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JULIANE KOKOTT

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TGE Gas Engineering GmbH – Sucursal em Portugal

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Autoridade Tributária e Aduaneira

{?????? ??? Tribunal Arbitral Tributário

(Centro de Arbitragem Administrativa)

[????????????? ?????????????? ??? ??? ?????? ?????????????? ????????????

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

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«????????????? ?????????? – ?????????? ??? ??? – ??????? ??? ??? – ?????? ??? ??? ???????
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I. ????????

1.

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

2.

? ?????????? ??? ?? ??? ?????????? ??? ??????? ??? ??? ???, ?????????? ???,
????????? ?????????? ??? ?? ?????????? (2).

3.

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

II. ?? ?????? ???????

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

4.

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

?? ?????? ??????? ?????? ??????????????? ?????? (3) (??? ????: ?????? ???). ?? ????? 167 ???
?? ??? ??????? ?????? ?? ????:

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

5.

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

«????? ?????? ??? ?? ?????? ??? ?? ?????????? ?????????????????? ??? ??? ?????? ??????? ???
????????????? ?????? ???, ? ?????????? ??? ?????? ??? ?? ????????, ??? ??????
????? ??? ?????? ?????????????? ??? ?????? ???, ?? ?????? ??? ??? ?????????? ??? ??
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?)

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

[...]»

6.

?? ????? 44, ?????? ???????, ??? ?????? ???, ?????? ?????? ??? ??? 1? ?????????? 2010,
?????? ??? ?????? ??? ?????? ?????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?? ?????? ???
????? ??? ?????????? ??? ???????????????. ??????, ??? ?? ?????????? ?????????? ???
????? ?????????? ??? ?????????? ??? ??????, ?? ?????? ?????? ??? ?????????? ??? ?????????? ???
????????, ??? ?? ????? 44, ?????? ??????, ??? ?????? ???, ? ?????? ??? ?????????? ???.
? ?????? ?????????? ???.

7.

????????? ??? ?? ??????? ??? ?????? ?????? ?????????????????? ??? ?????? ?????????? ???
????????? (??) 282/2011 ??? ??????????, ??? 15?? ?????? 2011, ??? ?? ?????? ??????
????????? ??? ?????? 2006/112/?? ?????? ?? ?? ?????? ?????? ?????? ?????? ??????????????
?????, ??? ?????? ??? ??? 1? ?????? 2011 (4). ?? ?????? 10 ??? ?? ??? ??????????
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????????? ?????????????? ??? ?? ???
11 ??? ?????? ??? ?????? ??????????.

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8.

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

9.

? Regime do Registo Nacional de Pessoas Coletivas (????? ??? ?? ?????? ?????? ??????
???????, ??? ????: ????? RNPC) ?????????? ??? ?????? ??? ?????? ?????????? ??? Registo
Nacional de Pessoas Coletivas (????? ??? ?????? ?????? ????????, ??? ????: RNPC).

10.

????? ?? ?????? 4, ??????????? 1, ?????????? ?? ??? ?, ??? ????? RNPC, ??? ?????? ???
????????????? ??? ???? ?????? ?????? ??? ?????????????? ? ?????????? ?????? ??? ??? ?
????????????? ?????? ?????? ??? ?????? ? ?????????? ? ?????????? ??????, ??? ?????? ??????
????????????? ??? ??????????.

11.

? ?????? 13 ??? ????? RNPC ?????? ??? ??? ?????????????? ??? RNPC ?????? ??????
????????? ??? Número de Identificação de Pessoa Coletiva (?????? ?????? ??????
????????, ??? ????: NIPC), ??? ?????? ??? ?????????????? ??? ?????????????? ??? ?? ???
??????.

III. ?? ?????????? ?????????? ??? ? ?????? ??? ?????? ??? ??????

12.

? TGE Gas Engineering GmbH (??? ????: TGE Bonn) ?????? ?????? ?????????????? ??????? ??
????? ?? ??????. ??? 3 ??????? 2009 ?????? ??? ??????????, ??? ??? ?????? ??? ??????????
????????? ?????? (????? ?????????? ??????????), ??? NIPC 980410878, ?? ??????????
????????? ??? ?????????? ?????? ?????? ?????????????? ??? ??????????????.

13.

? ?????????????? ??? ?????? ?????? ??? ?????? ?? ?????????????? ?????????????? ??? TGE Bonn, ??
????? ?????? ??? ?????? «TGE Gas Engineering GmbH – Sucursal em Portugal» (??? ????:
TGE Portugal). ??? 7 ??????? 2009 ?????? ??? ?????????? ??? NIPC 980412463, ??
????????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ??????????.

14.

???? 17 ??????? 2009 ? TGE Bonn ??????, ??? ?????? ?? ?? Somague Engenharia SA (???
????: Somague), ??? ?????? ?????????? ?????? (Agrupamento Complementar de Empresas)
?? ??? ?????? «Projesines Expansão do Terminal de GNL de Sines, ACE» (??? ????: ??????).

15.

? ? ?????? ?????? ?????????? ??? ?????? ?????????????? ?? ?????? ?????????? ??? ??????
????? ?????? ?? 85 % ??? ?? Somague ??? ?? 15 % ??? ??? TGE Bonn. ??? ??????????,,
????????, ?? ?????????? ?????????? ??? ?????? ??? ??????, ??? ? TGE Bonn ?? ??????????
?? ?????? 64,29 % ??? ? Somague ?? ?????? 35,71 % ??? ?????????? ?????????????? ??
????? ?????? ??? ??????.

16.

? ? ?????? ??? ??????, ? TGE Bonn ?????????????? ??? NIPC 980410878, ? ?????? ???
????? ?????????? ?? ?????????? ?????????? ??? ?????? ?????? ?????? ?????????? ???
?????????, ??? ??? ??? NIPC ??? ?????????? ??? TGE Portugal.

17.

? ?????? ? ?????? ??? ?????? ?? ?? Redes Engéticas Nacionais (??? ????: REN), ???
????????????? ?????? ?????????? ?????????, ??? ???????, ??? ?????????? ???, ?? ???

???? ?????????? ??? ?????????? ??????? ??? Sines, ? ?????? ?????? ?????????? ???????
????????????? ????.

18.

????? 4 ?????? 2009 ? ?????? ?????? ?? ??? TGE Portugal ??????? ??????????????. ???????
?????? ????? ?? ?????? Somague.

19.

?? ??????? ?? ???? ?? ????? ????????, ? TGE Portugal ??? ? Somague ??????? ??
?????????????? ?? ?????????? ?? ???? ?? ?????????? ?????????? ?? ?????????? ?? ???? ??????.
?????? ?? ??????? ?? ??????? ?? ?????????????? ?? ?????????? ?? ?????????? ?????????? ?? ???? ??
?????? ?? ??? TGE Portugal («full back-to-back general principle»), ? ?????? ?????????? ??
REN, ?? ??????????, ??? ?? ?????? ??? ?? ????? ?????????? ?? ??? ?? ????? ?????? ?? ???? ??
????????? ?? ???? ?????????? ??? ? TGE Portugal.

20.

? ??????? ???????????? ??? TGE Portugal ??? ?? 64,29 % ??? ?????? ??? ?????? ???
??????????? ??? ??? ?????? ??? ?????? ??? ?????????????? ????????????????,
????????????? ??? NIPC ??? ??? ?????????? ??? TGE Portugal. ?? ? Somague ? ??????
??? ?????????? ??? ?? 35,71 % ??? ??????. ?? ?????????? ?????????? ?? ?????????? ???
?? ?????????? ??? ?????? ??? ?????? ????? ?????? ????. ????????, ?? ??????
????????? ??? ?????? ?? ??? ?????????? ?????????? ??? ?????? ??? ?????? ?? ??????????
???? ?????????? ??? ??????. ??????, ? ?????? ?????? ??? ?????? ??? ?????????? ??? ?? ??? ?? ??? ??
????? ??? ?????????? ??? ??????, ? ?????? ?????? ??? ?????? ??? ?????????? ??? ?? ??? ??
????????? ??? ?????????? ??? ??????, ? ?????? ?????? ??? ?????? ??? ?????????? ??? ??

21.

?? ????????, ? TGE Portugal ??????? ??? ?????????????? ??? ?? ??? ?????????????? ???.

22.

??? ??????? ?????????? ??? TGE Portugal ??? ?????????? ??? ?? Autoridade Tributária e Aduaneira (????????? ??? ?????????? ???, ??? ????: ATA) ??? ??? ??????? ??? 2009, ??? 2010 ??? ??? 2011, ?????????? ??? ??????? ??? ?????????? ????. ??? ??????? ???, ? ATA ??????? ?? ?????????? ??? ? TGE Portugal ??? ? TGE Bonn ??????, ??? ??? ?????????? NIPC, ?? ?????????? ??? ?????????? ??? ?????????? ?????????? ??????. ?????? ?????? ??? ?????? ??? TGE Bonn, ??? ??? ??? ? TGE Portugal, ? ?????? ?????????? ?????? ??? TGE Portugal ??? ?? ??? ??? ?????? ????. ?????????? ?????? ??? TGE Portugal ??? ??? ??? ??? ?????? ???.

23.

?????? ??? ??????? ????????????????, ? ATA ??????? ??????? ?????????????? ???, ???, ??? ?? TGE Portugal, ????. ?????????????????? ????. ????. 28 ??????? 2014 ? TGE Portugal ??????? ??????? ????. ????. ??????? ??????? ????. ????. ??????? ????. ??????? ????. 2010 ????. ????. 2011, ? ??????? ??????? ????. ????. ATA.

24.

???? 19 ??????????? 2014 ? TGE Portugal ?????? ???????? ??? ?? ?????????? ??????????

???? ??????????, ? ?????? ?????? ?????????? ?? ??????? ??? ?????????? ????? 25
????????? 2015.

25.

???? 22 ?????????? 2015 ? TGE Portugal ???????? ??????? ??? ?????????? ??????????????
?????? ???????????, ?? ??? ????? ?????? ??? ??? ?????????? ?? ??? ??????????.

IV. ? ?????? ?????????????? ?????????? ??? ? ?????????? ?????? ??? ??????????

26.

? ?????? ??? ?????????? ?????????? ??? 29? ?????? 2016, ? ?????? ??????????????
????? 16 ?????????? 2017, ?? Tribunal Arbitral Tributário (????????? ?????????? ???
?????? ?????????? ?????????, ??????????) ?????? ??? ?????????? ?????? ??? ??????
267 ??? ? ?????????? ?????????? ??????????:

«????? ?? ??? 44, 45, ?? ??? 132, ???????? 1, ??????? ???, ?? ??? 167, 168, 169,
178, 179, 192?, 193, 194 ?? 196 ??? ?????? ??? (????? 2006/112), ?? ??? 10 ?? 11 ??
????????? ?????? (??) 282/2011 ??? ? ??? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ?? ??? ? ?????? ??? ?????????? ?????????????? ?????? ??? ?????? ??
????????? ?????????? ??? ??? ?????????? ?????? ?????? ?????????? ??????????, ????:

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

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

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

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

27.

?????????? ?? ?????? ??? ??????????? ??? ?????? ????????????, ?? ?????? ???????????
-????? ??? ? ?????????????? ??? ?????? ?????- ?????? ?????????????????? ??? ?? ??????????
?????????? ??? ?????? ?????????? ??? ?? ?????????? ??? ?????? ?????? ?????? ???
?????????? ??? ?????????????? ??? ?????? ??????.

28.

????? ??? ??????? ??? ???????????, ??????? ?????????????? ?????????? ? TGE
Portugal, ? ??????????? ?????????? ??? ? ?????????? ????????, ?? ?????? ??????????
????? ??? ??' ?????????? ??? 19? ?????? 2018.

V. ????????

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

29.

????? ??? ?????? ?? ??????? ??? ?? ???????????, ?? Tribunal Arbitral Tributário (??????????
?????????? ??? ?? ??????? ??????????? ???????) ?????? ?? ??????? ???????????
?????? ?????? ??? ?? ??????? ??? ?? ??????? ?? 267 ??? ??, ?? ?? ??????, ??????? ??
?????? ??? ?? ??????????? ??? ?????? ??????????? ?????????? (5).

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

30.

?? ?? ??????? ???, ?? ?????? ?????????? ??????? ?? ?????? ??? ?????????????? NIPC ??
????? ?????????? ??? TGE Bonn ??? ??? TGE Portugal ??? ?? ?????? ?????????????? ??
????????? ?? ??? ?????, ??? ? ??? NIPC ??? TGE Bonn ??? ?? ?????? ??? ?????????? ??
?? ?????? ??? ?????? ??? ? ?? NIPC ??? TGE Portugal ??? ?? ?????? ??? ??????????
?????????? ?? ??? ???.

31.

?????, ?? ??????? ??? ??????? ?? ?????? ?????????? ??????, ??? ???, ??
????????????? ?? ? TGE Bonn ? ? TGE Portugal ????? ?????? ?? ?????????? ??? ??, ???
? ?????? ?????????? ??? TGE Portugal ??? ?? ?????? ??? ?????, ?????????????? ??? ??? ??
?? ??????, ?? ?????? ?????????? ?????, ???' ?????, ?? ?????????? ?? ??????????, ??
?? ?????????? ??? ??? ??? ?????? ?????????, ?? ?????????? ?????????? ??? ??? ??.

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

32.

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

33.

???? ????????????????, ???? ??? ?????? ????????, ??? ? ?????? ????????, ??? ???.
????????? ??? ?????????? ?? ?????? ????????, ??? ?????? ??? TGE Portugal. ??????
????????? ??? ?????? ???, ?????? ???, ????????????, ??? ?????? ????.
????? ??? ????????, ???.

34.

??????, ?????? ??????????????? ?? ? TGE Portugal ????? ?????? ??????????? ?? ???????????
?? ?? ????? ?????? ??????????? ?? ??????????? ?? ?????.

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

35.

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

36.

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

37.

????? ?????? ??? ??????? ?? ???? ?????????? ?? ?? ???? ?????????????????? ???? ?? ???? ?????? ?????? ????, ??
????????????? ???? ??? ?????????? ???? ?? ???? ?????????? ???? ?? ?????? ?????????? ?????????????? ??????????????
???????????????, ?????? ??? ?????? ?? ??? ?????? ??? ?????? ?????? ?????????????? ?????????? ??? ????????????
?? ??? ?????? ??? ?????????????? ??? ??????????????????, ?????? ?????? ??? ?????????? ??? ?????????? ??????
????????? (6). ??????????, ? ?????????? ?????? ?????? ??? ?????????? ?? ?????????? ??? ??????????
????? ?????? ?????? ?? ??????????????.

38.

?????? ? ?????????????? ??? ?????? ??? ?????? ?????? ??? ?????????????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ?????? (7) ???, ??? ??????, ??? ?????? ??? ?????? ??? ?????? ???
????? ??????, ??? ??? ?????????? ??? ?????? ?????? ?????????????? (8), ? ?????? ??? ??
????????? ??? ?? ??? ?????? ?????? ?????? ?????? ?????? ??? ?? ??? ?????? ?????? ??????, ? ???
??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? (9).

39.

????? ??? ??????? ??????, ? TGE Bonn ??? ? TGE Portugal ?????????? ??? ???????????
???? ??? (??? ????: TGE) ??? ?? ?????? ??? ??????? ???.

40.

????? ??????? ??? ????, ??? ?????? ?? ??????? ???????????, ?? ??????? ??? ? TGE Bonn
??? ? TGE Portugal ?????????? ?????????????? NIPC ??? ??? ??? ??? ?????? ??? ??????
????????????? ? NIPC ??? TGE Bonn, ??? ??? ??? ?????????? ?? ?????? ??? ???????
??? ?????? ?????????????? NIPC ??? TGE Portugal.

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

41.

? ???? 168, ??????? ?, ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??????
(????????? ?????? ??? ?????? ??? ?????? ??? ?????? 14 ? ?????? ?????????? ??? ??? ?????? ???
????? 24, ?????????? 1, ??? ?????? ???) ?????? ??? ?????????? ??? ??? ??? ??? ??? ???
????????? ???????.

42.

????? ??? ?????? ?????????? ??? ???????????, ??? ?????? ??? ?????????????? ?????? ?? ??????
????????? ??? ?????????? ??? ?????? ??? ??? ?????? ??? ?????????? ?????? ??? ??????
??? ?????? ?????????? ??? ?????????? ??? ??????, ? ? ?????? ??? ?????? ?????? ??????
????????? ??? ?????? ?????????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? (10).

43.

????? ?? ?????????? ????, ??? ??????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??????????
?????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ??????, ? ? ?????? ??????????
?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
????????? ??? ??? ?????????? ??? ?????? (11).

44.

???????, ??? ?????? ??? ??????? ????, ? ?????? ?? ?????? ?? ??? ?????????? ??????????????
???????, ?????? ??? ?????? ?? ??? ? TGE. ??? ??? ?????????? ?? ??? ??? ??????????,
?? ?????????? ?? ??? ??? ??? ?????? ?????????? ? TGE ??? ??? ??? —??? ?? ???
?????? ? TGE— ?????? ?????????? ?? ?????????? ?? ??? ?????? ?????????? ?????????? ???.

45.

??????, ??? ??????? ?? ?????? ?????????? ??? ? ?????????????? ??? ?????? ????, ?? ???
????????? ??? ??? ??? ??????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????????, ?? ????
????????? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????
?? ??????. ?? ?????????? ?????????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
???? TGE ?? ??????. ?? ??? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??????
???? ??? TGE ???, ?? ??? ??????, ??? ?????? ?????????? ??????????.

46.

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

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????????????? TGE —??? ?? ??? ????? ?? ?????????— ?????????? ?? ?????????? ???
?????? ????? ?? ??? ????? ?? ????? ??????? ???, ?? ?????????? ??? ?????????????? ???
?????? ????? ?????????? ??? ????? ?? ??? ?????, ??? ??? ?????????????? ?? ??????????
??? ?????????? ??? ??????????.

47.

? Cibo Participations. ?? ??? ?????? ???, ?? ?????????? ?????? ??? ?????????? ???
??? ?????? ?????? ??? ?????????? ?????, ??? ?????????? ?????? ??? ?????? ?????????? ???
????????? ?????????? ???, ?? ?? ??????, ??? ?????????? ?????????? ??????????, ? ???????
????????? ?????????? ???, ??? ??????, ??? ?????????? ?????? ??? ?????? ??? ?????????? ???
????????? ?????????? ???, ??? ?????????? ?????? ?????? ?????????? ?????????, ??? ?????????? ???
????, ??? ??? ?????????? ??? ?????????? ?????? (12). ??? ? ?????????? ???
????????? ?????????? ???, ??? ?????????? ?????? ?????? ?????????? ?????????, ??? ?????????? ???
????, ??? ??? ?????? ???, ??? ?????????? ?????? ?????? ?????????? ??? ?????????? ???
????? ?????? ???, ??? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ??? ?????? ???
????, ?? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????????? ?????????? ???
????? ??????. ? ??? ?????? ?????????? ??? ?????? ?????????? ?? ?????? ??? ?????? ?????? ??????????
???? ? ?????? ?????????? ??? ?????? Cibo Participations: ?? ??? ???? ??? ?????? ???
????????? ???, ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???, ??? ?????? ???
?? ??? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???
????????? ??? ?????? ?????????? ? Cibo Participations. ? ?????? ?????? ??? ?????? ???
???? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ???
????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ???, ?? ??? ?????? ???
??? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ???.

48.

? ??? ?????? ?????????? ???, ?? ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
??? ?????? ?????? ? ?????? Heerma. ??? ?????????? ???, ? ?????? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? (13).

49.

? ???, ? ??? ?????? ?????????? ??? ?????? ?? ?????????? ??? ?????? ?? ??? ?????? ???
?????????. ?? ?????????? ???, ??? ?????? Kennemer Golf, ??? ? ??????
?????? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??????, ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
TGE —??? ?? ??? ?????? ??? ?????????— ?????????? ?????????? ??? ?? ??????????
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? TGE ?????????? ???

??? ?????????????? ??? ??????????????, ???????????, ??? ??? ?????? ????, ??????, ??????????
??????????, ?? ?? ??? ?????????????? ??? ?????????? ?????????? ??? ?????????? ?????????? ??????????
??? TGE ??? ??? ?????????? ??? ??? ?????????? ??? ?????????????? ?????????????? ??? ??????
??? ??? ?????.

50.

????????? ?? ??? ?????????? ? ??????? ???' ?????????? ??????????, ???
????????? ?????????? ??????? ?????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ???
?????? 28 ??? ??????? ???.. ?????????? ??? ?????? ?????? ?????? ?????????? ?????????????? ?
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ? ?????? ??? ?? ??? ?????? ??? ?????? ???
?????. ???????, ?? ?? ??? ????? ?????? ?????? ?????????????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ?? ?????????? ??? ?????? ??? ?????????????? ?????????????? ??? ?????? ??? ?????? ???
??? ?????????????? ?????????? ??? ?????? ??? ???????, ??? ???????, ??? ?????? ??? ?????? ???
?????? ????. ???????, ??? ?????????? ??? ?????????????? ??? ?????????? ??? 28 ??? ?????? ???
(«?? ?????? ?????????»).

51.

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

52.

????? ?????? ?????????? ??? ????????????, ?? ?????????? ?????????? ??? ?????? ??? ??????????
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ???
????????????? ??? ?? ?????? ??? ??? ?????? ?????? ?????????? ? ?????????? ??? ?????? ???
????????? ??? ?????????????? (15).

53.

????? ???????, ?? ?????? ?????? ??? ?????????? ?????????????? ??? ?????? ?? ??????????
????????? ??? ?????? ??? ?????? ?????????? ??????????????.. ?????? ?????, ??????, ???' ?????, ???
??? ?????????? ??? ?? ??? ?????? ?????????????? ??? ?????????, ?? ?????, ??? ????? (16).

54.

????????? ???, ?????? ??? ??????????????, ??? ?????????? ?????????? ?????????? ??????????
????? ??? ?????? ??? ?????? 24, ?????????? 1, ??? ?????? ???, ? ??????, ?? ?????, ???
?????? ??? ??? ??? «????????? ??????» ??? ?????? ?????? ??? ?????????????? ???
????????????? ??? ?????? ?????????? ?????? ?????? ????. ???????, ? ??? ??????
????????? ??? ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ??????,
????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ? ???
????? ??? ??? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? TGE ??? ??
????? ??? ??? ??? ?????? ??? ?????????????? ??? ?????, ?????????? ??? ? ???, ???
??? ?????? ??? ??????, ?? ?????????? ??? ??????.

55.

????? ???????, ?????????????? ??? ? ?????? ??? ?????? ??? ?????? ??? TGE ???????, ? ????
?? ??????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? TGE ?? ??????? ??? ???.

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

56.

?? ??????? ??????????? ?? ??? ?? ??????????? ??????? ?? ??????????? ?? ??? ?? 44 ??? 45
??? ??????? ??, ?? ??? ????? ??????????? ?? ??? ??????? ?? ??? ??????? ??.

57.

????? ?? ????? 44, ????? ???????, ??? ??????? ??, ????? ??????? ?? ??????????? ??
?????????? ??, ??? ????? ?? ????? ? ????? ?? ????? ?? ????? ??????????? ??????????????? ??
????? ?? ??????????. ? ?????????? ?? ??????? ??????? ?? ?? ????? ?????? ??????? ??
??????????, ?????? ?? ???????, ?? ???????????, ??? ??? ??????? ???????, ?????? ??
?????????? ?? (17).

58.

??????????, ? ??????????? ?? 44, ??????? ???????, ??? ??????? ?? ??????? ??
???? ?? ??????? ??????????? ?? ????? ?? ??????? ??????? ????? ??????????? ??
?????????? ?? (18).

59.

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

60.

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

61.

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

VI. ???????

62.

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

??. ?????? 168 ??? ??????? ??? ??? ?????? ???, ?????? ??? ?????????? ??????????
??????????? ??? ?? ?????????? ?????? ? ?????? ??????????, ??? ?????????? ??????????
????????? ??? ??, ??? ??? Agrupamento Complementar de Empresas [??????]
????????? ???] ?????????? ?? ?????? ?????? ??? ?????????????? ???
????????????? ?? ?????? ?????????? ?????? ??? ?????? ?????? ???, ?????? ??? ?? ???
????????? ?????? ??? ?? ??? ??? ??? ?? ??? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ??? ?? ??? ?????? ??? ?? ??? ?????? ??? ?????? ???.

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

(2) ?????? ??? 27?? ?????????? 2000, Heerma (C?23/98, EU:C:2000:46), ??? ?? 27??
????????? 2001, Cibo Participations (C?16/00, EU:C:2001:495).

(3) ?? 2006, L 347, ?. 1.

(4) ?? 2011, L 77, ?. 1.

(5) ?????? ??? 12?? ?????? 2014, Ascendi Beiras Litoral e Alta, Auto Estradas das Beiras
Litoral e Alta (C?377/13, EU:C:2014:1754, ?????? 23 ??? 34).

(6) ?????? ??? 23?? ?????? 2006, FCE Bank (C?210/04, EU:C:2006:196, ?????? 33 ???
37), ??? ??? 17?? ?????????? 2014, Skandia America Corp. (USA), filial Sverige (C?7/13,
EU:C:2014:2225, ?????? 25 ??? 26).

(7) ?????? ??? 17?? ?????????? 2014, Skandia America Corp. (USA), filial Sverige (C?7/13,
EU:C:2014:2225, ?????? 23).

(8) ?????? ??? 27?? ?????????? 2000, Heerma (C?23/98, EU:C:2000:46, ?????? 8).

(9) ?????? ??? ?????? ?????????? ?. Léger ??? ?????? FCE Bank (C?210/04,
EU:C:2005:582, ?????? 38).

(10) ?????? ??? 3?? ?????? 1994, Tolsma (C?16/93, EU:C:1994:80, ?????? 14), ??? 21??
?????? 2002, Kennemer Golf (C?174/00, EU:C:2002:200, ?????? 39), ??? 23?? ?????? 2006,
FCE Bank (C?210/04, EU:C:2006:196, ?????? 34), ??? ??? 17?? ?????????? 2014, Skandia
America Corp. (USA), filial Sverige (C?7/13, EU:C:2014:2225, ?????? 24).

(11) ?????? ??? 3?? ?????? 1994, Tolsma (C?16/93, EU:C:1994:80, ?????? 13), ??? ???
21?? ?????? 2002, Kennemer Golf (C?174/00, EU:C:2002:200, ?????? 39).

(12) ?????? ??? 27?? ?????????? 2001, Cibo Participations (C?16/00, EU:C:2001:495,
?????? 42 ??? 43)? ???????????, ?? ?????????? ??????? ??? ??????? ??? ???????
????????? ??? ?? ?????????? ?????????? ??? ???????.

(13) ?????? ??? 27?? ?????????? 2000, Heerma (C?23/98, EU:C:2000:46, ?????? 13 ???
19).

(14) ?????? ??? 21?? ?????? 2002, Kennemer Golf (C?174/00, EU:C:2002:200, ?????? 40).

(15) ?????????? ??? 27?? ?????????? 2001, Cibo Participations (C?16/00, EU:C:2001:495, ????? 27), ??? 12?? ?????????? 2013, Le Crédit Lyonnais (C?388/11, EU:C:2013:541, ?????? 26 ??.), ??? ??? 15?? ?????????? 2016, Barlis 06 – Investimentos Imobiliários e Turísticos (C?516/14, EU:C:2016:690, ?????? 37 ??? 39).

(16) ?????????? ??? 27?? ?????????? 2001, Cibo Participations (C?16/00, EU:C:2001:495, ????? 27), ??? 12?? ?????????? 2013, Le Crédit Lyonnais (C?388/11, EU:C:2013:541, ????? 27), ??? ??? 15?? ?????????? 2016, Barlis 06 – Investimentos Imobiliários e Turísticos (C?516/14, EU:C:2016:690, ????? 39).

(17) ?????? ??? 16?? ???????? 2014, Welmory (C?605/12, EU:C:2014:2298, ?????? 53 ??? 55).

(18) ?????? ??? 16?? ???????? 2014, Welmory (C?605/12, EU:C:2014:2298, ????? 56).