

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

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

??? 26?? ??????? 2018 (*)

«????????????? ?????????? – ?????????????? ????? ?????????????? ?? ?????? ?????????? ?????????? – ?????????? – ?????????? ?????????????? – ?????????? ??? ?????????????? ??? ?????????? – ?????? ?????????? – ?????????? ?????»

???? ?????????? C?234/16 ??? C?235/16,

?? ?????????? ?????? ?????????????? ?????????? ?????????? ??? ?????? 267 ????, ???
?????? ?? Tribunal Supremo (?????? ??????????, ???????) ?? ?????????? ??? 10?? ??? ??
11?? ??????? 2016, ?? ?????? ?????????? ??? ?????????? ??? 25 ??????? 2016, ???
?????? ??? ????,

Asociación Nacional de Grandes Empresas de Distribución (ANGED)

????

Consejería de Economía y Hacienda del Principado de Asturias (C?234/16),

Consejo de Gobierno del Principado de Asturias (C?235/16),

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

????????? ??? ??? R. Silva de Lapuerta, ?????? ???????, C. G. Fernlund, J.-C. Bonichot
(????????), A. Arabadjiev ??? E. Regan, ???????,

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

?????????: L. Carrasco Marco, ?????????? ??????????,

?????? ??? ??? ?????? ?????????? ??? ?????? ??? ?? ?????????? ?????????? ??? ??
6?? ??????? 2017,

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

– ? Asociación Nacional de Grandes Empresas de Distribución (ANGED), ??????????????
?? ??? J. Pérez-Bustamante Köster ??? F. Löwhagen, abogados, ??? ??? ??? ??? J. M.
Villasante García, procurador,

– ?? Consejería de Economía y Hacienda del Principado de Asturias ??? ?? Consejo de
Gobierno del Principado de Asturias, ?????????????? ??? ??? A. Roces Llaneza, letrada,

– ? ?????????? ???????, ?????????????? ??? ??? N. Gossement ??? P. N?me?ková
????? ??? ??? ??? G. Luengo,

???? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ??????????
?? 9?? ??????? 2017,

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

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1 ?? ?????????? ?????????????? ?????????? ?????????? ?? ?????????? ??? ?????? 49 ??? 54
????, ????? ?? ???? ?????? 107, ?????????? 1, ???.

2 ?? ?????????? ?????? ?????????????? ??? ?????????? ?????????? ?????????? ?????? ???
Asociación Nacional de Grandes Empresas de Distribución (ANGED) ??? ??? Consejería de
Economía y Hacienda del Principado de Asturias (????????????? ?????????? ?????????? ???
????????????? ??? ?????????? ??? ??????????, ??????), ??????, ??? ??? Consejo de
Gobierno del Principado de Asturias (????????????? ?????????? ??? ?????????? ???
?????????), ??????, ?????? ?? ?? ?????????? ????? ?????????????? ??? ??????
????????? ?????????? ??? ?????????? ????? ?????????? ????? ?????????? ?????????? ??? ?????????? ???
?????????.

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

3 ? Ley del Principado de Asturias 15/2002, de medidas presupuestarias, administrativas y
fiscales (????? ??? ?????????? ??? 15/2002, ??? ??????????????,
????????? ??? ?????????? ?????), ??? 27?? ?????????? 2002 (BOPA ????. 301, ???
31?? ?????????? 2002), ?? ????? ??? ????? ??? ?????????? ?????????????? ???
????????? ??? ?????? ????? (?? ?????: ????? 15/2002), ?????? ??? ????? 21 ??? ??? ???
????? ?????????? ?????????? (?? ?????: IGEC), ??? ??? 1? ?????????? 2003.

4 ?? ?????????? ??? 15/2002 ?????????? ??? ????? ??? ????? ?????????????? ??
????? ?????????? ?????????? ??? ????? ??? ?????????? ?????????? ??? ?????????? ??? ?????,
??? ?????????? ??? ??? ????? ?????? ?????????? ??? ?????????? ???.

5 ?? ????? 21, ?????????? 2, ??? ????? 15/2002 ?????????? ??? ?? ?????? ??? ?? IGEC
????????? «?? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???».

6 ??? ?? ????? 21, ?????????? 3, ??? ????? 15/2002, ? ?????? ??? ????? ?????????? ???
????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? 4 000 m2. ?? ????? ???, ?? ????? ?????? ???
1? ?????????? 2005, ??? ?????????? ??? ?????????? ?? 2 500 m2.

7 ??? ?? ????? 21, ?????????? 4, ??? ????? 15/2002, ??? ?????????? ??? IGEC ??
????????? ??? ?????? ?????????? ?? ?????? ?????????? ?????????? ??? ?????? ???
????????? ?? 10 000 m2 ??? ??? ?????? ?????????? ?????????? ??? ???
?????????????: ?????? ??? ?????? ??????????, ??????, ?????? ?????? ?????, ??????????-
????????? ??? ?????????? ???.

8 ??? ?? ????? 21, ?????????? 5, ??? ????? 15/2002 ?????????? ??? ?????????? ???
IGEC ?? ?????????? ??? ?????????????? ?????? ?????????? ?????????? ??? ?????????? ???
?? ??? ?????? ?????????? ?? ?????? ?????, ??? ?? ?????? ??? ?????? ??? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ?????? ??? ?????????? ??? ?????? ???.

9 ?? ????? 21, ?????????? 7, ??? ?????? ?????? ?????????? ??? ??????????????

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

10 ??? ??? 21, ?????????? 11, ??? ??? 15/2002 ?????????? ??? ? IGEC ??????????????
?? ??? ????????, ??? ??????????, ??? ??? ??? ??? ?, ?????????? 10 % ??? ?? ??????
????????? ??????????? ?? ?????? ??? ?????????? ?? ?????? ?????????? ??? ?????? ??????????
?? ??????????? ?? ?????????????? ??? ?????? ?????? ?????????? ?????? ??? ?????????? ??? ??
????? ?????????? ?????????????? ??? ?????????? ?????????? ?????? ??? ?????????????? ??? ??
????? ?????????? ?????????? ??? ?????????? ?????? ??? ?????????? ?????? ??? ?????????????? ??? ??

11 ??? ??? 1? ?????????? 2015, ?? ?????? ?????????? ??? ??? ?????? ?????? ?????????????????? ??
????????? ?????????? ??? ?? decreto legislativo 1/2014, por el que se aprueba el texto refundido
de las disposiciones legales del Principado de Asturias en materia de Tributos Propios
(????????? ?????????? 1/2014, ??? ?????????? ??? ?????????? ??? ??? ??? ?????????????? ??? ??
????????? ?????????? ??? ?????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????????? ??? ??), ???
23? ?????? 2014 (BOPA ????. 175, ??? 29? ?????? 2014).

12 ??? ?????? III ??? ?????????? ??? ?????????? ?????? ??? ?????????????? ?????? ?????????????? ??
????? ?? ?????????? ??? ??? 15/2002, ?????? ?????? ?? ?????? ?????? ??? ?????? ??? ??????????
????????? ??? ?????????????? ??? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????.

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

13 ??? ??? ??? 15/2002 ?????????? ?????????????? ??? ?????? ??? ??? ?????? ??????????
????????????? ?? ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ?????? ??????????
??? ??????????, ??? ?????????????? ??? ?????????? ??????????, ?????? ??? ?????? ??????????
????, ??? ??? ??? ?????????????? ??? ?????????? ??? ?????????? ?? ?????????? ??? ?????????? ??? ??
????????????? ??? ?????????? ??? ?????????? ?????????????? ??? ?????????? ?? ?????????? ??? 3? ??????
2003, ?? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??
????????? ?????????? ?? ?????????? ?????????? ?????????, ?????????????? ??? ?????????? ??? ??????????
????? ?? ??? IGEC. ??? 11 ?????????? 2009, ?? ?????????? ?????????? ??? ?????????? ??? ??????????
??? ?????????? ?????????? ??? ?????????? ?????? ??? IGEC, ?? ?? decreto 139/2009, por el
que se aprueba el Reglamento des Impuesto sobre Grandes Establecimientos Comerciales
(BOPA ????. 273, ??? 25? ?????? 2009).

14 ??? ?? ?????????? ??? 2003, ? ANGED, ?????? ??? ?????? ??? ?????????? ??????????????
????????, ?????? ?????? ??? Tribunal Superior de Justicia de Asturias (?????????
????????????? ??? ?????????? ??? ?????????? ??? ?????????, ??????) ?????????? ??? ??? ?????? ???
????????? ???, ??? ??? ??? ??? ??? ?????? ?????????? ??? ??? ?? ??????????
????????? ??? ??? ??? ?? ?????? ??? ?????????? ?????????????? ??? ??????????.

15 ?? 2009 ? ANGED ?????? ?????? ?????? ??? ?????????? ??? ?????????????? ?????? ?????????? ??? ??
????????? ??? ?? ??? ??????????.

16 ?? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ???
????????? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???
Tribunal Constitucional (????????????? ??? ?????????, ??????) ?? ??? ?? ??????????????????
??? ?????????? ??? IGEC. ?????? ??? ?????????? ??? ?????????? ?????????? ??? ?? Tribunal
Constitucional (????????????? ??? ?????????), ??? 10 ?????? 2014, ?? Tribunal Superior de
Justicia de Asturias (????????? ?????????? ??? ?????????? ??? ?????????) ?????????? ????
?? ?????????? ??? ??? ANGED ??????. ??? ??????, ? ANGED ?????? ????
????????? ??? ??? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? Tribunal Supremo

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

17 ? ANGED ??????? ?????? ??????????? ??????? ??? ?????????? ??????? ?? ???????
??? IGEC ??? ??? ?????????????? ?????????? ??? ?? ?????????? ???????????.

18 ?? ??????? ?? 28?? ?????????? 2014, ? ??????? ??????????? ??? ?????????? ???
???, ?? ??????? ?????????????? ?????????? ??? ?????????? ??? IGEC, ? ??????? ???
?????????? ?? ????? ?????????? ?????? ??? ?? ?????????? ?????????? ???????????
????????????? ?????? ?????? ?? ?????????? ?? ?????????? ?????????? ?????? ??? ???????????
?????, ??? ??? ?? ?????????? ??? ?????????? ?????? ?? ?????????? ?????????? ??? ?????? ???
????? ????.

19 ??? ??? ????????, ?? Tribunal Supremo (????????? ??????????) ?????????? ??
?????????? ??? ??????? ??? ?????????? ??? ?? ?????????? ??? ?????????? ?? ??????????,
????????????? ??? ?????????? C?234/16 ??? C?235/16, ?????????? ??? ??????????:

«1) ??? ?? ??? 49 ??? 54 ??? ??? ?????? ??? ?????????? ?????????????? ???
????????????? ??? ?? ?????????? ?????? ?????????? ?????????? ?????????????? ?? ??????????
????????? ??? ?????????? ??? ?????? ??? ?????????? ??? 4 000 m2 ??? ??? ?????????? ???
????? ??? ??????, ??? ?????????? ??? ?????? ?????????? ?????? ??? ??????????, ? ??????
????????????? ?????????? ??? ??? ?????????? ?????? ??? ?? ????? ?????????? ??????????????
????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ???
????????????? ?? ?????????? ?????? ??? ?????? ?????, ?????????? ??? ?????? ????:

?) ??? ?????????? ??? ?????????? ?? ?????? ?????????? ?????????? ?????????? ??????????????,
????????? ??? ??????????, ??? ??? ?????? ??? ?????????? ?????????? ??? ?????????? ???
????? ?????????? ??? 4 000 m2, ?????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????????????? ???, ???

?) ??? ?????????? ??? ?????????? ?????? ?????????? ?????????? ??????????????, ??? ?????? ?
????????? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ?? 10 000 m2, ??? ??????
????????????? ??? ??? ?????????????? ?????????? ??? ?? ????? ??????????, ??? ?????? ??????????,
????? ??????????, ?????????? ??? ?????????? ??? ?????????? ???;

2) ??? ?? ??? 107, ?????????? 1, ??? ?? ?????? ??? ?????????? ?????????????? ???
????????? ??????????, ??? ?? ?????? ??? ?????????? ??? ?????????? ??? IGEC ???
????????? ??? ?????????? ??? ?????????? ?????????? ?????????? ??? ?????????? ??????????
????????? ??? ?????????? ??? 4 000 m2 ??? ??? ?????????? ?????????? ??? ??????????
????????????? ??? ?????? ??? ?????? ?????????? ?????????? ??? ?????????? ?????????? ???
????????????? ?? 10 000 m2, ??? ?????? ?????????? ??? ?????? ?????????????? ??????????
?? ??? ??????????, ??? ?????? ??????????, ??? ?????? ??????????, ?????????????? ??? ??????????????
?????;»

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

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

20 ?? ?? ?????? ??????? ???, ?? ?????? ?????????? ?????, ???' ??????, ??
????????????? ?? ?? ?????? 49 ??? 54 ??? ?????? ??? ?????? ??? ?????????? ?? ?????
????????????? ??? ?????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ??????
?????.

21 ??? ?????? ??????????, ? ?????????? ?????????????? ??? ?? ?????? ?? ?????? ??? ??????????

????? ??? ??????? ??????? ??????? ?? ?? ??? ????? ?????????? ?????????????? ??? ???????
????? ??????? ?????? ?? ?? ??????? ?? ?? ?????? ?????? ?? ?? 54 ??? ??
??????????, ?? ??? ?? ???????, ??? ??????? ?? ?? ?????????? ?? ?? ?????? ?? ?? ?????? ?? ??
(??., ?????? ??, ??????? ?? 12?? ??????? 2006, Test Claimants in Class IV of the
ACT Group Litigation, C?374/04, EU:C:2006:773, ??? 43, ??? 43, ??? 14?? ??????? 2006,
Denkavit Internationaal ??? Denkavit France, C?170/05, EU:C:2006:783, ??? 22).

22 ???????, ?????????????? ??? ??? ?? ?????????? ?????????????? ??? ?? ??????? ???
????? ??? ??????? ??? ?? ??? ????? ?????????????? ?????????????? ?? ??, ??? ??
????????? ??? ????? ?????????? ??????????, ?????????? ??? ?? ?????? ?? ?? ??????????
(?????? ?? 5?? ?????????? 2014, Hervis Sport-és Divatkereskedelmi, C?385/12,
EU:C:2014:47, ??? 30 ??? ??? ?????????? ??????????).

23 ???????, ?????????? ??? ?????? ???? ???? ?????????? ?????????? ???????????, ??
????? ?????? ???????????????, ?? ??? ??, ?????????? ?????? ??? ?? ???????????????
??, ??? ?? ?????? ??? ?????? ??? ?????????????? ?????????????? ??? ?? ?????????? ??? ??
?? ??? ?? ?????? ??? ?? ?????? ?????????? ?? ?????????? ?????????? ?? ?? ?????? ???
????? ??? ?? ?????? ??? ?????? ?????????? ??????????, ?????? ?????? ?????? ?????????? ?? ??
?? ??? ?? ?????? ??? ?????? ?????????? ?????????? ??? ?? ?????? 49 ?? 54 ??? (??., ??'
????, ??????? ?? 5?? ?????????? 2014, Hervis Sport-és Divatkereskedelmi, C?385/12,
EU:C:2014:47, ??? 37 ??? 41).

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

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

26 ???????????, ? ?????????? ??? ?????? ??? ?????????? ??? ?? ?????????? ??? ??????????? ?
ANGED ??? ?????? ??? ?????? ??? ???????????, ?? ??? ?? ?????? ??? ?????????? ???
????? ??? ?? ?????? ??? ??????????? ??? ?????? ??? ?????? ? ?????????? ?????????? ???
?????????. ??????, ? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ???
?? ? IGEC ?????????? ???' ?????? ?? ?????? ?????????? ?????????? ??? ???.

27 ???????, ?? ?????? ?????????? ?????????? ??? ?? ??? ?? ??? ?????? ???
«?????» ?????????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ???.

28 ??? ???????, ??? ?????? ?????? ??? ?? ??? ???? ? ?????????? ??? ?? ??? 49 ???
54 ??? ?????? ??? ?????? ??? ?? ?????????? ??? ?? ??? ?????????? ??? ?? ???
????????? ???????????, ??? ? ?????? ??? ?????? ??? ?????? ???.

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29 ?? ?? ??????? ??????? ???, ?? ?????? ?????????? ???, ???' ??????, ??
?????????? ?? ?? ?????? ?????? ???????, ??? ?? ?????? ??? ?????? 107, ??????????
1, ???, ??? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ??
????? ?????????? ??? ?????? ???, ??? ?????? ??? ?????? ?????? ??? ??????
??, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ??????
????, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 4 000 m²
?? ?? ?????????? ?? ?????????? ??? ?????? ??? ?????? ?????? ???, ??? ??????, ???
??????, ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

?????????????? 10 000 m2.

30 ??? ??? ?????????????? ??????? ?? «????????? ??????????» ??? ???? ??????????
?????? 107, ??????????? 1, ????, ?????????? ?? ?????????? ????? ?? ??????????
?????????????. ??????, ?????? ?? ?????????? ??? ??????? ?????????? ? ??????? ?? ??????????
????????? ??????. ???????, ? ?????????? ??? ??????? ?? ??????? ?? ?????????? ? ??????? ?? ??????
?????? ??? ??????? ??????. ??????, ? ?????????? ??? ??????? ?? ??????? ?? ?????????? ??????????
????? ??? ??????????. ???????, ?????? ?? ??????? ?? ??????? ?? ??????? ? ?????????? ???
????????????? (??., ?????? ?????, ??????? ??? 21?? ?????????? 2016, ??????? ??? World
Duty Free Group SA ???., C?20/15 P ??? C?21/15 P, EU:C:2016:981, ????? 53).

31 ??? ??? ?????? ??? ?????????? ??? ?????????? ?????????????? ??? ?????????????????, ? ????
????????? ?????????? ??????? ?? ???????????, ??? ?????? ?????????? ?????????? ???, ???
??? ?????????? ??? ???????????, ??? ?????? ?????????? ?? ?????????? ?????? ???, ???
????????? ?????????? ???????, ?? ??????? ??????? ?????? ?????? ?????? ?? ??????????
«????????? ?????????? ??? ?????????? ?????????? ?????? ?????? ?????? ?????? ??? ???????, ???
????????? ??? ?????????????? ?? ?? ?? ??? ?????? ??????? ???????, ?? ?????????? ?????????? ???
????????? ?????????? ??? ?? ???????????, ?? ???????????, ?????????? ?????????? ??????????
??? ?????? ?? ?????????????? ?? «????????? ?????????? ??????????» (??., ?????? ???,
?????? ??? 21?? ?????????? 2016, ??????? ??? World Duty Free Group SA ???., C?20/15
P ??? C?21/15 P, EU:C:2016:981, ????? 54 ????? ??? ????? ?????????????? ??????????).

32 ??? ????, ??????????, ?? ??????? ?????? ??? ?????? ??? ?????????? ?????????????? ??????????????,
????????????? ??? ??? ?????? ??????? ??????? ?? ?????, ??????? ??? ??????????
????????? ???????, ??????? ??? ?????? ??????? ??????? ?? ?????????? ?????????? ??????????
????????? ?? ?????? ?? ?????? ??????? ???????????????, ?????????? ?? ?????????? ??????????
????????? ?????????? ??????? ?????? ??????? ??? ??, ?? ?? ???????, ??????? ????????
????????? ??? ?? ?????? ??? ?????? 107, ?????????? 1, ????. ???????, ?? ??????????
????????? ??? ??????? ??? ?????? ??????? ???????, ?? ?????? ?????????? ??????????
?? ??? ?????? ??? ???????????????, ??? ??????? ??????? ?????????? ??? ?? ??????? ???
????????? ?????? (?????? ??? 21?? ?????????? 2016, ??????? ??? World Duty Free Group
??., C?20/15 P ??? C?21/15 P, EU:C:2016:981, ????? 56).

33 ??????, ??? ??? ?????????????? ??? ?????????????? ??????? ?? «?????????»,
????????????? ???, ?? ?????? ??????, ?????????????? ?? ?????? ? «?????????» ??????????
????????? ??? ??? ?????? ??????? ?????? ?????? ??????? ???, ?? ??????? ???????,
????????????? ??? ?? ??????? ?????????? ?????? ?????????? ??? ?? ??????? ??????? ???,
????????? ?????????? ??? ?????????????? ?? ?????? ?????????? ??? ?? ??????? ???
????????????? ?? ?? ??????? ??? ???????, ?? ?????????? ?????????? ??? ?? ???????
????????? (??., ?????? ???, ??????? ??? 21?? ?????????? 2016, ??????? ??? World
Duty Free Group SA ???., C?20/15 P ??? C?21/15 P, EU:C:2016:981, ????? 57 ????? ??? ???
????????????? ??????????).

34 ?????????????? ??? ?????? ??? ?? ?????? ??????? ?????????? ??? ?? ?????????? ???
????????????? ??? ?????? ??????? ??? ?????? ???' ?????? ?? ?????????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????????? ? ?????? ?????? ??? ?????? ??? ?????????? ??? ???
????????? ??? ?? ??????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????????? ??? ???
????????? ??? ??????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????????? ???
????????? ?????? ??? ?????? ???????, ???, ?? ?? ?????? ??? ???????, ?? ?????? ??? ? ???????,
?? ??? ? ??????? ???????, ??????? ??? ?????????????? ??????? ??? ??? ???
????????? ??? ?????????? ??? ?????? ??? ?????????????? ??????? ??? ?????? ??? ??????????

?? ????????????? [??., ??' ????, ??????? ??? 11?? ??????????? 2008, Union General de Trabajadores de La Rioja (UGT?Rioja) ??., C?428/06 ??? C?434/06, EU:C:2008:488, ??????? 47 ??? 50 ????? ??? ??? ????????????? ??????????].

35 ??????????, ??? ?????? ???????? ?????????, ??? ??? ?????? ??? ?????? 107, ?????????? 1, ????, ????? ??? ?????? ?????????????? ?????? ?????? ?????????????? ?????????? ?????????? ?, ?? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?? ? ?????????? ?????????? ?????????? ?? ?????? a priori ?????????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? (?????? 21?? ?????????? 2016, ?????????? ??? World Duty Free Group SA ??., C?20/15 P ??? C?21/15 P, EU:C:2016:981, ????? 58 ??? ??? ????? ?????????? ??????????).

36 ??? ??? ?????? ??? ??????? ?????????? ??? ??? ?????????? ??? ?????????? ?????? ?????????? ?????? ?? ?????????????? ??? ??? ?????? ?????? ?????? ?????? ?????? ?? ?????????? ?????? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? . ??????, ?????? ?? ?????? ?????? ?????? ??????, ??????, ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? (?????? 6?? ?????????? 2006, ?????????? ??? ??????????, C?88/03, EU:C:2006:511, ????? 81).

37 ?????????????? ?????? ???, ??????? ??? ??? ??? ?????????? ??? ?????????? ?????? ?????????? ?????? ??? ?????? a priori ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? (?????? 21?? ?????????? 2016, ?????????? ??? World Duty Free Group SA ??., C?20/15 P ??? C?21/15 P, EU:C:2016:981, ????? 77).

38 ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ?????? ??????, ?????????????? ??' ?????? ??? ??? ?????????? ?????? ??? ?????????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

39 ???????, ??????? ?? ?????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 4 000 m² ??? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ? IGEC ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

40 ?? ????? 107, ?????????? 1, ??? ?????? ?????????????? ??? ?????????? ?????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? (?????? 22?? ?????????? 2008, British Aggregates Association, C?487/06 P, EU:C:2008:757, ????? 89).

41 ??????, ??? ?????? a priori ?? ?????????? ??? ??? ?????? ?????? ?????? ??????.

??????, ??? ?????, ??? ??????? ?????????? «????????? ?????????????? ? ?????????? ?????? ??????????» ??? ?????? ?? ?????? ??? ?????? 107, ?????????? 1, ????, ?????????????? ??? ?????????? ?????? ??? ?????? ?? ?????? ??? ?????? ?????????? ??? ?????? ?????? ?????????? ?????? ??? ??????.

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

43 ??? ??????? ??? ?????????? ???, ?????? ?? ?????? ?????? ???, ?????????? ?????????? ?????????? ??? ??????, ? ?????????? ?????? ?????????? ?????????? ??? ? ?????????? ??? ?????????? ?????????? ?????????? ??? ?????? ?????? ?????????? ?????????? ?????? ?????? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? (?????? ?? 15?? ?????????? 2011, ??????? ??? ?????? ??? Government of Gibraltar ??? ??????? ??????????, C?106/09 P ??? C?107/09 P, EU:C:2011:732, ??? 97).

44 ????????????, ??? ????????????, ?? «????????? ??????» ??? ?????? 156 ??? ????????????, ?? ???? 107 ?????????? 1 ??? ?????? ??? ?????? ??? ?????? ?????? ?????? (?? 2016, C 262, ?, 1), «?? ??? ?????? ??? ?????? ?????????? ?? ?????????? ??? ?????????? ?????? ?????? ??? ?????? ??? ?????? ?????????? ???, ??????????, ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????????? [,...] ?????? ??? ?? ??? ?????? ??? ??????».

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

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

47 ??? ?????? ??? ?????? ??? ? ?????????? ??? ?????? ?????????? ?????? ??? ?????????? ??? ?????????? ??? (??., ???' ??????????, ?????? ??? 24?? ?????? 2011, ??????? ??? ?????? C?400/08, EU:C:2011:172, ??? 80).

48 ?????????????? ??? ?????? ?????? ?????????? ??? ?????????? ?????????????? ??? ?????????
????????? ??? ?????????? ?? ?????????? ??? ?????????? ?????????????? ?????????? ??? ??? ?????? ??
????????? ??? ?????? ?? ?????????? ?????? ?????????????? ?????????? ??????. ??? ?????? ????,
??? ?????? ?????? ?? ?????????? ??? ?? ?????? ??? ?????? ??? ??? 2 500 m² ? ?? ??????????????
????????? ??? ??? 4 000 m² ?????? ?????? ?????????? ?? ?????? ?? ??????.
????????????? ??????.

49 ??? ??? ?????????? ??????, ?????????? ?????????? ????? ????? ????? ?????? ??? ??????????
 ??????? ??? ??????????????, ??? ?? ??????? ????? ?????????? ??? ?????? ?????? ?????? ?????? ?????
 ?? ??????? ?????????? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????????? ?????? ?????? ???
 ?? ?????? ??? ?????? ?????.

50 ???????, ? ?????????? ??????? ??? ?????????? ?????????????? ??? ?????????? ??? ?????????? ???
????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????????
????? ?????????? ??? ?????? ??? ?????? ?? ???????? ?? ???????? ??? ???????? ???????? ????????, ??? ????
????? ?????? ??? ?????? ?, ?? ?? ??????, ??? ?????? ?? ?????? ?????? ???????, ??? ????.
????? ??? ?????? 107, ?????????? 1, ???.

51 ?? ??????? ??????????? ??????????? ??????? ??? ?????? ?????????????????? ???
????????? ??? ??????????? ??? ?????? ?????? ??????. ?????? ?? ? ?????????????? ??? ??????????
????????????? ?? ?????????????? ?????????????? ??? ?????? ?????? ?????? ??????????, ??????????,
????? ??????????, ?????????? ??? ?????????? ??????, ??? ?????????? ?????? ??? ?????? ??
????????????? ?? 10 000 m² ??????? ?????????? ??? ?????.

53 ? ?????????? ?????????? ??? ?????????????? ??? ?????????? ??????????????, ?? ??? ??????????
???? ??????????????, ??? ?? ?????????????? ??? ?????????? ?????????? ??????????????, ?? ?? ???
?????? ????, ??????? ?????? ?????????? ?????????? ?????????? ??? ??????????????. ?? ??????? ???
?????? ?????????? ??? ?????????? ??? ??? ?????????? ?????????? ?????????? ?????????? ??????????
????? ?????????? ??? ?? ??? ?????? ??????????, ???' ????, ??? ??????????????
????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ????.

54 ??? ?????? ?????????? ?????? ??? ?? ?????????????????? ?? ?????????? ??? ?????????? ?
????????? ??? ?????????????? ??? ?????? ?????? ?????? ?????????? ? ??????, ????????, ??? ??????????
?? ?????????? ?????????????? ?????????????????? ??? ??? ?????? ?????????? ?????????????? ??????????????.
???????, ??? ?????? ?????????????? ?????????????? ?? ?????????????? ?? ?????? ??????.

55 ?????????????? ?????? ??? ???????????????, ??? ?????? ?????? ?????? ?????? ?? ?????? ?
????????? ??? ??? ?????? ?????? ??????????, ??? ??? ?????? ??? ?????? 107, ??????????
1, ????, ????, ??? ? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??????, ? ?????? ??????????
??? ?????? ?????????? ??? ?????? ??? ??????, ??????, ??? ?????????? ?????? ???, ??????
??? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? 4 000 m². ? ??????
????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????
??????, ?????? ?????? ??????, ??????????-????????? ??? ?????????? ??????, ???
????????? ?????? ??? ?????? ??? 10 000 m², ?????? ?? ?????????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ????
??????????, ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ??????.

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

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

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

1) ?? ????? 49 ??? 54 ??? ????? ?? ?????? ??? ?????? ??? ??? ?????????????? ?? ??? ?????????????? ??? ?????? ?????? ??????, ??? ?????? ?????.

2) ??? ??????? ??????? ????????, ??? ??? ?????? ??? ?????? ?? 107, ?????????? 1, ????, ????, ???, ?????? ?????? ??? ??????? ??, ??? ??????? ??????, ??? ?????? ??????, ? ?????? ?????? ???, ?????? ?????? ??? ???????, ??? ?????? ???????, ?????? ?????? ???, ?????? ?????? ??? ???????, ??? ?????? ?????? ??, ?????? ?????? ??? ?????? ??????, ?????? ?????? ??? ???????, ?????? ?????? ??? ???????, ??? ?????? ???????, ?????? ?????? - ??????? ??? ???????, ??? ???????, ??? ???????, ??? ?????? ???????, ?????? ?????? ??? 10 000 m², ?????? ?? ??????? ?????? ??? ??? ???????, ??? ?????? ???????, ??? ?????? ???????, ??? ?????? ???????, ??? ?????? ???????, ??? ?????? ???????.

(?????????)

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