

Brazil Tax Round-Up

23 May 2019

Legislative Developments

On April 5, 2019, Brazilian IRS Normative Ruling No. 1,880/2019 was published, which outlined changes in the Repetro-Sped regulations, such as the Normative Rulings Nos. 1,871/2018, 1,415/2013 and 1,600/2015.

[Read more about the changes.](#)

[Read the regulation.](#)

Processing proposals of normative acts to the Ministry of the Economy

On April 18, 2019, Ministry of Economy Ordinance No. 170/2019 was published, which regulates the administrative proceeding for normative acts and other legislative policies subject to the approval of the minister or the executive secretary of the Economy.

[Read the regulation.](#)

DCTF-Web for companies with revenues above BRL 4.8 million

On April 22, 2019, Brazilian IRS Normative Ruling No. 1,884/2019 was published, establishing the mandatory filing of the Digital Return of Federal Tax Credits and Debts ("DCTF-Web") as of April 2019 for entities that are members of "Group 2 - Business Entities," whose revenues were above R\$4.8 million in the calendar-year of 2017.

[Read the regulation.](#)

Codes for judicial and extrajudicial deposits

On April 25, 2019, CODAC Executive Declaratory Act No. 08/2019 was published, clarifying that the codes 2226 to 2602 and 2619 to 2859 must be used for social security contributions destined to the Social Security or other entities or funds related to i) the months of January 2009 and later that have been assessed from August 1, 2011 on, ii) debts included in the DCTF-Web since it became mandatory or (iii) other debts of the same nature collected through DARF or DAE.

[Read the regulation.](#)

Brazilian IRS's Answers to Advance Tax Ruling Requests

Amounts received under the Production Individualization Agreement ("AIP")

On April 1, 2019, the Coordination Office (“COSIT”) of the Brazilian IRS Answer to Advance Tax Ruling Request No. 89/2019 was published, clarifying that the amounts received by the holder of direct participation rights in oil reserves in Production Separation Agreements (“AIP”), as compensation for the transfer of its original right of exploration to another concessionaire of a nearby concession block, whose exploration has extended beyond the limits of its original concession area, should be considered gross revenue, in accordance with Section 12, item IV, of Law No. 1,598 of 1977. The Brazilian IRS said that these amounts are subject to the assessment of Contribution on Revenues (PIS/Pasep and COFINS).

[Read the opinion.](#)

The right to use software

On April 1, 2019, the COSIT Resolution of Conflicting Opinions No. 02/2019 was published to clarify the non-assessment of Contributions on Revenues (PIS/Pasep-Import and Cofins-Import) on amounts paid, credited, delivered or remitted to individuals or legal entities domiciled abroad as remuneration of the copyrights related to computer programs, since those amounts are detailed in the document that supports the operation. In cases such as these, import taxes will only be levied on amounts related to related services eventually hired.

[Read the resolution.](#)

Goods manufactured by 3D printers

On April 1, 2019, the COSIT Answer to Advance Taxpayer's Request No. 97/2019 was published, providing that the establishment that produces goods using a 3D printer that will be taxed, even in case of a zero or exempt rate, is considered a taxpayer of the Tax on Manufactures Products (“IPI”). Therefore, the IPI is levied on the exit of the goods from the establishment, in accordance with Section 8, Section 24, item II and Section 35 of the IPI Regulation.

In this sense, it was concluded that it is an industrialization operation under the transformation modality, subject to the 8% perceptual for calculating the calculation basis of the Corporate Income Tax (“IRPJ”) and 12% of the Social Contribution on Income (“CSLL”), both in the Presumed Profit regime. In case this activity is requested by a third party, however, the applicable perceptual will be 32%, as it is characterized as a provision of service.

[Read the opinion.](#)

Social security payments

On April 2, 2019, the COSIT Answer to Advance Tax Ruling Request No. 143/2019 was published regarding the levy of social security contributions on sick pay, accident aid, indemnified notice, one-third extra holiday pay, overtime hour, incorporated overtime hour, maternity-leave pay and payments related to workplace conditions.

In the opinion of the Brazilian IRS, the amounts related to sick pay, accident aid and indemnified notice are not subject to Social Security Contributions since they have a compensatory nature. On the other hand, the one-third extra holiday pay, overtime hour, incorporated overtime hour, maternity-leave pay and pay related to workplace conditions are subject Social Security Contributions as they have a salary nature.

[Read the opinion.](#)

License use and/or right to market and distribute software

On April 15, 2019, the COSIT Answer to Advance Tax Ruling Request No. 99.004/2019 was published, establishing that the amounts paid, credited, delivered, employed or remitted abroad as payment for the right to distribute or commercialize software for resale to a final consumer i) are considered royalties for Withholding Income Tax ("WHT") purposes, being assessed at the rate of 15%; ii) are not taxed by the Contribution on Intervention on the Economic Domain ("CIDE"), except in cases when transfer of technology occurs; and iii) are not taxed by Contributions on Revenues (PIS-Import and COFINS-Import) as long as these values are noted in the document that supports the operation.

[Read the opinion.](#)

Interest and fines reductions under PERT

On April 18, 2019, the COSIT Answer to Advance Tax Ruling Request No. 99.005/2019 was published, establishing that the reversal or recovery of the amount of interest and compensatory fines recognized as an expense are included in the calculation basis of the Corporate Income Tax ("IRPJ") in the Real Profit regime and in the calculation of the Social Contribution on Net Income ("CSLL") and Contributions on Revenues ("PIS" and "COFINS") in the non-cumulative calculation regime at the moment of joining the Special Program for Tax Regularization ("PERT").

[Read the opinion.](#)

NCM code for pipe handling systems used in FPSO

On April 24, 2019, the COSIT Answer to Advance Tax Ruling Request No. 98.103/2019 was published, establishing that piping handling systems used in FPSOs must be classified under the NCM code 8428.90.90.

[Read the opinion.](#)

Registry of SPC on the National Taxpayer's Registry

On April 24, 2019, the DISIT/SRRF02 Answer to Advance Tax Ruling No. 2.006/2019 was published, establishing that Brazilian law does not authorize the inclusion of a Special Partnership ("SCP") as a subsidiary of its ostensive partner at the National Taxpayer's Registry.

[Read the opinion.](#)

The rate to calculate the Corporate Income Tax calculation basis in the Presumed Profit Method for imaging services

On April 24, 2019, the DISIT/SRRF02 Answer to Advance Tax Ruling Request No 2,005/2019 was published, which defines that, as from January 1, 2009, it is possible to use the rate of 8% to calculate the Corporate Income Tax ("IRPJ") calculation basis in Presumed Profit Method in relation to the activities of diagnostic assistance and therapy, clinical pathology, imaging, pathological anatomy and cytopathology, nuclear medicine and clinical analysis as long as the provider of the services are organized as business entities and follow the norms of the Brazilian Health Regulatory Agency ("Anvisa").

[Read the opinion.](#)

Licensing of software – companies from the same economic group

On April 29, 2019, the COSIT Answer to Tax Ruling Request No. 146/2019 was published, establishing that the licensing of software for trading purposes between companies from the same economic group to be used for their main economic activity cannot be characterized as a cost sharing agreement. Therefore, the amounts of these payments must be considered royalties since they are related to a license of software for trading/distribution purposes without transfer of technology.

[Read the opinion.](#)

Relevant Decisions of the Taxpayer Council of Administrative Appeals

Corporate reorganization, business purpose and abusive tax planning

On April 10, 2019, the Taxpayer Council of Administrative Appeals (“CARF”) ruled that there was no business purpose on the creation of investment funds associated with a familiar holding company.

According to the majority of the Counselors, the creation of such funds should aim to benefit the business, not to merely reduce the tax burden of the holding company. CARF said that it is necessary to verify not only the legality of the acts but also the economic purpose of the operation in order to avoid that the reorganization is done fundamentally to save taxes.

In the opinion of counselor Julian Marteli Fais Feriato, there are three criteria that a tax planning strategy must meet to be considered legitimate: (i) the acts that triggered the reduction of the tax burden must occur chronologically before the tax triggering event; (ii) the acts of the taxpayer that resulted in the reduction of the tax burden must be lawful; and (iii) the manifestation of the intention must correspond to its social economic purpose.

[Read the changes.](#)

Relevant Decisions provided by the Superior Court of Justice

Exclusion of ICMS from the calculation basis of the CPRB

On April 10, 2019, the First Section of the Superior Court of Justice (“STJ”) ruled to exclude the Tax on Distribution of Goods and Services (“ICMS”) from the calculation basis of the Social Security Contribution on the Gross Revenue (“CPRB”).

The Ministers rendered a similar decision to the one made by the Federal Supreme Court related to the exclusion the ICMS from the Contributions on Revenues’ (“PIS” and “Cofins”) calculation basis in Extraordinary Appeal No. 574,706.

[Read the decision.](#)

Inclusion of ICMS on the calculation basis of IRPJ and CSLL on the presumed profit method

The First Section of the STJ will consider the possibility of including the ICMS amounts in the calculation basis of the Corporate Income Tax (“IRPJ”) and the Social Contribution on the Net Profits (“CSLL”), when calculated based on the Presumed Profit system.

The following Special Appeals were affected by the system of binding effects: Special Appeals Nos. 1,767,631, 1,772,634 and 1,772,470.

[Read the decision.](#)

Social Security Contribution on stock options

The STJ will judge the levy of the security contribution on stock options on Extraordinary Appeal No. 1,737,555, which was filed by National Treasury Office against the decision of the Regional Federal Court of the Third Region (“TRF3”).

Relevant Decisions provided by the Federal Supreme Court

Constitutionality of the ad fee created by the Municipality of São Paulo

On April 5, 2019, Minister Alexandre de Moraes granted Constitutional Appeal (“RCL”) No. 30,326 to revoke the decision of the São Paulo State Court of Justice, which—based on a misunderstanding of Federal Supreme Court (“STF”) precedents—had ruled unconstitutional the ad fee created by the Municipality of São Paulo,.

[Read the decision.](#)

Right to accrue IPI credits on acquisition of inputs from the Free Economic Zone of Manaus

On April 25, 2019, the STF heard Extraordinary Appeals Nos. 596,614 and 592,891 and recognized the right to accrue credits of the Tax on Manufacturing Products (“IPI”) derived from acquisitions of input, raw material and packaging material from the Free Economic Zone of Manaus (“ZFM”).

On that occasion, the STF stated that taxpayers have the right to offset IPI credits on the acquisition of input, raw material and packaging material from the ZFM under the exempt regime, considering the regional benefits, as set forth in Section 43, paragraph 2, item III of the Brazilian Federal Constitution when taken into consideration with Section 40 of the Transitory Constitutional Disposition Act (“ADCT”).

[Read Extraordinary Appeal No. 596.614.](#)

[Read Extraordinary Appeal No. 592.891.](#)

Judgment scheduled on distribution of oil royalties

The STF's judgment on the preliminary injunction granted on the Direct Action of Unconstitutionality ("ADI") No. 4,917—which suspended Law No. 12,734/2012 provisions for new rules in oil royalties distribution—has been scheduled for November 20, 2019.

[Read the process.](#)

Unconstitutionality of municipal law preventing law firms to be taxed by the fixed taxation regime

On April 24, 2019, the STF declared unconstitutional a municipal law that prevents law firms from being subjected to the fixed taxation regime on an annual basis (RE 940.769).

[Read the process.](#)

For more information about the topics raised in this newsletter, please contact our Tax team. Visit us at tauilchequer.com.br/en-US/.

Bottino, Carolina

cbottino@mayerbrown.com

+55 21 2127 4217

Grisi, Celso

CGrisi@mayerbrown.com

+55 11 2504 4671

Martins, Ana Luiza

AMartins@mayerbrown.com

+55 11 2504 4626

Rodrigues, Thais Rezende Bandeira de

Trodriques@mayerbrown.com

+55 21 2127 4236

Tauil Rodrigues, Ivan

itauil@mayerbrown.com

+55 21 2127 4213

Telles , Eduardo Maccari

etelles@mayerbrown.com

+55 21 2127 4229

Vinci, Guido

CVinci@mayerbrown.com

+55 21 2127 4230

Castro, Diana

dcastro@mayerbrown.com

+55 21 2127 4252

Delvecchio, Rachel

rdelvecchio@mayerbrown.com

+55 21 2127 1624

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