

?????? C?335/05

?ízení Letového Provozu ?R, s. p.,

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Bundesamt für Finanzen

(?????? ??? Finanzgericht Köln

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«?????? ??? ?????? ?????? ??? — ?????? 2, ?????????? 2 — GATS — ?????? ??? ??????
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(?????? 86/560 ??? ??????????, ?????? 2 § 2)

?? ?????? 2, ?????????? 2, ??? ?????? ?????? ?????? 86/560 ??? ??? ?????????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ?? ??? ?????? ?????? ?????????? — ???
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??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ??? ? ??? «????? ???» ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ???.

?????????, ?? ?????? 2, ?????????? 2, ??? ?????? ?????? ??????, ??? ?????? ??? ??
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? ???????, ? ??????? ????, ??????? ??????? ?? ??? ?????? ?????? ??? ??????????? ??
??????????, ?? ???? ???? ?????? ???????, ?? ?????? ? ?? ???? ? ?????????? ???????????
??????????????, ?????????? ??? ?????? ???, ??? ?????? ???? ?? ?????? ?? ?? ??? ?????? ???????????
?????????? ?????????????? ??? ?????????? ??? ?????????? ??? ?????????? ?? ?????? ????, ??
????????????? ?? ?????????? ??? ?????? ?????? ??????. ??? ??? ?????? ?????? ????, ?
????????? ??? ?????????? ??? ?????????? ?????????? ???????, ??? ?????? ??? ???????, ???
????????? ??? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ? ?????????? ???
????????? ?? ?????????? ? ?????????????? ??? ?????????????????? ??? ?????? ???? ??? «????? ?????» ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????????? ??? ?????? II, ?????????? 1, ??? ?????? ?????????? ??? ?????? ??? ?????????? ????.
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(??, ??????? 15, 18-21 ??? ??????.)

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

??? 7?? ?????? 2007 (*)

«?????? ???? ??? – ??? 2, ?????????? 2 – GATS – ?????? ??? ?????? ???????????
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?? ?????????? ??? ?????? ?????????? ?????????????? ?????????? ?????? ??? ?????? 234 ??,
??? ??????? ?? Finanzgericht Köln (?????????) ?? ??????? ??? 24?? ?????????? 2005, ? ????
????????? ??? ?????????? ??? 15 ?????????? 2005, ??? ?????? ??? ??????

?ízení Letového Provozu ?R, s. p.,

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Bundesamt für Finanzen,

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

????????? ??? P. Jann, ??????? ???????, R. Schintgen (?????????), A. Tizzano, M.
Ileši? ??? E. Levits, ???????,

?????? ??????????: P. Mengozzi

?????????: R. Grass

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

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

- ? ?????????? ??????????, ?????????????? ??? ??? ?. ??????????,
- ? ?????????? ??????????, ?????????????? ??? ??? J. Pietras,
- ? ?????????? ??? ?????????? ??????????, ?????????????? ??? ??? ?. ??????????????,
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??? 15?? ?????????? 2007,
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1 ? ?????? ?????????? ?????????????? ?????? ??? ?????? ??? ?????? 2,
????????? 2, ??? ?????? ?????? ?????? 86/560/???, ??? ??????????, ??? 17?? ??????????
1986, ??? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? – ?????? ?????????? ??? ?????? ?????????????? ??? ?????? ???
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326, ?. 40, ??? ????: ?????? ?????? ??????).

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????????
????? ?ízení Letového Provozu ?R, s. p. (???, ????: ?LP) ??? ??? Bundesamt für Finanzen
(????????????? ?????????? ?????????), ?????? ?????? ??? ?????????? ??? ??? ??? ??????
??? ??? ?????????????? ??? (???, ????: ???), ??? ?????? ??? ?????? ??? ?????????? ???
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3 ?? ??? ?????? 94/800/???, ??? 22? ?????????? 1994, ??????? ?? ??? ?? ?????????? ???
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????????????? ??? ?????? ??? ?????????? (1986-1994), ?????? ?????? ?? ?????? ???
????????? ??? ?????????? ??? (?? L 336, ?. 1), ?? ?????????? ??? ?????????? ??? ??????
????????? ?? ?????????? ??? ??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ???
????????? ??? ?????????????? ??? ?????????? 1, 2 ??? 3 ?????, ??? ?? ??? ??????
????? ? ?????? ?????????? ??? ??? ?????????? ??? ?????? ??? ?????????? (???, ????: GATS).

4 ?? ????? II, ?????????? 1, ??? GATS ?????????? ?? ??????:

«????? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??? ?????? ?????????, ??? ??????
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ??????
????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????
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5 ? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????:

«[?????????] ??? ? ???????? ?????? ?? ?????????? ??? ???????? ?????? ???
????????? ?????? ??? ?? ??? ?????? ?????, ?????????? ??? ?? ?????????? ??? ??????
79/1072/???, ?????????? ?????? ?????? ?? ?????????? ??? ?????????? ??? ??????
????? ?????? ????.».

6 ?? ?????? 2 ??? ?????? ?????? ?????? ?? ????:

«1. ?? ??? ?????? ??? ?????? 3 ??? 4, ??? ?????? ?????? ?????????? ?? ???
????????? ??? ?????? ??? ?????? ?????????????? ?? ?????? ??? ?????????? ??? ?????
????? ??? ?????? ??? [?] ?? ??? ?????? ?????????? ?? ?????? ??? ?????????? ??? ?????
????? ?????? ??? ?????? ?? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????? ???
????? ?????????? ??? ???, ??? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ???
????, ??? ?????? ??? ?? ?????? ??? ?? ?????????? ??? ?????? ?????????????? ??? ??? ?????? ???
??? ?????? ??? ?????????? ??? ?????? 17, ?????????? 3, ?????????? ?? ??? ?? ??? ?????? ???
77/388/??? ? ??? ?????? ?????????? ??? ?????????? ??? ?????? 1, ?????? 1, ?????? ??,
??? ?????? ????.

2. ?? ?????? ??? ?????? ?? ?????? ?? ?????????? ??? ?????????? ??? ?????????? ???
????????? 1 ?? ?????? ?????? ?????????? ?????????? ??? ?? ?????? ?????? ??? ?????? ???
????? ?????? ????.

3. ?? ?????? ??? ?????? ?????? ?? ?????? ?????? ?????????? ?????????? ????.»

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

7 ?? ?????? 18, ?????????? 9, ??? ??????, ??? ?????? ??? 1999 ??? ?? ?????? ???
????????? (Umsatzsteuergesetz 1999, BGBl. 1999 I, ? 1270, ??? ?: UStG) ?????????? ??
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«? ?????? ??? ?????? ?????????? ?? ?????????? ?????????? ??? ?????????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ?????? ??? ?????? ??? ?, ?? ?????? ?????? ?????? ??? ?????? ???,
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? [????? ??? ?????? ???
?????????] ???????????.»

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8 ? ?LP, ??? ?????? ??? ?????? ?????? ??????????, ??? ?????? ?????????? ??? ?????? ???
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??? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
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????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? 2002.

9 To Bundesamt für Finanzen ?????? ??? ?????? ??? ?? ??? ?????????? ??? ??
????????? ??? ?? ?????? ??? ?????? 18, ?????????? 9, ??? ??????, ??? UstG,
??? ?????????? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

10 ????? ???? ?????????? ??? ???. ?????????????? ?????????? ??? ?????? ??? ?????? ??? ??????????
?????, ? ?LP ?????? ??????? ?????? ??? Finanzgericht Köln.

11 ?? ??????? ??????????? ??????????? ??? ?? ???? ?? ??????? ??????? ?????????? ?? ???????
?????????? ?????????? ??? ?? ???? ???????, ??? ?? ??????? ??????? ?????? ?????? ?? ????
?????????????? ?????? ?? ???? ??????? ?????? ??????? ?????? ?????? ?????? ???????????
?????????????. ?? ?? ??????, ?? ?? ??? ?????????? ??????????? ?????????? ?????? ?? ????
?? ?????? ?????? ?? ?????? ?? ?????? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?? ???? II,
?????????? 1, ??? GATS. ???????, ?????????? ??? ? GATS ??????? ??????? ???????
?????? ? ??? ??????????? ?????????? ??? ?????????? ?????????? ?????????? ?????? ??????? ?? ????
?????. ??????????? ?? ?????????? ?????????? ?????????? ?????????? ?????????? ??? ?? ???? GATS
????? ?????? ?? ??????? ??? ?? ??????? ?????????? ??? ?????? ??????? ?? ???? ??????? ?? ????
?????????? ?????????? ???????.

12 ??????, ??????? ?? ?? ?????? 300, ?????????? 7, ??, ??? ?????????? ??? ? GATS
????????? ?? ?????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????????? ?????
??? ?????????? ?? ?????? ?? . ??????, ?? ?????? ?? ?????????? ?? ?????? ??
????????? ?? ?? ?? ?????? ?? ?? ?????? ?? ?????? ?? ?????? ?? ?? ?? ?? ?????? ??
????? ?? ?????? ?????????? ?? ?????? ?? ?????? ?? ?? ?? ?? 1, ????.

13 ?? Finanzgericht Köln, ??????????? ??? ? ??????? ??? ??? ??????? ??? ?????? ??? ?????? ???
?????????? ??? ?? ??? ?? ??? ? UStG ??????????? ?? ?? ??? 2, ??????????? 2, ??
?????? ?? ??? ??????? ??? ??????????????? ?? ??? ?? ??? ??? ?????? ??????????? ??? ?????? ??
????? ?? ??? ??????? ??? ?? ??? ?????? GATS, ????????? ?? ?? ??????????? ?? ??????????? ???
?? ??????? ?? ??? ??????????? ?? ??? ??????? ??????????? ???????:

«?????? ?? ?????? 2, ??????????? 2, ??? ?????? ?????? ?????? [...] ?? ??????????
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??? ?????????? ??? ??? ?? ?????????? ?????????? ?????????????? ??? ?? ?????? ?????? ???
????? ??? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ???, ?? ??????????????
????? ??? [GATS] (BGBl. 1994 II, ? 1473, [...]), ??????? ?? ?????????????? ??? ??????????????
?? ?? ?????????? ??? (????? ?, ?????????? 1) ?????? ??? ?????? ?????????? ??????????;»

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14 ?? ?????? ??????????? ?? ?? ??????? ??? ?????, ???' ?????, ?? ??????????????? ?? ??
?????? 2, ??????????? 2, ??? ?????? ?????? ?????? ?????? ?????? ?? ??????????? ?? ?? ???? ??????
??? ? ??????????????????? ?? ??? ??? ?? «????? ?????» ??????????????? ?? ?? ??? ????? ?????? ???
?????? ?? ??????????? ?? ??????????? ?? ?? ?????? ?? ?? ?? II, ?????????? 1, ??? GATS ????
?? ?????? ??????????? ???????.

15 ???????, ?????????????? ???, ??? ?????????? ? ??????? ?????????? ?? ?? ?????? 59
??? ?????????? ???, ?? ????? 2, ?????????? 2, ??? ?????? ??????, ???????, ??? ??????
??? ?? ?????? ??????? ??? ?????? ?????, ?????????? ?????? ?? ??? ?? ?????? ?????
????? ?????? ????????.

16 ????? ?????? ??? ??????? ?????? ?????? ?????? ?????? ? ? ?????? ?????? ??? ?????? ?????? ?????? ???
????? ? ?????????? ?????? ?????? ?????????????? ??????, ??? ?????? ? GATS, ??? ??? ??????????
????????? ??? ?????????? ??????, ?????????? ?????? ?????? ?????????? ??? ? ?????? ???
????????????? ??? ??? ?????????? ?????? ?????? ?????? ?????? ??? ?????????? ??? ??????????
????????? ?????? ?????? ?? ?????????? ?? ?????? ?????? ??? ??????, ??? ?????? ???
??????, ??? ?????? ?????? ?????? ??? ? ?? ?????? ?????? (????????? ??? 10??

????????????? 1996, C?61/94, ??????? ???? ??????????, ??????? 1996, ?. I?3989, ????? 52-
??? 1?? ??????? 2004, C?286/02, Bellio F.Ili, ??????? 2004, ?. I?3465, ????? 33- ??? 12??
?????????? 2006, C?311/04, Algemene Scheeps Agentuur Dordrecht, ??????? 2006, ?. I?609,
????? 25, ??? ?? 8?? ??????? 2007, C?447/05 ??? C?448/05, Thomson ??? Vestel France,
??? ?? ??? ????? ?????????? ??? ????? ?? ???????, ?????? 30).

17 ?? ??????????, ??????, ????? ? ?????????? ??? ?? ?????? 2, ?????????? 2, ???
?????? ?????? ??????, ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?? ?????? ??? ?????? ??
????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? 1 ?????? ??
????????? ?????? ?????????? ?????????? ??? ?? ?????? ???, ?????? ?????????? ?????????? ???
????? ???, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ??
????????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ???
????? GATS.

18 ??????????, ?? ??? 2, ?????????? 2, ??? ?????? ?????? ??????, ??????? ??????
?? ??? ?????? ??? ?????? ?? ?????????? ?? ??????????, ?? ??? ?????? ?????? ??????, ?? ???????
??? ?? ??????? ?????????? ??????????????, ?????????? ??? ?????? ???, ??? ?????? ??? ??
????? ?? ?? ??? ?????? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??
????????? ???, ?? ?????????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ???.

19 ??? ??? ??????? ??????, ? ??????? ?????? ??? ?????????? ??? ?????????? ??????????
??????, ??? ??? ??? ??????, ??? ?????? ?????????? ??? ?????? ??? ?????????? ?????????? ???
????? ??????? ? ?????????? ??? ?????????? ?? ?????????? ? ?????????????????? ??? ??????
2, ?????????? 2, ??? ?????? ?????? ?????? ??? «????? ???» ??? ??? ?????? ??? ??????
????? ?? ??? ?????? ??? ??? ?????? ?? ?????????? ??? ?????????????? ??? ?????????? ??
????????? 1, ??? GATS ??? ?????? ?????????? ??????.

20 ??????, ?? ??? 2, ?????????? 2, ??? ?????? ?????? ?????? ?????? ??? ?????? ???
?????? ??? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????????
??? ?????? ?????? ??? GATS.

21 ?????? ??? ??????, ??? ?????????? ?????? ??? ?????? ?? ?????? ? ?????????? ??? ??
????? 2, ?????????? 2, ??? ?????? ?????? ?????? ??? ?????? ?? ?????????? ??? ?? ???????
??? ? ?????????????? ?? ??? ?????? «????? ???» ?????????? ?? ??? ?????? ??? ??????
?????? ??? ??? ? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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22 ?????????? ??? ? ?????? ?????????? ??? ?? ??? ?????? ?????????? ??? ?????? ???
??? ?????????? ?????????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ?????????? ???, ?' ???
????????? ?? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????
????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????.

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

?? ?????? 2, ?????????? 2, ??? ?????? ?????? ?????? ?????? 86/560/??? ??? ??????????,
??? 17?? ???????? 1986, ??? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ?? ??? ?????? ?????? ?????? ?????? – ?????? ?????????? ??? ???
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??? ? ?????????????? ?? ??? ?????? «????? ?????» ?????????????? ?? ?????? ???
????? ?????? ??? ??? ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ??????
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(???????????)

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