

memorandum to clients

02.25.2016

The Administrative Council of Tax Appeals (CARF) stress its position on the concept of inputs to Contributions to PIS/COFINS

This morning, the 3rd Panel of the Superior Chamber of the Administrative Council of Tax Appeals (CSRF), revisited the discussion about the concept of inputs to the Contribution of PIS (Social Integration Program) and COFINS (Contribution for the Financing of Social Security).

Despite CARF's understanding, in the past few years, be reinforced in the sense of RFB Normative Instructions (Ins) n. 247/2002 and 404/2004 exceeded restrained the definition of input, the matter became relevant with the possibility of the CSRF issues a different comprehension of the definition due to some panel's members unused perception on the topic.

However, by majority, the Counselors decided that the understanding about the inputs definition should remain, as long as at this moment there is no legislation or jurisprudence authorizing a conversion of the council's understanding. They emphasized that a change without a solid judicial base would only result in legal uncertainty, leading discredit to the Council.

Moreover, they highlighted that the current CARF's understanding is aligned to the most recent Superior Court of Justice's statements and quoted the Justice Mauro Campbell's vote, issued during the ruling of the Especial Appeal 1.246.317/MG, occurred on 19.05.2015, as a paradigm to be followed in the definition of inputs to PIS/COFINS.

Thereby, the 3rd Panel of CSRF remained loyal to your grasp of the legislation by stressing the relevance of the essentiality and pertinence criteria to define the input. Reinforcing, in this means, that the definition of input to PIS/COFINS is unique and does not merge with the concept of expenses adopted in the Corporate Income Tax law or the cost with raw materials or intermediated products or package's material to the Tax on Manufactured Products (IPI).

After establish the aforementioned references to the concept of inputs, the 3rd Panel began the individual analysis of the disallowance appointed by the inspection in the use of the PIS/COFINS credits by an industrial company of the food sector, and decided the following:

- 1) **Cleaning and Disinfection material:** essential to these companies/entitle the credit use;
- 2) **Package Material (from one job station to the other [transport]):** essential to these companies/entitle the credit use;
- 3) **Industrial Uniform acquisition:** essential to these companies/entitle the credit use;
- 4) **Industrial Uniform washing:** not essential to the productive activity therefore the unfavorable understanding to the contributories/does not entitle the credit use¹.

¹ In the present case the contributory also aimed the use of extemporaneous credits (which the CSRF was favorable to the contributories) and presumed agribusiness credit (also favorable to the contributories).

² REsp 1.221.170/PR, holding the Justice Og Fernandes after the forecast of the Rapporteur Justice, Napoleão Nunes Maia, forecast your vote favorable to the contributories, acknowledging that the RFB Normative Instructions are exceeding restraining.



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It is worth emphasize that this decision brings an embracing environment to the industrial companies, specially, those from the food sector, although remain some doubts about the conception of input to the commercial and service providers companies in which the inputs are profoundly diverse.

Our law office which works in the leading case about the matter, currently awaiting to be ruled by the Supreme Court of Justice², also actively participated in the maintenance of CARF's understanding and remains at your disposal should you require any further information or clarification on the above matter.

Team responsible for preparing Memorandum to Clients:

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

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

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



r. Cincinato Braga 340 , 9º andar
São Paulo , SP , Brasil , 01333-010
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 , Brasil , 70715-900
tel +55 61 3251 9403 , fax +55 61 3251 9429

souzaschneider.com.br