

April / May 2004
Year VI, Number 55

HIGHLIGHTS

Reduction of the CPMF tax rate regarding investment accounts

FEDERAL REGULATIONS

Law No. 10,865 of April 30, 2004

Provisional Measure No. 183 of April 30, 2004

Decree No. 5,057 of April 30, 2004

Decree No. 5,058 of April 30, 2004

Decree No. 5,059 of April 30, 2004

Decree No. 5,060 of April 30, 2004

Decree No. 5,061 of April 30, 2004

Decree No. 5,062 of April 30, 2004

Decree No. 5,072 of May 11, 2004

Ordinance from the Ministry of Finance No. 93 of April 30, 2004

Resolution of the Foreign Trade Chamber ("CAMEX") No. 10 of April 28, 2004

Resolution CAMEX No. 12 of May 24, 2004

Normative Ruling of the Federal Revenue Department No. 407 of April 2, 2004

Normative Ruling of the Federal Revenue Department No. 414 of April 2, 2004

Normative Ruling of the Federal Revenue Department No. 419 of May 21, 2004

Normative Ruling of the Federal Revenue Department No. 420 of May 21, 2004

Normative Ruling of the Federal Revenue Department No. 422 of May 18, 2004

Normative Ruling of the Federal Revenue Department No. 424 of May 20, 2004

Interpretative Declaratory Act of the Federal Revenue Department No. 13 of April 5, 2004

Executive Declaratory Act of the Federal Revenue Department No. 17 of April 30, 2004

ICMS Protocol from the National Finance Committee ("CONFAZ") No. 19 of April 12, 2004
Ruling of the Customs General Committee ("COANA") No. 5 of May 25, 2004

DECISIONS

Tax Immunity with respect to Charity Institutions – Superior Court of Justice ("STJ")
Personal Liability of the partners – STJ
Law 10,833/03 does not violate the constitutional principle of isonomy (*princípio da isonomia*) – Federal Regional Court ("TRF")
PIS credits – Decision on request for Ruling of the Federal Revenue Department
PIS and COFINS credits regarding the acquisition of exempt raw materials – Decision on request for Ruling of the Federal Revenue Department

NEWS

Non-levy of ISS on banking transactions related to granting of guarantees
Decision suspends ISS on imports
Decision exempts ISS on franchising
PIS/COFINS tax basis reduction

HIGHLIGHTS

Reduction of the CPMF tax rate regarding investment accounts

On April 2, 2004, the Official Gazette published Provisional Measure No. 179 (“MP 179”) amending Law No. 9,311 of October 24, 1996, which created the Provisional Tax on Banking Transfers (“CPMF”).

MP 179, which shall become effective as of August 1, 2004, amends Article 8 of Law No. 9,311/96 reducing to zero the CPMF tax rate applicable to *investment accounts*. Investment accounts are banking accounts created with the main purpose of making financial of fixed or variable income investments. Investment accounts has the purpose of consolidating one’s available cash for investment.

Central Bank’s Administrative Act No. 3,235 of April 22, 2004 (“Circular”), which regulated MP 179, determines that all financial institutions shall maintain specific control and designate a director to oversee the referred investment accounts.

From a practical perspective, investment account holders are not subject to the CPMF on the transfer of funds from its/his/hers investment accounts to investment funds. Therefore, only the transfer of funds from the investor’s bank account to its/his/hers investment accounts shall be subject to the CPMF.

Considering the new rule established by MP 179, funds invested before July 31, 2004 may not be directly transferred to investment accounts. These funds must be first transferred to the investors’ regular bank accounts and, then, to the investors’ investment accounts so to be “reinvested”. On the other hand, as from August 2006, the legislation provides for the possibility of directly transferring the investors’ financial investments to investment accounts to be reinvested.

Further, Article 2 of MP 179 establishes that in case of inappropriate use of the investment accounts, which may results in lack of CPMF payment, the government may impose penalties up to 450% of the amount of CPMF that were not collected.

MP 179 also provides that the withholding income tax (“IRRF”) due on financial investments shall be collected: (i) on the last business day of May and November of each given year, or (ii) upon redemption/liquidation of the financial investment, whichever occurs first. Before MP 179, the IRRF due on financial investments was levied on a monthly or quarterly basis.

FEDERAL REGULATIONS

Law No. 10,865 of April 30, 2004

Creates the Contribution to the Social Integration Program levied on the Import of Foreign Products or Services and Contribution for Social Security Financing due by the Importer of Foreign Goods or Services (“PIS/COFINS- Import”). Law No. 10,865 resulted from the conversion of Provisional Measure 164/04 into Law.

Provisional Measure No. 183 of April 30, 2004

Reduces to zero the rate of the Contribution to the Social Integration Program (“PIS”) and the Contribution for Social Security Financing (“COFINS”) levied on imports and sales in the domestic market, of fertilizers, agribusiness defensives and their raw materials and seeds for sowing.

Decree No. 5,057 of April 30, 2004

Reduces to zero the PIS and COFINS rates levied on imports and gross revenues resulting from the sale of chemical and pharmaceutical products, as well as products destined to laboratories' use, semen and embryos.

Decree No. 5,058 of April 30, 2004

Reduces the Federal Excise Tax ("IPI") rate levied on certain vehicles.

Decree No. 5,059 of April 30, 2004

Reduces the PIS and COFINS rates applicable to import and commercialization of gasoline, diesel, liquid petroleum gas ("LPG") and airplane kerosene and establishes the coefficients to reduce the contributions levied on those products.

Decree No. 5,060 of April 30, 2004

Reduces the rates of the Contribution for Intervention in the Economic Domain ("CIDE") levied on import and commercialization of petroleum and oil products, natural gas and its by-products, and fuel ethylic alcohol.

Decree No. 5,061 of April 30, 2004

Provides for the readjustment of benefits granted by the Social Security as from May 1, 2004 and establishes the limit for the Social Security Contribution basis ("*salário-contribuição*") and the Social Security Benefits ("*salário-benefício*").

Decree No. 5,062 of April 30, 2004

Establishes the coefficient to reduce the PIS and COFINS rates, levied on the import and sales in the domestic market of beverages and their packages.

Decree No. 5,072 of May 11, 2004

Reduces to 8% the IPI rate levied on vehicles and increases to 7% the IPI rate levied on shampoos.

Ordinance from the Ministry of Finance No. 93 of April 30, 2004

Provides for the calculation and use of the IPI presumed credit as reimbursement of PIS and COFINS levied on the acquisition of raw materials, intermediary products and package products applicable to the manufacturing of products to be exported.

Resolution of the Foreign Trade Chamber ("CAMEX") No. 10 of April 28, 2004

Reduces to 2%, until June 30, 2006, the Import Duty ("II") rate applicable to capital, information and telecommunication goods, previously approved as "Ex-Tarifários".

Resolution CAMEX No. 12 of May 24, 2004

Includes products in the "Ex-tarifários" list, subject to a zero II rate.

Normative Ruling of the Federal Revenue Department No. 407 of April 2, 2004

Provides for the IRRF levied on capital gains earned in Brazil by individuals or legal entities resident or domiciled abroad.

Normative Ruling of the Federal Revenue Department No. 414 of April 2, 2004

Approves the Electronic Request of Reimbursement or Restitution and Offsetting Statement Program ("PER/DCOMP 1.3") and establishes rules for its application with respect to reimbursement, offsetting or restitution request to the Federal Revenue Department.

Normative Ruling of the Federal Revenue Department No. 419 of May 21, 2004

Provides for the calculation, use and filing of information regarding the IPI presumed credit as reimbursement of PIS and COFINS, pursuant to Law No. 9,363/96.

Normative Ruling of the Federal Revenue Department No. 420 of May 21, 2004

Provides for the calculation, use and filing of information regarding the IPI presumed credit alternative regime as reimbursement of PIS and COFINS, pursuant to Law No. 10,276/01.

Normative Ruling of the Federal Revenue Department No. 422 of May 18, 2004

Provides for the levy, review and collection of the CIDE on the commercialization and importation of oil and its derivatives, natural gas and its derivatives, and alcohol and its derivatives.

Normative Ruling of the Federal Revenue Department No. 424 of May 20, 2004

Provides for the requirements and procedure applicable to the suspension regime of PIS and COFINS levied upon importation of goods performed by establishments located within the Manaus Free-trade Zone (*Zona Franca de Manaus*).

Interpretative Declaratory Act of the Federal Revenue Department No. 13 of April 5, 2004

Provides for the applicability of the IPI presumed credit to legal entities subject to the cumulative and non-cumulative levy of PIS and COFINS.

Executive Declaratory Act of the Federal Revenue Department No. 17 of April 30, 2004

Publishes a formula for calculating the PIS/COFINS- Import.

ICMS Protocol from the National Finance Committee (“CONFAZ”) No. 19 of April 12, 2004

Provides for the impossibility to maintain State Value-added Tax (“ICMS”) credits related to transactions involving States which granted fiscal benefits in disagreement with the ICMS legislation. The validity of this Protocol is currently suspended by Order No. 2 of May 4, 2004 from the Executive Secretary of the CONFAZ.

Ruling of the Customs General Committee (“COANA”) No. 5 of May 25, 2004

Publishes an electronic chart to assist taxpayers in calculating the PIS and COFINS-Import.

DECISIONS

Tax Immunity with respect to Charity Institutions – Superior Court of Justice (“STJ”)

TAX. IMMUNITY. LAW No. 8,212/91, ARTICLE 55. CHARITY INSTITUTIONS. The effect of the decision that recognizes the right to the Charity Institutions Certificate shall retroact to the moment of its administrative filing, not harming the taxpayer for the administrative delay in reviewing the administrative requirement for the Certificate. (**Superior Court of Justice. Special Appeal No. 381956**)

Personal Liability of the partners – STJ

TAX. MOTION TO CLARIFY CONFLICTING DECISIONS. TAX COLLECTION. LIABILITY OF THE MANAGING PARTNER. LIMITS. ARTICLE 135, III OF THE FEDERAL TAX CODE. The assets of the partner of a legal entity do not jointly account for tax debts incurred by the legal entity. The liability is characterized only in cases of irregular liquidation of the entity, or willful misconduct or fraud. The partners are responsible for the debt of taxes which resulted from abuse of powers, breach of law, disrespect of the articles of association or statute, under the terms of Article 135, III of the Federal Tax Code (“CTN”). The mere default of tax payment may not be considered a criminal offense. Thus, the joint liability cannot be characterized in this case. (**ERSP 260107/RS**)

Law 10,833/03 does not violate the constitutional principle of isonomy (*princípio da isonomia*) – Federal Regional Court (“TRF”) 3rd Tax Region

The Third Panel of the Federal Regional Court (“TRF”) of the 3rd Tax Region decided that Law No. 10,833/03 did not violate the constitutional principle of isonomy (*princípio da isonomia*) neither Article 246 of the Federal Constitution, which prohibits the use of Provisional Measures to regulate articles of the Federal Constitution whose wording has been amended by constitutional amendments enacted after 1995. **(Federal Regional Court 3rd Region Interlocutory Appeal No. 202107)**

PIS credits – Decision on Request for Ruling of the Federal Revenue Department No. 99 of March 19, 2004 – 6th Tax Region (Subject: PIS)

DISTRIBUTION OF GOODS. When distributing and commercializing goods, the taxpayer may take credits for expenses related to goods directly applied or consumed in the taxpayer’s activities such as expenses with vehicle repair, tires recap, insurance and tolls, provided that those goods are not included in the taxpayer’s fixed assets and the goods and services rendered have been acquired from legal entities domiciled in Brazil.

PIS and COFINS credits regarding the acquisition of exempt raw materials – Decision on Request for Ruling of the Federal Revenue Department No. 23 of February 13, 2004– 2nd Tax Region (Subject: PIS/COFINS)

CREDIT. RAW MATERIALS. The legal entity shall have the right to take credits related to PIS and COFINS, deriving from the acquisition of raw material used in the manufacturing process of products, even in case of exemption of the contributions levied on revenues regarding the supply of those referred raw materials.

NEWS

Non-levy of ISS on banking transactions related to granting of guarantees

Judge Luiz Sérgio Fernandes, of the 8th district of the State Court of São Paulo, granted a preliminary injunction suspending the Municipal Tax on Services (“ISS”) levy on banking transactions related to the granting of guarantees. **(Source: Jornal Valor, 08.08.2004 page E1)**

Decision suspends ISS on imports

The 14th District of the State Court of São Paulo granted a preliminary injunction to a financial group suspending the ISS collection on the import of services entirely rendered abroad. In addition, the injunction determines the non-levy of the referred tax on software license and transfer of rights. The basis for granting the injunction was that transfer of rights represents an obligation to give and, thus, cannot be characterized as rendering of service. **(Fonte: Jornal Valor, 05.26.04 pág. E2)**

Decision exempts ISS on franchising

The 2nd Civil Court of the Municipality of Barueri issued a decision exempting franchising activities from the ISS levy, as originally required under Complementary Law No. 116/03. **(Source: Jornal Valor, 05.31.04 pág. E3)**

PIS/COFINS tax basis reduction

Judge Raphael Cazelli de Almeida Carvalho from the 1st District of the Federal Justice of Foz do Iguaçu granted a preliminary injunction, excluding the ICMS, and the PIS and COFINS-Import from their own tax basis. The basis for granting the injunction was that Law No. 10,865/04 could not provide for a tax basis different than the customs value, as provided by Article 149 of the Federal Constitution. **(Source: Jornal DCI-Comércio Indústria & Serviços 05.26.04)**

Tax Newsletter

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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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