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Brazil Tax Round-Up

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Revocation of 1% penalty for cancellation of electronic fiscal invoice

On November 7, 2019, CAT Normative Decision No. 5 was published, revoking the fine of 1% of the operation in cases in which the cancellation occurs after 24 hours after the issuance of the electronic fiscal invoice and prior to the beginning of any inspection procedure.

Tax aspects of the creation of the “Green and Yellow Employment Contract” and related rate changes

On November 12, 2019, Provisional Measure No. 905/2019 was published, creating the “Green and Yellow Employment Contract” modifying labor and tax rules to encourage the creation of new jobs for people 18 to 29 years old.

Article 8 of Provisional Measure foresees the exemption of the social security contribution, the education contribution and social security contributions destined to third parties levied on the payroll of the employees hired based on this program. It should also be noted that the rate of Unemployment Compensation Fund (FGTS) contributions has been reduced from 8% to 2%.

Brazilian IRS publishes general guidelines for filing DIRF 2020

On November 28, 2019, Brazilian IRS Normative Instruction No. 1,915/2019 was published with general guidelines for filing the Withholding Income Tax Statement for calendar year 2019 (“DIRF 2020”).

It is important to highlight that the deadline for filing DIRF 2020 is February 28, 2020.

PGFN proposes regulating the tax transaction related to the debits enrolled as overdue liability and announces public consultation

On November 27, 2019, Ordinance PGFN No. 11.956/2019 was published, proposing to regulate the transaction in the collection of federal debits enrolled as overdue liability.

The Ordinance proposes three transaction modalities: adherence to **i)** the proposal from National Treasury Attorney's Office; **ii)** the individual proposal from National Treasury Attorney's Office; and **iii)** an individual proposal from the taxpayer with debit enrolled as federal overdue liability.

The first two are available to individual or legal entities whose total federal debits enrolled as overdue liability is limited to BRL 15,000,000 ; the last one is available for individual or legal entities whose total federal debits enrolled as overdue liability exceed BRL 15,000,000. On the same date, Ordinance No. 11,959/2019 announced a public consultation regarding the proposed regulation. The period for submitting suggestions, criticisms or other comments is from January 2 to February 28, 2020.



Taxation of property damage compensation

On November 21, 2019, Answer to Advance Tax Ruling Request DISIT/SRRF07 No. 7,064/2019 was published, stating that Corporate Income Tax ("IRPJ") and the Social Security Contribution on Net Profit ("CSLL") will not be levied on the amounts received as property damage compensation since the amount does not exceed the effective property loss. The exceeding part should be included in the calculation basis of IRPJ and CSLL.

The amounts related to the monetary adjustment and legal interest levied on the indemnity for property damage, calculated since the judicial summons, are considered financial revenue and, therefore, should be included in the IRPJ and CSLL calculation basis.

On the other hand, the amounts related to the indemnity for property damage should be included in the calculation basis of the Social Integration Program ("PIS") and the Contribution to Social Security Financing ("COFINS"). In addition, the amounts related to the monetary adjustment and legal interest levied on the indemnity for property damage, calculated since the judicial summons, are also considered financial revenue and subject to PIS and COFINS taxation.

Percentage of Profit Presumption for Hospital Services

On November 28, 2019, Answer to Advance Tax Ruling Request DISIT/SRRF08 No. 8018/2019 was published, stating the concept of hospital services for purposes of the presumed percentage of 8% to be applied to gross revenue earned by the legal entity in the calculation period. Hospital services, including dialysis and hemodialysis services, are those that are associated to activities developed by hospitals, aimed directly at health promotion, provided by health care establishments that carry out the activities provided for in RDC Resolution 1 to 4. Anvisa No. 50, of 2002.

The provider of hospital services must be organized, in fact and legally, as a company and comply with Anvisa standards.



STF: Unconstitutionality Action against State of Espírito Santo's law regarding the control and exploration of oil and gas

On November 1, 2019, the Brazilian Association of Companies of Oil and Gas Exploration and Production ("ABEP") filed Direct Unconstitutionality Action No. 6,248 against some articles of Law No. 8.501/2007 that foresee the control and collection of government take and financial compensation derived from oil and natural gas exploration. Marco Aurelio is the Reporting Minister assigned to the action.

STF: Unconstitutionality Action against State of Rio de Janeiro's law regarding ICMS on the extraction of oil and gas

On November 4, 2019, the Board of Directors of the Legislative Chamber of the State of Rio de Janeiro ("ALERJ") filed Direct Unconstitutionality Action No. 6,250, requesting i) the declaration of the unconstitutionality of article 155, paragraph 4th, item I of Federal Constitution, included by way of Constitutional Amendment No. 33/2001, which foresees that the destination state is the one entitled to charge ICMS on lubricating oils and fuels; and ii) the adoption of the interpretation of article 155, paragraph 2nd, item X, "b" to be that there is no prohibition on the taxation of the oil and gas extraction. Celso de Mello is the Reporting Minister assigned to the action.

STJ: Levy of individual income tax on payments related to non-compete pact

On November 5, 2019, the First Panel of the Superior Court of Justice began the judgment of Special Appeal No. 1,679,495/SP, which pertains to the levy of Individual Income Tax ("IRPF") on amounts received by executives as a non-compete pact in cases of termination of the work agreement. After Reporting Minister Gurgel de Faria presented his vote for the levy of Individual Income Tax, the judgment was suspended due to a request of Minister Regina Helena Costa for an analysis of case records.

STF: Unconstitutionality of State of Paraná's law that authorizes the grant of tax benefits not authorized by Convention

On November 7, 2019, the Supreme Court (STF) Plenary partially granted Direct Unconstitutionality Action No. ("ADI") No. 3.936, declaring the unconstitutionality of an article of Law No. 10,689/1993 from State of Paraná that allowed the executive power to grant ICMS tax benefits not authorized by the Convention of the National Finance Policy Council ("Confaz") in cases in which another state or the Federal District has also granted such tax benefit. On December 4, 2019, the decision became final.

STJ: Levy of social security contribution on the amount paid for workers' lunch breaks

On November 27, 2019, the First Chamber of the Superior Court of Justice decided that the social security contribution levied on the amount paid for lunch breaks for payments occurred prior to the labor reform resulting from the judgment of Conflict in Decision in Special Appeal No. 1,619,117, since Law No. 13,467/2017 expressly provides indemnity from this type of payment.

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