



# memorandum to clients

03.15.2017

## FEDERAL SUPREME COURT DECIDED THE ICMS IS NOT INCLUDED IN THE PIS/COFINS CALCULATION BASIS

On 3/15/2017, the Plenary of the Federal Supreme Court (“STF”), during the trial of the extraordinary appeal (“RE”) 574.706/PR, with binding effects, decided is unconstitutional the inclusion of the Tax on Circulation of Goods and Transportation and Communication Services (“ICMS”) in the Contributions to PIS/COFINS calculation basis.

In summary, the Justices Carmen Lucia (reporting justice), Rosa Weber, Luiz Fux, Ricardo Lewandowski, Marco Aurélio and Celso de Mello, voted in order to exclude the ICMS of the PIS and COFINS calculation basis, defending that the value of this tax does not represent revenue, but a mere accounting entry that will be passed on to the State.

In opposite, voted the Justices Edson Fachin, Roberto Barroso, Dias Toffoli and Gilmar Mendes.

In that sense, the Plenary comprehended that the ICMS is not included in the PIS/COFINS calculation basis and decided against the modulation of the decision’s effects.

The law office **Schneider, Pugliese** is available to discuss and define the best strategy in selecting, filing and conduct of judicial measure, as well as the possible restitution of unduly collected values.

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