



memorandum to clients

2/23/2018

Unconstitutionality of reduction of Reintegra rebate rate - Decrees numbers 8.415/2015, 8.543/2015 and 9.148/2017 – Violation of the principle of anteriority

In August 28, 2017, Brazilian Federal Official Gazette published the Decree nº 9.148/2017, which reduced the Regime for Reinstatement of Tax Amounts to Exporting Companies (“Reintegra”) tax rebate rate, foreseen in articles 21 to 29 of Law nº 13.043/2014, to 2% over the value of the its exporting revenue, during the period of 01/1/2017 to 12/31/2018.

By Law nº 13.043/2014, in “Reintegra”, taxpayers can obtain PIS and COFINS credits in percentage defined over export revenues of industrialized goods in Brazil. These credits could be used for (a) payment of these contributions, (b) tax liabilities offset managed by Federal Revenue of Brazil, or (c) refund in cash.

Considering the Decree No. 8.415/2015, which regulates Law No. 13.043/2014, the credits are calculate according to the following rates:

- 1% (one per cent), between 1 March 2015 to 31 December 2016;
- 2% (two per cent), between 1 January 2017 to 31 December 2017; and
- 3% (three per cent), between 1 January 2018 to 31 December 2018.

In 10/22/2015, was published the Decree nº 8.543/2015, which changed the Decree nº 8.415/2015, to reduce the “Reintegra” tax rebate in the following rates:

- 1% (one per cent), between 1 March 2015 to 30 November 2015;
- 0,1% (one tenth of one per cent), between 1 December 2015 to 31 December 2016;
- 2% (two per cent), between 1 January 2017 to 31 December 2017; and
- 3% (three per cent), between 1 January 2018 to 31 December 2017.

On the other hand, the Decree nº 9.148/2017 determined that the rate of 2% must be observed until 31 December 2018.

In our opinion, the reduction is improper during the period from December 1, 2015 to January 20, 2016, because the reduction of the benefit entailed an increase of the tax burden that the taxpayers stand, without respecting the principle of anteriority.

Moreover, we emphasize that the Federal Supreme Court already decided that the reduction of a tax benefit relief a certain “indirect increase” of taxes, thus must respect principle of anteriority.



In front of these circumstances, **Schneider, Pugliese** is at your service to discuss the best strategy to file a lawsuit to claim the recognition of credits in “Reintegra”, without the limitations expressed by the Decree nº 8.543/2015.

