

62019CJ0734

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

??? 12?? ?????????? 2020 (*1)

«????????????? ?????????? – ????? ?????? ?????? ?????????????????? ?????? (???) – ??????
2006/112/?? – ??????? ??? ????? ?????? – ?????? ??? ?????? ??????????????????
????????????????? – ?????????????????? ??? ?????????? ??? ??? ??? ??? ??? ?????? –
????????????????? ?????????? ?? ??????»

????? ??????? C?734/19,

??. ?????????????? ?????? ?????????????????? ?????????? ?????? 267 ????, ???
?????? ?? Tribunalul Bucure?ti (????????????? ??????????????, ?????????) ?? ??????? ??
27?? ?????????????? 2019, ? ?????? ?????????? ??? ?????????? ??? 4 ?????????? 2019, ???
?????? ?? ????

ITH Comercial Timi?oara SRL

?????

Agen?ia Na?ional? de Administrare Fiscal? – Direc?ia General? Regional? a Finan?elor Publice
Bucure?ti,

Agen?ia Na?ional? de Administrare Fiscal? – Direc?ia General? Regional? a Finan?elor Publice
Bucure?ti – Administra?ia Sector 1 a Finan?elor Publice,

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

?????????? ?? N. Wahl, ??????? ????????, F. Biltgen (?????????) ??? L. S. Rossi,
???????,

?????? ??????????: H. Saugmandsgaard Øe

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

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

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

–

? ?????????? ??????????, ??????????????? ??? ??? E. Gane ??? A. Rot?eanu,

–

? ?????????? ??????????, ??????????????? ??? ??? R. Lyal ??? ??? A. Armenia,

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

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

????????

1

? ??????? ?????????????? ???????? ?????? ??? ??????? ??? ?????? 28, 167, 168, 184 ???
185 ??? ??????? 2006/112/?? ??? ????????????, ??? 28?? ?????????? 2006, ??????? ?? ??
????? ??????? ????. ?????????????? ????. (?? 2006, L 347, ?. 1, ??? ????: ?????? ???).

2

?? ?????? ???

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

3

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

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

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

4

?? ?????? 28 ??? ??????? ?? ?????? ?? ????:

5

?? ?????? 63 ??? ???????? ??? ????? ?? ????:

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

6

?? ???? 167 ??? ?????? ??? ?????? ?? ????:

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

7

?? ???? 168 ??? ?????? ??? ?????????? ?? ??????:

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

?)

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

?)

?? ??? ??? ?????? ??? ?? ??? ?????? ??? ?????????????? ?? ?????????? ?????? ??? ??
????????? ?????? ??? ?? ??? ?????? 18, ?????? ?) ??? ?? ?????? 27,

?)

?? ??? ??? ?????? ??? ?? ??? ?????????????? ?????????? ???, ?????? ?? ?? ?????? 2,
????????? 1, ?????? ?), ?????? i),

?)

?? ??? ??? ?????? ??? ?? ??? ?????? ??? ?????????????? ?? ?????????????? ?????? ??? ??
????????? ?? ?? ?????? 21 ??? 22,

?)

?? ??? ??? ?????? ? ?????????? ??? ?? ?????? ??? ?? ??? ?????? ??? ?? ?????? ????.»

8

?? ???? 184 ??? ?????? ??? ?????? ?? ??????:

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

9

?? ?????? 185 ?? ??????? ?? ?????? ?? ???:

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

2. ????? ??????????? ?? ???? ?????????? 1, ??? ?????????????? ?????????????? ?????
????????? ???????, ??? ??? ?????? ??? ?????? ?????? ?????? ? ?????? ?????? ???????, ?? ??????????
???????????, ??????? ? ?????? ??? ?????????????? ? ?????????????? ?????? ??? ???
????????? ?????????? ??? ?? ?????????? ?????? ?????? ?????? ?????? ??? ?????????? ??? ?????? 16.

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

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

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

10

11

?? ?????? 126 ??? ?????? ???????????? ????

a)

?? ?? ??????? ?? ?????? ?? ??????? ?? ?? ??????, ???? ??? ???? ?????? ??? ?????? 128 ??? 130,
????????? ?? ??????? ?? ?????? ? ?????? ??????????, ?????????? ??? ???, ? ?????????????? ??
?????,

b)

?? ?????? ?????????? ?? ?????? ? ?? ?????? ?????????? ?????????? ?? ?????????? ?? ??????????, ?? ??????
?? ??? ?????????? ?? ?????? 132 ?? 133,

c)

? ?????????? ??? ?????? ? ? ?????? ?????????? ?????????????????????? ??? ?????????? ??? ??????,
????? ??? ?????? ?????????? ??? ?????? 127, ?????????? 1, ? ?????? ?????? ??? ??? ?????? ???
?????,

d)

? ?????????? ?????? ? ? ?????? ?????????? ?????? ?????????? ?????? ??? ???? ??????????????
????????????? ??? ?????????? ??? ?????? 127, ?????????? 2.»

12

???? ?? ???? 128, ?????????? 1, ??? ?????? ??????????, «?? ?????????? ?????? ?????? ?
????????? ??? ?????????? ?? ?????? ?????? ?????? ?? ?????? »..

13

?? ???? 129 ??? ?????? ?????????? ?????? ?? ???:

«1. ?? ?????? ?????????? ?????? ??? ?????? ??? ???? ?????? ?????????? ???????, ??? ????
????????? ??? ?????? 128.

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

3. ?? ?????? ?????? ?????????? ?????????? ?????? ????:

a.

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

[...]»

14

?? ???? 145, ?????????? 2, ??? ?????? ?????????? ?????????? ?? ????:

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

a)

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

[...]».

15

?? ???? 148, ?????????? 1, ??? ?????? ?????????? ?????? ?? ????:

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

a)

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

b)

????, ??? ???? ?? ??????? ?? ???????, ?????? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??
????? ?? ???? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ??????, ?????????????????? ??
????????????? ?? ?????? 138,

c)

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

16

? ???? 150, ?????????? 1, ??? ?????? ?????????? ??? ?? ???:

«????????? ??? [??], ??? ? ?????? ????? ?????????? ??????? ?? ??? ?????????? ??
????????? ??????, ??? ? ??????????? ?? ?????? ?? ?????????????? ?????????? ?????? ?
????????? ???????, ??? ? ??????????? ?? ?????? ?? ?????? ? ?????? ?????? ?????? ?????? ??
????????? ??? ?????? ??????? ?? ??? ?????????? 2 ??? 6 ??? ???? 160.»

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

17

? ???? 30 ??? Normele metodologice de aplicare a Legii nr. 227/2015 privind codul fiscal
(????????? ?????????? ??? 227/2015 ??? ?????? ??????????), ??? 6?? ??????????
2016, ?????? ?? ???:

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

18

? ???? 45, ?????????? 6, ??? ?????? ?????????? ?? ?????? ??????????, ??? 22??
????????? 2004, ??? ??????????????, ??? ?????? ?? ?????? 145, ?????????? 2, ??? ????
?????:

«???? ?????????? ?? ?????? ?????? ?????????????? ?? ?????? ?????????? ?????????? ??
????????? ?? ?????? ?????? ?????????? ?? ?????? ?????????? ?? ?????????? ??, ?????????? ??
????????????? ?? ?????? ???????, ? ?????????? ?? ?????? ?? ?????? ?? ?????????? ??
????????? ??????? ?? ?????? ?????? ?? ?????? ?? ?????? 145, ?????????? 2, ??? ??????
????????? ?? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?????????? ?? ?????????? ??
????? ? ?????? ???????, ??, ??? ?????? ?????????? ?????????? ?? ?????? ?? ?????? ??, ??
????????? ?? ?????? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ??????/????????? ??, ???
????????? ?? ?????? ?????? 15? ?????????? 1998, Ghent Coal Terminal (C?37/95,
EU:C:1998:1). ?? ?????? ?????? ?????? ?? ?????? ?? ?????????? ?? ?????? ??????????

???? ??????? ?? ??????????? ?????? ? ????????, ??? ?? ????? ??????? ?? ??????? ?? ??????? ??
?????? ?? ?? ????? 145, ?????????? 2, ??? ?????? ??????????, ??? ?????????????????? ??
??? ?????????? ?????????????? ??? ?????????????? ???, ??? ?????????????? ??? ??????
????????????? ??? ?? ??????? ???, ??? ?????????? ??? ?????? ??? ?????? ??? 29?? ??????????
1996, INZO (C?110/94, EU:C:1996:67). ??? ?????????? ?????? ?????? ?????? ??? ??????????
????????? ????, ? ?????????? ??? ?????? ?????? ?????? ??? [???] ??? ??
?????? ????, ?????????????????? ??? ?????????? ??? ?? ?????????? ??? ?????????????? ???,
????????? ?? ?????????????? ?????????? ??? ?????????? ??? ?? ?????????? ?? ?????????????? ???
????????? ??? ?????? ?????? ?????? ?????????, ??? ??? ?????????, ??? ?????????? ?????? ?????????? ???
????????? ?????????????? ???????, ??? ?????????? ??? ?????? ?????? ??? 29?? ??????????
2012, Gran Via Moine?ti (C?257/11, EU:C:2012:759).»

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

19

???? ?? ??? 2006 ??? 2007, ? ??? ?????? ?????????? ?????? ?????????? ?????? ??? ??????????
?? ??????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ??????????
?????? ??? ?? ?????? ?????????? ? ?????? ?????????? ???.

20

??????????, ?? 2006, ? ITH ??????? ??????? ?? ?????? ?????????? ??? ???????
?????????? ??????????. ? ITH ?????? ??? ?????? ????? ?????????? ?? ?????????? ???
?????????? ??????? ??????? ??? ?????????? ?????? ??? ?????? ?????????? ?? ??????????
??? ??????? (?? ?????: ?????? ???). ? ITH ?????????? ?? ??? ?????? ??????????
????????????? ??? ?? ??????? ??? ?? ?????????? ?????? ?????????? ??? ?????? ?? ???
????????? ??? ?????????? ??? ?? ???????, ??? ?? ??? 2007, ? ITH, ??????,
?????? ?? ?????????? ??????? ?? ?? ?????? ?????? ?????????? ?? ?????? ?????? ??? ??
????????? ??? ?????????? ??????? ??? ?????????? ?????? ??? ?????????? ??? ?????? ??? ??
????????? «Dragomire?ti Val» (?? ?????: ??????? ???) ??????? ?? ??? ?????????? ??? ??
????????? ??? ?????????? ??? ?? ??????? ?????????? ?????????? ???, ???????, ?????????? ?? ??? ?? ???
??? ?????? ? ??? ?????? ?? ??????? ??? ??????? ?? ??????? ???, ??? ?????????? ???
????????? ??????? ??????? ??? ?? ??? ?????? ?????????? ??????? ??? ?????????? ???
????????????????? ??? ???????.

21

? ? ??????? ?? ?????????? ?? ??? ?????????? ?????????????? ?????????????? ???
????????? ??? «????????? ??????» ??? ? ITH ?????? ?? ?????????? ??? ?????????? ???
????????????? ???, ??? ???????, ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??
2008, ?? ??? ?????? ?????? ??????????, ??????, ?? ?????, ?? ?????? ?????????? ?????????? ???
????????????? ??? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ??? 2015.

22

??? ??????? ??? ?????????? ?????? ??? ?????????????? ?? 2009 ??? ?? 2013 ???
????????? ??? ?????? ?????? ?????? 2006 ??? ?????? 2012, ? ?????????? ???
????????? ??? ? ??? ????? ?????? ?????? ??? ?????????? ??? ??? ?????? ?????? ???
? ?????????? ??? ?????????????? ?????? ??? ?????????? ?????? ?? ?????????? ???
????????? ??? ?????? ??? ?????? ?? ?????????????? ? ITH.

23

??? ??????? ?????????? ?????? ??? ?????????? ?? 2016 ??? ??????? ??? ??????
?????? ?????? 2012 ??? ?????? 2016, ? ?????????? ??? ?????? ??? ? ??? ??? ???
????? ?? ??? ?????? ?????? ??? ?????? ??? ??? ? ??? ???, ?????????? ?? ???
????? ??? ?????? ?????? ??? ?????? 239734 ?????????? ??? (RON) (????? 49316 ???).

24

? ?????????? ??? ??????, ??????????, ??? ??? ?????? ?? ?????????? ??????
????????? ??? ???, ?????? ?T? ??????, ??? ??? ??? ?????? ??? ?????????? ??? ??????
?????, ?? ?????? ??? ?????? ?? ?????????? ??? ?????????? ??? ?????????? ???, ??? ?????? ??? ???
??? ?????? ??? ?????? ?????? ??? ? ITH ?????? ??? ?????????? ??? ??????
??? ?? ?? ??? ?????? ??? ?????????? ??? ?? ??? ?????? ?????????? ??? ?? ??? ???.

25

???? ?????? ?? ?????? ???, ? ?????????? ??? ?????? ??? ?? ?????????? ?????? ?????? ???
?? ITH ??? ?????? ??? ?????? ?????????? ?????????? ?????????? ?? ?? ???
?? ?????? ??? ?????? ??? ?? ?????????? ??? ?? ?????????? ??? ??? ?????????????? ??
?? ??????, ? ITH ?????? ?? ?????????????? ??? ?? ??? ?????? ??? ?????? ?????????? ???.
????????? ??? ?? ?????????? ??? ?? ?????????? ???.

26

????????? ??? ? ?????????? ?????? ??? ?????? ??? ?????????? ?????? ??? ??????? ???
?? ?????? ?????? ?????????? ?, ? ITH ?????? ?????? ?????? ?????? ??? Tribunalul
Bucure?ti (????????? ?????? ?????????? ?, ??????), ?????????? ??? ? ??? ?????? ???.
????? ??? ?????? ??? ??? ??? ???.

27

? ? ?????? ??? ?????? ?????? ?????????? ??? ? ITH ?????? ?? ?????? ??? ?????????? ??
????? ?? ?????????? ?? ? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???
????????? ???, ??????????, ??? ?????? ?? ?????? ???, ??? ?????? ?? ?????????? ??? ???
??? ??? ?????????????? ??? ?????? ?????? ??? ?????? ?????????????? ?? ??????????.

28

??? ??? ??????? ???, ?? Tribunalul Bucure?ti (????????? ??????????) ?????????? ??
????????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ?? ?????? ?? ??????
????????? ???:

«1)

?)

? ??????????? ?? ???????? ??? [?????? ??], ??? ?????????? ?? ???? 167 ??? ?? ????
168, [??] ???[??] ??? ?????????? ??????? ??? ??? ?????????? ??? ??????????????
?????????????, ? ??? ?? ?????????? ??????? ??? ?????????? ??? ? ??? ?? ??????????
????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ???? ?? ??????????
??? ??? ??? ?????????? ?????????? ??? ?????? ?????????????? ??? ???? ??
????????? ?????????? ???????, ??? ?????????? ?????????? ??? ?????? ??? ??????????
?????????;

?)

? ?????????? ?? ??? ?????? ?????????? ??? ?????? ??? ???????????, ?? ??????????
????????????? ??? ??????????, ??? ?????????? ??? ?????? ??? ?????????? ??? ???? ??
????????? ?????????? ? ??? ?? ?????? ??? ?????? ??? ?????????? ??? ???? ??;?

?)

? ?????????? ?? ??? ?????? ?????????? ??? ?????? ?? ?????????? ??? ??? ?????? ?? ??????????
??? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ?? ?????????? ?? ??????????
????????? ??? ?????????? ??? ?????????? ??? ??????????;

-

? ?????????? ?????? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ?????????????? ??? ?????????? ??? ?????????? ???, ??? ? ??
??????, ??? ?????? ???, ?????????? ??? ?????? ??? ?????? ?????????? ??? ??? ?????? ??? ??????????
??? ?????? ??? ??????????;

-

? ?????? ??? ?????????? ??? ?????? ?? ??? ?????? ??? ??????, ?? ?????????? ?
????????????? ??? ?????? ?? ??o????? ??? ?????????????? ??? ?????? ??? ?????? ??? ??????????
????????? ???;

?)

? ??? [?????? ??] ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??
????????? ?????????? ??? ??????????;

-

? ?????????? ?? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ?? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ???;

-

? ?????????? ?? ??? ?????? ??? ?????????? ?? ?????????? ?? ??? ?????? ??? ?????? ??? ??????????
????????????? ??? ?????????? ???;

?)

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

????????????? ????, ??? ?????? ??? ???? ??? ?????? ?????????? ???????;

??)

????? ? [?????? ??] ??? ?? ??????? ?????? ??? ??????? ??? ?????? ??? ?????? ???, ??
????????? ?????????? ??? ???????, ?????????? ?????????? ?????????? ???
????????????? ??? ?????? ??? ?????? ?????? ??? ?????? ???, ??? (i) ? ??????
????????? ??? (ii) ? ?????? ?????? ?? ?????????? ??? ?????? ??? ?????? ? ??????
????????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????? (???)
????????? ???, ?? ??????, ??? ?????? ???, ??? ?????????? ?????? ??? ?????? ???
????????? ??? ??? ?????? ??? ??????????) ? (iii) ? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????????? ?????? ??? ?? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??????;

?)

????? ?? ??????? ??? [?????? ??], ??? ??????? ?? ???? 184 ??? ?? ???? 185, ??
[?] ???[?] ??? ??????? ??? ?????? ??? ?????????? ??? ?????????? ???
??????????, ? ??? ??? ?????????? ??? ?????????? ??? ???? ??? ??? ??????????
????????????? ??? ?????? ??? ? ?????????? ??? ?????????? ?????? ??? ?????? ???
????????????? ??? ??? ???;

? ???? ????, ?? ??????? ?????????? ?????????? ??? ?????????? ??? ??????????,
??????????, ??? ??? ??????? ?????????? ??? ???, ?? ??????? ??? ?????? ???
?? ??? ??? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????? ?? ??? ??? ?????? ?? ??? ?????? ??? ?????? ??? ?????????? ?????????? ???;

?)

????????? ? [?????? ??] ?? ?????? ?????? ? ?????? ??????? ?? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ???, ?? ?????? ?????????? ??? ?????? ???
????????? ??? ?????? ???, ??? (i) ???, ??? ?????? ??? ?????? ??? ?????? ???
????? ???, ? ?????? ??? ?????? ??? ??? ??? ?????? ??? ?????? ??? /????????? ???
????????? ??? ?????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? 15?? ??????????
1998, Ghent Coal Terminal (C?37/95, EU:C:1998:1), ??? (ii) ?? ?????? ?????????? ???
?? ?????????? ??? ? ?????? ??? ?? ?????? ??? ?????? ?? ?????? ??? ?????? ???
????????????? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???
????????????? ??? 29?? ?????????? 1996, INZO (C?110/94, EU:C:1996:67);

?)

????????? ? [?????? ??] ??? [?] ???[?] ??? ??????? ?????? ??? ??? ??????????
?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???:

???? ??? ?????? ? ??????? ???????? ??? ????? ?? ?????? ?? ? ??????? ??? ??
?????????? ?????????????? ?????;

-

???? ??? ?????? ? ??????? ?????? ?????????? ?????? ?????? ?????????? ???
?????????? ?????????? ??? ?? ?????? ??? ?????? ??? ?????????? ??? ???;

2)

?)

?????????? ? [?????? ???], ??? ?????????? ?? ?????? 28, ??? ??????? ??? ?????????? ???
??? ?????????????? ??? ?????? ??? ??? ?????? ?????? ?????? ?????? ?????? ??????
?????????????; ???

?)

????? ?? ?????????? ??? [?????? ???], ??? ?????? ?? ?????? 28, ??? ?????? ???
????????????? ?? ?????????? ??? ??? ?????????????? ??? ?????????????? ??? ???
????????????? ??? ?????? ?? ??? ?????? ??? ??? ?????????? ??? ?????????????? ???
????? ??????? ???????, ?? ?????? ?? ?????????? ??? ?????????? ??? ?????????? ???
?????????, ????? ??? ?????, ??? ?????? ???, ??? ?????? ??????, ??? ?? ?????? ???;
??????;

?)

????? ?? ?????? ?????????? ??? ?????? ???, ??? ?????????????? ??????????, ?
????????????? ??? ?????? ?? ?????????????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ?? ?????????? ??? ?? ???
?????, ??? ??? ????? ???????, ??? ?? ?????????? ??? ?????????? ??? ??? ?? ??? ???
??????;

?)

????? ?? ?????? ?????????? ??? ?????? ???, ??? ?????????????? ??????????, ?
????????????? ??? ?????? ??? ?????????? ?? ?????????????? ??? ?????????? ??? ??? ??
????????? ??? ?????????? ??? ?????? ?????? ?????????? ??? ?????????????? ??? ??????????
????????? ??? ?????????? ??? ?????? ?????? ?????????? ?????????? ??? ?????????? ???
????? ?? ?? ??? ?????? ??? ?????? ?? ?????? ??? ?????????? ??? ?????? ??? ?? ??? ???
????????? ?????????????? ??? ?????????? ?????? ???????;

?)

????? ? [?????? ???] ??? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
?????????? ??? ?????? ?????? ?? ?????? ?? ??? ?????? ?????????? ??? ?????? ???
????????? ?? ?????????? ??? ?????? ???, ????? ?? ?????????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?? ?? ??? ?????? ?????????? ??? ?????? ??? ?? ?? ???
??? ??? ?????? ???????;

???)

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

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

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

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

29

?? ?? ?????? ?????????????? ????????, ?? ?????????? ?? ?? ??, ?? ?????? ?????????????? ??????,
???' ??????, ?? ?????????????? ?? ?? ?????? 167, 168, 184 ?? 185 ?? ?????? ??? ??????
??? ?????? ?? ?? ?????????? ?????????? ?? ?? ?? ?? ?????? ??? ?????? ?? ?? ??, ?? ??????????
???????, ?? ?????????? ?? ?? ?????????? ?? ?? ?????????? ?? ?? ?????? ?? ?????????? ?????????? ????????
????????? ?? ?? ?????????? ?? ?? ?????????? ?? ?? ?????? ?????????? ?????????? ?????? ?? ??
???????, ?? ?? ?????????? ?? ??, ?? ?????? ?????????? ?? ?? ?????? ?????????? ?????????? ?????? ?? ??.

30

???????????????, ????????????????, ??? ??????????? ?? ??? ???? ? ?????????????? ???????
???????? ?????, ??????, ?? ????? «????????????? ??? ?????» ??? ???? ?????? ??? ??????
??? ???, ????????, ?? ?????? ?????? ??? ?????????? ?? ?????? ?????????????? ??? ???
????????????? ??? ?????????????? ??? (????????? ??? 28?? ?????????? 2018,
Imofloresmira – Investimentos Imobiliários, C?672/16, EU:C:2018:134, ??? 33 ??? ???
????????????? ??????). ?????????? ? ?????????? ???, ??? ?????? ??? ??????
?????, ??? ?????????????? ? ?????????? ??? ITH ?? ?????????? ??? ???.

31

?????????, ??????? ???. ?????? 167 ??? ??????? ???, ?? ?????????? ?????????? ?????????? ????.
??? ?????? ????. ????. ???? ???? ?????? ?????? ?????? ?????? ??????????. ????. ?????? ???????, ??????
? ?????????? ????. ????. ?????? ?????? ?????????? ? ?????????? ????. ????. ?????? ?????? ????. ?????? ?????????? ????.
????? ?????????? ?????????? ?????????? (?????. ??????? ???. 28?? ??????????? 2018,
Imofloresmira – Investimentos Imobiliários, C?672/16, EU:C:2018:134, ????? 35 ??? ???
????????????? ??????????).

32

????? ?? ??????????? ??? ????????????, ??? ?? ?????? ??? ?????? ??? ?????? ? ??????????? ???
???????, ??? ?? ??????????????? ??? ?? ?????????? ????????????, ??? ?? ??????????? ???
???? ?? ??????? ??? ??????????? ??? ?? ????????, ?? ??????? ??? ?? ??????? ??? ???????,
???????, ?? ?? ??????????? ??? ??????? ??????????? ??? ????? ??????? ? ?? ????????
????????? ????????, ??? ?? ??????????? ??????? ? ?????? ? ?????????? (??????? ??
28?? ??????????? 2018, Imofloresmira – Investimentos Imobiliários, C?672/16, EU:C:2018:134,
????? 36 ??? ??? ?????????????? ??????????).

33

??????????, ?? ?????????? ?? ?????? ???? ?????????????? ?? ?????????????? ?? ?????? ???
????????? ?? ?????????? ?? ?????? ?????? ?????? ?? ?????? ?? ?????????? ?? ?????? ?? ?????? ??
?????????? ?? ??? ??, ???????, ??? ?????????? ??????.. ? ?????????? ?? ?????????? ??
????? ?? ?????? ?? ?????????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????? ?????????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? 168 ?? ?????? ??

?????? ?????????????? ?????????????? ??? ?????? ?????????? ??????????, ??? ?? ?????????? ??
?????? ??? ?????????? ?????? (?????? ?? 28?? ?????????? 2018, Imofloresmira –
Investimentos Imobiliários, C?672/16, EU:C:2018:134, ??? 39 ??? ??? ??????????????
?????????).

34

??????, ?? ?????????? ??? ?????????????? ?????? ??? ?? ??????? ?????????
????????????? ?????????? ?? ??????????, ??? ?? ?? ??????? ? ?????????????? ??? ??
?????????????, ??? ?????????????? ?????????????? ??? ?? ??????? ???, ?? ?? ??? ????? ??
????????? ??????? ??? ?????? ?????????????? ?????? ??? ??????? ??? ?????? ??????????
?????? (?????? ?? 28?? ?????????? 2018, Imofloresmira – Investimentos Imobiliários,
C?672/16, EU:C:2018:134, ??? 40 ??? ??? ?????????????? ??????????).

35

???? ??? ????? ?????????? ?????????? ??? ?? ??????? ??? ?????????? ??? ??
????????? ??? ?????????? ?????????? ??? ?? ?????????? ??? ?????????? ??? ??
????????? ?? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??
??? ?????? ?????????? ?????????? ?????????? ?????????? ?????????? ??? ?? ?????? ??????????
??? ??? ?????????? ??? ?????????? ??? ?? ?????????? ??? ?????????? ?????????? ??? ??
????????? ?????????? ?????????? ?????? ?????????? ?????? ?????????? ?????????? ??? ??
????????? ??? ?? ?????????? ?????? ?????????? ?????? ?????????? ?????? ??? ?? ?????? ??? ??
(??., ????, ????, ??????? ?? 14?? ?????????? 1985, Rompelman, 268/83,
EU:C:1985:74, ??? 19, ??? ?? 17?? ?????????? 2018, Ryanair, C?249/17, EU:C:2018:834,
????? 23).

36

??? ?????? ?? ?????? ??? ?????? ??? ?????????? ?????????? ?????????? ??? ??
????????? ??? ?? ?????? ??? ?????????? ?????? ??? ?? ?????????? ??? ??
????????? ??? ?? ?????? ??? ?????? ??? ?????????? ?????????? ??? ??
????????? ?????? ?????????? ?????? ??? ?? ???????, ??? ??????? ??? ??
????????? ?????? ?????????? ?????? ??? ?? ???????, ??? ??????? ??? ??
????????? ?????? ?????????? ?????? ??? ?? ?????????? ?????? ??? ??
????????? ??? ?? ?????? ?????? ?????? ??? ?? ?????? ??? ?????????? ??? ??
????????? ??? ?? ?????? ?????? ?????? ??? ?? ?????? ??? ?????????? ??? ??
????????? ?????? ?????????? ??? ?? ?????????? ?????? ??? ?? ?????????? ??? ??
????????? ?????? ?????????? ??? ?? ?????????? ?????? ??? ?? ?????????? ??? ??
????????? ?????? ?????????? ??? ?? ?????????? ?????? ??? ?? ?????????? ??? ??
????????? (??., ????, ????, ??????? ?? 29?? ?????????? 1996, INZO, C?110/94,
EU:C:1996:67, ??? 22, ??? 28?? ?????????? 2018, Imofloresmira – Investimentos
Imobiliários, C?672/16, EU:C:2018:134, ??? 43, ??? ?? 17?? ?????????? 2018, Ryanair,
C?249/17, EU:C:2018:834, ??? 25).

37

??????, ??? ? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ??
????????????? ?? ?????? ??? ??/? ?????????? ??? ?? ?????? ??? ?????? ??? ??

????????????????? ??? ??????? ??? ?????? ??????? ?? ?????????? ??? ????? ?????????? (??.,
????? ????, ??????? ??? 14?? ?????????? 1985, Rompelman, 268/83, EU:C:1985:74,
????? 24, ??? 29?? ?????????? 1996, INZO, C?110/94, EU:C:1996:67, ????? 17, ??? 8??
?????? 2000, Breitohl, C?400/98, EU:C:2000:304, ????? 39, ??? ??? 17?? ?????????? 2018,
Ryanair, C?249/17, EU:C:2018:834, ????? 18).

38

??????, ? ?????????? ??? ?????? ?? ??????? ??? ?????????? ??? ?????????????? ??? ??????? ??
????????? ??? ? ??????? ??? ?????????????? ??? ?????????????? ??? ?????????? ??? ???????, ??
????????? ??? ? ??????? ??? ?????????? ??? ?????? ? ?????????? ??? ?????????? ??? ??????? ??
????????? ?????????? ??? ?????????? ?????????????, ??? ?????? ?????????????? ?????????? ??
????????? ??? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??
????????? ??? ???????, ???????????, ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????, ??????? ??
????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? (??., ?????? ????, ?????????? ??
14?? ?????????? 1985, Rompelman, 268/83, EU:C:1985:74, ????? 24, ??? 29?? ??????????
1996, INZO, C?110/94, EU:C:1996:67, ?????? 23 ??? 24, ??? ??? 8?? ?????? 2000, Breitohl,
C?400/98, EU:C:2000:304, ????? 39 ??? ??? ?????????? ??????????).

39

?????????, ??????? ? ?????????? ?????????????? ?????????????? ??????????????, ?????????????? ??
????????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ??????? ?? (??.,
????? ????, ?????? ??? 28?? ?????????? 2018, Imofloresmira – Investimentos
Imobiliários, C?672/16, EU:C:2018:134, ????? 51), ? ?????????? ??? ??????? ??
????????? ??? ?? ?????????? ? ?????????? ???, ?? ?????????? ?????????????? ??? ???????????,
??????? ??? ??????????, ??? ?? ?????????? ?????????? ?????????? ??? ???????, ??? ?? ??????? ??
????????? ?? ?????????? ?????????? ?????????? ? ?????????? ?????????? ??? ???????, ??? ?? ??????? ??
????????? ??? ?????????? ??? ?????????? ?????????? ??? ???????, ?? ?????? ?????????? ???????????
????? ??? ?????? ?????????? ???.

40

? ? ??????????, ??? ??? ??? ?????????? ?????????? ??? ?? ?????? ??????????, ?? ???
????? ?? ??? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ?????????????? ??? ?????????? ??
????? ????, ?????????? ? ?????????? ???, ??????, ??? ??? ?????? ??????????????
????????? ??? ?????????? ??? ?????? ?????? ?????????? ? ?????????? ?????????? ?? ??????? ??
?? ITH. ???????, ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??? ??????????????
????????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??? ??????????????.

41

???? ?????? ?? ?????? ?? ??????, ?? ?????????? ?????? ??? ?????? ??? ?????? ???, ??
????????????? ?????? ?????????????? ??? ?????????? ??? ?????????? ??? ???????, ?????? ??
????????? ??? ? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? 184 ??? 187 ???
????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??
????????? ??? ?????? ????. ? ?????????? ??? ?????????? ??? ?????? ??? ??????????
????????? ??? ?????????, ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ???, ??? ??????????
????? ?? ??????? ??? ?????? ?????????? ?? ?????????? ??? ?????? ??? ?????????? ??? ??
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ???
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ???
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ???

???? ???? ???? ??????? ???? ??? ?????? ??? ??????? ?????? ?????? ? ?????????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ??? ??? ?????? (??????? ??? 9?? ?????? 2020, Finanzamt Bad
Neuenahr-Ahrweiler, C?374/19, EU:C:2020:546, ??? 20).

42

??????????????, ????? ?? ???? ?????? ?????????????? ???, ??????? ?? ??????????? ?????? ?? ??????
??? ?? ??????? ?? ?????? ?????? ?????????????? ??? ?????? ?? ??????????? ??? ??
????????????? ??? ?????? ?????????????????? ??? ?????????? ??? ?????????????????? ?????? ?? .?
????????? ??? ?????? ??? ??? ?????????? ??? ?????????? ?? ??? ?????????? ??? ?????? ??? ??? ??????.
???? ?? ?????? ??? ?????????????? ?? ??? ?????????? ??? ?????????????? ??? ?????????????? ???
???? ?????????????????? ??? ??? ?????? ?????????? ?? ?????? ?????????????? ??? ??? ??? ??? ?
??? ?????????? ??? ?????? ?????????? ??? ???, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? (????????? ??? 9?? ??????? 2020,
Finanzamt Bad Neuenahr-Ahrweiler, C?374/19, EU:C:2020:546, ????? 21).

43

2018, Imofloresmira – Investimentos Imobiliários, C?672/16, EU:C:2018:134, ???? 47).

44

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

45

??????????, ??, ??? ??????????? ??, ?? ???? ????? ??????????????? ???????????, ? ??????????????
???? ???? ???, ??? ???????, ?? ???????, ?????? ??, ?????? ??????????????? ??? ??????? ??????????? ??
??????????????, ?? ??????????????????? ?? ??????????????? ?????? ??, ??????????? ??? ?? ???????????
?????????????? ???????, ??? ??????? ?? ??????????? ??? ??????????? ????? ??????????????? ???????,
??? ??????????? ??, ??????????? ??, ??? ??????? ??, ??? ??????????? ??? ??????? ??, ??????????? ??, ???,
???? ??, ??????? ??, ??????? 185 ??? ??????? ??, ?? ??, ???????, ??????????? ??? ??????? ??, ?????
???? ??, ??????? ??, ??????? ??, ??????? ??, ??????? ??, ??????? 184 ??? 185 ??? ??????? ??, ???
???? ??, ??????????????? ??, ??????????????? ??, ??? ???????.

46

????????????? ?????? ??? ??????? ???? ??????? ???????, ??? ?????? ?????????????? ???????,
??? ??????? ?? ??? ?, ?????? ?? ?????? ? ??????? ?????? ?? ?????? 167, 168, 184 ??? 185 ???
?????? ??? ?????? ??? ?????? ??? ?? ??????? ?????????? ??? ??? ??? ??? ??? ?????? ???
?????, ?? ?????????? ???????, ??? ?????????? ??? ?????????????? ?? ?????? ?? ?????? ?? ??????????
????????????? ??????? ?????????? ?????? ?????? ?????? ?????????????? ?? ??????
????????????? ??????? ???????, ??? ?????????? ?????????? ?????????????? ??? ?? ?????? ???
????????????? ??? ???, ??? ??? ??? ?????? ?? ?????? ?????????????? ??? ?? ??? ??? ??? ?? ?
????????????? ??? ??? ??? ?????? ??? ?????? ?? ?????? ?????????????? ?? ??? ?? ??? ??? ??? ?? ?
????????????? ?????????????? ??????????????.

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

47

???? ??????? ?????????? ?????????????? ???????, ??? ?????????? ?? ??? ??? ?, ?? ?????? ???????????
?????, ???' ??????, ?? ?????????????? ?? ? ?????? ???, ??? ?????????? ?? ?????? 28, ????
??? ?????? ???, ?? ??? ?????????? ??????? ??????? ?????? ?????? ?????? ???????????????,
????????????? ?? ?????????? ??? ??? ?????????????? ??? ? ?????????????? ??? ??? ???
????????????? ?????? ?????? ?? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??
????????????? ???.

48

????????????? ?? ????? ?????????? ??? ??????? ?????, ?????? ?? ????????????, ???' ?????, ???, ??? ???? ????? ????????, ?? ????????????, ? ?????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? (??????? ?? 22?? ?????????? 2018, MEO – Serviços de Comunicações e Multimédia, C?295/17, EU:C:2018:942, ????? 43 ??? ????? ?????????????? ??????????).

49

???? ????????, ?? ????? 28 ??? ?????? ???, ?????? ??? ?????? ??? ????? ??????????? ???, ???,
?????? ??? ???????, ??? ????? ??? ?????????? ??????, ?????????? ?? ?????? ??????????,
????????? ??? ???????? ??? ?????? ?????????? ??? ??????? ??????????, ??????????
????????? ??????? ??? ?????? ?????????????????? ?????????? ??? ?????? ?????????? ??????????????
?????????. ??????? ??? ?? ??? ????? ???????, ? ???????????????, ? ??????
????????? ??? ?????? ?????????? ??? ??????? ??? ???????????????, ?????????? ???,
??????, ??? ?????? ??? ?? ??? ????? ??????? ??? ??? ?????????????? ??? ?????????????? ???
????? ???????, ? ?????? ??????? ??? ???????????, ?????? ???????, ??? ???????,
????????? ??? ?????????? ??? ?????? ?????? (????????? ??? 4?? ????? 2017, ??????? ???
??????????????, C?274/15, EU:C:2017:333, ??????? 85 ??? 86 ??? ??? ??????????????
?????????).

50

??????, ?? ??????????? ?????? ??? ? ??? ?????????????? ?????????????? ??? ????? ????? ???
????????? ?????? ??????? ??????? ?????????? ?????????????????? ??????, ??????? ?? ?? ????? 14,
?????????? 2, ??????? ??, ??? ??????? ???, ?? ?????? ?????????? ?????? ?????? ????? IV ???
?????? ?????, ? ?????? ?????????? «????????????? ??????». ???????, ? ?????? ?????
?????? ???, ??? ?????? ???????, ??????? ??? ?????????? ?????????????? ?????????????? ??????
????????????????? ???????, ?? ?????? ?????????? ??? ?????? ?????????? ??? ???
(?????? ??? 4?? ??? 2017, ??????? ??? ??????????????, C?274/15, EU:C:2017:333,

????? 88).

51

???????, ??? ?? ?????????? ?? ???? ?????????? ?????????????? ?? ???? ?????????? ??
????????? ?????, ???, ??????, ?? ?????????? ?????? ??? ?????????? ??? ?????? ?
????????????????? ??????????, ??? ?????????? ??? ?????????? ?????, ??? ?????????? ?????? ???/?
???? ?????? ??????????, ???, ???????, ?? ?????????? ?? ?????????? ??? ?????? ???/? ??
????? ??? ?????????? ??? ?????????? ??? ??? ?????????? ?????? ??? ?? ?????????? ???
????? ???/? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????????????? ??? ?????? ??????????.

52

???? ?????? ??? ?????? ??? ?????? ??? ?????????????? ????, ??? ?????? ?????????? ?????????? ??
????? ??????????, ?????????? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????
????, ?????? ? ??????????, ?????? ?? ??? ?????? ??? ?????? ??? ?????? ??????. ??????????, ??????????
??? ?? ????? 14, ?????????? 2, ??????? ??, ??? ?????? ?????? ????? ?????????????? ?????? ???
??? «?????» ??? ??? ??????????????, ??? ?????? 28 ??? ?? ??? ?????? ??????, ??? ?
????????? ??? ?????? ?????? ?????? «??? ?????????? ?????», ?????? ?? ?????????? ??
????????? ??? ?????? ?? ??????????, ?????? ??? ?????????????? ??? ??? ??????????,
????????? ?????? ?? ?????????? ??? ?????? ??? ?????? ??????.

53

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

54

???? ?????? ?? ??????? ??????????, ??????? ?? ??? ?????????? ??? ?????????? ???????,
????? ? ?????????? ??? ??? ?? ?????? 14, ?????????? 2, ??????? ??, ??? ??? ?? ??? ?????? 28
??? ?????? ??? ?????????? ??? ?? ??? ?????? ??? ?????????? ? ?????????????? ???/? ??
????????? ??? ?????????? ?? ??? ?????? ?????????????? ??? ?????????????? . ?????? ??????????
??? ??????, ??? ?????????? ??? ?? ?????????? ??? ??????????, ??? ?? ?????????? ??????
?????????, ??? ??? ??? ??????, ??????????, ?????????? ??? ?????????? ??? ??????????
????????? ??? ?????????? ?? ???.

55

???? ????, ?? ?????????? ??? ?????? ??? ?????? ??? ?????, ? ??? ?????? ?????????????? ??? ?? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?? ??? ?????? ???
?????????, ??? ??? ??? ?????????? ????, ?????????? ?? ??? ?????? ?? ??????????
????????? ?????????????? ??? ?????? ?????????? ?????????? ??? ?????????????? ??? ??????, ????
????????? ??? ??? ?????????? ? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? 48 ???
????????? ??????????, ?????????? ??? ??? ?????????? ?????????? ??? ?????????? ??? ??????????
????????? ?????? ??? ?????????? ?????????????? ??? ??? ?????????? ??? ??????????.

56

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

? ?????????? ?? ??? 28, ??? ???? ?????? ???, ?? ??? ?????????? ??????? ?????? ?????? ??????
?????? ????????????????, ??? ?????????????? ?? ?????????? ??? ?? ?????????????? ???
????????????? ??? ??? ?????????????? ?????? ??????? ?? ??? ?????? ??? ?? ??????????
????? ??????? ?? ????? ?????????? ??? ?? ?????? ??? ?? ?????? ???.

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

57

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

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

1)

? ???? 167, 168, 184 ?? 185 ?? ?????? 2006/112/?? ??? ??????????, ??? 28??
????????? 2006, ??????? ?? ?? ?????? ?????? ?????? ?????????????? ???, ?????? ???
????? ?? ?????? ?????? ?????? ??? ?????? ?????????? ?????? (???) ??? ?? ??????
?? ?????, ?? ?????????? ??????, ??? ?????????? ??? ?????????? ?? ?????? ?? ?? ??
????????? ?????????????? ?????? ?????????? ?????? ?????? ?????????????? ?? ??????
????????? ?????? ???, ??? ?????? ?????? ?????? ?? ?????? ?????????????? ??? ?? ?????? ??
????????? ???, ??? ?????? ?????? ?????? ??? ?????????? ?? ?????????????? ?? ?? ?????? ??
????????? ?????? ?????? ?????? ?????? ??? ?????????? ?? ?????????????? ?? ?? ?????? ???.

2)

? ?????? 2006/112, ??? ?????????? ?? ??? 28, ??? ???? ?????? ???, ?? ??? ??????????
?????? ?????? ???, ??? ?????? ?????? ??????????????, ??? ?????????????? ?? ?????????? ??? ??
????????????? ???, ??? ?????????? ??? ?????? ?????? ?????????? ?????? ?????? ?? ?? ??
????? ??? ??? ?????????? ??? ?????? ?????? ?? ?????? ?????????? ??? ?? ?????????? ?? ?? ??
????? ??????.

(?????????)

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