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15.02.2017

Review of the amendments proposed to the text of Provisional Measure (MP) No. 766/2017

On 05/01/2017, the Provisional Measure No. 766 ("MP No. 766/2017"), which established the Tax Compliance Program (Programa de Regularização Tributária, "PRT"), was issued to the Brazilian Federal Revenue Service ("SRFB") and the National Treasury Attorney-General Office (PGFN).

Then the MP was referred to the Congress for approval and conversion into law. Thus, between 02/02/2017 and 02/07/2017, the congress members submitted 376 amendments to the Combined Chamber tasked with drafting the opinion.

Some issues addressed in the amendments, if approved, may help taxpayers and increase the attractiveness of the PRT. Please find below a review of the main proposals:

1. Reduction of fines and interest

The absence of reduction of fines and interest for those deciding to join the PRT has been much criticized by taxpayers. In response, the percentage-based reduction – either full or progressive – of the fines and interest rates was the topic most suggested by the Congress members. Some have drafted a proposal to relieve up to 100 percent of the fines and interest.

2. Index applied to update installments

Article 9, paragraph 3, of the MP provides for the use of the SELIC rate to update the amount of each monthly installment. Several amendments suggest changing this index to the TJLP (Long-Term Interest Rate), IPCA (Consumer Price Index - Broad), IGPM (General Market Price Index), and even the inflation ceiling.

3. Mandatory settlement of FGTS and future taxes

Article 3, subparagraphs II and IV of the MP determine, respectively, that joining the PRT entails the obligation to regularly pay the debts due after November 30, 2016, as well as the regular compliance with the FGTS (Government Severance Fund) obligations. However, several Congress members deem such requirements exaggerated and proposed the deletion/amendment of such subparagraphs.

4. Term for accession to the installment plan and cash payment percentage

Several amendments modify the 120-installment period established in the PRT; 160, 180 and 240 installments have been suggested. Some Congress members made a proposal to define the number of installments based on the gross revenue percentage, irrespective of the number of final installments

Also, proposals were drafted to reduce and dividing into installments the percentage provided for in subparagraphs I and II of Art. 2 of the MP, such as:

- possibility of paying the 20-24-percent rate of the consolidated debt, regarding the debts under the jurisdiction of RFB using own credits relating to the taxes managed by the Revenue Service;
- reduction of the rate to 5 percent;

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- removal of the requirement to pay in cash at least 20 percent of the consolidated debt, regarding the debts under the jurisdiction of RFB (Brazilian Revenue Service);
- removal of the requirement of a down payment of 20-24 percent of the consolidated debt, regarding the debts under the jurisdiction of RFB and PGFN;
- possibility of entering into an installment plan for the 20-24-percent rate of the consolidated debt, regarding the debts under the jurisdiction of PGFN;

5. Reduction of the minimum installment amount

Some amendments reduced the minimum installment amount, defined in Art. 4, to as low as R\$ 100.00 (one hundred reais).

6. Prohibition on joining future installment plans

Provided for in subparagraph II of Art. 3 of the MP, the prohibition to join future installment plans was deemed inadmissible by the Congress members. Several amendments proposed the deletion/amendment of this provision

7. Obligation to provide collateral

Article 3, paragraph 2, provides that an installment plan for debts equal to or greater than R\$ 15 million depends on the provision of a guarantee letter or guarantee insurance.

O art. 2º, § 4º da MP preconiza que os créditos próprios deverão ser utilizados primeiramente. Diversas emendas foram propostas para que não houvesse tal prioridade e o contribuinte pudesse optar livremente. Amendments have been proposed to delete/amend this provision, removing the requirement of providing collateral, including the possibility to redeem the amount provided, as the debt is amortized.

8. Mandatory credit usage order

Article 2, § 4 of the MP provides that own credits should be used first. Several amendments have been proposed to remove such priority order, leaving taxpayers free to choose.

9. Equalization of the method for settling debts before PGFN and RFB

Articles 2 and 3 of the MP discriminate the method for settling debts before RFB and PGFN. However, various Congress members deemed such differentiation improper and proposed amendments so that the debts could be settled in the same way.

Thus, several amendments have proposed the use of credits for debts before PGFN.

10. Tax exemption on reductions/discounts and offering of credits

Amendments for the non-applicability of PIS/PASEP, COFINS (Social Security Funding Contribution), IRPJ (Corporate Income Tax) and CSLL (Social Contribution on Net Earnings) to the assignment/use of tax losses and CSLL negative calculation base for settlement of debts under the PRT have been proposed.





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15.02.2017

11. Use of third-party credits

Some of the proposed amendments intend to allow the use of third-party credits for debt settlement.

12. Use of 100 percent of the tax loss carryforwards

Congress members submitted amendments proposing the use of 100 percent of the loss carryforwards. However, the legality and possibility of such rate are under discussion due to the 30-percent lock provided for in Act No. 9,065/95.

13. Bonus for timely payment

Congress members have drafted amendments to introduce a discount for good payers. The first proposal suggests the discount after 2 consecutive years without default, and the second one provides for a progressive discount as the installments are paid on time.

14. Mandatory use of escrow deposits

Article 6 of the MP provides that deposits linked to debts to be paid or under installment plans should automatically be converted into final payments. Faced with this obligation, several Congress members proposed a more flexible treatment for the word "automatically" and the requirement of fully using escrow deposits

15. Inclusion of credits arising from mandatory withholding and credits related to contributions to third parties

Amendments have been proposed to include credits arising from mandatory withholding and credits relating to contributions to third parties under the PRT.

16. Obligation to include all debts

Article 1, paragraph 2, requires that accession to the PRT should include all enforceable debts. This way, several Congress members have submitted amendments to clarify the taxpayers' right to indicate the debts that should be included in the PRT.

17. Exemption from attorney's fees and legal costs

A large percentage of the proposed amendments determine the exemption of attorney's fees and legal costs when the taxpayer waives an ongoing lawsuit to join the PRT.

18. Use of judiciary bonds, real property and assignment of third-party credit rights

Some amendments seek to allow the use of judiciary bonds, giving of real property and assignment of third-party credits to settle tax debts.





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15.02.2017

20. Other amendments of interest

- Possibility of suspending the installment plan in case of later economic crisis at the company;
- In case of accession to PRT, impossibility of requiring debts based on law or normative act deemed unconstitutional/illegal by the STF (Supreme Federal Court), STJ (Supreme Court of Justice) and RFB (Brazilian Revenue Service);
- Possibility of including debts of a tax or non-tax nature in the PRT, either registered or not in the Federal Active Debt;
- Removal from PRT only in case of non-payment of six consecutive installments or 20 alternate installments;
- Reduction of the period, from five to two years, to review the settlement of debts under the jurisdiction of RFB; certain amendments proposed only 12 months.
- Possibility of recovering credits used to amortize the debt entered in the PRT of the taxpayer is removed from the program

In view of such potential amendments to MP 766/2017, the law firm **Schneider, Pugliese, Sztokfisz, Figueiredo e Carvalho Advogados** available to assist in your decision to join the PRT.

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