NEWSLETTER – NOVEMBER/16

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SUMMARY

- **4)** RN Ruling – RN No. 414 of November 11, 2016;
- **5)** RN Ruling – RN No. 415 of November 28, 2016;
- **6)** Normative Ruling - DIFIS No. 14 of November 11, 2016;
- **7)** STJ settles understanding about maintenance of health plan by former employees.

TAX

- **1)** Normative Ruling No. 1,671 of November 22, 2016 – Brazilian Federal Revenue Office;
- **2)** Normative Ruling No. 1,672 of November 23, 2016 – Brazilian Federal Revenue Office;
- **3)** Executive Declaratory Act No. 90 of November 25, 2016;
- **4)** Interpretative Declaratory Act No. 11 of November 22, 2016;
- **5)** Answer to Inquiry No. 144 of September 27, 2016;
- **6)** Answer to Inquiry No. 152 of October 31, 2016.

INSURANCE, OPEN SUPPLEMENTARY PENSION PLAN AND FINANCIAL MARKET

1) **CMN RESOLUTION NO. 4,530 OF OCTOBER 27, 2016:** establishes the conditions for the refinancing of portions of transactions destined for the purchase and leasing of trucks, chassis, tractor-trailers, trailers, semi-trucks, tow-trucks, wreckers, including the dolly-type, tanks and related items, beds for new and used trucks, new tracking systems, insurance of the asset and loan protection insurance, signed by December 31, 2015.

   The refinancing above is set forth by article 1º-A of Law 12,096/2009, with CMN Resolution No. 4.530 having regulated the basic conditions of the use thereof, defining, for such purpose, both the "beneficiaries"; the "object of the refinancing"; the "term for delivery of the refinancing transactions"; the "financial charges"; and the term for reimbursement".

BACK TO SUMMARY

2) **CMN RESOLUTION NO. 4,537 OF NOVEMBER 24, 2016:** amends the regulation attached to Resolution No. 3,932/2010, which consolidates the rules regarding the destination of the funds raised in savings deposits by the entities parties to the Sistema Brasileiro de Poupança e Empréstimo [Brazilian Systems of Savings and Loans] (SBPE).

   The change made alters article 14 of the Regulation to once again increase the maximum limits of the appraisal amount of the financed real property set forth in item II and in paragraph 7. The limit for the Southeast Region increases from R$750,000.00 to R$950,000.00, while the limit for the remainder of the country increased from R$650,000.00 to R$800,000.00. The last increase of these amounts had been made on September 30, 2013.

   In addition, paragraph 8 was added to the same article 14, determining that "the contractual conditions must set forth the use of systems for the repayment of the transactions within the scope of the SFH which assure full settlement, in each payment of the installments due, of the amounts regarding contractual interest and the correction levied upon the outstanding balance during the period".

BACK TO SUMMARY

3) **CVM DELIBERATION NO. 757 OF NOVEMBER 24, 2016:** establishes the Integrated Risk Management System of the Securities and Exchange Commission.

   The purpose of the Integrated Risk Management System – SIG – is to assure compliance with the regulations brought by Law. 6,385/1976, which regulates the securities market through the identification, analysis, evaluation and handling of the risks defined and classified under the terms of the Deliberation in question.

   In this sense, the provisions categorize and evaluate the risks according to their nature and level of severity, also establishing a Risk Management Committee that will promote the strengthening of the risk management culture and define the risk management strategies at the CVM.

   It can be said that SIG is yet another initiative by CVM to reinforce risk-based supervision techniques in the Brazilian capital markets, which is already widely used by the Central Bank, by the Private Insurance

Superintendence and by the Supplementary Pension Plan Superintendence.

BACK TO SUMMARY

4) **BACEN CIRCULAR NO. 3,813 OF NOVEMBER 23, 2016:** amends Circulars No. 3,690 and No. 3.,691, both of December 16, 2013, regarding the conversion into reais of the expenses incurred in foreign currency through credit cards for international use and the payment method for international transactions.

One of the main amendments promoted is the establishment of the right of the consumer to choose the reference date for the exchange rate used in the conversion of the foreign currency of the purchase (the date of the purchase or the date of payment of the invoice).

BACK TO SUMMARY

5) **SUSEP ORDINANCE NO. 6,730 OF NOVEMBER 23, 2016:** organizes the Special Commission on the Market for Insurance, Capitalization, Reinsurance and Open Supplementary Pension Plans.

The goal of the Commission is to discuss matters relevant to the referred markets and will be composed by the Superintendent, the Directors, the Head of Office, the SUSEP General Office and the following market representatives:

i. President of *Confederação Nacional das Empresas de Seguros Gerais, Previdência Privada e Vida, Saúde Suplementar e Capitalização* – CNSeg [Brazilian Federation for General Insurance Companies, Private Pension and Life Insurance Plans, Supplemental HealthCare and Capitalization];
ii. President of *Federação Nacional de Seguros Gerais* - FenSeg [Brazilian Federation of General Insurances];
iii. President of *Federação Nacional de Capitalização* - FenaCap [Brazilian Federation of Capitalization];
iv. President of *Federação Nacional de Previdência Privada e Vida* - FenaPrev [Brazilian Federation of Private Pension and Life Insurance Plans];
v. President of *Federação Nacional das Empresas de Resseguro* [Brazilian Federation of Reinsurance Companies];
vi. President of *Federação Nacional dos Corretores de Seguros Privados e de Previdência Privada, das Empresas Corretoras de Seguros e de Resseguros* – Fenacor [Brazilian Federation of Private Insurance and Reinsurance Brokers, Capitalization, Private Pension Plans, Insurance and Reinsurance Brokerage Companies]; and
vii. President of *Escola Nacional de Seguros* - Funenseg [Brazilian Insurance School].

The Commission shall hold its ordinary meetings every two months and meet extraordinarily whenever called to do so by the Superintendent.

This initiative establishes a formal forum for dialogue between the market and SUSEP, the effective impacts of which must be monitored.

BACK TO SUMMARY

6) **CVM RULING NO. 582 OF NOVEMBER 22, 2016:** amends CVM Ruling No. 543/2013 and CVM Ruling No. 555/2014, which sets forth the provision of bookkeeping services for assets issued exclusively under the book-entry method, through

registration in individual systems in cases of centralized deposit.

According to the Market Development Superintendent of the CVM, Antonio Berwanger, "*The goal of the amendment to ICVM 543 is to improve the rules regarding the provision of bookkeeping services for assets issued exclusively under the book-entry method, through registration in individual systems in cases of centralized deposit. Thus, it is now required that the issuer contracts broker registered with the Independent Agency. The rule also sets forth rules for cases when the provision of the service is discontinued*".

Note that in comparison with the draft submitted to the public hearing, the main change in the rule published is in the provision setting forth that "*the issuer must automatically assume the obligation of conciliation before the central depositary for a term of 90 days, with the subsequent possibility of ending the centralized deposit of the respective assets. This will only be possible in case of interruption in the provision of the service by the broker without the due substitution within the term indicated in the ruling. Therefore, CVM opted to eliminate the provision requiring the contracting of a broker by the registration system*."

The full content of the Ruling can be accessed through the following link http://www.cvm.gov.br/export/sites/cvm/legislacao/inst/anexos/500/inst582.pdf.

BACK TO SUMMARY

7) **GUIDE FOR THE ISSUE OF GREEN BONDS IN BRAZIL:** the purpose of the 2016 Guide for the Issue of Green Bonds in Brazil, prepared by *Federação Brasileira de Bancos* [Brazilian Federation of Banks] (FEBRABAN) and by *Conselho Empresarial Brasileiro para o Desenvolvimento Sustentável* [Brazilian Business Council for Sustainable Development] (CEBDS) is to guide the participants and other parties interested in the fixed income bonds market in Brazil regarding the process for issuing Green Bonds.

Green Bonds are Fixed Income Bonds used to capture the funds necessary for implementing or financing the so-called Green Projects, which are projects with positive attributes from an environmental and climate point of view.

According to the Guide, Green Bonds are characterized by the financing of long-term projects, and represent "an important alternative for encouraging and making possible initiative and technologies with positive environmental features".

In Brazil, some financial instruments that could be categorized as Green Bonds are: Credit Right Investment Fund Quotas (FIDC); Agricultural Business Receivables Certificates (CRA); Real Estate Receivables Certificates (CRI), among others.

The target audience of the guide is potential issuers of such instruments (companies and financial institutions), as well as underwriters and investors.

The full contents of the Guide can be accessed through the following link: http://cebds.org/publicacoes/guia-para-emissao-de-titulos-verdes-no-brasil-2016/#.WDxz9fkrLIU

BACK TO SUMMARY

8) **SUSEP COMPLETES 50 YEARS:** on November 21, *Superintendência de Seguros Privados* [Private Insurance

Superintendence] had its 50th anniversary.

During the celebration, the Superintendent of SUSEP emphasized the importance of the insurance sector in resuming the economic development of the country and assured that "*Susep will keep its commitment to maintain active dialogue with the market, with a positive agenda and to work diligently to disseminate good practices and the offer of products and services that fully meet the needs of consumers*".

Our Partner João Marcelo dos Santos, former Director and Deputy Superintendent of SUSEP, participated in the celebration, as well as all of the other former Superintendents of SUSEP.

BACK TO SUMMARY

9) **DECREE NO. 8,906 OF NOVEMBER 21, 2016:** amends Decree No. 4,732/2003, regarding the position of Chairman of *Câmara de Comércio Exterior* – CAMEX [Foreign Trade Chamber], changing the composition of the Chamber so that it no longer includes the President of the Republic and the Minister of Planning.

BACK TO SUMMARY

10) **SUSEP UPDATES THE MARKET ORIENTATION REGARDING THE REQUIREMENTS PERTAINING TO THE REGULATIONS FOR SPECIALLY ORGANIZED FUNDS - FIES:** in October/2016, SUSEP published orientations for the market regarding the investment funds set forth in article 84 of CNSP Resolution No. 321/15, which are created to receive funds originating from supervised entities.

Two types of FIEs are currently set forth therein: "Pension Plans" and "Public Securities". The first has its mandatory elements defined by article 79 of SUSEP Circular No. 338/07, while the second is regulated by article 8, item I, letter "c" of CMN Resolution No. 4,444/2015.

In addition, the provision set forth in article 89 of CNSP Resolution No. 321/15 applies to all FIEs.

BACK TO SUMMARY

11) **SUSEP ACTUARIAL AUDITING LECTURE HELD ON NOVEMBER 1, 2016:** the lecture was held by the Coordination Office for Monitoring Technical Provisions of SUSEP on November 1, 2016, providing information and collaboration with the goal of explaining the procedures considered to be optimal by the Independent Agency regarding independent actuarial audits.

For example, the lecture presented the mandatory knowledge that auditors must have, as well as warnings regarding errors that must be avoided in the preparation of actuarial audit reports.

In fact, the information are clear and educational examples of situations that have been identified by SUSEP.

The full contents of the document can be accessed through the following link http://www.susep.gov.br/setores-susep/cgsoa/copra/arquivos-copra/apresentacoes/Auditoria%20Atuarial%20Independente%20-%20Apresentacao%202016.pdf

BACK TO SUMMARY

12) **IBA RESOLUTION NO. 12 OF NOVEMBER 10, 2016:** establishes the reference table of fees for actuarial examination of individual pension plan systems, makes recommendations

regarding the public contracting of actuarial services and sets forth other measures related to the fees to be charged for the realization of actuarial services in general.

BACK TO SUMMARY

13) **FEDERAL SUPREME COURT DECLARES THE MINAS GERAIS STATE LAW NO. 14,507/2002 ON CAPITALIZATION INSTRUMENTS UNCONSTITUTIONAL:** STF, adopting the understanding already stated in previous similar situations within the scope of the insurance market, decided that the state rule that established rules for the sale of capitalization instruments violated the competence of the Federal Government. The decision was taken in the judgment of Direct Action for the Declaration of Unconstitutionality (ADI) 2905, filed by *Confederação Nacional do Sistema Financeiro* [Brazilian Financial System Confederation] (Consif).

The judgment was finalized with the casting vote rendered by justice Gilmar Mendes, which voted in accordance with the vote of the reporting justice Eros Grau.

The decision was based on the allegation that the regulation of the market for capitalization instruments is a matter of commercial law and, therefore, under the strict legislative competence of the Federal Government. The state of Minas Gerais alleged that the law discusses a matter of consumer law, an argument that was not accepted by the STF.

BACK TO SUMMARY

14) **NEW RULES FOR COMBATING MONEY LAUNDERING AND THE FINANCING OF TERRORISM:** on November 17, 2016, the Securities and Exchange Commission (CVM) presented a draft of the ruling intended to substitute CVM Ruling No. 301 in a public hearing.

According to the Superintendent for market development, Antonio Berwanger, "*the goal was to update the provisions of the law establishing rules that seek to align the regulatory framework of the CVM with the recommendations of the Financial Action Group against Money Laundering and the Financing of Terrorism (GAFI/FATF) and with the commitments assumed with the Brazilian Strategy for Combating Corruption and Money Laundering (ENCCLA)*".

Note the following from among the proposed innovations:

i. the establishment of a Risk-Based Approach (ABR) in the prevention of money laundering and the financing of terrorism. The goal is to optimize human resources, materials and information of the persons obligated by article 2 of the Draft in the order to allow the effective management of the activities developed in the process of identification, monitoring, analysis and mitigation of risks in the conduct of its business;

ii. the guiding of the implementation of the ABR on the part of the segments regulated by the CVM with the provision that the institutions must prepare an internal risk assessment and a policy for the prevention of money laundering and the financing of terrorism (PLDFT);

iii. the provision that designates two separate directors for complying with the obligations, reinforcing the importance of the role of internal controls in the organization;

iv. improvements to the process for identifying clients by considering more flexible conditions in terms of updating registrations, visualization of the final beneficiary and definition of the diligences due by the institutions for purposes of this identification; and

v. the improvement of cases involving the communication of suspect transactions.

The public hearing notice and the full contents of the draft of the ruling can be accessed through the following link http://www.cvm.gov.br/export/sites/cvm/audiencias_publicas/ap_sdm/anexos/2016/sdm0916edital.pdf

BACK TO SUMMARY

15) **CMN RESOLUTION NO. 4,538 OF NOVEMBER 24, 2016:** the Central Bank of Brazil enacted a rule setting forth regarding the policy on the succession of managers in financial institutions.

The main goal of the rule is not to impose criteria for succession, but to make the structuring and planning of succession processes mandatory on the part of financial institutions.

BACK TO SUMMARY

16) **DECREE NO. 8.925 OF NOVEMBER 30, 2016:** amends Decree No. 3.937/2001, which regulates Law No. 6.704/1979, which provides for Export Credit Insurance (SCE).

Among the several changes introduced by the aforementioned Decree, the inclusion of reinsurers and investment funds in the list of institutions that may resort to the SCE and the provision for "differentiated, simplified and favored" treatment for micro and small enterprises should be highlighted.

BACK TO SUMMARY

PUBLIC INQUIRIES

1) **SUSEP PUBLIC INQUIRY NOTICE NO. 15 OF NOVEMBER 24, 2016:** the Superintendent of the Private Insurance Superintendence – Susep presented for public inquiry a draft of the CNSP Resolution that includes provisions in CNSP Resolution No. 223/2010, which set forth regarding the amendment of the Contractual Conditions for the Mandatory Civil Responsibility Insurance of Interstate and international Highway Passenger Transport Companies.

The term for sending comments and suggestions via electronic message to the address cgcom.rj@susep.gov.br or copat.rj@susep.gov.br was of 5 days, counted as of November 24, 2016.

The abovementioned draft is available on the webpage of Susep, at the link http://www.susep.gov.br/setores-susep/seger/copy_of_normas-em-consulta-publica/edital-de-consulta-publica-no-14-2016.

BACK TO SUMMARY

PENSION PLANS

1) **PREVIC RULING NO. 33 OF NOVEMBER 1, 2016:** establishes procedures and defines terms for the analysis of requirements that depend upon prior and express authorization, and sets forth other provisions.

PREVIC establishes rules to be observed by the Office of Technical Analysis – DITEC in requests submitted to its appraisal and makes available, through the Ruling enacted, an on-demand electronic licensing system (SLEWeb) for all of the private supplementary pension plan entities (EFPC).

With this, PREVIC makes the service universal for all of the 1024 rules for existing plans in its registration and will make orientations available on its website for including the rules for benefits plans in digital format. Based on the digital rules, the computer system must generate a comparison table containing the proposed amendments and the new version of the rules which, after approval, will be used for all of the subsequent amendment operations.

To encourage the use of the tool, PREVIC will grant special terms for the Entities.

The Ruling enacted revokes Previc Ruling No. 17 of November 12, 2014 and Previc Ruling No. 16 of November 12, 2014.

BACK TO SUMMARY

2) **PREVIC RULING NO. 34, OF NOVEMBER 04, 2016:** governs the registration and sending of electronic files with information on investment fund portfolios.

The Ruling enacted amends paragraph 5 of article 10 of MPS/PREVIC Ruling No. 2 of May 18, 2010, and creates paragraph 6 in this same provision.

The rule pertains to the sending of files regarding investment funds that list, starting on January 1, 2017, through the STA-PREVIC system available on the PREVIC website, according to the standards defined by *Associação Brasileira das Entidades dos Mercados Financeiro e de Capitais* – ANBIMA [Brazilian Association of Financial Market and Capital Market Entities].

With this rule, PREVIC will use the standardization established in the Qualified Services Code to receive information from the pension fund portfolios.

The submission, through the SICADI system, of the files set forth in the Ruling shall be waived starting on July 1, 2016.

BACK TO SUMMARY

3) **PREVIC ORDINANCE NO. 524 OF NOVEMBER 8, 2016:** disclose the list of underwriters qualified by the Office of Technical Analysis – Ditec, of PREVIC, during the period encompassed between October 1 and 31, 2016, as set forth in article 16, item II, of Previc Ruling No. 28 of May 12, 2016.

BACK TO SUMMARY

4) **PREVIC ORDINANCE NO. 527 OF NOVEMBER 8, 2016:** establishes the procedures and documents required for filing requests in licensing processes.

The rule must be observed by the private supplementary pension plan entities – EFPC when submitting the licensing request set forth in PREVIC Ruling No. 33, of November 1, 2016.

BACK TO SUMMARY

5) **PREVIC ORDINANCE NO. 549 OF NOVEMBER 22, 2016:** sets forth regarding business and customer service hours, workdays, attendance control and offsetting of hours worked by the employees of the Brazilian Supplementary Pension Plan Superintendence – PREVIC.

According to the Ordinance enacted, PREVIC will provide services to the external public from 8:00 a.m. to 6:00 p.m.

BACK TO SUMMARY

6) **HIGHER COURT OF APPEALS (STJ) – SPECIAL APPEAL (RESP) 1.626.020/SP – BENEFIT AMOUNTS FOR SUPPLEMENTARY PENSION PLANS**

RECEIVED IN GOOD FAITH, WHEN PAID UNDULY BY THE PRIVATE PENSION PLAN ENTITY, ARE NOT SUBJECT TO REIMBURSEMENT.

SUMMARY: SPECIAL APPEAL. CIVIL LAW. PRIVATE PENSION PLAN. STATUTE OF LIMITATION AND EXTRAJUDICIAL SETTLEMENT. LACK OF PRE-QUESTIONING. PRECEDENTS 282/STF AND 356/STF. POLICYHOLDER. UNDULY RECEIVED AMOUNTS. PROVISION OF THE REGULATION. POOR APPLICATION. ERROR BY THE SUPPLEMENTARY PENSION PLAN ENTITY. CORRECTION OF THE ACT. RETURN OF FUNDS. LACK OF NEED. PENSION NATURE. GOOD FAITH OF THE BENEFICIARY. APPEARANCE OF LEGALITY AND DEFINITIVE NATURE OF THE PAYMENT.

1. The dispute centers on knowing whether the overpayment made by the private pension plan entity, whether due to exclusive failure to act, or due to error in the interpretation and application of the normative act, entails the deduction of the differences in the matured portions of the policyholder's supplementary pension plan benefit.

2. Although the systems that govern open and private supplementary pension plan entities and those used for Social Security differ among each other, each having intrinsic specificities and autonomy with regard to the other, the same reasoning must be applied regarding the failure to reimburse the funds received in good faith by the insured or pension holder and must be applied in a definitive nature, in order to harmonize the systems.

3. Both the payment of public pension plan benefits and private pension plan benefits must be governed by the provision on objective good faith. Now, if the reputed definitive nature of the funds received by the policyholder is configured and who, rather than having caused or contributed to the error committed by the supplementary pension plan entity, remained in good faith, it becomes imperative to recognize the incorporation of the sum as property thereof, in order to dismiss the repeated claim of tax withheld in error or the allegation of unlawful enrichment.

4. The amounts received in good faith by the policyholder, when paid unduly by the supplementary pension plan entity due to the wrongful interpretation or bad application of the provision in the regulation, are not subject to reimbursement, because it creates the false expectation that these pension funds are legitimate, possessing a private pension plan agreement that is both of a civil and social security nature.

5. A different scenario is that of cases involving the reimbursement of supplementary pension plan benefit amounts received due to injunctive relief that is subsequently revoked, considering that in these situations, the reversibility of the anticipatory measure prevails, along with the lack of good faith of the beneficiary and the prohibition of unlawful enrichment.

6. Special appeal denied.

BACK TO SUMMARY

7) **PREVIC BANNERS UPDATED FOR DOWNLOAD:** PREVIC made updated banners available for download on its website for private supplementary pension plan entities and presented a link to the PREVIC website, as determined by Ruling No. 13, of November 12, 2014 (http://www.previc.gov.br/supervisao-das-entidades/banner-para-download).

BACK TO SUMMARY

HEALTHCARE

1) **NORMATIVE RULING – DIDES NO. 64, OF NOVEMBER 11, 2016:** amends Normative Ruling DIDES No. 63/2016, which sets forth regarding the Quality

Factor to be applied to the adjustment index defined by the ANS for healthcare professionals, laboratories, clinics and other non-hospital healthcare establishments.

Normative Ruling DIDES No. 64/2016 has as the focus of its amendments the activities of Professional Councils, which had their list of obligations expanded. They will not only be responsible for establishing the criteria to be used for defining the A and B levels, but also will consolidate the data received from the healthcare service providers and pass them on to the ANS.

BACK TO SUMMARY

2) **NORMATIVE RULING – RN NO. 412 OF NOVEMBER 10, 2016:** sets forth regarding the request for cancellation of the individual or family healthcare plan agreement, and the exclusion of the beneficiary from collective corporate agreements or by adhesion.

According to ANS, "*the goal of the rule is to eliminate possible interference in the communication between the beneficiary and the healthcare plan operator at the moment in which the beneficiary pronounces their desire to cancel the healthcare plan or exclude dependents*", such that the Resolution only applies to the so-called new plans, contracted after January 1, 1999.

In individual and family healthcare plans, the cancellation may be requested by the policyholder in person (at the headquarters of the healthcare plan operator, at its regional offices or locations indicated thereby); through telephone service made available by the healthcare plan operator; or through the webpage of the healthcare plan operator on the internet. Once the request is made, the healthcare plan operator must provide the beneficiary with proof of receipt thereof and the plan shall be canceled.

Meanwhile, with collective corporate plans, the main beneficiary may request their exclusion or that of a dependent from the collective healthcare plan to the company they work for using any method. The company must inform the healthcare plan operator so that it can take the applicable measures within 30 days. If the company violates this term, the main employee beneficiary may request exclusion directly from the healthcare plan operator.

The request for exclusion from the collective plan by adhesion, for its part, may be made by the main beneficiary to the legal entity contracting the private healthcare assistance plan. In this case, the request will be submitted to the healthcare plan operator to adopt the applicable measures, with the cancelation only having its effects as of the cognizance thereof. On the other hand, the beneficiary may communicate their intention directly to the healthcare plan operator, which must provide a proof of receipt of the request, with the cancellation having immediate effect.

The full contents of the Resolution and all amendments thereto can be accessed through the following link http://www.ans.gov.br/component/legislacao/?view=legislacao&task=TextoLei&format=raw&id=MzMyNA.

BACK TO SUMMARY

3) **NORMATIVE RULING - RN NO. 413 OF NOVEMBER 11, 2016:** sets forth regarding the procedures for the electronic contracting of private healthcare assistance plans, which are also applicable to the healthcare plan operators classified as benefits managers.

Note the following from among the determinations set out:

i. The optional offering of the electronic contracting of private healthcare assistance plans;
ii. The total responsibility of the healthcare plan operators for safeguarding the information regarding electronic contracting, including with regard to the personal information of the interested parties;
iii. The list of essential information brought by article 4 which must be presented by the healthcare plan operators during the contracting process;
iv. The details of the contracting process and the effectiveness of the agreements, defined by article 5.

The full contents of the Resolution can be accessed through the following link http://www.ans.gov.br/component/legislacao/?view=legislacao&task=TextoLei&format=raw&id=MzMyNw.

BACK TO SUMMARY

4) **NORMATIVE RULING - RN NO. 414 OF NOVEMBER 11, 2016:** amends Normative Resolution – RN No. 388/2015, which sets forth regarding the procedures adopted by the Brazilian Supplementary Healthcare Agency for the structuring and realization of its inspection actions, and amends RN No. 124/2006, which sets forth regarding the application of penalties for violations of the legislation regarding private healthcare assistance plans.

The full contents of the Resolution can be accessed through the following link http://www.ans.gov.br/component/legislacao/?view=legislacao&task=TextoLei&format=raw&id=MzMyOA.

BACK TO SUMMARY

5) **NORMATIVE RULING - RN NO. 415 OF NOVEMBER 28, 2016:** amends the Internal Rules of *Agência Nacional de Saúde Suplementar* – ANS [Brazilian Supplementary Healthcare Agency], enacted by Normative Resolution No. 197/2009 and Normative Resolution No. 198/2009.

The current Resolution adds to the competences of the Sector Development Office – DIDES, the performance of research and the proposition of rules regarding the economic and financial aspects of the mechanisms for regulating the use of the healthcare services adopted and used by the healthcare assistance plan operators; and the indication of the economic and financial aspects regarding the adoption and use, by the healthcare assistance plan operators, of a moderating factor as the mechanism for regulating the use of such healthcare services.

In addition, item V of article 38 and items XI and XII of article 48 of Normative Resolution No. 197/2009 were added with the term “assistance” to qualify the regulation of the use of healthcare services adopted and used by the healthcare plan operators.

Lastly, article 43 was amended, the paragraph 4 of which had been individually amended to reflect the revocation of item XXV of the same article.

BACK TO SUMMARY

6) **NORMATIVE RULING - DIFIS NO. 14 OF NOVEMBER 11, 2016:** amends Normative Ruling No. 13/2016, setting forth the Right to Inspection, that establishes the procedures to be adopted for the Inspection Cycle and for the Inspection Intervention set forth in

articles 45, 46 and 48 to 54 of Normative Ruling No. 388/2015;

The various changes affect paragraph 2 of article 5; the main section of article 6; the main section of article 7; articles 9 to 15; the main section and paragraphs 1 and 2 of article 16; the main section of article 17; item II of article 18; the main section and paragraphs 1 to 3 of article 20; the main section and paragraphs 1 and 2 of article 21; the main section and paragraphs 1 and 2 of article 22; the main section of article 23, as well as paragraphs 1 to 4 of the same article 23 and article 27, all of IN No. 13 of 2016, of DIFIS.

The entirety of the amendments can be viewed through the following link http://www.ans.gov.br/component/legislacao/?view=legislacao&task=TextoLei&format=raw&id=MzMyOQ

BACK TO SUMMARY

7) **STJ SETTLES UNDERSTANDING ABOUT MAINTENANCE OF HEALTH PLAN BY FORMER EMPLOYEES:** with the judgment of REsp 1594346/SP and REsp 1608346/SP, the Superior Court of Justice (STJ) finally consolidated interpretation on the possibility of a former employee remaining as beneficiary of a health plan offered to him by his former employer.

According to Law 9.656/98, the former employee who (i) contributed with any amount, including through payroll discount, to pay for part or all of the monthly payment of his or her health insurance, (ii) has benefited from the benefit offered by the former employer as a result of employment relationship, (iii) had his employment contract terminated without motive or due to retirement, will be entitled to remain as the beneficiary.

Thus, this possibility is conditioned to the requirement that the former employee has paid part of the plan price during his or her employment period, whether that payment was made by payroll deduction or not.

In addition, in order to continue as a beneficiary, the employee retired or dismissed without just cause must pay the full price of the plan, including the part that was previously paid by the employer.

With the decisions, it was demonstrated that the partnership fee paid by the employee does not fulfill the requirement of contribution required by the legislation, being necessary that payments of the monthly instalments of the plan have been made, even if through discounts in the payroll.

This precedent crystalised by the STJ puts an end to the understanding of some judges that the health plan offered by the employer consisted in a form of *in natura* salary, which gave rise to the mistaken interpretation that the simple offer of the plan was sufficient to characterize the contribution provided in Law 9,656/98 and, thus, guarantee the right of the former employee to maintain his beneficiary status.

BACK TO SUMMARY

TAX

1) **NORMATIVE RULING No. 1,671 OF NOVEMBER 22, 2016 – FEDERAL REVENUE OFFICE OF BRAZIL:** sets forth regarding the Withholding Income Tax Return regarding the 2016 calendar year and the special situations that occurred in 2017 (Dirf 2017) and the Generating Program for Dirf 2017 (PGD Dirf 2017).
It establishes the rules to be observed in the presentation of the Withholding

Income Tax Return (IRRF) for the 2016 calendar year and the special situations that occurred in 2017 (DIRF 2017), and the Generating Program for DIRF 2017 (PGD DIRF 2017). Note the following from among the rules:

a) the requirement to inform in the referred statement all of the beneficiaries of all earnings, among them: (i) the work of the contracted employee, when the amount paid during the calendar year is greater than or equal to R$ 28.559,70; (ii) dividends and profits, paid starting in 1996, and amounts paid to the owner or shareholder of a micro company or small company, except officer's compensation and rent, when the annual amount paid is greater than or equal to R$ 28,559.70;

b) with regard to payments for private healthcare assistance plans, the collective corporate modality, contracted by the payment sources for the benefit of its employees, the statement must contain, among other information, the name and registration number in the individual taxpayers' register (CPF) of the beneficiary policyholder and of the respective dependents, or, in the case of a dependent younger than the age of 18 on December 31, 2016, the name and date of birth of the minor;

c) the statement must be presented by 11:59:59 p.m., Brasília time, on February 15, 2017.

BACK TO SUMMARY

2) **NORMATIVE RULING NO. 1,672 OF NOVEMBER 23, 2016 – FEDERAL REVENUE OFFICE OF BRAZIL:** establishes criteria for compliance with the obligation to maintain records in the Ledger for Control of Production and Inventory included in the Digital Tax Registration EFD) established by Normative Ruling RFB No. 1,652/2016.

BACK TO SUMMARY

3) **EXECUTIVE DECLARATORY ACT No. 90 OF NOVEMBER 25, 2016**: sets forth regarding the layout of the Generator Program for Withholding Income Tax Return (PGD Dirf 2017).

Through COFIS Executive Declaratory Act No. 90/2016, the layout that would apply to the fields, records and files of the Withholding Income Tax Return was approved (DIRF 2017).

BACK TO SUMMARY

4) **INTERPRETATIVE DECLARATORY ACT No. 11 OF NOVEMBER 22, 2016:** sets forth regarding the assessment of Tax on Financial Transactions (IOF) in transactions involving the assignment of credit rights.

lly, the declaratory act determines that transaction for the assignment of credit rights in which the financial institution is included as assignee are subject to the assessment of the Tax on Financial Transactions (IOF) over credit transactions, regardless of whether the credits assigned are incorporated into credit instruments, whenever the transaction is performed with the goal of providing credit to the assignor. Sole Paragraph.

It also establishes that a co-obligation clause must be included in the credit assignment agreement or, if this clause is expressly absent, the legal or business arrangement established between the parties must have been configured in such a way that the assignor will ultimately be responsible for any default by the original debtor/beneficiary.

BACK TO SUMMARY

5) **ANSWER TO INQUIRY No. 144 OF SEPTEMBER 27, 2016:**
SUBJECT: ANCILLARY OBLIGATIONS

SUMMARY: SISCOSERV. LOAN. FINANCING. REGISTRATION.

Provides various explanations regarding the registration of loans, travel abroad and the international transport of cargo –
"SUBJECT: ANCILLARY OBLIGATIONS
SUMMARY: SISCOSERV. LOAN. FINANCING. REGISTRATION.
In loan and financing transactions (services involving the granting of credit), made between parties resident and domiciled in Brazil and parties resident and domiciled abroad, the amount of the transaction to be listed in Siscoserv is composed of the interest, added with all of the costs necessary for the effective provision of the service, not registering the amount loaned or financed. In these transactions, the date for the start of the provision of the service will be considered as the first date in which the granting of the loan or financing is characterized by any method.
SISCOSERV. TRAVEL EXPENSES ABROAD.
The legal entity must register in Siscoserv the expenses incurred with travel abroad by the managers and technicians when referring to services contracted thereby, and invoiced in the name of individuals resident and domiciled abroad, except for personal expenses directly contracted by their representatives, such as meals, housing and transportation abroad, which are considered personal transactions.
ANSWER TO INQUIRY BOUND TO ANSWER TO INQUIRY COSIT NO. 129 OF JUNE 1st, 2015.
SISCOSERV. REGISTRATION. INTERNATIONAL TRANSPORT OF CARGO. AGENT.
The legal entity domiciled in Brazil that contracts a cargo agent resident in Brazil to operate the international transport of goods to be imported, made by the transport company domiciled abroad, will be responsible for the registration of the transport service in Siscoserv in case the cargo agent only represents it before the service provider domiciled abroad. When the cargo agent contracts the transport service under its own name, the responsibility for registering the service in Siscoserv will be incumbent thereon".

BACK TO SUMMARY

6) **ANSWER TO INQUIRY NO. 152 OF OCTOBER 31, 2016:** sets forth regarding Withholding Income Tax – IRRF.

This Answer to Inquiry sets forth hat earnings originating from VGBL are subject to income tax, at the source and in the annual statement, even if the beneficiary bears a serious illness.

BACK TO SUMMARY

PARTNERS OF THE FIRM AND RESPECTIVE AREAS

Daniela Matos
Insurance and Reinsurance
Phone: (11) 5643-1065

dmatos@santosbevilaqua.com.br

João Marcelo dos Santos
Insurance and Reinsurance
Phone: (11) 5643-1066

jsantos@santosbevilaqua.com.br

Julia de Menezes Nogueira
Tax Law
Phone: (11) 5643-1062

jnogueira@santosbevilaqua.com.br

Juliano Nicolau de Castro
Labor Law
Phone: (11) 5643-1061

jcastro@santosbevilaqua.com.br

Keila Manangão
Litigation and Arbitration
Phone: (21) 2103-7638

kmanagao@santosbevilaqua.com.br

Marco Antonio Bevilaqua
Insurance, Reinsurance, Supplementary Pension and Supplementary Health
Phone: (11) 5643-1063

mbevilaqua@santosbevilaqua.com.br

Roberto F. S. Malta Filho
Corporate, Contracts, Mergers and Acquisitions, Arbitrations and Judicial Reorganization/Restructuring
Phone: (11) 5643-1064

rmalta@santosbevilaqua.com.br

santos bevilaqua ADVOGADOS