

MEMORANDUM TO CLIENTS

TAX EXEMPTION IN EXPORTS INTERMEDIATED BY "TRADING COMPANIES"

Date **09/05/2013**

In August 30, Justice Luís Roberto Barroso from the Brazilian Supreme Court (STF) issued a decision according to which the controversy regarding the application of the exemption provided in article 149, § 2, I, of the Constitution to indirect exports – i.e., those made through the so-called "trading companies" - is a matter subject to "General Repercussion"¹.

The trial of the subject will occur in Extraordinary Appeal n. 759,244, filed by a company in the sugar and ethanol sector, defending the applicability of the exemption provided by article 149, § 2, I, of the Constitution to such export incomes. The company argues that despite the constitutional provision, the Brazil's Federal Revenue (RFB) applies Article 245 of the RFB Normative Ruling n. 03/2005², taxing revenues from indirect exports as if they were domestic sales, which means restriction of tax exemption only to sales made directly by the manufacturer to buyers domiciled abroad, without any provisions in Constitution in this sense.

Furthermore, as highlighted by Justice Barroso, "the controversy is relevant from an economic perspective and overcomes the subjective interests of the cause, affecting all companies that export from Brazil with intermediation of a 'trading company', i.e, most of the Brazilian exporters, who have no direct access to the international market".

The other Justices of the Supreme Court may present their their vote until the 19th of September, agreeing or not with Justice Barroso's understanding on the General Repercussion of the matter. If Barroso's position is confirmed by other Justices, once

¹ According to art. 543 of the Brazilian Civil Procedure Code, once recognized the general repercussion of the judgment of any matter, this means that its final conclusions on the issue will bind other agencies from the judicial and executive powers

² Although the mentioned rule (Article 245 of the RFB Normative Instruction No. 03/2005) was repealed, its provisions are repeated in another currently valid rule (Article 170 of the RFB Normative Instruction n.º 971/2009), maintaining the importance and relevance of the matter for exporting companies

the Full Bench of the Supreme Court judges the matter (extension of tax exemption to indirect exports), all other Courts in the country will have to follow its conclusions.

We remain at your disposal for any clarification.

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