

MUNICIPAL TAX COUNCIL OF SÃO PAULO

Specific tax report nº 04 • Year I • October 2014

Dear Readers:

The purpose of this **Tax Bulletin of the Municipal Tax Council** is to update our clients and other interested parties in the main issues being discussed and decided within the scope of administrative litigation of the municipality of São Paulo.

In this issue, we will handle four different subjects related to Jurisprudence and Legislation. To directly access each text, click:

Attorney's Office of the Municipality of São Paulo regulates the installment plan for tax liabilities at the São Paulo Tax Administration.

The service should result in innovation, to be classified as research activity for assessment of ISS (Tax on Services).

CMT sets criterion to classify export of services in the commercial representation activity.

Impossibility of extension of acknowledgment of IPTU (Municipal Tax on Urban Real Estate) exemption for ISS (Tax on Services).

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Souza, Schneider, Pugliese e Sztokfisz Advogados law firm is available to its clients should they have any questions related to this Tax Bulletin

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Attorney's Office of the Municipality of São Paulo regulates the installment plan for tax liabilities at the São Paulo Tax Administration.

Last August, the Attorney's Office of the Municipality of São Paulo published the Administrative Rulings No. 4/2014 and 16/2014, which regulate the registration in the Overdue Liabilities List and the installment plan for debts owed to São Paulo Tax Administration.

In summary, the Administrative Ruling No. 16/2014, published on 08.29.2014, provides for the registration of liabilities in the Overdue Liabilities List, establishing that after the final decision at the administrative level, the tax liabilities be included in the Overdue Liabilities List within the 90 days. It also entitles the Taxpayer to finance these liabilities in up to 60 months.

On the other hand, the Administrative Ruling No. 04/2014, published on 08.30.2014, sets criteria and conditions for the financing of tax liabilities, registered in the Overdue Liabilities List, administered by the Tax Department of the Tax Office of the Attorney's Office of the Municipality of São Paulo.

The main provisions, among others, are: possibility of an installment plan for the liabilities not exceeding R\$ 111,000.00 regardless of prior approval of the Director of the Department in charge of the liability; and installment plan for a maximum of 60 months; and, the possibility of a maximum of 3 further installment plans for the consolidated liability.

SOUZA, SCHNEIDER, PUGLIESE E SZTOKFISZ ADVOGADOS office is available to clients, to clarify any doubts regarding this administrative ruling.

The service should result in innovation, to be classified as research activity for assessment of ISS (Tax on Services).

This is the Tax Administrative Proceeding (PTA 2014-0.099.665-8) which discusses the requirement to tax ISS on revenues from marketing's research and planning services.

In its defense, the Appellant states that its service is classified as "Research and development services of any nature", as set forth in the item 2.01 of the List of Services, whose ISS rate is of 2%.

Furthermore, it claims that, the provision of these services to companies headquartered abroad, characterizes an export of services, since these clients use these researches to develop new products, i.e., the utility of the research would be verified abroad.

Regarding the first item, the core of the matter is the distinction between "Advisor or consultant services of any nature, not comprised by other items on this list; analysis, examination, research, collection, compilation and supply of data and information of any kind, including registration and similar", classified under the item 17.01 of the List of Services, whose rate is of 5%, and "Research and development services of any nature", set forth in section 2.01, whose ISS rate is of 2%.

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The 4th Judging Chamber, unanimously, considered that the distinction should be based on the following criterion: if the service rendered results in some kind of innovation it should be classified under the item 2.01, otherwise, under the item 17.01, just as the service rendered by the Appellant should have been classified.

Concerning the Export of Services, the divergent vote of the Member Lucio Masaaki Yamazato prevailed, to the sense that, as the service is rendered in Brazil, there ought to be no mention to exported services.

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CMT sets criterion to classify export of services in the commercial representation activity.

This is the Tax Administrative Proceeding (PTA 2014-0.119.752-0) which discusses the requirement to tax ISS on revenues from the rendering of Commercial Representation services.

In its defense, the Appellant claims that this is export of services, since it rendered representation services to a company with headquarters abroad.

The 2nd Judging Chamber unanimously, as per the vote of the Reporter Member, Jonathan Vita, did not accept export of services in the case, on the grounds that the conclusion of the contract and delivery of the merchandise took place in Brazil, which does not configure export of services.

In summary, the Members considered that, for “Commercial Representation” services, the criterion for verification of results is identified upon the “conclusion of the contract and the delivery of the merchandise”.

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Impossibility of extension of acknowledgment of IPTU (Municipal Tax on Urban Real Estate) exemption for ISS (Tax on Services).

This is the Tax Administrative Proceeding (PTA 2014-0.061.529-8) which discusses the requirement to tax ISS on the activity of “Retirement homes and halfway houses, day care centers, nursing homes and similar”, classified under the item 4.17 of the List of Services appended to Law No. 13701/2003.

The tax deficiency notice arose out of the non-granting of the request for exemption filed by the Appellant on account of non-fulfillment of the conditions provisioned in the Article 14 of CTN [National Tax Code], namely: a) to hold a checking account abroad; b) to hold relevant part of its working assets as stocks; c) not to carry out the proper bookkeeping.

Regarding the merits, the 3rd Chamber has decided, by majority, to deny cognizance of the Appeal, as it

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considered that the Board was not competent to analyze the request for exemption, as per the Article 79 of the Law No. 14107/05.

However, the Members discussed the possibility to extend the exemption granted to IPTU (secured by the Taxpayer) to ISS. The Reporter Member, Sheila Tâmbara, considered that compliance with the requirements for exemption from one tax may differ from those required for another tax; thus, the Taxpayer could have not stop ISS payments based on exemption acknowledged for the IPTU.

In contrast, the opinion of the Member Carolina Romanini Miguel was divergent to the sense of acknowledging the possibility to extend the exemption of IPTU to ISS, on the grounds that the “benefit is applicable to all taxes, and no conditions different from those defined by Article 14 of the National Tax Code may apply. So, the exemption of IPTU shall extend to ISS.”

However, the appeal was not accepted, on the grounds of lack of evidence of proper bookkeeping by the Appellant, pursuant to Article 14, III, of the CTN.

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