



memorandum to clients

9/5/2017

CSRF confirms its position in accepting tarps and straps as inputs for PIS and COFINS credits

The Superior Chamber of Tax Appeals (“CSRF”) of the Administrative Council of Tax Appeals (“CARF”) has once again judged the concept of “input” for PIS and COFINS credits purposes.

Despite the reiterated understanding of CARF in recent years that Normative Instructions (“IN”) no. 247/02 and 404/04 of the Brazilian Internal Revenue Service restricted excessively the concept of “input” set forth in Laws no. 10,637/02 and 10,833/03, the case gained relevance as taxpayers saw the possibility of the CSRF changing its understanding with the admission of new members.

However, by a unanimous vote, councilors sustained the understanding consolidated by CARF that such IN are illegal, given that there is no modification, whether by force of legal modification or court precedent interpretation. It was highlighted that CARF’s current understanding is aligned with the most recent judgments at the Superior Court of Justice, such as REsp no. 1,246,317/MG¹, on May 19, 2015, which is a paradigm in the definition of the concept of “input” for PIS and COFINS purposes.

Thus, CSRF maintained its interpretation of the law, reiterating the relevance of the essentiality and pertinence criteria of expenses in the productive process for the definition of “input.” It was reaffirmed that the concept of “input” in the context of PIS and COFINS is autonomous and is not to be confused with the same concept within the scope of Corporate Income Tax or the Tax on Industrialized Products.

After setting these parameters, the chamber analyzed each individual item of the notice of deficiency issued against the industrial company, which manufactures food products. The councilors stated that truck tarps and straps used to fasten cargo for road transportation are essential for the company’s core business, thus authorizing the appropriation of credit.

Thus, taxpayers in a similar situation are in an excellent position to appropriate PIS and COFINS credits on their expenses with truck tarps and fastening straps.

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¹ REsp no. 1,221,170/PR, currently with Justice Og Fernandes following the vote of Rapporteur Justice Napoleão Nunes.



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