

# MEMORANDUM TO CLIENTS

09.09.2015

## **RFB Rule no. 1.265/2015 – Special Administrative Collection**

Rule no. 1.265, of the Federal Revenue Office of Brazil (“RFB”), was published on Sep. 4, 2015, which, with the purpose of perfecting the procedures for the recovery of tax credits and increasing the collection of federal taxes, provides for the procedures related to the special administrative collection of enforceable debts of amounts equal or superior to R\$ 10,000,000.00 (ten million reais), per tax debtor, as well as debts of lower amounts, elected by the RFB units.

This Rule consolidates measures provided for in several legislations, as the case may be, to the tax debtor that, when summoned by the RFB, fails to regularize his debts:

- (i) enrollment with the Information Registry of Unsettled Credits of the Federal Public Sector (“CADIN”), preventing the performance of financial transactions and the execution of contracts, involving the use of public funds, and the concession of tax and financial incentives;
- (ii) the exclusion of special installment plans, such as REFIS, PAES and PAEX, reestablishment of the enforceability of the total unpaid tax credit, plus the charges applicable at the time of the taxable events, and the enforcement of the offered guarantee, if any;
- (iii) exclusion from the Federal Simplified Tax System for Small Businesses (Simples Nacional) ;
- (iv) exclusion of benefits and tax incentives, on a federal level, relative to taxes managed by the RFB, as well as on state and municipal levels, in case of debts of taxes intended to the social security;
- (v) inventory of assets and rights for the follow-up on the tax debtor’s equity;
- (vi) communication to Traffic Departments (“Detran”), Port Authorities and Maritime Courts, and to the Civil Aviation Department for the collection of the debt clearance certificate for the disposal of any type of chattel;
- (vii) communication to regulatory agencies for the repeal of permissions and public concessions;
- (viii) communication to the relevant federal administration body and to the state and municipal administration bodies in case of tax debts intended to the social security, for the termination of contracts entered into with the Government;
- (ix) claims to public banks for the purpose of not releasing credits arising from public funds, transfers and financing, including installments of financing that has not yet been released;
- (x) cancellation of the approval of the Express Customs Decision (Linha Azul) and of the certification of the Brazilian Program of Authorized Economic Operators;
- (xi) imposition of a fine to legal entities and their officers and other members of the higher management, in case of irregular distribution of bonuses and profits;
- (xii) imposition of a separate fine of 50% (fifty percent) on the monthly payment amount of the uncollected taxes determined on the estimated tax basis, even if tax losses have been ascertained or a negative tax basis for the social contributions on the net income in the corresponding calendar year;
- (xiii) claim for the filing of a tax provisional remedy;
- (xiv) tax claim for criminal purposes;
- (xv) statement of incapacity of a legal entity or the suspension of the enrollment in the Individual Taxpayers’ Registry (“CPF”) for failure to confirm the reception of correspondence relative to the special administrative collection; and
- (xvi) the recording of the debts as collectible by the Federal Government, plus 20% (twenty percent) on the basis of charges and other legal collections, and the filing of a tax enforcement action.

In addition, Rule no. 1.265 sets forth that, in case of legal entities, the procedures of the special administra-

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tive collection will also apply to partners that are jointly liable for the debt.

The mentioned normative act further establishes that the RFB units may adopt other collection procedures, including the inclusion of the tax debtor and, in case of a legal entity, of the respective partners and responsible parties, into a special inspection program.

Lastly, under Rule no. 1.265, all the collection procedures are to be carried out within 6 (six) months, as of the inclusion of the tax credit into the special administrative collection, which, after this term, should be sent to be recorded as a debt collectible by the Federal Government.

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