

Tax Alert

November/December 2005

Recent Brazilian Supreme Court Ruling Benefits PIS/COFINS Taxpayers

A controversial aspect of Law no. 9,718/1998 has just been decided by the Federal Supreme Court in favour of taxpayers of the Social Integration Tax ("PIS") and the Social Contribution Tax ("COFINS").

Until the enactment of said law, PIS/COFINS were value-added taxes charged only on revenue from the sale of goods and rendering of services. However, as a result of its Article 3, Section I, their tax basis was broadened to include not only direct sales revenue but also additional revenue such as financial interest and leases, and PIS/COFINS became non-cumulative for certain companies.

On 9 November 2005, after several years of court challenges, the Federal Supreme Court declared that such Section I of Article 3 is unconstitutional. This ruling not only benefits taxpayers that already challenged the law but is great news to those that chose to wait for the higher court verdict. Based on this precedent, taxpayers can now benefit from legal action seeking to exclude from the PIS/COFINS tax basis revenue that does not arise from the sale of goods or the rendering of services since the enactment of Law no. 9,718/1998.

Please be advised that companies that have not yet sought court action against seeking restitution or set-off of such taxation must observe applicable statutes of limitation, as follows:

- (i) taxpayers not subject to value-added PIS/COFINS: restitution or set-off is limited to the last 5 years; and
- (ii) taxpayers subject to value-added PIS/COFINS: restitution or set-off is limited to the period between November 2000 to November 2002 (for PIS) and November 2000 to January 2004 (for COFINS).

Our tax litigation department will be happy to assist you and provide further information about this issue, as well as to represent clients seeking restitution or set-off of these credits.

Best Regards,

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