

MEMORANDUM TO CLIENTS

03.17.2015

Tax Ruling COSIT no. 60/2015 –International Remittances from Brazil – Proof of Payment of Taxes

On March 6, 2015, Tax Ruling no. 60, issued by the General Tax Coordination (“COSIT”) of the Brazilian Federal Revenue Services (“RFB”) was published on the Federal Official Gazette. Tax Ruling no. 60/2015 discusses the requirements to proof payment of taxes in order to remit funds abroad from Brazil, as foreseen in article 880 of the Brazilian Income Tax Regulations, approved by Decree no. 3,000, from April 26 1999 (“RIR/1999”).

According to the Tax Ruling, international remittances of funds shall only be authorized by the Brazilian Central Bank (“Bacen”) against proof of payment of taxes involved in the transaction. For that purpose, a Declaration of Offsetting (“DCOMP”) was not considered a suitable instrument.

However, article 156 of the Brazilian Tax Code foresees that both payment and offsetting are manners of extinguishing tax debts. Therefore, according to our understanding, DCOMPs are suitable instruments to meet the requirements of article 880 of RIR/1999. In this sense, we also highlight that the Superior Court of Justice has already recognized offsetting as having the same effects of payment in order to apply the institute of voluntary tax disclosure (Appeal on Special Appeal no. 1,136,372/RS, 1st Panel, Reporting Judge Minister Hamilton Carvalhido, published on May 18, 2010).

Therefore, we understand that it is possible to discuss RFB’s interpretation set forth on Tax Ruling no. 60/2015 before judicial courts, in order to obtain recognition that DCOMPs are suitable instruments to proof tax extinguishment and authorize conclusion of international remittances from Brazil.

It is important to highlight that according to article 9 of Normative Instruction no. 1,396/2013, tax rulings issued by COSIT have binding effects before RFB and therefore direct the actions of the employees of that organ.

We remain at your disposal for any further clarifications.

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