

memorandum to clients

02.07.2017

Ruling no. 1,687, of Jan. 31, 2017 – Tax Regularization Program

On Feb. 1, 2017, there was published Ruling no. 1,687, of the Brazilian Internal Revenue Service, regulating the Tax Regularization Program (“PRT”), enacted by Provisional Measure no. 766, of Jan. 4, 2017.

According to this Ruling, taxpayers shall opt for the PRT between Feb. 1, 2017 and May 31, 2017, through a request to be sent exclusively via the RFB website. Different requests shall be presented for (i) debts related to social security contributions, as well as the ones created as substitution, and contributions due to other entities and funds and (ii) other debts administrated by the RFB.

Upon presentation of the request, the taxpayer must pay the amount corresponding to the upfront payment or to the first installment of the PRT, until the last working day of the month when the request is presented, respecting the minimum value of installments, of BRL 200.00 per month for individuals, and BRL 1,000.00 per month for entities. Payments via DARF shall be performed under code 5184, whereas payments via Social Security Collection Document (Guia da Previdência Social - “GPS”) must be performed under code 4135, for entities, of 4136, for individuals.

If the debts are object of administrative or judicial dispute, the taxpayer that opted for PRT must expressly give up the disputes before adhering to the Program, as well as renounce its legal claims concerning the debts in the relevant records. For judicial lawsuits, the taxpayer must also request the extinction of the lawsuit without solution on merits, in accordance with section 487, III, “c” of the Code of Civil Procedures. The taxpayer shall present the RFB of its jurisdiction proof that such procedures were adopted concerning the judicial lawsuits until May 31, 2017, that is, until the end of the period for opting.

In turn, if the taxpayer intends to include debts already included in previous term-payment programs, it shall expressly give up on such term-payment programs at the moment it makes the option for PRT, on RFB’s website. Notice that, if the request for adhesion is canceled or does not produce effects, the Ruling on point provides that the term-payment programs the taxpayer gave up will not be restored.

After formalizing the procedures for adhesion, the RFB will inform the term for the taxpayer to present the data necessary for the consolidation of the term-payment program or of the upfront payment using credits.

During such period, the taxpayer shall calculate and collect the amount of debts object of the term-payment program, divided by the number of installments intended, respecting the minimum value of installments.

Moreover, taxpayers that choose to use tax credits or credits of tax losses or CSLL negative basis must inform the amounts to be used for the purposes of liquidation of the debts object of the PRT.

Notice that the credits of tax losses and negative CSLL basis that may be used within the PRT are the ones assessed until Dec.31.2015 and declared until Jul. 29, 2016¹. These credits may belong to: (i) the taxpayer itself; (ii) the one responsible for the tax; (iii) the one jointly liable for the debt; (iv) direct or indirect daughter or mother entities; or (v) entities under direct or indirect control of the same entity on Dec. 31, 2015.

¹ The last date for declaration of credits as set forth in Provisional Measure no. 766/17 was Jun. 30, 2016. However, on Feb. 2, 2017, there was published an amendment to the Provisional Measure, postponing such deadline to Jul. 29, 2016. The Ruling ought to be amended soon to reflect this correction.



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On the other hand, the legislation allows the use of tax credits held by the taxpayer regarding periods prior to the option for PRT. According to the RFB Ruling, these credits must be object of an Electronic Request for Return or Reimbursement, through RFB's Program PER/DCOMP, transmitted prior to the term of notification to present the data necessary for its consolidation.

If the use of credits is fully or partially rejected, the taxpayer will have thirty days to pay the debts that were not amortized.

Finally, this Ruling provides that the adherence to the PRT implies the taxpayer's consent regarding the receipt of notifications via electronic mailbox. Therefore, the taxpayer that opts for this Program must access regularly the virtual environment of the Taxpayer's Service Center (Centro de Atendimento ao Contribuinte - "e-CAC") of the RFB in order to check the receipt of notifications related to the Program.

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