

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

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

??? 8?? ?????????? 2022 (*)

«????????????? ?????????? – ?????????? ??? ?????????? ?????????? – ?????? ???????
????? ?????????? ?????? (???) – ?????? 2006/112/?? – ?????? 203 – ??????????????
????? ??? – ?????????? ?????????? ?? ?????????? ?? ?????????? ?????????? ?????????? –
????????? ?????????? ?????????? ?????????? ?????????? ?????»

????? ??????? C?378/21,

?? ?????????? ?????? ?????????????? ?????????? ?????????? ??? ?????? 267 ????, ???
?????? ?? Bundesfinanzgericht (????????????? ?????????? ??????????, ???????) ??
?????? ??? 21?? ?????? 2021, ? ?????? ?????? ??? ?????????? ??? 21 ?????? 2021,
??? ??????? ??? ???

P GmbH

????

Finanzamt Österreich,

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

????????? ??? ??? F. Biltgen (?????????), ????????????, N. Wahl ??? J. Passer, ????????,

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

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

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

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

– ? ?????????? ????????, ?????????????? ??? ??? A. Posch,

– ? ?????????? ????????, ?????????????? ??? ??? L. Lozano Palacios ??? ??? R. Pethke,

????? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?? ?????? ?? ??????????
??? 8?? ?????????? 2022,

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

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1 ? ?????? ?????????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? 203 ??? ??????
2006/112/?? ??? ?????????? ??? 28?? ?????? 2006, ?????? ?? ?? ?????? ?????????? ???
????????????? ??? (?? 2006, L 347, ?. 1, ??? ?????????? ?? 2018, L 329, ?. 53), ???
????????????? ?? ??? ?????? (??) 2016/1065 ??? ??????????, ??? 27?? ?????? 2016 (??
2016, L 177, ?. 9) (??? ????: ?????? ???).

2 ?? ?????? ??? ??????????? ??? ?????? ??????? ??????? ??? P GmbH ???
??? Finanzamt Österreich (?????????? ??? ?????? ??? ???????) (??? ????: ??????????? ????) ??
?????????? ??? ?????? ??? ??????????? ?? ????? ?????? ?????? ??????????????? ??? ??????
????? ??????????????? ??? (???) ??? P ??? ??????????, ??? ?????????? ??? ????? ??????
????? ??? ?? ????? ??? ??????????? ?? ?????????? ??????????.

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

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

3 ?? ????? 193 ??? ?????? ??? ?????? ?? ???:

«?? ??? ?????????? ??? ??? ?????????? ??? ?????? ??? ? ?????? ?????????????? ??????????????
????????? ??? ??? ?????? ??????????, ??? ??? ?????????? ??? ? ??? ?????? ?????????? ???
????? ?????? ??? ??? 194 ??? 199? ??? ?? ??? 202.»

4 ?? ????? 203 ??? ?????? ??? ?????? ?? ???:

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

5 ?? ????? 220, ?????????? 1, ??? ?????? ?????????? ?? ???:

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

1) ??? ??? ?????????? ??? ?????? ??? ?????? ??????????, ??? ?????? ??????????????
????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ??????,

[...]».

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

6 ?? ????? 11, ?????????? 1, ?????? 1, ??? Umsatzsteuergesetz 1994 (????? ??? 1994
????? ??? ?????? ?????? ??????) (BGBI. 663/1994), ??? ?????? ??? ?????? ??? ?????? ??? ??????????
????????????? ??? ?????? ?????? (??? ????: UStG 1994), ?????????? ?? ???:

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

7 ?? ????? 11, ?????????? 6, ??? UStG 1994 ?????? ?? ???:

«????? ?????? ?? ?????????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????????? ?? 400 ???, ????,
????? ??? ?????????? ????, ? ?????? ??? ?????? ??? ?????? ??????????:

1. ??? ?????????? ??? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???

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

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

3. ??? ?????????? ??? ?????????? ??? ?????? ? ?????? ??? ?????? ?????????? ??? ?????? ???
????????? ?????????? ??? ?????? ?????? ??? ?????? ??????????

4. ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ? ?????? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ???

5. ??? ?????????? ??? ??????.»

8 ?? ????? 11, ?????????? 12, ??? UStG 1994 ?????? ?? ???:

«?? ? ?????????? ??? ?????????? ???, ?? ?????????? ?????? ?? ?????????? ?????? ? ???
?????? ??????????, ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ??????????
????????? ??? ?????????? ?????????????? ???, ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ???
??? ?????????? ??? ?????? ???, ??? ?????? ??? ?????????? ?????????????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ???' ?????????? ??? ?????? 16, ?????????? 1.»

9 ?? ????? 16, ?????????? 1, ??? UStG 1994 ?????? ?? ???:

«?? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????????? ?????????? ???
?????? ??? ?????? 1, ?????????? 1, ?????? 1 ??? 2,

1. ? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ??? ??? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???

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

10 ?? ????? 239a ??? Bundesabgabenordnung (????????????? ??? ?????? ??????????), ???
????? ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???, ?????????? ?? ???:

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

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

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

3. ?????? ?? ?????? ?????? ??? ?????????? ??? ?????????? ???

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

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

11 ??? ?? ?????????? ??? 2019, ? ?????????? ??? ?????? ???, ? ??????
????????????? ??? ?????????? ??? ?????? ??????????, ?????????? ??? ?????????? ??? ??????
????????? ??? 20 %. ?????????? ??? ?????? ??? ?????? ??? ?????? 22 557 ?????????? ???
????????, ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? 11, ?????????? 6, ??? UStG

1994 ?????????? ?????? ?????? ??? ????? ?????? ?????????? ??? ?? ??? ????????????

12 ??? ??? ?????? ?????????????? ?????????? ?????????? ??? ?? ??? ?????? ???
????????????? ??? ?????? ?????? ?????? ?????????????? ?????? ?????????? ???, ?? ?????? ???
????? ?????? ?????? ??? ??? ??????.

13 ? ?????????????? ??? ?????? ??????, ??? ?????? ?????? ?? ?????? ??? ? ??????
????????? ??? ??? ??? ?????????? ??? ?????? ??? 20 % ??? 13 %, ??????
????????????? ?????? ??? ?????????? ??? ?????? ??? ?? ??? ?????? ?? ?????????? ??? ??????????
???? ??? ???.

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

15 ? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?? ??? ?????????? ??? ?
????? ??? ?????? ??? Bundesfinanzgericht (????????????? ?????????? ?????????? ???,
?????), ?? ?????? ??? ?? ??????????????, ??? ?? ?????? ??? ?????????? ???
?????????????, ?? ?? ?????? 203 ??? ?????? ??? ?????? ?? ??? ?????? ?????????? ??? ?????
??? ?????? ??????, ?????? ??? ?????????? ?????????? ?????????? ?????????? ??????????
?????. ?? ?????????? ?????????? ??????????, ?????? ?? ?????????????? ?? –?????
????? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ? ?????????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ?????????? – ?????? ?? ??????
????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ?????????? ?????? ??????????
?? ??? ??????, ??? ??????, ? ?????? ??? ?????? ?????? ?????? ?????????? ???.
????????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ?? ??????????
??? ???, ?? ?? ??????, ? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????????
????????????? ??? ?????? ??? ?? ??? ?????? ?????? ?????? ?????? ?????????? ??????????????
????? ?????? ??????????.

16 ??? ??? ?????? ????, ?? Bundesfinanzgericht (????????????? ??????????)
????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?? ?????????? ???
????????? ?? ?????????? ?????????? ??????:

«1) ??? ?????? ??? ?????? ??? ?????? ?????????? ?????? ?? ?? ?????? 203 ??? ??????
?? ???, ?? ?????????? ??? ?????? ???, ??? ?????? ?????? ?????????? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ???,
????? ??? ?????????? ??? ?????? ??? ??????;»

2) ?? ?????????? ?????????? ??? ?????? ??? ?????? ???, ??? ??????????,
????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ???
203 ??? ??????:

?) ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
????? ?????? ???, ???, ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ???
???, ???, ???, ? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??????;

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

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

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

17 ?? ?? ????????????????? ???????, ?? ??????? ?????????????? ?????, ???' ??????, ?? ?????????????? ?? 203 ??? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??????.

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

19 ?????????? ?? ?????? ?????? ??? ?? ?????? (????? 8?? 2019, EN.SA., C?712/17, EU:C:2019:374, ??? 26).

20 ??? ?? ?????????? ??? ?????????? ?????? ?????? ?????? 203 ??? ?????? ???, ?? ?????? ?????? 203 ??? ?????? ???, ? ??? ?????? ?????? ??? ?????? ?????? ?????? ???, ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? 8?? 2019, EN.SA., C?712/17, EU:C:2019:374, ??? 32, ??? ?? 18?? 2021, P (????? ??????), C?48/20, EU:C:2021:215, ??? 27].

21 ??? ?????????? ? ?????? ?????????? ??? ?????? 26 ??? ?????? ???, ?? ?????? 203 ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??????.

22 ?? ??? 203 ??? ?????? ??? ?????????? ??? ?????? 193 ??? ?? ??? ?????? ??? ?????? ??? ?? ??? 193, ?? ?????? ?? ?? 220, ?????????? 1, ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? 193, ? ??? ?????? ???, ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

23 ???????, ??? ?????????? ? ?????? ?????????? ??? ?????? 26 ??? ?????? ???, ?? ?????? 203 ??? ?????? ??? ?????? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ? ?????? ?????? ??? ?????? ?????? 193 ???.

24 ?? ???????????, ??? ?????????????? ??? ????? 18 ??? ?????? ???????????, ?? ??????
?????????? ?????????? ??? ?????? ?????????? ?????????? ?????????? ??????, ??? ??? ???
??? ??? ?? ??????????? ?????????? ??? ? ??????? ??? ?????????????? ??? ??????
????? ??????????? ?????????? ??? ?????? ?????? ???????????, ?? ?????? ??? ?????
????????? ??????? ??? ??? ??????. ???????????, ?? ?? ??????, ? ?????????? ??? ??
????? 203 ??? ?????? ??? ??? ?????? ?????????? ?????????? ?? ??? ?????? ?????? ???????.

25 ?????????????? ?????? ??? ??????? ??? ??????? ???????, ??? ?????? ??????????????
?????? ?????? ?? ?????? ? ??????? ??? ?? ?????? 203 ??? ??????? ??? ?????? ??? ??????
??? ??????????? ?????? ???, ? ?????? ?????? ??????? ???????, ??? ??????? ??? ??????
????????? ???? ??? ?? ?????? ??????????? ?? ?????????? ???????????, ??? ???????, ???
??? ?? ??? ???????, ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ??? ??? ??? ???????
?????? ??????? ??????? ?????????? ???????, ??? ??? ??? ?? ?????????? ???
????????? ???? ?????? ?????????????? ??????? ???????????, ?? ?????? ??? ?????? ???????
????????? ???? ??? ???????.

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

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

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

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

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

?? ???? 203 ?? ?????? 2006/112/?? ??? ??????????, ?? 28?? ????????? 2006,
?????? ?? ?? ????? ?????? ?????? ?????? ?????????????? ?????, ??? ?????????????? ??
?? ?????? (??) 2016/1065 ??? ??????????, ?? 27?? ?????? 2016,

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

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

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

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