

?????? C-427/05

Agenzia delle Entrate – Ufficio di Genova 1

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**Porto Antico di Genova SpA**

(?????? ??? Commissione tributaria regionale di Genova

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«????????????? ?????? — ?????????? (???) 4253/88 — ???? 21, ?????????? 3, ??????  
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(????????? 4253/88 ??? ??????, ??? ????? ?????????? ??? ?? 2082/93,  
????? 21 § 3, ?? 2)

? ? ?????? 21, ?????????? 3, ?????? ??????, ??? ?????????? 4253/88, ??? ?? ??????????  
????????? ??? ?????????? 2052/88 ??? ?????? ??? ?????????? ??? ?????????? ???  
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????? ??? ?????????? ??? ?????? 2082/93, ??? ?? ?????? ??? ?????? ??? ?? ??????????  
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??????, ? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ?????? ???  
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(???. ??????? 18-21 ??? ???????.)

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?? 25?? ??????? 2007 (\*)

«?????????? ?? – ?????????? (???) 4253/88 – ??? 21, ?????????? 3, ??????? ?????? – ?????????? ?????? – ?????????? ?????????? ?????????? – ?????????? ?????? ?????????? ?????? ?????????? ?????? ??????????»

???? ?????? C?427/05,

?? ?????????? ?? ?????? ??????? ?????????? ?????????? ?????????? ??? ?????? 234 ??,  
?? ??????? ?? Commissione tributaria regionale di Genova (??????) ?? ??????? ??? 31??  
????????? 2005, ? ?????? ??????? ??? ?????????? ??? 1? ?????????? 2005, ??? ??????  
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### **Agenzia delle Entrate – Ufficio di Genova 1**

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### **Porto Antico di Genova SpA,**

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

????????? ??? ??? K. Lenaerts, ??????? ???????, ?. ?????? (??????), R. Silva de Lapuerta, E. Juhász ??? J. Malenovský, ???????,

?????? ??????????: J. Mazák

?????????: L. Hewlett, ??? ?????? ????????,

?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???  
15?? ?????????? 2007,

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

- ? Porto Antico di Genova SpA, ?????????? ??? ??? I. Vigliotti, avvocato,
- ? ??????? ????????, ?????????? ??? I. M. Braguglia, ?????????? ??? ??? ???  
M. Massella Ducci Teri, avvocato dello Stato,
- ? ??????? ????????, ?????????? ??? G. de Bergues ??? J.?C. Gracia,
- ? ???????, ?????????? ??? D. O'Hagan ??? N. O'Hanlon, ?????????? ???  
?? A. Aston, SC,

– ? ?????????? ??? ????, ?????????????? ??? ??? H. G. Sevenster ??? ??? P. van Ginneken,

– ? ?????????? ????????, ?????????????? ??? ??? A. Kruse,

– ? ?????????? ??? ????????, ?????????????? ??? ??? C. White,  
??????????? ??? ?? J. Stratford, barrister,

– ? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ??? E. Traversa ??? L.  
Flynn, ?????????????? ??? ??? A. Colabianchi, avvocato,  
???? ?????? ??? ??????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???  
?? 8?? ??? 2007,

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1 ? ?????? ?????? ?????????? ?????????????? ?????? ??? ??????? ??? ?????? 21,  
????????? 3, ?????? ??????, ??? ?????????? (???) 4253/88 ??? ??????????, ??? 19??  
????????? 1988, ??? ??? ?????? ?????????? ??? ?????????? (???) 2052/88 ??? ???  
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????????????? ?????? (?? L 374, ?. 1), ??? ??? ?????????? ??? ??? ?????? ?????????? (???)  
2082/93 ??? ??????????, ??? 20?? ?????? 1993 (?? L 193, ?. 20, ??? ????: ??????????  
4253/88).

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ??? Agenzia delle Entrate –  
Ufficio di Genova 1 (????????? ??? 1, ??? ????: Agenzia) ??? ??? ??????  
Porto Antico di Genova SpA (??? ????: Porto Antico), ?????? ?????????? ??? ??????  
????? ? ?????? ?????? ??? ?????? ??? ?????? ??? ??????, ?? 2000, ?? ???  
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3 ?? ??? «????????», ?? ??? 21, ?????? 3, ?????? ???, ??? ??????????  
4253/88 ????:

«?? ?????? ??? ?????? ?? ?????? ?????? ?????? ?????????? ?????? ?????? ?????? ??????  
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4 ?? ??? 55, ?????? 3, ??? ?????????? ?????????? 917, ?? 22?? ??????????  
1986 (GURI ????. 302, ?? 31?? ?????? 1986, ?????? ??????????, ??? ????:  
????????? ?????? 917/86), ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
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«????????? ?????? ?? ?????? ???:

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? ) ?? ??????? ?? ??? ? ? ? ????? ?? ?????????????? ?? ??????????? ? ???  
?????????????, ??? ???? ?????????? ?? ?????? 53, ?????????? 1, ????????? e ??? f, ???  
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??? ??????????????. ?? ?????? ????? ?????????? ?????? ?????????? ??? ?????? ??? ??????????  
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5 ??? ?????????? ??? ???? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??????????  
?????? ?????????? ??? ???? ?????????? ??? ?????? ??? ?????????? , ? Porto Antico ?????????,  
?????? ?? ?? ?????? 55, ?????????? 3, ????????, ??? ?????????? ?????????? 917/86,  
??? ?????? ??? ??? ????? ?????????? ??? 2000 ??? ?????????? ??? ??? ?????????? ??  
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????????????? 1994-1999.

6 ??? 22 ??????? 2002, ?????????? ??? ?????????? ?????????????? ??? ?? ?? ???  
????????? ??? ?????????? ?????????? ??? 2000, ? Porto Antico ??????? ??????  
?????? ??? Agenzia, ??????? ??? ?????????? ??? ?????? ??? ?????? ?????????? , ??? ??  
????? ???, ???????????. ?? ??? ?????? ??? ?????????? ??? ?? ?????? 55, ?????????? 3,  
????????? ??, ??? ?????????? ?????????? 917/86 ?????????? ??? ?????????? ??? ??????  
21, ?????????? 3, ???????, ??? ?????????? 4253/88.

7 ??? ? Agenzia ??? ???????, ??????? ??? ?????? ??? ?????????? ?????????? ???  
????????? ???, ? Porto Antico ?????? ?????? ?????? ??? Commissione tributaria provinciale  
di Genova ? ????, ?? ?????? ??? 10? ?????? 2003, ??????? ??? ?????? ??? ??????  
??? ?????? ??? ?????? ??? ? ?????? ??? ?????? ?????????? ??????????????.

8 ??? 10 ??????? 2004, ? Agenzia ?????? ?????? ??? ?? ?? ??? ?????????? ???????  
??? Commissione tributaria regionale di Genova, ? ????, ?????????? ?? ?????????? ??  
????? 55, ?????????? 3, ????????, ??? ?????????? ?????????? 917/86 ?? ??  
????????? 4253/88, ?????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ?? ??????  
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«1) ??? ?????????? ?? ?? ??? 21, ?????????? 3, [?????? ??????], ??? ??????????  
[4253/88] [...] ?? ??? 55 [??? ?????????? ?????????? 917/86] (??? ??? 2000),  
?????? ?? ?? ??? ?? ?????? ??? ?????????? ?????????? ?????????? ??? ?? ?? ?????????? ???  
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2) ?? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??  
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9 ?? ?? ?????? ??? ???????, ?? ?????? ?????????? ?????? ???' ?????? ?? ?? ??? 21,  
????????? 3, ??????? ???????, ??? ?????????? 4253/88 ??? ?? ?????? ??? ??????????  
????? ?????????? ???????, ??? ??? ??? ?????? 55, ?????????? 3, ??????? ??, ???  
????????? ?????????? 917/86, ??????? ?? ??? ?????? ?? ?????????? ??? ??

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10    ???????????, ?????????????? ???, ??? ?????? ?????? ??????????, ?????????? ???? ???? ??????????  
????????? ??? ?????????? ??? ?????? ???, ?? ?????? ??? ?????? ?????? ?? ??? ?????? ???  
????????? ?? ?????????? ?????? (????????? ??? 11?? ?????????? 1995, C-80/94, Wielockx,  
???????? 1995, ?. I-2493, ??? 16, ??? ??? 7?? ?????????? 2004, C-319/02, Manninen,  
???????? 2004, ?. I-7477, ??? 19). ??????????, ? ?????? ?????? ??? ?????? ?? ?????? ?? ??????????  
?? ?????????? ??? ?????????? ??? ?????????? ?? ??? ?????? ?????? 4253/88 (?., ??????,  
???????? ??? 10?? ?????? 1981, 36/80 ??? 71/80, Irish Creamery Milk Suppliers Association  
.??., ?????? 1981, ?. 735, ????? 15).

11    ??????, ?? ??? 21, ?????????? 3, ?????? ??????, ??? ?? ??? ?????? ?????????? ??????  
?? «[?]?? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?  
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12    ??? ?? ?????????? ?? ?? ?????????? ?????? ?????? ?????????? ?????? ??? ??????????????  
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13    ?????? ?? ?????????? ?? ?? ?????????? ?????? ??? ?????????? ?????? ??? ?????? ?? ??????????  
?? ??? 21, ?????????? 3, ?????? ??????, ??? ?????????? 4253/88, ??? ?????? ???  
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????????????? ??? ?????? (?????), ????? ???????????????. ??????????????, ??????  
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????? ??? ???, ??????, ? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??????  
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
(?. ?????? ??? 5?? ?????? 2006, C-84/04, ?????? ??? ?????? ?????? 2006,  
. I-9843, ????? 35).

14    ???????, ??? ?? ?????????? ?? ?? ??? 21, ?????????? 3, ?????? ??????, ???  
????????? 4253/88 ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ??????????  
?? ? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? 917/86 ??????????  
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15    ?? ??????????, ??? ?????? ? ?????? ?????????? ??? ?? ?????? 28 ??? ??????????  
??, ?? ??? ??? ?????????? ?????????? ??? ?????? ? Porto Antico ?????????? ?????????? ???  
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16    ??????, ?????????? ? ?????????? ??? ? ?????????? ??? ?????????? ??? ??????????  
????????? 917/86 ?????? ?????????? ??? ??? ?????? ??? ?????????? ?????????? ???  
????????????? ??? Porto Antico. ? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
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17    ??? ???????, ??? ?????? ?? ?????????? ??? ? ?????? ??? ?????? ??? ?????? ??? ??????

????? ??????????? ???????????, ??? ??????????? ?? ???? ????? ??????????? ????????, ????????  
????? ? ??????? ??? ??? ?????? ??? ?????? 21, ?????????? 3, ??????? ??????, ???  
????????? 4253/88, ??? ??????? ??? ?????????????? ??? ?? ?????????? ?????????????? ??????  
????????? ??? ?????????? ?????? ??? ?????????? ?? ?????, ??? ?????? ?????? ?????? ?????,  
???? ?????????? ? Porto Antico, ?? ?????????? ?????????? ?? ??? ?????? ?????? ?????? ???  
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18    ??????? ?? ?????????? ? ?????????? ??? ?????? ?? ?????????? ?? ?????? ??? ??????  
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????????? ??? ?? ?????????? ?????? 917/86, ??? ?????????? ??? ?????????????? ???  
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19    ??????, ??? ?? ?????????? ???, ?????????? ??? ?????? ??? ?????????? ? Porto Antico, ?  
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????? ???, ??? ?????? ?? ?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ??????????????, ?  
????? ?????? ?? ?? ?????? ?????????? ?????????? ?? ?????????? ??? ?????????? ??????????, ???  
?? ?????????? ?????????? ?????????? ?????????? (??., ?????? ???, ?????????? ???  
12?? ?????? 2001, C-189/01, Jippes ???., ?????? 2001, ?. I?5689, ????? 129, ??? ??? 12??  
????????? 2006, C-479/04, Laserdisken, ?????? 2006, ?. I-8089, ????? 68).

20    ???????????, ??? ?? ?????????? ???, ?????? ? ?????????? ??? ?????????? ???  
????????? ?????????? ?? ??? ?????? ??????????. ??????, ??? ?? ?????????? ?? ???????????,  
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?? ??? ?? ?????? ???, ?? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ???  
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21    ?????? ??? ???????????, ??? ?????? ?????? ?????? ?? ?????? ? ?????? ??? ?????????? ???  
????? 21, ?????????? 3, ??????? ??????, ??? ?????????? 4253/88 ??? ?? ?????? ???  
????????? ?????? ?????? ?????????? ??????, ??? ?????? ??? ?????? 55, ?????????? 3, ???????  
??, ??? ?????????? ?????????? 917/86, ?????? ?? ??? ?????? ?? ?????????? ???  
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22    ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ? ?????????? ???  
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23    ?????????? ??? ? ?????? ?????????? ??? ?? ??? ?????? ?????? ?????????? ??? ?????? ???  
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????????? ?? ?????????? ??? ?????? ?????????? ?????? ?? ?????? ??? ?????? ??????????  
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? ? ?????? 21, ?????????? 3, ?????? ?????, ??? ?????????? (???) 4253/88 ???  
????????? ??? 19?? ?????????? 1988, ??? ??? ?????????? ?????????? ???

? ?????????? (???) 2052/88 ???? ????? ??? ?????????? ??? ?????????????? ???  
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???????, ???? ??? ?????????????? ??? ?? ?????? ?????????? (???) 2082/93 ??? ??????????  
?? 20?? ?????? 1993, ???? ??? ?????? ??? ?? ?????? ?????????? ?????? ??????????  
???????, ???? ??? ?????? 55, ?????????? 3, ?????????? ??, ??? ??????????  
????????? 917/86, ??? 22?? ?????????? 1986, ?????????? ?? ??? ????? ??  
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(?????????)

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