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ADVOGADOS

INSURANCE & REINSURANCE

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NEWSLETTER

Brazilian Federal Regional Court decides that PIS-importation and COFINS-importation applies to (re)insurance business

The Brazilian Federal Regional Court recently unanimously decided that insurance policies and reinsurance agreements are equivalent to rendering of services, therefore PIS-importation and COFINS-importation ("PIS/COFINS-importation") applies to the premiums remitted abroad. Pursuant to Law No. 10.865/2004, PIS-importation and COFINS-importation applies to the remittance of amounts abroad as consideration for services rendered. The basis for calculation of these taxes is 15% on (re)insurance premiums remitted abroad.

The lawsuit, brought against an insurance company and a local reinsurer, debates whether social contributions PIS/COFINS-importation applies on premium of reinsurance remitted abroad.

The defense brought by the insurer and local reinsurer argued that

(a) the contract of (re)insurance is not rendering of services and, therefore, is not considered as a service, which is the basis for the applicability of PIS/COFINS-importation; and

(b) placement of reinsurance abroad is not equivalent to importing services, which is subject to Service Tax (*Imposto sobre Serviços – ISS*) and not by IOF-insurance.

Below are the arguments brought by the Court to justify the decision:

(i) the activity carried out by insurers and reinsurers is compatible with the definition set out in Section 594 of the Civil Code in relation to service agreements, given that the obligation assumed by (re)insurers is the assumption of a risk and not the payment of claims, otherwise the absence of a claim would result in the non-existence of the insurance agreement; and

(ii) the placement of reinsurance abroad is equivalent to the importation of services, as set out in Section 195, item IV, of the Federal Constitution.

In view of the above, this decision is an important precedent that can negatively impact the economics of the (re)insurance sector. It is expected that the taxpayer will appeal to the higher courts.

SUSEP publishes rule clarifying the concept of "premium corresponding to each automatic or facultative contract" for intra-group placements

According to Resolution CNSP 168/2007the cession of risk by insurers or local reinsurers to foreign (re)insurers of the same financial conglomerate is limited by a percentage of the premium of each automatic or facultative contract.[1]

This new regulation has aimed at clarifying the concept of "premium corresponding to each automatic or facultative contract", set forth in article 14, paragraph 4:

(i) for proportional facultative contracts, the reinsurance/retrocession premium ceded relating to each reinsured/retroceded risk;

(ii) for non-proportional facultative contracts, the reinsurance/retrocession premium ceded referring to each reinsured/retroceded risk for each layer contracted;

(iii) for proportional automatic contracts, the reinsurance/retrocession premium ceded referring to the risks underwritten and covered by each contract; and

(iv) for non-proportional automatic contracts, the reinsurance/retrocession premium ceded for each layer contracted in each contract.

The new rules also sets out which period of time which is taken into account when making this calculation. For automatic contracts, described in items (iii) and (iv) above, the determination of the premium will have to consider each year that the contract is in force. The period can be shorter if the total effective period of the contract or the remaining term after the last anniversary is less than one year.

[1] Article 14, paragraph 4: the limitation is calculated on a percentage basis of the premium as follows: (i) 20% until 31 December 2016, (ii) 30% as of 1 January 2017, (iii) 45% as of 1 January 2018, (iv) 60% as of 1 January 2019, (v) 75% as of 1 January 2020.

For non-proportional contracts, either facultative or automatic (as indicated in items (ii) and (iv) above), the premium will be determined considering each line of business included in the contract, including any layers.

The rules also determine, with respect to non-proportional automatic contracts, that the adjustment premiums, minimum and deposit premiums and possible reintegration of premium must be considered when calculating the ceded reinsurance/retrocession premium.

It is not possible to deduct from this calculation the commissions paid.

Finally, the new Circular clarifies that companies shall adapt to these new rules upon renewal of the contracts or within one year of publication of this rule, whichever occurs first.

New rules for intra-group placements and placements with local Reinsurers

Intra-group placements

As of 1 January 2017, intra-group placements to foreign (re)insurers of the same financial conglomerate by local (re)insurers has increased in 10%[2]. Now, up to 30% of the premium corresponding to each automatic or facultative contract can be placed with a (re)insurer of the same financial conglomerate.

The contracts related to surety bonds, export credit insurance, agricultural insurance, internal credit insurance and nuclear risks insurance can be ceded freely to companies belonging to the same financial conglomerate.

Mandatory placement with local reinsurers

As of 1 January 2017 the mandatory placements with local reinsurers was reduced to 30% of each reinsurance or retrocession agreement, pursuant to Article 15, sole paragraph, of CNSP Resolution 168/2007. Please note that local reinsurer still have a right of first refusal relating to 40% of the risk being placed in reinsurance.

SUSEP launches regulation for new life insurance product

Resolution CNSP 344/2016 was published on 27 December 2016, which sets out new rules and criteria for structuring and commercializing the so called “universal life insurance”.

This new type of life insurance combines a saving element to the traditional life insurance coverage, allowing the insured to receive the surplus premium paid upon termination of the policy if no loss occurred. Universal life policies must be effective for at least five years and cannot be renewed.

[2] Pursuant to Article 14, paragraph 4, item II, of CNSP Resolution 168/2007

In general lines, the insured capital of the universal life insurance is divided in: (i) the cost of insurance, which is the part of the insured capital guaranteed by the insurer; and (ii) the surplus which is the part of the insured capital accumulated during the life of the policy and received by the insured upon termination of the policy.

There are two types of universal life insurance:

(i) non-variable universal life, where the premium remains unchanged during the policy's effective period (except for adjustments to reflect inflation); and

(ii) variable universal life, that allows the capital to vary according to the cost of insurance and the surplus, which can be recalculated during the term of policy. This means that the premium is variable.

This rule will take effect on 26 April 2017.

New Solvency rules for the Brazilian insurance market

In line with Brazil's efforts to adapt insurance rules to the EU's Solvency II Directive and International Financial Reporting Standards (IFRS), Resolution CNSP 343/2016 changed the certain provisions related to the solvency calculation of regulated entities.

Pursuant to this new rule, the calculation of the adjusted net equity must now consider the full market value of its financial assets.

Resolution CNSP 343/2016 altered certain provisions of CNSP Resolutions 321/2015, 332/2015 and 335/2015, and came into force on 31 December 2016.

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