

## # MUNICIPAL TAX COUNCIL OF SÃO PAULO

Specific tax report nº 06 • Year I • September 2015

Dear Readers:

The purpose of this **Tax Bulletin of the Municipal Tax Council** is to update our clients and other interested parties in the main issues being discussed and decided within the scope of administrative litigation of the municipality of São Paulo.

In this issue, we will handle four different subjects related to Jurisprudence and Legislation. To directly access each text, click:

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**Souza, Schneider, Pugliese e Sztokfisz Advogados** law firm is available to its clients should they have any questions related to this Tax Bulletin

Enjoy your reading!

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### Regulation for Electronic Domicile of São Paulo Citizens (DEC).

On July 1, 2015, the Official Gazette of the Municipality of São Paulo published the Decree 56.223/2015, governing the articles from 41 to 50 of the Law no. 15.406/2011, which handle electronic communication between the Municipal Treasury and Taxpayers, via the Electronic Domicile of São Paulo Citizens (DEC).

With this tool, the Municipal Treasury may use electronic communication to:

- a) Notify the Taxpayer of any administrative act;
- b) Service processes;
- c) Issue general notes.

We highlight that the enrollment at the Electronic Domicile of São Paulo Citizens (DEC) is mandatory for all companies, within timeframes to be released by the Municipal Treasury. Should the Taxpayer not register the Municipal Treasury will issue notice and publish it in the Official Gazette of the City.

Indeed, every service of process carried out via this tool replaces the publication of acts and decisions in the Municipal Official Gazette, as well as personal or mail delivery to the Taxpayer.

In addition, we note that the issuance of notices, in general, via DEC will not exclude the spontaneity of acknowledgment of debts for the purposes of the article 138 of the CTN [National Tax Code].

The office of SOUZA, SCHNEIDER, PUGLIESE E SZTOKFISZ ADVOGADOS is available to its clients for any clarification regarding the above-mentioned Decree.

### Exemption of ISS for social-purpose services.

On July 31, 2015, the Official Gazette of the Municipality of São Paulo published the Decree 56.302/2015, governing the Law no. 16.127/2015, which grants ISS exemption for services rendered via public-private partnership in strategic area of the Municipality.

In brief, ISS exemption will be granted to Specific-Purpose Companies (SPE's), with headquarters and management in the Municipality of São Paulo, who enter into Public-Private Partnership Concessions Agreements with the Direct Public Administration and with Federal, State of São Paulo and Municipality of São Paulo instrumentalities to render services within the territory of São Paulo, in the following areas :

- a) Metropolitan public transportation;
- b) Health;
- c) Education;
- d) Social-purpose housing;
- e) Public lighting.

Moreover, ISS exemption will be granted to non-profit organizations qualified as social organizations, established in the Municipality of São Paulo, who enter into management agreements to constitute a partnership with the Direct Public Administration and with Federal, State of São Paulo and Municipality of São Paulo instrumentalities to render services within the territory of São Paulo, in the following areas:

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- a) Health;
- b) Culture;
- c) Sports, leisure and recreation.

Along these lines, we note that the granting of the foregoing exemptions is contingent upon the presentation, by the Company, of formal petition to the Municipal Treasury Secretary.

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### **New procedures to cancel Service e-Invoices [NFS-e] and issuance of Client Invoice [NFTS].**

On July 1, 2015, the Official Gazette of the Municipality of São Paulo published the Decree 56.224/2015, governing the São Paulo ISS (Decree no. 53.151/2012), in specific regarding the cancellation of the Services' Electronic Invoice ("NFS-e") and the issuance of Electronic Client/Dealer Invoice ("NFTS").

In brief, the Decree provisions that after the receipt and acceptance by the taxpayer, the Services' Electronic Invoice (NFS-e) cannot be cancelled.

On the other hand, the above-mentioned Decree no. 56.224/2015 sets a new hypothesis for the issuance of the Electronic Client/Dealer Invoice (NFTS), allowing the issuance of a new tax document if the services' client/dealer refuses, justifiably, the NFS-e issued by the services provider.

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### **CMT decides for the application of ISS on bank activities and guarantees.**

This is in reference to the Administrative Proceeding (PA no. 2014-0.090.598-9) which discusses the requirement of ISS on: (i) banking services, such as issuance, elaboration and registration of documents; and (ii) contracts linked to guarantee transactions.

Regarding the ISS on banking services, the Appellant argues that the services, which were the purpose of the fine, are not primary-purpose activities necessary to achieve banking activities and, therefore, not deemed as independent services for the purposes of ISS taxation.

In relation to ISS taxation on bank guarantees, the Appellant argues that it is an uncertain obligation materialized only upon the default of its Client and that even so there is no obligation that could be qualified as service, as per the Binding Precedent no. 31 of the STF [Federal Supreme Court].

The 3rd Judgment Chamber, unanimously, decided that the services rendered by financial institutions are subject to ISS grounded on the fact that they are independent units offered to the clients, with revenues apart from financial transactions.

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Regarding ISS taxation on revenues from guarantees rendered, the 3rd Judgment Chamber agreed that their legal nature is provision of services and admitted that as the bank guarantee is a contract to guarantee the performance of an obligation it is not a credit facility, which would exclude this municipal taxation.

Thence, the 3rd Judgment Chamber, unanimously, did not grant the Ordinary Appeal filed by the Taxpayer and upheld the fines under the Administrative Proceeding no. 2014-0.090.598-9.

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