

# MEMORANDUM TO CLIENTS

07.02.2015

## **The Presidency of the Republic and the Ministry of Treasury Make Changes to CARF's Structure**

In the April 30, 2015 edition of the Federal Official Gazette ("DOU"), two normative rules that alter the operation of the Administrative Court of Tax Appeals of the Ministry of Treasury ("CARF") were published.

The first was Decree no. 8,441/15, which provides for the remuneration paid to Councilors representing taxpayers at CARF for each trial session in which they participate, up to a limit of six sessions per month. As a result, the Decree sets forth that these court Councilors are to comply with the limits of the practice of law under the Bylaws of the Brazilian Bar Association ("EOAB") created by Law no. 8,906/94.

The EOAB determines, pursuant to its Article 28, II, that "the practice of law is incompatible with the activities of all of those engaged in trial duties in collective deliberation bodies of the government", and, pursuant to its Article 30, I, that "civil servants of the government are prevented from practicing law in connection with the Public Treasury that remunerates them".

Within this context, the Minister of Treasury consulted the Federal Council of the Brazilian Bar Association ("OAB") on the application of these limits to Councilors representing taxpayers. In its reply, published in the DOU of May 26, 2015, OAB confirmed the application of the *incompatibility* provided for in EOAB, Article 28, II, to the case; and, due to such ruling, they considered it was no longer necessary to assess the existence of any *impediment* provided for in EOAB, Article 30, I, since, in this regard, the inquiry made by the Minister was "invalid, since this is a case of total incompatibility with the practice of law, not one of impediment". As a result, OAB set a term of 15 days for incumbent Councilors that represent taxpayers, who are also engaged in the practice of law, to formalize their option for only one of the two activities.

The second normative rule published in the DOU of April 30, 2015 was CARF Rule (*Portaria*) no. 21, which created CARF's Ethics Committee ("CE-CARF") and approved its Bylaws. Some of the main duties of the CE-CARF include the application of the "Code of Ethics or Conduct" of the Court and the "ascertainment, ex-officio or through accusations, of a fact or conduct in disagreement with the pertinent ethical standards". Although the Committee has already been created, its members have not been appointed yet.

Should you require any further information on the above, please feel free to contact us.

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