

Dear Readers:

The Tax Bulletin aims to update our clients and other interested parties on the major issues being discussed and decided within the Judiciary, Legislative and Executive level.

In this 101th edition, we address 09 different issues related to Jurisprudence, Regulations and Consultation Solutions.

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# ' tax bulletin

# 101

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Schneider, Pugliese, Sztokfisz, Figueiredo e Carvalho Advogados law firm is at the disposal of our clients to clarify any questions about the issues addressed in this publication.  
We wish you a good reading!



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## Jurisprudence

### STJ – Possible CPRB offset against Social Security Contributions

On 10/17/2017, 2nd Chamber of High Court of Justice (“STJ”) ruling on the Motion for Clarification on the Internal Appeal in Special Appeal (“REsp”) n. 1.611.761/SC, defined the values of Social Security Contribution on Gross Revenue (“CPRB”) destined to the General Social Security Regime to be offset against the Social Security Contribution of the same kind and constitutional destination.

The Chamber, unanimity, accepted in part the Motion for Clarification to recognize partially the REsp and, in this part, recognize the possibility of offsetting the CPRB against Social Security Contributions, according to the case-law of the Court already settled thereon.

### STJ – Revocation of the zero rate of COFINS- imports of aircraft

On 10/24/2017, the Second Chamber of the STJ ruled on the Resp n. 1.660.652/RS, which discusses the revocation or not of zero rate of COFINS- Import of aircraft classified on 88.02 position of the NCM.

The Minister Francisco Falcão, Rapporteur of the appeal, considered that the conversion of the MP 610 into Law n. 12.844/2013, which has added one percentage in rates of COFINS- Import, has no conflict with the art. 8th, 12th § of Law n. 10.865/2004. In fact, the Minister considered that these laws complement each other.

In this respect, the Chamber, unanimously, understood to be due to COFINS- Import on the importation of aircrafts classified in 88.02 position of NCM at 1% rate according to the provisions contained in 21st of the art. 8th of law n. 10.865/2004.

### STJ – Impossibility of suspending the tax foreclosure against company under reorganization that does not provide Tax Compliance Certificate

On 10/17/2017, the 2nd Chamber of the STJ ruled on the REsp n. 1.673.421/RS to reaffirm the understanding that the suspension of constrictive and expropriation acts in foreclosure against the company in court-supervised reorganization is subject to the granting of reorganization processing, provided that the tax compliance certificate has been submitted.

For the Minister Herman Benjamin, Rapporteur of the appeal, the understanding favorable to taxpayers on the waive to submit the tax debts certificate for purposes of reorganization processing, issued for the 2nd Section, shall be the object of rereading, insofar as the Certificate is prerequisite for the granting of Court-supervised Reorganization, as required on articles 57 and 58 of Law n. 11.101/2005. He pointed out, however, the hypothesis of the judge of foreclosure based on the principle of lower burden prevents acts that impede the Plan of Court-supervised Reorganization.

In this respect, the Chamber unanimously dismissed the appeal of the taxpayer understanding that, in actual case, the company fails to submit Tax Compliance Certificate.

## **TRF1- Existence of suspicion/hindrance of CARF's members – Bonus of Efficiency**

On 10/18/2017, the 4th Section of the Federal Regional Court of the 1st Region ("TRF1"), when ruling on the Incident of Recurrent Demands resolution ("IRDR") n. 0008087-81.2017.4.01.0000/DF, understood that there is no suspicion or hindrance of Auditors-Inspectors of Internal Revenue Service of Brazil to act as judges in the Administrative Council of Tax Appeals ("CARF") and receive Bonus of Efficiency and Productivity, established by Provisional Measure ("MP") n. 765/2016, on the values of "tax and customs penalties" they have kept in the assessments tax.

To the Federal High Court Judge Novély Reis, offense to the dignity of the human person is to assume the bad faith of public officials in the performance of their tasks, thus it would not be possible to assume that the Auditors-Inspectors working to CARF as Members would keep those penalties merely for the interest of receiving or increase their Bonus of Efficiency. In addition, he said that in any suspicion and hindrance referred to in the Rules of Procedures of the CARF are applicable only to the representatives Members of taxpayers. Finally, he stated that, in the conversion of the MP n. 725/2016 into law n. 13.464/2017, there was the exclusion of "tax and customs penalties" from the calculation basis of the Bonus of Efficiency and Productivity, so that there would be no more so-called suspicion or hindrance.

However, as the MP has the force of law and has produced immediate effect after its publication on 12/30/2016, the 4th Section of TRF1, unanimously, established the thesis "Duration of the Provisional Measure 765 of 12.29.2016, there was no hindrance or suspicion of auditors-inspectors participating in trials in the Administrative Council of Tax Appeals/Carf, earning the bonus of efficiency established by that measure. With the publication of Law 13.464 of 07.10.2017 this discussion becomes moot".

## **Regulations and Consultation Solutions**

### **Solution of COSIT Consultation n. 506/2017 – Calculation basis of Income Tax regarding the collection of rents**

On October 17, 2017 the Solution to Consultation n. 506, of General Coordination of Taxation ("COSIT") was published, concerning the calculation basis of income Tax of Individuals ("IRPF") regarding the collection of rents.

COSIT understood that values spent with social security contributions relating to the construction, enlargement and renovation of property, as well as fees of property registration are not expenses required to the earning of rent revenue, thus they would not be included in the list of exclusions of art. 14 of law n. 7.739/89.

### **Solution of COSIT Consultation n. 498/2017 – Assessment of COFINS regarding freight and storage**

On October 10, 2017 the Solution to Consultation n. 498 of COSIT was published on credits, to the cumulative Cofins regime, relating to freight and storage on sale of products with suspension benefit, exemption, zero rate or no assessment of Cofins.

The COSIT understood that legislation does not prohibit the taking credit for sales operations services entitled to tax disallowances, especially because the credit is given for goods and services purchased, that have been properly taxed. Therefore, provided that the freight and storage comply with other legal

requirements, credits should be generated in these operations.

### **Solution to Consultation n. 4.037/2017, of 4th Tax Region - Assessment of COFINS regarding freight**

On October 11, 2017 the Solution to Consultation n. 4.037/2017 was published on the appropriation of freight credit in sale of products subject to the single-phase regime of assessment of contribution to PIS and Cofins.

The 4th Tax Region understood that expenditures with freight for the sale of products manufactured by the company are subject to credit by non-cumulative contribution regime to PIS and Cofins, provided that the products that generate such freight expenses are manufactured by the company

### **Provisional measure n. 806/2017 – Taxation of investments in closed-end investment funds**

On October 30, 2017 the provisional measure n. 806/2017 was published which amended the Income Tax taxation of investments in closed-end investment funds. In general, the bi-annual taxation was established of these funds, regardless of that assessed on the redemption, amortization or disposal of the unit.

### **Provisional measure n. 807/2017- Extended the deadline for joining the PERT**

On October 31, 2017, provisional measure n. 807/2017 was published which extended the deadline for joining the Program of Tax Regularization (“PERT”) to November 14, 2017 and disseminated the changes to various percentages applicable to certain settlement forms.

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