

Dear Readers:

The purpose of this **Tax Bulletin # Administrative Council of Tax Appeals** is to inform our clients and those interested in the main issues being discussed and decided in this court.

In this 110th issue of our note, we comment a decision in which the Superior Chamber of Tax Appeals (“CSRF”), discussing again the concept of input for the purpose of PIS and COFINS credit assessment, adopted an intermediate understanding, voting for the possibility of assessing credits on expenses with shipping of finished products.

We also comment a decision in which CSRF pointed that IN SRF no. 243/02, which deals with transfer pricing, only became effective as of January 2003.

To directly access the text referring to each of these topics, click on:

CSRF – PIS/COFINS credits on inputs – Shipping expenses

CSRF – Transfer pricing – IN SRF no. 243/02

Schneider, Pugliese, Sztokfisz, Figueiredo e Carvalho Advogados is available to its clients should they have any questions on the decisions commented on in this newsletter.

Enjoy your reading!

“REGISTRATION OF CREDITS DUE TO THE PURCHASE OF INPUTS. POSSIBILITY, REGARDLESS OF SUPPLIERS HAVING PAID THE TAX, PROVIDED THAT THE TAXPAYER MAY PROVE TO HAVE PAID FOR THE TRANSACTIONS AND RECEIVED THE PRODUCTS.

Scenario in which the purchases carried out by the taxpayer are subject to registration of basic credits due to the purchase of inputs, at set forth by section 3(II) of Law 10,637/02. This right must be acknowledged in this case, since there is prove in the records that the relevant transactions are subject to PIS and COFINS, as indicated in the entry tax documents, and that the transactions were paid for and duly delivered, regardless of suppliers having collected the tax. This averts the consequences derived from the possible inaptitude of suppliers, as provided by section 82 of Law 9,430/96.

BASIC CREDITS. EXPENSES WITH FREIGHT.

Expenses with freight for the transportation of products being manufactured and/or finished products between the taxpayer's branches, paid and/or credited to companies, with bill of lading or tax documents for the provision of services, allow the purchaser to register PIS credits, which may be deducted from the contribution due and/or return/offset.”

The decision on point deals with credits registered by the taxpayer concerning the Contribution to the Social Integration Program (*Contribuição ao Programa de Integração Social* - “PIS”) and the Contribution to Fund Social Security (*Contribuição para o Financiamento da Seguridade Social* - “COFINS”) on inputs it produced and freight between its branches.

Regarding freight, the decision rendered by CARF was favorable to the taxpayer, ruling that it could register credits on freight between its branches regarding finished and unfinished products and inputs for production.

Against said decision, the Tax Administration filed a special appeal, which was only accepted in what concerns freight related to finished products. Regarding unfinished products and inputs, the Superior Chamber of Tax Appeals (*Câmara Superior de Recursos Fiscais* - “CSRF”) understood there was no divergence between precedents and did not accept the appeal.

Starting the trial with the registration of credits related to the freight of finished products, the vote adopted the intermediary definition of input, mentioning a precedent recently issued by CSRF. Considering this definition, CSRF ruled that the freight of finished products between branches of the same taxpayer is characterized as cost of the sale transaction; hence, it is directly related to its corporate purpose. It is relevant to mention that this conclusion taken by CSRF did not result from a deep analysis of the specific activities developed by the taxpayer. Therefore, in our opinion, it could apply to most similar cases. Notice that the taxpayer is a company dedicated to the production of long steel products.

Concerning the inputs used for production, there was a discussion concerning how much credit the taxpayer could register. The reason for this discussion was that the tax document issued by the supplier informed an amount different from the one actually agreed and paid by the taxpayer. This scenario was proven by the taxpayer with accounting records, bank statements and entry tax documents, attesting the amount that grounded its PIS and COFINS credits.

CARF had adopted a restrictive perspective, ruling that the taxpayer was entitled to register credits at the amount informed in the tax document issued by the suppliers, since this amount would be the one subject to the contributions payable by the suppliers.

After analyzing the taxpayer's special appeal, CSRF understood the taxpayer had proven to have paid an amount higher than the one indicated in the supplier's tax document, so it had the right to register credits on the amount actually paid for the inputs.

"EFFECTS OF IN 243/2002 IN THE YEAR IT WAS ENACTED, PRINCIPLES OF ANTERIORITY, IRRETROACTIVITY AND PROTECTION OF LEGITIMATE TRUST.

Issued on Nov.13.2017, IN 243 was only effective after [2003], because of the principles of anteriority, irretroactivity and protection of legitimate trust".

The decision on point deals with the trial of a Special Appeal by CSRF, which was filed against a decision that denied relief to the taxpayer's Voluntary Appeal.

The proceeding concerns a charge of Corporate Income Tax (*Imposto sobre a Renda da Pessoa Jurídica - "IRPJ"*) and Social Contribution on Net Profit (*Contribuição Social sobre o Lucro Líquido - "CSLL"*), resulting from adjustments assessed by tax agents in the calculation basis, supported by IRS Ruling 243/02, related to the computation of Method Resale Price Less Profit with 60% margin. This method is called PRL-60 and it is used for transfer pricing control between related parties, as provided by section 18(II) of Law No. 9,430/96.

In its appeal, the taxpayer argued that the formula brought by IRS Ruling 243/02 triggered different results from the ones obtained with Law 9,430/96, being more burdensome. It also claimed that the Ruling applied by Tax Agents, which had been enacted on November 13, 2002, could not produce effects in the same calendar year, but only after Jan.01.2003, respecting the principles of legal certainty, anteriority, irretroactivity and protection of legitimate trust.

When trying the special appeal, the CSRF unanimously granted relief to the taxpayer's arguments that the method brought by IRS Ruling 243/03 could not apply to taxable events that had taken place in the year it was enacted, due to the principle of anteriority. Hence, it ruled that the more burdensome methodology of PRL-60 could only after the following year.

Moreover, Counselors stated that there were *"no grounds for tax agents to adopt the formula established by Ruling 243/2002 for the year of 2002 itself"*. Therefore, it granted relief to the Special Appeal, cancelling the infraction notice.

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