

MEMORANDUM TO CLIENTS

09.03.2014

Federal Courts of the Federal District admits that taxes on Industrialized Products (IPI) and Import Taxes (II) might be excluded from the tax base for the assessment of Import PIS/COFINS

Recently, the 9th Federal Court of the Judiciary Section of the Federal District acknowledged the right of the taxpayer to pay Import PIS/COFINS contributions on a tax base including only customs value, without the inclusion of the ICMS and contributions, in addition to IPI and II.

Based on the Appeal to the Superior Court of Justice (RE) no. 559.937/RS, decided on March 2013 by the Federal Supreme Court (STF)¹, the Federal Judge Lana Lúgia Galati ordered in addition to the exclusion of the ICMS and of contributions, the exclusion of the amounts for IPI and II, as irrespective of the authorization under the Federal Constitution of 1988 to charge PIS and COFINS to the Importer of foreign goods and services, it provisions, also, for the application of the rate of taxation only on customs value, which is an expression ordered by the current customs legislation as the value composed of (i) freights for the imported merchandise; (ii) expenditures with loading, unloading and handling; and (iii) merchandise insurances.

Along these lines, other amounts eventually included in the tax base of the foregoing, such as, e.g., IPI and II, might be opposed before the Judiciary Branch, as foreign to the concept of customs value and to the constitutional provisions.

We ought to highlight that this matter is material for Import PIS/COFINS taxpayers, and we avail ourselves for further support and clarifications.

¹Under the RE no. 559.937/RS, the STF stated the unconstitutionality of the article 7th, item I, of the Law no. 10.865/04 when it added to the tax base for Import PIS/COFINS the amounts of ICMS taxed on customs clearance, in addition to the values of contributions.

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Team responsible for preparing Memorandum to Clients:

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

Flavio Eduardo Carvalho (flavio.carvalho@souzaschneider.com.br)

Thomas Ampessan Lemos da Silva (thomas.ampessan@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

WWW.SOUZASCHNEIDER.COM.BR