

PROVISIONAL MEASURE N° 694, DATED SEPTEMBER 30, 2015

Provisional Measure n° 694 (“MP n°. 694/2015”), which modified the tax treatment applicable to the interest on shareholders’ equity (“JCP”) and sets other provisions, was published on September 30, 2015, in the special edition of the Federal Official Gazette.

Article 1 of the provisional measure in question amended the wording of the heading of article 9 of Law n° 9,249, dated December 26, 1995 (“Law n°. 9.249/1995”), in order to limit, in the ascertainment of the taxable income, the deductibility of the JCP, paid or credited to the holder, partner or shareholder of the legal entity, at the lowest amount between the one calculated *pro rata die*, based on the Long-Term Interest Rate (“TJLP”), and the one obtained through the application of a 5% (five percent) rate per year.

Furthermore, this provision modified the wording of § 2° of the mentioned article, increasing the tax rate of the Withholding Income Tax charged on the payment or credit of such interest, from 15% (fifteen percent) to 18% (eighteen percent). Such tax treatment changes of the JCP will come into force as of January 1, 2016.

It is worth stating that the JCP paid or credited to the holder, partner, or shareholder resident and domiciled in tax-favored countries is still subject to Withholding Income Tax at a 25% (twenty-five percent) rate.

Moreover, MP n°. 694/2015 included § 7° of article 19, § 13 of article 19-A, and § 5° of article 26, all from Law n°. 11,196, dated November 21, 2005 (“Law n°. 11,196/2005”), in order to suspend, for the calendar year of 2016, tax incentives with technological research and development of technological innovation, which may be deducted at the calculation of the tax basis of the Corporate Income Tax (“IRPJ”) and the Social Contribution on the Net Income (“CSLL”). These benefits currently provide for the following:

- (i) The use by legal entities of up to 80% (eighty percent) of the sum of the expenditure with technological research and development of technological innovation;
- (ii) The use of up to 100% (one hundred percent) of the sum of the expenditure with projects of scientific, technological, and technological innovation research conducted by the Scientific and Technological Institution (ICT) or private non-profit scientific and technological entities; and
- (iii) The use of up to 180% (one hundred and eighty percent) of the expenditure with technological research and development of technological innovation related to IT and automation activities, in the case of legal entities using the benefits provided for in Laws n° 8,248/1991, dated October 23, 1991 (“Law n° 8,248/1991”), n° 8,387, dated December 30, 1991 (“Law n° 8,387/1991”) and n° 10,176, dated January 11, 2001 (“Law n° 10,176/2001”).

MP n° 694/2015 further amended the wording of article 8 of Law n° 10,865, dated April 30, 2004 (“Law n° 10,865/2004”) and of article 56 of Law n° 11,196/2005, in order to increase the tax rates of the Contribution to the PIS-Importation and COFINS-Importation to 1.11% (one point one one percent) and 5.02% (five point zero two percent), respectively, owed by importers and producers of petrochemical products intended for petrochemical facilities and chemical industries. Such amendments will come into force as of January 1, 2016.

MEMORANDUM TO CLIENTS

10.07.2015

Lastly, the mentioned provisional measure repealed the provisions in Laws n° 10,865/2004 and n°. 11,196/2005, which (i) address the reduction of the tax rates of the Contribution to the PIS and COFINS applicable to importers and producers of petrochemical products intended for petrochemical facilities and chemical industries; (ii) authorized the Executive Branch to grant presumed credit of the Contribution to the PIS and COFINS to the petrochemical facilities; and (iii) address the ascertainment and use by the petrochemical facilities of the credit of the Contribution to the PIS and COFINS at the acquisition of petrochemical products.

The repeals provided for in items (i) and (ii) will come into force as of January 1, 2016, whereas those in item (iii) will only come into force as of January 1, 2017.

Souza, Schneider, Pugliese e Sztokfisz Advogados law firm is entirely available to assist its clients in relation to the above matters.

MEMORANDUM TO CLIENTS

10.07.2015

Team responsible for preparing Memorandum to Clients:

Igor Nascimento de Souza (igor.souza@souzaschneider.com.br)

Henrique Philip Schneider (philip.schneider@souzaschneider.com.br)

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

Cassio Sztokfisz (cassio.sztokfisz@souzaschneider.com.br)

Fernanda Donnabella Camano de Souza (fernanda.camano@souzaschneider.com.br)

Diogo de Andrade Figueiredo (diogo.figueiredo@souzaschneider.com.br)

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

Vitor Martins Flores (vitor.flores@souzaschneider.com.br)

Maria Carolina Maldonado Mendonça Kraljevic (mariacarolina.maldonado@souzaschneider.com.br)

Rodrigo Tosto Lascala (rodrigo.tosto@souzaschneider.com.br)

Sérgio Grama Lima (sergio.lima@souzaschneider.com.br)