

Brazil Tax Round-Up

18 June 2019

Legislative Developments:

Innovations for filing tax documents

On May 3, 2019, COGEA Executive Declaratory Act No. 4/2019 was published, which amended COGEA Executive Declaratory Act No. 1/2019 to allow the following documents to be submitted via the Brazilian IRS's digital platform, e-CAC: the Rural Property Tax Clearance Certificate (CND ITR), the Social Security Contributions Payment Forms (GPS) and the Federal Revenue Collection Document (DARF).

São Paulo regulation on "tax war"

On May 8, 2019, the São Paulo State Attorney General's Office (PGE/SFP) Regulation No. 1/2019 was published, setting forth the procedures to be used by taxpayers for the recognition of Value-Added Tax (ICMS) credits from transactions in which tax benefits have been granted by other states without prior authorization of the Brazilian Finance Policy Council (CONFAZ).

Recognition of the credit implies the waiver of any challenge or administrative or judicial appeal and the withdrawal of existing appeals on said credits under the terms of article 2, paragraph 1, of the regulation.

Regulation changes for installment of executable tax debts administered by Brazilian IRS and PGFN

On May 16, 2019, the Office of the Attorney General of the National Treasury (PGFN) and the Brazilian IRS published Joint Ordinance No. 1,891/2019, which alters the procedures for the installment of tax debts administered by the IRS—ordinary installments, installments of companies under judicial reorganization and simplified installments.

Also on May 16, , PGFN and the Brazilian IRS published Joint Ordinance No. 448/2019, which alters the procedures for the installment of executable federal tax debts administered by PGFN.

New procedures for the use, offset and transfer of ICMS credits

On May 22, 2019, Decree No. 46,668/2019 and Rio de Janeiro Treasury Office (SEFAZ) Resolution No. 35/2019 were published, which alter ICMS Regulation and Sefaz Regulation No. 720/2014 on the offset, use and transfer of the ICMS credit balance recorded in tax books.

According to the updated regulations, the ICMS credit balance can be subject to:

I – **Offset**, when its amount is intended to offset debit balances with credit balances between establishments of the same company located in the state of Rio de Janeiro

II – **Use**, when its value is applied toward the payment of ICMS due in the following types of transactions: import or entry of scrap metal, installments, tax-deficiency notices, assessment notes or debit notes. These procedures apply to all types of transactions,, whether registered or not as overdue, by the holder's own establishment or by an establishment of the same company located in the state of Rio de Janeiro

III – **Transfer**, when applied to the establishment of another company located in the state of Rio de Janeiro as payment in the acquisition of inputs, goods or permanent assets

The use of credit balances must observe the following order of priority:

I - Offset

II - Use by the holder's own establishment

III - Use by other establishments of the same company

IV - Transfer to a third-party establishment

Waiver of ICMS form submission

On May 22, 2019, SEFAZ Regulation No. 37/2019 was published, which waives, as of May 2019, the requirement that all taxpayers from the state of Rio de Janeiro submit ICMS Calculation Form (GIA-ICMS).

However, the waiver does not apply to late amendments or submissions for periods prior to the effective date of the regulation.

Brazilian tax reform approved by the Constitutionality Committee of the House of Representatives

On May 22, 2019, the Constitutionality Committee of the House of Representatives (CCJC) approved the Tax Reform bill. The bill would combine five taxes—the Value-Added Tax (ICMS), the Tax on Services (ISS), the Contributions on Revenue (PIS and COFINS) and the Tax on Manufactured Products (IPI)—into a single value-added tax called "Tax on Goods and Services" (IBS).

Changes in CARF casting votes regulation

On May 28, 2019, the House of Representatives approved the urgent processing of Legislative Bill No. 6,064/2016, which provides for the end of the casting of the vote favorable to the Brazilian Treasury in the Administrative Council of Tax Appeals (CARF). Under this bill, in the event of a tie in CARF's votes, the opinion most favorable to the taxpayer will prevail, with an exception for the possibility of the Brazilian Treasury to bring the matter to court.

Changes in Legal Entity Taxpayer's Registry regulations

On May 28, 2019, Brazilian IRS Normative Ruling No. 1,895/2019 was published, amending provisions of Normative Ruling No. 1,863/2018, which regulates the Legal Entity Taxpayer's Registry (CNPJ). The rules on the mandatory extension of information provided by the company to the final beneficiaries of the economic activity have been changed.

Attorney General expands the possibilities of suspension of tax foreclosures

On May 29, 2019, PGFN Ordinance No. 520/2019 was published, expanding the possibility of suspension of tax foreclosures by the PGFN to cases involving debts considered to be irrecoverable or having a low prospect of recovery.

Agreements are enacted between Brazil and Switzerland and the United Kingdom for tax information exchange

On May 30, 2019, Decrees Nos. 9,814/2019 and 9,815/2019 were enacted, regulating the exchange of tax information between Brazil and Switzerland and the United Kingdom. Upon written request, the competent authority must provide the requested information, even if the case under investigation is not a crime within the jurisdiction of the requested party.

Brazilian IRS's Answers to Advance Tax Ruling Requests:

Deemed Profit Method on the provision of hospital services

On May 6, 2019, DISIT/SRRF Answer to Advance Tax Ruling Request No. 7,023/2019 was published, establishing that for tax-triggering events in the provision of hospital services occurring as of January 1, 2019, it is possible to use the rate of 8% to calculate the tax base of the Corporate Income Tax (IRPJ) and 32% for Social Contribution on Net Profits (CSLL) in the Deemed Profit Method.

PIS and COFINS credits cannot be accrued on fuel distribution transactions

On May 6, 2019, DISIT/SRRF07 Advance Tax Ruling Request No. 7,019/2019 was published, establishing that storage and shipment expenses incurred by fuel distributors in ethanol sales transactions cannot be accrued as input credits for the calculation of PIS and COFINS in the non-cumulative system.

PIS and COFINS credits on sales of goods exempted from taxes in REPORTO

On May 6, 2019, DISIT/SRRF07 Answer to Advance Tax Ruling Request No. 7,017/2019 was published, clarifying the possibility of keeping PIS and COFINS credits on sales made with suspension, exemption, zero rate or non-levy of taxes under the Tax Regime for an Incentive to Modernize and Expand the Port Structure (REPORTO), in accordance with article 17 of Law No. 11,033/2004.

Offset between social security and non-social security taxes

On May 6, 2019, DISIT/SRRF07 Answer to Advance Tax Ruling Request No. 7,015/2019 was published, clarifying that the offset between tax credits and liabilities of social security and non-social security contributions is only allowed if both have a calculation period after the use of the Digital Bookkeeping System for Tax, Social Security and Labor Obligations (eSocial).

Brazilian IRS opinion on temporary export customs regime

On May 7, 2019, COSIT Answer to Advance Tax Ruling Request No. 149/2019 was published, regulating the Temporary Export Regime for the Improvement of Goods established by Ministry of Finance Ordinance No. 675/1994. The Brazilian IRS established that the calculation of the customs value of the goods being exported and subsequently reimported must take into account all the goods and services that were necessary to manufacture the final product abroad.

Non-assessment of Social Security Contributions on performance awards

On May 21, 2019, COSIT Answer to Advance Tax Ruling Request No. 151/2019 was published, establishing that as of November 11, 2017, performance awards given by employers in the form of goods, services or money to employees do not compose the tax base of social security contributions. However, the non-assessment of social security contributions for awards given in the period between November 14, 2017, and April 22, 2018, is limited to two payments per year.

IPI on goods sent from importers' establishments on behalf of third parties

On May 24, 2019, COSIT Answer to Advance Tax Ruling Request No. 159/2019 was published, clarifying the assessment of IPI taxes on goods sent from importers' establishment to buyers on behalf of third parties. It also established that the tax base of the IPI will be the total amount of the delivery transaction, which includes the amount of the entry's invoice (commercial invoice plus taxes assessed on the import), added to the shipping costs, other incidental expenses collected or charged by the taxpayer to the buyer or recipient, and the amount of the ICMS assessed on the transaction, regardless whether the tax was paid or not.

PIS and COFINS input credits accrued by legal entities that operate Brazilian multimodal transport

On May 24, 2019, COSIT Answer to Advance Tax Ruling Request No. 160/2019 was published, establishing the possibility of PIS and COFINS credit accrual in the non-cumulative system as inputs, by legal entities that operate Brazilian multimodal transport, in relation to expenses with subcontracts signed with third parties for cargo road and rail transport and cargo transfer.

Accounting record on the change from actual profit to deemed profit Method

On May 24, 2019, COSIT Answer to Advance Tax Ruling Request No. 163/2019 was published, establishing the requirement of add-backs of previously deferred amounts to the tax base of IRPJ and CSLL when a change from the tax regime of actual profit to deemed profit occurs. It also allows for the exclusion from the calculation of the deemed profit and result calculated based on the cash method of amounts received that were already entered in the account records.

Accounting treatment of differences between the amounts of book depreciation and accelerated depreciation

On May 24, 2019, COSIT Answer to Advance Tax Ruling Request No. 152/2019 was published, establishing the requirement to register directly in the tax books the difference between the amount of book depreciation and the amount of accelerated depreciation due to the use of movable assets in more than one daily shift.

Case Law:

Interest for late payment is assessed in the period between the date of calculation and request and the certificates of government judgment debt

On April 2, 2019, the Special Court of the Superior Court of Justice (STJ) ruled for the assessment interest for late payment in the period between the date of the calculation and the request or certificate of government judgment debt, following the orientation established by the Federal Supreme Court (STF) in its decision on Appeal to the STF No. 579,431—(Appeal to the STJ No. 165,599—Repeating Topic 291/STJ).

IPI presumed credits compose the tax base of IRPJ and CSLL

On May 22, 2019, the First Section of the STJ ruled for the accrual of presumed IPI credit in the IRPJ and CSLL tax base—(Divergence Appeal in the Special Appeal No. 1,210,941).

Decisions on statutes of limitations and loss of procedural rights can be subject to interlocutory appeal

On May 23, 2019, the Fourth Panel of the STJ ruled for the admission of interlocutory appeals against interlocutory decisions on statutes of limitations and loss of procedural rights, based on article 1,015, II, of the Code of Civil Procedure of 2015 (CPC/2015)—(Appeal to the STJ No. 1,772,839/SP).

STJ may reconsider the possibility for each subsidiary to issue its own tax debt clearance certificate

On May 28, 2019, the First Panel of the (STJ began a trial that may review consolidated case law about the possibility of each subsidiary issuing its own tax debt clearance certificate—(Special Appeal to the STJ No. 1,286,122).

Trial begins on the constitutionality of the 30% lock-up to offset tax losses

On May 29, 2019, the Plenary Session of the STF began a trial, with broad repercussions, on the constitutionality of the 30% lock-up to offset tax losses and the negative CSLL tax base. On that occasion, no opinion was rendered, and the expectation is that the trial will be resumed on June 27, 2019—(Extraordinary Appeal to the STF No. 591,340/SP).

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