

Dear Readers:

The purpose of this **Tax Bulletin** has as its objective to keep our clients and other interested parties duly up-to-date on the main subjects being discussed and decided by the Judiciary, Legislative, and Executive.

In this 80th Issue, we're dealing with 11 different questions, within law, legislation and Consultation Solutions.

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

Enjoy your reading.

Jurisprudence

Supreme Court – STF – Acknowledged General Repercussion

- IRPF – bank deposits – unproven Source- Tax Assessment based only on bank statements

On 8/27/2015, the Federal Supreme Court (STF) acknowledged the existence of General Repercussion on the discussion about the impact of the Individual income tax (IRPF) on bank deposits considered as revenue or earnings omission, against the provision contained in art. 42 Act No 9.430/1996. This constitutional issue will be discussed at the extraordinary appeal (RE) no. 85.649/RS, by the Rapporteur Hon. Minister Marco Aurélio.

- Social security contributions – Unconstitutionality of the expression “not cumulative” – Art. 20 of law 8.212/91 – systematic calculation of the contribution payable by the insured employee and the individual worker.

On 8/14/2015, the Federal Supreme Court (STF) acknowledged the existence of General Repercussion on the discussion about the constitutionality of the phrase “non-cumulative” in the heading of article 20 of law 8.212/1991, which provides for the calculation of systematic social security contribution due by the insured employee and the independent worker. This constitutional issue will be discussed at the extraordinary appeal (RE) no. 852.796/RS, by the Rapporteur Hon. Minister Dias Toffoli.

- Contribution to the Employment Time Guarantee Fund - FGTS (– Art. 1 of 110/01 LC- Unconstitutionality of maintaining social contribution after reaching the purpose which motivated its imposition

On 9/4/2015, the Federal Supreme Court (STF) acknowledged the existence of General Repercussion on the discussion about the constitutionality of the maintenance of the FGTS 10% (ten per cent) contribution, established by art. 1 of the complementary law No 110/2001 against the end of the purpose which motivated its imposition. This constitutional issue will be discussed at the extraordinary appeal (RE) no. 878.313/SC, by the Rapporteur Hon. Minister Marco Aurélio.

- PIS and Cofins Calculation Base – – exclusion of presumed ICMS (Brazil VAT) credit arising from tax incentives granted by the States and the Federal District

On 8/27/2015, the Federal Supreme Court (STF) acknowledged the existence of General Repercussion on the discussion about the possibility of exclusion from the calculation base of PIS and COFINS the corresponding values of ICMS credits presumed to result from tax incentives granted by States and the Federal District. This constitutional issue will be discussed at the extraordinary appeal (RE) no. 835.818/PR, by the Rapporteur Hon. Minister Marco Aurélio.

- IPI- Non Cumulative – Presumed Credit - IPI Credit Impossibility assumed for purchasing inputs that are untaxed and subject to 0% (zero percent) rate

On 8/27/2015, the Federal Supreme Court (STF) acknowledged the existence of General Repercussion on the discussion about the impossibility of IPI credit for purchasing inputs that are exempt, not taxed or subject to 0% tax rate. The Supreme Court also reaffirmed the case-law of the Court for not crediting the IPI tax in such hypotheses in order to definitively cease the discussion. This constitutional issue will be discussed

at the extraordinary appeal (RE) no. 398.365/RS, by the Rapporteur Hon. Minister Gilmar Mendes.

- **Court-ordered debt payments - Obligation for payment through court-ordered debt payments of the amounts owed by the State between the date of the injunction and awarding order implementation**

On 8/7/2015, the Federal Supreme Court (STF) acknowledged the existence of General Repercussion on the discussion about the obligation of payment pursuant to court-ordered debt payments of amounts owed by the State Revenue between the date of the injunction and the effective implementation of the order. The Supreme Court also reaffirmed the Court's jurisprudence which requires the compliance with the court-ordered debt payments set forth in art. 100 of the Federal Constitution for the payment of amounts due by the State Revenue. This constitutional issue will be discussed at the extraordinary appeal (RE) no. 889.173/MS, by the Rapporteur Hon. Minister Luiz Fux.

TRF1- ICMS and IPI – Non collectible on the provision of custom graphic composition service

On 7/21/2015, the Seventh Chamber of the First Region Federal Regional Court (TRF1), by analyzing the Ap No. 0063587-91.2011.4.01.3800, decided, unanimously, that the provision of custom graphic composition service is subject only to ISSQN tax, and is not subject to ICMS or IPI taxes.

This judgment is in accordance to the analog application of Precedent No. 156 of the STJ Brazilian case law of the Superior Court of Justice, and founded an important precedent (AgRg in REsp 1308633/SP), judged in the light of art. 543-C of the CPC, through which it was defined that the graphic compositing services provided under client's demand are of a mixed nature and thus these services are included in the list attached to the LC No. 116/03 (13.05 item). Therefore, it was acknowledged that such operations are only subject to ISSQN taxation.

Nevertheless, it is important to emphasize that this issue is not ruled yet. ADIs no. 4.389/DF and 4.413/DF, which will define the tax will be incurred on the custom graphics packaging composition services, haven't been judged yet: ISS, ICMS or IPI.

TRF1-PIS and COFINS – Non collectible on operations with goods ordered for the Manaus free trade zone

On 8/14/2015, the eighth Class of the First Region Federal Regional Court (TRF1), by analyzing the Ap No. 0005925-24.2014.4.01.3200, unanimity, corroborated the understanding exposed on the REsp 1.276,540-AM, in the sense that the operations with goods ordered for the free zone of Manaus are equal to exporting for fiscal purposes pursuant to art. 4 of Decree-Law No. 288/67, therefore, the court ruled for the collection of PIS and COFINS contributions over these activities.

In addition to this, the Rapporteur of the case, Federal Judge Novély Vilanova da Silva Reis said that referred tax benefit also is extended to the companies based at the Manaus free trade zone that sell its products to others within the same location, observing not only the purpose of the creation of the Manaus Free Zone, but also the constitutional principles that govern the fight against social and regional inequalities.

¹156/STJ Summary: "The provision of customized graphic composition service, although it does not involve the delivery of goods, is subject only to ISS taxation."

Legislation and Answer to Consultations

Decree no. 8.506/2015 – Enactment of the agreement for FATCA implementation

On 8/21/2015, the Decree no. 8.506/2015 was published, which enacted INTERGOVERNMENTAL AGREEMENT TO IMPROVE TAX COMPLIANCE AND TO IMPLEMENT Foreign Account Tax Compliance Act (“Agreement to Implement FATCA”), entered into between Brazil and United States, on September 23, 2014.

This agreement, entered into in the context of the global policy for integration of financial information for tax purposes, provides for the cooperation in the exchange of tax information, especially with regards to the automatic and mutual information sharing between the tax authorities of the two countries.

In the legislative scope, the Agreement to Implement FATCA was approved by the National Congress on 5/26/2015, through the Legislative Decree no. 146 (“Legislative Decree no. 146/2015”).

COSIT Consultation solution no. 190/2015-IRRF- conversion of Indebtedness into Capital

On 8/13/2015, the query Solution No. 190 was published, by the General Coordination of Taxation Revenue (“COSIT”), which deals with the withholding income tax (“IRRF”) in the conversion of interests into share capital.

According to COSIT, the conversion of interests resulting from Loan agreements, entered into between the company and its shareholders, in the share capital of the liable company, must be considered as payment for bringing up the obligation of interests payment.

This way, the said operation would be subject to the collection of IRRF, whose withholding and collection is upon the company receiving the investment, as the corporate borrower.

COSIT Consultation solution no. 205/2015-IRRF - financial resources loan with Payment in installments

On 8/14/2015, the Consultation Solution No. 205 from COSIT was published, which clarified that, for financial resources obtained through loan agreements that set forth its payments to be made in installments, the IRRF charged on its interests should be withheld and calculated on the amount received each month.

Considering the provisions of law No. 8.981 from January 20, 1995 (law no. 8.981/ 1995”) and Normative Instruction 1.022, April 5, 2010 (“IN no. 1.022/2010 “), COSIT clarified that these financial incomes are subject to IRRF collection for the payment of each of the installments, “according to the starting date thereof”.

In this way, the tax rate will be determined at the time of the payment of each installment, taking into account the time which has elapsed between the drawdown date and the corresponding interests payment date.

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