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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 96th edition, we address 5 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 - Differentiated taxation is constitutional for sugar production in the North and Northeast

On 04/05/2017, the Federal Supreme Court ("STF") ruled the Extraordinary Appeal ("RE") n. 592.145, with general repercussion recognized, and deemed to be constitutional the regime provided for the Law 8.393/1991 establishing the maximum rates of 18% for the IPI assessed on sugar production out of North and Northeast, as well as enabling 50% deduction for the production of Espírito Santo and Rio de Janeiro.

The Rapporteur of the case, Minister Marco Aurélio, understands reasonable to validate the differentiated taxation for the sugar production in the regions mentioned above, as an instrument of IPI tax incentive, concluding this refers to a normative political option to the essentiality of the product.

In this line, the full Bench established the thesis of "Appearing constitutional under the selective nature angle, regarding the essentiality of product and isonomic treatment, article 2nd of Law 8.393/1991, to reveal the maximum rate of Excise tax (IPI) of 18%, ensuring the exemption to the taxpayers located in the area of authority of the Northeast Development Superintendence (Sudene) and Amazon Development superintendence (Sudam) , and the authorization for the reduction up to 50% of the rate of taxpayers located in the States of Espírito Santo and Rio de Janeiro."

STF – Assessment of IPTU on property of a legal entity of public law occupied by private entity

On 04/06/2017, the full Bench of the STF, when ruling on the RE n. 601.720/RJ, with general repercussions recognized, decided by the assessment of IPTU on property of a legal entity of public law assigned to legal entity of private law.

In short, the rapporteur, Minister Marco Aurélio, understood that the reciprocal immunity provided by the Federal Constitution, prevents the states from requiring taxes one from another, is not extended to public buildings occupied by private entities.

Thus, for most Ministers, defeated Edson Fachin and Dias Toffoli, the full Bench decided for the assessment of tax, thus remains established the following thesis "Assessment of the IPTU on the property of a legal entity of public law assigned the legal entity of private law person with outstanding tax."

STJ – Immediate application of the thesis signed by the STF regarding the exclusion of ICMS from calculation base of PIS/COFINS

On 04/05/2017, the first Chamber of the Superior Court of Justice ("STJ"), when ruling on the Special Appeals ("REsp") n. 1.536.341/BA; 1.536.378/GO; 1.547.701/MT and 1.570.532/PB, understands for applying the understanding issued by the STF in general repercussion that one should not include the ICMS in the calculation basis of PIS/COFINS.

The Ministers decided to change the case law then prevailing of the STF to adopt the reasons of the Supreme Court in the trial of leading case RE n. 574.706/PR, in which it considered that the value of the ICMS does not feature income of the company, therefore, it should not be included in calculation of the social contributions.

Thus, although the Supreme Court has not yet stated an opinion on the extent of the effects of the decision, theses was stated favorable to the taxpayer regarding the provisions in the new CPC on the immediate application of recurrent.

STJ - Inclusion of inflationary purges from the calculation of court deposits made up to 1996

On 05/03/2017, the Special Court of the STJ, in ruling on the REsp n. 1.131.360/RJ, in recurrent regime, decided by the inclusion of the inflationary purges for monetary restatement of court deposits made to the date on which SELIC-01/1996 has entered in force.

In short, the appeal was filed by Company which made the court deposit in May 1989 and subsequently withdraws the amount in 1996 without the inclusion of inflationary purges.

Thus, for most, Ministers of Court decided to establish the following thesis: "The monetary restatement of judicial deposits must include the inflationary purges."

TRF2 – The determining factor for measuring the rate of contribution to the GILL/RAT should be registered in the purpose of companies and before Inland Revenue Office

On 04/06/2017, the 3rd Specialized Bench of Federal Regional Court of the 2nd region ("TRF2"), when ruling on the appeal n. 0001217-02.2006.4.02.5101, concluded that, for the purposes of assessing the degree of risk of the activity and definition of the contribution rate to the GILL/RAT, the preponderant activity of the company must take into account as detailed in the National Roll of Legal Entities ("CNPJ") and in its Bylaws or Articles of Incorporation.

In this case, the company was assessed by collecting the Contribution to GILL/RAT as the activity carried out by its workers showed mild level of risk of an accident at work, using the rate of 1%. However, according to the registration in the CNPJ and the purpose of the company, the itemized activity results in the submission of the company to 2% rate, according to the provision of workers subject to medium level of risk of an accident at work.

Thus, the Bench decided, by unanimous vote, that for the purposes of assessment of contribution to GILL/RAT the tax rate applicable to the level of economic activity risk should be considered as it is declared and recorded in the articles of incorporation of the companies and the Inland Revenue Office, although the workers of a given facility are not submitted to actual risk.

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