Memorandum to Clients

05.21.2014

SPECIAL ICMS DEBT INSTALLMENT AGREEMENT PLAN (“PEP”) – STATE OF SÃO PAULO – STATE DECREE No. 58,811, OF SEPTEMBER 27, 2012 – STATE DECREE No. 60,444, OF MAY 13, 2014.

State Decree No. 60,444/14, published on May 13, 2014, reopened the term to join the Special ICMS Debt Installment Agreement Plan (“PEP”) of the State of São Paulo, enabling the settlement of ICM or ICMS debts relative to taxable events occurring up to December 31, 2013, in a lump sum payment or in installments, with significant discounts.

For payment in cash, a reduction of 75% (seventy-five percent) was granted from the adjusted amount of the punitive and late payment fines, and 60% (sixty percent) from the interest charged on the tax and on the punitive fine.

The installment plan, on the other hand, may be entered into in up to 120 monthly and successive installments, with a reduction of 50% (fifty percent) from adjusted amount of the punitive and late payment fines, and 40% (forty percent) from the interest charged on the tax and on the punitive fine.

In this case, the monthly installments are to be at least of R$ 500.00 (five hundred reais), and late payment charges will be incurred, as set forth in article 1, item II, of State Decree no. 58.811/2012, of 0.64% per month (from 1 to 24 installments), 0.80% per month (from 25 to 60 installments) and 1.00% per month (from 61 to 120 installments).

In addition, with regard to debts enforced through a Tax Assessment Notice and Fine Charge (“AIIM”) not recorded as collectible, the provided reductions are applied cumulatively to the discounts of 70%, 60%, or 45% on the adjusted amount of the punitive fine, depending on the date on which the tax debts were settled.

As to amounts deriving from operations or installments of taxpayers whose registration information with the Tax Authorities is irregular, may only be settled in a lump sum payment. If the debts of such kind are recorded as collectible and collected in a tax enforcement action, they may be paid in installments.

Moreover, the ICMS PEP reaches federal debts, whether they have been assessed or not, recorded as collectible or not, including (i) voluntary admission of debts to the Tax Authorities, (ii) debts deriving exclusively from monetary penalties for the non-performance of accessory bookkeeping requirements, (iii) balance from installment agreements in connection with the ICMS Installment Agreement Incentive Plan (“PPI”), created by State Decree no. 51,960/2007, (iv) balance from installment agreements in connection with the Special ICMS Installment Plan (“PEP”) created by State Decree no. 58,811/12, and (v) certain taxpayers’ debts subject to the rules of the “Simples Nacional” (Federal Simplified Tax System for Small Businesses) (tax rate differential and tax due because of tax substitution).

The installment agreement will be considered to have been entered into at the time of collection of the first installment on the set date. Causes for the breach, in turn, will be in case of the following: (i) failure to follow any condition set forth in the Decree; (ii) failure to pay 4 (four) or more installments, successive or not, except for the first one; (iii) failure to pay at least 3 (three) installments, except for the first one, after 90 (ninety) days of the due date of the last installment of the agreement; (iv) failure to prove the withdrawal and collection of any judicial actions costs and charges; (v) incorrect statement, on the date of adhesion,

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of the adjusted amount of deposit in court for purposes of debit balance discounts, or whose deposit does not have any relation with the debts included in the installment plan; and (vi) failure to comply with other conditions to be set in a joint resolution of the Treasury Office and the State Attorney Office.

It is also of note that breaching the installment agreement will cause the debit balance to be recorded as collectible – without the granted discounts – and to receive a tax enforcement action (in case of a tax not recorded as collectible) or its immediate enforcement (in case of a debt under judicial collection).

Furthermore, the granting of benefits does not exempt the taxpayer, in case of debts subject to tax enforcement actions, from posting a full guarantee of the amount being collected, as well as the payment of legal costs and attorneys' fees, the latter being reduced to 5% of the tax debt amount . Likewise, the refund of all or part of the amount collected prior to the effectiveness of the Decree is not allowed

In turn, the amounts deposited in court voluntarily to secure the action, relative to the amounts included in the installment agreement, may be discounted from the debts to be collected, provided there was no final and unappealable ruling in favor of the Treasury of the State of São Paulo.

The taxpayer may join the Special ICMS Debt Installment Agreement Plan from May 19, 2014 to June 30, 2014, by accessing: http://www.pepdoicms.sp.gov.br and selecting the tax debts to be settled, and issuing the State Collection Slip ("GARE/ICMS") corresponding to the first or the single installment.

The access to the PEP system is made with same login and password used in the access to the Electronic Tax Service Office (PFE). If the taxpayer does not have access to the Electronic Tax Service Office, he is to attend the Tax Service Office connected to the establishment and request his login and password to access the PEP system. It is still possible to use the login and password of the ICMS PPI.

When accessing the system, the taxpayer must select, among the list of debts shown, those to be settled. If necessary, he may also: request rectification of debt amounts stated in the list; request the inclusion of debts stated in information documents or computed by the Tax Authorities and not stated in the list; or include amounts referring to voluntary admission of debts.

When selecting the debts, it is possible, if necessary, to simulate the payment terms in the available options. After deciding on the payment term, the operation is completed and the PEP number, the Adhesion Agreement, and the respective GARE-ICMS of the first or single installment are created, confirming adhesion to the plan.

Furthermore, Joint Resolution SF/PGE no. 1, of May 15, 2014, set the requirements for using the ICMS accumulated credits and amounts to be reimbursed under article 270, § 2, of the RICMS/SP (ICMS-ST), for the settlement of debts subject matter of the Special ICMS Debt Installment Agreement Plan.

Lastly, it should be pointed out that the granting of the installment plan was authorized by ICMS Agreement (Convênio ICMS) no. 24/14, entered into within the National Board of Treasury Politics ("CONFAZ)", on March 21, 2014.

Our firm has a team specializing in working with matters related to the State Treasury Offices, and is available to our clients for whatever they deem necessary in this regard.

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Team responsible for preparing Memorandum to Clients:

Eduardo Pugliese Pincelli (eduardo.pugliese@souzaschneider.com.br)

Rafael Fukuji Watanabe (rafael.watanabe@souzaschneider.com.br)

Amanda Mateoni Salvestrini (amanda.mateoni@souzaschneider.com.br)

Fernando Kawaro Ferreira Marques (fernando.kawaro@souzaschneider.com.br)

R. Cincinato Braga, 340 • 9º andar • 01333-010 • São Paulo • SP
tel 55 11 3201 7550 • fax 55 11 3201 7558

Brasília Shopping • SCN quadra 5, Bloco A • Torre Sul • 14º andar • sala 1406 • Brasília • DF • 70715-900
tel 55 61 3251 9400 • fax 55 61 3251 9429

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