

# MEMORANDUM TO CLIENTS

09.19.2014

## **Federal Supreme Court judges Protocol ICMS nº 21/2011 unconstitutional**

The Federal Supreme Court (STF) has declared the unconstitutionality of Protocol 21, which authorizes the signatory states to collect a “differential” ICMS tax rate in the event that the addressees of the products by non presential means were end consumers which are not ICMS tax payers.

The Supreme Court has confirmed, thus, that interstate operations destined to end consumers which are not payers of this tax are subject only to collecting the ICMS tax to the State of origin, calculated at the internal rate, with nothing being due to the State where the end consumer not payer of this tax is located, in the terms of article 155, § 2, VII, “b” of the Constitution.

In this regard, the STF stressed that even if the current model of tax allotment is questionable, you cannot make a tax reform by protocol, which would be a completely improper means.

However, the STF determined that the statement must cause effects from the concession of the injunction ADI 4.628 (on 21/02/2014), save for the actions already filed.

We stress that the theme is relevant to all the companies which perform sales in a non presential manner to other states, such as sales via internet, telemarketing, etc.

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