

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 106th edition, we address 10 different issues related to Jurisprudence, Regulations and Consultation Solutions.

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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!



## Jurisprudence

### **STJ- Repetitive Appeal – Delimitation of the scope of the thesis established the Repetitive Issue No.118/STJ**

On 04/24/2018, the 1st Section of the Superior Court of Justice (“STJ”) decided, by majority, to affect the Special Appeal (“REsp”) No.1.715.256/SP as representative of controversy about the delimitation of the scope of the thesis by the Court on the actual overpayment evidence or unduly for purposes of statement of the right to offset in the Writ of Mandamus.

### **STJ- Repetitive Appeal - Legality of the inclusion of ICMS in the calculation basis of the Social Security Contribution on gross revenues**

On 05/08/2018, the 1st Section of the STJ decided unanimously, to affect the REsps No.1.638.772, 1.624.297/RS and 1.629.001/SC as representative of controversy about the possible inclusion of ICMS in the calculation basis of the Social Security Contribution on the Gross Revenues, established by MP No.540/2011 and later converted into Law No.12.546/2011.

### **TRF1- No assessment of the Contribution to the GILLRAT/SAT on indemnity funds**

On 04/30/2018, the 8th Panel of the Federal Regional Court of the 1st Region (“TRF1”), when judging the Appeal No. 0000596-41.2014.4.01.3811 considered the non-assessment of Contribution to the Environmental Risk of Work (“GILLRAT”) about indemnity pay in cash and constitutional one third of vacations as well as the first 15 days before the sick pay.

The appellate judges unanimously consider that the Contribution to the GILLRAT has basic identity with the social security contributions, as well as the Contributions due to Third Parties (FNDE, Incra, Sesc, Senac, Sebrae). Therefore, as the understanding of the Court is settled regarding the non-assessment of social security contributions on indemnities, the same treatment should be given to the Contribution to GILLRAT. On the other hand, the Contribution to GILLRAT is assessed on the salary pays such as, paid weekly rest, overtime and hazard pay, health hazard and night shift premium.

### **TRF1 - Illegality of the increase in SISCOMEX Rate**

On 05/04/2018, the 7th Panel of the TRF1, ruling on the Appeal No. 0067882-71.2015.4.01.3400, considered the illegality of the adjustment of SISCOMEX Rate carried out by MF Ordinance No. 257/2011 and ratified by the RFB IN No.1.158/2011.

For the Rapporteur, Appellate Judge Ângela Catão followed by other Appellate Judges of Panel, the MF Ordinance No.257/2011 has not provided on the monetary adjustment/values adjustment according to the variation of operating costs and investments in SISCOMEX. Thus, the substantial increase in the Rate without legal support confronts the Federal Constitution.

The Panel decided to follow the recent positioning of the STF in the judgment of RE No.959.274, although the precedent has not been decided in general repercussion.

## **TRF3- Illegality in establishing the conditions for the non-allocation of payments made under installment programs**

On 05/08/2018, the 7th Panel of TRF3, when ruling on the Appeal No.0007762-18.2013.4.03.6103, decided on the illegality of the condition imposed by the Administration with regard to the allocation of payments made, although manually, relating to debts originally inserted into PAEX (MP 303/2006) and later migrated to the REFIS of Law No.11.941/2009.

According to the Appellate Judges, the obstacles reported by the Administration about the technical impossibility of its operating system violates the reasonableness principle as, in fact, it prevents the continuity of business activities regularly. For the Panel, any system errors are responsibility of the State, taxable to taxpayers seeking to rectify the situation before Tax Authority.

## **Regulations and Consultation Solutions**

### **Federal Justice – Premium**

On 05.17.2018, judgment was issued, which granted the motion to stay execution of the taxpayer to cancel a tax assessment by the use of premium regarding corporate restructuring performed between 2004 and 2005.

In the judgment, the judge took into account art. 20 of Decree-Law No.1.598/77, before the amendments made by Law No.12.973/2014, whose new wording changed the possibility of amortization, restricting it only to transactions between non-dependent businesses, adding that the company's movement that led to the premium took place before the amendment of the legal provision, thus the assessment of 2014 rule or its countable principles would not be possible.

### **Provisional Measure No. 834/2018 - Extension of Rural Tax Debts Remedy Program**

On May 30, 2018 Provisional Measure No. 834/2018 was published extending to October 30, 2018 deadline for adherence to Rural Tax Remedy Program established by Law No.13.606/2018.

### **COSIT Consultation Solution No. 38/2018- Income Tax of Individuals – Assessment on profits and dividends**

On 04/30/2018, Consultation Solution No.38 Taxation General Coordination (“COSIT”) was published, which provided on the non-taxation of income tax on profits and dividends paid to the beneficiary of the shares. The COSIT considers that regardless of recipient of profits – shareholder or beneficial owner – profits and dividends calculated from the month of January 1996 are not assessed by income tax according to article 10 of Law No.9.249.

### **PGFN Ordinance No. 42/2018 - Record in Overdue Tax Debts - Amendment of PGFN Ordinance No.33/2018**

On 05/28/2018, Ordinance No. 42 of General Attorney's Office for the Department of Treasury (“PGFN”) was published, which amended the PGFN Ordinance No.33, which deals with the procedures for record of overdue federal tax liability and the criteria for submission of applications for review of overdue debt.

The PGFN amended, through the Ordinance, the term for installment plan of debt recorded in overdue tax debt, which will be 30 days as of 10.01.2018.

## **Law No.13.670/2018 – Social Security Contribution on Gross Revenues – Amendment of Laws No.12.546/2011 and 9.430/1996**

Law No.13.670 was published in special edition of the Federal Official Gazette on 05.30.2018, which brought new wording of articles 7th and 8th of Law No.12.546/2011, on the Social Security Contribution on Gross Revenues (“CPRB”), to provide that the social security substitutive contribution, previously established for an indeterminate period, shall be in force up to December 31, 2020. In addition, the changes defined expressly which sectors should be subject to CPRB, excluding all other activities that are not provided for by law and established fine percentage as a penalty to taxpayers who had not provided the SPED files and other electronic controls of economic or financial activities to RFB.

Finally, the law changed also the article 74 of Law No.9.430/1996, setting new hypotheses which prohibited tax offset in the scope of RFB.

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