

# Seizing opportunities



## Tax Alert Brazil

Main aspects of the newest Tax Regularization Program

Issue: Marco de 2017/March 2017 · [www.roedl.de/brasilien](http://www.roedl.de/brasilien) · [www.roedl.com/br](http://www.roedl.com/br)

### STF DECIDE PELA INCONSTITUCIONALIDADE DA INCLUSÃO ICMS NA BASE DE CÁLCULO DO PIS/COFINS

#### > Notícia

O Supremo Tribunal Federal (STF) decidiu na última quarta-feira (15), por 6 votos a 4, a favor dos contribuintes de que o governo federal não pode incluir o Imposto sobre Circulação de Mercadorias e Serviços (ICMS) na base de cálculo das contribuições para o Programa de Integração Social (PIS) e para a Contribuição para o Financiamento da Seguridade Social (Cofins).

A decisão da Suprema Corte terá repercussão geral no Judiciário, ou seja, a partir de agora, as instâncias inferiores da Justiça também terão de seguir essa orientação.

Em nota, o Ministério da Fazenda informou que a União ingressará com o recurso de embargos de declaração quando o acórdão for publicado, "a fim de que o seu pedido de modulação de efeitos seja apreciado pela Corte". A União requererá que a decisão do STF tenha efeitos a partir de 2018.

#### > Modelo de cobrança

O modelo atual de cobrança é complexo e existem formas diferentes de incidência do tributo, com regimes cumulativo e não cumulativo além de uma sistemática diferenciada para micro e pequenas empresas.

### SUPREME COURT (STF) RULES FOR THE UNCONSTITUTIONALITY OF THE INCLUSION OF THE ICMS IN THE TAX BASE OF THE PIS/COFINS

#### > News

The Brazilian Supreme Federal Court (STF) ruled last Wednesday (15) by 6 votes to 4, in favor of the taxpayers that the federal government cannot include the Value-Added Tax (ICMS) on the basis of calculation of contributions to the Social Integration Program (PIS) and to The Contribution to the Financing of Social Security (Cofins).

The decision of the Supreme Court will have general repercussions in the Judiciary, that is, from now on, the lower courts will also have to follow this direction.

The Ministry of Finance announced that the Union will file an appeal with the statement of objections when the judgment is published, "so that its request for modulation of effects may be examined by the Court." The Union will require that the STF decision take effect from 2018.

#### > Tax collection

The current model of collection is complex and there are different forms of tax incidence, with a non-cumulative regime (for companies that are in real profit, which is a form of calculation of Income Tax) and cumulative system (for companies that are in the Presumed profit), as well as a differentiated system for micro and small companies.

## Tax Alert Brazil

### > Modulação e Aplicabilidade

A aplicabilidade desta decisão depende de modulação dos efeitos que ainda não foi votada no supremo, pela falta de pleito neste sentido no processo, conforme entendimento da ministra Cármen Lúcia.

A questão é que a decisão abre precedente e possivelmente afetará outros tributos incidentes sobre o faturamento bruto das empresas, que também incidem sobre o ICMS assim como pode afetar a discussão acerca da inclusão do ISS na base de cálculo do PIS/Pasep e da Cofins, que já se discute nos tribunais.

Apesar da decisão, é importante frisar que as empresas que não tenham ingressado com medida judicial sobre o tema, ainda não devem excluir o ICMS da base de cálculo do PIS e da Cofins, sob risco de serem autuadas pela Receita Federal.

A Rödl & Partner Brazil possui profissionais especializados que estão sempre disponíveis para auxiliá-lo neste assunto, em língua Alemã, Inglesa, Espanhola e Portuguesa.

Caso necessite de suporte adicional, entre em contato com nossa equipe de Consultoria Tributária.

### > Modulation and Applicability

The applicability of this decision depends on the modulation of its effects, which has not yet been voted in the supreme, for the lack of litigation in this sense in the process, according to the understanding of Minister Carmen Lúcia.

The concern is that the decision sets a precedent and might affect other taxes levied on companies' gross revenues, which are also imposed on ICMS, as it may also affect the discussion about the inclusion of the ISS in the PIS/Pasep and Cofins calculation basis, which is already being debated in the courts.

Despite the decision, it is important to note that companies that have not filed a lawsuit on this matter, should not yet exclude the ICMS from the PIS and Cofins calculation basis, at the risk of being assessed by the Federal Revenue Service.

Rödl & Partner Brazil has specialized professionals that are always available to support you in this matter in German, English, Spanish and Portuguese languages.

Should you need further assistance, please contact our Tax Consulting team.

#### Seizing Opportunities

*"The factors that drive Brazil's growth are well-known – strong demographics, modernised infrastructure, and richness of natural resources. Brazil still offers diverse investment opportunities. It is not without reason that the metropolis of São Paulo is one of the world's largest industrial hubs. Seize with us the opportunities this market offers!"*

*"Every hand grasped, every foot put on the shoulders of another Casteller is an opportunity for us to create a brand-new constellation of a human tower. We only have to recognise that opportunity and – what is perhaps even more important – seize it with confidence."*

*Castellers de Barcelona*



„Each and every person counts“ – to the Castellers and to us.

Human towers symbolise in a unique way the Rödl & Partner corporate culture. They personify our philosophy of solidarity, balance, courage and team spirit. They stand for the growth that is based on own resources, the growth which has made Rödl & Partner the company we are today. „Força, Equilibri, Valor i Seny“ (strength, equilibrium, valour and common sense) is the Catalan motto of all Castellers, describing their fundamental values very accurately. It is to our liking and also reflects our mentality. Therefore Rödl & Partner embarked on a collaborative journey with the representatives of this long-standing tradition of human towers – Castellers de Barcelona – in May 2011. The association from Barcelona stands, among many other things, for this intangible cultural heritage.

#### Imprint:

**Tax Alert Brazil** – Issue March 2017

#### Publisher:

**Rödl & Partner Brazil**  
Audit – BPO – Business Advisory - Tax  
Latin America Coordination  
German Desk Transaction Competence Center

#### Responsible for the content: Head of Tax & Business advisory

Michael Loeb – michael.loeb@roedl.pro

#### LatAm-Coordinator & Tax Manager São Paulo

Karen Steuer – karen.steuer@roedl.pro

#### General & Tax Manager Curitiba

Guilherme Paludo – gilherme.paludo@roedl.pro

This Newsletter offers non-binding information and is intended for general information purposes only. It is not intended as legal, tax or business administration advice and cannot be relied upon as individual advice. When compiling this Newsletter and the information included herein, Rödl & Partner used every endeavour to observe due diligence as best as possible, nevertheless Rödl & Partner cannot be held liable for the correctness, up-to-date content or completeness of the presented information.

The information included herein does not relate to any specific case of an individual or a legal entity, therefore, it is advised that professional advice on individual cases is always sought. Rödl & Partner assumes no responsibility for decisions made by the reader based on this Newsletter. Should you have further questions please contact Rödl & Partner contact persons.