?????????? 2, ??????? ??, ?? 2008/9 ??? ?? ??????? ??,
??, ?? ??????? ??? ??????? ???????, ????? ?? ????? ?????????? ??????? ???.
????????? ???????, ??????????? ??? ?? ???????.

28

?? ??? ??????, ??? ? Bundesfinanzhof (????????????? ??????????? ??????????), ??? ???.
??? ??? ?? ??????????????. ???????????, ??? ?? ?????? ??????????, «?? ??????????
??? ?????? 8, ?????????? 2, ??????? ??, ??? ?????? 2008/9 [...] ?????????? ??????, ???
?? ??????????, ??? ?????????? ?????? ?????????? ?????? ??????, ??? ?????? ?????? ??????????
???? [????????? ?????????? ?????????? ?????] ?? ?????????? ?????? ??? ?????? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??????.

29

?????????, ?? ?????? ?????????? ?????????? ???, ??? ??? ?????? ?? ??????????, ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??
????????? ??????????, ?????? ??? ?????????? ???, ??? ?? ?????? ??????????, ??????
????? ?????? ? ?????? ?????????? ??????, ??? ??? ?????? ??? ?????? 226, ?????? 2,
??? ?????? 2006/112. ????????, ??????, ??? ? ?????? ?????? ?????? ?????? ??????, ??????
????? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????????,
??? ?????? ??????.

30

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

31

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

32

?????, ?? Bundesfinanzhof (????????????? ?????????? ??????????) ?????????? ?? ???
?? ?????? ??? ?? ?????? ??? ?? ?????????? ??? ?????? ?????????? ?? ??? ?????? ???
????????????? ?????????? ???, ??? ?????? ?? ?????? ?????????? ?????????? ??? ???
????????????? ? ?????? «????? ??????» ??? ??? «????? ??????».

33

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

«1)

???? ?? ?????? 8, ?????????? 2, ??????? ??, ??? ?????? 2008/9 [...], ??? ?? ?????? ?
?????? ?????????? ?????? ?? ???????????, ?????? ?????? ?????????, ??? ?????? ???
??????????, ??? ??? ?????? ?????? ?????????? ??? ??? ?????? ?????????, ??? ?????? ???
????? ??? ? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????, ?
????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????,

??????????;

2)

?? ?????????? ?????????? ?????????? ??? ?????????? ??????: ?????????? ?????????? ???????
??? ?????????? ??????????, ??? ??? ?????? ??? ?????? 15, ?????????? 1, ??????
?????????, ??? ?????? 2008/9, ?????? ?????????? ??? ????? ?????????? ? ??????
????????? ?????????? ??? ?????? ??? ?????? ??? ??????????;

3)

??????, ??? ?? ??????? ??? ?????? ???????, ?? ?????? ?????? ?? ??????? ???, ??? ??
????? ??? ?????? ???????, ? ?? ?????????????? ??? ?????? ?????? ???????????
?????????? ??? ?????? ?????? ??????? ?? ???????, ??? ??? ?????????? ???
?????????? ??? ?????? ??? ?????? ?????????? ??? ??? ?????? ??? ??????? ??? ??????? ???
??????????, ??? ?????, ??? ?? ?????? ?????? ?????????????? ? ??????, ???, ?? ???
??????????, ??? ?? ?????? ?????? ??? ?????? ??? ??????????, ?? ?????????? ?????? ??????
?????????? ??? ??? ? ?????? ??? ?????????, ?????????? ?? ?????????? ?????? ?????
?????????? ??? ?????? ?????? ?????????? ?? ??????????;»

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

34

?? ?? ?????? ?? ?????? ?????????? ???????, ?? ?????? ?????? ?? ?????????? ???
??????, ?? ?????? ?????????? ???, ???' ?????, ?? ?????????? ?? ?? ?????? 8,
????????? 2, ??????? ??, ??? ?? ????? 15, ?????????? 1, ??? ?????? 2008/9 ??? ??
????? ???, ??? ?????? ?????????? ??? ??? ?????? ?????????? ?????????????? ???
??????????, ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ??????????
???, ???????, ??? ?????? ?????? ??? ?????? ?????????, ? ?????????? ??? ???
?????? ?????? ?????????? ?????? ?? ?????? ??? ?????? ??? «???? ??????» ???
??? ?????? ??? ?????? 15, ?????????? 1, ??? ?????? 2008/9 ??? ?? ?????? ??? ??????
???.

35

?????????, ?????????????? ??? ?? ?????? 170 ??? 171 ??? ?????? 2006/112, ?????? ??? ??
????? 3 ??? 5 ??? ?????? 2008/9, ?????? ??? ?????????? ?????????????? ???
?????????? ?????????? ??? ??? [?????? ??? 18?? ?????? 2020, ??????? ???
????????? (????????? ??? ??? - ???????), C?371/19, ?? ???????????, EU:C:2020:936,
????? 76].

36

??????, ?? ?????????? ??? ?????????????? ??? ?? ?????? ??? ?????????? ??
?????? ?????? ?????????? ??? ?????? ?? ?????? ?????????? ??? ??? ?????? ?? ??????
?????? ???, ??? ?????????? ??? ??? ?????? 2008/9, ??? ?? ?????????? ???
??????????, ??? ?????? ??? ?????? ??? ?????? 2006/112, ?? ?????? ??? ??? ??? ???
?????? ??? ?????????? ??? ?????? ??? ?????? ??? [?????? ??? 18?? ?????? 2020,
?????? ??? ?????? (????????? ??? ??? - ???????), C?371/19, ?? ???????????,
EU:C:2020:936, ?????? 78 ??? ??? ?????????? ??????????].

37

?? ?????? 171, ?????????? 1, ??? ?????? 2006/112 ?????????? ?? «[?] ?????????? ??? ??
????? ?????????? ??? ?, ??? ??? ????? ?????????????? ??? ?????? ?????? ???
????????????? ??? ?????? ?????? ??? ?????????? ? ?????????? ?????? ??? ?????????????? ??
????, ??? ?????? ?????? ?????????????? ?? ??? ?????? ?????, ?????????????? ?????? ??? ?????????? ?? ??
????????? ?????? ?????????? ??? ?????????? ??? ?????? 2008/9/?». ??? ??? ??????
??, ? ?????? 2008/9 ?????? ?????? ?????????? ??? ?????? 2006/112 ?????????? ??
????????? ?? ?????????? ??? ?????????? ??? ?????????? ???.

38

????? ?? ?????? 15, ?????????? 1, ?????? ??????, ?????? ??????, ??? ?????? 2008/9, ?
????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ? ?????? ??? ?????? ???
?? ?????? ??? ?????? ?? ?????? 8, 9 ??? 11 ??? ?????? ???.

39

??????, ?????????? ??? ?????? ??? ?????? ??? ?????? 8, ?????????? 2, ???????? ??, ??
????? 2008/9 ?????????? ??? ? ?????? ??? ?????? ?????, ?????????????? ???
????? «????? ??????», ?????????? ?? ??? ??? ?????? ?????, ?????????????? ???
?????.

40

?? ?????? ???, ?????????????? ???, ?????????? ??? ?????????? ?????? ?????? ?????? ???
????? 2006/112 ??? ??? ?????? 2008/9, ??? ?????? ?? ?????? ?????????? ?????? ???
?? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??? ? ?? ??? ??????
????????????? ??? ??? ??? ??? ??? ??? ???.

41

??????, ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ???, ?????? ??????????????
?? ?????????????? ??? ?????? ?????? ???, ?? ?????? 226, ?????? 2, ??? ??????
2006/112 ?????? «????????????? ??? [...] ? ?????? ?????????? ?? ?????? ???
????? ????».

42

? ? ??????, ? ?????? ?????????? ??? ?????? ?????????? ??? ?????? 8, ?????????? 2,
????? ??, ??? ?????? 2008/9 ?????????? ?? ?????????? ?????? ? ?????? ? ??????
????????? ?? ?????????? ?? ?????????? ???.

43

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

44

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

?????????????? ???? ??????? ?? ??????????? ?????????????? ??? ???????????
??????????, ???' ??????? ?? ?????? ??? ?????????????? ??? ??? ?????????????? (??.,
???' ???????, ??????? ??? 21?? ??????? 2018, V?dan, C?664/16, EU:C:2018:933,
?????? 41 ??? 42).

45

???? ?? ?????????? ?? ???????????, ??????? ??? ?? ?????????? ??? ???????, ??
????????? ??? ?????????? ??????? ?????????? ??? ??????? ?????????????? ??? ???
??? ??????? ??????? ?????????? ???, ? ?????? ?????? ??? ?????? ?????? ?????? ???
????????????? ??? ?? ?????? ??? ??? ?????????? ? ?????????????? ??? ?????? ???
????????? ??? ?????????? ?????????????? ??? . ??? ??????????, ?? ?????? ?????? ???
????????? ?????????? ?? ??? ?? ?????????? ?????????? ??? ?????????? ??? ?????? ???
????????????? ?????????? ??? ?????? ??? ?????????? ?????????? ???, ??? ??? ??????????
??? ?? ?? ??? ?????????????? ?????????? ??? ???????, ?? ?????? ??? ??? (?????? ?? 2??
????? 2019, Sea Chefs Cruise Services, C?133/18, EU:C:2019:354, ????? 35 ??? ???
????????????? ??????????).

46

? ? ?????????? ??? ??????? ??, ?? ?? ??????, ??? ???????????, ?????????? ?????????????? ???
?? ?????????? ??? ?? ??? ?? ??????, ???????, ?? ??????????????. ?? ?????????? ???
????????? ??????? ??? ?? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ???
[?????? ?? 18?? ??????? 2020, ??????? ??? ?????????? (????????? ??? –
?????????), C?371/19, ?? ????????????, EU:C:2020:936, ????? 79 ??? ??? ??????????????
?????????].

47

? ?????????? ??? ?????? ??? ?????????????? ??? ?? ?????????? ?? ?????????? ? ?? ?????????????? ?
?? ?? ??? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ??????????????, ??? ?? ?? ??
????????? ??? ?????? ?????????? ?? ?????????? ?????????? ?????????? ??????????????
[?????? ?? 18?? ??????? 2020, ??????? ??? ?????????? (????????? ??? –
?????????), C?371/19, ?? ????????????, EU:C:2020:936, ????? 80 ??? ??? ??????????????
?????????].

48

?????????, ??? ?????????? ?? ??? ??????, ?? ?? ?????? ??? ?? ??? ??????
????????????? ??? ?? ?????????? ?? ?????????? ? ??? ?????????? ?????????? ???
????????? ??? ?????????? ?????????? [?????? ?? 18?? ??????? 2020, ???????
???? ?????? (????????? ??? ?? – ??????????), C?371/19, ?? ????????????,
EU:C:2020:936, ????? 81 ??? ??? ?????????? ??????????].

49

??????????????, ????, ??? ?? ?????? 20 ??? ??????? 2008/9 ??????? ??? ?????? ??????
?????????? ?? ???????, ?????? ?????? ??? ?? ?????????? ??? ?????????????? ??? ?????? ??????
?? ??????? ? ?????? ??? ?????? ?? ??? ?????? ?????????? ?????????????? ??? ?????????? ?????? ?
????? ??????, ?? ??????, ?????? ??? ?????????? ?????????? ?????? ??? ?????? ??? ?????? ?????? ?
??? ?????? ?????? ???????????????, ?????????? ??????????????, ?? ?????? ?????? ?????? ??
?????????? ?????? ?????????? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??
????????? ?????? ??? ?????? ??? ?????? ???.

50

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

51

???? ?????????? ????, ? ???? ??? ?????????????? ??? ? ???? ??? ?????????????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ?? ?????????? ??? ?
????? «???? ??????????», ???? ??? ?????? ??? ?????? 15, ?????????? 1, ??? ??????
2008/9, ??? ?? ?????? ?????? ??? ?????????? ??? ?????????? ?? ?????? 20, ?????????? 1, ???
?????? ???? ?? ?????? ?????? ?????????? ??? ?????????? ??? ?????????? ?? ?????????? ?? ??????????????
????? ?????????????? ??? ?????????????? ??? ?????????? ??? ?????????? [????. ?????? ???
18?? ?????????? 2020, ?????????? ??? ?????????? (????????? ??? ??? – ??????????),
C?371/19, ?? ??????????????, EU:C:2020:936, ??? 88].

52

?????????, ??? ?????????? ??? ?????? ???, ??? ?? ?????????? ? ??????????????
????????? ??? ???????, ?????? ?????????? ??? ?? ?????? ??? 18?? ?????????? 2020,
????????? ??? ?????? (????????? ??? ??? – ??????????), (C?371/19, ?? ??????????????,
EU:C:2020:936, ??? 74), ???? ???? ??? ?????????? ??? ?????????? ??? ?????????? ??? 10 ???
????????? 2008/9, ?? ?????????? ?? ?????? ??? ?????????? ??? ?????????? ?? ?????????? ??? ??????
??? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ???
????????? ???, ? ???? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??????.

53

??????????, ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ? ?????????? ??? ?????? ??????????
?? ??????? ??????? ??? ?? ?????????? ??? ? ?????????? ??? ?????? ??? ?????? ??????????
???? ??????? ??? ???, ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ??????????????,
????????? ?? ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ??????
????????? ? ??? ?????????? ??? ??? [????????? ??? 18?? ?????????? 2020, ?????????? ???
????????? (????????? ??? ??? – ??????????), C?371/19, ?? ??????????????, EU:C:2020:936,
????? 82 ??? ??? ?????????? ??? ??????????].

54

????? ????????, ?????? ????, ?? ? ?????? ?????? ??? ? ? ?????? ? ?????? ? ?????? ????
????? ????????, ???? ??? ?????? 2008/9.

55

?????, ???' ????????, ??? ?????? 10 ??? ?????? 2008/9, ?? ?????? ??? ?????? ??
????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????????? ??
????????? ??? ?????????? ?????? ? ??? ?????????? ??? ?????? ??? ?????? ?????????? ???
????????? ?????? ??? ?????????? ?????? 1000 ??? ? ? ?????? ??? ?????? ?????? ?????? –?? ??
????????? ??? ?????? ?????? ?? 250 ??? ? ? ?????? ??? ?????? ?????? ?????? ?????? ??
????????? ??? ?????? ??????.

56

???????, ??? ? ???? 20, ?????????? 1, ????? ??????, ??? ? ???? ???????, ??
????????? ??? ? ???? ?????? ?????? ?????????? ??? ?????? ?????? ?????????? ??? ? ????
? ?????? ?????????? ??????, ?????? ? ???? ?????? ?? ?????????? ? ?????????? ???
????????? ??? ?????????? ??? ??????, ?????????? ??? ?????????? ?????? ?????? ???
????????????? ?????? 10.

57

????????????? ??? ?????????? ??? ?????? ?????? ?? ?????????? ? ?????????? ??? ??????????
????????? ??? ? ???? ?????? ??? ?????????? ???, ??? ?????? ?? ?????? ??? ?????? ??? ??
????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???, ??
?? ?????? ??? ???? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????? 20, ?????????? 2, ??? ?????? 2008/9, ? ?? ?????? ??? ?????????? ?? ?????????? ???
????? ?????????? ??? ???.

58

????? ??? ?????? ??? ?????????????, ??? ?????? ??? ?????? ?????????? ??????????????
????? ??? ???? ? ???? ? ?????? ??? ???? 8, ?????????? 2, ?????????? ?, ??? ??
????? 15, ?????????? 1, ??? ?????? 2008/9 ???? ??? ?????? ???, ??? ?????? ??????????
?? ??? ???? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ? ??????
????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???, ?????????, ??? ?????? ??? ?????? ? ???
????? ?????? ???, ? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????? ??
????? ??? ???? «???? ??????» ??? ???? ?????? ??? ?????? 15, ??????????
1, ??? ?????? 2008/9 ??? ???? ??? ?????? ????. ??? ?????? ??? ?????? ??? ?????? ???,
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? ?????? ??? ?????? ??? ?????? ???, ? ?????????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ???, ?? ? ???? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? 20, ?????????? 2, ??? ?????? 2008/9, ? ??
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

59

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

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

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

?? ????? 8, ?????????? 2, ??????? ??, ??? ?? ????? 15, ?????????? 1, ??? ??????
2008/9/? ?? ???????????, ??? 12?? ??????????? 2008, ??? ?? ?????????? ???????????
?????? ??????? ?? ??? ??????? ??? ?????????????? ?????, ??? ?????????????? ???
?????? 2006/112/? , ?? ?????????????? ??? ????? ?? ?????????????????? ??? ?????? ???
?????????? ??? ?????????????? ?? ??? ?????? ?????, ??? ?????????????? ?? ???
?????? 2010/66/? ??? ???????????, ??? 14?? ?????????? 2010, ?????? ??? ?????? ??? ???
?????? ??????????? ??? ????? ?????????????? ?????? ??? ?????????? ?????????????? ???
??? ???????????, ??? ????? ?????? ?????? ??? ?????? ?????????? ?????? ??? ??????????? ???
?????????? ???, ???????, ??? ?????? ?????? ??? ?????? ??? ?????????? ??????????, ? ???????????
???? ??? ?????? ?????? ?????????? ?????? ??? ?????????? ??? ? ?????? ??? «????
?????????» ??? ?????? ?????? ??? ?????? 15, ?????????? 1, ??? ?????? 2008/9, ???
????????????? ?? ??? ?????? 2010/66, ??? ?? ?????? ??? ?????????? ??? . ??? ?????? ???
????????? ???, ??? ??????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???,
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???,
????????? ?????? ?? ?????? ??? ?????? ??? ?????????? ?? ?????????????? ?????? ???
????? ?????????? ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???,
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? 20, ?????????? 2,
??? ?????? 2008/9, ??? ??????????? ??? ??? ?????? 2010/66, ? ?? ??? ?????? ???????????
?? ?????????? ??? ?????? ???????????.

(?????????)

(*1) ?????? ??????????: ? ??????????.