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## MP 449/08 – More Relevant Aspects

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Giving continuance to the study of the tax alterations brought up by the recently issued Provisional Measure 449/09 (*MP* 449/08), we briefly comment below on two relevant points of the new legislation. We stress that the present article does not intend to approach all particularities of the two institutes, but only provide an overall analysis of them, highlighting eventual possibilities to taxpayers.

#### Small Debts Installment Payment

One of the first dispositions of *MP* 449/08 concerns the possibility of paying in installments debts no higher than R\$ 10,000.00, provided some legal requirements are met. The election of the number of installments may vary from a 6 to 60 range, and at sight payments are also allowed. Whichever the form of payment is chosen, it is followed by a proportional reduction of penalties, interests, and legal charges. Thus, as lower the number of installments are, the bigger will be the mentioned reductions. At sight payments are granted with the same benefits of the payment in 6 months (6 installments).

Debts higher than R\$ 10,000.00 may also be paid in installments, as long as the exceeding amount of the mentioned ceiling value is paid at sight and without the applicability of any reduction or benefit.

The number of installments election is up to the debtor and, for legal entities, each monthly payment can't be inferior to R\$ 100.00.

We emphasize that the benefits in question are not applicable to isolated penalties, as well as to penalties applied as consequence of non-compliance with accessory tax obligations and with criminal and voting legislations.

The payment under the abovementioned requirements option is applicable to both individuals and legal entity and should have been done until March 31st, 2009. The pertinent rules are comprised in the Joint Ordinance PGFN/RFB n. 1, from March 10th, 2009 ("*Portaria Conjunta* PGFN/RFB n.1").

#### Credit Offsetting Procedures

Among other important alterations regarding tax compensation, the *MP* 449/08 has established the prohibition of utilization of credits related to taxes under the management of the Federal Revenue Department when compensated with debts of estimate monthly payments of *IRPJ* and *CSLL* (corporate income taxes).

Judicial discussions arose and many others are expected to arise from this prohibition. Recently, a company was granted with a preliminary injunction authorizing its right to compensate the credits in question, as long as constituted before the issuance of the Provisional Measure.

The decision, dated January 28th of 2009, made possible to the company to use all its federal tax credits obtained before *MP* 449/08 to be monthly offset against *IRPJ* and *CSLL* amounts. The arguments presented by taxpayers pointed out that the *MP*'s effects could not be retroactively, not to mention the violation of the principle of acquired rights. The decision can still be contested.

Finally, we alert that the Provisional Measure in question have not yet been converted into Law by means of the National Congress approval. Thus being, the final text may suffer some changes, resulting in different requirements and conditions. As for now, until the original text of *MP 449/08* is still in force, taxpayers may apply to the benefits as described above.

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