

# MEMORANDUM TO CLIENTS

03.11.2015

**War of Ports – Supreme Federal Court declares unconstitutional laws of the state of Paraná, which granted tax benefits related to circulation tax of goods and services (ICMS), but modulates effects to future**

The Supreme Federal Court judged today, unanimously, partially deferred the Direct Action of Unconstitutionality no. 4481/PR to declare the unconstitutionality of Paraná's State Laws n<sup>o</sup>s. 14.985/2006 e 15.467/2007, which granted tax benefits related to circulation tax of goods and services (ICMS) to taxpayers that are importers, established at Paraná's State.

The Supreme Court reinforced its own jurisprudence in sense that tax-benefits concession without the authorization of the National Council of Fiscal Policy (CONFAZ) infringes article 155, ¶2<sup>o</sup>, XII, subheading "g" of the Brazilian Federal Constitution.

Although the Supreme Court has applied a well-known jurisprudence to this case, related to the unconstitutionality of these tax-benefits concession without CONFAZ approval, which originated the "Fiscal War" between states of Federation, this decision stands out from others because it is the first decision that applies modulation effects to determine that those tax-benefits are valid until the trial's date of this case. In other words, according to the majority of Supreme Court's Justices, this decision will only have effects since from the date of trial's session held today, on date 03.11.2015. According to the vote of the Reporting Justice, Roberto Barroso, this measure aims "to protect legal certainty".

Regardless of Supreme Court's position in sense that is required caution when applying effects modulation, this thesis, in relation to the tax-benefits given by a State where several importers are established, has a special relevance to the discussion involving the ICMS credit disallowance done by other states where are those importers purchasers taxpayers. After all, if the tax-benefit is valid until the trial's date today, it means, in our interpretation, that those credits disallowances are invalid.

We remain at your disposal for any further clarifications.

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