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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 98th edition, we address 11 different issues related to Jurisprudence.

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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!



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Jurisprudence

STF - Virtual Plenary - Constitutionality of Rural Union Contribution - Decree-Law n. 1.661/71

On 06/02/2017, the Plenary of the Federal Supreme Court (“STF”), in judging the Extraordinary Appeal (“RE”) 883.542/SP, with general acknowledged repercussion, analyzed the constitutionality of the Rural Union Contribution established by Decree-Law N. 1.661/1971.

The Plenary held that this Contribution, whose nature is tax, was approved by Federal Constitution/88 (“CF/88”), and it is required of all members of the category, regardless of membership of the union. In addition, it dismissed the allegation of double taxation because of the identity between the calculation base and the hypothesis of incidence of the Rural Territorial Tax (“ITR”), since the second part of item I of article 154 of CF/88 is inapplicable to social contributions and consequently concluded that there was no prohibition of identity between contributions and taxes.

In this line, reaffirming dominant jurisprudence in the STF, the thesis “The Rural Union Contribution, instituted by Decree-Law 1.661/1971, does not constitute hypothesis of double taxation and such tax was received by the constitutional order in force”.

STJ - Non-payment of IPI and IR/Fonte - Joint liability of representatives of legal entities - Article 8 of Decree-Law no. 1.736/1979 - Invalidity

On 06/21/2017, the Special Court of the Superior Court of Justice (“STJ”), in judging the Special Appeal (“REsp”) 1.419.104/SP, through Allegation de Unconstitutionality, declared the unconstitutionality of article 8 Of Decree-Law no. 1.736/1979, which provided for the joint and several liability of the controlling shareholders, directors, managers or representatives of companies for the credits arising from the non-payment of the Industrialized Products Tax (“IPI”) and the withholding Income tax (“IR-Fonte”).

In sum, the Minister Og Fernandes, rapporteur of the appeal, understood that the provision is formally unconstitutional because of the need to issue a Complementary Law to dispose of general tax rules, which include the tax liability of third parties, in accordance with Art. 146, item III, paragraph “a”, of CF/88.

In this sense, it was unanimously followed by the other Ministers and the instrument was declared unconstitutional.

STJ - The revocation of the preliminary injunction granted begins the statutory period for the Tax Authorities

On 05/10/2017, the 1st Section of the STJ finalized the judgment of the Divergence Appeal in the Special Appeal Bill (“EAREsp”) 407.940/RS and defined that the prescription for the Tax Collection of tax debts starts or resumes with the revocation of the injunction that suspended the enforceability of the credit, even if there has not yet been a final and unappealable decision.

In the case, the taxpayer defended, in the will of Motion to Stay Execution, the prescription of the tax credit, since the express revocation of the injunction in Second Instance occurred and the exceptional resources were not received with suspensive effect.

The Minister Og Fernandes, rapporteur of the appeal, understood that, once the provision is a preliminary decision and there is no other measure capable of suspending the demandability of the tax credit, the period of limitation is automatically initiated and the credit becomes payable from that moment on.

By a majority, the Section granted the taxpayer's appeal to recognize that the revocation of the injunction begins the statute of limitations for the Tax Authorities to collect the tax credit.

STJ - Possibility of crediting PIS / COFINS in the single-phase regime

On 06/06/2017, the 1st Panel of the STJ finalized the judgment of the opposing Motion to Clarify in REsp 1.346.181/PE to understand the feasibility of crediting PIS/COFINS in the single-phase regime.

The Minister Benedito Gonçalves, responsible for the trial's decision, followed the understanding already made by the Chamber when in REsp n. 1.051.634/CE in the sense that the maintenance of PIS / COFINS credits authorized by art. 17 of Law no. 11.033/04 applies to all taxpayers, regardless of whether they are submitted to the REPORTO tax regime, considering the non-cumulative principle.

The Panel, by most votes, accepted the motion of clarify of the taxpayer's declaration to modify the Special Appeal with the expiration of Minister Sergio Kukina.

This understanding is not yet pacified within the scope of the Panels of public law of the STJ, as the precedents of the 2nd Panel continue to follow the line of which there is evident incompatibility between the regimes.

In addition, the Divergence Appeal n. 1.051.634/CE, opposed by the Treasury to modify the understanding favorable to taxpayers, were recently admitted for analysis of the 1st Section, the body responsible for settling disputes between Panels of public law.

STJ - BacenJud prior to service of the debtor - Exceptional measure

On 06/27/2017, the 2nd Panel of the STJ, when judging REsp 1.670.176/PE, unanimously understood that the blocking or attachment of money, through the BacenJud system, before the Tax debtor's appointment is exceptional.

The Minister Relator, Herman Benjamim, stated that the fact that there is a legal provision for the seizure of money by electronic means does not of itself lead to the reasoning that this constriction should always be made before the counterpart is summoned. According to the Minister, early blocking, based on the general power of caution of the judge, is exceptional and must be carried out only when the requirements set forth in articles 653 and 813 of CPC/73 are demonstrated (i) the existence of assets and not location of the debtor; and (ii) danger of severe injury or difficult repair.

STJ - Import Tax - Rate reduction benefit of tax rate - Import declaration registered before the entry into force of the benefit - possibility

On 06/20/2017, the 2nd Panel of the STJ, in the judgment of REsp 1.664.778/PR, decided on the possibility of guaranteeing to the taxpayer the extension of the effects of Resolution CAMEX n. 86/2015, which reduced the Import Tax rate ("II"), if the date of registration of the Import Declaration ("DI") preceded the entry into force of the benefit.

In the present case, the taxpayer had postulated the request for concession of tariff benefit on a date prior to the presentation of the DI. However, the CAMEX resolution granting the benefit to the imported good was published later.

According to Minister Og Fernandes, rapporteur for the case, it is reasonable and proportional to guarantee the taxpayer the benefits of the "ex-tariff" regime, since it had already been requested from the competent authority prior to the offer of DI.

The Panel, unanimously, dismissed the appeal of the National Treasury.

COSIT Consultation Solution n. 347/2017 - Revenue from disposal of interest in presumed income

It was published, on June 27, 2017, the Consultation Solution n. 347, of the General Taxation Coordination ("COSIT"), dealing with the form of taxation of revenue arising from the sale of ownership interest in presumed income.

COSIT understood that the revenue obtained from the sale of a non-permanent shareholding by a legal entity that has as one of its objects the purchase and sale of holdings should be computed as gross revenue, applying the percentage of presumption of 32%. In the event of the sale of a permanent equity interest, the transaction is subject to the calculation of the capital gain, which must be directly and fully computed in the IRPJ and CSLL calculation base.

Ordinance of the Attorney General of the National Treasury n. 690/2017 - Special Program for Tax Regularization and debts administered by the Attorney General of the National Treasury

The Ordinance of the Attorney General of the National Treasury was published on June 29, 2017, dealing with Provisional Measure no. 783/2017, which provides for the Special Tax Regularization Program ("PERT").

The Ordinance regulates the adhesion of debts registered in active debt of the Union, of individual or legal responsibility, in PERT. The Program covers debts of a tax and non-tax nature that expire up to April 30, 2017, including the objects of previous installments active or terminated, or under judicial discussion. The Ordinance provides for the modalities by which the taxable person can settle pending claims. The deadline for adhesion ends on August 31, 2017.

Decree n. 9.094 / 2017 - Simplification of service to users of public services

It was published, on July 17, 2017, Decree n. 9,094, dealing with the simplification of service in public services.

The Decree exempts the requirement, in federal public agencies, for signature recognition and for authentication in documents produced in the country. It is also expected that documents proving the regularity of the situation of users of public services, certificates, certificates or other documents that appear in an official database of the federal public administration, should be obtained directly from the body responsible for the database, should not be required of users of public services.

Normative Instruction of the Federal Revenue of Brazil n. 1.717/2017 - Norms relating to restitution, compensation, reimbursement and reimbursement.

It was published, on July 18, 2017, Normative Instruction n. 1.717 from the Federal Revenue of Brazil, which revoked Normative Instruction n. 1.300, of November 20, 2012, dealing fully with the procedures for restitution, compensation, reimbursement and reimbursement of claims before the Federal Revenue Service.

Decree n. 9.115 - Promulgates the Convention between the Government of the Federative Republic of Brazil and the Government of the Russian Federation

On August 1, 2017, Decree n. 9.115, which promulgates the Convention on the avoidance of double taxation and the prevention of tax evasion with respect to income taxes between the Government of the Federative Republic of Brazil and the Government of the Russian Federation, signed in Brasilia on November 22, 2004. From the publication of the Decree, the Brazil Russia Convention becomes fully effective.

Team responsible for the preparation of that Tax Bulletin:

Henrique Philip Schneider (philip.schneider@schneiderpugliese.com.br)
Eduardo Pugliese Pincelli (eduardo.pugliese@schneiderpugliese.com.br)
Cassio Sztokfisz (cassio.sztokfisz@schneiderpugliese.com.br)
Diogo de Andrade Figueiredo (diogo.figueiredo@schneiderpugliese.com.br)
Flavio Eduardo Carvalho (flavio.carvalho@schneiderpugliese.com.br)
Rafael Fukuji Watanabe (rafael.watanabe@schneiderpugliese.com.br)
Rodrigo Tosto Lascala (rodrigo.tosto@schneiderpugliese.com.br)
Maria Carolina Maldonado Kraljevic (mariacarolina.maldonado@schneiderpugliese.com.br)
Rodrigo Leal Griz (rodrigo.griz@schneiderpugliese.com.br)
Thomas Ampessan Lemos da Silva (thomas.ampessan@schneiderpugliese.com.br)
Ana Cristina de Paulo Assunção (anacristina.assuncao@schneiderpugliese.com.br)
Vanessa Carrilo do Nascimento (vanessa.nascimento@schneiderpugliese.com.br)
Sergio Grama Lima (sergio.lima@schneiderpugliese.com.br)
Pedro Paulo Bresciani (pedro.bresciani@schneiderpugliese.com.br)
Renata Ferraioli (renata.ferraioli@schneiderpugliese.com.br)
Pedro Guilherme Ferreira Bini (pedro.bini@schneiderpugliese.com.br)
Tatiana Ergang Barros (tatiana.barros@schneiderpugliese.com.br)
Henrique Rodrigues e Silva (henrique.silva@schneiderpugliese.com.br)
Andréa Marco Antonio (andrea.antonio@schneiderpugliese.com.br)
José Filipe Rodrigues Camargo Guimarães (josefilipe.guimaraes@schneiderpugliese.com.br)
Nando Machado Monteiro dos Santos (nando.machado@schneiderpugliese.com.br)
Guilherme Almeida de Oliveira (guilherme.oliveira@schneiderpugliese.com.br)
Vivian Gomes Ishii (vivian.ishii@schneiderpugliese.com.br)
Jéssica Caroline Covolan (jessica.covolan@schneiderpugliese.com.br)
Lisandra Pacheco (lisandra.pacheco@schneiderpugliese.com.br)
Andressa Paula Senna (andressa.senna@schneiderpugliese.com.br)
Raphael Oliveira Ferreira de Toledo Piza (raphael.piza@schneiderpugliese.com.br)



r. Cincinato Braga 340 , 9º andar
São Paulo , SP , Brasil , 01333-010
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 , Brasil , 70715-900
tel +55 61 3251 9403 , fax +55 61 3251 9429