

March 2008

New measures to foster export transactions and mitigate the effects of the Brazilian currency (real) appreciation

The Brazilian Government announced on March 12, 2008, several actions in order to stimulate exports and reduce the effects of the dollar freefall, briefly summarized as follows: (i) *IOF* (Financial Operations Tax) will no longer be levied (zero rated) on foreign exchange operations related to a series of transactions such as the inflow of revenues derived from the export of goods and services; remittances abroad of revenues derived from local resources made by branches of international airlines; inflow of foreign currency to cover for credit card (emitted abroad) expenses; etc; (ii) exporters are allowed to hold abroad the full amount of revenues derived from export deals (previously 30%); and (iii) foreign investments in the financial and capital markets, except variable-rate income (stock, merchandise and futures markets, as regulated by the National Monetary Council – *CMM*), will be subject to *IOF* at a rate of 1.5%, as of March 17, 2008, on the liquidation of the foreign exchange operations. The new *IOF* measures were implemented by Decree 6,391, published on March 13, 2008.

Government sends the proposal for a tax system reform to the National Congress

National Congress received on February 28, 2008 the Executive bill for a substantial constitutional reform affecting the Brazilian tax system. The proposal encompasses a set of amendments to the Federal Constitution with the ultimate goal of stimulating the economy and improving the country's competitiveness through the rationalization and simplification of the tax system at Federal, State and Municipal levels.

In brief, the most relevant terms of the proposal are: (i) the unification of the *PIS*, *COFINS* and *CIDE* taxes into the new *IVA-F* (*Imposto sobre Valor Agregado – Federal or Federal VAT*);, (ii) the merger of the *CSLL* and *IRPJ* to create a single Corporate Income Tax system; and (iii) the unification of all 27 State *ICMS* legislations into one Federal Law applicable throughout the Federation.

The tax system reform is still expected to generate a lot of debate. At the core of the recent discussions another controversial issue has been brought back to light: the taxation on 'private wealth'. Despite of having been established in the Constitution since 1988, it was never regulated as none of the Complementary Law projects presented to Congress were approved. Each existing project determines a different range of tax rates and its own

concept of 'private wealth'. One of the projects, on the other hand, proposes to remove from the Constitution the possibility of taxing 'private wealth'.

Court decision exempts leasing revenues from the COFINS

The *TRF* (Federal Regional Court) of the 1st Region enacted a decision recognizing the taxpayer's right not to include the revenues from leasing agreements in the *COFINS*' assessment basis. On her vote, the Federal Judge *Maria do Carmo Cardoso* affirmed that the debate around this issue is no longer pertinent since the *STF* (Federal Supreme Court) declared unconstitutional the Article 3, 1st paragraph, of Law 9,718/98 – which had broadened the concept of 'gross revenues' to include in the *COFINS*' assessment basis any type of income.. However, the income from leasing agreements does not fall under this valid concept based on the court judgment and as a consequence *COFINS* does not apply. The decision is valid only to the extent of the plaintiff.

Brazil-Mexico Double Tax Treaty

The Brazilian Revenue Services (*Receita Federal do Brasil – RFB*) issued the *ADI* (*Ato Declaratório Interpretativo*) 22 – published on February 6, 2008 – establishing that the Double Tax Treaty signed between Brazil and Mexico is also applicable, since January 1st, 2008, to the Mexican 'single-rated corporate tax' regime (*impuesto empresarial a tasa única*).



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