TAX BULLETIN

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Dear Sirs:

The **Tax Bulletin** aims to update our clients, as well as those interested in important tax issues that are being discussed at Courts, Legislative and Executive.

In the 65nd edition, we bring 03 different subjects, within Case Laws and Legislations.

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Legislations

Legislative changes to the Internal Regulations of the Municipal Tax Council of São Paulo and to Tax Representatives allow the issue of Binding Precedents and authorize the City of São Paulo not to appeal when a matter is subject of an appeal representative of disputes by the STJ and of the STF.

Case Laws

Non-levy of the ISS on revenues deriving from the rendering of investment consulting services to Offshore Funds.

Possibility of rectifying notice of assessments in order to change the tax classification of the notified service during a tax administrative proceeding.

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Legislations

Legislation changes to the Internal Regulations of the Municipal Tax Council of São Paulo and to the Tax Representatives allow the issue of Binding Precedents and authorize the City of São Paulo to not appeal when a matter is subject of an appeal representative of disputes by the STJ and of the STF.

As known, in April of 2013, Ordinance (Municipal Law of São Paulo) no. 15,690 was enacted, which includes § 9 to article 49 and § 6 to article 50 of Law no. 14,107/2005, whereby the Chief of Municipal Tax Representation was granted powers to request authorization to the Municipal Finance and Economic Development Secretary not to file a motion to review, as well as a request for decision reversal, in cases in which the Federal Supreme Court (STF) and the Superior Court of Justice (STJ) have consolidated their positions on a given matter, pursuant to articles 543-B and 543-C of the Code of Civil Procedure (CPC).

This means that although the decisions of the STF and STJ rendered under the general repercussion system and that of appeals representative of disputes do not have a binding effect (only persuasive), it is up to the City of São Paulo to proceed not to file appeals against decisions that are contrary to the Municipality, when the issue has been resolved by such Higher Courts with regard to these systems.

Furthermore, Law no. 15,690/2013 added article 44-A and its paragraphs to Law no. 14,107/2005, in order to grant powers to the Chairman of the Municipal Tax Council (CMT), as specified by law, to issue binding precedents according to the case laws of the very CMT and based on case laws consolidated by the Higher Courts.

Thus, recently, on February 7, 2014, Rules of the Municipal Finance and Economic Development Office of São Paulo, nos. 27 and 28, were enacted, which approve the New Internal Regulations (i) of the CMT and (ii) of the Tax Representation, respectively, regulating on the exemption to file appeals in the situations specified in the Law, as well as the issue of binding precedents for the Municipal Tax Administration of São Paulo.

We understand that such rules are in line with the guidelines set forth in Constitutional Amendment no. 45/2004, as well as in the Code of Civil Procedure (CPC), which seek to standardize decisions that are repeated in the Courts and to provide stability to the legal relationships that are object of litigation.

Case Laws

Non-levy of the ISS on revenues deriving from the rendering of investment consulting services to Offshore Funds.

This is the case of a Tax Administrative Proceeding (PTA 2011-0.125.786-1), which discusses the requirement of the service tax (ISS) charged on revenues arising from the rendering of investment consulting services to Offshore Funds, and of a fine for the non-performance of accessory bookkeeping obligations.

Objections to the tax assessment notices were then filed and fully upheld in the Administrative Trial Court.

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In the trial of an Ordinary Appeal filed by the Taxpayer, the 1st Judgment Chamber unanimously found it to have partial grounds, maintaining the fine for failure to submit the documents required by the Tax Auditor; however, it canceled the tax assessment notices that require the performance of the principal obligations.

The 1st Judgment Chamber, when examining the semantic content of the sole paragraph of article 2 of Complementary Law no. 116/2003 –which deals with the exemption of the ISS on the export of services to countries abroad when, although developed in the Brazil, the result thereof is not verified herein– found that (i) the place where the result of the services is located is not the same as the place where the service is performed, and, furthermore, that (ii) lawmakers the complementary law indented to tax the source of service enjoyment and not the payment source.

Therefore, in the case of provision of international services, the Chamber found that the other side of the relationship becomes relevant: the service beneficiary (not always the service acquirer), considering, thus, the place of the result, the place where the service beneficiary is located.

The 1st Judgment Chamber then concluded that the result of the service (its utility) is found with the immediate beneficiary, that is, the person who hires the consultant, the Offshore Fund or its representative, and not with the intermediary beneficiary, the investors in the Fund.

The Tax Representative filed a Request for Reversal to the Combined Chambers, which are responsible for standardizing the decisions of the Municipal Tax Council and which, in turn, by majority voting (19 x 3), upheld the decision of the 1st Judgment Chamber under the argument that there are no consolidated case laws on the matter, a requirement for the filing of a Request for Reversal.

Possibility of rectifying notice of assessments in order to change the tax classification of the notified service during a tax administrative proceeding.

This is the case of a Tax Administrative Proceeding (PTA 2011-0.108.586-6), which discusses the possibility of rectifying an assessment notice, changing the tax classification of the notified service from item 55 of the list of services of article 2 of Ordinance no. 13,473/02 to item 42 of the same list of services.

The tax assessment demands the payment of the ISS levied on revenues of custody activities registered with COSIF (Accounting Plan for Institutions under the National Financial System) no. 71770008, which should therefore be classified under item 42 of article 2 of Ordinance no. 13,473/02, namely "Management of assets and business of third parties and of consortiums".

What happens is that the tax auditor stated item 55 of the list of services contained in article 2 of Ordinance no. 13,473/02, that is, "storage, deposit, loading, unloading, organization, and safeguard of assets of any nature (except for deposits made in financial institutions authorized to operate by the Central Bank of Brazil)".

The appealed decision, handed down by the 2nd Judgment Chamber, intended to remedy the clear error in the tax assessment when it found it possible to rectify the assessment in order to state the correct tax classification, leading to the filing of a Request for Reversal by the Taxpayer to the Combined Chambers, responsible for standardizing the decisions of the Municipal Tax Council.

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By majority vote (12 x 11), the Councilors of the Combined Chambers rejected the request for reversal of the decision rendered by the 2nd Chamber of Judgment, following the dissenting opinion of Councilor Luciana Mello in order to allow the rectification of the assessment based on article 15 of Law no. 14,107/2005, according to which "if the proceeding is under a trial phase, errors of fact or of law will be corrected by the judgment body, voluntarily or through an objection or appeal, and will not be the cause of nullity."

Therefore, the classification of the notified activity was rectified, allowing the taxpayer a term to file an objection. We understand that even if such an alteration is considered possible (which we do not believe, considering article 142 of the National Tax Code - CTN), it should occur within a five-year period, as of the taxable event.

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