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The Brazilian Federal Revenue Department holds that royalty payments exempted from *PIS* and *Cofins*

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The Brazilian Federal Revenue Department recently stated that *PIS* (Employee's Profit Participation Program) and *Cofins* (Social Security Financing Tax) are exempted on cross-border payments of royalties for the use of trademarks and know-how, following decisions on formal consultation presented by the taxpayers. Please note that the favorable decision also includes the use or exploration of inventions, processes, and manufacturing formulae. The *PIS* and *Cofins* taxes on the import of goods and services have been levied since May 2004, at 9.25%, and since then the regulations have raised discussions regarding the imposition of these taxes on royalty payments.

In summary the Brazilian companies challenged the concept of royalties for *PIS* and *Cofins* taxation purposes: whether or not royalty payments should be considered or viewed as "services" and chargeable to *PIS* and *Cofins*. Brazilian tax authorities understood that royalties should not give rise to *PIS* and *Cofins* charges, provided the related agreements clearly discriminated the correspondent amounts related to services and royalties. Otherwise, the whole contract amount shall be subjected to *PIS* and *Cofins* taxes.

Under this context, in principle *PIS* and *Cofins* refunds could be obtained on the cross-border royalty payments on which these taxes have already been suffered, provided the refund requirements set out in the law are met (e.g. legal administrative process, taxpayer sole consultation, etc). According to the Brazilian Central Bank, Brazilian companies remitted abroad a total amount of approximately US\$ 8.04 billion regarding royalties and licenses in the past four years.

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