

MUNICIPAL TAX COUNCIL OF SÃO PAULO

Specific tax report n° 05 • Year I • March 2015

Dear Readers:

The purpose of this **Tax Bulletin of the Municipal Tax Council** aims to update our clients and other interested parties on the major issues being discussed and decided within litigation level of São Paulo city administration.

In this Edition, we are dealing with four different issues in Case of Law and Legislation. To directly access each texts, click:

Term is open for joining the PPI/2014.

New procedures for issuing electronic invoice for non-taxable service.

CMT decides for assessment of ISS on the shelf software licensing.

CMT establishes the criterion for assessment of services related to the software development.

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

Enjoy your reading!

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Term is open for joining the PPI/2014.

City Official Gazette of São Paulo published on the day 01.08.2015, Decree number 55.828/2015, which regulates the PPI/2014, established by law number 16.097/2014.

In short, tax debts should be divided or not, regardless of its constitution, registration in executable debt or filing, related to **generating facts taking place up to December 31, 2013**. Only debits from traffic violations cannot be object of installments plan as well as contractual obligations and indemnities payable to the City of São Paulo for damage caused to its assets.

The debts should be paid up to 120 monthly instalments, by applying the following reductions to the tax credits:

- a) Sole installment: 85% reduction of the value of default interest; 75% of fine and 75% of attorneys' fees (applicable only to debts recorded in executable debt);
- b) Installments plan: 60% reduction of the value of default interest; 50% of fine and 50% of attorneys' fees (applicable only to debts recorded in executable debt);

The following terms were established for joining the program:

- a) 04/30/2015: tax debts;
- b) 04/17/2015: for the inclusion of tax debit balance from installment plan in progress.

Indeed, the installments shall be equal, successive and monthly, updated by the SELIC, and the amount to be paid monthly cannot be lower than the R\$ 200.00 for legal entities.

Moreover, the inclusion in the program will cause the irrevocable and intractable confession of all included debts, which installment plan approval depends on the withdrawal from any judicial or administrative discussions.

In turn, the formalization of the adhesion application to PPI will be made through the website of the city hall (https://www3.prefeitura.sp.gov.br/ppi_portal/Forms/frmOrientacoesPPI.aspx), accessible through the use of Web password, wherein payment options should be simulated.

New procedures for issuing electronic invoice for non-taxable service.

The Normative Instruction SF/SUREM number 14/2014 was in force on 02.23.2015, edited by the Finance Department of the City of São Paulo, which regulates the issuance of Electronic Services Invoice – NFS-e.

In short, the amendments refer to the correct filling of the invoices related to non-taxable services by the city of São Paulo. Regarding the possibility of immunity, exemption or suspension of the tax demands, in addition to point out the respective applicable situation, the taxpayer shall indicate whether, in the case of tax demand, the ISSQN would be due or not to the city of São Paulo.

Still, in respect to the exports of services, taxpayers should not indicate the option “exempt/released”. In these cases, “exports of services” option must be informed.

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CMT decides for assessment of ISS on the shelf software licensing.

This is Administrative Tax Proceeding (PTA number 2014-0.205.575-3) in which ISS demand is discussed on the imports of systems analysis and development services, preparation of computer programs and computer technical support.

In its defense, the Claimant alleges that taxation concerns the import of goods, claiming that the imported software are standardized, i.e. “off-the-shelf”, subject only to the assessment of ICMS.

Firstly, the claim that the assessed income was object of goods import was removed for lack of evidence. Furthermore, as regards the allegation that the imported software was standardized (“off-the-shelf”), the 4th Judging Chamber by unanimity of vote, according to the vote by Council member Paulo Roberto de Andrade, understood that the distinction between ‘customized’ software and “off-the-shelf” was buried with the LC Number. 116/03, so that ISS assessment is valid on the software as there is no exception in this complementary Law.

Indeed, in the opinion by Council member Paulo Andrade, the dichotomy with which, in his opinion, has not been handled by superior courts, refers to the conflict between “software whose property is assigned definitely x software whose use is assigned temporarily”, in this way, shifting the center off the discussion of the product characteristic to the legal relationship maintained between the parties.

CMT establishes the criterion for assessment of services related to the software development.

This is Tax Administrative Proceeding (PTA number 2014-0.221.170-4) which discusses the ISS requirement on revenue arising from training activities and maintenance and support of computer software, related to preparation and development service of software, provided by the taxpayer.

In its defense, the Claimant maintains that the activities were carried out complementing the software preparation and development service, therefore they should not receive different tax treatment. The Fourth Judging Chamber, unanimously pursuant to vote by Council member Ricardo Cheruti, understood that each service, once identified in the services list attached to LC number 116/2003, shall be identified autonomously for ISS assessment.

Strengthening the understanding, upon examination of the documentation attached to the proceedings, the Council member stated that the services of staff training and technical support were invoiced separately by the Claimant, by the issuance of separate invoices, a fact that, he understands, allows the clear distinction between assessed services.

Thus, the 4th Judging Chamber, while denying grounds to the Taxpayer’s appeal, concluded that, in spite of being possible the joint contracting of software development services, support and training for its use, such activities cannot be deemed ancillary, and should be assessed separately.

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Team responsible for preparing tax bulletin the Municipal Tax Council of São Paulo:

Eduardo Pugliese Pincelli (eduardo.pugliese@souzaschneider.com.br)

Fernanda Donnabella Camano de Souza (fernanda.camano@souzaschneider.com.br)

Gabriela Barroso Gonzaga Ferreira Porto (gabriela.porto@souzaschneider.com.br)

R. CINCINATO BRAGA, 340 • 9º ANDAR • 01333-010 • SÃO PAULO • SP
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 • 70715-900
TEL 55 61 3251 9400 • FAX 55 61 3251 9429

WWW.SOUZASCHNEIDER.COM.BR