

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

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

??? 17?? ?????????? 2019 (*)

«????????????? ?????????? – ????? ?????????????? ????? (???) – ?????? 2006/112/?? –
????????? – ????? 135, ?????????? 1, ?????????? ?? ??? ?? – ?????? ?????? ?? ??
????????? ?? ?? ?? ?????????????? ?????????? ?? ?? ?? ?????????? ?????????? –
????????? ?? ?????? ?????? ??????????, ?? ?????????? ?? ?????????? ?????????? – ??????
?? ?????, ?? ??????? ??????, ??? ?????????? ?? ?????? ?? ?????????? ?? ?????????? ?? ??????????
???? ??? ?????? ?????????? ?????????? ?????????? ??? ?????????? ??? ??? ?????????? ?????????? ?
???? ?????????? ??? ?????????? ?????????»

???? ?????? C?692/17,

?? ?????????? ?????? ?????????????? ?????????? ??????? ?? ?????? 267 ????, ??
?????? ?? Supremo Tribunal Administrativo (?????? ?????????? ???????????, ???????????)
?? ??????? ?? 8?? ??????? 2017, ? ????? ??????? ?? ?????????? ??? 11 ???????????
2017, ??? ??????? ?? ???

Paulo Nascimento Consulting – Mediação Imobiliária Lda

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Autoridade Tributária e Aduaneira,

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

?????????? ?? A. Arabadjiev, ?????? ???????, L. Bay Larsen ??? C. Vajda
(??????), ???????,

?????? ??????????: H. Saugmandsgaard Øe

?????????: M. Ferreira, ????? ?????????? ??????????,

?????? ?? ?? ?????? ?????? ?????????? ?? ??????? ?? ?? ??' ?????????? ?????????? ??
?? ?????????? 2019,

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

- ? Paulo Nascimento Consulting – Mediação Imobiliária Lda, ?????????????? ?? R. Silva Lopes ??? A. Coelho Martins, advogados,
- ? ?????????? ???????, ?????????? ??? L. Inez Fernandes, M. Figueiredo
??? R. Campos Laires,
- ? ?????????? ???????, ?????????? ??? L. Lozano Palacios ????? ??? ??? ???
B. Rechena,

???? ?????? ??? ?????? ??????????? ??? ??????? ??? ?????? ??? ?????? ?? ???????????
??? 2? ??? 2019,

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

???????

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

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ??????? ?????? ??? ??????? Paulo
Nascimento Consulting – Mediação Imobiliária Lda (??? ????: PNC) ??? ??? Autoridade
Tributária e Aduaneira (?????????? ??? ?????????? ???, ??????????) ??????? ?? ???
????????? ??? ?????????????? ??? (??) ??? ?????????? ?? ?????, ?? ???????
??????, ??? ?????????? ??? ?????? ??? ?????????? ?? ?????????? ??? ?????? ??? ??????? ?
PNC ??? ?????? ?????????? ?????????? ?????????? ??? ?????????? ??? ??? ?????? ?????????? ?
????? ?????????????? ?? ?????????? ???????.

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

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

3 ??? ?? ??? 2, ?????????? 1, ??????? ??, ??? ?????? 2006/112, ??? ??
??????????, ???????????, «?? ?????????? ?????? ??? ??????????????? ?? ???????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????? ?? ???
????????? ???» ??? «?? ?????? ???????, ??? ?????????????? ?? ?????????? ??? ???????
?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????? ?? ??? ???????
?? ???».

4 ?? ?????? 9, ?????????? 1, ??? ?????? ?????? ??? ?????? ?? ????:

«?????? ?? “????????? ????” ?????????? ????, ??? ?????? ?????????? ??? ??
?????????? ???, ?????????? ???????????, ?????????? ??? ?????? ??? ?????????? ??? ??
?? ?? ?????????? ??? ?????????? ??? ?????? ???.

?? “????????? ?????????? ????” ?????????? ??? ?????????????? ??? ???????????, ???
?????? ? ??? ?????????? ???????, ?????????????? ??? ?????? ??? ?????????????? ???
??????????, ??? ?????????? ?????????????? ??? ?????? ??? ?????????????? ??? ???????????
?????????????. ?? ?????????? ?????????????? ??? ???????, ??????, ? ??????????????
????????? ? ?????? ?????, ?? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ??????????..»

5 ??? ?? ??? 14, ?????????? 1, ??? ?? ??? ?????? «[?] “????????? ??????”
????????? ? ?????????? ??? ?????????? ?? ?????? ??? ???????, ?? ??????, ???????
?????».

6 ??? ?? ??? 24, ?????????? 1, ??? ?????? ??????, «[?] “????? ?????? ??????” ???????
??? ?????? ? ?????? ??? ?????? ?????? ?????? ???».

7 ?? ?????? 25, ??????? ??, ??? ?????? 2006/112 ?????? ??? «[?] ?????? ??????????
????? ?? ??????????, ?????? ????, [...] ??? ?????? ?????? ????, ?? ????
????????????? ??? ? ??? ??? ??????».

8 ?? ?????? 135, ??????????? 1, ?????????? ?? ??? ??, ??? ?????? ?????? ?????? ?? ??????:

«?? ?????? ??? ?????????????? ??? ?????????? ????:

?) ?? ?????????? ?? ???? ?????????????????? ??????????? ?????? ?? ???? ?????????? ??????????

[...]

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

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

9 ? Código do Imposto sobre o Valor Acrescentado (????????? ?????? ??????????????? ??????),
?? ??? ?????? ?????????????? ?? ?????????????? ?????? ? ?????? 2006/112, ?????????? ??
????? 9, ?????? 27, ?????????? a ??? c, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????????
????????????? ??? ?????????? ??? ?????? ?????? (??? ????: ??????? ???), ???
????????????? ??? ??? ??? ???? ?????????? ??????:

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

[...]

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

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

10 ???? ?? ?????????? ????, ?????????????? ??????????? ???, ??? ?????????? ??? 2006, ? PNC,
????? ??? ?????? ??? ?????????????? ??? ?????????? ???????, ?????? ?????????????? ??????
????????? ??? ?????????? ??????. ? PNC ?????????? ??? ?????????? ?????? ?????? ?????? ???
????????? ???, ??? ?????????? ??? ??????? ???, ??? ?????? ? ?????????? ??? ????????,
????????? ??? ?????????? ??? PNC ?????? ??? ??? ?????????? ??? ???????.

11 ? PNC ??????? ???????? ??? Tribunal de Família e Menores e de Comarca de Portimão
(????????????? ??????????? ?????????????? ?????????? ??? ?????????? ??? ?????????????? ???
Portimão, ??????????) ????? ?? ?????? ?? ?????????? ? ?????????? ??? ?? ??? ?????????? ??
???? ?? 125 000 ??? ?? ?? ?????????? ?????????? ??????????, ????? ?? ?? ?? ??
?????????? ????? ?????? ?????????? ??????????. ?? ?? ??? ?????????? ??????? ??????? ?? ??
???? ?? ??? ?????? ??? ?????? ??? PNC, ? ????? ?????? ??????????.

12 ????????, ??? ?? ?????????? ??? ??? ?????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ??????????
???, ?????????? ??? ? ?????????? ??? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????????? ??? ?? ???????, ? PNC ?????? ?????????? ??? ?? ??? ?????? ??????????
????????? ?????????????? ?????????? ??? ??? ?????????? ??? ?????????? ??? ?????????? ???, ??? ????
??? ?????????????? ?? ??? ?????? ??? ?????? ??????????????, ? ?????? ?????????? ??????????
??? ??? ??? 170 859,62 ???.

13 ???????, ??? ?????????????? ??? ??? ??????? ?????? ??? ?????????????? ??????????????
????????????? ?????????????? ?????????? ?????????????? ?????????? ??? ??????????????
??? ?????????? ??? ?????????????? ??????. ?? ?????????? ?????????????? ?????????? ??????????????
??? ?????????? ??? PNC ??? ?? ??? ??? 606 200 ???, ??? ?? ??? ?????? ??????????????
????????? ?? 70 % ??? ?????????? ??? ?????? ??? ?????????? ??????. ? ?????????? ?????? ??? ???
????????????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????????????? ??? ?????? ??? ???
?????????????, ??? ?????? ?????????? ?????? ??? ?????? ??? ?????????????? ??? ?????? ??? ???
????????????, ??? ?????? ??? ?????? ??????????, ??? ?????????? ?????????? ?? 417 937,12 ???.

14 ?? ?????????? ??????????? ??? 29 ??????????? 2010, ? PNC ?????????? ??? ??????????
Starplant – Unipessoal Lda (??? ????: Starplant) ??? ?? ?????????? ??? ??? ?????????????? ???
????????? ??? ?? ?????????? ??? ??? ??? ?????????? ?????????? ?????????????? ??????????????
????????????, ??? ?????? ?????????? ??? ?? Starplant ??? 351 619,90 ???.

15 ??? ??????? ??? 2010, ? PNC, ??????, ?????????? ?????????? ?? ??? 125 000
???? ?? ?????????? ??? ??? ?????????????? ?????????? ??? ??? ?????????????? ??????????
??? ??????? ?? ??? 26 250 ???, ??? ?????????? ??? ??? ?????????? ?? ??? ??? ?????????? ?? ??? ???
????? ????. ???????, ?????????? ?? «????? ?????????? ??? ??? ??? ?????????????? ??
?????????» ?? ??? ??? 200 369,90 ???, ??? ?????????? ??? ??? ?????????? ??
????????????? ??? ?? Starplant ???????, ??? ??? ?????? ??? ?????????? ?????? ??? ???.

16 ??? 24 ?????? 2014, ? Autoridade Tributária e Aduaneira (?????????? ??? ??????????)
????, ??????????) ?????????? ??? PNC ?????? ?????????????? ??? ??? ?????? ???,
????????? ??? 83 647,77 ???, ?????? ?????????? ??? ??? ?????? ??? ??? ?????? ??? PNC ???
????????? ??? ?? ?????????? ??? ?????? ??? ?????????? ??? ??? ?????????? ??? ??? ?
????????? ??? ?????????? ??? ?????? 351 619,90 ????. ???????, ? ?? ???
???? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ???????, ? ?????? ??????? ?? ???, ?????????? ??? ?????????? ??? ?????????? ???
????, ?? ??????? ?????, ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ???
????????? ??? ???, ? ?????? ??????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ???
????????? ??? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???.

17 ?? Tribunal Administrativo e Fiscal de Loulé (?????????? ??? ?????????? ??? Loulé,
?????????), ?????? ??? ??? ?????????? ??? PNC ?? ?????? ??? ?????? ???
????????????? ?????? ?????????? ??? ???.

18 ?? ?????? ??? 4?? ?????????? 2016, ?? Tribunal Central Administrativo Sul (?????????
????????? ??? ?????????? ?? ?????????? ??? ?????? ??? ??????????, ??????????), ??????????
????????? ?????????? ??????? ?? Fazenda Pública (????????? ????, ??????????),
????????? ??? ?????????? ??????? ?? ?? ??????? ??? ? ?????? ?????????? ?????????? ??????????
????????? ??? ?????????? ?????????? ??? PNC, ??? ?????? ?? ?????????? ??
????????? ??? ?????? ?????????? ??? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? 9 ?? ???
??? ??? ??? ??????? ?? ????. ??????????, ?? ?? ??? ?????????? ?????? ??? ?????? ??? ? ??????
????? ??? ??????? ?? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? 9,
?????? 27, ??????? a, ??? ?? ??? ?????? ??? ??? ?????? ?????????? ??? ?????????? ??? ??????????????
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????????? ??? ??????????.

19 ? PNC ?????? ?????? ?????????? ??? ??? ?????????? ?????? ?????? ??? Supremo
Tribunal Administrativo (????????? ?????????? ??????????, ??????????), ??????????????
??? ? ?????????? ??? ?????????? ??? ?????? 9, ?????? 27, ??????? a, ??? ?????? ??? ???
????????? ??? ?????? ?????????? ??????????, ??? ??? ??? ?????? ?????????? ??? ???
????? ??? ??? ??? ?????????? ?????????? ??? ?????? ??? PNC ?????????? ???

?????????? ??? ??????????? ??? ??????? ?? ??????? ??? ??????? ??? ??????? ? ?????
?????????? ??? ??????????? ??? ?????? ?? ?? ??? ????? ?? 9, ?????? 27, ??????? a, ???
?? ??? 13, ?, ??????? ??, ?????? 1, ??? ????? ?????? 77/388/??? ??? ???????????, ???
17?? ??? 1977, ??? ??????????? ??? ??????????? ??? ??????? ??? ?????, ??? ??????? ??
???? ?????? ?????? ?????? – ??? ????? ?????? ????? ?????????????? ?????: ??????????
?????????? ??? (?? ????. ??? 09/001, ?. 49, ??? ????: ??? ?????). ? ??????? ??? ??
????? ??????? ??????????????? ??? ?????? 135, ?????????? 1, ??????? ??, ??? ???????
2006/112, ?? ??? ????? ??????????? ??? ??????????????? ? ??? ?????? ??? 1??
?????????? 2007.

20 ??? ??? ??????? ????, ?? Supremo Tribunal Administrativo (?????? ???????????
??????????) ?????????? ?? ??????????? ??? ??????? ??? ??????????? ??? ?? ??????? ??
?????????? ?? ??????? ??????????? ??????:

«??? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? 135,
?????????? 1, ?????????? ?, ??? ??????? ???, ?????????? ??? ?????????? ??? “??????????”,
“?????????????????” ? “????????????? ?????????” ? ?????????? ?? ?????, ?? ?????????? ??????,
??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??????
????????? ??? ?????? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??????
????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????????? ?????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??????????;»

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

21 ?? ?? ??????????? ????, ?? ?????? ?????????? ????, ???' ??????, ??
????????????? ?? ?? ??? 135, ?????????? 1, ??????? ??, ??? ?????? 2006/112 ??? ??
????? ??? ? ??????? ??? ????? ?????????? ??? ??? ?????????? ??? ?????????? ?? ??????? ??
?? ?????????????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?? ??????, ??
????????? ????, ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ??????????
????????? ????, ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????.

22 ???????, ?????? ?? ??????? ?? ???? ?????? ??? ?????? ?????? ??????????? ?? ??? ???.

23 ???????, ??? ?? ??? 2, ?????????? 1, ??? ?????? 2006/112, ?? ?????? ?????????? ??
????? ?????????? ??? ??, ?????????? ??? ?? ?????????? ??? ?????? ?????? ?????? ??????????
????? ??? ?????? ??? ?? ?????????????? ??? ?????? ?????????? ?????? ?????????? ?????? ???
????? 9, ?????????? 1, ??? ???????, ??? ?????? ?????? ??? ?????? ?????? ?? ?????????? ????, ??????????
????? ?????????? ????, ??? ?????? ?????????? ??? ?? ?????????? ????, ?????????? ????, ??????????
??????????. ? ?????? ??? «????????? ?????????? ??????????» ?????????? ??? ?????? 9,
????????? 1, ??????? ????, ??? ?????? 2006/112 ?? ?????????? ????, ???
????????????? ??? ??????????, ??? ?????? ??? ?????? ??? ?????????? ????, ??????????,
??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ????
????????? ?????? ?????? ?????? (?????? ??? 8?? ?????? 2018, C&D Foods
Acquisition, C-502/17, EU:C:2018:888, ????? 29 ??? ????? ?????????? ??????????).

24 ??????????? ??? ?? ?????????? ??? ?? ?????????? ??? ?????? ??? ?????????? ?? ?????? 9,
?????????? 1, ?????? ??????, ??? ?????? 2006/112 ??? ?????? ??? ?? ?????? ??????????
? ?????? ??? 13?? ?????? 2013, Kostov (C-62/12, EU:C:2013:391), ??? ?????? ??????? ??
????? ??? ?????? ?????????? ?? ??? ?????? ??? ?????????? ?????????? ??? ????????

25 ??? ?? ?????????? ??? ??????????? ??????????????, ????????, ??? ? ??????? ??? ?? ????
??? ??????? ??? ?????? ?? ??????? ?????????? ?????????? ?????????? ??????? ??? ??????????????
????? ??????? ???????, ?? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ??????,
??? ??????? ??? ?????????? ??? ?????? ?? ??????? ?????????? ?????????? ?????????? ??????????????
(????. ??????? ??? 15?? ?????????? 2011, S?aby ?.??., C-180/10 ??? C-181/10,
EU:C:2011:589, ????? 37 ????? ??? ????? ?????????????? ??????????).

26 ?? ???????????, ? PNC ?????????? ??????????? ?? ??? ?? ??? ????? ?? ????????,
????? ? ??????? ?? ??? ?? ???, ? ??????? ?? ?????? ?? ??????? ?? ??????? ?? ??? ?? ???????
??? «?????????? ?? ??????????????» ???, ??? ?? ??? ?????? ??? ?????? 9, ??????????? 1,
?????? ?? ???, ??? ?????? 2006/112, ??????? ? ?????????? ??? PNC ??? ??????? ??
????? ?? ??? ?????? ?????????? ??? ?????????? ??? ???????????, ?????????? ??? ? ??????????
?????????????? ?? ??? ?? ??? ?????? ??? ?????? ??? ?????? ? ?????????????? ??? ?????????? ???.

27 ???????, ?????????????? ???, ??? ?????? ??? ? ??????? ?????????????? ?? ?? ??????
42 ??? ?????????? ???, ? ??????? ??? ?????? ?????? ?????? ?????? ?????????? ?????????????????? ???
????????? ?????????? ??????? ?? ?? ??? ????? ?????????????? ?????????? ?????????? ?????????? ???
????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????????? ?????????? ?????????? ???
????????????? ??? PNC, ? ?????? ?????????? ??? ?????? ?????? ?????????? ?????????? ??????????,
????? ? PNC ?? ?????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????
????????????? ??????????, ??? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ???
?????????????. ??? ??????????, ? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???
????????????? ??? ?????? ?????????? ??? ?????? ?????????? ?????????????? ??? ?? ?? ???
?????????.

28 ??? ??? ?????????? ??????, ??? ?? ??????? ????? ? ?????? ?????? ????? ?????? ?????? ?????? ?????? ?, ?
????? ?????????????????? ??? ??????? ??? ?????????? ??? ?????????????? ??? ?????? ???, ??? ?????????? ??? ????
????? ?????????????? ??? ?? ??? ????? ?????????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??????
????????? ??? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?? ??? ????? ???????, ??? ?????? ??? ??
????? ????, ??? ??????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????
9, ?????????? 1, ?????? ??????, ??? ?????? 2006/112.

29 ????????, ????????????, ???, ??? ???? ?? ?????? 2, ????????????, 1, ?????????? ?? ??? ?,
??? ??????? 2006/112, ??? ???? ??????????, ????????????, ?? «????????????? ?????? ???
?????????????????? ?? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ??????????
????? ??? ???? ?????? ?? ??? ?????? ?????? ???» ??? «?? ?????? ??????????, ??
?????????????????? ?? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ??????????
????? ??? ???? ?????? ?? ??? ?????? ?????? ??? ??????».

30 ?? ?????? 14, ?????????? 1, ??? ?????? 2006/112 ?????? ??? ?????? ?????? ?? ?? «????????? ??? ?????????? ?? ?????????? ??? ?????????? ?? ??????, ?? ??????, ?????????? ??????», ??? ?? ?????? 24, ?????????? 1, ??? ?????? ?????? ?????? ?????? ??? ?????? ?????????? ?? «????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????».

31 ?? ???????????, ???? ????. ??? ??????????????, ??? ???? ?????? ??? ???, ???
????????? ????. ??? ???? ????. ??? ???????, ??? ?????????????? ??? ???? ????.
????????????????? «?? ?????????? ??????». ??? ??. ?????????????? ??? ???? ????.
????????? ?????????? ??? ? PNC ?????????? ??? Starplant, ?????? ????????, ??? ????
????? ??? ????????, ??? ??. ?????????? ??? ??. ?????????????? ??? ?????????? ??? ??.
????????? ??? ??. ?????????? ??? ??. ?????????? ??? ??. ?????????????? ?????????? ??????????
?? ??. ?????????? ?????????? ? ???? ?????????????? ?? ???? ?????????? ????????, ??????????
?? ???? ? ???? ?????????? ?????????? ?????????? ?????????????? ?? ??. ?????????? ??? ??.
???? PNC ????. ????????, ?? ???? ????. ??? ??.

32 ???????, ??? ?? ?????????? ??? ?????????????? ?????????? ??? ?????? ?????? ?????? ??????????
????? ??? ? ?????????? ??? ?????? ? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????????????? ?? ?????????? ???
????????? ?????????? ??????, ??? ?????? ? ?????????????? ??? ?????? ?????? (????.
????????? ??? 10?? ?????? 2011, Bog ??., C-497/09, C?499/09, C-501/09 ??? C-502/09,
EU:C:2011:135, ????? 53, ????? ??? ??? 10?? ?????? 2016, Baštová, C-432/15,
EU:C:2016:855, ????? 70).

33 ????????, ????????????, ??? ???? ?????????? ?? ???? ???? ?????????? ?? ???? ?????????? ?? ???? ???? ???? ????
???? ?? ??????????, ?? ???? ?????????? ?? ???? ???? 31 ?? ?????????? ????????, ?????? ??
????? ?????? ??? ? ??????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??????? ?? ???????????????
????????? ?? ??? ?????? ???????????????, ???????, ?? ?????????? ?????????????? ???, ???????, ??
????????? ?? ?????????????? ?? ???? ???? ?? ?????????????? ?? ???? ?????????? ??? ???? ???? ????
????????????? ?????????????? ?????????????? ?? ???? ???? ?????????? ??????????????.

35 ?? ?????????? ??????, ? ??????? ?????? ????? ?????? ?????? ????????, ? ??????, ????

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

?????? ?? 27?? ??????? 2019, Mydibel, C-201/18, EU:C:2019:254, ????? 34 ??? ???

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

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????????? ??, ??? ??????? 2006/112. ??? ?????? ?????????? ?????????? ?? ??????? ???

????????? ?????? ??????????????.

36 ?????????????? ?????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????,

????? ?????? ??????????? ?? 31 ??? 35 ??? ??????? ??????????, ? ?????? ???,
????? ??????????????? ?? ?????? ?????????? ??? ?? ??????? ??????, ???????, ?? ?? ???
?????? ???, ??? ?? ?????? ?????? ??? ?????? ??? ?? ?????? ?????????? ? ??????? ??? 27??
????????? 2011, GFKL Financial Services (C-93/10, EU:C:2011:700). ???????, ? ?????? ???
????????? ?? ?? ?????????? ??? ?? ??? ?????? ?????? ?????????? ????? ?????????? ??? ??
??????????, ?? ??? ?? ???????, ?????????? ?????????? ?? ??? ?????? ?????????? ??? ??
????????? ??? ?? ??? ?? ???????, ?? ?????? ?????? ?????????? ?????????? ?? ??? ?????? ?????????? ???
????????? ??? ?? ??? ?? ???????, ?? ?????? ??? ?????? ?????? ?????????? ?????????? ?? ??? ?????? 26 ??? ??
????? ??????????, ??? ?????????????? ? ?????? ?????????? ?????????? ?????????? ??? ?????????? ??? ??
????????? ?????? ??? ?? ??? ?????? ?????????? ?????????? ?????????? ?????????? ??? ??
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????? ?????? ??? ?? ??? ?????? ?????? ??? ?? ??? ?????? ?????????? ?????? ??? ??
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37 ??? ?? ??????? ?????????? ??? ? ??????? ??? ?????? ??? ?????? ?????? ?????????? ?? ??
?????? ??? ?????? 2, ?????????? 1, ?????????? ?? ??, ??? ?????? 2006/112.

38 ??? ?? ?????? ?? ??????? ?? ? ??????? ?????? ?????? ?????????? ??? ?? ?????? ?????????? ???
????????? ??? ?????????? ??? ?? ?????? 135, ?????????? 1, ?????????? ??, ??? ???????
2006/112, ??????? ?? «?? ??????? ??? [??] ?? ?????????? ?????? ?????? ??? [??] ??
????????? ?????????? ??? ?????????? ??? ?????? ??? ?? ?????? ??? ?????? », ?????????? ???,
???? ?????????? ?? ??? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ?? ?????? ??? ??
???? ?????? ??? ?????????? ??? ?????? ?????? 61 ??? ?????? ???, ?? ??????????
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ??? «?????»
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
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????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? [????. ?????????? ???
11?? ?????? 1996, Régie dauphinoise, C-306/94, EU:C:1996:290, ?????? 16 ?? 19, ??
29?? ?????? 2004, EDM, C?77/01, EU:C:2004:243, ?????? 65 ?? 70, ?? ?? 18??
????????? 2018, Volkswagen Financial Services (UK), C-153/17, EU:C:2018:845, ?????? 36 ??
???? ?????????? ??????]. ???????, ??? ?? ?????? ?????? ?????? ?????? ?????? ???????
????????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ?? ?????????? ??? Starplant
?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?? ??????????.

39 ??? ???????, ?? ??????? ??? ? ?????? ??? ?????? ?????? ?????????????? ?? ?????? ??????????
?? ?? ?????? ??????????, ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ???
????????? ??? ?????? 135, ?????????? 1, ?????????? ??, ??? ?????? 2006/112.

40 ??????, ??????? ?????? ?? ? ?????????? ? PNC ??? ?? ??' ?????????? ??????????
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????? 33 ?? 35 ?? ??????? ???????, ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????,
?? ?? ??????????, ?? ??????? ??? ?????? «?????» ???, ???????, ??? ?????? ??? ??
????? ?????????? ??? ?????????? ??? ?????? 135, ?????????? 1, ?????????? ??, ??? ??????
2006/112, ?? ?? ?????? ??? ?????? «????????? [...], ?? ?????? ??? ?????? ??? ??
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41 ?????? ??? ??????? ??? ?????????? ??? ?????????? ?????????? ?????? ???
????? ?? ?????? ?????? ??? ?? ?????? 135, ?????????? 1, ?????????? ??, ??? ??????
2006/112 ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?? ?????? ???

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

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

? ???? 135, ?????????? 1, ??????? ?? , ??? ?????? 2006/112/? ? ???? ?????????? ,
?? 28? ?????????? 2006, ??????? ?? ???? ?????? ?????? ?????? ?????????? ?? ???? ?????????? ??????
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????? ?????????? ?? ???? , ?? ??????? ?????? , ??? ?????? ?????????? ?? ???? ??????
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(?????????)

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