

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

??? 17?? ?????? 2016 (*)

«????????????? ?????????? — ?????????? — ????? ?????????????? ????? — ?????
2006/112/?? — ?????? 135, ?????????? 1, ?????????? ?? — ?????????? ??? ???? ?????????? —
?????? ??? “?????????????” ?????????? ??? ??? “????????? ?? ????? ?????? ?????? ?????????? ???
????????????????? ??? ??? ?????? ?????????? ??? ??? ?????? ?????????????? ?????????? ???
????????? ?????????????? ??? ??? ?????? ?????????? ??? ??? ?????? ?????? ??? ??? ?????? ???
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???? ?????? C?40/15,

? ? ?????????? ?????? ?????????????? ?????????? ?????????? ??? ?????? 267 ????, ???
?????? ?? Naczelnego S?d Administracyjny (?????? ?????????? ??????????, ???????) ??
?????? ??? 19?? ?????????? 2014, ? ????? ?????? ??? ?????????? ??? 2 ?????????? 2015, ???
?????? ??? ?????? ??? ????

Minister Finansów

????

Aspiro SA, ????? BRE Ubezpieczenia sp. z o.o.,

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

????????? ??? ??? R. Silva de Lapuerta, ?????? ???????, A. Arabadjiev, J.?C. Bonichot, C.
G. Fernlund (???????) ??? S. Rodin, ????????,

?????? ??????????: J. Kokott

?????????: K. Malacek, ?????????? ????????????,

?????? ??? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???
2015,

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

– ? Minister Finansów, ?????????????? ??? ??? B. Rogowska?Rajda, ????? ??? ??? ???
J. Kaute ??? M. Lubi?ski,

– ? Aspiro SA, ?????????? ??? ??? M. Szafarowska, ????? ??? ??? ??? ??. Michalik
??? M. Spychalski, ?????????? ????????????,

– ? ?????????? ????????, ?????????? ??? ??? B. Majczyna ??? ??? K. Ma?kowska,

– ? ?????????? ??? ????????, ?????????? ??? ??? L. Christie ??? S.
Brandon, ?????????? ??? ??? ?. ????????????, barrister,

– ? ?????????? ????????, ?????????? ??? ??? L. Lozano Palacios ??? M.
Owsiany?Hornung,

???? ?????? ?? ?????? ??????????? ??? ???????? ??? ??????? ??? ?????? ?? ???????????
?? 23?? ?????????? 2015,

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

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1 ? ?????? ?????????????? ?????????? ?????? ??? ???????? ??? ?????? 135, ??????????
1, ????????, ??? ?????? 2006/112?? ??? ??????????, ??? 28?? ?????????? 2006,
?????? ?? ?? ????? ?????? ?????? ?????????????? ?????? (EE L 347, ?. 1, ??? ????: ??????
???? ??).

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ??? Minister
Finansów (????????? ??????????) ??? ??? Aspiro SA, ????? BRE Ubezpieczenia sp. z o.o.
(???: Aspiro), ??????? ?? ?????????? ?????? ??? ?????? ??? ?????????? ??? ??? ???
????????????? ??? (???) ??? ?????????? ?????????????? ??? ?????? ??? ?????? ??? ?????? ???
? Aspiro ??? ??? ??? ??? ?????????? ?????????????? ??????????????.

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

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3 ?? ?????? 135, ?????????? 1, ????????, ??? ?????? ??? ?????? ?? ?????? ?? ????:
«?? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ????:

?) ??? ?????????? ??? ?????????????? ??? ?????????????? ??? ???????, ??? ?????? ?????????????? ??
????????? ?? ??? ?????? ?????????? ??? ???????, ??? ?????????????? ??? ??? [?????????
?????????] ??? ?????????????? ??? ???????».

4 ?? ?? ?? ?????? 135, ?????????? 1, ????????, ??? ?????????? ??? ?????? 13, B,
????????? ??, ??? ?????? ?????? 77/388/???, ??? ??????????, ??? 17?? ?????? 1977, ???
????????????? ??? ?????????? ??? ???????, ??? ?????????? ?? ??? ?????? ??? ?????? ???
????????? — ??? ?????? ?????? ?????? ?????????????? ????: ?????????? ??? ?????????? ??? (??
???. ????. 09/001, ?. 49), ?? ?????? ??????????????.

5 ?? ?????? 135, ?????????? 1, ????????, ??? ?????? ??? ?????? ??? ?????? ?? ??????????
?? ?????????? ??? ?????? ????:

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

[...]

??) ??? ??????, ?????????????? ??? ?????????????? ??? ?????????????? ??? ?????? ???
?? ??????????, ?? ?????? ?????? ?????? ??? ?????? ?????????? ??? ???????, ??????????
?? ?????? ??????, ?? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????????????? ??? ??
????????? ??? ?????? ?????? ??? ?????? 15, ?????????? 2».

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

6 ? ustawa o podatku od towarów i usług (????? ??? ??? ??? ??? ??? ??? ???
?????????), ??? 11?? ?????? 2004, ??? ?????? ??? ?????? ??? ?????? ??? ??????????

????????????? ??? ?????????? ??? ?????? ?????? (Dz. U. 2011, ????. 177, ????. 1054, ????. 1054: ?????? ????. 1054), ??????????, ??? ?????? ????. 43, ?????????? 1, ?????? 37, ?? ????:

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

7 ?? ?????? 43, ??????????? 13, ??? ?? ??? ?????? ????:

«? ??????? ?? ???? ????? ?????? ?????? ??? ?? ???? ?????? ?????????? ??? ?? ????
????????? ??????? ?? ???? ?? ??? ?????????????? ??? ?? ?????????? 1, ??? ?? 7 ?? 37 ??
41, ????????, ?? ??? ????? ?????? ?????? ?????????? ??????? ?? ??? ?????? ?????????????? ??
????????? ?? ?? ??? ?????? ?? ?????????? ?? ?? ?????????? ?? ?? ??? ?????? ?? ?? ??
????????? 1, ??? ?? 7 ?? 37 ?? 41.»

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

8 ? Aspiro, ??????? ?????????? ??? ???????, ?????????? ????. ? ?? ??? ????? ???????
?????? ??? ?????? ??? ??????????? ?????????????? ??????????????, ????? ?????????? ???
????? ??????? ?? ??? ??????????? ???, ?? ?????? ??? ?????????? ??? ?????????? ???
????????????? ??? ??????. ?????????? ???' ??????? ??????????, ??????? ?? ??
????? ??? ?????? ??? ?????? ??????????.

9 ?? ?????? ?????????? ?????????? ??? ? Aspiro ??? ????? ???????????
?????????, ?????? ? ?????????? ?????? ??????. ????, ? Aspiro ??? ?????? ?????? ???
?????????. ??? ?????? ??? ?? ??? ??????????, ?????????????? ??? ?????????? 18
????????, ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ??????????:

- ?????????? ??? ?????????? ?????????

- ?????????? ??? ?????? ??? ?????????????? ?????? ??? ?????????????? ???
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- ??????????? ?? ?????? ?? ?????????????? ?????????????? ?? ??????,
????????????????? ?? ?????????????? ?? ?????????? ?? ?????? ?? ?????? ?????????????? ??
????????????? ?? ???????, ?? ?????????????? ?? ?????????????? ?? ?????????????? ?? ?????????? ??
?? ?????????????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ?? ?????????????? ?? ??????, ??
????? ?? ?????? ?? ?????? ?? ??????????????, ?????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????????? ??
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- ?????????????? ??? ?????????????? ?? ??? ?????????, ?????????????????? ??? ??? ?????????
????????????? ??? ??? ?????????? ?????? ???? ??????????????, ?????? ??? ???
????????????? ?? ??? ?????????? ?????? ??? ?????????? ??? ?????????????? ?????????????? ???
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– ?????????????? ??? ?????????? ?????????????? ?????? ??? ?? ?????????? ????? ??, ?????? ??? ?????????? ?????? ?????????? ?????? ??? ?????? ?????? ??? ?? ????????

- ?????????? ???????? ??? ????? ?????????? ?????????? ?? ?????????? ?????? ??? ???
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- ?????? ?????????? ??? ?????????? ??? ??????, ?????????? ??? ?? ?????????? ??? ???????
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- ?????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????????? ?????????? ??? ?? ???????
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- ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ?????????? ??? ???????
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- ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ?????????? ??? ???????
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- ?????? ??? ?????? ???' ?????? ??? ??????, ?????????? ??? ?? ?????????? ??? ???????
????????? ??? ?????? ??? ?? ?????????? ??? ???????

- ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ?????????? ??? ???????
????????? ??? ?????????? ??? ?????? ??? ?? ?????????? ??? ???????.

10 ? Aspiro ?????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?? ?????? ??????????
????????? ??? ?? ?????????? ??, ??? ?? ?????? ??? ??, ?? ?????? ??? ??, ?? ??????????
????????? ??? ??, ?? ?????? ??? ?? ?????? ??? ?????????? ??? ??, ?? ???????.

11 ??? ??? Aspiro, ?? ?????? ??? ?????? ??????????????, ?????? ??? ??????, ??? ??
??? ?? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????? ???
??? ?????? ??? ?????????? ??????. ?? ?????? ?????? ?????? ?????????? ?????????? ??????, ??
????????? ?????????? ?? ?? ?????????????? ??? ?? ?????? ??? ?????????? ?????????? ?????????? ???
????????? ??? ?? ?????????? ???, ?? ?????? ??? ?????????? ?????????? ??????. ? Aspiro
????? ??? ?? ?? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ?? ?????? ??? ?????????? ???
? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?? ??? ??.

12 ????? ??? 31 ?????????? 2012 ?????????? ??????? ???, ? ?????????? ??????????????
????????????? ??? ?? ?????? ?? ??? Aspiro. ? ?????????? ?????????? ?????? ??? ???
? ?????? ?????????? ????????, ??? ? ?????????????? ??? ?????????? ?????????????? ???
???? ?? ?????????? ??? ?????, ?????????????????? ??? ?????????? ??? ??????????
????????????? ??????? ?? ??? ??? ?????????? ?????????? ?? ??? ?????? ??? ??????, ??????
????????????? ???????, ? ?? ??? ????? ?????????? ?????????? ??? ?????? ?? ?????? ?????????? ???
????? ?????????????? ? Aspiro ?????????? ?? ??? ?????????????? ??? ?????? ??? ???
????????? ?????????????? ????????. ????????, ???' ????, ?? ?? ??? ????? ?????????? ???
????????? ??? ?????????? ??? ??? ???, ?????????? ??? ? ?????????? ??? ?????? ?????? ??????????
??? ?????????? ??? ?????????? ?? ?????????????????? ??? ??????? ??????????????
????????????? ??? ??? ?????????? ??????????.

13 ? Aspiro ?????????? ??? ?? ??? ?????????? ??????? ??????? ??? Wojewódzki S?d Administracyjny w Warszawie (????????? ?????????? ?????????? ??? ?????????? ??? ?????????).
?? ?? ??? ?????????? ?????????? ??????? ??? ??????? ??? ??????? ??? ??????? ??? ?? ???
????????? ?????? ??????? ??? ??? ??? ? ?????? ?????????? ??? ?????? ?????? ???, ??? ? ??????
????????? ??? ??????? ?? ?????????? ??? ?????????? ????? ?????????? ?????? ??? ?????????? ???
?? ?? ??? ??????.

14 ?????????? ?????????? ?????? ?????? ?????????? ?????? ?????? ?????????? ??????.

15 ??????? ??????????? ?? ??? ? ? ?????? ?????? 43, ??????????? 13, ???
????? ??? ???? ??????? ??????????? ?? ?????????? ??? ?????????? ??? ?????? 135,
?????????? 1, ??????? ??, ??? ??????? ??? ??? ??? ?? ?????????? ??? ?????? ??? ??????
?????? ? Aspiro ??????? ?? ?????????? ??? ??? ???, ?? Naczelnny S?d Administracyjny
(?????? ?????????? ??????) ??????? ?? ?????????? ?? ?????????? ??? ?????????? ??? ??
?????? ??? ?????????? ?? ??????? ?????????? ??????:

«?????? ?? ?????? 135, ??????????? 1, ????????? ??, ??? ??????? ????? ?? ???? ?????????? ??
??? ?????? ??? ?????????? ??? ?????? ??? ??? ????? ???????, ?? ?????? ?????????? ???
?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??? ?????????? ??? ??????????, ?????? ?
?????? ?? ?????????? ?? ?????????? ??? ?????? ??? ??? ??????????, ??????????????????
?? ?? ?????????? ??? ?????????? ??? ??????;»

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

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

16 ? Aspiro ?????????? ??? ? ??????? ??? ?????? ?????? ?????? ?????? ?????????????? ??????
????????? ??? ??????? ??????? ??? ??? ?????? ?????? ??? ?????? ?? ?????? ??? ??????. ???
??? ?? ??? ??????, ?? ??????? ?????? ??? ?????????? ?????????? ??? ?????? ??? ??? ?????? ???
????????? ??? ?????? ?? ?? ?????? ??????????. ? Aspiro ?????????? ???, ?????? ??? ?? ??
????? 43, ?????????? 13, ??? ?????? ??? ?????????? ??? ?? ?????????? ??? ?????? ???
135, ?????????? 1, ??????? ?, ??? ?????? ??? ???????, ?? ?????? ??? ??????.
????????? ?? ?????????? ?? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?? ??? ??????.

17 ???????, ?????????????? ???, ??? ??????? ??? ?????????????? ??? ?? ??? 267 ???
?????????? ?????? ??? ?????????????? ??? ?? ??? ??????? ??????????????, ??????????????
?????????????? ??? ??????? ???????????, ?? ?????? ??? ?????????? ??? ?????????? ??? ?? ???
??? ?????? ??? ?????????? ??? ?????? ?????????? ?? ???????, ?? ??????????, ??????????????
????? ??? ?????????????? ??? ?????????? ??? ?? ??????????????

?????????? ??? ?? ?????? ??? ?????? ??? ??????????? ??? ?? ??????????? ??? ?? ??????????? ??? ?? ???????????
??? ?????????? ??? ???????, ??? ???????, ??? ?????????? ???????????, ??? ???????, ?? ?????????? ??
?????????? ?????? ?? ??????? ?? ??????? ?? ?????????? ??? ?????????????? ??????????? ??????????? ???
?????????? ?????? ?? ??????? ?? ?????????? ??? ?????????? ??? ?????????????? ??????????? ??????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????????? ?? ?? ?????????? ??? ?????????? ???
????????? ??? ??????, ??? ?? ?????????? ??? ?????? ?????????? ?????? ? ??? ?????????? ??? ?????? ??? ??
????????? ??? ??????? ?? ?????????? ? ?????? ?????????? ??? ?????? ?????????? ?????????? ??? ??????
????????? ?????? ??? ?????????? ??? ?????? ??? ?????????? (?. ?????????? PreussenElektra,
C?379/98, EU:C:2001:160, ?????? 38 ??? 39, ?????? ??? Melki ??? Abdu, C?188/10 ???
C?189/10, EU:C:2010:363, ????? 27).

18 ?? ??????????, ?????????????? ??? ?? ?????? ?????????? ???????, ??? ?????? ???
???????, ?? ?????????? ?? ?????? ?????? ??? ?? ??? ?????? ??????? ??? ?????? (??., ??????
?????, ?????? Pfeiffer ?.??., C?397/01 ??? C?403/01, EU:C:2004:584, ????? 113) ???, ???
?????? ??????????, ??? ?? ??? ??? ?????? ??? ?????? ??? . ?????? ?? ?? ??? ??????????
?????????? ?? ??? ??? ?????? ?????????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??????????
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ???
????????? ??? ?????? ??? ?????? ???, ??? ?????????? ?????????? ??? ?? ?????????? ??? ?? ??????????
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

19 ???????, ?? ?????????? ?????? ?????? ?????? ???????.

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20 ???????, ?????????????? ??? ?? ??? ?????? ??? ?????????????? ??? ?? ??? ?????????? ???
????????? ??? ?????? 135, ?????????? 1, ??? ?????? ??? ?????? ??? ?????? ?? ??????????????
????, ?????????? ??? ?????????? ?????????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ?? ??? ?????? ?????? ?????????? ??? ?????????????? ??? ?????????? ??? ?????? ???
????????????? ??? ?????? (?. ?????? BG? Leasing, C?224/11, EU:C:2013:15, ????? 56).

21 ?????????? ?? ??? ?????? ??????? ?? ?????? ?????????? ??? ???????, ?????? ?? ?????????? ??
????????????? ?????????????? ???, ??? ?????? ??? ?????? ?????? Aspiro, ???????
«????????????? ??????» ? «????????? ?? ??? ?????? ?????????? ???????, ??? ??????????????????
?? ??? [????????? ??????????] ??? ?????????????? ?????????», ??? ??? ?????? ???
????? 135, ?????????? 1, ??????? ??, ??? ?????? ??? ???.

22 ??????, ? ?????? ??? ?????????? ?????? ?????????? ?????????? ??????????????, ??? ?????? ???
????????, ??? ?? ?????? ??? ? ?????????? ?????? ?????????? ?????????? ??? ?????? ??? ??????????????
????????? ??????????, ?? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????????? ???
????????? ??????, ?? ?????????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ???
(????????? CPP, C?349/96, EU:C:1999:93, ????? 17, ??? Taksatorringen, C?8/01,
EU:C:2003:621, ????? 39).

23 ?? ?????????? ?????????? ??? ? ??? «????????????? ??????» ??? ?????? ???
????????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????????????? ??? ??????
????? ?????????? ? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

???????, ??? ????? ?????????? (?. ?????? Taksatorringen, C?8/01, EU:C:2003:621, ?????? 40 ??? 41).

24 ?? ?????????? ????, ??? ?????? ?????????? ?????? ??? ? Aspiro ??? ??? ?????????? ?
????? ?????? ??? ?????????? ?????? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ?? ?????? ??? ?????? ???.

25 ???????, ??????? ? ??????? ??? ?????? ?????? ?????? ?????? ?????????????? ???????,
????? ?????????? ??? ???? ?????? ?????????? ???????, ?????? ?????? ?????? ?????????? ???
????????? ?????? ?????? ?????? ?????????? ?? ?????????? ??? ?????? ?????? ?????? ???
????? ??? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ?????????? ?????? ?????????? ??? ? ?????? ?????? ???,
????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? 135, ?????? 1, ?????? ?, ??? ?????? ???.

26 ??????, ? ?????????? ??? ?????? ?????????? ??? ???? ?????????? ??? ?????? 20 ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ??? ???? ?????? ??????
??? ???.

27 ?? ??? ?????? ?????? ??? ?????? ??? ???? ?????? ??? Aspiro ??? ???
????????? ?????? ??? ?????? ???, ??? ?????? ??? ???, ? ?????????? ???
????????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ???, ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ???, ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ???, ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????? 135, ?????? 1, ?????? ?, ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? 2006/112 ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? [COM(2007) 747 ?????], ??? ?????? ??? ?????? ??? ?????? 28 ??????
2007.

28 ??????, ?? ?????? ??? ?????? ???, ?? ?????? ??? ??????
????????? ???, ??? ?? ?? ?????? ??? ?????? ???, ??? ?????? ???
????????? ??? ?????? ?? ?????? ??? ?????? ???, ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ???
??? ?????? 135, ?????? 1,
????? ?? ??? ???, ??? ?????? ???, ??? ?????? ???, ??? ?????? ???
????? (??., ??' ?????? ??? ??????, ?????? SDC, C?2/95, EU:C:1997:278, ??? 66).

29 ?? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ?????????? ??????
?? ?????? ?? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ???
????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? 135, ?????? 1,
????? ??, ??? ?????? ???, ??? ?????? ???, ??? ?????? ???
????? ??? ?????? ???, ??? ?????? ??? 135, ?????? 1, ?????? ??
?? ??, ??? ?? ??? ??????, ?? ?????? ?????? ??? «?? ?????? ???»
????????? ?????? ?????? (??., ??' ?????? ??? ??????, ?????? Taksatorringen, C?8/01,
EU:C:2003:621, ??? 43).

30 ??????, ?????? ? ?????????? ??? ?????? 27 ??? ?????? ?????? ??????
????? ??? ?????? ??? ?????? ???, ?? ?????? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? 135, ?????? 1, ?????? ?, ??? ?????? ???

???????????, ???' ????????, ???? ??????? ???? ?????? 135, ?????????? 1, ?????????? ?? ???
???, ??? ?? ??? ??????.

31 ?????????????? ?????? ??? ???? ??? ?????????? ?????????????? ?????????????? ??? ?????? ??
????????? ??? ?????????????? ??? ?????? 25 ??? ?????? ?????????? ??????????. ??? ??????????
? ?????? ?????????? ??? ?????? 28 ??? ?????? ???, ? ?? ??? ?????? ??? ?????????? ??
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??????????
?????????. ??????????, ? ?? ??? ?????? ??? ?????? ?????? ?????????? ?????? ?????? ??????????
?? ?????????? ?? ?????? ??? ??????????, ??? ?????????????? ??? ? ?????? ?????? ??
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?? ?????????? ??????
????????? (??., ??' ?????? ??? ??????, ?????? Deutsche Bank, C?44/11, EU:C:2012:484,
????? 45).

32 ?????? ?? ????????, ???????, ?? ?? ??????? ??? ?????? ??? ?????? ?????? ??????????
????????? «????????? ?? [????????????? ??????] ?????? ??????????, ???
????????????????? ??? ??? [????????? ??????] ??? ?????????????? ??????????» ???
????????? ??? ??? ??? ?????? ??? ?????????? ??? ??? ??? ???.

33 ?? ,?? ?????, ??????, ??? ?????? ??? «?????[??] ?? [????????????? ??????] ???
????[??] ??????», ?????? ?? ???????, ??? ?????????? ? ?????? ?????????? ???
?????? 31 ??? ?????????? ???, ??? ? ??? «?????????» ??? ?????????? ??? ??
?????? ?????????? ??????? ??? ??????? ??? ?????????????? ?????????????? ?????????? ???,
?????? ??????, ??? ?????????????? ??????, ? ?????? ?????????????? ?????? ??? ??????????
????? ??? ?? ??? ???????.

34 ?? ,?? ?????, ???????, ??? ?????????? ??? ?????? ?????? ?????????? ?????????? ??????
?? «????????????? ??? ??? [????????? ??????] ??? ?????????????? ??????????»,
?????? ?? ?????????? ?? ? ?????????????? ??? ?????????????? ?????????? ??? ? Aspiro,
????????? ?? ?????????????? ??? ?????? ??? ?????? ??? ?????????????? ??????????????
?????????????, ?????? ?? ?????????? ??? ?????????? ??? ?????????? ?????? ??? ??????????.

35 ??????, ?? ?????? ???, ?????? ??? ?????????? ??? ?????? ?????? ??????????
????????? ??????????, ? Aspiro ??? ??? ?????? ??? ?????? ?????????? ? ???
????????? ?????? ??? ?????? ?????????? ?????? ?????? ???, ? ?????????? ???
????? ??? ??? ?????? ?????? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ????
????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ??? ??? ???.

36 ??? ?????? ?? ??????????, ?????? ?? ?????????? ?? ?????? ?????????? ???
????????? ?????????? (??., ??' ?????? ??? ??????, ?????? Arthur Andersen, C?472/03,
EU:C:2005:135, ??? 32? Abbey National, C?169/04, EU:C:2006:289, ??? 66, ??? J.C.M.
Beheer, C?124/07, EU:C:2008:196, ??? 17).

37 ??? ??? ?????? ??? ?????????? ??? ??????, ?????? ?? ?????????? ??? ??????????
??????, ?????? ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
??? ?? ??? ?????????? (?????? Taksatorringen, C?8/01, EU:C:2003:621, ??? 44). ? ???
????? ?????? ?? ?????? ??? ?????? ??? ?????????? ??? ? ?????? ??? ? ?????????? ???
????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ?????? (??., ??' ?????? ??? ??????, ?????? J.C.M. Beheer, C?124/07,
EU:C:2008:196, ??? 29). ???????, ? ?????????? ??? ?????? ??? ?????? ??? ??????????
????? ??? ?????????? ??? ?????????? ??? ???????, ??? ? ? ?????? ??? ??????????
????? ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (??., ??' ?????? ??? ??????, ???
Arthur Andersen, C?472/03, EU:C:2005:135, ??? 33 ??? 36).

38 ? ?????? ??? ??? ???????????? ?????? ?????????? ??? ?????????? ?????????? ???
Aspiro. ??????????, ? Aspiro ??? ???? ?????? ?? ??? ?????????? ???????????,
????????? ??? ?????? ?? ?????????????? ??? ?????? ?? ?????? ?? ?????????? ???
????????????? ???????????, ??? ?? ?????? ?????? ?? ??? ???????????, ??? ?????? ???
????????? ??? ?????????? ??? ?????????? ??? ?????????? ???.

39 ????????, ??????? ?? ?? ?????? ??? ?? ??? ?????? ?????????? ??? ?? ??? ??????
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????????? ??? ?????? ?? ?????? ?????? ?????????? ??? ?? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ?????? ???????, ?? ?? ?????? ?????? ?????????? ??? ?? ??? ?????????? ???
?? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?? ??? ?????????? ??? ?????????? ???
????????? ??? ?? ?????? ?????? ?????????? ??? ?? ??? ?????? ?? ??? ?????? ??? ?????????? ???
????? ?? ?????? ?????????? ?????????? (??., ?????? ???, ?????????? Taksatorringen,
C?8/01, EU:C:2003:621, ??? 45? Arthur Andersen, C?472/03, EU:C:2005:135, ??? 36, ???
J.C.M. Beheer, C?124/07, EU:C:2008:196, ??? 18). ??? ?????? ??? ??????????????????
?? ??? ?????? ??? ?????? ???????, ?? ?????? ??? ?????? ?? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????????? (??., ??' ??? ???? ??? ??????, ?????? J.C.M. Beheer, C?124/07,
EU:C:2008:196, ??? 9 ??? 18).

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

41 ????????, ??? ?????? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? «???

????????????? ??? ??? [????????? ??????] ??? ?????????? ??? ?????? », ???
?? ??? ?????? ??? ?????? 135, ?????????? 1, ?????? ??, ??? ?????? ???.

42 ??? ? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?
????? Arthur Andersen (C?472/03, EU:C:2005:135), ?? ?????? ??? ?????????? ???
????? ?????????? ?????????? ??? ? Aspiro ?????? ?? ?????????? ?? ?????????? ???
????????? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ?????????? ??? (??., ??' ??? ???? ??? ??????, ?????? Arthur Andersen, C?472/03,
EU:C:2005:135, ??? 38).

43 ??' ??? ???? ??? ???????, ??? ?????? ?????????? ?? ?????? ??????????, ??? ?????? ?
????????? ??? ??????? ???????, ??? ?????? ??? «????????? ?????????? ???» ???
????? 2, ??? 3, ??? ?????? 2002/92/?? ??? ?????????? ?????????? ??? ???
????????? ??? 9?? ?????? 2002, ?????? ?? ??? ?????????? ?????????? ??? (??
2003, L 9, ?. 3), ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? 2, ?????????? 1, ??? ?????? 77/92/?? ???
????????? ??? 13?? ?????? 1976, ??? ??? ?????? ??? ?????????? ??? ?????? ???
??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? (ex ??? 630
????), ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
???. ???.. 06/001, ?. 243), ??? ?????? ?????????? ??? ?????? 2002/92. ??? ?????? ???
????????? ??? ?????? 46 ??? ?????? ???, ?? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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44 ?????????? ? ?????? ??? ??????????? ?????? ??? ?????? ?????????? ??? ?????????????????? ??
????????????? ?????????????? ?? ??????, ?????? ??? ? ?????????? ?????????? ?? ?????????? ??
??? ?????????? ??? ??? ?????????? ?????????? ?????????? ?????????? ??? ?????? ?????? ???
????? ?? ??? ?????????? ?????????? ?? ?????? ?? ?????? ?????????? ?????????? ?????????? ??
????????????? ??? ??? ???.

45 ??? ?? ?????? ??? ?????? ?????????? ?????????? ??? ??? ?????????? ?????????? ?????? ??
????? ? ?????????? ??? ?? ?????? 135, ?????????? 1, ?????????? ??, ??? ?????? ?????? ??? ??
??? ?????? ??? ?????????? ?????????????? ??????, ??? ?? ?????????? ?????? ?????? ???, ??
????? ?????????? ??? ?????? ??? ?????? ??? ??? ?????????? ?????????? ?????????? ??????????
??? ?????????? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ??? ??? ???.

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

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

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

?? ??? 135, ?????????? 1, ?????????? ??, ??? ?????? 2006/112/?? ??? ??????????,
?? 28?? ?????????? 2006, ?????? ?? ?? ?????? ?????? ?????? ?????? ?????????????? ????,
???? ??? ?????? ??? ?????????? ?????????????? ??????, ??? ?? ?????? ??? ?????? ??? ??????
????? ???, ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????????? ?????????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????.

(?????????)

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