

MEMORANDUM TO CLIENTS

11.06.2015

Law no. 13.169/2015 – Increase of the rate of Social Contribution on Net Income (“CSLL”) – Unconstitutionality – Offense to the constitutional principles of Reference, Solidarity and Isonomy, Anteriority and Non-Retroactivity

The Federal Official Gazette (“D.O.U.”) published in October 2015 Law no. 13.169/2015, which, in its Article 1, amended the normative provisions set forth by Law no. 7.689/1988, and increased the Social Contribution on Net Income (“CSLL”) rate to financial and similar institutions, according to the table below:

CSLL rate set forth by law	Type of legal entities	Period of effectiveness of the rate
20%	Those included in items I to VII and X of Article 1 of LC no. 105/2001 – Banks of any type, distributors of securities, exchange and securities brokers, credit companies, financing and investments, real estate credit companies, credit card administrators, trade lease companies and associations of savings and loans	September 1, 2015 and December 31, 2018 (after January 1, 2019, the rate will return to 15%)
17%	Those set forth in item IX of § 1 of Article 1 of LC no. 105/2001 – Credit Cooperatives	October 1, 2015 and December 31, 2018 (after January 1, 2019, the rate will return to 15%)
9%	Other legal entities, according to the text of the Law	Undetermined

MEMORANDUM TO CLIENTS

11.06.2015

Notwithstanding the foregoing, such law brought normative provisions that **were not set forth in the original normative text** of Provisional Remedy (MP) no. 675, dated May 21, 2015, such as:

Application of the rate of 20% **for undetermined period**, with the period comprised between September 1, 2015 and December 31, 2018; and

Creation of a specific rate of 17% for **credit cooperatives** for determined term, with the period comprised between October 1, 2015 and December 31, 2018;

In light of the lack of any justifications and being certain that these increases occur in the scope of the tax adjustment intended by the Government aiming at balancing the public accounts, the character exclusively of collection of such increase of rates seems clear to us. However, the contributions will only be valid if obeying the principles of reference, isonomy, and solidarity set forth in the Federal Constitution, which are not observed to the extent in which they require a financial effort only from a group and not from society as a whole, with such group not even being benefited by any differentiated state action or not encumbering in excess the Social Security.

Moreover, it should be stressed that the Federal Supreme Court (STF) has been maintaining a position in several opportunities for the need to observe the principle of the nonagesimal anteriority, effective from the date of publication of the law, whenever the Provisional Remedy suffers substantial innovations in its conversion into law.

Evidently, the majoring of the CSLL rate to financial institutions and credit cooperatives with **immediate and retroactive** effects, as set forth by Article 17 of such Law, frontally breaches not only the principle of anteriority set forth in §6 of Article 195 of CF/88, but also the principle of non-retroactivity set forth in Article 150, III, item "a" of the Federal Constitution of 1988, reason why we recommend taxpayers impacted by the measure to immediately file a legal remedy to remove the majoring to the rates imposed by Law no. 13.169/2015, to the extent applicable to year 2015.

We are at your disposal for any clarifications deemed necessary, considering the focus of engagement of the office before higher courts.

¹Article 1 - Law no. 7.689, dated December 15, 1988, will become effective with the following changes:

"Article 3

I - 20% (twenty percent), in the period between September 1, 2015 and December 31, 2018, and 15% (fifteen percent) from January 1, 2019, in the case of legal entities of private insurance, of the capitalization and those in items I to VII and X of § 1 of Article 1 of Complementary Law no. 105, dated January 10, 2001;

II - 17% (seventeen percent), in the period between October 1, 2015 and December 31, 2018, and 15% (fifteen percent) from January 1, 2019, in the case of the legal entities mentioned in item IX of § 1 of Article 1 of Complementary Law no. 105, dated January 10, 2001;

III - 9% (nine percent), in the case of other legal entities" (NR)

²RE 568503, Relator(a) [delivers the opinion]: Min. CÁRMEN LÚCIA, Full Court, judged on 02/12/2014, PUBLIC 14-03-2014.

³Article 17. This Law will become effective on the date of its publication, producing its effects:

I - from the first day of the fourth month following that of publication of Provisional Remedy no. 675, dated May 21, 2015, in relation to the new wording provided to items I and III of Article 3 of Law no. 7.689, dated December 15, 1988, according to Article 1 of this Law;

II - from the first day of the fourth month following that of publication, in relation to Article 15 of this Law; and

III - from the date of publication of this Law, in relation to the other provisions.

MEMORANDUM TO CLIENTS

11.06.2015

Team responsible for preparing Memorandum to Clients:

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

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

Fernanda Donnabella Camano de Souza (fernanda.camano@souzaschneider.com.br)

Diogo de Andrade Figueiredo (diogo.figueiredo@souzaschneider.com.br)

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

Thomas Ampessan Lemos da Silva (thomas.ampessan@souzaschneider.com.br)

Alberto Frederico Teixeira Soares Carbonar (alberto.carbonar@souzaschneider.com.br)

Tatiana Ergang Barros (tatiana.barros@souzaschneider.com.br)