

Dear Readers:

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

In this 117th edition of our note, we comment a decision in which the Administrative Council of Tax Appeals (“CARF”) considered the operation of public offering of existing shares has commercial aspects because (i) the company (taxpayer) was aiming new resources, and (ii) the operation was not linked with the performance (attainment of goals) of the employees. Because of it, CARF considered the operation has legal nature of extra compensation for labor law purposes, therefore, the operation should not be levied by pension contributions (article 28, paragraph 9, point ‘e’, item 7, of Law n. 8.212/1991).

We also commented on a decision in which CARF (i) stated that there was no ‘real purpose’ in the sale of shares through investment fund structures, which caused the Administrative Council to collect income tax on the capital gain earned by the funds in the transaction; (ii) on the other hand, the Counsel allowed the offsetting of amounts paid as commissions (“come-cotas”) by the funds of the amounts of capital gain levied on income tax; (iii) withdrew the capital gain taxation on the sale through the merger of shares (so called “incorporação de ações”), since it was understood that the transaction was an effective exchange between companies; and (iv) levied income tax and social contribution on net income related to the transaction, charging the partners and managers of the legal entity, on the grounds that after the extinction of the legal entity and, in the case of corporate transactions without a ‘real purpose’, individuals would be jointly and severally liable, in view of the common interest of the partners and legal entity to sale the shares.

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

Also, if requested, we are fully available to translate our Tax Bulletin to English.