

## Newsletter

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### Highlights

According to the STJ, financial revenues are not subject to COFINS

### Federal Regulations

Normative Ruling of the Federal Revenue Department No. 379 of December 30, 2003

Normative Ruling of the Federal Revenue Department No. 388 of January 28, 2004

Normative Ruling of the Federal Revenue Department No. 390 of January 30, 2004

Normative Ruling of the Federal Revenue Department No. 392 of January 30, 2004

Normative Ruling of the Federal Revenue Department No. 394 of February 5, 2004

Normative Ruling of the Federal Revenue Department No. 404 of March 12, 2004

Normative Ruling of the Collegiate Board of National Institute of Social Security ("INSS")  
No. 105 of March 24, 2004

Resolution of the Management Committee of the Program for Payment of Federal Tax  
Debts ("CG/REFIS") No. 34 of February 4, 2004

Resolution of the Foreign Trade Chamber ("CAMEX") No. 3 of February 13, 2004

Resolution CAMEX No. 5 of March 1, 2004

Resolution CAMEX No. 6 of March 1, 2004

Resolution CAMEX No. 8 of March 29, 2004

Resolution CAMEX No. 9 of March 31, 2004

Interpretative Declaratory Act of the Federal Revenue Department No. 2 of February 5,  
2004

Interpretative Declaratory Act of the Federal Revenue Department No. 4 of March 4, 2004

Interpretative Declaratory Act of the Federal Revenue Department No. 10 of March 5, 2004

### Municipal Regulations

Decree of the Municipality of São Paulo No. 44,493 of March 15, 2004

Decree of the Municipality of São Paulo No. 44,540 of March 29, 2004

Ordinance of the Finance and Development Department No. 14 of March 2, 2004

### News

CPMF and CSLL levied on export revenues

The non-applicability of COFINS new system

## Highlights

### **According to the STJ, financial revenues are not subject to COFINS**

On February 2004, the Superior Court of Justice ("STJ") ruled on a special appeal excluding financial revenues from the tax basis of the Contribution for Social Security Financing ("COFINS"). According to the STJ, the contribution shall be levied only on operational revenues. The STJ ruled that invoicing is a synonym of gross revenue, which necessarily implies the sale of goods and rendering of services (*i.e.*, *operational revenues*).

Law 9,718 issued in 1998 amended the concept of invoicing, determining the levy of COFINS not only on operational revenues but also on any other revenues earned by the taxpayer. By extending the concept of invoicing, the law included all (or most of all) revenues in the tax basis of COFINS - including financial revenues.

The STJ decided that, by including other revenues in the COFINS tax basis, Law 9,718/98 violated Article 110 of the Brazilian Tax Code ("CTN"), which prohibits the modification of the definition of concepts of private law (such as invoicing) to define a tax levy.

The STJ used the same understanding adopted by the Federal Supreme Court ("STF"), on case RE 150.755-1/ PE, regarding the tax basis of the social contribution on gross revenues ("*Contribuição ao Fundo de Investimento Social - FINSOCIAL*"). The STF decided in that particular case that the concepts of gross revenue and invoicing could only be equivalent if those concepts were viewed under the terms defined in Decree-Law No. 2,397/87, in other words, as "gross revenues derived from the sale of goods and services of any nature".

In any event, this matter is already under the STF plenary session for review, which shall determine the final understanding of the Courts with respect to this matter.

## Federal Regulations

### **Normative Ruling of the Federal Revenue Department No. 379 of December 30, 2003 (published in the Official Gazette on February 2, 2004)**

Regulates the reimbursement of credits of PIS and COFINS related to the acquisition of goods and services for exportation and the offsetting of such credits against debts related to other taxes administrated by the Federal Revenue Department.

### **Normative Ruling of the Federal Revenue Department No. 388 of January 28, 2004**

Provides for the option with respect to special regime of calculation and payment of PIS and COFINS levied on non-alcoholic beverages, soft drinks and beers.

### **Normative Ruling of the Federal Revenue Department No. 390 of January 30, 2004**

Provides for the calculation of the tax basis and payment of the Social Contribution on Net Income ("CSLL").

### **Normative Ruling of the Federal Revenue Department No. 392 of January 30, 2004**

Provides for the income tax on earnings resulting from the award of the Federal Justice and of the Labor Court decisions.

### **Normative Ruling of the Federal Revenue Department No. 394 of February 5, 2004**

Determines that the Federal Excise Tax ("IPI") shall be collected twice a month from January 1, 2004 until December 31, 2004, and monthly as from January, 2005 among other rules with respect to the bookkeeping of IPI credits and debts.

### **Normative Ruling of the Federal Revenue Department No. 404 of March 12, 2004**

Provides for the non-cumulative levy of COFINS as established by Law 10,833/03.

### **Normative Ruling of the Collegiate Board of National Institute of Social Security ("INSS") No. 105 of March 24, 2004**

Amends rules on the taxation and collection of the Social Security Contribution administrated by the National Institution of Social Security.

### **Resolution of the Management Committee of the Program for Payment of Federal Tax Debts ("CG/REFIS") No. 34 of February 4, 2004**

Provides for the refund of undue or overpaid amounts within the scope of the Program for Payment of Federal Tax Debts ("REFIS").

### **Resolution of the Foreign Trade Chamber ("CAMEX") No. 3 of February 13, 2004**

Reduces to 4%, until December 31, 2005, the Import Duty ("II") rate levied on capital and information technology goods approved as "Ex-Tarifários".

### **Resolution CAMEX No. 5 of March 1, 2004**

Reduces to 2% the Import Duty rate levied on capital and information technology goods, previously approved as "Ex-Tarifários", maintaining the validity term.

### **Resolution CAMEX No. 6 of March 1, 2004**

Reduces to 0%, until December 31, 2005, the Import Duty rate levied on diesel electric locomotives approved as "Ex-Tarifários".

### **Resolution CAMEX No. 8 of March 29, 2004**

Reduces to 2%, until December 31, 2005, the Import Duty rate levied on certain capital and information technology goods, as well as on certain component parts of the Integrated Systems ("SI") and extends, until the referred date, the reduction of the import duty applicable to certain goods previously approved as "Ex-Tarifários".

### **Resolution CAMEX No. 9 of March 31, 2004**

Reduces to 0%, until June 30, 2004, the Import Duty rates levied on certain chemical components approved as "Ex-tarifários".

### **Interpretative Declaratory Act of the Federal Revenue Department No. 2 of February 5, 2004**

Reduce to 0% as from April 1, 2004, the rate of PIS and COFINS levied on revenues of the legal entity manufacturer of raw materials, glass and plastic packages established by annex of Law 10,833/03.

### **Interpretative Declaratory Act of the Federal Revenue Department No. 4 of March 4, 2004**

Provides for the applicable penalties regarding non-compliance with the temporary admission customs regime.

### **Interpretative Declaratory Act of the Federal Revenue Department No. 10 of March 5, 2004**

Provides for the withholding of income tax, CSLL, PIS and COFINS on payments regarding certain services rendered by legal entities, according to Articles 29 and 30 of Law 10,833/03.

## **Municipal Regulations**

### **Decree of the Municipality of São Paulo No. 44,493 of March 15, 2004**

Regulates the program of selective incentive applicable to the introduction, expansion or modernization of commercial or residential establishments in the central area of the Municipality of São Paulo.

### **Decree of the Municipality of São Paulo No. 44,540 of March 29, 2004**

Approves the Regulations on Municipal Services Tax ("ISS") of the municipality of São Paulo.

### **Ordinance of the Finance and Development Department No. 14 of March 2, 2004**

Provides for the payment of the ISS.

## **News**

### **CPMF and CSLL levied on export revenues**

Justice Alcides Vettorazzi of the 4th district of the Federal Justice of Joinville, in an ordinary lawsuit, decided that the Federal Government should reimburse the amounts collected as CSLL and Provisional Tax on Banking Transfer ("CPMF") levied on revenues derived from exports. The collection of those contributions was considered improper in view of Constitutional Amendment No. 33/01, which provides that social contributions and contributions for intervention in the economic domain should not be levied on revenues resulting from exportation. **Source: Gazeta Mercantil, 02.18.04, Legal & Jurisprudência - Rio**

### **The non-applicability of COFINS new system**

Justice Cristiane Farias R. dos Santos, of the Federal Justice of São Paulo, granted a preliminary injunction, allowing COFINS collection according to the system applicable before Law 10,833/03, (*i.e.*, not applying the non-cumulative system) to

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Most comments above are based upon recently published regulations or information obtained from the regulatory agencies themselves. Some issues may still be in discussion at the time of the publication of this newsletter. Some of the rules mentioned above may be amended, replaced or revoked. This publication is only a general review of the subject matter hereof and under no circumstances constitutes a legal opinion or advice.

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a service provider. According to the decision, the referred law violates Article 246 of the Federal Constitution, which forbids a provisional measure to regulate an article amended by a constitutional amendment promulgated as from 1995. The other argument mentioned in the decision refers to a non-isonomic treatment applicable to service providers by the referred law, which is contrary to the principle of the tax capacity (*i.e.*, the taxpayer's ability to pay taxes) and also represents a confiscation. (Source: lawsuit No. 2004.61.00.002687-1)

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