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??? 8?? ?????????? 2020 (*1)

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??. ?????????? ?????? ?????????????? ?????????? ?????????? ??? ?????? 267 ????, ???
?????? ?? Tribunalul Cluj (????????? ?????????? Cluj, ???????) ?? ??????? ??? 3??
?????? 2019, ? ?????? ??????? ??? ?????????? ??? 23 ?????? 2019, ??? ??????? ???
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Impresa Pizzarotti & C SPA Italia Sucursala Cluj

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Agen?ia Na?ional? de Administrare Fiscal? – Direc?ia General? de Administrare a Marilor
Contribuabili,

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

????????? ??? ??? L. Bay Larsen, ?????? ???????, M. Safjan ??? N. Jääskinen
(????????), ???????,

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

?????????: A. Calot Escobar

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

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

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? Impresa Pizzarotti & C SPA Italia Sucursala Cluj, ?????????????? ??? ??? L. I. Budu?an,
avocat?,

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? ?????????? ??????????, ?????????????? ?????? ??? ?? C.-R. Can??r, ??? E. Gane ???
??? A. Rot?reanu, ??? ??? ?????? ??? ?? E. Gane ??? A. Rot?reanu,

—
? ??????? ??????????, ?????????????? ??? ??? M. Smolek ??? J. Vlá?il, ????? ??? ??? ???
J. O?ková,

—
? ?????????? ??????????, ?????????????? ??? ??? J. Möller ??? R. Kanitz,

—
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—
? ?????????? ??????????, ?????????????? ??? ??? G. Palmieri, ?????????????? ??? ??? E. De
Bonis, avvocato dello Stato,

—
? ?????????? ??????????, ?????????????? ??? ??? B. Majczyna,

—
? ?????????? ??????????, ?????????????? ??? ??? W. Roels ??? A. Armenia,

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1

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2

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Italia Sucursala Cluj (??? ????: Impresa Pizzarotti) ??? ??? Agen?ia Na?ional? de Administrare
Fiscal? – Direc?ia General? de Administrare a Marilor Contribuabili (?????? ?????????? ????)
– ?????? ?????????? ?????????? ?????? ?????? ???????????, ???????, ??? ???:
????????? ???), ?? ?????????? ??? ?????? ?????? ?????? ?????????? ?????????? ??? ?????? ???
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3

? ?????? 7 ??? Legea nr. 571 privind Codul fiscal (????? 571 ??? ?????? ??????????)

??????), ??? 22?? ??????????? 2003 (Monitorul Oficial al României, ???? I, ????. 927, ??? 23?? ??????????? 2003), ???? ???? ??? ?????? ??? ?????? ??? ?????????????? ?????????????? ??? ??????? ???? ?????? ?????? (??? ????: ??????????? ???????), ?????? ?? ????:

«????? ??? ??????? ??? ?????????? ??????, ?????????????? ??? ????? VI, ??????? ??:

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20. “???????: ??? ?????? ? ?????? ????????

21. “????????????? ???????”: ??? ?????? ?????? ?????? ?????????????? ?? ??? ?????? ?????? ?????? ?
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ii)

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iii)

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?? ?? 11, ?????????? 2, ?? ?? ???? ?? ?? ?????????? ?? ???:

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5

? ???? 29, ??????? 3, ??? ? ???? ?????? ?????? ?? ????:

«?? ?????????? ?????? ?????? ?????????? ?????????? ?????? ?????? ?????? ?????? ?????? ??
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6

? Impresa Pizzarotti ?????? ?? ?????????? ??? ?????? ??? SC Impresa Pizzarotti & C
SPA Italia (??? ????: Pizzarotti Italia), ?? ??? ???? ?????.

7

????? 29 ?????? 2016 ?? 11 ?????????? 2017, ?? ???? ?????? ??? ?????????? ??
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??????, ??? ? ???? ??? ?????? ??? ?????? ?????????? ??? ?? ? ???? ?????????? ???
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Pizzarotti Italia: ??? ?????? ?? ?????????? 6 ?????????? 2012 ??? ??? 11400000 ???
??? ?????? ?? ?????????? 9 ?????? 2012 ??? ??? 2300000 ???.

8

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??? ?????? ??? ???? ??? Impresa Pizzarotti ??? ???, ?????? ??? 1? ?????????? 2013
?? ?????? ?????? ?????? ??? 11250000 ???, ??? 9 ?????? 2014 ?? ??? ??????
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9

????????? ??? ? ???? 11, ?????????? 2, ??? ?????????? ???, ?? ????
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????? ? ???? ?????? ??? «????? ?????? ?????? ??? ?????? ???» ?????? ??? ??
????????? ??? ? ???? ?????? ??? ?????? ?????? ?????? ?????? ???, ?
????????? ??? ?????? ??? ? Impresa Pizzarotti, ?????????? ?????? ??? ???? ???,
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10

???? ????????, ??? 20 ??????????? 2017, ?????????? ??? ?????? ?????????????? ????????

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(RON) (?????? 72400 ????) ??? ??????? ?? ??????????? ??? ??? ?????????? ???

1857137 RON (?????? 452595 ????).

11

? ? ??????? ??? 23?? ?????????? 2017, ? ?????????? ??? ?????? ?????????? ?? ????????

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12

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Tribunalul Cluj (????????? ?????????? Cluj, ???????), ??????? ??? ??????? ???

????????? ??? 23?? ?????????? 2017 ??? ??? ?????? ?????????????? ??? ??? ??? 20??

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13

? ? ??????? ??? ??????? ??? ?????? ???, ? Impresa Pizzarotti ??????????? ???' ??????

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???? ? ? ??? 49 ??? 63 ???, ?????? ?????????? ??? ? ?????????? ?????????? ???

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14

? ? ? ??????? ???, ?? Tribunalul Cluj (????????? ?????????? Cluj) ?????????? ??

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«?????????? ?? ??? 49 ??? 63 ??? [????] ?? ?????? ?????? ??? [?? ??? 11,

????????? 2, ??? ? ???? 29, ?????????? 3, ??? ?????????? ??????], ? ?????? ??????????

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?? ?? ??????? ???, ?? ?????? ??????????? ?????? ???' ?????? ?? ??????????????? ??? ??
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????????? ??? ??? ?????? ?????, ??? ?? ??? ?????????????? ???' ??? ?????? ??? ?????? ???
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????????? ?? ??? «????????? ?????? ??????», ?? ?????? ?? ?????????? ?? ??????????
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????? ??? ?????? ??? ?????? ?????? ??? ?????????? ?? ?????????? ?? ?? ?????? ?????? ?????? ??????
????????????? ??? ?????????? -??? ?? ?????????? - ?? ??? ?????? ?????? ???, ??? ?
????? ?????? ?????? ??? ?? ?? ?????? ?????? ??? ?? ?????????????? ???, ??????????
?? ???' ??? ?????? ?????? ??? ?????? 49 ??? (???. ?????? ??? 15?? ?? 2008, Lidl
Belgium, C?414/06, EU:C:2008:278, ??? 15, ??? ?? 15?? ?????????? 2011, Dickinger ???
Ömer, C?347/09, EU:C:2011:582, ??? 35).

18

? ? ??????????, ? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????????? ??? ?????? ??????
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????? ?????????? ?????????? ??? ?? ?????? ??? ?????? 63 ??? (??., ???' ??????????,
????? ??? 15?? ?? 2008, Lidl Belgium, C?414/06, EU:C:2008:278, ??? 16 ??? ???
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20

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21

?????????????, ???????, ??? ? ??????? ????????????, ??? ????? ??????????? ?????
????? ??? ?????????? ?????? ?? ?????? 49 ????, ????????????, ??????? ?? ?? ?????? 54
????, ?? ??????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?? ??????? ??????
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????????? 2006, Denkavit Internationaal ??? Denkavit France, C?170/05, EU:C:2006:783,
????? 20, ??? ??? 21?? ?????????? 2016, Masco Denmark ??? Damixa, C?593/14,
EU:C:2016:984, ??? 23 ??? ??? ?????????? ??????????).

22

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??? 14?? ?????????? 2006, Denkavit Internationaal ??? Denkavit France, C?170/05,
EU:C:2006:783, ??? 21).

23

???? ?????? ??? ???????, ????????????, ??????? ?????? ??? ???? ?????, ??? ??? ?????? ???
????? 54 ????, ?????????? ?? ???????, ??? ? ??????? ??? ?????? ????????, ??? ???
????????? ??? ??????? ?????? ?? ??? ?????? ?????? ?????? ?????? ?????? ??????. ?? ??????? ??????
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?????, ?? ?????? 49 ???? ?? ?????????? ??? ??????????????. ? ?????????? ?????????????? ???,
????????, ?? ?????? ?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ???
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??? 14?? ?????????? 2006, Denkavit Internationaal ??? Denkavit France, C?170/05,
EU:C:2006:783, ??? 22 ??? ??? ?????????? ??????????).

24

?? ??????? ???, ????????????, ??????? ?????? ??? ???? ?????????? ??? ?????? ??? ??????
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????????????? ?? ??? ?????? ?????? ?????? (????. ?????? ??? 21?? ?????????? 2010, SGI,
C?311/08, EU:C:2010:26, ??? 42 ??? 45).

25

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??????????, ?? ?? ?????????????? ?? ???? ?? ? ??????? ?? ?????? ?? ???? ?????????????? ?? ???? ???????,
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26

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???? ? Impresa Pizzarotti, ??????? ?????????? ?????????? ?????????????? ??' ?? ?? ??
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27

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??? ??? ?????????????? ???????, ?????? ?? ?????? ?????? ?????????? ??? ?????????? ??? ??????????
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?????????, ?????? ?????????????????? ??? ??? ??? ?????????????? ?????? ?????? ?????? (????.
????? ??? 31?? ??? 2018, Hornbach-Baumarkt, C?382/16, EU:C:2018:366, ????? 35).

28

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?? ??????? ?????? ?? ?????? ??????????? ??? ?????? ?????? ??????????????? ??????????? ?
?? ?????????????? ??? ??????????? ?????? ?????? ?????????? ?????????????? ?????????????? ???
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????? 2018, Hornbach-Baumarkt, C?382/16, EU:C:2018:366, ??? 36).

29

30

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??? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?? ?????????? ?????????
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??? (????? ??? 31?? ??? 2018, Hornbach-Baumarkt, C?382/16, EU:C:2018:366, ??? 43).

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????????????? ??? ??????????, ??? ??? Impresa Pizzarotti, ?????? ??? ? ?????????? ???
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????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? (????.
????? ??? 21?? ?????????? 2010, SGI, C?311/08, EU:C:2010:26, ??? 63).

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? ?????????????? ??? ?????? ??? ?????????? ??? ?? ?????? 29, ?????????? 3, ???
????????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
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????????? in concreto ?? ?????. ??????, ? ?????????????? ?????? ?????? ?????? ?? ?????? ??? ?????? ??? ?????? ???
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??? ??????? ?????», ?? ?????????? ?? ?????????? ?????? ?????????? ?? ??????? ???
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????????? ?? ??????? ??? ?? ?????????? ??????. ?? ?????? ??? ?????? ??????????????
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? ? ????? 49 ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???' ?????? ?? ?????? ??? ?????? ???
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(?????????)

(*1) ?????? ??????????: ? ??????????.