

Dear Readers:

The purpose of this **Tax Bulletin** aims to update our customers and other interested parties on the major issues being discussed and decided within Judiciary, Legislative and Executive level.

In this 84nd edition we deal with 9 different subjects related to Case Law, Legislation and Consultation Solution.

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The offices of **Souza, Schneider, Pugliese and Sztokfisz Advogados** are available to its clients for any clarification regarding the above-mentioned subjects.

Enjoy the reading!



Jurisprudência

STF (Federal Supreme Court) - Acknowledged General Repercussion

• Offset on its own initiative - Federal Revenue Service - credits of taxpayers against debts not paid in installments or installments without guarantee

On December 18, 2015 the Virtual Branch of the Federal Supreme Court (STF) had a positioning on the existence of a general repercussion on such controversy concerning the constitutionality of the sole paragraph of Article 73 of Law 9.430/1996, as amended by Law 12.844/2013, which provides for the possibility that the Tax Authority, taking the opportunity of the refund or reimbursement of taxes managed by the Brazilian Federal Revenue Service, proceed to the offset, on its own initiative, against debts not paid in installments or installments without guarantee, as provided in Article 146, item III, sub-item “b”, of the Federal Constitution (CF/88). Such matter will be discussed in Special Appeal (RE) n. 917285/SC, the judge-rapporteur of which is Justice Dias Toffoli.

STJ (Superior Court of Justice) - Prevalence of international tax treaties over the rule of domestic law

On November 19, 2015, the First Panel of the Superior Court of Justice (STJ) resolved that the provisions of International Treaties shall prevail over the legal rules of domestic law for the purpose of enforcing the Brazil-Spain Treaty under Decree 76.975/76 and releasing the withholding of Income Tax on the compensation received by foreign companies.

In the case at hand, the Spanish company not incorporated in Brazil provided services to the Brazilian company, resulting in the Brazilian Federal Revenue Service requiring the payment of the Withholding Income Tax on any remittances made to pay for the service. For the RFB, such fees characterized taxable income by IRRF (Withholding Income Tax), not to be confused with the case provided for in Article 7 of the Treaty, which would approach the taxable income.

However, the First Panel, in line with other STJ precedents, understands that the income should be taxed only in the country of origin of the company (Spain), confirming that the Treaty’s provisions are not limited to taxable income, but also cover the operating profit.

TRF1 (Regional Federal Appellate Court for the 1st Region) - IPI (Tax on Manufactured Products) - Non-levy of taxes on the output of products from the premises of cosmetics, toiletries and perfumery distributors

On November 17, 2015, the Seventh Panel of the Regional Federal Appellate Court for the 1st Region (TRF1) unanimously granted an Interlocutory Appeal to suspend the payment of the Tax on Industrialized Products levied on the activities of wholesale establishments that sell cosmetics, toiletries and perfumes purchased from a distributor due to equivalence to industrial establishments under Law number 8393/2015.

In the opinion of Federal Appellate Judge Hercules Fajoses, the collection of Tax on Manufactured Products (IPI) on the activities of wholesale establishments that sell cosmetics, toiletries and perfumes was allegedly illegal even before the promulgation of Decree 8.393/2015 since the equivalence of such establishments to industrial establishments, creating a new taxpayer of IPI, was perpetrated by Ordinary Law 7.789/1989,

, when it could only occur through a specific law, namely: Complementary Law, according to the Constitutional provisions.

Thus, on the grounds that the Public Treasury did not provide sufficient arguments to invalidate this legal opinion, the Appellate Judge, accompanied by the Panel, confirmed the appellate interlocutory relief and suspended the requirement of paying the tax.

TRF3 (Regional Federal Appellate Court for the 3rd Region) - The tax foreclosure may only be redirected to the partners if there are acts in excess of authority or breach of law

On November 18, 2015 the Fourth Panel of the Federal Appellate Court for the 3rd Region (TRF3) unanimously denied the Interlocutory Appeal of the Public Treasury to confirm the decision issued to suspend the joint and several liability of the partners concerning tax foreclosure. In the opinion of Appellate Judge Marcelo Saraiva, accompanied by the Panel, the tax foreclosure may only be redirected to the managing partners' property when they act in excess of authority or breach of law (Article 135 of the National Tax Code).

In the case at hand, the Public Treasury did not identify the company at the address provided and requested the redirection of the foreclosure to the partners, but the judges confirmed that the company was still operating and the behavior of the partners was not within any of the cases described in Article 135 of the National Tax Code.

Legislation and Query Solutions

Law number 13.241/2015 - Contribution to PIS (Social Integration Program) and COFINS (Contribution for the Financing of Social Security) - Electronics and Computer Industry Products

On December 31, 2015 Law 13.241/2015 ("Law 13.241/2015") was published, which reintroduced the levy of the Contribution to the Social Integration Program ("PIS Contribution") and the Contribution for the Financing of Social Security ("COFINS") on the gross revenue from retail sale of electronics and computer industry products, such as digital processing units, keyboards, modems, digital routers and smart phones. Such contributions will apply to any taxable events arising from January 1, 2016, at full tax rates, to be effective until December 31, 2016.

Said Law also introduced a new regime concerning the Tax on Manufactured Products ("IPI") for beverages such as wines, liqueurs and brandies.

Law number 7.175/2015 – ITCMD (Taxes on Heritable Property and Donation of Any Property or Rights) – State of Rio de Janeiro

On December 29, 2015 State Law 7.174/2015 ("Law 7.174/2015") was published, which provides for Taxes on Heritable Property and Donation of Any Property or Rights ("ITCMD").

Among other amendments, Law 7.174/2015 raised the tax rate of ITCMD in the State of Rio de Janeiro,

which will change to 4.5%, for amounts up to 400,000 UFIR-RJ and 5% for amounts above 400,000 UFIR-RJ. These rates will apply from March 28, 2016. Furthermore, there was a change to the system for payment of ITCMD in cases of donations with usufruct reservation, the rate of which will change to 50% on the property value, both in the donation and the transfer of the full property to the donee.

Finally, Law 7.174/2015 created the ITCMD taxation on complementary social-security plans, such as the Free Benefit Generating Plan (“PGBL”) and the Free Benefit Generating Life Plan (“VGBL”), which will be imposed on transmission of heritable property.

Consultation Solution COSIT (General Coordinator’s Office for the Tax System) number 230/2016 - CIDE-Royalties Credits - Time Limit

On December 22, 2015 Consultation Solution number 230 rendered by the General Coordinator’s Office for the Tax System (“COSIT”) was published, which provides for the time limit for the use of credits from the Contribution for Intervention in the Economic Domain (“CIDE”) applicable to any amounts paid, credited, delivered, used or remitted to a foreign country as royalties related to contracts for exploitation of patents and use of trademarks.

The taxpayer has notified that it has CIDE-Royalties credits and intends to use same as offset against future debts arising from the same tax. In its consultation, it believes that the credits should not be classified as receivables against the Public Treasury, in which case they would not be subject to any limitation period.

In response to such consultation, COSIT expressed its understanding that the CIDE-Royalties credits, although such credits do not represent a debt payable by the Federal Government, but rather a tax benefit, enforceable against the Federal Treasury, would be subject to a general limitation period of five years, as provided in Article 1 of Decree number 20.910, of January 6, 1932 (“Decree number 20.910/32”).

Normative Instruction number 1.609/2016 - IOF (Tax on Financial Transactions) - Credit Transactions - Exemption of Collection

On January 20, 2016, Normative Instruction number 1.609/2016 was published, as issued by the Brazilian Federal Revenue Service (“IN/RFB number 1.609/2016”), which amended IN/RFB number 907/2009 that provides for the Tax on Credit, Exchange and Insurance Transactions, or related to Bonds or Securities (“IOF”), in order to add provisions concerning credit transactions.

IN/RFB number 1.609/2016 added paragraph 3 to Article 3 of IN/RFB number 907/2009, which provides that the extension, renewal, modification, composition, consolidation and assumption of debts, and similar business in credit transactions with maturities of more than 365 days, without substitution of the debtor, shall not give rise to complementary IOF collection on any unpaid balance of a previously taxed transaction.

ADI (Interpretative Declaratory Act) number 1/2016 - IRRF (Withholding Income Tax) - Financial Investments from Individuals who Obtained the Non-Resident Status

On January 20, 2016 Interpretative Declaratory Act number 1 (“ADI number 1/2016”) was published, which



provides for the application of the Withholding Income Tax (“IRRF”) on financial investments of individuals.

To apply the special tax regime on foreigner investors who do not reside in a country of favored taxation, the taxpayer must require such non-resident to provide supporting documents to prove the submission of the Communication of Definitive Departure from the Country to the Brazilian Federal Revenue Service (RFB). Also, the taxpayer must withhold or pay the Income Tax imposed on the earned income until the day before the acquisition of non-resident status.

Finally, said ADI confirms that an individual who obtained non-resident status in the Brazilian territory must communicate such situation to the relevant payer in Brazil.



Team responsible for the preparation of that Tax Note:

Igor Nascimento de Souza (igor.souza@souzaschneider.com.br)
Henrique Philip Schneider (philip.schneider@souzaschneider.com.br)
Eduardo Pugliese Pincelli (eduardo.pugliese@souzaschneider.com.br)
Cassio Sztokfisz (cassio.sztokfisz@souzaschneider.com.br)
Fernanda Donnabella Camano de Souza (fernanda.camano@souzaschneider.com.br)
Diogo de Andrade Figueiredo (diogo.figueiredo@souzaschneider.com.br)
Flavio Eduardo Carvalho (flavio.carvalho@souzaschneider.com.br)
Vitor Martins Flores (vitor.flores@souzaschneider.com.br)
Rafael Fukuji Watanabe (rafael.watanabe@souzaschneider.com.br)
Rodrigo Tosto Lascala (rodrigo.tosto@souzaschneider.com.br)
Maria Carolina Maldonado Kraljevic (mariacarolina.maldonado@souzaschneider.com.br)
Gabriela Barroso Gonzaga Ferreira Porto (gabriela.porto@souzaschneider.com.br)
Laura Benini Candido (laura.candido@souzaschneider.com.br)
Thomas Ampessan Lemos da Silva (thomas.ampessan@souzaschneider.com.br)
Ana Cristina de Paulo Assunção (anacristina.assuncao@souzaschneider.com.br)
Vanessa Carrilo do Nascimento (vanessa.nascimento@souzaschneider.com.br)
Sergio Grama Lima (sergio.lima@souzaschneider.com.br)
Pedro Paulo Bresciani (pedro.bresciani@souzaschneider.com.br)
Renata Ferraioli (renata.ferraioli@souzaschneider.com.br)
Pedro Guilherme Ferreira Bini (pedro.bini@souzaschneider.com.br)
Roberta Marques de Moraes (roberta.moraes@souzaschneider.com.br)
Tatiana Ergang Barros (tatiana.barros@souzaschneider.com.br)
Alberto Frederico Teixeira Soares Carbonar (alberto.carbonar@souzaschneider.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

souzaschneider.com.br