

NEWSLETTER APRIL 2017

INSURANCE AND OPEN PENSION PLANS	1
1) PRIVATE INSURANCE SUPERINTENDENCE - SUSEP INSTRUCTION No. 84, OF 4/5/2017	
2) PUBLIC INQUIRY - CPA 11	
3) PUBLIC INQUIRY - CPA 12 AND CPAO 12	
4) INSTRUCTION MANUAL OF THE SYSTEM FOR ELECTRONIC REGISTRATION OF PRODUCTS [REGISTRO ELETRÔNICO DE PRODUTOS – REP] (VERSION APRIL 11, 2017)	
5) TABLE 92 OF THE PERIODICAL INFORMATION FORM [FORMULÁRIO DE INFORMAÇÕES PERIÓDICAS - FIP]: CALCULATION MAP OF THE INSPECTION FEE	
6) EXCERPT FROM TECHNICAL COOPERATION BETWEEN SUSEP AND IBRACOR, OF 4/26/2017	
7) SUSEP CIRCULAR No. 549, of 4/26/2017	
FINANCIAL MARKET, CAPITAL MARKET AND OTHERS.....	5

- 1) BRAZILIAN CENTRAL BANK - BACEN COMMUNICATION No. 30576, of 3/31/2017
- 2) BRAZILIAN SECURITIES AND EXCHANGE COMMISSION - CVM STATEMENT No. 764, OF 4/4/2017
- 3) CVM INSTRUCTION No. 585, OF 4/5/2017
- 4) DECREE No. 9029, OF 4/10/2017
- 5) GENERAL CONTROLLER'S OFFICE OF THE FEDERAL GOVERNMENT - CGU ADMINISTRATIVE RULE No. 915, DE 12.04.2017
- 6) BACEN CIRCULAR No. 3831, of 4/13/2017
- 7) DECREE No. 9035, OF 4/20/2017

CLOSED SUPPLEMENTARY PENSION 8

- 1) NATIONAL SUPPLEMENTARY SOCIAL SECURITY SUPERINTENDENCE - PREVIC ADMINISTRATIVE RULE No. 338, OF 4/5/2017 - LIST OF THE QUALIFIED LEADERS OF MARCH 2017
- 2) PREVIC ADMINISTRATIVE RULE No. 375, OF 4/17/2017
- 3) SUPERIOR COURT OF JUSTICE - STJ, INTERLOCUTORY APPEAL IN SPECIAL APPEAL ARESP NO. 577.459/PE
- 4) STJ, RESP NO. 1520435/SC

HEALTH 13

1) BOARD OF RULES AND QUALIFICATION OF HEALTH PLAN COMPANIES - DIOPE NORMATIVE INSTRUCTION No. 054, OF 4/10/2017

2) INSPECTION BOARD - DIFIS NORMATIVE INSTRUCTION No. 015, OF 4/25/2017

3) NORMATIVE RESOLUTION No. 422, OF 4/25/2017

4) JUDGE EXEMPTS HEALTH PLANS FROM THE PAYMENT OF THE SUPPLEMENTARY HEALTH FEE

TAX 16

1) ANSWER TO INQUIRY No. 1013, of 3/27/2017

2) RFB NORMATIVE INSTRUCTION No. 1704, of 3/31/2017

3) TAXATION COORDINATION OFFICE - COSIT NORMATIVE OPINION No. 1, of 3/31/2017

4) INTERPRETATIVE DECLARATORY ACT No. 4, of 4/13/2017

5) INSPECTION COORDINATION OFFICE - COFIS EXECUTIVE DECLARATORY ACT No. 024, of 4/18/2017

PARTNERS OF THE FIRM AND RESPECTIVE AREAS 20

INSURANCE AND OPEN PENSION PLANS

1) PRIVATE INSURANCE SUPERINTENDENCE - SUSEP INSTRUCTION No. 84, OF 4/5/2017

Provides for the Register of Non-Settled Credits of Federal Bodies and Entities [Cadastro Informativo dos Créditos não Quitados de Órgãos e Entidades Federais - CADIN], according to Law no. 10522/2002.

Under said Instruction, the General Management and Finance Coordination Office [*Coordenação Geral de Administração e Finanças – CGEAF*], through the Collection, Budget and Finance Coordination Office [*Coordenação de Arrecadação, Execução*

Orçamentária e Finanças - CORAF], will continue to control CADIN, to the benefit of SUSEP.

In regard to the inspection fee, CORAF will enter and cancel data in CADIN. Concerning fines deriving from administrative sanction procedures, the General Judgment Coordination Office/Judgment Coordination Office - CGJUL/COJUL will refer the cases in which fines were not paid to CGEAF/CORAF, which will control the entry or cancellation of the liabilities in CADIN.

Regarding the other SUSEP Units that are responsible for or handle defaults of any nature, they will follow the procedures set in the Instruction and request CGEAF/CORAF to entry or cancel the liabilities in CADIN.

The General IT Coordination Office [*Coordenação-Geral de Tecnologia da Informação - CGETI*] will develop and/or improve the internal system to control entries/cancellations and the queue, especially to meet the demands from internal and external control bodies.

Failure to complete the legal formalities will entail imposition of the penalties provided in Law no. 8112/1990.

To check the Instruction please access <http://www2.susep.gov.br/bibliotecaweb/docOriginal.aspx?tipo=1&codigo=40370>.

2) PUBLIC INQUIRY - CPA 11

The Brazilian Actuarial Institute [Instituto Brasileiro de Atuária - IBA] decided to submit CPA 011 to public inquiry.

CPA 011 is intended to disseminate principles and specific procedures related the best practices for the calculation of technical provisions for expenses, which must be followed by actuaries, as well as to offer mechanisms for a better understanding by the technicians and all those responsible for the management and governance of companies supervised (Companies) by SUSEP concerning the form and reach of the concept and calculation of the provision. Those interested may send until 5/15/2017

their comments and suggestions via the e-mail cpa@atuarios.org.br, indicating as subject “Consulta Pública - CPA 011 - PROVISÕES TÉCNICAS PARA DESPESAS. Only QUADRO DE SUGESTÕES - CPA 011 [SUGGESTION BOX - CPA 011] may be used.

For details on the inquiry please access <http://www.atuarios.org.br/IBA/Avisos-e-Noticias/?id=516>.

3) PUBLIC INQUIRY - CPA 12 AND CPAO 12

IBA also decided to submit to public inquiry CPA 012 and CPAO 012 (guidance), which provide for provision for IBNR and adjustment to IBNER.

Those interested may send until 5/15/2017 their comments and suggestions via the e-mail cpa@atuarios.org.br, indicating as subject “Consulta Pública - CPA 012 - IBNR e IBNER” [Public Inquiry - CPA 012 - IBNR e IBNER] or “Consulta Pública - CPAO 012 - IBNR e IBNER”, and must use only the QUADRO DE SUGESTÕES CPA 012 - IBNR e

IBNER and the QUADRO DE SUGESTÕES CPAO 012 - IBNR e IBNER.

For details on the inquiry please access <http://www.atuarios.org.br/IBA/Avisos-e-Noticias/?id=517>.

4) INSTRUCTION MANUAL OF THE SYSTEM FOR ELECTRONIC REGISTRATION OF PRODUCTS [REGISTRO ELETRÔNICO DE PRODUTOS – REP] (VERSION APRIL 11, 2017)

SUSEP made available the new version of the Instruction Manual of the System for Electronic Registration of Products, valid since 8/1/2016 and available on <http://www.susep.gov.br/setores-susep/cgpro/registro-eletronico-de-produtos-2013/manual-de-utilizacao-do-rep>.

5) TABLE 92 OF THE PERIODICAL INFORMATION FORM [FORMULÁRIO DE INFORMAÇÕES PERIÓDICAS - FIP]: CALCULATION MAP OF THE INSPECTION FEE

On 4/18/2017 SUSEP published a note informing that since August/16 the following changes have been made to the Table 92 of FIP:

- a) Six-Month Periodicity: The insurers, capitalization companies and open supplementary pension entities must complete it in the reference months of June and December and the local reinsurers in the months of May and November.
- b) Display of the reference month field for the six-month period.
- c) Elimination of the item “Information on payment” (No. of Document for Payment to the Federal Government - GRU, Payment Date, Amount Paid (R\$) and Notes).

6) EXCERPT FROM TECHNICAL COOPERATION BETWEEN SUSEP AND IBRACOR, OF 4/26/2017

SUSEP and the Brazilian Institute of Self-Regulation of the Insurance Brokerage, Reinsurance, Capitalization and Open Supplementary Pension Market [Instituto Brasileiro de Autorregulação do Mercado de Corretagem de Seguros, de Resseguros, de Capitalização e de Previdência Complementar Aberta – IBRACOR] executed, on 2/23/2017, a technical cooperation agreement, whose purpose is the definition of procedures for the coordination and harmonization of joint activities of SUSEP and IBRACOR, in the insurance, reinsurance, capitalization and open supplementary pension market, as well as exchange of information between those two entities with a view to complying with their legal attributions. The effectiveness term of the agreement will be 24 months from the publication.

The agreement is related to the periodical activities to keep a record file of brokers.

7) SUSEP CIRCULAR No. 549, of 4/26/2017

Establishes, in compliance with the sole paragraph of art. 109 of CNSP Resolution no. 243/11, the procedure for service of notice, through a remote transmission equipment in Administrative Sanction Procedures involving insurers, capitalization companies, local, admitted or occasional reinsurers, open supplementary pension entities and companies under a special regime, upon their availability in the subsection "Documents for the Market" of section "Information to the Market" on the official website of SUSEP (www.susep.gov.br), and makes other provisions.

This rule requires that the supervised entities access on the business days unread documents issued by SUSEP in the SUBSECTION "Documents for the Market" of SECTION "Information to the Market", on the official website of SUSEP <http://www.susep.gov.br>.

The notices will be considered served when they are downloaded and, after having been read, they will

remain available for 2 years. After this period of two years, they may be accessed upon request by the interested party, which will be met by SUSEP within 5 business days.

The periods to fulfill the notices remotely issued will start to run from the first business day after the date of the notice downloading from the official website of SUSEP. However, should the notices not be read within 5 days from the date they were made available, the period will automatically start to run from the first business day following the end of such period.

Finally, the periods will be continuous and definite, the initial date will not be counted but the due date will be, and such periods will start to run or expire on a business day; the periods will be extended to the first following business day should the expiration date occur on a non-business day.

To check the full text of the Circular please access <http://www2.susep.gov.br/bibliotecaweb/docOriginal.aspx?tipo=1&codigo=39649>.

FINANCIAL MARKET, CAPITAL MARKET AND OTHERS

1) BRAZILIAN CENTRAL BANK - BACEN COMMUNICATION No. 30576, of 3/31/2017

Informs the percentage and the maximum limit of the interest rate to be used in loan contracts with prefixed interest rate executed within the ambit of the Housing Finance System [Sistema Financeiro da Habitação - SFH].

The percentage related to the basic yield of savings deposits addressed in the sole paragraph of art. 18-A of Law 8177/1991, effective in April, is 1.11627% p.a.

The maximum limit of the interest rate for contracts with prefixed rates executed within the ambit of SFH, effective in April, is 13.2501% p.a.

2) BRAZILIAN SECURITIES AND EXCHANGE COMMISSION - CVM STATEMENT No. 764, OF 4/4/2017

Sets criteria to exempt the insurers, reinsurers, open private pension entities, closed supplementary pension entities and financial institutions from the registration of the securities portfolio manager.

The insurers, reinsurers, open private pension entities, closed supplementary pension entities and financial institutions are exempt from the registration addressed in art. 23 of Law no. 6385, of 1976, in the cases:

- a) they manage a portfolio of exclusive investment funds; and
- b) the insurer, reinsurer, open private social security entity, closed supplementary social security entity or

financial institution is the only unitholder of the fund whose portfolio it manages.

CVM Statement no. 753, of June 10, 2016, was revoked.

3) CVM INSTRUCTION No. 585, OF 4/5/2017

Amends the provisions of, and adds new ones to, CVM Instruction no. 332, of April 4, 2000, CVM Instruction no. 476, of January 16, 2009, CVM Instruction no. 480, of December 7, 2009, and CVM Instruction no. 494, of April 20, 2011.

To check the Instruction please access <http://www.cvm.gov.br/legislacao/inst/inst585.html>.

4) DECREE No. 9029, OF 4/10/2017

Amends Presidential Decree no. 4732, of June 10, 2003, which provides for the Foreign Trade Chamber

[Câmara de Comércio Exterior - CAMEX], Decree no. 4993, of February 18, 2004, which creates the Committee for Export Financing and Guarantee [Comitê de Financiamento e Garantia das Exportações - COFIG], Decree no. 9004, of March 13, 2017, which transfers the Department of Agriculture, Cattle Raising and Supply and the Special Micro and Small Company Office of the Government Department of the Presidency of the Republic to the Ministry of Industry, Foreign Trade and Services, and Decree no. 715, of December 29, 1992.

To check the Decree please access http://www.planalto.gov.br/ccivil_03/ato2015-2018/2017/Decreto/D9029.htm.

5) GENERAL CONTROLLER'S OFFICE OF THE FEDERAL GOVERNMENT - CGU ADMINISTRATIVE RULE No. 915, DE 12.04.2017

Implements the Risk Management Policy [Política de Gestão de Riscos - PGR] of the Ministry of Transparency, Inspection and CGU.

This measure is intended to the compliance with the MP/CGU Joint Normative Instruction no. 01/2016, which provides for the systematization of practices related to governance, risk management and internal controls within the ambit of the bodies and entities of the Federal Executive Branch.

To check it please access http://www.cgu.gov.br/sobre/legislacao/arquivos/portarias/portaria_cgu_915_2017.pdf.

6) BACEN CIRCULAR No. 3831, of 4/13/2017

Provides for operating procedures within the ambit of the Brazilian Central Bank related to the Special Regime for Foreign Exchange and Tax Good Standing [Regime Especial de Regularização Cambial e Tributária - RERCT], addressed in Law no. 13254, of January 13, 2016, and Law no. 13428, of March 30,

2017, and amends the annex to Circular no. 3.690, of December 16, 2013.

To check the Circular please access <https://www.bcb.gov.br/pre/normativos/busca/normativo.asp?tipo=Circular&data=2017&numero=3831>.

7) DECREE No. 9035, OF 4/20/2017

Approves the Regulation Structure and the Chart of At-Will Appointments and Positions of Trust of the Ministry of Planning, Development and Management, redistributes at-will appointments and replaces at-will appointments of the Superior Group-Direction and Assistance [Grupo-Direção e Assessoramento Superiores - DAS] with At-Will Appointments of the Executive Branch [Funções Comissionadas do Poder Executivo – FCPE], and changes at-will appointments.

To check the Decree please access http://www.planalto.gov.br/ccivil_03/Ato2015-2018/2017/Decreto/D9035.htm.

CLOSED SUPPLEMENTARY PENSION

1) NATIONAL SUPPLEMENTARY SOCIAL SECURITY SUPERINTENDENCE - PREVIC ADMINISTRATIVE RULE No. 338, OF 4/5/2017 - LIST OF THE QUALIFIED LEADERS OF MARCH 2017

On April 7, 2017 PREVIC published on its website the List of Qualified Leaders of the Closed Supplementary Social Security Entities [Entidades Fechadas de Previdência Complementar - EFPC) for February 2017. To check the list please access <http://www.previc.gov.br/a-previdencia-complementar-fechada/legislacao-especifica->

[1/portarias/2017/portaria-previc-ndeg-338-de-5-de-abril-de-2017.pdf/view](http://portarias/2017/portaria-previc-ndeg-338-de-5-de-abril-de-2017.pdf/view).

2) PREVIC ADMINISTRATIVE RULE No. 375, OF 4/17/2017

Makes public the Structure for Term of the Average Interest Rate [Estrutura a Termo de Taxa de Juros Média - ETTJ] for the year of 2017, which is addressed in Previc Instruction no. 19, of February 4, 2015.

The rates correspond to the average of the past three years of daily ETTJs and their base is the federal bonds indexed by the Broad Consumer Price Index [Índice de Preços ao Consumidor Amplo - IPCA]; they may be checked on <http://www.previc.gov.br/a-previdencia-complementar-fechada/legislacao-especifica-1/portarias/2017/portaria-previc-ndeg-375-de-27-de-abril-de-2017.pdf>.

3) SUPERIOR COURT OF JUSTICE - STJ, INTERLOCUTORY APPEAL IN SPECIAL APPEAL ARESP NO. 577.459/PE

On February 21, 2017, the Third Panel of the STJ rendered judgment on AREsp no. 577.459/PE ruling that it is impossible to combine rules of different legislations to favor participants in private pension plans. Below is the synopsis of the judgment:

INTERNAL INTERLOCUTORY APPEAL IN INTERLOCUTORY APPEAL IN SPECIAL APPEAL. PRIVATE PENSION PLAN. VIOLATION OF RES JUDICATA. NONEXISTENCE. COMBINATION OF DIFFERENT BENEFIT PLANS. OLD AND NEW RULES MORE ADVANTAGEOUS. HYBRID REGIME NOT VIABLE. THEORY OF ACCUMULATION.

1. Violation of res judicata should not be even mentioned because plaintiff was ensured the application of the rules in Regulation no. 2,

especially as to only the parts of plaintiff's interest. The provision of the judgment rendered in other case, which became final, only stated and recognized the vested right of the plaintiffs to that case to the supplementary benefits provided in Regulation no. 1.

2. It is not possible to combine rules of different legislations to favor a participant in a private pension plan. Indeed, according to the theory of accumulation, the combination of different regulations (such as the old and the new ones) to have a hybrid regime, that is, a third regulation, is not admissible. Precedent.

3. Internal interlocutory appeal denied.

(AgInt in AREsp 577.459/PE, reported by Justice RICARDO VILLAS BÔAS CUEVA, THIRD PANEL, tried on 2/21/2017, Electronic Court Journal DJe 3/2/2017)

4) STJ, RESP NO. 1520435/SC

On March 28, 2017, the Third Panel of the STJ rendered judgment on REsp no. 1520435/SC and decided that it is possible to revise the proportional supplementary retirement income in order for the beneficiary to receive the full benefit where the additional length of service is recognized, even if at a later time, and provided that in compliance with the requirement related to the funding source for the period to be rectified, to ensure the pension fund balance. Below is the synopsis of the judgment:

SPECIAL APPEAL. CIVIL. CLOSED PENSIO PLAN. DENIAL OF AN OPPORTUNITY TO BE HEARD. SUSPENSION. SPONSOR LACK OF STANDING TO BE SUED - AD CAUSAM. CONSUMER PROTECTION CODE. NON APPLICABILITY. PROPORTIONAL SUPPLEMENTARY PENSION. ADDITIONAL LENGTH OF SERVICE. FURTHER RECOGNITION. INITIAL MONTHLY INCOME REVISION. FULL BENEFIT. LACK OF PAYING SOURCE. CAPITALIZATION REGIME. PARTICIPANT'S RESPONSIBILITY.

1. Lawsuit to discuss if the proportional supplementary retirement income may be

revised in order for the beneficiary to receive the full benefit, irrespective of the funding source, as the additional length of service was recognized at a later time.

2. Judgment on the pleadings is possible where the trial courts understand that the case is substantially supported and declare that there is sufficient evidence for the court to make its findings (art. 130 of the Code of Civil Procedure/1973), so that there is no need for actuarial evidence.

3. The sponsor has no standing to be defendant in suits involving the participant and the private social pension entity, especially where the controversy refers to a benefit plan, such as the granting and revision of the supplementary pension. This is so because the sponsor and the pension fund have their own legal personalities and different assets, and the sponsor's interest is merely economic and not juridical.

4. The Consumer Protection Code does not apply to a legal relation held between the closed social security entity and its participants,

because the entity's assets and their respective income are fully used to grant and pay benefits, so that the association and mutual natures prevail to repeal the profit purpose. Thus, the pension fund does not fit the legal concept of supplier.

Understanding of Precedent no. 563/STJ.

5. The Supplementary Social Security is not aimed at granting actual gains to the participant, especially if that affects the actuarial balance of the mutual fund. Therefore, if there is no corresponding funding source, it is not possible to apply typical formulas of the official social security to the private social security.

6. According to arts. 37 and 38 of the Benefit Plan Regulation no. 4 da ELOS [Fundação Eletrosul de Previdência e Assistência Social - Eletrosul Foundation of Social Security and Social Assistance] in order for the supplementary pension for length of service to be granted, among other requirements, the period of connection with the Social Security must be fulfilled and in such case the

supplementary pension may be granted in whole or in part.

7. After further recognition and annotation of the additional length of service by the National Institute of Social Security [Instituto Nacional do Seguro Social - INSS), the ELOS beneficiary that receives the proportional supplementary pension may apply for the inclusion of such period in the private social security, as this is provided in the rules of the benefit plan itself. However, to receive the full supplementary benefit, the beneficiary must also meet the requirement for formation of a guarantee reserve, as established in art. 28, par. 5, of the regulation of the entity.

8. The closed social pension entity may increase the amount of the supplementary pension, resulting from the divergent information about the beneficiary's length of service, only after the beneficiary having transferred the "difference in the Mathematic Reserves", especially where the period to be rectified refers to an activity developed as independent worker, that is, before joining the

sponsor company or even the pension fund. Logic of the capitalization regime and the funding plan. Preservation of the financial health of the pension fund, whose loss is supported by all participants, beneficiaries and the sponsor.

9. Special appeal granted. (REsp 1520435/SE, reported by Justice RICARDO VILLAS BÔAS CUEVA, THIRD PANEL, tried on 3/28/2017, Electronic Court Journal DJe 4/4/2017)

HEALTH

1) BOARD OF RULES AND QUALIFICATION OF HEALTH PLAN COMPANIES - DIOPE NORMATIVE INSTRUCTION No. 054, OF 4/10/2017

Establishes the possibility of prior annual authorization for transactions involving the portfolio of bonds and securities, as provided in art. 13 of Normative Resolution - RN no. 392, of December 9, 2015, which provides for the acceptance, registration, linking, custody, operation, and allocation and concentration limits for investment of guarantee assets of the companies within the ambit of the supplementary health system and makes other provisions.

According to the Normative Instruction (article 3), the company may request to the DIOPE Director prior

annual authorization to operate the guarantee assets, provided that it:

I – invests all its financial guarantee assets in individualized accounts, proper for registration or deposit of assets, with the institutions referred to in item V of art. 4 of Normative Resolution no. 392, of 2015, and do not invest them in an investment fund dedicated to the supplementary health sector;

II – meets all transparency and dissemination standards in its corporate governance practices as provided in Annexes I and II;

III - meets the requirements set in art. 14 of Normative Resolution no. 392, of 2015;

IV – has no operating asset (real property) registered as guarantee asset, even before the expiration of the effectiveness of art. 34-A of Normative Resolution no. 392, of 2015;

V – complies with the rule of the National Monetary Council applicable by operation of Normative Resolution no. 392, of 2015, as well as the other provisions of such Normative Resolution;

VI – does not have being under a special regime in the twelve (12) months prior to the application; and

VII – does not have insufficient guarantees for the financial balance, economic and financial irregularities that put at risk the continuity or the quality of the health care services, identified by DIOPE within the ambit of its authority.

The authorization will be effective for 12 months from the date it is given, and will be automatically renewed for an equal period provided that the company meets the requirements mentioned above (arts. 4 and 5).

The authorization may be canceled at any time, should DIOPE verify that the requirements are not met, in which case the company may apply for a new authorization only after 180 days from the cancellation (art. 6).

To check the Normative Instruction please access <http://www.ans.gov.br/component/legislacao/?view=legislacao&task=PDFAtualizado&format=raw&id=MzQwNw==>.

2) INSPECTION BOARD - DIFIS NORMATIVE INSTRUCTION No. 015, OF 4/25/2017

Provides for electronic communication between the Inspection Board [Diretoria de Fiscalização - DIFIS] and private health assistance plan companies.

The electronic communication addressed in the Normative Instruction refers only to documents sent by DIFIS to the companies, and does not apply to documents sent by the companies to DIFIS.

The files forwarded by DIFIS through the PTA Application will be made available in the received files area of the application and will be available for download by the company during ninety (90) days (article 3); the companies have the duty of accessing at least every two days the area of the system of the National Supplementary Health Agency [Agência Nacional de Saúde Suplementar - ANS] where the documents will be available (article 5).

To check the Normative Instruction please access <http://www.ans.gov.br/component/legislacao/?view=l>

[egislacao&task=PDFAtualizado&format=raw&id=MzQxNw==.](#)

3) NORMATIVE RESOLUTION No. 422, OF 4/25/2017

Amends Normative Instruction no. 103, of June 17, 2005, which provides for the Supplementary Health Fee, introduced by Law no. 9961, of January 28, 2000, regulates the tax administrative procedure within the ANS and makes other provisions.

The amended articles basically address how notices will be served as well as when a notice will be considered served.

To check the Normative Instruction please access <http://www.ans.gov.br/component/legislacao/?view=egislacao&task=PDFAtualizado&format=raw&id=MzQxNg==>.

4) JUDGE EXEMPTS HEALTH PLANS FROM THE PAYMENT OF THE SUPPLEMENTARY HEALTH FEE

Under the trial-court decision rendered in lawsuit no. 0004166-64.2015.4.03.6100 brought by the Brazilian Group Medicine Association [Associação Brasileira de Medicina de Grupo - ABRAMGE] the Federal Court of São Paulo did not authorize the collection of the supplementary health fee based on the understanding that its calculation base was not established by law, therefore it violates the principle of tax lawfulness.

According to the judge, as the Supplementary Health Fee is a species of the genus tax, for it to be introduced, increased, reduced or eliminated there must be a law to lend it effectiveness and enforceability. Law no. 9961/2000 created the National Supplementary Health Agency - ANS and introduced the Supplementary Health Fee, whose taxable event is ANS's exercise of police powers which are legally attributed to it. The calculation base, in turn, is established in article 3 of Collective Board - RDC Resolution no. 10/2000. According to the judge's

understanding “the examination of article 3 reveals that the base for the calculation of the Supplementary Health Fee was stipulated by a regulation in direct violation of the constitution in force and for such reason it cannot prevail in relation to the taxpayer.”

The decision of the Federal Court of São Paulo, which is subject to appeal, recognized and stated the non-enforceability of the obligation of plaintiff’s associates to pay the supplementary health fee created by Law no. 9961/2000, according to the calculation base provided in article 3 of RDC Resolution no. 10/00 and those following it.”

and no. 1.391.092/SC, within the ambit of the system of art. 543-C of the Code of Civil Procedure, which established that insurance brokers are not included in the list of entities in art. 22, par. 1, of Law no. 8212, of 1991.

SUBJECT: Contribution for the Social Security Financing [Contribuição para Financiamento da Seguridade Social - COFINS]

SYNOPSIS: INSURANCE BROKERS. LIST OF ENTITIES IN ART. 22, PAR. 1, OF LAW No. 8212, OF 1991. BINDING PRECEDENTS. SPECIAL APPEAL No. 1400/287/RS AND SPECIAL APPEAL No. 1391092/SC

The STJ, when rendering decision on Special Appeal no. 1.400.287/RS and Special Appeal no. 1.391.092/SC, within the ambit of the system of art. 543-C of the Code of Civil Procedure, established that the insurance brokers are not included in the list of entities in art. 22, par. 1, of Law no. 8212, of 1991.

Due to the provisions in art. 19 of Law no. 10522, of 2002, in the Office of the Counsel to the Federal Treasury/Brazilian Federal Revenue PGFN/RFB Joint Administrative Rule no. 1, of 2014, in the Office of the

TAX

1) ANSWER TO INQUIRY No. 1013, of 3/27/2017

Recognized the binding nature of the STJ’s precedents set in Special Appeals no. 1.400.287/RS

Counsel to the Federal Treasury/Legal Representation Coordination Office PGFN/CRJ Note no. 73, of 2016, and in PGFN/CRJ Note no. 134, of 2016, the Brazilian Federal Revenue Office is bound to such understanding.

By virtue of the binding precedents, the insurance brokers are not considered a “broker company” nor an “independent private insurance agent” to all effects provided in the tax legislation, and therefore, they are subject to the non-cumulative regime for assessment of the Contribution for Social Security Funding - COFINS and to the rates provided in such regime. 3) SOLUTION OF INQUIRY LINKED TO SOLUTION OF COSIT INQUIRY No. 174, OF MARCH 13, 2017.

2) RFB NORMATIVE INSTRUCTION No. 1704, of 3/31/2017

Provides for the reopening of the period for adhesion to the Special Regime for Foreign Exchange and Tax Good Standing [Regime Especial de Regularização

Cambial e Tributária - RERCT], addressed in Law no. 13428, of March 30, 2017.

RFB Normative Instruction no. 1.704/2017 regulated the reopening of the period for adhesion to the RERCT, promoted by Law no. 13428/2017.

Among the provisions, we point out the following ones:

- a) determination that funds or properties are, among others, those not reported or reported with omission or inaccuracy in regard to essential information: values, tangible or intangible assets, capital and rights, irrespective of the nature, origin or currency, that are owned or were owned prior to 6/30/2016 by individuals or legal entities resident, domiciled or based in Brazil;
- b) conditional upon full payment of fine for legal standing corresponding to 135% of the income tax assessed, for adhesion to the regime;
- c) required payment by means of a DARF collection document identifying the CNPJ of the Ministry of Finance instead of the ID of the taxpayer and number of the receipt of presentation of the Statement of Foreign

Exchange and Tax Good Standing (DERCAT) in the reference number field);

d) the statement must be presented upon access to the service "presentation of DERCAT," available on <http://rfb.gov.br>, from 4/3/2017;

e) the taxpayer that joined the RERCT up to 10/31/2016 may rectify the DERCAT adding new values, and should such right be exercised, the taxpayer will undertake to pay the tax and fine corresponding to the additional value and to meet the new deadline set for the conversion of the amount denominated in foreign currency.

3) TAXATION COORDINATION OFFICE - COSIT NORMATIVE OPINION No. 1, of 3/31/2017

Under COSIT Normative Opinion no.1/2017 the RFB addressed the administrative reimbursement because

the Federal Supreme Court, in the decision on Extraordinary Appeal no. 559.937, pronounced that the inclusion of the Tax on Circulation of Goods and Services [Imposto sobre Circulação de Mercadorias e Serviços - ICMS] and the amount of the contributions themselves in the base for the calculation of the PIS/PASEP - Import Contribution and COFINS-Import Contribution is unconstitutional.

In view of that, the RFB clarified that

a) concerning taxable events occurred from 10/10/2013, the ICMS and the own contributions are not part of the base for calculation of the PIS/PASEP-Import and the COFINS-Import, which correspond to customs amount;

b) the term to apply for reimbursement is 5 years, and such term starts to run on the date of the undue payment;

c) the legal entities subject to non-cumulative assessment regime of PIS/PASEP and COFINS may offset credits to assess such contributions in relation to import transactions in which the PIS/PASEP-Import and COFINS-Import are effectively paid according to the events described in art. 15 of Law no. 10865/2004;

d) in the case of legal entities subject to the cumulative assessment regime, undue payments or overpayments of PIS/PASEP-Import and COFINS-Import do not generate credits to be used in regard to PIS/PASEP and COFINS.

4) INTERPRETATIVE DECLARATORY ACT No. 4, of 4/13/2017

Provides for the tax treatment for income paid, credited, delivered, employed or remitted by a source located in Brazil to legal entities resident abroad for international transportation services based on a double income taxation agreement or treaty executed by Brazil.

Under its Interpretative Declaratory Act no. 4/2017, the RFB clarified that the tax treatment of income paid, credited, delivered, employed or remitted by a source located in Brazil to legal entities resident abroad for international transportation services based on a double income taxation agreement or treaty executed by Brazil will be that specific one provided in the

respective Agreement or Treaty, and the use of the term “profit” will be interpreted according to the specific article addressing international transportation as income.

5) INSPECTION COORDINATION OFFICE - COFIS EXECUTIVE DECLARATORY ACT No. 024, of 4/18/2017

Provides for the Manual for Digital Accounting Records Layout [Escrituração Contábil Digital - ECD].

Under RFB Executive Declaratory Act no. 24/2017, the Manual for Digital Accounting Records Layout was approved; its contents may be downloaded from <http://sped.rfb.gov.br/pasta/show/1569>. RFB Executive Declaratory Act no. 93/2016, which addressed such subject, was revoked.

PARTNERS OF THE FIRM AND RESPECTIVE AREAS



Daniela Matos

Insurance and Reinsurance
(11) 5643-1065
dmatos@santosbevilaqua.com.br



João Marcelo dos Santos

Insurance and Reinsurance
(11) 5643-1066
jsantos@santosbevilaqua.com.br



Julia de Menezes Nogueira

Tax Law
(11) 5643-1062
jnogueira@santosbevilaqua.com.br



Juliano Nicolau de Castro

Labour Law
(11) 5643-1061
jcastro@santosbevilaqua.com.br



Keila Manangão

Litigation and Arbitration
(21) 2103-7638
kmanangao@santosbevilaqua.com.br



Marco Antônio Bevilaqua

Insurance, Reinsurance,
Supplementary Pension and
Supplementary Health
(11) 5643-1063
mbevilaqua@santosbevilaqua.com.br



Roberto F. S. Malta Filho

Corporate, Contracts, Mergers and
Acquisitions, Arbitrations and Judicial
Reorganization/Restructuring
(11) 5643-1064
rmalta@santosbevilaqua.com.br