

# MEMORANDUM TO CLIENTS

09.30.2014

## **MPS/MF Interministerial Order No. 438/2014 – Disclosure and Opposition to Accident Prevention Factor (FAP) for the year 2015**

On September 24, 2014, was published the MF/MPS Interministerial Order No. 438, issued by the Department of Treasury (“MF”) and the Social Security Office (“MPS”) to rule on the rate of frequency, severity and cost, by economic activity, considered for the calculation of the Accident Prevention Factor (“FAP”) of 2014, effective for the year 2015, and on the processing and judgment of oppositions and appeals by companies against the FAP ratio assigned to them.

Through this Order, was published the list of percentage of frequency, severity and cost per Subclass of the National Classification of Economic Activities (CNAE), calculated in 2014, considering information from databases of social security for the years 2013 and 2012, calculated according to the methodology approved by the National Council of Social Security (“CNPS”).

In addition, the Order provides that the value of the FAP of each company and their orders of frequency, severity, cost and other elements that composed the calculation process will be announced on September 30, 2014 by the MPS. The access to this information will be granted to the taxpayer by password, which will be required in the website of MPS and Internal Revenue Service of Brazil (“RFB”).

Companies that are prevented from receiving the FAP below 1.0000 because they have presented cases of death or permanent disability will be able to remove this obstacle if they prove to have invested in improving security in the workplace, through the electronic form “Statement of Investment in Material Resources, Human and Technological Improvement in the Workplace Safety” (“Demonstrativo de Investimentos em Recursos Materiais, Humanos e Tecnológicos em Melhoria na Segurança do Trabalho”) properly filed, ratified and transmitted from October 1st to 31, 2014. Companies that are prevented from receiving the FAP below than 1.0000 because they have presented an Average Annual Turnover (“Taxa Média de Rotatividade”) exceeding 75% may remove this obstacle if they prove to have observed the standards of Health and Safety at Work (“Saúde e Segurança do Trabalho”) in cases of voluntary dismissal or termination of the work. This proof will also to be made through the electronic form “Statement of Investment in Material Resources, Human and Technological Improvement in the Workplace Safety” (“Demonstrativo de Investimentos em Recursos Materiais, Humanos e Tecnológicos em Melhoria na Segurança do Trabalho”), properly filed, ratified and transmitted as described in the preceding paragraph.

The Order also provides that the FAP attributed to the companies can be opposed before the Department of Health and Operational Safety Policies of the Social Security Policy Office (“Departamento de Políticas de Saúde e Segurança Ocupacional da Secretaria de Políticas de Previdência Social”) of the MPS. Such opposition must be filed electronically through a form that will be available on the websites of the RFB and the MPS, with suspensive effects, and must deal exclusively with the reasons for disagreement about the elements that compose the calculation of FAP and should be transmitted in the period from October 30 to December 1st, 2014. The decision for this opposition will be published in the Federal Official Gazette (“Diário Oficial da União”), and its full content will be posted on the website of Social Security, with access only to the taxpayer, by password.

Against the decision of the lower administrative court, the taxpayer may file an appeal, with suspensive effects, within 30 days after publication in the Federal Official Gazette. The appeal must also be filed electronically, and it will be examined ultimately by the MPS. The final decision will be published in the

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Federal Official Gazette – terminating the suspensive effects – and its full content will be posted on the website of Social Security, with access only to the taxpayer, by password.

Should you require any further information on the above matter, please feel free to contact us.

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