Memorandum to Clients

05.20.2015

Decree no. 8.451/15 – Foreign Exchange Rate Fluctuation – Zero tax rate for PIS and COFINS levied upon foreign exchange fluctuation related to exports and debts, and to revenues related to hedge transactions.

On May 20, 2015, the Decree no. 8.451 ("Decree no. 8.451/15") defined the concept of "elevated foreign exchange fluctuation" in order to allow taxpayers to swap their tax recognition regime from accrual basis to cash basis, and vice-versa, whenever the described situation arises. This concept is relevant for assessing taxes on profits (IRPJ and CSLL) and taxes on revenues (PIS and COFINS).

According to the Decree, an "elevated foreign exchange fluctuation" period is defined as any calendar month in which the United States Dollar exchange rate varies (whether positively or negatively) by more than 10% in comparison to the Brazilian Real. The variation shall be determined by comparing the Dollar exchange rate to the Brazilian Real on the first and on the last day for any given calendar month.

The Decree also modified the Decree no. 8.426/15, for setting zero percent rates for PIS and COFINS levied on foreign exchange revenues related to exports and debts, and on revenues arising from hedge transactions. The Decree no. 8.426/15 originally established a 0.65% PIS and a 4% COFINS rates as a general rule for financial revenues. Thus, the Decree no. 8.426/15 was enacted to create the aforementioned exceptions.

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