

Alert – COSIT Ruling # 91/2018 brings relief to the reinsurance market

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For the tranquility and safety of the admitted reinsurers, the COSIT (Coordination Office of Brazilian IRS) Ruling # 91, of 02.02.2018, which partially reformed COSIT Ruling # 62, of 01.20.2017, was published in the Brazilian Federal Official Journal on 08.08.2018.

As it is known, COSIT Ruling # 62/17 was issued at the beginning of 2017, dealing broadly with tax law issues related to the reinsurance market and expressing Brazilian Federal Revenue understanding about IRPJ (Corporate Income Tax) and CSLL (Social Contribution on Profits) regimes applicable to local, admitted and occasional reinsurers, levy of PIS and COFINS social

contributions on relevant revenues, and IRRF (withholding income tax) and PIS and COFINS-Import contributions on remittances made abroad regarding reinsurance and retrocession premiums.

The first ruling is related to a query presented by ABER - currently FENABER - regarding these matters, around 10 years ago, soon after the opening of the reinsurance market in Brazil.

Broadly speaking, there were no surprises in the answer, except for the treatment applicable to the admitted reinsurers.

In fact, with the edition of Supplementary Law # 126/2007, there were initially questions about what should be the minimum elements of the local presence of admitted reinsurers, especially regarding their representative offices.

However, such doubts were overcome by the reinsurance legislation, mainly by CNSP Resolution #

168/2007, in which production we participated assisting FENABER. Based on this rule, the admitted reinsurer's representative offices became mere service providers to the reinsurers domiciled abroad exercising no insurance activity in Brazil, what allowed them to be taxed as ordinary legal entities and to opt between the Real or Presumed Profit regimes, and by cumulative or non-cumulative PIS and COFINS regimes, being also subject to the same COFINS and CSLL rates applicable to ordinary legal entities.

However, to the market's surprise, the Brazilian Federal Revenue, through COSIT Ruling # 62/2017, understood differently. Based on the premise that the regulation requires that the admitted reinsurer grants broad powers to the representative office, COSIT understood that this office would perform insurance activity in Brazil, becoming necessary that it is subjected to the Real Profit regime and to the PIS and COFINS cumulative regime, in addition to the higher rates of CSLL and COFINS provided by the law for this sector.

There was also great uncertainty by the fact that the ruling did not establish the calculation basis to be used for these taxes, i.e., whether reinsurance premiums paid to the admitted reinsurers or service rendering revenues of the representative offices.

This understanding, considering the risks it implies in relation to the past and the future, has

generated a profound apprehension for the admitted reinsurers and for the market in general - its clients and partners.

In view of this, FENABER passed to look for a negotiated solution with the Brazilian Federal Revenue. In this sense, a clarification about how the admitted reinsurers actually operate in Brazil was made. And this work, which involved the Ministry of Finance, the Brazilian Federal Revenue and the Private Insurance Superintendence, and of which we were part of, was completely successful, as it can be noticed by the publication of COSIT Ruling # 91/2018.

This new ruling basically distinguishes between the admitted reinsurers' representative offices that exercise broad powers that have been assigned to them and those that do not exercise such powers, performing exclusively subsidiary activities. The firsts are, in fact, characterized as private insurance agents and are subjected to their legal regime. The others must be treated as mere service providers, and the same treatment applicable to the eventual reinsurer must be applied to the admitted reinsurers which operate abroad.

This review meets the market's wishes, bringing to it the desired legal security. It is important to be aware, however, to the fact that if the representative office does not exercise the full powers granted to the

admitted reinsurer, reserving its activities to the provision of ancillary services, it should be possible to demonstrate. It should be also possible to demonstrate, documentally, in case of inspection by the Brazilian

Federal Revenue, that the activity is restricted, to avoid wrong assessments that could involve the arbitration of the representative office's profits, as well as the collection of differences of PIS, COFINS and CSLL.



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