

memorandum to clients

01.09.2017

Provisional Measure no. 766/2017 and the Tax Regularization Program

On January 5, 2017, there was published Provisional Measure no. 766 (“Provisional Measure no. 766/2017”), which enacts the Tax Regularization Program (“PRT”), to be administered by the Brazilian Internal Revenue Service (“SRFB”) and the Attorney-General Office of the National Treasury (“PGFN”).

According to article 1 of Provisional Measure no. 766/2017, natural persons and corporations will be able to pay up tax or non-tax debts which were due by November 30, 2016, including those which were previously included in active or inactive installment agreement programs; those which are being discussed in administrative or judicial proceedings; and those which were assessed by the SRFB after the enactment of the Provisional Measure.

Eligible persons may enroll in the PRT in the 120 days following the publication of the application procedures which will be made available by the SRFB and the PGFN. By enrolling in the PRT, applicants a) make an irrevocable and irreversible confession of the tax debts in question; b) become liable to paying in due time the installments of debts consolidated under the PRT and those due by November 30, 2016, whether they have or not been remitted to the PGFN for enforcement; c) are prevented from including PRT debts in any other future form of installment agreement, except for renegotiations under article 14-A of Law no. 10,522/2002; and d) become liable to keeping up with all Employees’ Social Security Fund (“FGTS”) obligations.

Payment forms for debts administered by the SRFB are provided for in article 2 of Provisional Measure no. 766/2017, to wit:

- Upfront and in cash: at least 20% of the consolidated debt amount, with the remainder to be paid through the offsetting of previous-year losses or with tax credits from other SRFB-administered taxes;
- 24 installments: cash payment of at least 24% of the consolidated debt amount in 24 monthly installments, with the remainder to be paid through the offsetting of previous-year losses or with tax credits from other SRFB-administered taxes;
- 96 installments: upfront cash payment of at least 20% of the consolidated debt amount, with the remainder to be paid in up to 96 monthly installments; or
- 120 installments: payment of the consolidated debt amount in up to 120 monthly installments, calculated to respect the minimum percentages set forth by section IV of article 2 of Provisional Measure no. 766/2017 in relation to the consolidated debt amount¹.

It is important to note that in the first two forms of payment, after the upfront payment or of the 24th installment, the remaining debt may be paid in 60 further installments, beginning the month after the last installment payment.

Additionally, tax credits arising from previous year losses are eligible for payment under the PRT are those which were incurred into by December 31, 2015, and declared by June 30, 2016. Applicants may use their

¹ 10th to 12th installment: 0.5%; 13th to 24th installment: 0.6%; 25 to 36th installment: 0.7%; and 37th installment onwards: remaining balance, in up to 84 monthly installments.



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own credits, as well as credits of third parties liable to tax under a legal provision, and of companies controlled by the applicant or the applicant's controllers, as of December 31, 2015.

Regarding debts which are under the authority of the PGFN for enforcement, article 3 of Provisional Measure no. 766/2017 lists the following payment forms:

- 96 installments: 20% of the consolidated debt amount, with the remained to be paid through 96 monthly installments; or
- 120 installments: payment of the consolidated debt amount in up to 120 monthly installments, calculated to respect the minimum percentages set forth by section II of article 3 of Provisional Measure no. 766/2017 in relation to the consolidated debt amount².

Another relevant point is that for debts under enforcement by the PGFN, the enrollment of debts in amounts greater than BRL 15,000,000 requires the presentation of a warranty or a financial surety securing the debt. Also, the minimum installment amount for PRT applicants is BRL 1,000 for corporations, and BRL 200 for natural persons.

Despite there being no late payment fines or interest reductions, the PRT may be an interesting option for companies with tax credits from previous year losses, or with tax credits from other SRFB-administered taxes, as well as those whose tax debts are being enforced by the PGFN, which may be conveniently paid in up to 120 monthly installments.

² Same as above.



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