

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

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

??? 4?? ??????? 2021 (*)

«????????????? ?????????? – ?????????? – ????? ?????????????? ????? (???) – ??????
2006/112/?? – ????? 2, ?????????? 1, ??????? ?? – ?????????? ?????????? ????? ?? –
????????? – ????? 132, ?????????? 1, ??????? ?? – ?????????? ?????????? ?????????? ??
????????? ?? ?????? ?????? ?????? ?? ?????????? ?????? ?????????? – ??????????
????????????? ?? ?????????? ?????? – ?????????? ?????? ?????????? ?????????? ??
????????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?????????? ?? ?????? ??
????? – ?????? ?? “?????? ?????? ??????”, ??? “?????? ??? ?????? ?????????? ??
?????” ??? ?? “????????????? ?? ??????” – ???????»

???? ?????? C?581/19,

?? ?????????? ?????? ?????????????? ?????????? ??????? 267 ????, ???
?????? ?? Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa – CAAD)
[????????? ?????????? ?????????? (????? ?????????? ?? ?????????? ??
????????? – CAAD), ??????????] ?? ?????? ?? 22?? ?????? 2019, ? ?????? ?????? ??
????????? ?? 30 ?????? 2019, ??? ?????? ?? ??????

Frenetikexit – Unipessoal Lda

????

Autoridade Tributária e Aduaneira,

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

????????? ??? ??? A. Prechal, ?????? ???????, N. Wahl (?????????), F. Biltgen, L. S.
Rossi ??? J. Passer, ???????,

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

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

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

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

– ? Frenetikexit – Unipessoal Lda, ?????????????? ??? ??? R. Monteiro, advogado,

– ? ?????????? ???????, ?????????????? ??? ??? L. Inez Fernandes ??? R. Campos
Laires ??? ??? ??? S. Jaulino ??? P. Barros da Costa,

– ? ?????????? ???????, ?????????????? ??? ??? L. Lozano Palacios ??? ??? B.
Rechena,

???? ??????? ?? ?????? ??????????? ??? ???????? ??? ??????? ?? ???????????
?? 22?? ?????????? 2020,

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

???????

1 ? ??????? ?????????????? ?????????? ?????? ??? ??????? ??? ?????? 2, ??????????? 1,
????????? ?, ??? ??? ?????? 132, ?????????? 1, ??????? ?, ??? ?????? 2006/112/?? ??
??????????, ??? 28?? ?????????? 2006, ??????? ?? ?? ????? ?????? ?????? ???????????????
????? (?? 2006, L 347, ?. 1).

2 ? ??????? ??? ?????????? ??? ??????? ??????? ??????? ??????? ??? Frenetikexit –
Unipessoal Lda ??? ??? Autoridade Tributária e Aduaneira (????????????? ??? ??????????????
?????, ??????????) ??????? ?? ????? ?????????? ?????????????? ?????? ??????????????
????? (??) ??? ?? ????? ?????????? ?????????? ?????????????? ??? ?????????????? ???
????????? ????? ?? ?????????? ??? ??????? ?? ?????????? ?????? ??? ?? ?????????? ???
????????? ?????????? ??? ?? ?????????? ???????.

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

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

3 ??? ?? ??? 2, ?????????? 1, ??????? ?, ??? ?????? 2006/112, ??? ??
?????????:

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

4 ??? ?? ??? 132, ?????????? 1, ??????? ?? ?? ?, ??? ???????, ?? ?????? ???
?????????:

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

5 ??? ?? ??? 132, ?????????? 1, ??????? ?, ??? ?? ??? ?????? ???, ?? ?????? ???
?????????:

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

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

6 ??? ?? ??? 9, ?????????? 1, ??? Código do Imposto sobre o Valor Acrescentado
(????? ??? ????? ?????????? ???), ?????????????? ??? ?? ????:

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

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

7 ? Frenetikexito ?????? ?????????? ??????? ? ?????? ?????, ??????, ??????????????
????????????? ??? ?????????????? ?????????? ??????????????, ?????????????? ?????????? ??
?? ?????????? ??? ??????? ?????????? ??? ??? ?????????? ???????, ?????? ???
????????????? ??? ??? ??????? ??? ?????????? ??? ??????? ??? ?????????? ???????, ??? ?
????????? ?????????? ??? ???? ?????????? ??? ?????????? ?????????? ? ? ?????????? ???
????????? ??????????.

9 ? ?????????????? ?? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? .
????????? ??? ??? ?????????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?? ?????????? ???
????????? ?????????? ??? ??? ?????????? ???????, ??? ??? ??????????????, ?????????, ???
????????? ??????????????. ??? ?????????? ??? ?? ?????????? ?? ?????????? ?? ?????????? ?? ??????????
?? ?????????? ??? ?? ?????? ?? ?? ?????? ??? ?????? ?????? ??? ????? ?????????????? ?? ??????????
?? ?????????????? ??? ????? ??????????. ???????, ?? ? ?????????? ?????????? ?? ?????????? ??
????? ?????????????? ?????????? ??????????????, ? ?????????????? ?????????? ??? ??????????,
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????????? ???
?????????????.

10 ????????, ? ?????? ?? ???? ?????????? ?????????????? ?????????????? ?????????? ??
????? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ??????, ?????? ?????????? ??????????
?????, ?? ?????? ?????? ?????? ?? ???? ?? ???? ?????? ?? ???? ?? ???? ?????? ?? ???? ??
?? ?????????? ?????????????? ?? ???? ?????????????? ?? ???? ?????? ?????.

11 ? ?????????????? ???, ??? ??????, ????, ??? ?????????? ???, ??? ????????, ??? ???????, ??? ??????? ????
????? ??? ?????????? ???, ??? ?????????? ????, ??? ???????, ??, ??, ??? ?????????? ???, ??? ???????, ??? ?????????? ????
??? ?????????? ???, ??? ???????, ??, ??, ??? ?????????? ???, ??? ?????????? ???, ??? ?????????? ???, ??? ?????????? ???
??? ?????? ???, ??? ?????????? ???, ??? ?????????? ???, ??? ?????????? ???, ??? ?????????? ???, ??? ?????????? ???
??? ?????? ???, ??? ?????????? ???, ??? ?????????? ???, ??? ?????????? ???, ??? ?????????? ???, ??? ?????????? ???.

12 ??? ??????? ???????, ? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???, ??? ??
????????? ??? 2014 ??? 2015, ?? ?????? ??? ?????????????? ??? ?????? ??? ?????? ???
????????? ??? ??? ?????????? ??????????????, ?????? ??? ??? ?????? ?????????? ???
??? ?????? ????. ?? ?? ??????, ?????????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???, ?
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?????? ??? ?????? ??? 13
253,05 ???.

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

14 ??? ?? ?????? ?? ??????, ?? Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa – CAAD) [????????? ?????????? ?????????? ?????????? (????? ??????????) ??? ?????????? ?????? – CAAD), ??????????] ?????????? ?? ?????????? ??? ??????????
??? ?????????? ??? ?? ?????? ??? ?????????? ?? ?????????? ?????????? ?????????? ??????????:

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

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

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

??? ??? ?????? ?????? ??? ?????? ??? ?????? 2, ?????????? 1, ?????????? ??, ???
????????? [2006/112], ??? ?? ?????????????? ??? ?????? ??? ?????????? ???, ???
????????? ?????????? ??????????, ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??
????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??, ?? ??????????
?? ?????????? ? ?????????? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ??
?????; ?, ?????????, ?????????? ?????? ?? ?????????????? ??? ?????? ??? ??????????
?????, ??? ?? ?????????? ?????????? ??????????, ??? ?????????? ?? ?????????? ?? ??????????????
??? ?????? ?? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
????????, ?????????? ??? ?????????? ??????, ?? ?????????? ?? ?????????? ??? ??????????
????????? ?????????? ? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????????????;

2) ??? ??? ?????? ?????? ??? ?????? ??? ?????????? ?? ?? ?????????? ??? ?????? 132,
????????? 1, ?????????? ??, ??? ?????? [2006/112/], ?????????? ?? ?????????? ?? ??????????
????????????? ??? ?? ??? ?????? ??? ?????? ??? ?????????? ?????? ?? ??? ?? ?????????? ??
????????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????? ?? ?????? ?? ??????????
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?? ?????????? ??? ?????? ??
????????? ??? ??????;»

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

15 ?? ??? ?????? ?????????? ???, ? ?????????? ?????? ?????????? ?????????? ??? ?
????????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?????????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????????? ???
????????? ??????????, ??? ?????? ?? ?????? 94, ?????? ??, ??? ??????????
????????? ??? ??????????.

16 ?????????? ???, ??? ?????? ?????? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?
?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ?????????? ???
?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
?? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 94 ???

???????????? ?????????????? ??? ?????????????? (????????? ??? 19?? ?????????? 2018, Consorzio Italian Management ??? Catania Multiservizi, C?152/17, EU:C:2018:264, ??? 21 ??? ??? ?????????????? ??? ??????????).

17 ???????????, ????? ?????? ?????? ?????? ??????????, ????? ??????????? ?? ?????? 94, ?????????? ??,
??? ?????????? ???????????, ?? ?????????????? ? ??????? ????? ?????????? ??????????
?????? ??? ??????? ?????????? ?????????????? ??? ?? ?????? ?????????? ??????????????
????????????? ?, ???????????, ?????? ??? ?????????? ?????????? ??? ?????? ??????????????
?? ?????????? (??????? ?? 3?? ?????????? 2019, Iccrea Banca, C?414/18, EU:C:2019:1036,
????? 28 ??? ??? ?????????????? ??????????), ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?? ?????? ?????????? ?? ??????? ?????????? ?? ?????? ??? ?????????? ? ?? ?????? ??????????
????????? ??? ??????? ??? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
(??????? ?? 5?? ?????? 2019, Wilo Salmson France, C?10/19, ?? ????????????,
EU:C:2019:464, ??? 15).

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

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

19 ?? ?? ??????????????? ??????????, ?? ?????? ??????? ?? ??????????????? ??? ???????, ??
?????? ??????????? ?????, ???' ??????, ?? ??????????????? ?? ?? ?????? 2, ??????????? 1,
?????? ??, ?? ??????????? ?? ?? ?????? 132, ??????????? 1, ??????????? ??, ?? ??????
2006/112 ??? ?? ??????? ?? ??????????? ??????????????? ??????????????? ? ?????? ??????????
??? ??????????????? ??? ???????????, ??? ??????? ??????????????? ?? ?????? ??????????????? ??
?????????????? ???, ???????????, ??? ??????? ??????????????? ?? ?????? ??????????????? ??
????????? ??????? ?? ?? ??????????? ?? ??????????? ??????????????? ?? ?? ?????? ??????????????? ??
????????? ??????????? ??????? ??????????. ?????? ?????? ?? ??????????? ?? ? ??????????? ?? ?? ??
??, ? ?????? ??????????? ?? ?? ?????? 132, ??????????? 1, ??????????? ??, ?? ??????? ??,
?????????? ?? ?? ??????????? ??????? ?? ?? ???????????, ?? ??????????? ???????????
?????????? ??????????? ?????? ?? ??????????? ??????? ?? ??????????? ???????????, ? ?? ?? ??
?? ?? ?? ?? ?????? ??????? ?? ?? ??????? ?? ?? ??????? ??????? ?? ?? ??????? ?? ?? ???????.

20 ???????????, ?? ????????, ? ?????????? ??? ?? ?????? ?????????? ??????? ??
?????????? ?????? ?????????? ???????????, ??? ?? ???????, ??? ?????? ??? ?? ???? ??
???? ?? ?????????????? ??? ?? ??????? ??? ?????? ?????? ???????????, ??? ?????????????? ?
????????? ?????????? ???????????????, ??????? ?? ??????? ??? ?????? ?????????? ???
????????? ??? ??????? 132, ?????????? 1, ??????? ??, ??? ?????? 2006/112.

21 ????????, ????, ????????, ?? ???????????, ? ????????, ???, ????????, ?????, ???
 ???????????, ? ???????????, ???, ?????, ???, ????????, ???, ?, ???????????,
 ????????, ???, ????????, ???, ???????????, ? ???????????, ????????.

22 ????? ?????? ??????????, ?? ????. ?? ??????????????????? ???. ?? ??. ?????????? ??
????????? ???. ?? ??. 132 ???. ?????? 2006/112 ?????? ???. ?????????? ???. ???.?
????????? ???. ???. ?????? ??????, ???. ?????? ???. ?????? ?????? ???. ???. ?????? ?????????? ???. ???.
???. ???. ?????? ?????? ???. ???. ???. ?????? ?????? ???. ???. ?????? ?????? ???. ???. ?????? ???.
????????? ?????? ???????. ???. ???. ?????? ?????? ?????? ???. ???. ?????? ?????? ???. ???. ?????? ???.

???. ????????????, ? ?? ??? ?????????? ????? ?????? ?????????????? ??? ?????????? ??? ?? ?????? ??? ???? ?? ???? ??
????????????????? ??? ?? ?????????? ??? ?????????? ??? ?? ?????? ??? ?? ?????? ?????? 132 ?????? ??
????????????? ??? ?????? ??? ?? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ??????????????????
(??????? ??? 8?? ?????????? 2020, Finanzamt D, C?657/19, EU:C:2020:811, ????? 28 ??? ???
????????????? ??????????).

23 ??????????????, ?? ???? ?????? ??????? ??????? ?? ?????????????? ?????? ??? ?????????? ??????
???? ?????? ???????????, ??? ?????? ??? ?? ?????????? ??? ?????? ?????? 2006/112,
????????????? ?????? ?????? ??? ratio legis ??? ?????????? ??? ?????? ?????????? ? ??????
????? (????. ??????? ?? 13?? ??????? 2014, ATP PensionService, C?464/12, EU:C:2014:139,
????? 61 ??? ??? ?????????????? ?????????). ???????, ?? ??? ??? ??????????????????
?? ?????? 132, ?????????? 1, ??????? ??, ??? ?????? ?????, ??? ?? «????????? ??????????
??????????, ?? ?????? ?????????????????? ??? ?????? ?????? ??? ?????? ?????????? ???
?????????? ???????????, ??? ?????????????? ??? ?? ?????????????? ?????? ?????? ?????» , ???
????????? ??????? ?? ?????????????????? ?????? ?????????????? ?? ?????? ??????????
?????????? ?? ?????????? ??? ?? ??? ?????? ?????????? ?? ?????? ?????? ?? ??????
????????????? ???' ?????????? ??? ?????? 132, ?????????? 1, ??????? ??, ??? ?? ????
??????, ??? ?????????? ??? ?????????????? ?????????? ?? ?????? ?????????? ??????
??????????, ??? ?????? ??? ?????? ??? ?????????????? ??? ?????????? ?? ?????? ??? ?????? ????
????????? ?? ??? ?????? ??? (????. ?????????? ??? 10?? ?????????? 2002, Kügler,
C?141/00, EU:C:2002:473, ?????? 36, ??? ??? 10?? ?????? 2010, Future Health Technologies,
C?86/09, EU:C:2010:334, ?????? 36).

24 ??????????? ?? ??? ? ?????? ??? «????????? ???????????», ??? ? ???? 132,
?????????? 1, ??????? ??, ??? ?????? 2006/112, ??? ? ?????? ??? «????????? ??????????
??????????», ??? ? ???? 132, ?????????? 1, ??????? ??, ??? ?????? ??????, ??????,
?????????, ??????? ?????????? ?? ?????? ?? ???????, ??? ?????????? ???, ??? ?????? ??
????????, ??? ??? ?????????? ? ?????????? ??? ?????? (????????? ??? 10?? ?????? 2010,
Future Health Technologies, C?86/09, EU:C:2010:334, ?????? 37 ??? 38, ??? ??? 18??
?????????? 2019, Peters, C?700/17, EU:C:2019:753, ????? 20 ??? ??? ??????????????
?????????).

25 ????? ????????, ?? «?????? ?????? ?????????? ??????????», ????. ????. ?????. ????. ?????.
???????, ?????? ?????????? ?? ?????????? ?????????? ??????, ???????, ?????????? ??? ??????
???????, ??? ?? ?????????????? ?? ?????? ??????? ? ?????????? ? ?????????????? ?????????? ???
????????? ??? ?? ??? ?????? ?????? [????. ??????? ??? 5?? ??????? 2020, X
(???????, ??? ?? ??? ??? ?????????? ?????????????? ??????????), C?48/19,
EU:C:2020:169, ????? 27 ??? ????? ?????????????? ??????????], ?????????? ????.
????????? ???' ??????? ?? ? ?????????????? ?????? ????? ?????? ?????????? ??????????
????????? ?????? ?????? (????????? ?? 10?? ??????? 2010, Future Health Technologies,
C?86/09, EU:C:2010:334, ????? 40 ??? ????? ?????????????? ??????????, ??? ?? 21??
?????? 2013, PFC Clinic, C?91/12, EU:C:2013:198, ????? 26).

26 ??????????, ?? ?????????? ?????????? ? ?????????????? ?????????? ??? ?????????? ??
????? ?? ?????????? ?? ??????? ?? ??????, ?????????????????? ?? ?????????? ?? ?????????????? ??
????????????? ??, ??????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????? 132, ?????????? 1,
????????? ??, ?? ?????? 2006/112 [????????? ?? 5?? ?????? 2020, X (????????? ?? ?? ??
?? ?? ?????????? ?????????????? ??????????), C?48/19, EU:C:2020:169, ????? 29 ??
???? ?????????????? ??????????].

27 ????????, ? ????????, ??? ????????????, ??? ?????? 132, ????????????, 1, ????????, ?,
??? ??????? 2006/112 ????????????, ??? ????????????, ??? ????????????, ?? ????????????, ?? ??? ????????

????? ?????? ??? ?????? ??? ??????? ??????????, ??? ?????????????? ??? ?????? ?????? 24 ??? 26
??? ??????? ??????????, ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ?????? ?????????? ??? ?????????????? ??????????????, ??? ??? ?????? ??????????????
??? ?? ?????? ?????? ???.

28 ??? ?????? ?? ?????? ??? ?????????? ??????????, ??? ?????? ?? ?????????? ?, ??? ?????????????? ?
????????? ?????? ?????????? ??? ? ??????????, ??? ?????? ?????????? ?????????? ??????????????, ???
? ?????? ??? ?????? ???, ? ?????? ?????????? ??? ?????????? ?????????? ??? ?????????????? ???
????? ??? ?????? ?????????? ??? ?????? ?????????? ?????????? ???, ?????????? ???, ???
????? ?????? ?????????? ??? ?????????? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ???
????? ?????? ?????? ??? ?????? ?????? ??????, ???????, ??? ? ?????? ??? ?????? ???
????? ?????? (????? ??? 27?? ?????? 2019, Belgisch Syndicaat van Chiropraxie ???.,
C?597/17, EU:C:2019:544, ??? 23 ??? ??? ?????????? ??????????), ?? ?????????? ???
????? ?????? ?????? ?????? ? ?????????? ?????????? ?????????? ??? ? ?????? ??? ?????? ???
????????? ?????? ??? ?????????? ?????? ??? ?????????? ?????????? ??? ? ?????? ??? ?????? ???
????????? ?????? ??? ?????????? ?? ?????? ?????? ?? ?????? ?????? ??? ?????????? ??? ??? ???
????????? ?????? ??? ?????????? ?????? ??? ?????? ?????? ??? ? ?????? ??? ?????? ???
????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ? ?????? ??? ?????? ???
????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ? ?????? ??? ?????? ???.

29 ?? ?????? ??? ?????? ?????????? ?? ??????????, ??? ?????? ?? ?????? ??? ?????? ? ??????
??? ?????? ??? ?????????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ? ??????
????????? ??? ?????? ?????? ?????? ??? ?????? 132, ?????????? 1, ?????????? ?, ???
????? 2006/112. ??????, ??? ?????? ?? ??????????, ??? ?????? ??? ?????? ??? ?????????? ???
????? ???, ??? ? ?????????? ??? ?????? 132 ??? ?? ?????? ?????? ?????????? ???
????????? 2 ??? ????? IX, ?? ?????? ?????????? «????????? ?????? ?????????? ?????????? ???
????????? ??????????». ??????, ??? ?????????? ??? ?????? ??? ?????? ?? ?????????? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
(????????? ??? 21?? ?????? 2013, PFC Clinic, C?91/12, EU:C:2013:198, ??? 23, ??? ??
21?? ?????????? 2017, ?????? ??? ??????????, C?616/15, EU:C:2017:721, ??? 49), ??
??? ?????????????? ??? ?? ?????? ?????? ?????? ?????????? ???, ? ?????? ??? ?????? ???
????? ??? ?????????? ??? ?? ?????? ?????? 132.

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

31 ????????, ????????, ?????????? ?????????? ??? ?????? ?????? ?????????? ?? ?????? ??? ???????, ??
?????????, ?? ????????, ?????????? ??? ?????? ?????????? ?? ?????? ?????????? ?? ?????? ???, ????????, ??
???????????, ????, ????, ??? ?????? ??? ?????????? ?? ?????? ?????????? ?? ?????? ?????????? ?? 24
??? 26 ??? ????????, ???????, ??? ?????? ??? ?????? ?????????? ?? ?????? ?????? ?????????? ??
???????????, ??? ????????, ?????????? ?????????? ????????????????, ??? ? ?????????? ???
????????? ??? ?????? ????, ??? ?????? ?? ?????????? ??? ?????????? ?????????? ??????????
????????? ?? ?????? ????, ??? ?????? ?? ?????? ??? ?????? ?? ?????? ?????????? ?? ?????? 132 ??? ???????
2006/112 ???, ??? ????????, ??? ????????, ??? ?????? ??? ?????? ?? ?????? ?????????? ?? ?????? ?????? 132,
???????????, 1, ????????, ??, ??? ?? ?????? ????????, ?????? ?????????? ?? ?????? ???????, ????.

32 ? ?????????? ??? ???? ??????????? ???? ???? ???? ?????????????? ???????????????, ? ????
???????????, ????????????, ?? ??????????? ???? ??????? ???? ?????????? ?? ???? ??????????? ???? ????
?????? ? ??? ??????? ?????????? ??? ??? ???? ???? ??????? ???? ??????????? ???? ?????????????? ?
????????? ??? ??????????? ???? ????? ??????? ???? ???????????, ??? ???????????, ?? ??
??????, ?? ??????????? ?????? ??? (?????. ??????? ???? 17? ??????????? 2020, WEG
Tevessstraße, C?449/19, EU:C:2020:1038, ????? 48 ??? ??? ?????????????? ??????????),
????????? ???, ??????????? ???? ??? ??????? ??? ?????? ????? ?????? ?? ???? 132,
?????????? 1, ??????? ??, ??? ??????? 2006/112, ?? ?????????? ??????????????
????????????? ?? ?????? ?????????? ??? ?????????? ????? ?????????? ?????? ??? ?? ??????????
????????????? ?????????????? ??? ??? ?????????? ??? ?????????? ?????? ??? ?????? ??
????????? ?????????????? ???? ?????? ??? ??????????.

33 ?????????????? ??? ?????????? ?? ??? ???? ?????????? ?? ??? ?????????? ??? ?????????? ?????????????
??? ?????????? ??? ?????? 132, ?????????? 1, ?????????? ??, ??? ?????? 2006/112 ?????? ???
ratio legis ??? ?????????? ??? ?? ?????? ??? ?????????? ?????? ??? ??? ?????? ??? ??????????
2 ??? ?????? IX ??? ??????. ????????, ??? ?????????? ? ?????? ?????????? ??? ?????? ?????????? ???
????????? ?????????? ? ?????????????? ??????????????, ? ?????? ??? ?? ??? ?????? ??? ????
????????? ?????????? ??? ?????? ?????????? ??????????, ?? ?????????? ??? ?????????? ???
????????????? ??? ?????? ???, ?????? ?? ?????? ??? ?????????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ??? ?????????? ???, ? ??????
????????????? ??? ?????? 22 ??? ?????? ?????????? ?????????? ??? ?????????? ??? ? ??????
????????????? ??? ?????? 61 ??? ?????????? ???, ? ?????? ?????????? ?????? ??? ??? ??????,
????? ?????????????? ?????? ??? ?????? ??? ??????, ??? ?????? ?? ??????????.

34 ??????? ?? ???????, ??????? ?? ?????????? ???, ??? ?? ??????? ??
?????????? ?? ?? ??????? ???????, ??????? ?????????? ?????????????? ? ??
????????? ?? ?? ??????? ?? ?? ??????? ?? ????? ?? ????? ?? ????? ?? ?????? ??
????? ??????? ?? ?? ??????? ?? ??????? 132, ??????? 1, ??????? ??, ??? ??????
2006/112. ???????, ??????? ?? ??????? ?? ??????? ?????????? ???????.

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

36 ????????????????, ???????, ???, ?????????? ??? ?????????? ??? ?????????????? ??? ?????? 267
????? ? ????? ??????????? ?? ??? ?????????? ??? ?????????????? ?????? ??? ??????
????????????? ??? ??? ??????????????, ?????????????? ??? ?? ??? ????? ??????????, ?? ??? ??? ???
?? ??? ???????, ?????? ????, ?? ?????????????? ??? ?? ??? ?????????? ?? ??????????
???????????, ?? ???????, ??????????, ?? ??? ?????????? ?????????????? ?????????????? ?

????? ?????????? ??? ??????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??????
????? ?????????? ?????????? ??? ?? ?????????? ??? ?????? ?? ?????????? ??? ??????
????????? ??? ?? ?????????? ?????? ?? ?????????? ?????? ?????? ??????????
????????? ?????? ?? ?????? ?? ?????????? ?????? (????? ??? 19?? ??????????
2018, Mailat, C?17/18, EU:C:2018:1038, ??? 35 ??? ??? ?????????? ?????? ??????), ??
????????? ??? ?? ?????????? ??? ?? ?????????? ?????? ?? ?????? ?????? ?? ?? ?????? ???
????? ?????????? ?????? ?? ?????? ?????? ?? ?????? ?????? ??? ?? ?????? ?????? ???
????????? ??? ?? ?????? ?????? ?????? (????? ??? 17?? ?????????? 2013, BG? Leasing,
C?224/11, EU:C:2013:15, ??? 33). ??? ?? ?????? ???, ?????????? ?? ??????????
?????????.

37 ??? ?? ?????????? ??? ?????????? ??? ?????????? ???, ??? ?????????? ??? ??
????????? ?????????? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ??????, ?????? ??
????? ??? ?? ?????? ??? ?? ?????????? ??? ?? ?????? ?????????? ? ?? ??? ?????? ??????????
????????? ?? ?????? ?? ?????????? ?????? ?????? ??? ? ?????????? ?????? ??????????
(???. ?????? ??? 25?? ?????????? 1999, CPP, C?349/96, EU:C:1999:93, ??? 28 ???
???? ?????????? ??????), ?? ?? ?????????? ???, ??? ??????, ??? ??????
????????? ??? ?? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?? ???
1, ?????????? 2, ?????? ??????, ??? ?????? 2006/112 [????? ??? 2?? ?????? 2020,
Blackrock Investment Management (UK), C?231/19, EU:C:2020:513, ??? 23 ??? ???
????????? ??????].

38 ??????, ???' ??????? ??? ?? ?????? ??????, ??????, ? ?????? ??? ?????????? ???
??? ?????? ?????? ?? ?????????? ?????? ??? ?????? ?? ?????????? ??????, ???
?? ?? ?????????? ? ?????????? ?????? ??? ?????????? ??? ?????? ??? ?? ??????, ???
????? ?????? ?????? ??? ?????? ?????????? ?????? ?????? ??? ?????????? ??? ??????????
????? ?? ?????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??????????
????????? ??? ?????????? ?????????? ??????, ??? ?????? ? ?????????? ??? ??????
????????? [????? ??? 2?? ?????? 2020, Blackrock Investment Management (UK), C?231/19,
EU:C:2020:513, ??? 23 ??? ??? ?????????? ??????].

39 ????? ??????, ??? ??????????? ? ?????? ?????????????? ??? ?????? 22 ??? 33 ???
????????? ???, ?????? ?? ?????????????? ?? ?????????????? ?????? ??? ??????????
????? (????????? ?? 29?? ?????? 2007, Aktiebolaget NN, C?111/05, EU:C:2007:195,
????? 22, ??? ?? 18?? ?????? 2018, Stadion Amsterdam, C?463/16, EU:C:2018:22, ???
30) ??? ?? ?????? ??? ?????? ?????????? (?????? ?? 19?? ?????? 2012, Deutsche Bank,
C?44/11, EU:C:2012:484, ????? 21 ??? ??? ?????????????? ??????). ?? ?????? ???
????????? ?? ?????? ?????????????? ??? ?????? ?????? ?????????????? ??????
????????? ??????, ?? ??? ?????? ?? ???, ?? ?????? ?????? ?????????????? ??? ???
????????? ?????, ?????????? ??? ?????? ?????? ?????????? ??? ?????????? ?? ?? ?????????? ???
????????? ??? ?????? (?????? ?? 28?? ?????? 2019, Sequeira Mesquita,
C?278/18, EU:C:2019:160, ??? 30) ??? ?? ?????????? ?????? ???, ?????? ? ??
[?????? ?? 2?? ?????? 2020, Blackrock Investment Management (UK), C?231/19,
EU:C:2020:513, ??? 34], ??? ?? ??, ?? ?????? ?????? ??? ?????????? ??????????????
????? (????. ?????? ?? 25?? ?????? 1999, CPP, C?349/96, EU:C:1999:93, ???
31), ??????????????, ?????? ??????????, ??? ?? ?????? ??? ?????????? ??? ??????, ???
?. ? ?????? (?????? ?? 17?? ?????? 2013, BG? Leasing, C?224/11, EU:C:2013:15,
????? 43) ? ?????? (?????? ?? 8?? ?????? 2016, Stock '94, C?208/15, EU:C:2016:936,
????? 33) ?????? ??? ?????? ?????? ?????? (?????? ?? 19??
????????? 2012, Purple Parking ?? Airparks Services, C?117/11, ?? ???????????,
EU:C:2012:29, ??? 34 ??? ?????? ?????????? ??????) ? ?????? ??????????
(?????? ?? 18?? ?????? 2018, Stadion Amsterdam, C?463/16, EU:C:2018:22, ??? 27).

40 ???????, ??? ?????????? ?????? ?????? ?????? ?????? ??? ?????? ?? ???????
??? ?????????? ?????? ?????? ??? ?????? ?????? ???, ???, ?????????? ???, ??? ??????????
????? ?? ?????? ?? ??? ? ?????????? ?????? ?????? ???, ?????????? ??? ?????? ???
????????? ?????? ?? ??? ?????? [?????? ?? 2?? ?????? 2020, Blackrock
Investment Management (UK), C?231/19, EU:C:2020:513, ??? 29 ??? ?????? ??????????
?????????].

41 ??? ?? ?????????? ??? ?????????? ?????? ?????? ?????? ??? ?????? ?????????? ???
????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? [?????? ?? 2??
2020, Blackrock Investment Management (UK), C?231/19, EU:C:2020:513, ???
29 ??? ?????? ?????????? ??????].

42 ?? ?????? ??????????, ?? ?????? ?????????? ??? ?????? ?????????????? ???
??????, ??? ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ???, ?? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ? ???
????????? ?? ?????? ?? ??? ?????? (????. ?????? ?? 22?? ?????? 1998, Madgett ??
Baldwin, C?308/96 ?? C?94/97, EU:C:1998:496, ??? 24).

43 ??????, ??? ?????????? ? ?????? ?????????? ??? ?????? 44 ??? ?????????? ???,
?????? ??? ?????? 2006/112, ?? «????? ??????????» ?? ?????????? ??? ??????
????????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??
????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????

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

44 ????? ?????? ?? ??????????? ??????????, ?? ?????????? ??? ?????? ?? ?????????? ??? ?????
????, ?? ?????? ?????? ?????? ??????????, ??? ?????? ?????? ?????????? ?????? ??? ????? 38 ???
????????? ??????????, ??? ??? ?????????? ??? ?????????? ?????? ?????????? ?????? ??? ?????? ??
????????????? ??? ? ?????????????? ??? ?????? ?????, ??????, ?? ?????????????? ???
????????????? ??? ?????????????? ??? ?????? ??????????, ?????? ??? ?????????????? ???
????????? ?? ?? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???????, ??? ???
??????, ?????????????? ?????????????? ?? ?? ?????????? ?????????? ??? ?????? ???
????????????? ??? ???, ?????????? ?????????? ?????????????? ?????????????? ??? ?????? ???.

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

46 ????????, ??? ?? ?????????? ??? ?????????????? ??? ?? ????????,
????????? ??? ?? ?????????? ??? ???????, ?? ?????????? ??? ???????, ?? ?????????? ??? ??
????????? ??? ???????, ??? ?? ?????????? ??? ??????????????, ??? ???????, ??? ?? ??????????
??? ?? ?????????? ??? ???????, ??? ?? ?????????? ??? ???????, ??? ?? ?????????? ??? ??
????? ??? ?? ?????????? ??? ???????, ??? ?? ?????????? 38 ??? 39 ??? ?????????? ??????????.

47 ????????, ?? ???? ?????????? ?????? ?? ?????? ?????? ?? ?????????? ?????? ?? ?????????? ?????? ??
????? ?? ???? ?????????? ?????? ?? ?????? ?????? ?? ??????.

48 ????? ?????? ?? ??????????? ??????????? ?? ??????? ??????????, ???? ?? ?????????? ?????? ?? ?????????? ????
?????? ????, ??? ??????? ?????? ??????? ??????????, ???? ??? ?????? ??????? ??????? ????
?????? 40 ??? 42 ??? ??????? ??????? ???????, ??????, ?? ???????????, ?? ???????????,
?????, ? ??????? ?????? ?????? ??? ?????????? ?????????? ?????????? ?????????? ?????? ?? ??????
??? ?????? ??????????. ?????? ??? ?? ???? ?????? ??? ?????????? ?????? ?????????? ??????????
????????? ? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ?????????? ?????????? ?? ??????
???? ?????????? ?? ?????????? ??? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ?? ??????
????????? ??????, ?????? ?????????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??
????????? ??????, ?????? ?? ??? ?????? ??? ?????????, ???? ?? ?????????? ??? ? ??????????
????????? ?????? ?? ?????????? ??? ?????????? ??? ?????????? ??????????. ???????, ??? ??????????
????? ?????????? ?? ?????? 56 ??? ?????????? ???, ??? ?????????? ??? ?????????? ??? ??????,
????? ?? ??? ?????????? ??? ???????????, ?? 40 % ??? ?????????? ??????????
????????? ??? ?????? ?? ?????????? ? ??????? ?????????? ??? ?????????? ?????????????? ??????????,
?????? ?? ????, ???????, ??? ?????? ?? ?????????????? ?? ?????????? ?, ??? ??????????
???, ????????. ???????, ?? ??????? ?????????? ?????????? ???????????????, ???? ?? ??????
????? ?????? ???, ??? ??????? ?? ?????????? ?????????? ?????????? ?? ?????? ?? ??? ??????, ??
????? ?????????? ?? ?????????? ??? ??????? ?? ?????????? ??? ?????????? ?????????? ?????????? ???
?? ?????????? ??????

49 ?? ?????? ?????????? ???, ??? ??? ?????????? ??? ?????????????? ??? ?? ????
???????????, ??????? ?? ?? ?????????? ??? ?????????? ??? ??????? ?????? ?????? ??
?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??
????????? 2. ?????????? 1. ??????? ???. ??? ?????? 2006/112.

50 ??????? ?? ??????? ????????, ??? ?????????? ?????????????? ?????????????? ?????????? ??
????? ? ??????? ?? ? ?????? 2006/112 ??? ?????? ??? ??????? ???, ??? ?? ?????????? ??
????????????? ?? ?? ?? ?????? ????????????. ?????????? ?????????????? ?????????????????? ? ??????

? ?????????? ??? ?????????????? ??? ?????????????? ?????????????? ?? ???? ???? ????
????????????? ???, ??????????, ??? ?????? ?????????? ?????????? ??? ?????????? ???
????????? ?????? ?? ???? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? 132, ??????? 1, ?????? ?, ??? ?????? ???.

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

51 ?????????? ??? ? ?????? ?????????? ??? ???? ???? ?????????? ??? ???? ????
??? ?????????? ?????????????? ??? ?????? ?????? ?????? ??? ?????????? ?????????? ,?' ???
????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ?????? ??????????
????? ?????????? ?????????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? , ??? ??????????.

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

H ?????? 2006/112/?? ??? ?????????? , ??? 28?? ?????????? 2006, ??????? ?? ?? ????
?????? ???? ?????????????? ????, ??? ???? ?????? ???, ??? ??? ?????????? ???
????????????? ??? ???? ?????? ?????????? , ?????? ?????????? ?????????? ?????????????? ?
????? ?????????? ??? ?????????? ??? ?????????? ?????????? ?????????? ?????????? ??
????? ?????????? ?????????? ???, ?????????? , ??? ?????????? ?????????? ?????????? ??
??? ?????????? ??? ?????????? ?????????? ?? ?? ?????????? ??? ??????????
????????? ??? ??? ?????????? ?????? ?????? ?????????? ??? ?????????? ??? ??????????
????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 132, ??????????
1, ??????? ?, ??? ?????? ???.

(?????????)

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