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# Brazil Tax Round-Up

#5 - September 2019



Legislative Developments - 3

Brazilian IRS's Answers to Advance Tax Ruling Requests - 5

Case Law - 5

Contacts - 6

### Recof and Recof-Sped requirements simplified

On August 1, 2019, Brazilian IRS Normative Instruction No. 1,904/2019 was published, amending the existing regulation of the special customs regime of manufacturing warehouses under computerized control ("Recof"). Highlights include i) the extinguishment of the company's minimum BRL 10 million net equity requirement, ii) the reduction of the export's minimum value of goods from USD 5 million to USD 500,000 and iii) the reduction from 80% to 70% of the minimum utilization of the goods imported under the regime in the production process requirement.

### Procedures applicable to remittance overseas of goods admitted under Recof regime

On August 29, 2019, Ordinance No. 51/2019 of the General Coordination of Customs Service ("COANA") was published to regulate the applicable procedures for the remittance overseas of goods submitted to Recof for testing; demonstration; repair; maintenance; restoration; or aggregation of goods parts, pieces or components. This remittance will neither suspend nor interrupt the counting of the validity term of the regime.

### Modifications in Brazil and Norway Treaty to avoid double taxation

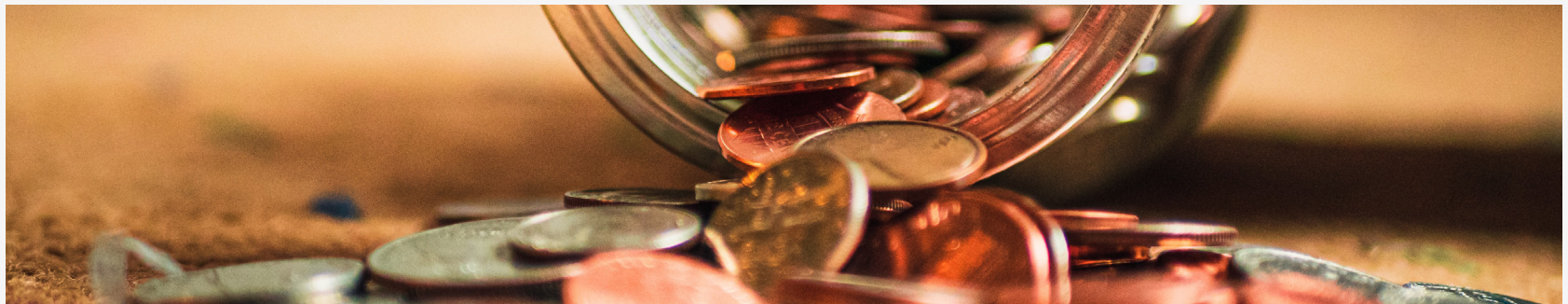
On August 9, 2019, Decree No. 9,966 was published, proclaiming the protocol with amendments to article 27 of the tax treaty to avoid double taxation and tax evasion between Brazil and Norway. These amendments are related to the mechanism of information exchange between the countries.

### Reduced to zero: The rate of the Import Duty levied on IT and Telecommunication machines and equipments

On August 27, 2019, the Ministry of Economy published Ministerial Ordinance No. 532/2019, reducing to zero the rate of the Import Duty ("II") of 281 IT and telecommunication goods until December 31, 2010. The items include marine engines, agricultural machinery and industrial ovens.

### Decree No. 9,995/2019: Changes to the Export Processing Zones regulation

On August 30, 2019, Decree No. 9,995 / 2019 was published, modifying the proceedings for installing an Export Processing Zone ("ZPE"). Among the main changes in the proceedings was the preservation of tax, currency and administrative benefits foreseen in Law No. 11,508/2007 to goods and services imported or purchased domestically for installation or use in a non-customs EPZ area provided that the terms, limits and conditions of the regime are complied with (article 4, § 3).





## Presumed rates to be applied on the revenues from the sale of customized software for the purpose of calculating the Presumed Profit

On August 7, 2019, Answer to Advance Tax Ruling Request Disit/SRRF07 No. 3037/2019 was published, stating that the revenues related to the customization of software should be subject to the presumed rate of 8% for the purposes of calculating the Corporate Income Tax ("IRPJ") under the Presumed Profit Methodology in cases in which the customization was carried out merely to meet specific needs of the customer. However, if the customization is characterized as a development of a new version of the product, or is so significant that it can not be viewed as mere adjustment, the customization is considered to be a provision of service, and the revenues related to it should be subject to the presumed rate of 32%.

## WHT rate on donations to beneficiaries resident or domiciled overseas

On August 13, 2019, Answer to Advance Tax Ruling Request Disit/SRRF07 No. 7047/2019 was published, stating that donations to beneficiaries resident or domiciled overseas should be subject to the Withholding Income Tax ("WHT") by the Brazilian payor source.

## Assignment of manpower in clinical analysis services

On August 22, 2019, Answer to Advance Tax Ruling Request Disit/SRRF08 No. 8015/2019 was published, stating that laboratory services for clinical analysis provided by the assignment of manpower should be subject to the withholding of social security tax at the rate of 11%, as established by article 31 of Law No. 8,212/1991.

## Social Security Contribution on Gross Revenue ("CPRB") on manufacturing on demand

On August 27, 2019, Answer to Advance Tax Ruling Request Cosit No. 247/2019 was published, stating that the third-party manufacturer may collect the social security tax by the CPRB methodology in cases where the manufacturing process results in one of the products listed in article 8, item VIII of Law No. 12,546/2011.

## Impossibility of administrative refund of tax credits after five years

On August 27, 2019, Answer to Advance Tax Ruling Request Cosit No. 239/2019 was published, stating that, as a general rule, taxpayers are not allowed to be refunded at the administrative level of tax credits recognized by final judicial decisions, and, in cases where the taxpayer is not able to fully offset the credits with other tax debts within the five-year term provided for in article 103 of Normative Instruction IRS No. 1717/2017, to the taxpayer cannot file Offset Returns or Refund Requests of the unused balance based on articles 68 and 69 of the same Normative Instruction.

## Public Hearing at Supreme Court regarding Complementary Law No. 87/96 (“Kandir Law”)

On August 5, 2019, a public hearing was held at the Supreme Court (“STF”), as requested by Justice Gilmar Mendes in the case of Direct Unconstitutionality Action by Omission (“ADO”) No. 25. The court fixed a six-month deadline for a special committee formed by representatives of the federal and state governments to discuss conciliation proposals and to reach an agreement regarding federal government transfers to the states as a result of the exemption of the State VAT (“ICMS”) on exports established by Kandir Law.

## STJ has not accepted for trial the Special Appeal on PIS/COFINS exclusion from its own calculation basis

On August 20, 2019, the Second Chamber of the Superior Court of Justice (“STJ”) decided not to accept for trial the Special Appeal No. 1,813,843, that addresses the exclusion of the PIS and COFINS from its own calculation basis under the grounds that it is a constitutional matter and, therefore, must be judged by the Supreme Court (“STF”).

## Right to accrual: PIS and COFINS non-cummulative credits on advertising

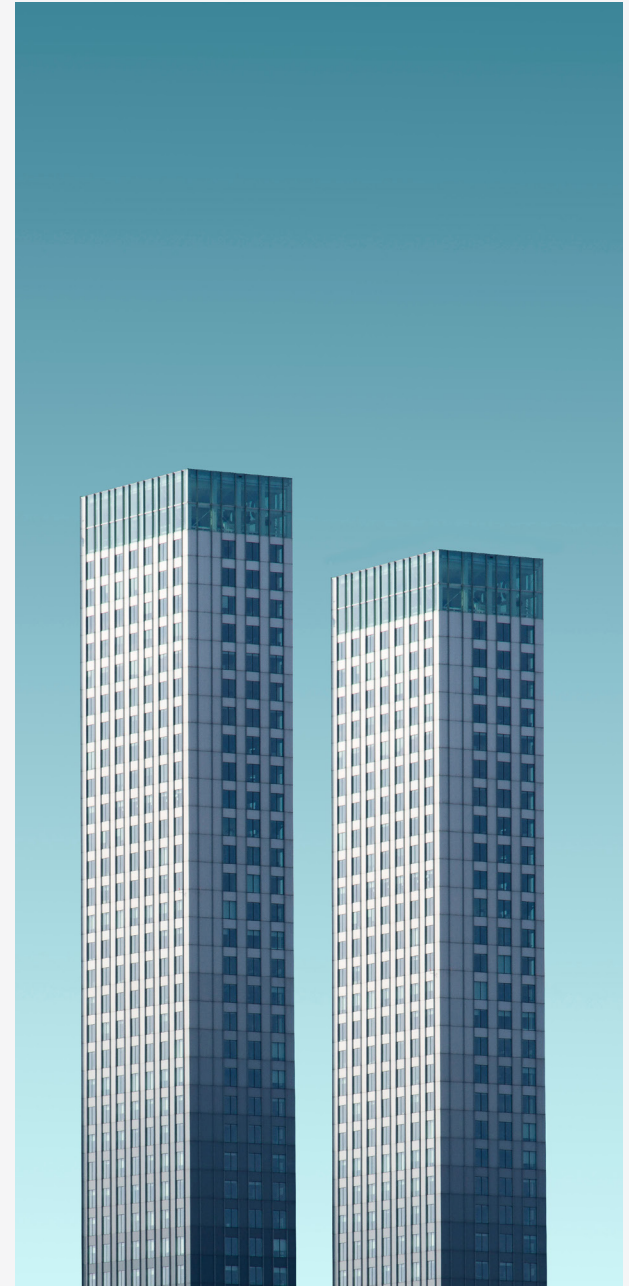
On August 22, 2019, the Administrative Council of Tax Appeals (“CARF”) granted a taxpayer’s voluntary appeal to cancel two tax assessments related to PIS and COFINS non cummulative credits accrued on advertising costs. Based on these decisions, advertising expenses fit the criteria of essentiality and relevance adopted by the Superior Court of Justice (“STJ”) in the judgment of Special Appeal No. 1,221,170-PR (Lawsuit No. 19515.721360/2017-23).

## STJ prohibits issuance of tax clearance certificate by branch offices

On August 27, 2019, the First Panel of the Superior Court of Justice (“STJ”) determined that tax clearance certificates may only be issued in cases where all branches and the headquarters of a legal entity are in a tax clearance position (Lawsuit No. 1,286.122).

## STF confirms that monetary restatement and interest rates created by state law are limited to the federal rates

On August 30, 2019, the Supreme Court (“STF”) judged Lawsuit No. 1,216,078, under the general repercussion system, by which it was confirmed that although the states and Federal District are allowed to legislate on monetary adjustment and interest rates for updating tax debts, the rates established by their laws cannot exceed those established by the federal government.



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