

09.18.2014

## Supreme Court of Justice concludes the judgment on the illegality of the SAT/RAT rate increase

The First Panel of the Superior Court of Justice (STJ), on 9/16/2014, concluded the judgment of the Special Appeal No. 1.425.090/PR, which deals with the legality of the increase in the Contribution to Work-Related Injury Insurance (SAT), currently designated Work-Related Environmental Risk (RAT), provided for in item II of Article 22 of Law No. 8.212/91, raised by means of Decree No. 6.957/2009.

In this case, FTP Powertrain Technologies do Brasil<sup>1</sup> filed a lawsuit aiming at refraining from paying the aforementioned charge under the terms of reclassification determined by Decree No. 6.957/2009, which reclassified the activity of manufacture of parts and accessories for motor system of motor vehicles, main activity of the company, from medium to severe degree of risk, situation that generates SAT/RAT rate increase from 2% to 3%.

When the trial began, Minister Napoleão Nunes Maia Filho (Rapporteur) voted for the illegality of that increase, considering that no statistic data able to demonstrate the effective increase of injuries in the activity developed by the company have been submitted by the Executive Branch, therefore justifying such reclassification and consequent increased rate. This understanding was accompanied by Ministers Arnaldo Esteves Lima and Benedito Gonçalves.

On 9/16/2014, Minister Sérgio Kukina presented his vote upon further review, disagreeing with the Rapporteur's understanding. For him, Decree No. 6.957/2009 would be in accordance with tax legislation and any new factual or evidentiary analysis would find an obstacle in the Abridgment No. 7 issued by STJ.

Therefore, the First Panel of the Supreme Court of Justice (STJ), by majority, restored the sentence, so that the company should collect the Contribution to SAT/RAT at a rate of 2%, thus excluding the reclassification of its activity as promoted by Decree No. 6.957/2009.

Although the concrete case is about a company whose business is the manufacture of parts and accessories for motor system of motor vehicles, we understand such decision is applicable to all and any company that has had its contribution rate to SAT/RAT increased, as provided by Decree No. 6.957/2009. As the Decree has reclassified the degree of risk of the activity of various sectors, we recommend the filing of lawsuits, so that the unjustifiable and illegal rate increase (by means of reclassification of degree of risk of the activity) is acknowledged, since there is no factual basis for that. Such action will impact future collections and allow the refund of what was paid in the past.

Finally, we must register that the financial impact of the issue may be even more significant if the Accident Prevention Factor (FAP) of the taxpayer is greater than 1<sup>2</sup>, because in this situation the rate increase that may have been determined by Decree No. 6.957/2009 will mean even higher charges

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<sup>1</sup>FTP Powertrain Technologies do Brasil is a division of Fiat Group, specialized in developing, producing and selling motors and gear-boxes.

<sup>2</sup>FAP is a multiplier that ranges from 0.5 to 2, which should apply to the Contribution rate to SAT/RAT.

# MEMORANDUM TO CLIENTS

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We remain available to you for any clarifications that may be required.

*[Click here](#) to verify the list of main activities and corresponding degrees of risk reclassified by Decree No. 6.957/2009, as an amendment to Decree No. 3.048/1999.*

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We stress out the constitutionality of FAP is also object of challenge by the Judiciary Branch, and there are two Direct Actions brought on the grounds of unconstitutionality in progress at the Supreme Federal Court (STF).

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