

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

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

??? 7?? ??????? 2024 (*)

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

???? ??????? C?341/22,

?? ??????????? ?????? ?????????????? ?????????? ??????? ??? ?????? 267 ????, ???
?????? ?? Corte suprema di cassazione (?????? ?????????? ???????????, ???????) ??
?????? ?? 19?? ??? 2022, ? ????? ?????? ??? ?????????? ??? 25 ????? 2022, ???
?????? ?? ???

Feudi di San Gregorio Aziende Agricole SpA

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Agenzia delle Entrate,

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

?????????? ??? ??? K. Jürimäe, ?????? ???????, K. Lenaerts, ?????? ??? ???????????,
????????? ?????????? ??????? ??? ?????? ???????, N. Piçarra, N. Jääskinen (?????????) ???
M. Gavalec, ???????,

????????? ??????????: A. M. Collins

?????????: C. Di Bella, ?????????? ????????,

?????? ?????? ??? ?????? ?????????? ??? ??????? ??? ??' ?????????? ??? ?????????? ???
14?? ?????? 2023,

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

– ? Feudi di San Gregorio Aziende Agricole SpA, ?????????????? ??? ?? R. Nicastro,
avvocata,

– ? ??????? ????????, ?????????????? ??? ?? G. Palmieri, ?????????????? ??? ??
D. G. Pintus, P. Pucciariello ?? F. Urbani Neri, avvocati dello Stato,

– ? ????????, ????????, ?????????? ??? ?? A. Armenia, ?? F. Moro ?? P.
Rossi,

???? ?????? ??? ?????? ?????????? ??? ??????? ??? ?????????? ??? ?????? ?? ??????????
?? 28?? ?????????? 2023,

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

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1 ? ?????? ?????????????? ?????????? ?????? ??? ?????????? ??? ?????? 9, ?????????? 1,
??? ??? ?????? 167 ??? ?????? 2006/112/?? ??? ??????????, ??? 28?? ?????????? 2006,
?????? ?? ?? ????? ?????? ?????? ?????????????? ?????? (?? 2006, L 347, ?. 1) (?? ????:
????? ???), ?????? ??? ??? ?????? ??? ?????????????? ??? ?????? ?????????????? ???
(??), ??? ??????????????, ??? ?????????? ??? ?????????????? ??? ?????????????? ??? ???
????????? ??????.

2 ? ??? ?????? ??????? ?????????? ??? ?????? ?????? ?????? ?????? ??? Feudi di San Gregorio Aziende Agricole Spa (??? ????: ?????? Feudi) ??? ?? Agenzia delle Entrate (????????? ????, ????) (??? ????: ?????????? ????) ??????? ?? ??? ?????? ??? ?????????? ????.

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

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

3 ????? ?? ?????? 9, ??????????? 1, ??? ??????? ???:

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

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

4 ?? ?????? 63 ??? ??????? ?????????? ?? ??????????:

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

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

6 ?? ?????? 168, ?????????? ?, ??? ??????? ????? ?? ????:

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

?) ??? ?????????? ? ?????????????? ??? ?? ??? ????? ?????? ?????? ??? ?? ??? ?????? ??? ?? ??? ?????? ??? ?? ???
????????????? ? ?????????? ?? ??? ?????????? ??? ?? ??? ?????????? ??? ?? ??? ?????????? ??? ?? ??? ??????????
? ?????????? ?? ??? ?????????? ??? ?? ??? ?????????? ??? ?? ??? ?????????? ??? ?? ??? ??????».

7 ?? ?????? 273 ??? ??????? ??? ????:

[...]»

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

8 ?? ?????? 30 ??? legge n. 724 – Misure di razionalizzazione della finanza pubblica (????? 724 – ?????? ??????????????? ??? ???????? ???????????), ??? 23?? ??????????? 1994 (?????? ??????????? ??? GURI ????. 174, ??? 30?? ??????????? 1994) (??? ????: ??? 724/1994), ?? ????: «????????? ????????. ?????????? ?????? ?????», ??? ?????? ????: ??? ?????? ??? ?????? ??????????? ??????????? ??? ??????? ??? ?????? ??????, ?????? ??? ?????:

[...]

4. ??? ??? ?????????? ?????????? ??? ??????????, ?? ?????????? ?????????? ??? ??????????
??? ?? ?????? ??? [??] ??? ?????????? ??? ????? ?? ?????????? ??????????
????????? [..] ? ?????????? [...]. ??????, ??? ????? ?????????? ?????????????? ?????????? , ?
????????? ?????? ? ?????????? ??? ?????????? ?????? ??? ??? ?????? ??? ???, ???
????????? ?????? ??? ?? ??? ????? ??? ?????????? ??? ??? ?????????? ??? ?????????????? ???
????????????? ??? ?????????? 1, ?? ?????????? ?????????? ??? ?????????? ?????????????? ???
??? ??? ?????????? ??? ? ?????? ?????????? ??? ?????????? ?????????????? ??????????????.

4 bis. ?? ?????????? ?????????? ?????????????? ?????????????? ?? ??????? ?? ?????? ??????????
?????? ?? ???? ??????? ??????, ??? ?????? ??? ?????????????? ??? ?????, ??? ?????, ??? ?????, ??? ??
?????????????, ??? ?????? ?????? ??? ?????????? ??????, ? ??? ?????????? ?????? ??
????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??? ??
????? ?????????????? ??? ?????????? 4, ? ?????????????? ?????? ?????? ??? ?????? ?? ?????? ??
??? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? [...].

[...]»

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

9 ? Vigna Ottieri Srl (??? ????: ??????? Vigna) ??? ?????? ?????? ?????? ?????? ????
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? (?????).

10 ??? 22 ?????????? 2010 ? ?????????? ??? ?????????? ?????? ?????? Vigna ???
????? ?????? ????, ??? ?????? ??????????, ?????? ????, ??? ? ?? ??? ?????? ?????? ??????????
?? ?????? (??? «????? ?????? ??????») ??? ? ?????????? ??? 2008, ??? ??? ??? ? ?? ??
????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ??
????? ??? ??????, ??? ??? ?????? ?????? ??? ?????????? ??? ?????? ?????? 30 ??? ?????? 724/1994, ??
????? ?????? ?????????? ?? ?? ??????. ??? ??? ?????? ?????????? ?????? ?????? ?????? ???
?? ?? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? Vigna ??? ???
????? ?????? ?????????? ??????????, ??? ?????????? ?????? ?? ?????????? ??? 2006, 2007
?? 2008. ? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??????
??, ??? 42 108 ???, ??? ?????? ?????? ? ?????? Vigna ??? ?? ?????????? ??? 2009.

11 ? ?????? Vigna ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??????
??? Commissione tributaria provinciale di Avellino (????????????? ?????????? ??????????)
????????? Avellino, ???). ?? ?????? ??? 18? ?????? 2012, ?? ?????????? ???
????? ??? ??????.

12 ? ?????? Feudi, ? ??? 27 ?????????? 2012 ??? ?????????? ??? ??????
Vigna, ?????? ??? ?????? ??? ?????????? ?????????? ?????? ??? Commissione tributaria
regionale della Campania, sezione distaccata di Salerno (????????????? ??????????)
????????? ?????????? ??????????, ??? ?? ?????????? ??? ??? ??? ??????, ???), ??
????? ??? ??????.

13 ??? 27 ?????? 2014 ? ?????? Feudi ?????? ?????? ?????? ??? Corte suprema di
cassazione (????????? ?????????? ??????????, ???), ?? ?????? ??? ?? ??????
?????????. ???' ??????, ?????????? ??? ? ?????? ?? ??? ?????? ?????? ??????
??? ??? ?????? ??? ?????? ???, ??? 30 ??? ?????? 724/1994 ??????.

14 ?? ?????? ?????????? ???????????, ???' ??????, ??? ? ?????? ?????? ?????? ??????
????? ??? ? ?????????? ?? ?????? ?????? ?????? ??? ?? ??????????, ?? ??
?????, ??? ?????? ?????? ?????????? ?????????? ??? ?????? ?????? ?? ?????? ??????
??? ?????? ?????? ?????????? ???, ???, ??? ?????????? ???, ??? ?????? ??????.
??? ??? ?????? ??? ?????? ???, ?? ?????? 30 ??? ?????? 724/1994 ??????
????????? ??????, ? ?????? ?????? ??? ?????? ??? ? ?????? ??? ? ?????? ?????? ??????
??? ?????? ??? ?????? ??? ? ?????? ?????? ??? ? ?????? ?????? ??? ? ?????? ?????? ???
????????? ??? ?????? ??? ? ?????? ?????? ??? ? ?????? ?????? ??? ? ?????? ?????? ???,
????? ??? ?????? ??? ? ?????? ?????? ??? ? ?????? ?????? ???, ??? ? ?????? ?????? ???
????????? ??? ?????? ??? ? ?????? ?????? ??? ? ?????? ?????? ??? ? ?????? ?????? ???
????????? ??? ?????? ??? ? ?????? ?????? ??? ? ?????? ?????? ??? ? ?????? ?????? ???.

15 ??? ??? ?????? ?????????? ?????? ???, ??? ? ??? ? ??? ??????,
??? ??? ?????? ??? ? ?????? ??? ? ?????? ??? ? ?????? ??? ? ?????? ??? ? ??? ? ???
????? ?????? ??? ? ?????? ??? ? ?????? ???, ???, ??? ? ??? ? ?????? ??? ? ??? ? ???,
??? ?????? ?????? ??? ? ?????? ??? ? ??? ? ?????? ??? ? ??? ? ?????? ??? ? ??? ? ???,
??? ?????? ??? ? ?????? ??? ? ?????? ??? ? ??? ? ?????? ??? ? ??? ? ?????? ??? ? ??? ? ???,
????????? ??? ?????? ??? ? ??? ? ?????? ??? ? ??? ? ?????? ??? ? ??? ? ?????? ??? ? ??? ? ???,
????????? ??? ?????? ??? ? ??? ? ?????? ??? ? ??? ? ?????? ??? ? ??? ? ?????? ??? ? ??? ? ???,

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

16 ????? ??? ?????????? ??????, ?? ??????? ?????????????? ??????????????, ??????, ?? ??????
????????? ? ?????????? ??? ?????????????? ??? ????? ???, ??? ??????????, ?? ?????????? ??????????
??? ?????????????? ??? ??? ??? ??????? ?? ??? ?????????????? ?? ?????????? ? ??????
????????? ?????????? ??? ??? ??????, ?????? ??? ?? ?????????????? ?????????????? ??
????????? ??? ??? ?????? ??????? ?????????? ?????????? ??????, ?????? ? ??????
??? ?????????? ??? ? ?????????????? ?????? ??? ?????????? ?????? ?????? ?????? ??? ??????
????? ??? ?????????????? ??????????. ??????, ?????? ?????????? ?????????? ??? ?????? ???
????? ?????? ?????? ?? ?? ?????? 9, ?????????? 1, ??? ?????? ???, ??? ?? ??????
?????????, ???' ??????, ??? ? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ??? ???
????? ?????????? ??? ?????????? ?? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??
????? ??????.

17 ????????, ?? ?????? ??????????? ??????????? ?? ? ?????? ?????????? ??????? ?????????
?????? ?? ?? ????? 167 ??? ??????? ??, ????? ?? ?? ??? ????? ?????? ?? ?????????????? ??
??? ?? ?? ?? ?? ?? ?? ??????????????. ?? ?? ?? ????? ?????????? ?????????????? ??, ??????? ??
????????????? ?????????? ?????????????, ?????????????? ?? ?????????? ?????????? ??????? ??
????? ?????????? ?? ??????? ?? ?????? ??, ?? ????? ?? ?????????? ?? ?????? ?? ?????? ??
?????, ????????, ?? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??
???? ?????? ??, ????????, ??? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?????? ?????????? ?? ??? ?? ?????????? ??.

18 ???????, ?? ?????? ??????????? ??????????? ?? ?? ?????????????? ??? ?????? 30 ???
????? 724/1994 ??????????? ?? ??????????? ?????? ??? ?? ?????? ?? ?????? ?? ??????
????????? ??? ?? ?????? ??? ?????????? ?????? ??? ?? ?????????? ?? ???? ?? ????
????????????? ?????? ??????????. ????????????, ?????? ?? ? ?????????? ??? ?? ????,
????????? ??? ?????????? ???, ?????????? ?? ?? ?????????? ?? ?????????? ?? ? ???
???? ?????? ?? ??? ?????? ?????? ?????????? ?????? ?? ?????????? ??? ?? , ?????????? ?? ?
????? ??? ?? ??? ?????????? ?? ?????????? ??? ?? ?????????? ??? ?? ??? ?? ???? ?? ????
???? ?????????? ?????? ?????????? ?? ?????????? ?? ?????????? ??? ?? ??? ?? ???? ?? ?
????????? ?? ?????????? ??? ?? ?????????? ?????? ?? ?????????? ?? ?????????? ??????????.

19 ???? ??? ?????????? ??????, ?? Corte suprema di cassazione (????????? ??????????)
?????????) ?????????? ?? ?????????? ??? ??????? ??? ?????????? ??? ?????????? ?? ???? ?????????? ??
????????? ?? ?????????? ?????????????? ??????????:

«1) ????? ?? ??????? 9, ??????????? 1, ??? [???????? ??] ??? ?????? ??? ??????? ?? ???????
??? ??????? ?? ???? ??????????? ??? ????? ??, ??? ???????, ?? ??????? ??????? ???? ??????? ?
?????????? ?? ???? ??????????? ??? ????? ??, ??? ???????, ??????? ???? ??????? ?? ???? ?? ????
?????? ?? ???? ??????? ??????? ??????? ?? ???? ?? ???? ??????? ???? ??????? ?? ???? ???????
?????????? ?? ???? ?? ???? ??????? ??? ????? ?? ???? ???????, ????? ??????????????? ?? ???? ??
???? ???????, ?? ??????????? ??? ?? ??????????? ??????? ?? ???? ???????, ????? ?? ???? ??
???? ??????? ?? ???? ??????? ??????? ?? ???? ?? ???? ??????? ?? ???? ???????;

2) ?? ?????????? ?????????? ?????????? ??? ????? ??????, ??? ? ???? 167 ???
[????????? ???] ??? ? ? ??????? ?????? ??? ?????????????? ??? ??? ??? ? ???? ??????????????????
??? ?????????????? ??? ?????????????? ?????????? ??? ??? ??? ?????? ??? ?????????????? ??
?????? ????????, ??? ? ??? ??? [?????? 30 ??? ????? 724/1994], ??? ? ??? ?????? ???
????????? ??????? ?????? ??? ?????????? ??? ?????????????? ??? ??? ??? ?????? ? ????????

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

3) ?? ?????????? ?????????? ?????????? ??? ?????? ?????? ??????, ?????? ?? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??????
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? [?????? 30
??? ?????? 724/1994], ??? ???? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??????
??? ??? ??? ?????? ? ?????? ?????? ?????? ??? ?????? ??? ???? ??? ?????? ??? ?????? ??? ???? ???
????????? ??????, ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????
????????? ??? ?????? ??? ???? ?????? ??? ??????, ?????? ?????????? ?????? ??? ?????? ??? ???? ???
?????????, ?????????? ?? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ???? ???
????????? ???, ?????? ?? ???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???;
???

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20 ?? ?? ?????? ?????????? ???????, ?? ?????? ?????????? ??????, ???' ??????, ??
????????? ?? ???? 9, ?????????? 1, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??????, ??????? ??? ?????? ???, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?????? ?? ?????, ??? ?? ?????? ?????? ?????????? ?????????? ??????????, ??????????
?????? ?????????? ???, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

21 ??? ?? ?????? 9, ?????????? 1, ??? ?????? ???, ??? ?????? ???, ?? «????????? ???
????» ??????? ?????????? ???, ??? ?????? ?????????? ??? ?? ?????????? ???, ???
????????? ?????????? ???, ?????????? ??? ??? ?????? ?????? ??? ?? ?????????? ???, ???
??? ?????????? ????. ? ?????? ??? «????????? ?????? ??????????», ??? ?? ??????
??? ?????? 9, ?????????? 1, ??? ?????? ???, ??? ?????? ???, ?????? ??? ?????? ???
??? ?????????? ???, ??? ?????? ??? ?????? ?????? ???, ?????????? ???, ??? ?????? ???
??? ?????????? ???, ??? ?????? ??? ?????? ?????? ???, ??? ?????? ??? ?????? ???
??? ?????????? ???, ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ???, ??? ??????
????????? ???, ??? ?????? ???, ??? ?????? «? ?????????? ?????? ???, ??? ?????? ???, ??? ??????
????? ??? ?????? ???, ??? ?????? ???».

22 ??????????, ? ?????? ??? ?????? ??? ?????? ??? ?????? 9, ?????????? 1, ??? ?????? ???
?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? «????????? ???,
????????? ???, ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ???, ??? ??????
????????? ???, ??? [?????? ??? 25?? ?????????? 2021, Gmina Wroc?aw (????????? ???
????????? ???, ???), C?604/19, EU:C:2021:132, ??? 69 ??? ??? ?????? ???, ??? ??????
?????????].

23 ?? ?? ?????? ?????????? ??? ???? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
?? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????

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

24 ?? ??????????, ?????????? ??? ?????? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ??????????
??? ?????? ?????????? ??????????, ??? ?????? ?????????? ?????? 2008 ??? ??? ???
????????????? ?????????? ???, ??? ?????? ??? ?????? ?? ?????????? ??? ?????? ?????? ???
????????? Vigna ??? ???????, ? ?? ??? ?????? ?????? ?????? ?????? ??????????
?????????????, ??? ?????? ?????? ?? ??? ?????? 9, ?????????? 1, ?????? ??????, ??? ??????
???, ??? ?????? ?????????? ??? ?? ?????????? ??? ?????? 22 ??? ?????? ?????? ??????????
?????????.

25 ?????? ??? ?????? ??????, ??? ?????? ?????????? ?????? ?????? ?? ?????? ?? ??????
????????? ??? ?? ??? 9, ?????????? 1, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????, ??????? ??? ?????? ???, ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ?? ??????, ??? ?? ?????? ?????????? ?????????? ?????????? ??? ??????????
????????? ?????????? ???, ? ?????????? ?????? ??? ?????? ??? ?????? ?????????? ???
????????????? ??? ?????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ?? ??? ??????
????????????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?? ??? ??????
?????????.

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

26 ?? ?? ?????? ?????????? ???????, ?? ?????? ?????????? ???, ???' ??????, ??
????????????? ?? ?? ??? 167 ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????????????? ??? ??
??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?? ?????? ?????????? ???
??? ?????? ? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ???
????????????? ??? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????????? ??? ??????????
???? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????????? ???
?????????.

27 ??????, ???????????, ??? ??????, ???, ??? ?????? ??????????, ?? ?????????? ???
????????? ??? ?? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ?
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ???
????????? ?? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??????????
???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
???? ?????? 25??
????? 2021, Amper Metal, C?334/20, EU:C:2021:961, ??? 23 ??? ??? ??????????????
????????, ??? ??? 25?? ??? 2023, Dyrektor Izby Administracji Skarbowej w Warszawie (???)

– ?????????? ????????, C?114/22, EU:C:2023:430, ??????? 27 ??? 28 ??? ???
????????????? ??????????].

28 ????????????, ??? ?? ????? 168 ??? ??????? ??? ??????????? ???, ??? ?? ?????? ??????? ?
?????? ??? ??????????? ???????, ??????? ?? ??????????? ??? ??????????????. ??????, ?
?????????????? ??????? ?? ????? «?????????? ????? ??» ??? ?? ?????? ??? ???????
????.. ???????, ?? ????? ?? ?? ??????????? ??? ??????????? ??? ??????????? ??? ?? ???
?????????? ??????? ?? ??????????????? ??? ??????? ??? ??????? ??? ??????????? ??? ?? ???
???? ?? ??? ??????? ??? ??????????????? ??????? ??? ???, ?? ??????? ???????, ?? ??
???? ????? ?? ?? ??? ????? ??????? ??????? ?? ??????????? ??? ????? ?? ??????????? ??? ??
[????.. ??????? ?? 8?? ??????????? 2022, Finanzamt R (?????? ?? ??? ?? ??????? ??
?????? ?? ??????), C?98/21, EU:C:2022:645, ????? 39 ??? ??? ??????????? ??????????].

29 ??? ????? ?? ??????? ?? ?? ??????? ???????????, ? ?????? ?????? ??? ? ??? ??
????? ??? ?? ??? ????? ??????????? ???????, ??????????????? ???, ?????????????? ??
????????????? ??? ??????????? ??? ????? ?? ??????? ??? ??????? ??? ?? ??? ?? ??? ???????,
????? ???' ????? ??????? ?? ??????????? ??????? ??? ?????? ?????? ?????? ???????????????
?????? ??????? ??? ????? ?? ??????????? ??????? ??? ??????? ??? ?????????? ??????? ???
??????.. ?? ??????? ??????????? ??? ??? ??????? ??? ?????????? ??????? ??? ?????????? ??
?????? ??????????? ??? ?? ??????? ??? ??????????? ??????? ??? ??????? ??? ??????????? ???
?????????????? ??????? ??? ??????????? ??????? ??? ??????? ??? ??????????? ???
????????? ??????? ?? ??????? ??????????? ??????? [?????? ?? 8?? ???????????
2022, Finanzamt R (?????? ?? ??? ?? ??????? ?? ??????? ??????), C?98/21,
EU:C:2022:645, ????? 45 ??? ??? ??????????? ??????????].

30 ??????, ??????? ?????????? ??????????? ??????????? ??? ?????? ??? ?????????????? ??? ??
????? ??? ?? ?????????? ??? ??? ?????????? ??????? ??? ?????? ??? ?????? ??? ??????????????
?????? ??????? ??? ????? ?? ??????????? ??????? ??? ??????? ??? ?????????? ??????? ???
????????, ??????? ?? ??????? ??? ??????? ??????? ??? ??????? ??? ?????????? ??????? ???
????????? ??????? ??? ??????????? ??????? ??? ???, ???????, ?????????? ?????????? ??? ??
??? ??????? ?? ??? ?????????? ??? ?????? ??????. ?? ??????? ??? ???, ???????, ???????, ??????? ??
????? ????? ?? ?? ??????? ??? ??????????? ??????????? ??? ??????????? ??? ?????????? ??? ??
(????.. ??????? ?? 12?? ?????????? 2020, Sonaecom, C?42/19, EU:C:2020:913, ????? 42 ??
???? ??????????? ???????).

31 ??? ?? ??????? ?????????? ?????????? ??? ?????? ??????? ??? ??????? ??? ?? ??? ??
?? ??????? ??????? ??? ?? ??????? ?? ??? ??????? ??? ?????? ??????? ??????????? ?? ???????????
????? ??? ??????? ???, ??? ?????? ? ??????????? ??? ?????? ??? ??????????? ??? ??
????????? ??????????? ??? ???????, ?? ??? ??????????? ??? ?????? ?????????? ??????????? ??? ??
??????????, ??? ?? ??????????? ??? ?????? 27 ??? ??????? ??? ?????????? ??????????? ??? ??
?????????? ??? ?? ??????? ??????? ??? ??? ??????????? ??? ??????????? ??? ??
????????????? ??? ??????????? ??????????? ??? ??????????? ??? ??????????? ??? ??, ??? ??
?????????? ??? ??????????? ??? ??????????? ??? ???????????, ??? ?????? ??????? ??? ???????
?????????? ??? ???????????.

32 ?????????? ?????? ? ??????????, ??? ???????, ??? ?? ??????? ?????????? ??? ??
?????? ?? ??? ??????????? ??? ????? ?????????? ??? ?? ?????????? ??? ??????????? ??? ??
????? ??????????? ??? ???????, ??? ?? ??????? ??? ?? ??? ?????????? ??? ?? ??????????? ??? ??
?????? ? ???????????.

33 ???????, ??????????? ??? ?? ??????????? ?????? ??????????? ??????????? ???????????,
?????????? ??? ??????????? ?????? ??? ?????? ??????????? ??? ?????? ??????????? ??? ??
?????? ???, ?? ?? ??????????? ??? ????? ??????????? ?????? ??? ?? ??????? ??? ??????? ??

????????????? ??? ?????????? ??????? ??? ?????? ?????? ? ?????????????? . ????????, ???
??? ?? ?????????? ?? ?????????? ?????????? ?????????? ??? ?????????? ??? ???????, ??
?????? ??? ?? ?????? ?????? ?????????? ?????????? ?? ??? ?????????? ??? ??????? ???
???? ?????????? , ??? ????? ?????????? ?????? , ??? ? ?????? ??? ?? ???
????????? ?????? ?????? ? ?????? ?????????? [????? . ?????????? ??? 3? ?????? 2005, Fini
H, C?32/03, EU:C:2005:128, ?????? 34 ??? 35, ??? ?? 25? ??? 2023, Dyrektor Izby
Administracji Skarbowej w Warszawie (??? – ?????? ??????), C?114/22, EU:C:2023:430,
????? 41 ??? ??? ?????????? ??????].

34 ?????????? ??? ? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??????????
??? ?? ?????????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ?? ?????????? ??? , ??
????????? ??? ?????? ?????? ?????? ?? ?????????? ?????? ??? ?????? ?? ??????????????
????????? ??? ?????? ??? ?????? ?????? ?? ?????????? ??? ? ?????????? ?????? ??? ?????? ??????
????? ??? ??? ??? ? ?????? ?? ?????????? ??? ? ?????????? ??? ? ?????? ??? ?????? ??????
????????? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ?????? ?????????? ?????? ???
????????? ?????? ??????. ?? ???????, ?????????? ??? ?????? ?????????? ??
????????? ??? ?? ?????? ?????????? ?????? ?????? ?????? ??? ?????? ?????????? ??????
????????? ?????? [????? ??? 25? ??? 2023, Dyrektor Izby Administracji
Skarbowej w Warszawie (??? – ?????? ??????), C?114/22, EU:C:2023:430, ????? 43 ???
???? ?????????? ??????].

35 ??? ?????? ??? ?????????? ?????????? , ??? ?????? ?????????? ?????????? ??? ?
????????? ?????????? ?????????? ?????? ??? ?????? ??? ?????? ?????????? , ??????, ??? ??
????????? ?????? , ??? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ???
????????? ?????? ??? ?????????? ?????? , ?????? ?? ?????????? ??? ?????? ?????? ??????????
????????? ?????? ??? ?????? ??? ?????? ?? ?????? ?????? ?????? ??? ?????? ??? ?????????? ???
????????? ?????? ?????? , ?????? ?? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??????????
????????? ??? ? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????????
????? ??? ?????????? ?????????? [????????? ??? 21? ??? ?????????? 2006, Halifax
?., C?255/02, EU:C:2006:121, ?????? 74 ??? 75, ??? ?? 25? ??? 2023, Dyrektor Izby
Administracji Skarbowej w Warszawie (??? – ?????? ??????), C?114/22, EU:C:2023:430,
????? 44 ??? ??? ?????????? ?????? ??????].

36 ??? ?? ?????????? ??? ?????????? ?????? ??? ?????? ?????? ??? ? ??? ?? ?????? ??? ??????????
??? ?????????? , ? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?? , ??????????
??? ?????????? ??? ?????? ?????? ?????? ?????? , ?? ?????? ??? ?????? ?????? ??????????
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??????????
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
[????????? ??? 16? ??? 1998, ICI, C?264/96, EU:C:1998:370, ????? 26, ??? ?? 25?
????? 2023, Dyrektor Izby Administracji Skarbowej w Warszawie (??? – ?????? ??????),
C?114/22, EU:C:2023:430, ????? 46 ??? ??? ?????????? ?????? ??????].

37 ???????, ?????????? ??? ?? ?????? ?? ?????? ?? ?????? ??? ?????? ?????? ??? ??????
?? ?????? ?????? ??? ?????? 273 ??? ?????? ???, ?????????? ?? ?????????? ?? ??????????
????????? ?????? ??? ?????? ?? ?????? ?????? ?????? ??? ?????? ?????? , ?? ??????
????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? . ?????? ?????? , ?? ??????
????? ??? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ???
????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? , ?? ?? ?????? , ??? ?????????? ???
??? [????????? ??? 9? ??? ?????? 2021, Kemwater ProChemie, C?154/20, EU:C:2021:989,
????? 28, ??? ?? 25? ??? 2023, Dyrektor Izby Administracji Skarbowej w Warszawie (??? –
????? ?????? ??????), C?114/22, EU:C:2023:430, ????? 47 ??? ??? ??????????]

? ??????????].

38 ?? ???????????, ?? ?????? ??????????? ??????????????? ??? ?? ?????? 30 ??? ???
724/1994 ?????? ?? ??????????????? ??? ??????, ??????????????? ?? ?????? ??????????
?????????. ???????, ? ??????????? ??? ??????????? ??????????????? ??? ?????? ???,
???? ??? ????? ??????????? ?? ??????? ?????? ??? ??????????? ??? ?????? ???,
????????? ??????????? ??????????? ??????????? ??????????? ??? ?????????? ???,
????????? ??? ?????? ??????????? ?????? ?????? ??????????? ??? ??????????? ???,
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???,
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???,
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???,
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???,
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???,
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???.

39 ?? ?????????? ??? ?????? ?????? ??????????? ?? ??? ???????????, ??? ??????????????? ???
??? ?????????? ????, ?? ?????? ?????? ??? ?????? ?????? ?????? ??? ??????????????? ???
????????? ?????? ? ??????????????? ???????????, ??? ?? ?????????? ??? ??????????????? ???
?????????????? ??? ?????? ?????? 33 ??? 36 ??? ?????????? ?????????? ??????????. ???????, ??
?? ??? ?????? ?????????? ??? ??????????? ??? ?????? ?????? ?????? ?????????? ??? ???????????
???? ??? ?????? ?? ?????? ??????????????? ??? ?? ?????????? ?????????????? ??????????????
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????????????????? ?????????? ???
????????? ?????? ?????? ??????, ??? ?????? ??? ?????? ?????? ?????? ?????????????? ??? ?????? ???.
?????????, ?????????????? ??? ?????? ?????? ?????????????? ??? ?????? 34 ??? ?????????? ??????????
?????????, ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???
?????????.

40 ???????, ? ?? ??????????? ??? ??????????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?? ??????????? ??????????? ??? ??????????? ??? ?????? ?????? ?????? ??????
????? ? ?????????????? ??????????? ??? ?????? ?????????? ?????? ?????? ??? ??? ???
????? ?????? (????. ?????? ?? 11? ?????? 2021, Ferimet, C?281/20, EU:C:2021:910,
????? 52 ??? ??? ?????????????? ??????????).

41 ???????, ?? ?????????? ??? ?????? ?????? ??? ??? ?????? ?????????? ?????? ???
????????? ??? ?????? ?? ??????????? ?????????? ?????? ??? ?????? ?????????? ???
????? ??? ?????? (????. ?????? ?? 7? ?????? 2017, Eqiom ??? Enka, C?6/16,
EU:C:2017:641, ??? 31 ??? ??? ?????????? ?????? ???). ??????, ??? ?????? ?? ???
????? ??? ??? ?????? ???????, ??? ??? ??????, ??? ?? ?????????? ??? ???
????????????? ?? ?????? ?????? ??? ?????? ??? ?????????? ??? ??? ??? ?????? ??? ???
?? ?????? ?????? ?????????? ?? ?? ?????? ?????? ??? ?????? ?????? ??? ?????????? ??? ???
?? ??? ?????? ??????.

42 ???????, ??? ??????? ??? ?? ??????????? ??? ?????? 38 ??? ???????
????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??????.

43 ?????????????? ?????? ??? ??????? ??? ??????????????, ??? ?????? ??????????????
??????? ?????? ?? ?????? ? ??????? ??? ?? ?????? 167 ??? ?????? ??? ?? ?????? ??
????????????? ??? ?? ?????? ??? ?????? ?????????????? ?????? ??? ?????? ??? ?????????????? ??
????? ?????????? ??? ?? ?????? ??? ?????? ? ?????????? ?????? ??? ?????????? ??? ?????????????? ??
????????? ??? ?????????????? ??? ?? ?????? ??? ?????? ?????, ??? ?? ?????? ??? ?????? ??? ?????? ??????????
?? ?????????? ??? ?? ?????? ??? ?????? ?????? ??? ?????????? ??? ?? ?????? ??? ?????? ??????????
?????????.

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

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

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

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

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

1) ?? ?????? 9, ?????????? 1, ??? ?????? 2006/112/?? ??? ??????????, ??? 28??
????????? 2006, ??????? ?? ?? ?????? ?????? ?????? ?????????????? ????, ???
??? ?????? ??? ?? ?????? ??????, ?????? ??? ?????? ???, ?? ?????????? ???
????????? ??? ?????????? ??? ?????? ?????? ?????????????? ?????? (??) ?????? ?? ??????,
????? ?? ?????? ?????????? ?????????? ?????????? ????, ?????????? ?????????? ???
????????? ??? ?, ? ?????????? ??? ?????? ?????? ?????????? ???
????????? ??? ?????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ?? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?? ??? ??????.

2) ?? ?????? 167 ??? ?????? 2006/112 ??? ?? ?????? ??? ?????????????? ??? ??
??? ??? ?????????????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????????
????? ??? ?????? ? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????????
??? ?????????? ??? ??? ?????? ??????, ??? ?? ?????? ??? ?????? ??? ?????? ?????????? ??
????????? ??? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?? ?????? ??? ??????????
?????????.

(?????????)

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