

12.18.2013

Precedent summaries approved by the administrative council of tax appeals

An extraordinary session of the Full Bench of the Superior Chamber of Tax Appeals (CSRF) was held on Dec. 9, 2013, to analyze the proposals of precedents for the consolidation of its case laws.

Proposals limited to the jurisdiction of each of the 3 panels of the Superior Court¹ were analyzed, as well as general summaries, extending to all bodies of the Administrative Council of Tax Appeals. Ten new summaries were approved which, pursuant to article 72 of the Internal Regulation of the Council, must be followed by members of the CARF².

These are the new Summaries published today in the Official Federal Gazette:

I – New precedent summaries approved by the full bench of the CSRF³:

1. A 10 (ten)-year statute of limitations is applied to the petition for a refund requested administratively prior to June 9, 2005, in case of a tax subject to assessment by ratification, as of the taxable event.

2. The Corporate Economic and Tax Information Statement (DIPJ), as of its inception, is not an acknowledgment of indebtedness, nor a proper and sufficient instrument for the requirement of the tax credit stated therein.

II – New precedent summaries approved by the 1st panel of the CSRF⁴:

3. Failure to transcribe the balance sheets or trial balance sheets for suspension or reduction purposes to the Accounting Journal does not justify the collection of a separate fine provided for in article 44 of Law no. 9,430, dated December 27 1996, when the tax debtor submits sufficient accounting and tax recording to prove the suspension or reduction of the estimate.

4. Profits earned abroad by a branch, office, subsidiary, or associate company will be converted into reais by the exchange selling rate of the day of the financial statements on which such profits were ascertained, and as of the effectiveness of MP no. 2.158-35, of 2001.

5. The presumption of omission of revenues characterized by the supply of cash funds to the company by the administrators, partners of unlimited liability partnerships, or by the administrator of the company, is only suppressed with the cumulative demonstration of the origin and effectiveness of the delivery of the funds.

¹The CSRF Panels have the same jurisdiction as the respective CARF Sections. The 1st Panel hears proceedings relative to the IRPJ, CSLL, and SIMPLES, having residual jurisdiction as to other tax matters; the 2nd Panel hears proceedings that involve the IRPF, ITR and Social Security Contributions. As to the 3rd Panel, it hears cases dealing with the charge of the IPI, PIS/COFINS, IOF, CIDE, customs issues and taxes on international trade. The Full Bench, which combines members of the three panels, is responsible for standardizing dissenting theses that involve more than one of CSRF's panels

² Article 45. A councilor that: VI – fails to observe, repeatedly, a precedent summary or summary of a resolution of the Full Bench of the CSRF, issued pursuant to articles 73 and 77, 72 and 76, respectively, as well as to the provisions in article 62, shall lose his/her term of office.

³ Applicable to the 2 Sections of the CARF.

⁴ Applicable only to the 1st Section of the CARF.

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6. Failure to submit books and documents does not justify, alone, the increase of the ex-officio fine, when this omission caused the determination of the profits.

7. The determination of profits in an ex-officio procedure can be made by using any of the calculation alternatives listed in article 51 of Law no. 8,981, dated January 20, 1995, when the gross revenue is not known.

III – New precedent summaries approved by the 2nd panel of the CSRF⁵:

8. The deduction of alimony from the tax basis of the Individual Income Tax is allowed, under Family Law rules, when its effective payment is proven and when the obligation arises from a judicial decision, from an agreement ratified in court, and as of March 28, 2008, from a public deed specifying the obligation amount or stating the obligations in favor of the beneficiary.

9. For purposes of application of the statute of limitations term provided for in article 150, § 4, of the National Tax Code (CTN), for social security contributions, early payment is characterized by the collection, albeit partial, of the amount considered to be due by the taxpayer on the reference date of the taxable event to which the assessment refers, even if the portion relative to the item specifically required in the tax assessment notice was not included in the tax basis of this collection.

IV – New precedent summaries approved by the 3rd panel of the CSRF⁶:

10. The Tax Auditor of the Federal Revenue of Brazil has jurisdiction to inspect the performance of the requirements of the drawback system under the suspension mode, which include the assessment of the tax credit, its exclusion due to the recognition of the benefit, and the verification, at any time, of the conditions set by the relevant legislation.

The new precedents of the CARF will come into force as of their publication in the Federal Official Gazette, when they will receive a specific number and compliance will be mandatory by all its counselors.

The approval of these new summaries, which consolidate the case laws of the Administrative Council of Tax Appeals, is an important instrument to increase the speed and stability of the relationship between the Tax Authorities and the Taxpayers. With the implementation of the electronic process, the identification of appeal matters, and the publication of new precedents, the administrative trials tend to become faster.

Should you require any further information on the above matter, please feel free to contact us.

⁵ Applicable only to the 2nd Section of the CARF.

⁶ Applicable only to the 3rd Section of the CARF.

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