

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 102th edition, we address 07 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 - Exclusion of presumed ICMS credits from calculation base of IRPJ and CSLL

On 11/08/2017, the 1st Section of the Superior Court of Justice (“STJ”) concluded the judgment of the Appeal Against a Divergent Decision (“EREsp”) No. 1.517.492/PR to move away the application of Legal Person Income tax (“IRPJ”) and Social Contribution On Net Profits (“CSLL”) on the credits presumed of Tax on Circulation of Goods and Services (“ICMS”).

The Section, in its majority, interpreted that the taxation, by the Union, of operations discharged by the State offends, in particular, the principle of federalism, since it empties the tax benefit granted by the entity of the federation.

Therefore, it remains consolidated the agreement of the Groups of Public Law of STJ by the exclusion of credits presumed of ICMS on the calculation base of IRPJ and CSLL.

### STJ - Exclusion of the ICMS from the calculation base of CPRB

On 09/21/2017, the 1st Panel of the STJ concluded the judgment of Special Appeal (“REsp”) No. 1.694.357/CE to decide on not to include the ICMS in calculation base of Social Security on the Gross Revenue (“CPRB”).

In view of the legal similarity of the discussions, the Panel decided to apply the understanding established in the Extraordinary Appeal (“RE”) No. 574.706/PR, opportunity at which the Supreme Federal Court (“STF”) moved away the application of the ICMS in the calculation base of PIS/COFINS.

This is because, according to the vote of the Reporter, Min. Napoleão Nunes, the present demand also discusses on the inclusion of the ICMS, which effectively does not adhere to the equity of the Taxpayer, in the calculation base that represents revenue.

Thus, it remained unanimously defined the non-inclusion of the ICMS in the calculation base of the CPBR.

### STJ - Possibility of using fiscal losses and negative calculation base for the settlement of default interests in the cases of adhesion to the subdivision of Law No. 11,941/09 (“REFIS”)

On 11/28/2017, the 2nd Panel of the STJ judged REsp No. 1.608.957/SP to declare the possibility of using fiscal losses and the negative calculation base of the CSLL before the conversion into income of the court deposits to discount the default interests resulting from delay in payment of taxes object of subdivision.

For the Reporter, Min. Og Fernandes, §7 of art. 1 of Law No. 11,941/09 clearly provides the possibility to discount default interests, by using fiscal loss and the negative calculation base from CSLL. In the same direction, when art. 10 of the same law is fulfilled, it is clear that such measure can be adopted before the conversion into income of the court deposits.

For this reason, Memorandum-Newsletter No. 220/2011/PGFN/CDA, when establishing the need to fully use the deposit before using the fiscal loss and negative base of the CSLL, clearly surpassed the regulatory power set forth in art. 12 of Law No. 11,941/09.

## Regulations and Consultation Solutions

### Normative Instruction RFB No. 1.765/17 - Rules on return and compensation

Normative Instruction RFB No. 1,765 was published on 12/4/2017, which amends rules concerning the transmission of return applications, as well as those of compensation, repayment and reimbursement of federal tributes, which had been consolidated, this year, in IN RFB No. 1,717/17.

The new act will be effective from 1.1.2018. From this date on, applications presented by means of PER/DCOMP program, shall only be acknowledged after the confirmation of the transmission of digital fiscal bookkeeping where it is demonstrated the pledged credit right. The rule, which is good for credits of PIS, Cofins, IPI, IRPJ and CSLL, shall reach the statements that contain verified credits since January 2014; and, in the case of IRPJ and CSLL, it is also applied to the cases of special verification resulting from extinction, spin-off, merger or incorporation.

### Normative instruction RFB No. 1,761/2017 - Statement of Operations Liquidated with Currency in Cash ("DME")

Normative Instruction RFB No. 1,761 was published on 11/21/2017, which regulates the provision of information relative to the operations liquidated in cash.

According to provision of the standard, individuals or legal entities, residents or domiciled in Brazil, who receive, each month, values in cash, whose sum is equal or superior to R\$ 30,000.00, should report the fact to the treasury department, by means of the DME, available at RFB's website.

### Solution of COSIT No. 29/2017 divergence COSIT – Non-Cumulativeness: Outsourced manpower.

Solution of Divergence No. 29 was published on 11/16/2017, of the General Coordination of Taxation ("COSIT"), regarding the taking of credits of PIS and Cofins relative to the expenses with contracting of companies for availability of temporary labor.

COSIT understood that such services constitute inputs applied in the production of goods intended to the sale or in the rendering of services.



## **Normative Instruction RFB No. 1,757/2017 – Withholding Income Tax (“DIRF”)**

On 11/13/2017, Normative Instruction of the Brazilian Federal Revenue No. 1757 was published in the Official Gazette, ruling the DIRF of the fiscal year of 2018, with regard to the calendar year of 2017.

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