



memorandum to clients

2/22/2018

STJ finishes judgment of the concept of “input” for purposes of PIS and COFINS credits, adopting the criterion of essentiality as relevance for taxpayers’ activities

On February 22, 2018, the First Trial Party of the Superior Court of Justice (“STJ”) completed, under the repetitive appeals regime, the judgment of Special Appeal no. 1.221.170/PR, in which our firm acted as counsel. The court defined the concept of input, found on Laws no. 10.637/02 and 10.833/03, for the purposes of acknowledging PIS and COFINS credit rights assessed on expenditures with goods and services.

By a majority, the justices declared that the concept of “input” of Normative Instructions no. 247/02 and 404/04 is illegal, as they are not sustained by the wording of article 3(II) of Laws no. 10.637/02 and 10.833/03, thus compromising the efficacy of the non-cumulativeness PIS and COFINS system.

Thus, pursuant to the decision held by a majority of the court, the concept of input is that which relates to the criterion of essentiality as relevance of the good or service to the activity of the taxpayer, whether they are employed directly or indirectly.

On her opinion delivered today, Justice Assusete Magalhães, following Justice Regina Helena Costa, declared that the criterion of essentiality as relevance is broader than that of pertinence, or just essentiality, up until then adopted unanimously by the Administrative Council of Tax Appeals.

To that effect, she pointed out that expenses with personal protective equipment, for instance, are not essential under the scope of the taxpayers’ activity, but are essential if analyzed under the light of its relevance for the attainment of that same activity.

Schneider, Pugliese, is at your service to assess and debate which goods and services are eligible for input crediting as per STJ’s concept, so as to define the best strategy to conduct administrative and judicial discussions.

