

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

??? 3?? ?????????? 2013 (*)

«????????? ?????????? ??? ????????? – ?????????? ?????????? – ????? ????????? – ?????
??? ?????????? ?????????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????????? ?? ?????? ??? ?????? ?????? – ?????? “????????? ??????” ?????? ??? ??????
????? – ?????? ?????????????????? – ?? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ???
????? ?????????? – ?????????? ?????? ??? ?????????? ?????? ?????? ??? ?????????????? ???
????? ?????? ?? ??? ?????? ?????????? ?????? ?????? – ?????? ??? ?????????? –
????? ?????? ?????????? ?????????? – ?????? ?????? ?????????? – ??????????»

????? ??????? C?282/12,

? ? ?????????? ?????? ?????????????? ?????????? ??? ?????? 267 ????, ???
?????? ?? Tribunal Central Administrativo Sul (??????????) ?? ??????? ??? 29?? ?????? 2012,
? ??? ?????? ??? 6 ??????? 2012, ??? ?????? ??? ???

Itelcar – Automóveis de Aluguer Lda

?????

Fazenda Pública,

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

????????? ??? ??? L. Bay Larsen, ??????? ????????, K. Lenaerts, ?????????? ???
??????????, ??????? ??????? ??????? ??? ??????? ????????, J. Malenovský, U.
Löhmus (????????) ??? M. Safjan, ????????,

????????? ??????????: N. Wahl

?????????: V. Tourrès, ??????? ??????????,

?????? ????? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???
11?? ??????? 2013,

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

- ? Itelcar – Automóveis de Aluguer Lda, ?????????????? ??? ??? P. Vidal Matos ??? D.
Ortigão Ramos, advogados,
- ? ?????????? ????????, ?????????????? ??? ??? L. Inez Fernandes ??? J. Menezes
Leitão ??? ??? ??? A. Cunha,
- ? ?????????? ????????, ?????????????? ??? ?? M. Afonso ??? ??? W. Roels,
?????? ??? ??????? ??? ?????, ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
?????? ??? ?????? ??????? ??? ???????,
- ?????? ??? ???????

???????

1 ? ?????? ?????????????? ?????????? ?????? ??? ?????? ??? ?????? 56 ?? ??? 58 ??.

2 ? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? Itelcar –
Automóveis de Aluguer Lda (??? ????: Itelcar) ??? ??? Fazenda Pública (???????) ???
????? ?? ?? ?????????? ?????? ??? ?????? ??? ?????????? ??? GE Capital
Fleet Services International Holding, Inc. (??? ????: GE Capital), ?????????? ????, ???
????? ??? ?????? ??? Itelcar.

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

3 ? ?????? ?????????? (Código do Imposto sobre o Rendimento das Pessoas
Colectivas), ?? ?? ??? ?????? ?? ?????????? ?? ?????????? 198/2001, ??? 3??
?????? 2001, ??? ??? ?????????? ??? ?? 60?A/2005, ??? 30?? ?????????? 2005
(??? ????: CIRC), ?????????? ?? 61, ?? ????? «?????????????»:

«1. ??? ? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????????? ??
????????????? ??? ?????? ?????????? ?? ?? ??? ?????? ?????? ??? ??????, ?? ?? ??? ??????
????????? ????, ??? ?????? ?????? ??? ?????? 58, ?????????? 4, ??? ??????
?????????????, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???.

2. ?? ?????? ?????? ?????????? ? ?????????? ?????????? ?? ?????????? ?????????????? ??? ?????? ???
????? ??? ?? ?????? ?????????? ?????? ?????????? ?? ?? ??? ?????? ?????? ??? ??
?????, ??? ?????? ??? ?? ?????? ?????????? ??? ?????? 58, ?????????? 4, ??????????
????????? ?????????? ?? ??????.

3. ?????????? ??? ?????? ?????????? ??? ?? ??? ?????? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? 1 ??? 2 ????, ?? ?????????? ??? ?????? ??? ?????????? ??? ?? ??????????
?? ?????????? ????, ??? ?????? ??? ?? ?????????? ??? ?????? ??? ?????????? ??? ?? ??????
????????? ??? ?????????? ???.

4. ??? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??????????, ?? ?????? ??
?? ??????, ?????????? ??? ?? ?????? ??? ?????? ?????????? ??? ?????? ??????????, ? ????
????????? ??? ?????????? ?? ?? ?????? ?????? ?????????? ?????????? ??????????,
????????????????? ??? ?????????? ?? ?? ?????? ?????? ?????????? ?????????? ??? ?????????? ??????????
????????????? ??? ?? ??? ?????? ??? ?? ?????????? ?????? ??? ?????? ?????????? ?????????? ??? ?? ???
?????????.

5. ??? ??? ?????????? ??? ?????? ??????????, ?? ?????? ?????? ?????????? ??? ??????
????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ?????? ???
????????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ???
????????????? ??? ?? ?????????? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ??
????????? ??? ?????????? ???.

6. ?????? ??? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?????? ????
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ???, ??
????????? ??? ?????????? 1 ??? ?????? ?????? ???, ?? ?????? ?????? ?????????? ??? ??
????????? ??? ?????????? ??? ?????? ?????? 3, ? ?????????? ???, ?????????? ???.

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

7. ? ?????????? ??? ??? ????? ??????? ?????? ??? ?????????? 6 ?????? ?? ??????????????
??? ?????????? ?????? ??? ????? ?????? ?????????? ?? ?????? 121.»

4 ?? ?????? 58, ?????????? 4, ??? CIRC, ??? ????? ?????????? ?? ???? 61, ??????????
1 ??? 2, ??? ?? ??? ??????, ??? ?? ????:

?) ???? ?????????? ??? ??? ??????? ??? ? ??? ?????? ???, ??? ?????????? ? ???
????????? ???, ?? ?????? ???????, ?????? ? ????, ?????????? ??? ?????????? ??? ?? 10
% ??? ?????????? ??? ? ??? ?????????? ????

?) ?????????? ????, ?????? ?? ????? ???????, ?? ??????? ????, ?? ?????????? ??
????????? ????, ???????, ?????? ? ??????, ?????????? ?? ?????????? ???, ?? 10 % ???
????????? ???, ??? ? ??? ?????????? ??????

?) ???? ?????????? ??? ??? ?????? ??? ?????????? ??????? ???, ? ??????????????
?????????????, ??????????????, ?????????????? ? ?????????? ??????, ??? ??? ??????, ???
????????? ??? ????? ?????????? ?????

?) ?????????? ?? ?????????? ?????? ?? ???????, ?? ??????
????????? ?? ?????? ?????????? ?????????? ? ?? ?????? ?????????? ?????????????? ??????????????

??) ?????????? ??????? ?? ?????? ?????????? ?????? ??????????, ??? ?????? ?????? ?????????? ??
?? ?????????? ?????? ??? ?????? ?????????? ? ?????????? ?????????? ?????????? ??????????
????????????? ??????????????

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

2) ?????????? ??? ?????? ??? ? ? ???????? ?? ?????? ??????? ??? ??????????, ??????
? ?????????? ??? ????? ?????????? ?????? ??? ??? ?????

3) ?????????? ??? ???? ?????????????? ??? ??? ????? ?????? ?? ?????????????????? ???

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

4) ?????????? ?????????? ??? ????? ? ??? ????? ?????????? ?????????? ?????????? ??????????

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

5) ?????? ??????? ? ?? ???? ? ?? ??????? ? ?? ?????????? ? ?????? ? ?????? ?????, ? ??
?????? ? ? ?????? ? ?? ??????? ? ?? ?????????? ? ?? ?????????? ? ?????? ? ?? ?????? ?
????????????? ???? ? ?? ??????? ? ?? ?????????? ? ?? ?????????????? ???? ? ??.

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

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

5 ? Itelcar ?????? ??????????? ???????, ? ?????????????? ??? ?????? ???????, ?????
?????, ??? ?????????? ??????? ?????????? ??????. ????? ?? 2005, ?? ??????
????????? ?? Itelcar ?? ??????? ? ??????? ?????? General Electric International (Benelux) BV
???? ????? ???????????, ?? ??????????? ??? 10 %, ? ??????? GE Capital. ??? ?? 2006, ??
99,98 % ??? ??????? ??? Itelcar ?? ??????? ? ?? ??? ?????? ??????? ??? ?? ??????
0,02 % ?? ?????? ? GE Capital.

6 ????, 23 ??????? 2001 ??????? ?? ???, ?????? ??????? ????????, ??????????? ????????????,
 ?????? ??? Itelcar ??? ?? GE Capital ????? ?? ?????? ? ?????? ??????? ??
 ?????????????? ??????? ?????? ?????? ?????????? ?????? ?????????????? ?? ?? ???? ?????? Euribor,
 ?????????????? ?? ?????? («spread») 0,5 %.

7 ??? ??????? ?? ?????????? ?????, ? ??????? ?? ????? ?????????????? ? Itelcar
?????? ?? 122 072 179,97 ??? ?? 2004, ?? 131 772 249,75 ??? ?? 2005, ?? 212 113 789,46
???? ?? 2006 ?? ?? 272 113 789,46 ??? ?? 2007.

8 ? Itelcar ??????????? ?? ?????? ?????? ?????????? ?????? ??? ?? ?????????? ???, ??? ?? ???
2004 ??? 2007, ?? ??? ?? ?????? ?? ?????? ??? ?????? ?????? ?????????? ??? GE Capital ?? ???????
?? ????????, ??? ??????? ????????, ??? ??? ?????????? ?????? ??? ??? ??? ? ?????????? ???
????????? ??? ?????????? ?? ??? GE Capital ??? ?????? ??? ??? ??? ??? ??? ?????? ???
?????????.

11 ? Itelcar ??????? ?????? ??? ?????????????? ??? Tribunal Administrativo e Fiscal de Sintra
????????? ??? ?????????? ?????????????? ?? ?????? ?????? ??? ? ?????????? ??? ?????????? ???
?????? ?????????? ?????????? ??? ?? ?? ?????? ?????????? ?????????? ??? CIRC ???????? ?? ??
?????? ??? ??????.

12 ????? ??? ????????, ?? Tribunal Central Administrativo Sul ?????????? ??
????????????? ?? ???? ?????? ?? ???? ?????????? ?? ???? ?? ???? ?????? ?? ???? ?????????? ?? ????
????????????? ?? ??????:

«?????????? ?? ?? ????? 63 [????] ?? 65 [????] (????? ?????? 56 [?] ?? 58 [?])
????????? ??????, ??? ? ?????? ?? ?????? 61 ??? CIRC [...], ? ?????, ??? ??
?????????? ?? ?? ??? ?? ?????? ?????????? ?? ?????? ?????? ?????? ?????? ??
?? ?? ?????? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? 58, ?????????? 4, ??
CIRC, ?? ??????? ?? ?? ??????, ?? ??????, ?? ?????? ?? ?????? ?? ?????? ??,
???? ?? ?????? ?? ?????? 61, ?????????? 3, ?? CIRC, ?????????? ?? ??????????, ?? ??
????????? ?????? ?? ?? ?????? ?????????? ?? ?????? ?? ?????????? ?? ?????? ?? ??
????? ?????? ?? ?? ?????? ?????? ?? ?????? ?????????? ?? ?????? ??, ? ?????? ??
????????? ?????? ?????? ?????? ?????????????? ?? ?????? ??????????, ?? ?? ?????? ??????
?????? ??????;»

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

13 ?? ?? ??????? ???, ?? ?????? ??????????? ??????, ???' ??????, ??? ?? ????? 56 ?? ??
?? ?????? ?? ?????????? ?? ??????? ?????? ?????? ?????? ? ?????? ?? ?????????? ???
????????? ?? ???????, ?? ?????? ??????? ?? ?????????????? ?? ?????? ?????????????? ??,
?? ?????? ?? ?? ?????? ?? ?????? ?? ?????????????? ?? ?????????? ?? ?????????? ?? ??????
????????? ?? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????????? ?? ??????
?? ? ?????? ?? ?????? ?? ?????? ???, ???? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ???
????????? ?? ?????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????????? ?? ??????
????????? ?? ??????.

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

14 ????? ???? ?? ??????? ??? ?????????? ??? ?????? 56 ?? ??? ??? ?????????? ???
????????? ??? ?????? ??????, ?????????? ? ?????????? ?????????? ??? ?? ?????? ??? ??
????????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?? ?????????? ??? ??
????????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????, ??? ?????? ??? ?????????? ???
????????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????, ??? ?????? ??? ?????????? ???
??? ????????? VIII ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? I ???
????????? 88/361/??? ??? ??????????, ??? 24? ?????? 1988, ??? ?? ??? ?? ?????? ???
?????? 67 ??? ?????? [????? ??? ?????????? ?? ?? ?????? ??? ??????????] (?? L 178,
?. 5), ??? ??? ??? ????? ?????????? ??? ?????????? ??? ?????????? (??., ???????, ??????? ???
3? ?????????? 2006, C?452/04, Fidum Finanz, ??????? 2006, ?. I?9521, ??????? 41 ??? 42).

15 ?? ???? ??????????, ? ?????????? ?????????? ?????????? ?????????? ??? ? ?????????? ???
????? ??? ???? ?????? ?????? ?????? ?????? ?????? «?????? ??????» ???

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

16 ???????, ?? ?????????? ??? ??????, ??? ?????? ?????? ?????????? ??? ?????? ??
????????? ?????????? ?????????? ?????????? ?????????? ??? ?????? ??????, ??? ?????? ? ??????
??? ?????????? ??? ?????????? ??? ?????? ?????????? ?? ?????????? ?? ? ?? ???
????????? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????????? ?? ?????? ??????????
????????? ??? ?????????? ?. ??????????, ??? ?????? ??? ?? ?????????? ??? ?????????? ???
????????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?? ?????????? ?? ?????? ???
????????? ??? ?????????? ??? ?? ?????????? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??????
????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?? ?????? ??? ??????
????, ??? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? 43 ?? (??. ?????? ??? 13??
????????? 2012, C?35/11, Test Claimants in the FII Group Litigation, ?????? 96 ??? 97 ???
???? ?????????? ??????).

17 ? ? ?????????? ??? ?????? ?????? ???, ??? ?????? ?? ?????????? ??? ?????? ??????
????????? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ?????????? ??????????
????????? ??? ?????????? ?? ?????????? ?????????? ?????????? ?????????? ?????????? ???
????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ?????????? ???, ??? ?????? ??
????????? ??? ?????? 43 ?? ??? ?????? 56 ?? (????????????? ??????
Test Claimants in the FII Group Litigation, ?????? 98).

18 ?????????, ?????? ?????? ??? ?????? ?? ?????????? ?????????? ?????????? ??????????
????????? ??? ?????? ???, ? ?????? ??? ?????????? ??? ?? ?????????? ??? ?????? ??? ??????
????? ? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ?? ?????????? ?????????,
????? ?? ?????????? ??? ?? ?????? ??? ?????? 56 ?? . ??? ?????????? ?? ?????????? ?? ??????
????? ?????? ?????? ??????, ??????, ?? ?????????? ?? ?????? ?????? ?????? ?????????? ??
????????? ?? ?????????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????????? ?? ??????
????????? ??? ?? ?????????? ?????? ?????? ? ?????? ?????? ?????? ?????????? ?? ??????
????? (????????? Test Claimants in the FII Group Litigation, ?????????? ?????? 99, ??? ??
28?? ?????????? 2013, C?168/11, Beker, ?????? 30).

19 ? ?????????? ??? ?????? ?????? ?? ?????? ?????? ?????? ??????, ??? ? ?????? ?????? ??? ??????
?? ?????? ???, ? ?????? ??? ?? ?????????? ?????????? ??? ?????? ??? ??????????
????????? ?????????? ?? ?????? ?????? ?????? ?? ?????????? ?????? ?? ?????? ??? ??????
????????? ?????? ??? ? ?????? ?????? ?????? ?????????? ??? ?? ?????? ????. ?????????? ???,
? ?????? ??? ?? ?????? ??? ?? ?????? 43 ?? ??? ??? 56 ?? ??? ??????
????????? ?????? ?????? ??? ?????? ?? ?????? ?????????? ?????? ??? ?????? ?????? ??????
????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ??????
????????? ?? ?????????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???.

20 ? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????, ??? ?????????????? ? Itelcar ??? ?
????????? ?????? ?, ? ?????? ??? «????? ??????», ??? ?????????? ??? ?????? 58,
????????? 4, ??? CIRC, ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ??????
????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ??????, ??? ??
????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ?? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ?? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

?????? ???? ?? ???? ????????, ??? ?????????????? ???' ?????? ?????????? ??? ??????????

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

22 ?????? ??? ?? ?????????? ??? ? ?????????? ??? ?????????? ??? ?????? ??? ????? ??????????
????????????? ??? ???? ?????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??????????????
??? ?????????? ??? ??????? ? ??? ????? ?????????? ?????????? ?????????? 10 % ??? ???
????????? ? ??? ?????????? ??? ?????? ??? ?????????????? ??? ?????? ?????????? ??? ?????
?? ??? ?????? ?????????? ??? ?????? ??????????, ??? ?????????? ??? ????? 58,
????????? 4, ??????? ?? ??? ??, ??? CIRC, ?????????? ? ?????????? ??? ??????????
????? ??? ?????????? ??? ?????????? ???' ?????? ??? ? ?????????? ??? ?????? ??????????????
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? (?).., ????, ????, ????
??? 13?? ?????? 2000, C?251/98, Baars, ?????? 2000, ?.I?2787, ????? 20, ??? ??? 12??
????????? 2006, C?446/04, Test Claimants in the FII Group Litigation, ?????? 2006, ?.I?11753, ??? 58).

24 ????? ?? ??????, ??? ?????????? ?????????? ?? ???????????, ????? ??? ?????????? ??? ??
????? ?????????? ??? ?? ?????? ??? ??????? ?? ??? ?????? ?????, ?? ?????????? ??? ??
??? ?? ???? ?????? ??? ?? ?????????????? ??? ?? ?????? ??? ?????? ?????? ?????? ??????????
?????????, ?? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ?????? ?????????? ??? ??????????
?????????????. ???????????, ?????????? ??? ?????? ??? ?????????? ? ?????????????? ?????? ??????????
????? ??? ??' ???????????, ??????? ?????? ??? ? ??????? ?????? ??? ?????? ??? ?????? ???
?????? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ???
?????? ?????? ??? ?????, ??? ?????? ??? ?? ?????????? ?????????? ?????????? ??? ?????? ???
????? ?????? ?? ?????????? ?? ?????? ?????? ?????? ?????????? ?????????????? ?? ??? ??? ??????
????? ?????? ?????? ?? ?????????? ?? ?????? ?????? ?????? ?????? ?????????? ?? ??? ??? ??????
????? ??????, ??? ??? ?????? ??? ?????? 58, ?????????? 4, ??? CIRC (??., ???'
??????, ?????????????? ??? 13? ?????????? 2012, Test Claimants in the FII Group
Litigation, ??? 100).

25 ???????, ?????? ?? ? ??????? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ??
????????? ?????????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ????
????????? ?? ???? 56 ??.

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

26 ??????? ?? ?????????? ???, ??? ????? ????????, ??????? ? ??? ????? ????????
?????? ??? ?????????? ??? ?????? ?????, ?? ??? ????? ??? ???????, ??? ??? ?????
?? ?????? ?? ?????? ??? ?????? (?????? ??? 10?? ??? 2012, C?338/11 ???
C?347/11, Santander Asset Management SGIIC ???., ??? 14 ??? ??? ???????????
?????????).

27 ??? ????? ???????? ?????? ??????? ??? ?????? ??? ?????? ??? ??????????????
?? ?? ??? 56, ?????????? 1, ??, ?? ?????????? ?????????????? ??? ??????????
????????????? ?????? ??? ?????? ?? ?????????? ??? ?????????? ??? ??????????
????????? ?????? ??? ?????? ?????????????? ?????????? ?? ??? ?????? ??? ??????
????????? ?????? ??? ??? ?????????????? ?????????? ?? ??? ?????? (????????? ??? 25??
????????? 2007, C?370/05, Festersen, ?????? 2007, ?. I?1129, ??? 24, ????? ??
Santander Asset Management SGIIC ???., ??????????????, ??? 15).

28 ?? ??????????, ??? ?? ??? 61, ?????????? 1, ??? CIRC ?????????? ???, ??? ??
????? ?????????? ??? ?????????? ????? ?????????? ??? ?????????????? ?? ??? ??
????? ?? ??? ????? ?????? ???????, ??? ?? ?????? ??? ?????? 58,
????????? 4, ??? CIRC, ?????? ?? ??????????, ??? ?? ?????? ??? ?????????? 3 ??? ??
??? ?????? 61, ?? ?????? ??? ?????? ?? ?????????? ?????? ??? ?????? ??? ??????????
??? ?????????? ??? ?????????? ?????? ??? ?????????? ??? ?? ??? ?????????????? ???
????????? ??????.

29 ????????, ??? ?????????? ?????? ??? ?? ??? 61, ?????????? 1, ??? CIRC, ?
????????? ??? ?????? ??? ?????? ????? ?????????? ??? ? ?????????? ?????? ???
????????????? ??? ?????? ?????????? ? ?? ??? ?????? ?????? ???.

30 ??? ?????????? ? ?????????? ?????? ??? ?????????? ??? ?? ?????????? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ?????????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ???
????????????? ?? ??? ?????? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ???
????? ?? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????????
?? ??? ??? ??? ?????????? ??? ?????????? ??? ?? ??? ?????? ?????? ?????? ??????.

31 ??? ?????? ?????? ?????? ?????????? ?????? ?? ??? ?????????? ?? ?????????? ???
????????????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???
?? ?????????? ?? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???,
??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? . ??????, ??? ?????? ??????
????????? ?????????? ??? ?????????? ?????? ?????? ??? ?????? ??? ?????? ???' ???,
????????? ??? ?? ??? 56 ??.

32 ??? ?????? ??????????, ??? ?????? ?????? ?????????? ??? ?????? ?? ??? ?????? ???
????????????? ??? ?????????? ?????? ?????? ?????? ?????????? . ??????, ???
????????? ???, ?? ?????? ? ?????????? ?? ??? ?????? ?????????? ??? ?? ?????? ???
????????????? ?????? ??? ?? ??? ?????????? ?? ??? ?????? ?????? ??? ?? ?????? ???
????????????? ?????? ??? (?. ?????????? ?????? ??? 13?? ??? 2012, Test
Claimants in the FII Group Litigation, ??? 55 ??? ?????? ?????????? ???).

33 ? ?????????? ?????? ?????????? ?????????? ??? ? ?????? ??? ?????? ??? ?????? ???
?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????
?? ?????? ??? «?????????????» ? ?????? ?????????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????

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

34 ??????, ?????? ?? ?????????? ???, ??? ?????? ??????????, ?????? ?????? ???
????????? ??? ?????????? ?????????????? ?????? ?? ?????????????? ??? ??????????
????? ??? ?????? ?????????? ???????????, ?? ?????? ??? ?????? ?????????? ??????????
????????? ??? ?????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ?? ??????
?? ?????? ??? ?????????? ??? ?????????????? ?????????? ??? ?????? (??., ??????,
????????? ??? 13?? ?????? 2007, C?524/04, Test Claimants in the Thin Cap Group Litigation,
????? 2007, ?. I?2107, ?????? 72 ?? 74, ?????? ??? ?? 17?? ?????????? 2009,
C?182/08, Glaxo Wellcome, ?????? 2009, ?. I?8591, ????? 89).

35 ??? ?????? ?????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ? ??????
????????? ??? ?????????? ??? ?????? ?????????????? ??? ?????????????? ??? ?????????? ???
???? ?????????????? ?? ?????? ??? ?????, ?? ??? ?????? ?????????? ?????????? ???, ???
????????? ??? ??? ?????????? ??? ?????????? ?????? ??? ?????????? ??? ?? ??? ?????? ??????
?????????, ?????? ??? ?? ?????????? ?????????? ??? ?? ?????????? ?????? ??? ?????? ??? ??????
?? ?????????? ?????????? ??? ?? ?????? ??? ?????? ??? ?????????? ?????????? ??? ??
????????????? ??? ?????????? ??? ?????? ??????, ??? ?????? ?????????? ??? ??????
????????? ??? ?? ?????????? ??? ?????? ?????? ??? ?????????? ?????? ??? ?????? ??? ??
????????? (??., ???' ??????, ?????????? ?????? Test Claimants in the Thin Cap
Group Litigation, ??? 77).

36 ??????, ?????? ?? ?????????? ?? ? ?? ??? ?????? ?????????? ?????? ??? ?????? ??? ??????????
?? ??? ?????? ??? ?????? ??? ?????? ???.

37 ??????, ??? ?? ?????????? ?? ?????????? ?????? ?????????? ??? ?????? ???, ? ??????
????????? ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ?????????? ???
????? ??? ? ?????, ?????? ? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??
?????????, ?????? ??? ?????? ?????????? ??? ?????????? ?????? ?????? ??? ?????? ??
????????????? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ??? ??
????????? ??? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??
????????? ??? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??
????? ??? ?????????? (??., ??????, ?????????? Test Claimants in the Thin Cap Group
Litigation, ???????????, ??? 82, ?????? ??? ?? 5?? ?????? 2012, C?318/10, SIAT,
????? 50).

38 ?????, ?? ?????????? ??? ?????? ???, ??? ? ?????? ??? ?????? ?????? ??? ??????
?? ?? ?????? ?????????? ?? ?????????????? ?????? ??? ?????????? ??? ?????????? ???
??????????, ?????????? ?? ??? ?????? ?????? ??? ?????????? ?? ?????????? ??? ?????????? ???
????? ?? ?????????? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?????? ?????? ?????? (??., ??????, ?????????? ?????? ?????????? Test
Claimants in the Thin Cap Group Litigation, ??? 83, ?? SIAT, ??? 52).

39 ?? ??????????, ?????? ??????, ??????, ??? ?? ?????? 61, ?????????? 6, ??? CIRC
????????? ???, ?????? ??? ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ???,
????????? ??? ? ?????? ?? ?????? ?????????? ?????? ?????????? ?????????? ?? ?????????? ??
?? ?????????? ??? ?? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??
????????? ?? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ???
????????? ?? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ???

???????, ?????? ??? ?????? 61, ?????????? 1, ??? CIRC, ?? ???????? ?????? ???
????? ??? ?????? ?? ?????? ??? ?? ?????? ?????? ?? ?????? ?????? ?? ??????????.

40 ??????, ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ??
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ???.

41 ????????????, ??? ?????????? ??? ???? 20 ??? ?????? ??????????, ? ??????
?? «?????? ??????», ??? ?????? ??? 58, ?????????? 4, ??? CIRC, ???????????,
????????? ??? ?????? ?????? ?????????????? ?? ?????? ??? ?????????? ?????? ???
????????? ???' ?????? ??? ?????? ?????????????? ??? ?????????????? ??? ??????????
????????????? ??????. ??? ??? ?????? ?????????? ??? ?????????????? ??? ?????? ???
????? 61, ?????????? 3, ??? CIRC ?????????? ???, ?????????? ??? ?????????? ??????????,
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ??????????.

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

43 ??????, ??? ??? ???, ?????? ???, ??? ?????? ?? ?? ?????? ??? ?????????? ???
????????? ?? ?????? ?????????? ??? ?????? 21 ??? ?????? ??????????, ? ?????? ???
????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ? ??????????
????????? ?????? ??? ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ???,
????? ??? ?????????? ? ?????? ??? ?????? ??? ?????? 41 ??? ?????? ?????? ???,
???' ??' ???, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ???
????????? ??? ?????? ???, ??? ?? ?????, ?????????, ?????????? ?? ?????????? ??? ?
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

44 ??? ??? ?????????? ???, ? ?? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.
?????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ??????????, ??? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? (?. ?????????? ?????? SIAT, ?????? 58 ??? 59).

45 ??????? ??? ???????, ??? ?????????? ??????? ?????? ?? ?????? ? ??????? ??? ??
????? 56 ?? ??? ?????? ??? ??????? ??? ??????????? ?? ??????? ??????? ?????? ? ?????? ???
?????? ?? ??????????? ?? ???????, ??? ????? ??????? ??? ??????? ??? ??????????????? ???
?????????? ?????? ???????????, ?? ????? ??? ??? ?????? ??? ?????? ?? ??????????????? ???
?????????? ?????? ?????? ??????? ??????? ??????? ?? ??????????????? ?? ?????? ???
?????????? ?????? ?? ??? ????? ??????? ??????? ???????, ??? ??????? ?? ??????????? ???
?? ??????? ?? ?? ??? ????? ??????? ??????? ?? ??????? ??????????? ??????? ?? ???
????? ? ?????????????? ?????? ??????? ??????? ??????? ??? ?????? ?? ??????, ??? ? ?? ???
?????? ???????, ??? ?????? ??? ????? ??????? ??? ? ??????????? ?? ?????? ???
????????? ?????? ??? ?????? ??? ????? ??????? ??????? ?????? ?? ?????? ?? ?????? ???
??????, ??? ??????? ?? ?????? ??? ????? ??????? ??????? ?????? ??????? ??? ??
?????? ??????? ??? ??????? ??????? ??????? ?????? ?? ?????? ?? ?????? ??????? ???
?? ??????????? ?? ?????????????? ?? ??? ?????????? ??? ?? ?????? ??????? ??????? ?? ???
????????? ???.

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

46 ?????????? ??? ? ??????? ??????????? ??? ?? ??? ?????? ?????? ?????????? ??? ?????? ???
??? ?????????? ?????????????? ??? ??????? ??????? ??? ??????? ???????????, ?' ???
?????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ?????? ???????????
????? ??????? ??????????? ??? ???????????, ??? ??? ?? ??? ???????, ??? ???????????.

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

?? ??? 56 ?? ??? ?????? ??? ??????? ??? ??????????? ?? ??????? ??????? ??????? ?
????? ??? ??????? ?? ??????????? ?? ???????, ??? ?????? ??????? ???
?????????? ??? ??????????? ???????, ?? ?????? ??? ??? ?????? ???
????? ??? ??????????? ?? ??????? ?????? ??????? ??????? ??????? ???
?????? ?? ??????????? ?? ?????? ??? ?????? ??????? ??????? ??? ?? ???
?????? ??????? ???????, ??? ?????? ??? ?????? ??????? ??? ??????? ??? ?? ???
?????? ??????? ??? ?????? ??? ?????? ??????? ???????, ??? ? ?? ???
?????????? ???????, ??? ?????? ??? ?????? ??????? ??? ? ??????????? ?? ???
?????????? ??????? ??? ?????? ??? ?????? ??????? ??? ??????? ??????? ???
?????????? ???????, ??? ?????? ??? ?????? ??????? ??? ??????? ??????? ??????? ???
?????????? ??? ??? ??????? ??????? ??? ?????? ??? ??????? ??????? ??????? ???
?? ??? ??????? ??? ??????? ?? ?????????? ?? ??????????? ??? ?? ??? ???????
??? ?? ??????? ??????? ?? ?????? ??? ?????? ??????? ???.

(???????)

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