

# INFORMATION REPORT

OCTOBER 2017

## INSURANCE AND OPEN SUPPLEMENTARY SOCIAL SECURITY ..... 1

1) INFORMATION ON THE NEW REGISTER OF INSURANCE BROKERS – 9/29/2017

2) INTER MINISTERIAL MANAGEMENT COUNCIL OF THE RURAL INSURANCE – CGSR RESOLUTION Nº 058, OF 10/16/2017

3) BILL 3139/2015

4) SUSEP CIRCULAR No. 559, of 10/26/2017

## FINANCIAL MARKET, CAPITAL MARKET AND OTHERS.....4

1) NATIONAL LAND TRANSPORTATION LAND AGENCY - ANTT STATEMENT Nº 325, OF 9/28/2017

2) PUBLIC HEARING ON CHANGE TO CVM INSTRUCTION 481

3) LAW No. 13486, OF 10/3/2017

4) PUBLIC HEARING ON REVISION OF TECHNICAL PRONOUNCEMENTS No. 12 OF THE ACCOUNTING PRONOUNCEMENT COMMITTEE - CPC

5) CENTRAL BANK UPGRADED THE IF.DATA SYSTEM

6) NATIONAL CONSUMER DEPARTMENT – SENACON ADMINISTRATIVE RULE Nº 25, OF 10/10/2017

7) GOVERNMENTAL POLICY ANALYSIS AND MONITORING SUBOFFICE – SAG PUBLIC INQUIRY Nº 01/2017 – ANALYSIS OF THE REGULATORY IMPACT

8) DECREE No. 9177, OF 10/23/2017

9) DECREE Nº 9.178, OF 10/23/2017

10) NATIONAL MONETARY COUNCIL - CMN RESOLUTION No. 4606, OF 10/19/2017

11) CVM INSTRUCTION No. 591, OF 10/26/2017

12) LAW No. 13500, OF 10/26/2017

13) MINISTRY OF JUSTICE ADMINISTRATIVE RULE MJ Nº 905, OF 10/24/2017

14) LAW No. 13495, OF 10/24/2017

15) CVM STATEMENT No. 782, OF 10/25/2017

## CLOSED SUPPLEMENTARY SOCIAL SECURITY..... 15

1) NATIONAL SUPPLEMENTARY SOCIAL SECURITY SUPERINTENDENCE – PREVIC INSTRUCTION Nº 12, OF 10/13/2017

2) CMN RESOLUTION No. 4604, OF OCTOBER 19, 2017

## HEALTH ..... 16

1) NATIONAL CONSUMER DEPARTMENT – SENACON ADMINISTRATIVE RULE Nº 24, OF 10/10/2017

## TAX..... 17

1) FEDERAL REVENUE OFFICE – RFB NORMATIVE INSTRUCTION Nº 1.749, OF 9/29/2017

2) OFFICE OF THE GENERAL COUNSEL FOR THE NATIONAL TREASURY – PGFN ADMINISTRATIVE RULE Nº 976, OF 10/3/2017

3) ANSWER TO INQUIRY No. 494, OF 9/26/2017

4) NATIONAL ASSOCIATION OF PARTICIPANTS IN PENSION FUNDS - ANAPAR QUESTIONS FEDERAL REVENUE ABOUT POSSIBLE DOUBLE TAXATION IN SUPPLEMENTARY SOCIAL SECURITY

5) LAW No. 13496, OF 10/24/2017

6) ANSWER TO INQUIRY No. 4039, OF 10/19/2017

7 ) DECLARATORY ACT No. 009, OF 10/23/2017

8) TAX AUTHORITY’S WIN AT THE ADMINISTRATIVE BOARD OF TAX APPEALS - CARF SETS A PRECEDENT

9) OFFICE OF THE GENERAL COUNSEL FOR THE NATIONAL TREASURY - PGFN ADMINISTRATIVE RULE No. 1032, OF 10/25/2017

10) FEDERAL REVENUE OFFICE - RFB NORMATIVE INSTRUCTION No. 1752, OF 10/25/2017

11) LAW Nº 13.494, OF 10/24/2017

12) FEDERAL REVENUE OFFICE - RFB NORMATIVE INSTRUCTION No. 1753, OF 10/30/2017

13) PROVISIONAL PRESIDENTIAL DECREE - MP Nº 807, OF 10/31/2017

14) OFFICE OF THE GENERAL COUNSEL FOR THE NATIONAL TREASURY - PGFN ADMINISTRATIVE RULE Nº 1052, OF 10/31/2017

15) FEDERAL REVENUE OFFICE - RFB NORMATIVE INSTRUCTION Nº 1754, OF 10/31/2017

16) PROVISIONAL PRESIDENTIAL DECREE - MP Nº 806, OF 10/30/2017

PARTNERS OF THE FIRM AND RESPECTIVE AREAS ..... 33

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# INSURANCE AND OPEN SUPPLEMENTARY SOCIAL SECURITY

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## 1) INFORMATION ON THE NEW REGISTER OF INSURANCE BROKERS – 9/29/2017

The latest information on the new register of insurance brokers, updated in September 29, 2017, is:

- a) 10,057 insurance brokers already registered, after the Agency has granted the application;
- b) 3,583 applications NOT YET FINALIZED;

c) 4,135 applications "DEPENDING ON FULFILLMENT OF REQUIREMENT", "DEPENDING ON FULFILLMENT OF PRELIMINARY REQUIREMENT" and "SECOND REQUIREMENT BEING REVISED;"

Concerning those brokers that still need to finalize their applications, we remember that should the application not be finalized within 60 days, it will be canceled, as provided in art. 6, par. 1, of SUSEP Circular no. 552, of 2017.

As informed in the September report, the period for the insurance brokers/individuals' enrollment in the new register runs from June 1, 2017 to December 15, 2017, and a new registration will be required every three (3) years, and the period for the brokers/entities runs from December 1, 2017 to August 30, 2018, and likewise, a new registration will be required every three (3) years.

## 2) CGSR RESOLUTION No. 058, OF 10/16/2017

CGSR Resolution no. 058, published in the Federal Official Journal no. 58 of 10/17/2017, approves the distribution of budget of the Subsidy Program for the Rural Insurance Premium [*Prêmio do Seguro Rural - PSR*] for 2017, subject to the limits of the spending authorization and payment by the Ministry of Agriculture, Livestock, and Supply.

The full rule is available at <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?jornal=1&pagina=6&data=17/10/2017>

## 3) BILL 3139/2015

On 10/24/2017, the public hearing of the special committee of the House of Representatives was held to analyze the bill (PL 3139/15) that prohibits the car

protection promoted by associations that operate as a type of cooperative.

For those that carry out this type of activity, a market gap is being filled as the insurers are not able to meet the demand for that protection.

In fact, that is an evidently illegal, and even criminal, activity, to the extent that it illegally captures the savings of the people and is not authorized by SUSEP. In addition to being unfair competition, to the extent that the insurers, as it is logical, are subject to taxes and required to keep a financial reserve equivalent to the value of the insured assets whereas the associations are not required to do so.

Unfortunately, notwithstanding SUSEP's efforts to fight such associations, their number has grown and the society seems to have got used to them.

The bill, although unnecessary to call the attention to the impropriety, has the merit of emphasizing the need for the insurance, irrespective of the name it is called, to be offered by insurers only.



The bill may be accessed at <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=1805742>

#### 4) SUSEP CIRCULAR No. 559, of 10/26/2017

Establishes the basic rules for sales of Insurance covering Civil Liability of Hangars and Airport Operations and the contractual conditions of this Insurance Standard Plan, approved by the Managing Board through SUSEP Procedure no. 15414.629564/2017-91, available on SUSEP website. This circular replaces and amends the previous one, SUSEP Circular no. 71 of 1977, which was in effect for 40 years.

SUSEP Conduct Supervision Director Carlos de Paula explained that the product required a specific update, which was being discussed since 2008, based on the tariff changes established by Decree no. 3633/2000: “As a result of the elimination of the tariff provisions

determined by Decree no. 3633/2000, and the requirement for insurers to present Technical Actuarial Notes [*Notas Técnicas Atuariais* - NTAs], it was necessary a specific update of the Civil Liability of hangars.”

The full rule is available at

<http://www2.susep.gov.br/bibliotecaweb/docOriginal.aspx?tipo=1&codigo=41300> .

# FINANCIAL MARKET, CAPITAL MARKET AND OTHERS

## 1) NATIONAL LAND TRANSPORTATION AGENCY - ANTT STATEMENT No. 325, OF 9/28/2017

The Collective Board of ANTT, under the authority conferred on it, resolved that the number of the entry at the margin of an insurance policy addressed in item X of article 23 of Resolution no. 4799, of July 27, 2015 (identification of the insurer, number of insurance policy and number of the entry) must be composed as

established in the Annex to this Statement. These procedures will be adopted from October 2, 2017.

The rule is available at <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?jornal=1&pagina=77&data=02/10/2017>;

## 2) PUBLIC HEARING ON CHANGE TO CVM INSTRUCTION 481

The Securities and Exchange Commission of Brazil (CVM) submitted to a public hearing held on 10/2/2017 the draft of the instruction that amends CVM Instruction 481, specifically Chapter III-A providing for attendance and remote voting at shareholders' meetings.

The purpose is to improve the remote voting system, which was compulsorily adopted by publicly held corporations whose shares are part of IBrX-100 or IBOVESPA, following the trend towards improved



corporate governance and reduced costs related to the shareholders' attendance at meetings.

Those interested were able to send suggestions and comments to the Market Development Superintendence (SDM) until November 1, 2017. The call for the public hearing may be checked at [http://www.cvm.gov.br/audiencias\\_publicas/ap\\_sdm/2017/sdm0417.html](http://www.cvm.gov.br/audiencias_publicas/ap_sdm/2017/sdm0417.html);

### 3) LAW No. 13.486, OF 10/3/2017

On 10/4/2017, Law no. 13.486 was published, which amends art. 8 of Law no. 8.078, of September 11, 1990 (Consumer Protection Code); to insert paragraph 2 in that article 8, establishing the supplier's duty to sanitize equipment and utensils used to supply products and services and to inform, where applicable, on the risk of contamination.

The full rule is available at [http://www.planalto.gov.br/ccivil\\_03/ato2015-2018/2017/lei/L13486.htm](http://www.planalto.gov.br/ccivil_03/ato2015-2018/2017/lei/L13486.htm) ;

## 4) PUBLIC HEARING ON REVISION OF TECHNICAL PRONOUNCEMENTS No. 12 OF THE ACCOUNTING PRONOUNCEMENT COMMITTEE - CPC

CVM submitted on 10/5/2017 at a public hearing the draft of the statement approving the Revision of Technical Pronouncements no. 12.

Among the provided amendments, we cite the following:

- Enactment of CPC 47 (its purpose was to establish the principles the entity will apply to provide the users of accounting statements with useful information on the nature, time and uncertainty of revenues and cash flows derived from contracts with clients);

- Enactment of CPC 48 (its purpose was to establish principles for financial reports on financial assets and liabilities providing the users of accounting statements with pertinent, useful information for assessment of amounts, time and uncertainty of the future cash flows of the entity);
- Amendment to CPC 48 allowing the Insurers not to apply in full the CPC 48 until 2021; two distinct points should be highlighted: Temporary exemption and overlapping;
- Change in the classification and measurement of transactions involving payment based on actions of the CPC 10;
- Change in properties for investment under the CPC 28 (its purpose was to establish the accounting treatment of properties for investment and respective disclosure requirements);
- Annual changes made by the International Accounting Standards Board - IASB for the 2014 – 2016 Cycle as from January 1, 2018;
- Annual changes made by the CPC to harmonize previous pronouncements with the

International Financial Reporting Standards - IFRS.

Suggestions could be sent until 11/6/2017 to the Superintendence for Accounting and Audit Standards, preferably via the email [AudPublicaSNC0517@cvm.gov.br](mailto:AudPublicaSNC0517@cvm.gov.br), and the call for the public hearing may be accessed at [http://www.cvm.gov.br/audiencias\\_publicas/ap\\_snc/2017/snc0517.html](http://www.cvm.gov.br/audiencias_publicas/ap_snc/2017/snc0517.html)

## 5) CENTRAL BANK UPGRADED THE IF.DATA SYSTEM

The Central Bank upgraded the IF.Data system, the database with information on financial institutions. The information structure was standardized and the reports are now clearer and more detailed, according to the provisions of the Information Access Law (Law no. 12.257/2011) and the Basel Accord (its purpose is

to find a more accurate measure to assess the risks incurred by internationally active banks), specifically Pillar 3, which seeks to promote market discipline.

Said improvement follows the global market trend towards tax transparency, specially at the moment Brazil starts negotiations to become a member of the Organization for Economic Co-operation and Development - OECD.

## 6) NATIONAL CONSUMER DEPARTMENT - SENACON ADMINISTRATIVE RULE No. 25, of 10/10/2017

SENACON published SENACON Administrative Rule no. 25 creating a Work Group to revise, update and modernize Decree no. 6523, of July 31, 2008, which set general rules on the Consumer Assistance Service [*Serviço de Atendimento ao Consumidor – SAC*].

The Group, that will be coordinated by the SENACON, will be composed of several consumer protection entities, such as the Brazilian Consumer Protection Institute [*Instituto Brasileiro da Defesa do Consumidor - Idec*] and the Brazilian Association of Consumer Protection Offices [*PROCONS BRASIL – Associação Brasileira de Procons*].

Unfortunately, neither SUSEP nor the National Confederation of Insurers [*Confederação Nacional de Seguradoras – CNSeg*] are part of the Group, also formed by the National Agency of Telecommunications [*Agência Nacional de Telecomunicações – ANATEL*], National Agency of Electric Power [*Agência Nacional de Energia Elétrica – ANEEL*] and the Brazilian Federation of Banks [*Federação Brasileira dos Bancos - FEBRABAN*].

CNSeg does not take part in the Group in spite of its efforts to dialog with the consumer protection entities, and considering that the Decree unquestionably applies to the activities of the insurers.

The entire rule, published in the Federal Official Journal of 10/13/2017, may be accessed at



<http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?jornal=1&pagina=45&data=13/10/2017>

## 7) GOVERNMENTAL POLICY ANALYSIS AND MONITORING SUBOFFICE – SAG PUBLIC INQUIRY No. 1/2017 – ANALYSIS OF THE REGULATORY IMPACT

The Governmental Policy Analysis and Monitoring Suboffice of the Office of the President's Chief of Staff submitted to Public Inquiry no. 01/2017 conducted until November 1, the proposals for *General Guidelines* and *Guidance* for the Analysis of Regulatory Impact.

The analysis of the regulatory impact is an internal administrative procedure of federal regulatory

agencies to base and guide regulatory decisions of public agents.

The immediate purpose of the proposals submitted to public inquiry is to make relevant regulatory decisions more efficient, coherent, technically stronger and foreseeable, in addition to improving their quality.

It is worth noting that the analyses will not be binding upon the decision-making process, although the Analysis of the Regulatory Impact will guide and base such process.

However, it is unquestionable that it is a good tool to restrict the powers of the government since decisions and justifications diverging from the analyzed facts carry a heavier weight.

The proposed model, which is not intended to the regulatory agencies only, is internal (as it uses internal technicians predominantly), unitary (no one will be responsible for revising the analysis, at least for now), and is not centralized, so each agency organizes itself to use it.

Concerning the methodology, the inquiry, although the cost-benefit analysis is mentioned, does not exhaust

the existing options, nor does it require the exclusivity of that methodology.

The proposal in question is of utmost relevance, to the extent that in Brazil a lengthier discussion on the impact of the rules, especially those issued within the regulatory ambit, is yet to be held.

We need to effectively set out guidelines for the issuance of supposedly positive rules that increase the costs of activities without any relevant benefit or creating unnecessary barriers for entry into markets such as the insurance market.

The draft is available at <http://www.regulacao.gov.br/agenciasreguladoras/consulta-publica/consulta-publica-001-2017>

## 8) DECREE No. 9177, OF 10/23/2017

On 10/24/2017, the Federal Official Journal published Decree no. 9177, of 10/23/2017, that regulates art. 33 of Law no. 12305, of August 2, 2010, which introduces the National Solid Waste Policy and supplements art. 16 and art. 17 of Decree no. 7404, of December 23, 2010 and makes other provisions.

The decree establishes that manufacturers, importers, distributors and sellers of products (as well as their wastes and packages) referred to in the head provision and par. 1 of art. 33 of Law no. 12305 that are not signatories of the commitment executed with the Federal Government, are required to structure and implement reverse logistics systems (reuse of solid wastes or their environmentally adequate disposal); such obligations are considered equal to those imposed on the signatories of agreements made with other sectors and already executed with the Federal Government.



That is, the purpose of the rule is an equal treatment to all sectors, which must implement reverse logistics systems, whether or not an agreement or a commitment was signed with the corresponding sector.

The full rule is available at [http://www.planalto.gov.br/ccivil\\_03/ato2015-2018/2017/Decreto/D9177.htm](http://www.planalto.gov.br/ccivil_03/ato2015-2018/2017/Decreto/D9177.htm) ;

## 9) DECREE No. 9178, OF 10/23/2017

Amends Decree no. 7746, of June 5, 2012, which regulates art. 3 of Law no. 8666, of June 21, 1993, and provides for criteria, practices and guidelines to promote a sustainable development in contracts executed by the federal direct government agencies, independent agencies and foundations as well as non-independent state-owned companies, and sets up the Inter-ministerial Commission for the Sustainability in

the Government [*Comissão Interministerial de Sustentabilidade na Administração Pública - CISAP*].

That Decree, by amending Decree no. 7746 — which regulates art. 3 of the Procurement Law —, determines that when acquiring assets or contracting services and construction works, the federal government, direct government agencies, independent agencies and foundations will adopt sustainable criteria and practices in the invitations to bid but respecting the competitive nature of the procurement process.

To extent that the federal government is authorized to launch procurement processes and must fully comply with the legal provisions, that is a way to drive the companies, which are the parties that are the most interested in this process, to adopt a position more aligned with sustainable policies.

This is also valid for the other spheres of the state and city governments that base their procurement process on the Federal Law and on that decree.

The rule may be accessed at [http://www.planalto.gov.br/ccivil\\_03/Ato2015-2018/2017/Decreto/D9178.htm](http://www.planalto.gov.br/ccivil_03/Ato2015-2018/2017/Decreto/D9178.htm).

## 10) NATIONAL MONETARY COUNCIL - CMN RESOLUTION No. 4606, OF 10/19/2017

Provides for the optional simplified methodology for assessment of the minimum required Simplified Reference Property [*Patrimônio de Referência Simplificado* - PRS5], the requirements for opting for this methodology and additional requirements for a simplified structure of continuous risk management.

This regime will require only information on the capital of the institutions and can be adopted by singular credit cooperatives, non-banking institutions that grant credit, except development agencies, and non-banking institutions operating in the gold or the foreign currency market or operating as fiduciary may

participate. Non-banking institutions are those not authorized to obtain cash deposits and those that do not have the word “bank” in their names. In addition, the total assets of these institutions must be less than 0.1% of the Gross Domestic Product (GDP) and their profile must be simplified (they do not make some types of transactions, such as assets loan).

According to the Regulation Director of the Central Bank Otávio Damaso, the change will reduce the compliance costs of non-banking institutions. “We are simplifying the structure required for the risk management of less complex institutions. Some procedures require the institution to fill out 27 pages of report. With the RPS, this may drop to six pages. This means optimization of the work processes.” However, he also warns that a more flexible regulation does not cause any loss to the control of the information and the prudence principles.

The full resolution may be accessed at <https://www.bcb.gov.br/pre/normativos/busca/normativo.asp?numero=4606&tipo=Resolu%C3%A7%C3%A3o&data=19/10/2017>

## 11) CVM INSTRUCTION No. 591, OF 10/26/2017

CVM Instruction no. 591 was enacted on 10/26/2017; it amends CVM Instruction 308, which deals with the registration and the activity of independent audit within the ambit of the securities market and defines the duties and responsibilities of managers of entities audited by independent auditors.

Among the amendments, we point out the maintenance of a policy on continued education of the professional from the approval in the Technical Qualification Test - CVM specific until the professional's registration with CVM; work at only one audit company (whether as partner or responsible technician); requirement for continued education policy for the members of audit teams, whether responsible technicians, directors, managers, supervisors or others in a management position, involved in the audit.

The instruction is available at <http://www.cvm.gov.br/legislacao/instrucoes/inst591.html>.

## 12) LAW No. 13500, OF 10/26/2017

Amends Supplementary Law no. 79, of January 7, 1994, providing for transfers of funds from the National Penitentiary Fund [*Fundo Penitenciário Nacional* - Funpen], Law no. 11473, of May 10, 2007, to allow provision of exceptional and voluntary services to the National Public Security Department [*Secretaria Nacional de Segurança Pública* - Senasp], which includes the National Public Security Force [*Força Nacional de Segurança Pública* - FNSP].

It also amends Law no. 8666, of June 21, 1993, and dispenses with procurement in the cases of construction, expansion, remodeling and improvement of penitentiaries provided that grave and serious risks to the public security are evidenced; it also establishes that the invitations to bid, in case of



services agreements, may require that a minimum percentage of the labor to be used by the contractor corresponds to ex-convicts, amends Law no. 10826, of December 22, 2003 (Disarmament Statute) to allow the members of the National Public Security Force [*Força Nacional de Segurança Pública* - FNSP] to obtain permit for possession of firearms, and revokes Provisional Presidential Decree no. 755, of December 19, 2016.

The rule may be accessed at [http://www.planalto.gov.br/ccivil\\_03/Ato2015-2018/2017/Lei/L13500.htm](http://www.planalto.gov.br/ccivil_03/Ato2015-2018/2017/Lei/L13500.htm).

### 13) MINISTRY OF JUSTICE ADMINISTRATIVE RULE MJ Nº 905, OF 10/24/2017

On 10/26/2017, the Federal Official Journal published MJ Administrative Rule no. 905, of 10/26/2017, which approves the Internal Regulation of the National

Consumer Department [*Secretaria Nacional do Consumidor* – Senacon]. Among others, the Department has authority to prepare and disclose a supplementary list of contractual clauses and abusive practices, according to the Consumer Protection Code.

The rule may be accessed at <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?jornal=1&pagina=36&data=26/10/2017>.

### 14) LAW No. 13495, OF 10/24/2017

Amends the provisions of Law no. 9503, of September 23, 1997 (Brazilian Traffic Code), to enable vehicle owners to register the main driver of their motor vehicle in the National Registry of Motor Vehicles [*Registro Nacional de Veículos Automotores* - Renavam], for purposes of liability.

The entire law is available at [http://www.planalto.gov.br/ccivil\\_03/ato2015-2018/2017/lei/L13495.htm](http://www.planalto.gov.br/ccivil_03/ato2015-2018/2017/lei/L13495.htm).

## 15) CVM STATEMENT No. 782, OF 10/25/2017

Delegates to the Institutional Investors Relationship Superintendence [*Superintendência de Relações com Investidores Institucionais* - SIN] the power to dispense with certain requirements of Funds for Investment in Non-Standard Receivables [*Fundos de Investimento em Direitos Creditórios Não Padronizados* - FIDC-NP], such as, for example, presentation of an attorney's legal opinion, under art. 7, par. 1, of CVM Instruction 444; presentation and update of prospectus, under articles 8, 25 and 34, of CVM Instruction 356; and non-inclusion in the Regulations of processes of origin and description of collection mechanisms, under art. 24, X, (b) and (c), of CVM Instruction 356.

However, such requirements may be released only if the following demands are satisfied, cumulatively: (i) the FIDC-NP must be intended to a single investor or a specific business group (that is, a group that has one

common holding company and one single and inseparable interest); and (ii) the FIDC-NP's shares must not be traded in the secondary market.

The statement is available at <http://www.cvm.gov.br/legislacao/deliberacoes/deli0700/deli782.html>.



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## CLOSED SUPPLEMENTARY SOCIAL SECURITY

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### 1) PREVIC INSTRUCTION No. 12, OF 10/13/2017

Previc Instruction no. 12 was published in the Federal Official Journal on 10/19/2017. It amends the wording of item IV, art. 4, of Previc Instruction no. 10, of September 27, 2017, featured in the September Report.

The original wording established that Closed Supplemental Social Security Entities (EFPC) should provide information on the investment policy of each benefit plan by March 1 of the fiscal year in question. The new wording changed the deadline to provide such information; it sets that the information on the

policy of each benefit plan, including its revisions, must be sent within 30 days from the date of approval by the Decision-Making Board.

Further, such instruction revokes item VII – which established the period to submit statements on transactions involving federal government bonds – and the sole paragraph – which dealt with the period to deliver revised investment policies – of art. 4 of Normative Instruction no. 10.

The entire instruction is available at <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?jornal=1&pagina=17&data=19/10/2017>.

### 2) CMN RESOLUTION No. 4604, OF OCTOBER 19, 2017

Amends Resolution no. 3922, of November 25, 2010, that provides for investment of funds of Specific Social Security Regimes [*Regime Próprio de Previdência Social* - RPPS] introduced by the Federal

Government, the States, the Federal District and the Municipalities.

The Social Security Department informs that “the amendments encourage better professional qualification for managers and set requirements for the engagement of service providers of the RPPS, for the sake of transparency of the costs incurred with management of the corresponding assets.”

Some limits for investment in assets were changed, according to the degree of risk, and relevant conditions to reduce the risk when investing in Equity Investment Funds [*Fundos de Investimento em Participação* - FIP] and Fund of Investment in Receivables [*Fundo de Investimento em Direitos Creditórios* - FIDC] were added; the limits of some categories (such as hedge funds) were raised, and the set of assets eligible for investment in RPPS funds was increased as well.

The entire resolution is available at <https://www.bcb.gov.br/pre/normativos/busca/normativo.asp?numero=4604&tipo=Resolu%C3%A7%C3%A3o&data=19/10/2017>.

## HEALTH

### 1) NATIONAL CONSUMER DEPARTMENT - SENACON ADMINISTRATIVE RULE No. 24, OF 10/10/2017

The National Consumer Department, through its National Secretary, published SENACON Administrative Rule no. 24, which creates a Work Group to update and improve health plan services.

The Group, which will be coordinated by SENACON, will be joined by the National Supplementary Health Agency [*Agência Nacional de Saúde Suplementar* - ANS] and the National Federation of Supplementary Health [*Federação Nacional de Saúde Suplementar* - FenaSaúde].

The entire rule, published in the Federal Official Journal on 10/13/2017, is available at <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?data=13/10/2017&jornal=1&pagina=44&totalArquivos=116>

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## TAX

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### 1) FEDERAL REVENUE OFFICE - RFB NORMATIVE INSTRUCTION No. 1749, OF 9/29/2017

Amends Normative Instruction no. 1728, of August 14, 2017, which regulates the Program for Rural Tax Good Standing [*Programa de Regularização Tributária Rural - PRR*], instituted by Provisional Presidential Decree no. 793, of July 31, 2017, amended by Provisional Presidential Decree no. 803/2017, within the ambit of the RFB.

Debts may be paid under the PRR even if they were assessed by the tax authority after August 1, 2017, provided that the adhesion to the Program occurs until November 30, 2017 and the tax is legally due until April 30, 2017.

In order to be able to pay debts in installments, taxpayers that adhere to the PRR in October 2017 must pay one per cent (1%) of the consolidated debt, without any reductions, referring to the installment of September 2017 along with one per cent (1%) of the consolidated debt, without any reductions, referring to October 2017.

Those that adhere to the Program in November 2017, in turn, must pay two per cent (2%) of the consolidated debt without any reductions, referring to the installments of September and October 2017, along with one per cent (1%) of the consolidated debt, without any reductions, referring to November 2017.

With the extension of the Program period, the taxpayers must prove to the RFB until November 30, 2017 that they sought dismissal of any proceedings with prejudice, or requested a certificate to the clerk's office attesting the status of the proceeding.

The entire instruction is available at <http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?idAto=86722&visao=anotado>

## 2) Office of the General Counsel for the National Treasury - PGFN ADMINISTRATIVE RULE No. 976, OF 10/3/2017

On 10/3/2017, Administrative Rule no. 976 was published; it amends PGFN Administrative Rule no. 894, of August 25, 2017, to extend the period for adhesion to the Program for Rural Tax Good Standing (PRR), instituted by Provisional Presidential Decree no. 793, of July 31, 2017, and amended by Provisional Presidential Decree no. 803, of September 29, 2017, for debts administered by PGFN.

The Rule regulates the changes enacted by Normative Instruction no. 1728, of August 14, 2017, extending the period for taxpayers to adhere to the PRR and to prove the request for withdrawal from, and waiver of, lawsuits to November 30, 2017.



The entire rule is available on <http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?visao=anotado&idAto=86800>.

### 3) ANSWER TO INQUIRY No. 494, OF 9/26/2017

#### **SUBJECT: GENERAL RULES ON TAX LAW**

#### **SYNOPSIS: MEDICAL SERVICES DECLARATION. HOSPITAL. INFORMATION ON ADVANCE PAYMENT. PROHIBITION. DEDUCTION OF AMOUNTS PAID TO SUBCONTRACTORS. PROHIBITION**

*The information provided in the Medical Services Declaration [Declaração de Serviços Médicos - DMed] filed by a hospital refers to payments for services provided, and not to advance payments received for services contracted but not yet provided.*

*In cases a hospital subcontracts professionals to provide a service contracted by its patients, the amount to be informed in the DMed, after the service is provided, is the total paid to the hospital under the agreement, irrespective of the amounts the hospital transfers to the professionals later.*

**LEGAL PROVISIONS: RFB ADMINISTRATIVE RULE No. 985, of December 22, 2009, arts. 1 to 6.**



## 4) NATIONAL ASSOCIATION OF PARTICIPANTS IN PENSION FUNDS - ANAPAR QUESTIONS FEDERAL REVENUE ABOUT POSSIBLE DOUBLE TAXATION IN SUPPLEMENTARY SOCIAL SECURITY

On 9/29/2017, the National Association of Participants in Pension Funds [Associação Nacional dos Participantes de Fundos de Pensão - ANAPAR] submitted to the Federal Revenue Office (RFB) an official letter asking it to change the interpretation of Answer to Inquiry no. 354. Such Answer to Inquiry expressly states that only ordinary contributions (those intended to fund benefits) to closed social security entities domiciled in Brazil are deductible from the personal income tax, with due regard to the conditions established in the legislation and in compliance with the cap of 12% on the total income

considered in the base for calculation of the tax payable in the Annual Income Tax Return.

According to the entity, both ordinary and extraordinary contributions paid by participants, as well as investments made by the sponsor, are exclusively intended to fund benefit plans of social security nature.

It also states that the supplementary legislation is clear: contributions established in the funding plan encompass not only the amounts of contributions made by Participants, Beneficiaries and Sponsors, necessary to build up reserves that guarantee the social security benefits, but also amounts essential to build up reserves to guarantee funds and provisions, and to cover other costs of the social security benefit plan. Therefore, when differentiating ordinary contributions from extraordinary contributions for purposes of deduction of the withholding income tax, the RFB could not have innovated by making an interpretation “*whose conclusions violate the rules and inherent principles of the supplementary social security regime, the guarantee of tax deferral and of*

*release from taxation during the period of accrual of funds.”*

The entire document is available at <http://www.anapar.com.br/wp-content/uploads/2017/09/OF-033-COSIT-1.pdf>.

## 5) LAW No. 13.496, OF 10/24/2017

On 10/25/2017, the Federal Official Journal published that Provisional Presidential Decree 783/2017 (which would become invalid on October 11) became a law. It introduces the Special Tax Good Standing Program [*Programa Especial de Regularização Tributária - Pert*] in the Federal Revenue Office and the Office of the General Counsel to the National Treasury, and amends Law no. 12249, of June 11, 2010, and Decree no. 70235, of March 6, 1972.

The law was approved with 3 vetoes of the Brazilian President:

- i. Par. 10 of art. 2 and item II of art. 4, which provided for adhesion to the installment payment plan and debt discounts for small businesses that opted for the *Simples* regime;
- ii. Article 12, which would zero the rates of the Income Tax, the Contribution to Social Security Financing (CSLL) and the PIS/Cofins levied on revenue earned by an assignor with the assignment of credits of tax losses and of CSLL negative tax base for legal entities that are controlled, controlling, or affiliated companies;
- iii. Par. 2 of art. 11, which provided that non-defaulting legal entities whose monthly installments are not sufficient to repay the debt cannot be excluded from the installment payment plan, except upon evidence of bad faith.

Emphasis on the formula to calculate credit from CSLL negative tax base to be used in the installment payment plan of legal entities of private insurance, legal entities of capitalization, and legal entities referred to in items I, II, III, IV, V, VI, VII and

X of par. 1, art. 1, of Supplementary Law no. 105, of January 10, 2001, upon application of a 20% rate on the total tax base.

The entire law is available at [http://www.planalto.gov.br/ccivil\\_03/ato2015-2018/2017/lei/L13496.htm](http://www.planalto.gov.br/ccivil_03/ato2015-2018/2017/lei/L13496.htm)

## 6) ANSWER TO INQUIRY No. 4039, OF 10/19/2017

**Subject: Corporate Income Tax [Imposto sobre a Renda de Pessoa Jurídica - IRPJ]**

**Synopsis: The payment of insurance to indemnify costs expenses and losses caused by advance payments made to suppliers, due to contractual nonperformance, is not subject, in certain events, to the Corporate Income Tax calculated according to the taxable profit system.**

*The indemnity in excess of the amount previously accounted for as asset will be considered equity increase and will be included in the base for the tax calculation. In case of partial contractual nonperformance, in order for the indemnity to be non-taxable, the amount to be indemnified must be identified in the accounting records of the legal entity.*

*The amount entered in the accounting records that reduced the base for the tax calculation and is further recovered must be added to the assessment of the taxable profit.*

*The amount related to adjustment for inflation and contractual interest, connected to the indemnity for property damage, must be computed in the assessment of the taxable income of the legal entity.*

**LEGAL PROVISIONS:** Law no. 9430, of 1996, arts. 12 and 70; Decree Law no. 1598, of 1976, art. 12. Regulation: Decree no. 3000, of 1999 (Income Tax Regulation - RIR/1999), art. 681; Federal Revenue - RFB Normative Instruction no. 1700, of 2017, arts. 3, 26 and 79.



**Subject: Social Contribution on Net Income [Contribuição Social sobre o Lucro Líquido - CSLL]**

**Synopsis: The payment of insurance to indemnify costs expenses and losses caused by advance payments made to suppliers, due to contractual nonperformance, is not subject, in certain events, to the CSLL calculated according to the taxable income system.**

The indemnity in excess of the amount previously accounted for as asset will be considered equity increase and will be included in the base for the contribution calculation. In case of partial contractual nonperformance, in order for the indemnity to be non-taxable, the amount to be indemnified must be identified in the accounting records of the legal entity.

The amount entered in the accounting records that reduced the base for the tax calculation and is further recovered must be added to the assessment of the base for the CSLL calculation.

The amount related to adjustment for inflation and contractual interest, connected to the indemnity for

property damage, must be computed in the assessment of the base for the CSLL calculation.

LEGAL PROVISIONS: Law no. 9430, of 1996, arts. 12 and 70; Decree Law no. 1598, of 1976, art. 12. Regulation: Decree no. 3000, of 1999 (Income Tax Regulation - RIR/1999), art. 681; Federal Revenue - RFB Normative Instruction no. 1700, of 2017, arts. 3, 26 and 79.

**Subject: Contribution for the Social Security Financing [Contribuição para Financiamento da Seguridade Social - Cofins]**

**Synopsis: The payment of insurance to indemnify costs expenses and losses caused by advance payments made to suppliers, due to contractual nonperformance, is not subject, in certain events, to the non-cumulative Cofins.**

The indemnity in excess of the amount accounted for will be considered equity increase and will be included in the base for the contribution calculation. In case of partial contractual nonperformance, the effective value must be identified in the accounting records of the legal entity in order for the indemnity not to be

*taxed. The recovery of credits written off to expenses that do not represent entry of new revenues do not make up the base for the contribution calculation.*

*The amount related to adjustment for inflation and contractual interest, connected to the indemnity for property damage, must be computed in the assessment of the base for the contribution calculation.*

**LEGAL PROVISIONS:** Decree Law no. 1598, of 1976, art. 12; Law no. 10833, of 2003, art. 1, pars. 1 to 3, item V, sub-item "b", art. 3, items VI and XI, pars. 13 and 14.

**Subject: Contribution to the Social Integration Program [Programa de Integração Social - PIS] / Public Servant Fund [Programa de Formação do Patrimônio do Servidor Público - Pasep]**

**Synopsis: The payment of insurance to indemnify costs expenses and losses caused by advance payments made to suppliers, due to contractual nonperformance, is not subject, in certain events, to the non-cumulative PIS/Pasep.**

*The indemnity in excess of the amount accounted for will be considered equity increase and will be included in the base for the contribution calculation. In case of partial contractual nonperformance, the effective value must be identified in the accounting records of the legal entity in order for the indemnity not to be taxed. The recovery of credits written off to expenses that do not represent entry of new revenues do not make up the base for the contribution calculation.*

*The amount related to adjustment for inflation and contractual interest, connected to the indemnity for property damage, must be computed in the assessment of the base for the contribution calculation.*

**Legal provisions:** Decree Law no. 1598, of 1976, art. 12; Law no. 10637, of 2002, art. 1, pars. 1 to 3, item V, sub-item "b", art. 3, item VI; Law no. 10833, of 2003, art. 3, items VI and XI, pars. 13 and 14, and art. 15, items I and II.

**ANSWER LINKED TO ANSWER TO INQUIRY No. 455 - General Taxation Coordination - Cosit, of September 20, 2017 (Published in the Federal Official Journal - DOU of 9/26/2017, section 1, p. 27.**



Other answers in this same regard: Answers to Inquiry no. 4040, of 10/19/2017, no. 4041, of 10/19/2017, no. 4042, of 10/19/2017, no. 4043, of 10/19/2017.

## 7) DECLARATORY ACT No. 009, OF 10/23/2017

Establishes the rules for information of final beneficiaries of national entities domiciled abroad. Among the entities not required to provide information are: i) social security entities, pension funds and similar institutions, provided that they are regulated and inspected by a competent government authority in the country or in their country of origin, and ii) investment funds specially constituted and exclusively intended for collecting funds of supplementary social security benefit plans or personal insurance plans, provided that they are regulated and inspected by a competent government authority in their country of origin. However, insurers regulated and inspected by a competent government authority must provide

information (including final beneficiary) and/or submit documents upon request, provided that they do not have significant influence on any national entity.

The entire act is available at <http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?visao=anotado&idAto=87392>.

## 8) TAX AUTHORITY'S WIN AT THE ADMINISTRATIVE BOARD OF TAX APPEALS - CARF SETS A PRECEDENT

The Higher Chamber of the Administrative Board of Tax Appeals [*Conselho Administrativo de Recursos Fiscais* - Carf] found that taxpayers must pay social security contribution for offering special coverage to managers and officers. The decision was rendered by the 2nd Panel.

This was about a notice of violation for failure to pay contributions owed by the company and intended for the Social Security, corresponding to the share of insureds, company, funding of benefits granted according to the level of work disability caused by work-related environmental risks, and entities of the S system, applied to payments made to insureds who are individual taxpayers, child care allowance, education allowance, health care plans, rents, etc.

Therefore, the Higher Chamber found that the amounts related to medical assistance are part of the salary considered for purposes of social security contribution, when plans and coverage are not equal for all insureds. The decision, made by casting vote, was adopted in a proceeding of Centrovias Sistemas Rodoviários (no. 13888.003 809/2007-81), of Arteris Group.

As the role of the Higher Chamber is to make administrative precedents uniform, this may be a dangerous precedent for taxpayers. We are at your disposal if you need more details.

## 9) OFFICE OF THE GENERAL COUNSEL FOR THE NATIONAL TREASURY - PGFN ADMINISTRATIVE RULE No. 1032, OF 10/25/2017

Amends PGFN Administrative Rule no. 690, of June 29, 2017, that provides for the Special Tax Good Standing Program (Pert), instituted by Provisional Presidential Decree no. 783, of May 31, 2017, which became Law no. 13496, of October 24, 2017, within the ambit of the PGFN.

The Administrative Rule was amended to match the law; some of the highlights are: now, withdrawal from, and waiver of, lawsuits in order to adhere to the Pert will exempt the plaintiff from action to pay attorney's fees; inclusion of art. 16-A, which provides for the use of credits from tax loss and CSLL negative tax base, in the Chapter VII, which title changed to GIVING IN

## PAYMENT OF REAL PROPERTY AND PAYMENT IN INSTALLMENTS WITH THE USE OF CREDITS.

The entire rule is available at <http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?visao=anotado&idAto=87429>.

## 10) FEDERAL REVENUE OFFICE RFB NORMATIVE INSTRUCTION No. 1752, OF 10/25/2017

Amends the RFB Normative Instruction no. 1711, of June 16, 2017, which regulates the Special Tax Good Standing Program [*Programa Especial de Regularização Tributária* - Pert], instituted by Provisional Presidential Decree no. 783, of May 31, 2017, within the ambit of the RFB.

The instruction was amended to match Law no. 13496/2017, emphasis on art. 16-A, which provides that taxpayers that adhere to the program during the

effectiveness of Provisional Presidential Decree no. 783 will have their options automatically migrated, and will be entitled to the same conditions established in Law no. 13496, of October 24, 2017, therefore, it is not necessary to select a new option.

In addition, the instruction has one sole exhibit that features a model for waiver of challenge or administrative appeal, one of the requirements for adhesion to the program.

The entire instruction is available at <http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?visao=anotado&idAto=87430>.

## 11) LAW No. 13494, OF 10/24/2017

Introduces the Non-Tax Debts Good Standing Program [*Programa de Regularização de Débitos não Tributários* - PRD] within the federal autonomous government agencies and public foundations and the



Office of the Attorney General; amends Law no. 10522, of July 19, 2002, and Law 8213, of July 24, 1991; and makes other provisions.

This program allows the payment of non-tax debts owed to federal autonomous government agencies and public foundations, whether finally constituted or not, registered as overdue or not, overdue until the date the Law was published (10/25/2017), incurred by individuals or legal entities, including debts that were the subject of previous installment payment plans, whether terminated or active, subject of administrative proceedings or lawsuits, provided that the application is submitted within one hundred and twenty days from the date of publication of the regulation to be established by the federal autonomous government agencies and public foundations, and by the Office of the Attorney General, within the ambit of their authority.

The program will not encompass debts owed to federal autonomous government agencies and public foundations associated with the Ministry of Education established in item XXI of the sole article of the Annex to Decree no. 8872, of October 10, 2016, except for

credits resulting from contracts and agreements executed by the National Fund for Education Development [*Fundo Nacional de Desenvolvimento da Educação* - FNDE] with the States, Municipalities and the Federal District; the Brazilian Antitrust Agency [*Conselho Administrativo de Defesa Econômica* - Cade]; and the National Agency of Electric Power [*Agência Nacional de Energia Elétrica* - Aneel].

The program is very similar to PERT; the difference is its subject, which is non-tax debts, and it is the result of Provisional Presidential Decree no. 780/2017 becoming a law

The entire law is available at [http://www.planalto.gov.br/ccivil\\_03/\\_ato2015-2018/2017/lei/L13494.htm](http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/L13494.htm).



## 12) FEDERAL REVENUE OFFICE - RFB NORMATIVE INSTRUCTION No. 1753, OF 10/30/2017

Provides for the procedures to annul the effects of administrative acts, issued based on the authority granted by commercial law, that contemplate changes to, or adoption of, new accounting methods or criteria.

The Normative Instruction addresses the changes to the base for calculation of the federal taxes to eliminate the tax effect and affirm the tax neutrality, this one understood as the determination that the tax cannot cause distortions to the market offer, demand and prices except for the purposes of the tax policy. The enacted instruction contemplates the identification of administrative acts that contain new accounting methods and criteria, and provides, in detail, for procedures to annul the effects on the assessment of federal taxes.

The identification of the acts and the definition of the procedures are in following individual annexes to each administrative act: Annex I, which establishes procedures related to the provisions in item 1 of the Technical Pronouncements Revision no. 09, issued on December 22, 2016 by the Accounting Pronouncement Committee [*Comitê de Pronunciamentos Contábeis* - CPC]; Annex II, which establishes procedures related to the provisions in art. 6 of the National Monetary Council - CMN Resolution no. 4512, of July 28, 2016; and Annex III, which establishes procedures related to the provisions in CMN Resolution no. 4524, of September 29, 2016. Art. 5 This Normative Instruction takes effect on the date of its publication in the Federal Official Journal.

The entire instruction is available at <http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?visao=anotado&idAto=87571>.

## 13) Provisional Presidential Decree - MP No. 807, OF 10/31/2017

Amends Law no. 13496, of October 24, 2017, which institutes the Special Program for Tax Good Standing [*Programa Especial de Regularização Tributária - PERT*] in the Federal Revenue Office and the Office of the General Counsel for the National Treasury

The main change is the extension of the period to apply to the PERT to November 14; previously, according to Law no. 13496, the deadline was October 31, 2017.

With the time extension, taxpayers that apply during this period will pay a percentage of the consolidated debt by November 14 (installments of August, September and October 2017), another percentage by the end of November, related to November itself, and another in December. The percentages vary according to the type of debt payment chosen by the taxpayer.

The decree may be accessed at [http://www.planalto.gov.br/ccivil\\_03/\\_ato2015-2018/2017/Mpv/mpv807.htm#art1](http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/Mpv/mpv807.htm#art1).

## 14) Office of the General Counsel for the National Treasury - PGFN ADMINISTRATIVE RULE No. 1052, OF 10/31/2017

Amends PGFN Administrative Rule no. 690, of June 29, 2017, to extend the period for adhesion to the Special Tax Good Standing Program (PERT), instituted by Law no. 13496, of October 24, 2017, and amended by Provisional Presidential Decree no. 807, of October 31, 2017, for debts administered by PGFN.

As Provisional Presidential Decree no. 807 amended Law no. 13496 and extended the period for adhesion to the PERT, among other measures, it was necessary

to issue PGFN Administrative Rule no. 1052 to adjust the systems of the PGFN.

The Rule extended to 11/14/2017 the deadline for taxpayers to join the PERT as well as to prove their request for withdrawal from, and waiver of, lawsuits by submitting a copy of the corresponding petition filed or a certificate of the clerk's office attesting the status of the lawsuits.

The full administrative rule may be accessed at <http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?visao=anotado&idAto=87597>

## 15) FEDERAL REVENUE OFFICE - RFB NORMATIVE INSTRUCTION No. 1754, OF 10/31/2017

Amends RFB Normative Instruction no. 1711, of June 16, 2017, which regulates the Special Tax Good Standing Program [*Programa Especial de*

*Regularização Tributária* - PERT], instituted by Provisional Presidential Decree no. 783, of May 31, 2017, within the ambit of the RFB.

As MP no. 807 amended Law no. 13496, extended the period for adhesion to the PERT as well as changed the payment method of the installments of November and December 2017, the normative instruction, which contemplates the payment methods provided in the Provisional Presidential Decree, was necessary. Those taxpayers that apply during this period will pay a percentage of the consolidated debt by 11/14/2017 (installments of August, September and October 2017), another percentage by the end of November, related to November itself, and another in December. The percentages vary according to the type of debt payment chosen by the taxpayer.

In addition, the Instruction extended to 11/14/2017, the deadline to prove discontinuance of oppositions or administrative appeals and lawsuits and waiver of allegations of right to the RFB unit of the tax domicile of the taxpayer. The rule may be accessed at <http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?idAto=87598&visao=anotado>



## 16) PROVISIONAL PRESIDENTIAL DECREE - MP No. 806, OF 10/30/2017

Published in an extraordinary issue of 10/30/2017, MP no. 806 provides for the Income Tax levied on investments in investment funds.

By and large, the MP determines the application of the tax regime via “*come-cotas*”, already applied to open investment funds, also to investment funds and funds of investment in units constituted as closed co-ownership (those that do not admit unit redemption during their effective period).

*Come-cotas* is the name given to advanced payment of the Income Tax required in regard to several types of investment funds, such as fixed income and multimarket. Every six months, on the last day of May and on the last day of November, the number of units is reduced according to the income tax rate applicable

to the earnings. At the time of the redemption, the difference between the amount paid in advance through the “*come-cotas*” and the Income Tax rate applicable to the investment is calculated.

Although the issue of taxation of closed investment funds through the “*come-cotas*” is controversial, in principle, from June 1, 2018, the Withholding Income Tax - IRRF will be levied on the earnings of investments in the mentioned funds as follows: (i) on the last business day of May and November of each year; (ii) at the time of the amortization; (iii) upon the redemption of units at the end of effective period of the fund, or (iv) upon the end of the fund, if on a previous date, under art. 3 of the MP.

The full administrative rule may be accessed at [http://www.planalto.gov.br/ccivil\\_03/\\_Ato2015-2018/2017/Mpv/mpv806.htm](http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2017/Mpv/mpv806.htm)



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