

MEMORANDUM TO CLIENTS

01.10.2014

Responses to Inquiries of the Federal Revenue now have a normative nature – Normative Rule no. 1.434 dated December 30, 2013.

The Federal Revenue of Brazil (“RFB”) published Normative Rule no. 1,434, on Jan 2, 2014, whereby it attributes normative effectiveness and binding effect to its Inquiry Responses, which means an important change to tax legislation.

As known, the RFB is commonly inquired by the taxpayers, through Response to Inquiries, to clarify their position on the interpretation and application of tax rules to concrete situations. Previously, the instructions of these Responses to Inquiries had a binding effect only on the parties, that is, on the inquirer and the National Treasury, and did not extend to third parties¹.

In this regard, the consolidated case laws of the Administrative Council of Tax Appeals (“CARF”) state that the Response to Inquiries is an individual rule that binds the Tax Administration only in relation to the inquirer².

With the publication of the mentioned Normative Rule, however, the Cosit (General Tax Coordination) Responses to Inquiries and the Divergence Responses (issued at the verification of conflict among different Responses to Inquiries) now have a binding effect on an RFB level, backing up all taxpayers applying them, even if they have not officially consulted the Federal Revenue.

Therefore, we understand that the Cosit Responses to Inquiries and the Divergence Responses become even more important in the tax legislation, taking into account that their effects surpass the parties to the proceeding that requested their issue.

¹ Administrative Council of Tax Appeals: Appellate Decision no. 3403-002.555, session of October 25, 2013.

² Administrative Council of Tax Appeals: Appellate Decision no. 3101-001.209, session of August 22, 2012.

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As a result, and with the purpose of granting broad publicity to the conclusions of the RFB, Normative Rule no. 1,434/13 determines the publication on the internet (www.receita.fazenda.gov.br) of Cosit Responses to Inquiries and Divergence Responses, except, however, for the information protected by tax secrecy in relation to the taxpayer that filed the inquiry.

It is important to state that the taxpayers that do not agree with the position issued by the RFB are authorized to judicially challenge the conclusions of such Responses to Inquiries and any penalties imposed by the tax authorities based thereon.

Should you require any further clarifications on the above matter and assistance in the most adequate judicial and administrative measures, please feel free to contact us.

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Team responsible for preparing Memorandum to Clients:

Igor Nascimento de Souza (igor@ssplaw.com.br)

Henrique Philip Schneider (philip@ssplaw.com.br)

Flavio Eduardo Carvalho (flavio@ssplaw.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.SSPLAW.COM.BR