

THE ADMINISTRATIVE COUNCIL OF TAX APPEALS

Specific tax report n° 77 • Year VII • August 2014

Dear Readers:

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

In this 77th edition of our informative, the decision is commented taken by Administrative council of Appeals for Tax Matters (“CARF”) cancelling the fine penalty required by Tax Deficiency Notice understanding the spontaneous disclosure is applicable to the accessory obligations timely fulfilled.

We commented also the decision by CARF that has understood the rendering of artistic services by legal entity features fraud.

In order to access directly the text for each theme, click:

[Untimely of Accessory Obligation fulfillment - Fine - Spontaneous Disclosure](#)

[Social Security Contributions - Rendering of Artistic Services by Legal Entity](#)

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

Enjoy your reading!

THE ADMINISTRATIVE COUNCIL OF TAX APPEALS

Specific tax report n° 77 • Year VII • August 2014

“Subject: ACCESSORY OBLIGATIONS

Date of generator fact: 7/2/2009

SPONTANEOUS DISCLOSURE ASSESSMENT OF THE ADMINISTRATIVE PENALTIES UNTIMELY ON THE FULFILLMENT OF ACCESSORY OBLIGATION.

Spontaneous disclosure is applicable to the administrative accessory obligations fulfilled untimely however prior to the beginning of any inspection activity related to the duty to inform in Siscomex the data regarding the goods shipment destined to export.

Voluntary appeal granted.

This refers to judgment of the Tax Deficiency Notice drawn up to request the fine on the non-fulfillment of the accessory obligation to render the information on cargo carried by freight forwarder or shipping agency.

Generally, Inspection verified that Taxpayer requested the data rectification after the elapsed of term to render such information which were included in the cargo control system by Siscomex. In view of such behavior, Tax Authority understood the violation is featured as provided for article 107 of Decree Law number 37/1996, and assessed the fine provided for the same provision, and clarifies that defendant is liable for the information render outside the term, and Taxpayer liability is subjective (independent of the agent intent).

In the Refutation, Taxpayer alleged among other arguments, the fine should not be suitable as the rectification request was made before any inspection procedure, featuring the spontaneous disclosure contained in the article 138 of National Tax Code (“CTN”).

Inland Revenue Office of Brazil of Judgment denied the Refutation justifying among others that the non-fulfillment of the duty to render information on accessory obligations does not accepts the clearance of encumbrances by spontaneous disclosure.

After Taxpayer has filed the Voluntary Appeal, CARF cancelled the notice understanding the Taxpayer behavior of informing to Tax Authorities on the violation before any inspection proceeding, as in this case regarding the accessory obligation, features the spontaneous disclosure provided for the article 138 of CTN, removing the assessed penalty. That is, CARF understood the spontaneous disclosure is applicable to accessory obligations.

In the vote, Reporter Council Member sustained that the article 102 of Decree-Law number 37/1996 provides expressly on the application of the spontaneous disclosure to administrative penalties as the fine on the non-fulfillment of accessory obligations.

Therefore, the Voluntary Appeal was fully granted to cancel the notice.

THE ADMINISTRATIVE COUNCIL OF TAX APPEALS

Specific tax report n° 77 • Year VII • August 2014

“Subject: SOCIAL SECURITY CONTRIBUTIONS

Assessment Period: 01/01/1997 through 12/31/2001

(...)

POSSIBLE RENDERING OF ARTISTIC PERSONAL SERVICE BY LEGAL ENTITIES

The artist could not be legal entity, as the law defines him/her as ‘professional creating, interpreting, or performing works in any cultural nature for exhibition or public disclosure by mass communication means or places for shows.

INTERPRETATIVE NATURE OF ARTICLE 129 OF LAW 11,196/05

Support is look for in article of above-mentioned law, looking for the retroactive application that should encompass the case, however is not applicable as the law was promulgated in 2005, and generator fact extends to 2001 that is, four years before the effectiveness of the law as intended as reference. Moreover, the action was a fraud and does not encompass possible favorable retroactivity.”

Such judgment is a Tax Notice of Debt Entry (NFLD) drawn up for the requirement of Social Security Contributions assessed on the compensations paid to employees. The entry was based on the tax finding the company failed to pay the social security contribution on the salary work, which supposedly encompassed the employment relationship with artists and journalists by the civil contracting of legal entities incorporated by such individuals. According to Tax Administration such relationship has legal employment requirements (character, subordination, encumbrance, non-eventuality and rendering of services by individuals), the compensation paid as consideration for the services rendered would be subject to the social security contributions.

Therefore, Tax Authorities understood Taxpayer had violated the tax laws by simulating the rendering of services governed by civil law and drew up the notice.

Company was notified of Tax Deficiency Notice and submitted the Refutation, which was ruled partially with grounds by DRJ that has recognized the statute of limitation of the entry portion. Taxpayer filed the Voluntary Appeal against such decision.

In the document, Taxpayer alleged there is no simulation in hiring legal entities and the possibility of the retroactive application of the article 129 of Law number 11196/05. According to the Company, there is no employment relationship or simulation, as the hiring took place between two legal entities. It also added, the article 129 of Law number 11196/05 allows the rendering of artistic or cultural services by legal entity, although published after the generator facts thereto, it should be applied, as has interpretative nature, therefore, suitable to generate past effects, according to article 106, I of CTN.

When facing such allegations, CARF refused Taxpayer’s arguments and understood the hiring of artistic services of legal entity was a simulation in view of the factual circumstances. Regarding the retroactive application of article 129 of Law number 11196/05, Council members denied it, based on the counter-argument that article 106, II “a” and “b” forbids the retroaction when fraud is evidenced as it understood in this case.

Based on such allegations, CARF rule groundless the Voluntary Appeal.

THE ADMINISTRATIVE COUNCIL OF TAX APPEALS

Specific tax report nº 77 • Year VII • August 2014

Team responsible for preparing The Administrative Council of Tax Appeals Bulletin:

Igor Nascimento de Souza (igor.souza@souzaschneider.com.br)

Henrique Philip Schneider (philip.schneider@souzaschneider.com.br)

Eduardo Pugliese Pincelli (eduardo.pugliese@souzaschneider.com.br)

Cassio Sztokfisz (cassio.sztokfisz@souzaschneider.com.br)

Fernanda Donnabella Camano de Souza (fernanda.camano@souzaschneider.com.br)

Diogo de Andrade Figueiredo (diogo.figueiredo@souzaschneider.com.br)

Flávio Eduardo Carvalho (flavio.carvalho@souzaschneider.com.br)

Rafael Fukuji Watanabe (rafael.watanabe@souzaschneider.com.br)

Vitor Martins Flores (vitor.flores@souzaschneider.com.br)

Rodrigo Tosto Lascala (rodrigo.tosto@souzaschneider.com.br)

Laura Benini Candido (laura.candido@souzaschneider.com.br)

Marina Lee (marina.lee@souzaschneider.com.br)

Pedro Lucas Alves Brito (pedro.brito@souzaschneider.com.br)

Tiago Camargo Thomé Maya Monteiro (tiago.monteiro@souzaschneider.com.br)

Viviane Faulhaber Dutra (viviane.dutra@souzaschneider.com.br)

Flavia Gehlen Frosi (flavia.frosi@souzaschneider.com.br)

Thomas Ampessan Lemos da Silva (thomas.ampessan@souzaschneider.com.br)

Maria Carolina Maldonado Kraljevic (mariacarolina.maldonado@souzaschneider.com.br)

Gabriela Barroso Gonzaga Ferreira Porto (gabriela.porto@souzaschneider.com.br)

Amanda Mateoni Salvestrini (amanda.mateoni@souzaschneider.com.br)

Ana Cristina de Paulo Assunção (anacristina.assuncao@souzaschneider.com.br)

R. CINCINATO BRAGA, 340 • 9º ANDAR • 01333-010 • SÃO PAULO • SP
TEL 55 11 3201 7550 • FAX 55 11 3201 7558

BRASÍLIA SHOPPING • SCN QUADRA 5, BLOCO A • TORRE SUL • 14º ANDAR • SALA 1406 • BRASÍLIA • DF • 70715-900
TEL 55 61 3251 9400 • FAX 55 61 3251 9429

WWW.SOUZASCHNEIDER.COM.BR