

MEMORANDUM TO CLIENTS

09.04.2015

STF acknowledges the General Repercussion of the discussion concerning the constitutionality of the 10% FGTS contribution established by 1st article of the Complementary Law n. 110/01

On 09/04/2015, Federal Supreme Court (STF) decided to resume the analysis concerning the constitutionality of 10% FGTS contribution provided for in 1st article of Complementary Law (LC) number 110/2001¹ ; resulting from the General Repercussion of the controversy regarding the exhaustion of the purposes, reason to its creation. The Rapporteur of the extraordinary appeal representative of the controversy is the Justice Marco Aurélio.

On June 2012, during the trial of Unconstitutionality Direct Proceeding (ADIN) and 2556 2568, the Supreme Court had ruled on the constitutionality of such contribution. However, we must note that, this time, the issue will be analyzed by different legal grounds that were not examined at that time. The decision on the acknowledgement of General Repercussion is a clear signaling of the STF on the legal relevance of the issue.

According to the statement submitted by Justice Marco Aurélio, regarding such contribution is *“for the payment of the understated inflation of the accounts related to the Severance Indemnity Fund”*, the issue should be examined by the Supreme Court to determine *“If the fulfillment of reason for its creation implies on the unconstitutionality of the supervening tax obligation”*.

In view of these considerations, and remaining undefined the issue of the validity of the FGTS contribution established by 1st article of the LC no 110/2001, we understand that the taxpayers paying such tax should evaluate the financial impact of the thesis in order to file the lawsuit.

We are available for any clarification deemed necessary, given the activities of the firm at the higher courts.

¹“ 1st Article. The social contribution is established to be paid by employers in any dismissal of employee without cause, at ten percent rate on the amount of all due deposits, concerning the Severance Indemnity Fund -FGTS, during the term of the employment contract, added by the compensation applicable to blocked accounts. (See: ADIN 2,556-2 and ADIN 2,568-6)”

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