

# INFORMATION REPORT

DECEMBER 2018 / JANUARY 2019

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## INSURANCE AND OPEN SUPPLEMENTARY SOCIAL SECURITY

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### 1) National Council of Private Insurance - CNSP APPROVES DPVAT VALUE FOR 2019

CNSP approved on 12/12/2018 [CNSP Resolution no. 371/2018](#) reducing the premiums of the Compulsory Insurance against Personal Injury caused by Land Vehicles (DPVAT) by 63.3%, on average, for 2019.

This measure, resulting in a series of effectiveness gains to the Lead Insurer, was widely criticized because it was an opportunity to increase the benefits which are below the market value and not updated since 2007.

### 2) CNSP RESOLUTION No. 368, OF DECEMBER 13, 2018

[CNSP Resolution 368/2018](#) published on December 19 in the Federal Official Journal amends CNSP Resolution 321/2015 and sets, among others, a retention limit for local reinsurers.

This rule also replaced the requirement for rotation of the independent accounting audit firms with the mandatory rotation of their responsible members in regard to the supervised market.

### 3) CNSP RESOLUTION No. 369, OF DECEMBER 13, 2018

[CNSP Resolution 369/2018](#) published on December 19 in the Federal Official Journal, provides for the extended warranty insurance and amends CNSP Resolutions 296/2013 and 306/2014.

The amendments are intended to limit the time the insurer takes to settle the loss, facilitate the exercise of the insured's right to regret and make the purchase



of insurance more transparent with the inclusion of information in the authorization for collection of the insurance premium. To this end, the insurers will inform the insured the rate and value of the insurance representative's remuneration and this information will be included in the policy.

#### 4) CNSP RESOLUTION No. 370, OF DECEMBER 13, 2018

[CNSP Resolution no. 370/2018](#), published on 12/19/2018, addresses the conditions for the operation of insurers specialized in contracts on continued income payment.

In order for the establishment of an insurer specialized in contracts on continued income payment to make sense, additional rules must establish advantages for these insurers whose purpose is more restricted.

#### 5) CNSP RESOLUTION No. 372, OF DECEMBER 14, 2018

[CNSP Resolution no. 372/2018](#) provides for the minimum characteristics to be adopted in the agricultural insurance plan named Varied Risk Rural Insurance ("MultiSeg-Rural").

[According to the Ministry of Finance](#), *"the offer of this product by the insurers will allow the insureds and beneficiaries to compare similar substitute products contributing to the competition and, consequently, reducing the costs of insurance with broad coverage able to ensure the rural producers protection against multiple risks to which their cultures are exposed."*

## 6) Private Insurance Superintendence - SUSEP CIRCULAR No. 580, of DECEMBER 13, 2018

On 12/13/2018, [SUSEP Circular no.580/2018](#) set up the Permanent DPVAT Commission to improve the operation and rules related to the DPVAT, proposing changes, interpretations and/or guidance.

This Commission was set up as a result of the series of rules recently enacted that introduced new governance for the Lead Insurer and a new supervision system for SUSEP.

## 7) SUSEP CIRCULAR No. 581, OF DECEMBER 19, 2018

[SUSEP Circular no. 581/2018](#), published on 12/21/2018, establishes, among other provisions, the use of a specific biometric table in the structuring of

risk coverages offered by open supplementary pension plans and personal insurance plans.

## 8) SUSEP CIRCULAR No. 582, OF DECEMBER 19, 2018

Amends several provisions of [SUSEP Circular no. 569/2018](#) on capitalization and modalities of preparation, operation and commercialization of Capitalization Bonds, among other subjects, and provisions of SUSEP Circular no. 576/2018, which amended SUSEP Circular no. 569/2018 and established rules for the preparation, operation and commercialization of Capitalization Bonds.

## 9) SUSEP CIRCULAR No. 583, OF DECEMBER 19, 2018

[SUSEP Circular no. 583/2018](#) amends [SUSEP Circular no. 517/2015](#).

The main purpose of the rule was to make official SUSEP's adoption of the Technical Pronouncement CPA-002 – Independent Actuarial Audit" of the Brazilian Actuary Institute – IBA.

It is an important rule because recently, many actuaries were served notice because they adopted actuarial procedures not in conformity with the legislation.

In this context, the adoption of CPA-002 adds legal certainty to the activities of actuaries in independent actuarial audits.

## 10) SUSEP CIRCULAR No. 584, OF JANUARY 15, 2019

According to [SUSEP Circular no. 584/2019](#), the period for the new registration of personal insurance brokers/individuals, suspended as from February 2018 by [SUSEP Circular no. 567/2018](#), will start on July 1, 2019 and end on December 31, 2019, and will be repeated every three (3) years.

## 11) SUSEP STATEMENT No. 217, OF DECEMBER 19, 2018

[SUSEP Statement no. 217/2018](#), published on 12/21/2018, approves the regulation plan for 2019. Among the items on SUSEP agenda, we highlight the following ones, and make comments:

- Revision of the corporate processes on the supervised entities to adjust them to Decree no. 9094, of 2017 (on the simplification of public services) – an adjustment that is actually needed;
- Regulation of the “digital representative,” which may assume the obligation of promoting, on a noncasualness basis and independently, insurance contracts for the account and on behalf of the insurer and the open supplementary social security by remote means – new rules in this regard seem to us unnecessary and possibly will increase bureaucracy.
- Amendment to CNSP Resolution no.243/11 by establishing the priority of the processing of and decision on administrative sanction processes in the specified events (inclusion of art. 84-A);

sanction on members of the Audit Committee (amendment to arts. 2, par. 5, and/or 60); and sanctions for conducts related to the internal control system, the structure of risk management, and the corporate governance (amendment to art. 40) – these are adjustments regularly made to the rule as it evolves.

- Regulation of the application of Paragraph 4-A of article 2 of Resolution 243/2011, related to the possibility of not instituting an Administrative Sanction Procedure – this is a measure that will cause impacts as SUSEP did not apply it supposedly due to lack of a clear rule on how to do it;
- Revision of the rule on safekeeping of documents to adapt it to the limitation periods provided in the 2002 Civil Code and revision of the regulation on the use of the digital certificate – as matter of fact, this rule should not exist to the extent that the period for safekeeping of documents may conflict with the effective period of limitation applicable to each case. Indeed, this should not be regulated but changing the rule in effect is better than maintaining it, in view that it is fully incompatible with the real

preemptive periods concerning SUSEP's right to monitor the entities.

## 12) CALL FOR SUSEP PUBLIC INQUIRY No. 008, OF DECEMBER 26, 2018

SUSEP submitted to public inquiry the draft of a Circular providing for specific internal controls to prevent and fight money laundering.

[SUSEP's proposed changes](#) are positive and simplify the rule, and are very significant because they result in more freedom and responsibility for the supervised entities to develop their systems.

Relevant measures will be those putting an end to automatic notices and removal of the admitted reinsurers from the group of entities subject to the rule, which, in fact, never made sense.

Those interested were able to send suggestions until 1/24/2019.



## 13) SUPERIOR COURT OF JUSTICE APPROVES PRECEDENT ON LIFE INSURANCE

The Second Section of the Superior Court of Justice (STJ) approved on December Precedent 620, which addresses the life insurance.

**Precedent 620:** The fact that the insured was intoxicated does not exempt the insurer from paying the indemnity provided in the life insurance contract.

The STJ understands that the clause in the life insurance contract excluding the coverage in case of death resulting from intoxication is opposite to the purpose of the contract.

This is also the position of SUSEP, which, [since 2007](#) instructs the insurers not to include in the personal and injury insurance policies (except car insurance) clauses excluding coverage in case of “losses or accidents caused by acts practiced by the insurer by reason of mental disorder, intoxication or use of toxic substances.”

This is also STJ understanding of the civil liability coverage. According to recent court precedents

([Special Appeal - REsp. no. 1.738.247/SC](#)) “the exclusion of civil liability coverage from the insurance in the cases the driver is intoxicated is illegal, given that it harms only the victim already in disadvantage, removing the purpose and social function of this guarantee, which are the protection of the interests of harmed third parties entitled to indemnity and the insured’s property protection.”

According to that Court ([REsp. 1.485.717/SP](#)), the clause providing for the exclusion of the coverage against loss caused by the insured’s intoxication is legal only if related to insurance against damage. In such events, the loss of the insurance guarantee will be subject to the insurer’s production of proof of causal connection between the alcohol intake and the accident.

Unfortunately, in general, it is evident the STJ’s leniency towards the intake of alcoholic beverages and its lack of understanding of the structures of insurance that it addresses separately.

The presumption of aggravated risks and consequent exclusion of the coverage should be absolute in these cases.

## 14) National Department of Transport Infrastructure - DNIT NORMATIVE INSTRUCTION No. 002, OF JANUARY 4, 2019

[DNIT Normative Instruction no. 2/2019](#), published on 1/7/2018, provides for the application of penalties by DNIT, instituting the procedures for the Administrative Proceeding for Determination of Responsibility (PAAR) related to violations committed by suppliers, during the procurement and/or contractual phase in connection with DNIT.

One of the provisions of the rule that should be highlighted is the Public Authorities' obligation to notify the insurer of the expected loss in case of identification of supposed irregularities in the contracts covered by the performance bond.

## 15) DECREE REQUIRES APP'S DRIVERS OF SÃO PAULO TO CONTRACT DPVAT AND PERSONAL ACCIDENTS - PASSENGERS INSURANCE

São Paulo Mayor Bruno Covas signed on 1/4/2019 [Decree 58595/19](#) establishing rules to be obeyed by App's drivers of the city.

Among the requirements is the Certificate of Registration and Licensing of Vehicles (CRLV) issued by the city of São Paulo.

The rule amends municipal decree [56.981/16](#) that regulated the transport apps in the city and created the Municipal Record of App's Drivers (CONDUAPP) and the App's Vehicle Safety Certificate (CSVAPP), which are required for the exploitation of individual paid transport of passengers in the city.

According to the decree, a driver, to enroll in the CONDUAPP, must meet several requirements and to obtain the CSVAPP, must prove the contracting of the

APP and DPVAT insurance, in addition to meeting other requirements.

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## FINANCIAL MARKET, CAPITAL MARKET AND OTHERS

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### 1) LAW No. 13756, OF DECEMBER 12, 2018

[Law no.13756/2018](#), effective on 12/12/2018, provides for the National Public Security Fund (FNSP), the allocation of the proceeds of the lottery, and the commercial promotion and modality of lottery named fixed quota bets; it also amends the procedures set by Law no. 5768, of December 20, 1971, that regulates the free distribution of prizes by lot, through giveaway or contest, on account of advertisement.

An important change introduced by that law is that now the Ministry of Finance, instead of the Federal Savings Bank (CEF), is responsible for the analysis, issuance, and inspections of the free distribution of prizes by lot,

through giveaways, contests or similar distributions, on account of advertisement.

In addition, the new Law also establishes the same penalties set in Law 5768/1971 for nonperformance, specifically revocation of the authority, prohibition of commercial promotions for a period of up to two (2) years, and fine of up to one hundred per percent (100%) of the sum of the value of the prizes, which fine will be established by the Ministry of Finance.

## 2) LAW No. 13775, OF DECEMBER 20, 2018

[Law 13775/2018](#), published on 12/21/2018, regulates the issuance of negotiable invoices with book value for circulation as a commercial effect, upon entry in the electronic system. The law modernizes the issuance of the proof of credit generated by the sale of goods or services by a company.

In addition, according to the rule, the protest registers will create a national center of shared services that will issue the negotiable invoices.

The entries in the shared electronic system will replace the Journal of Negotiable Invoices provide in Law 5474/1968.

## 3) LAW No. 13777, OF DECEMBER 20, 2018

[Law 13777/2018](#), published on 12/21/2018, amends the Civil Code and the Law of the Public Registers and provides for the legal regime of multi-ownership and its registration.

According to the rule, “multi-ownership is the condominium regime in which each owner of the same property is the owner of a time fraction, to which corresponds the right to use and enjoy, with exclusivity, the entire property, to be exercised by the owners alternatively.”

Also, according to the rule, the property that is multi-owned is indivisible and is not subject to an action for division or extinction of the condominium. The legal system of the multi-ownership will be instituted by an act inter vivos and such act will define the duration of the periods corresponding to each time fraction.



#### 4) LAW No. 13792, OF JANUARY 3, 2019

Published on 1/4/2019, [Law no. 13792/2019](#) amended the Civil Code to change the quorum necessary to pass resolutions of limited companies.

According to the text, when a member is appointed manager in the articles of organization, he/she may be removed upon approval of owners of units of ownership corresponding to more than half the capital, except in the cases of provision in the articles of organization otherwise.

The rule changes the sole paragraph of article 1085 of the Civil Code and establishes that, subject to the events in which the company has two members only, the expelling of one of those members can be determined at a meeting especially called for this purpose and the member to be expelled must be made aware of the meeting in due time to attend the meeting and present defense.

#### 5) LAW No. 13793, OF JANUARY 3, 2019

[Law no. 13.793/2019](#), published on 1/4/2019, amended laws no. 8906/1994, 11419/2006, and 13105/2015 (Code of Civil Procedure), establishes that attorneys with or without judicial power of attorney will have access to the record of all proceedings ended or pending, except confidential and closed proceedings, and will be able to obtain copies of the record and make annotations at the time of the examination.

The new law also provides that scanned documents contained in electronic proceedings must be made available to the parties, attorneys, irrespective of power of attorney inserted in the record, members of the Prosecution Office and judges; the law also establishes that the Clerk's Offices of the courts may view them, except for closed proceedings.

## 6) LAW No. 13800, OF JANUARY 4, 2019

[Law no.13800/2019](#), published on 1/7/2019, authorizes the public authorities to sign partnership documents and documents establishing programs, projects, and other instruments of public interest with organizations that manage endowment funds; this law also amends Laws no. 9249 and 9250, of 1995, 9532/1997, and 12114/2009.

This law, in its art. 1, provides for the creation of the Brazilian endowment funds similar to the North-American ones to collect, manage and allocate donations of individuals and private legal entities to programs, projects and other purposes of public interest.

The rule is intended to reduce the dependence on the public funds and encourage the donations of individuals.

## 7) LAW No. 13804, OF JANUARY 10, 2019

[Law no. 13804/2019](#), published on 1/11/2019, establishes measures to prevent and fight contraband, smuggling, theft, robbery, and receiving of stolen property.

This law amends the Brazilian Traffic Code and sets severer punishments to the offenders. According to it, if the driver of a vehicle used for receiving of stolen property, smuggling and contraband, crimes that are provided in the Penal Code, is found guilty under a final decision, his driving license will be canceled or he will be prohibited from obtaining license to drive automotive vehicles for 5 five years.

## 8) Provisional Presidential Decree - MP No. 869, OF DECEMBER 27, 2018

Published in the Federal Official Journal on 12/28/2018, [MP 869/18](#) amends [Law 13709/18](#) on

data protection and creates the National Data Protection Authority (ANPD)

According to the provision, ANPD will be a part of the Presidency, and this measure has already been ratified by President Jair Bolsonaro through [MP no. 870 of January 1, 2019](#).

In addition to the jurisdictions established in law 13709/18, ANPD will have jurisdiction to

- Enact rules and procedures for personal data protection;
- Resolve, within the administrative sphere, on the interpretation of the General Data Protection Law (LGPD);
- Require the controllers and operators to provide information;
- Implement simplified mechanisms, including through electronic means, to record complaints on personal data treatment.
- Conduct inspections and impose sanctions.
- Encourage the adoption of standards for services and products that facilitate the data owners' control and protection of their data.

- Promote cooperation with international and transnational data protection authorities.
- Set up public inquiries.

Also, the MP provides that ANPD's jurisdiction will prevail, in regard to the personal data protection, over the related jurisdictions of other government entities or bodies. This aspect differs from that of the rules on the prevention of money laundering, whose model seems to be more adequate to reduce the regulatory costs and the risk of conflict among authorities.

MP 869/18 also changes the period for the law to take effect from 18 to 24 months; establishes that the function of data protection may be also performed by a company or may be outsourced, and not only by individuals as previously provided; and changes the dynamics of the revision of decisions based on the automated data treatment, establishing that the revision may be made through other means, and not only by an individual.

## 9) DECREE No. 9685, OF JANUARY 15, 2019

[Decree 9685/19](#) signed by President Jair Bolsonaro, and published on 1/15/2019, amends the [Disarmament Statute](#) and sets relaxed rules for gun ownership.

## 10) DECREE No. 9690, OF JANUARY 23, 2019

[Decree no. 9690/2019](#), published on 1/24/2019, amends the Information Access Law and authorizes public servants holding commissioned positions to attribute top secret classification to official information: 25 years (top secret data).

## 11) Brazilian Securities Commission - CVM INSTRUCTION No. 604, OF DECEMBER 13, 2018

CVM enacted on 12/13/2018, [CVM Instruction 604](#), that revoked a series of rules deriving from the implementation of the first phase of the Strategic Project to Reduce the Compliance Costs whose aim was to check the possibility of less complex regulatory changes, with low impact and oriented to specific and isolated situations, especially those related to regulatory redundancies and overlaps.

## 12) Board of Curators of the Salary Variation Compensation Fund - CCFCVS RESOLUTION No. 439, OF DECEMBER 11, 2018

Through Resolution no. 439/2018, the CCFCVS set the criteria for the establishment of the annual priority



order for the factual determinations of the novation procedures of FCVS.

The Resolution may be checked [here](#).

### 13) National Monetary Council - CMN RESOLUTION No. 4702, OF DECEMBER 19, 2018

[CMN Resolution 4702/2018](#), published on 12/21/2018, defined the annual global limit for credit transactions with government entities and bodies to be observed in 2019 by the financial institutions and other institutions authorized to operate by the Brazilian Central Bank.

Year	Transactions secured by the Federal Government	Transactions not secured by the Federal Government
2018	Up to R\$ 13 billion	Up R\$ 11 billion
2019	Up to R\$ 13,5 billion	Up R\$ 11 billion

### 14) CMN RESOLUTION No. 4706, OF DECEMBER 19, 2018

Through [Resolution no. 4706/2018](#), CMN improved the accounting rules applicable to the financial institutions for the accounting records of dividends, interest on the shareholders' equity, and other types of capital remuneration.

### 15) BRAZILIAN CENTRAL BANK CHANGES RULES OF THE PAYMENT MARKET

The Brazilian Central Bank (BACEN), through [CMN Resolution no. 7707/2018](#) and [BACEN Circular no. 3924/2018](#), established conditions and procedures for credit transactions linked to receivables of payment arrangement carried out by financial institutions.

The related contracts must specify: (i) the institution that will settle the receivables for each payment arrangement; (ii) the maximum daily amount subject to withholding, provided on the agenda of receivables

of payment arrangement; and (iii) the conditions for the release of the funds to be deposited into an account operated by the end receiving user, including funds derived from advances.

Based on this information, it is possible to connect the amount of the receivables (offered as guarantee) to the debit balance of the credit transaction, preventing excessive guarantee, or even for the shop owner to receive in advance the amounts in excess offered as guarantee.

Another point to be highlighted is that now the shop owner may receive in advance part or all receivables from the accrediting or sub-accrediting institutions.

## 16) BACEN CIRCULAR No. 3923, OF DECEMBER 19, 2018

Published on 12/21/2018, [BACEN Circular no. 3923/2018](#) amends Circular no. 3354, of June 27, 2007, which sets the minimum criteria for the classification of transactions in the negotiation portfolio, and Circular no. 3751, of March 19, 2015, which provides for the information to evaluate the

global systemic importance (IAISG) of the financial institutions and the remittance to the Brazilian Central Bank, and the disclosure of such information.

## 17) Brazilian Securities Commission/Superintendence of Accounting and Audit Standards/Superintendence of Relations with Companies - CVM/SNC/SEP OFFICIAL CIRCULAR LETTER 02/2018

The SNC and the SEP of the Brazilian Securities Commission published on 12/12/2018 [CVM/SNC/SEP Official Circular Letter 02/2018](#) with instructions as to the accounting records related to the recognition of revenue in the real estate property unit purchase and sale contracts not yet completed in the Brazilian publicly held corporations of the real estate development sector. This information must be considered in the Accounting Statements for the fiscal year ended on 12/31/2018.

18) OFFICIAL CIRCULAR LETTER No. 4/2018/Brazilian Securities Commission/Superintendence of Relations with the Market and Intermediaries - CVM/SMI

CVM SMI published on 12/17/2018, [CVM/SIN Circular Letter no. 4/18](#). Its purpose is to be guidance for independent investment agents (AAIs) and the institutions that hire them on the best form to meet the requirements set in [CVM Instruction 497](#).

19) OFFICIAL CIRCULAR LETTER No. 1/2018/Brazilian Securities Commission/ Superintendence of Relations with Investor/ Superintendence of Guidance to Investors - CVM/SIN/SOI

CVM SIN and SOI published on 12/17/2018 [CVM/SIN/SOI Official Circular Letter 01/18](#) on the frequency of the information report on Funds 157.

20) Brazilian Antitrust Authority/Brazilian Central Bank - CADE/BACEN JOINT NORMATIVE RULE No. 001, OF DECEMBER 10, 2018

CADE and BACEN approved Joint Normative Act no. 1 establishing procedures to harmonize their actions related to mergers and competition protection and

make them more effective within the ambit of the National Financial System (SFN).

A similar act was jointly enacted by CADE and the National Agency of Supplementary Health (ANS) (see item 11 below, in section “Health”).

Among others, the act provides that CADE and BACEN will share information to carry out activities in the competition sphere and will hold periodical meetings. At these meetings, they will discuss issues that require a ruling action on the part of both entities and that impact the competition among the institutions supervised by BACEN. CADE and BACEN may also hold meetings to evaluate the technical cooperation in administrative proceedings related to mergers and the identification of violations of the economic order involving the institutions supervised by BACEN.

Ideally, CASDE and SUSEP should also enact a similar joint act as the difficulties to harmonize CADE and SUSEP’s supervisions are very similar to those faced by CADE and BACEN, and CADE and ANS.

The full text of the joint normative act no. 1 may be checked [here](#).

## 21) CVM STATEMENTS REQUIRE APPLICATION OF THE RULES SET BY THE ACCOUNTING PRONOUNCEMENT COMMITTEE

CVM published on 12/27/2018 Statements 804, 805, and 806. CVM Collective Board approved the texts on the interpretations and technical pronouncements of the Accounting Pronouncement Committee (CPC) regarding the treatment of taxes on profit, accounting in a hyperinflationary economy, and the inflation-adjustment approach.

Following, the Federal Accounting Council (CFC) approved specific rules equivalent to the CVM statements, with the same contents and effectiveness date ([ITG 22](#), [NBC TG 42](#) and [ITG 23](#)).

[CVM Statement 804](#) approves and requires publicly held corporations to apply ICPC Technical Interpretation 22 issued by the CPC, which deals with the uncertainty about the treatment of taxes on profit.

[CVM Statement 805](#) approves and requires publicly held corporations to apply CPC Technical



Pronouncement 42 issued by the CPC, which deals with the accounting in a hyper-inflationary economy.

[CVM Statement 806](#), approves and requires publicly held corporations to apply ICPC Technical Interpretation 23 issued by the CPC, which deals with the inflation-adjustment approach provided in CPC Technical Pronouncement 42.

## 22) CALL FOR BACEN PUBLIC INQUIRY No. 70/2019, OF JANUARY 17, 2019

Aiming at increasing the effectiveness and application of intelligence to the actions for the prevention of money laundering and terrorism financing, BACEN submitted to public inquiry for 60 days a proposed improvement to the regulation of the policy, procedures, and internal controls of the regulated institutions to prevent the use of the financial system for the practice of crimes of money laundering and terrorism financing.

According to that proposal, the financial institutions will be required to adopt more adequate controls and,

based on a risk analysis, will report to Council for Control of Financial Activities (COAF) all transactions under suspicion.

In other words, the analyses will not address only certain values or persons, and the institutions will be required to monitor and analyze all financial transactions, irrespective of value or person, and report all suspect findings.

Therefore, it no longer makes sense to set a value limit for the communication but rather to make it clear that suspect transactions whichever the value involved must be communicated, and this broadens the scope of the relevant communications.

To this effect, the proposal improves the model of the internal risk approach of the institutions, which will consider, among others, the risk classification of the clients, products and third-party contractors.

Suggestions may be sent via [BACEN website](#) until 3/18/2019. Check the call [here](#).

## 23) NATIONAL LAND TRANSPORTATION AGENCY - ANTT RESOLUTION No. 5840, OF JANUARY 22, 2019

[ANTT Resolution no. 5840/2019](#), published on 1/24/2019, provides for international land cargo transportation, among others.

## 24) IASB PROPOSES EXTENSION OF THE PERIOD FOR THE USE OF IFRS 17 TO BE REQUIRED

The International Accounting Standards Board (IASB), the organization in charge of setting international accounting rules, published in May 2017, IFRS 17 – Insurance Contract (see our [Information Report - May 2017](#)), with expected effectiveness as from January 1, 2021.

However, in November 2018, aiming at an effective transition and application of the standard, given its

complexity, IASB proposed that it takes effect one year after the date previously set, that is, January 1, 2022.

The proposal will be submitted to a public inquiry expected for the beginning of this year.

## 25) CVM PUBLISHES STUDY TITLED “CRITERIA FOR SHAREHOLDERS’ PARTICIPATION IN MEETINGS OF PUBLICLY HELD CORPORATIONS”

CVM published on 12/10/2018 the study “Criteria for Shareholders’ Participation in Meetings of Publicly Held Corporations,” mainly based on art. 291 of Law 6404/76 (Law of Corporations).

The study may be checked [here](#).

## 26) FEDERAL GOVERNMENT LAUNCHES THE PUBLIC GOVERNANCE POLICY GUIDE

To improve the quality and the results of the government entities and ensure maximum return of the federal investments and policies, the federal government published the [Public Governance Policy Guide](#). The target audience comprises members of the top administration and the internal committees of the different government institutions.

The guide indicates that one of the problems faced by the governance policy is the lack of coordination and coherence among the several models existing in the federal government. From now on, the managers may count on the guide as a clear and official reference for their obligations in order to seek well-defined goals respecting the peculiarities and characteristics of each institution.

The document was prepared under the coordination of the Office of the President's Chief of Staff and the participation of the bodies that form the Inter-Ministry Governance Committee (CIG): Ministry of Planning, Development and Management, Ministry of

Transparency, and Office of the Federal Controller General.

## 27) MINISTRY OF ENVIRONMENT ESTABLISHES NEW MEASURES TO INSPECT THE BRAZILIAN DAMS

After the collapse of Brumadinho dam on 1/25/2019, the Ministry Council for Supervision of Responses to Disasters connected to the Presidency and the Office of the President's Chief of Staff was set up.

This Council is formed by ministers and representatives of 15 portfolios of the federal government, among them, the Ministry of the Environment (MMA). The first meeting, held on 1/28/2019, resulted in the publication of two Resolutions.

[Resolution no. 01/2019](#) recommends actions and measures to respond to the collapse of the Córrego do Feijão dam, in the city of Brumadinho, State of Minas Gerais.

In the first place, it advises the bodies of the federal government to give priority to the immediate assistance to the direct and indirect victims of the collapse of the Córrego do Feijão dam, in the city of Brumadinho, and reinforce the support to the government of Minas Gerais and the government of the cities washed by the Paraopeba river.

It also recommends the National Council of Water Resources to request the federal bodies to immediately inspect the dams under their jurisdictions, giving priority to those classified with “high potential of damage” or “high risk.” To systemize the data, the inspection bodies are requested to keep a record of the dams under their jurisdiction and share these data with the National System of Information on Dam Safety (SNISB).

The entrepreneurs are requested to (i) implement the recommendations contained in the reports on the inspection and periodical revision of safety; (ii) register and update the information on dams with SNISB; and (iii) immediately inspect the dams under their jurisdiction giving priority to those classified with “high potential of damage” or “high risk.”

[Resolution no. 02/2019](#) sets up the Subcommittee for Legislation Preparation and Update in charge of

drafting the updated and revised National Dam Safety Policy, established by Law no. 12334/2010.

A representative of Office of the President’s Chief of Staff will be responsible for coordinating the Subcommittee, which will be composed of members of the Ministries of Defense, Environment, Mines and Energy, and Regional Development, the Presidency Office, the Institutional Security Cabinet, the General Counsel to the Federal Government, the National Water Agency (ANA), the National Agency of Electric Power (ANEEL), the National Mining Agency (ANM), the Brazilian Environmental Protection Agency (IBAMA), and the Brazilian Electric System Authority (ONS).

The deadline for the group to complete the work is 2/27/2019, which must be approved within five days after delivery by the Ministry Council for Supervision of Responses to Disasters.



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## CLOSED SUPPLEMENTARY SOCIAL SECURITY

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### 1) Supplementary Social Security Superintendence - PREVIC ADMINISTRATIVE RULES No. 1152, OF DECEMBER 10, 2018

Published on 12/14/2018, PREVIC Administrative Rules no. [1152/2018](#) and [1154/2018](#) respectively provide for inflation adjustment of the minimum and maximum values and of the other pecuniary penalties for full or partial noncompliance with a Consent Decree (TAC) executed with the PREVIC.

For 2019, the penalty amount in case of noncompliance with a TAC executed with PREVIC will be at least R\$ 32,495.70 but will not exceed R\$ 8,123,924.09.

### 2) National Supplementary Social Security Council - CNPC RESOLUTION No. 031, OF DECEMBER 11, 2018:

Published in the Federal Official Journal on 12/28/2018, [CNPC Resolution no. 31](#) sets the conditions and procedures to be observed by the Closed Supplementary Social Security Entities (EFPC) regarding the property independence of the social security benefit plans made possible through enrollment in the National Register of Corporate Taxpayers (CNPJ).

According to the resolution, the social security benefit plans have their own and individual identity from all regulatory, actuarial, accounting and investment standpoints and for this reason, they are not accountable for the obligations of other benefit plans or obligations of the entities that manage them.

The deadline for the closed supplementary social security entities to adjust themselves to the procedures set in the Resolution is December 31, 2021.

### 3) Social Security Department - SPREV OF THE MINISTRY OF FINANCE PUBLISHES 10 NORMATIVE INSTRUCTIONS

Published in the Federal Official Journal on December 28, 2018, SPREV Normative Instructions no. 1 to 10, of December 21, 2018, address the issue of technical parameters of actuarial valuations of the regimes proper to the social security (RPPS).

Art. 1, par. 3, of the Ministry of Finance - MF Administrative Rule no. 464/2018 on the rules applicable to the RPPS actuarial valuations provides for the publication of these instructions establishing parameters for the definition of the funding plan and balance of the actuarial deficit.

The application of the parameters set in MF Administrative Rule no. 464, of 2018, is optional for the 2019 actuarial valuation (art. 79), and in case of non-application, the application of the parameters set in Ministry of Social Security - MPS Administrative Rule no. 403/2008 is mandatory, according to the Opinion of the Office of the Counsel to the Federal

Treasury that is being prepared to clarify this point. The following Normative Instructions were published:

- SPREV NORMATIVE INSTRUCTION No. 001, OF 12/21/2018

Provides for the structure and minimum elements (layout) of the base of record, functional, and remuneration data of the RPPS beneficiaries used in the actuarial valuations and corresponding forwarding to SPREV.

SPREV Normative Instruction no. 01/2018 may be checked [here](#).

- SPREV NORMATIVE INSTRUCTION No. 002, OF 12/21/2018

Provides for the assessment of the duration of the liabilities and the parameter interest rate to be used in RPPS actuarial valuations.

SPREV Normative Instruction no. 02/2018 may be checked [here](#).

- SPREV NORMATIVE INSTRUCTION No. 003, OF 12/21/2018

Provides for the structure and minimum elements (layout) of the actuarial flows to be prepared in the annual actuarial valuations and forwarded along with the actuarial valuation Statement (DRAA) to SPREV.

SPREV Normative Instruction no. 3/2018 may be checked [here](#).

- SPREV NORMATIVE INSTRUCTION No. 004, OF 12/21/2018

Provides for the category and description of the elements to identify the financing methods to be used in RPPS actuarial valuations to set the prices of the commitments of the RPPS benefit plans.

SPREV Normative Instruction no. 4/2018 may be checked [here](#).

- SPREV NORMATIVE INSTRUCTION No. 005, OF 12/21/2018

Provides for the structure and minimal elements of the Actuarial Technical Note (NTA), which will base the RPPS actuarial valuation and its forwarding to SPREV.

SPREV Normative Instruction no. 5/2018 may be checked [here](#).

- SPREV NORMATIVE INSTRUCTION No. 006, OF 12/21/2018

Provides for the size and profile of the RPPS actuarial risk for the application of a differentiated regime of actuarial parameters.

SPREV Normative Instruction no. 6/2018 may be checked [here](#)

- SPREV NORMATIVE INSTRUCTION No. 007, OF 12/21/2018

Provides for actuarial deficit amortization plans of the RPPS.

SPREV Normative Instruction no. 7/2018 may be checked [here](#).

- SPREV NORMATIVE INSTRUCTION No. 008, OF 12/21/2018

Provides for the structure and minimal elements of the RPPS Actuarial Technical Report and respective forwarding to SPREV.

SPREV Normative Instruction no. 8/2018 may be checked [here](#).

- SPREV NORMATIVE INSTRUCTION No. 009, OF 12/21/2018

Provides for the parameters to be used in the events used in RPPS actuarial valuations, the preparation of Events Analysis Report and respecting forwarding to SPREV.

SPREV Normative Instruction no. 9/2018 may be checked [here](#).

- SPREV NORMATIVE INSTRUCTION No. 010, OF 12/21/2018

Provides for the demonstration that the RPPS funding plan is adequate for the budget, financial, and tax capacity of the federal entity.

SPREV Normative Instruction no. 10/2018 may be checked [here](#).

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These instructions were prepared by the work group (GT) set up to improve and update the procedures for the RPPS actuarial management established by MF SPREV Administrative Rule no. 8/2017. The GT was composed of representatives of the National Board of Managers of the Regimes Proper to the Social Security (CONAPREV), the Brazilian Actuary Institute (IBA), the National Association of Members of the Accounting Courts (ATRICON), and the National Confederation of Municipalities (CNM), and had the technical support of the Applied Economic Research Institute (IPEA).



MF SPREV no.21/2018 made available to the public the Final Report prepared by the GT and set up an inquiry for the people to put forward suggestions for the content of drafts of the administrative rules and the normative instruction.

Thus, the participation of all those involved and the transparency of RPPS regulation process were ensured.

#### 4) PREVIC INSTRUCTION No. 001, OF JANUARY 21, 2019

Published on 1/24/2019, [PREVIC Instruction no. 1/2019](#) sets the procedures for the closed supplementary social security entities (EFPC) to select and monitor the services providers in charge of managing investment portfolios and investment funds, among other provisions.

This measure regulates articles 4 and 11 of [CMN Resolution no. 4661/18](#) and was submitted to public inquiry in November 2018.

It defines the minimum requirements for the selection and monitoring of the management of security portfolios and investment funds and sets additional criteria for the selection of Equity Investments Funds (FIP), Credit Right Investment Funds (FIDC), and Real Estate Investments Funds (FII).

It also sets the criteria for the contribution of 3% of the subscribed capital to a FIP and details how the requirements must be met as well as the experience required from managers of foreign funds.

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## HEALTH

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### 1) LAW No. 13770, OF DECEMBER 19, 2018

Published on 12/20/2018, Law no. [13.770/2018](#) amends Laws no. 9656/1998 and 9797/1999 and provides for breast reconstruction surgery following mastectomy caused by cancer treatment.

### 2) LAW No. 13787, OF DECEMBER 27, 2018

[Law no. 13787/2018](#), which took effect on 12/27/2018, provided for the scanning and use of information systems to safeguard, store and handle patients' records.

### 3) LAW OF THE STATE OF SÃO PAULO No. 16874, OF DECEMBER 14, 2018

Published in the Legislative Journal of the State of São Paulo, Law no. 16874/2018 provides for the sanctions to be imposed on assistance or health insurance plan companies that set time limit, value limit or quantity limit for hospitalizations.

However, this law is unconstitutional because only the federal government has jurisdiction to legislate issues related to Civil Law and Commercial Law and impose obligations on the assistance or health insurance plan companies whose relationship with the users is of strictly private nature.

The Federal Supreme Court precedents hold that *“the legislative jurisdiction regarding the consumer protection (Federal Constitution, art. 24, V and VIII) does not authorize the Member States to enact rules on contractual relations as it is part of the Federal Government’s jurisdiction to legislate civil law matters.”* (Direct action for the declaration of unconstitutionality - ADI 4701/PE, Justice-Rapporteur Roberto Barroso, Electronic Court Journal - DJe

8/25/2014; ADI 3402/SP, Justice-Rapporteur Dias Toffoli, DJe 12/11/2015; ADIs 3605/DF and 4228/DF, Justice-Rapporteur Alexandre de Moraes, DJe 9/13/2017 and 8/13/2018).

[The STF position was highlighted by the Office of the General Counsel to the Federal Government in the direct action for the declaration of unconstitutionality \(ADI\) 5984/PR,](#) which discusses the (un)constitutionality of law 19429/2018 of the State of Paraná. The rule determines that the amounts paid to dentists by legal entities that manage dental assistance plans in the State of São Paulo cannot be less than the amounts established in the table Brazilian Hierarchical Classification of Dental Procedures (CBHPO).

#### 4) NORMATIVE RESOLUTION No. 436, OF NOVEMBER 28, 2018

ANS published on December 3, 2018 Normative Resolution - NR no. 436, of November 28, 2018, amending [NR no. 363, of December 11, 2014,](#) which sets the rules for execution of agreements between

health assistance plan companies and health assistance service providers and [RN no 364, of December 11, 2014,](#) establishes ANS's adjustment index to be applied by the private health assistance plan companies to their health assistance service providers.

[NR no.436](#) amends the rules related to the agreements between the health assistance plan companies and their health assistance service providers concerning the Quality Factor, which is the adjustment factor applied to the annual adjustments to the agreements, provided in Law 13003/2014.

The Quality Factor is used where no index is defined in the agreement and where the parties do not agree on the index to be applied. This factor is contingent on the fulfillment of the quality criteria set for hospitals, day hospitals, Therapeutical Diagnosis Support Services (SADT), clinics, and health professionals.

## 5) NORMATIVE RESOLUTION No. 437, OF DECEMBER 3, 2018

ANS published Normative Resolution no. 437/2018, amending Normative Resolution no. 254, which provides for the adaptation and migration of contracts executed until January 1, 1999.

After this amendment, the migration is no longer restricted to adhesion group contracts and the corporate group plans may be also adapted. In addition, the insureds will have the right to adapt or migrate their health plans, and no new period will start to run for the restrictions related to the temporary partial coverage to be effective.

The Resolution may be checked [here](#).

## 6) NORMATIVE RESOLUTION No. 438, OF DECEMBER 3, 2018

ANS published [Normative Resolution no. 438/2018](#) on the regulation of the portability of the waiting period of private health plans.

Currently, the portability to another health plan may occur within the 4 months subsequent to the date of the contract anniversary. According to the new rule, which will be effective in June /2019, the insured may apply for the portability at any time.

In addition, it will be possible to switch to a plan with more coverage than the original one, without waiting periods for the coverages offered in the previous plan, provided that the monthly contribution to the new plan is within the same price range or within a price range below that of the original plan.

Another point of the new rule that should be highlighted is that it allows the portability of a group contract that was terminated to another plan of the beneficiary's choice. The portability right related to the waiting periods in these cases may be exercised within 60 days as from the date the beneficiary is made aware of the termination of his/her relationship with the plan company.

This new rule is also applicable to plans that are exclusively dental plans.



## 7) NORMATIVE RESOLUTION No. 439, OF DECEMBER 3, 2018

As from the enactment of [Normative Resolution no. 439, of December 3, 2018](#), ANS's periodical revision of the List of Health Procedures and Events will be conducted according to phases and flows previously defined, promoting the transparency of the methodology applied and the decision-making process.

## 8) NORMATIVE RESOLUTION No. 440, OF DECEMBER 13, 2018

Published on December 14, 2018, [Normative Resolution no. 440, of December 13, 2018, issued by the ANS Collective Board](#), institutes the Program for Health Assistance Good Practices of Private Health Assistance Plan Companies.

## 9) NORMATIVE RESOLUTION No. 441, OF DECEMBER 19, 2018

[Normative Resolution no. 441/2018](#), published on 12/20/2018, sets criteria for the calculation of the maximum adjustment to the pecuniary contributions to the private health assistance plans, both individual and family plans covering medical and hospital expenses, with or without dental coverage, contracted after January 1, 1999 or adapted to Law no. 9656, of June 3, 1998.

## 10) NORMATIVE RESOLUTION No. 442, OF DECEMBER 20, 2018

On 12/21/2018, ANS published in the Federal Official Journal [Normative Resolution no. 442/2018](#), which amends Normative Resolution no. 393/2015, which in turn provides for the criteria to build up Technical Provisions to be met by private health assistance plan companies.

## 11) CADE and ANS ENTER INTO TECHNICAL COOPERATION AGREEMENT

SUSEP's supervisions are very similar to those faced by CADE and BACEN, and CADE and ANS.

ANS and CADE entered into a [Technical Cooperation Agreement](#) to improve their activities pertaining to merger control in the health assistance market and, therefore, to better implement antitrust measures.

Under the agreement, which is valid for five years, CADE and ANS undertake to share information, databases, reports, diagnoses, and statistics, as well as technical opinions and findings of studies and research conducted by these entities. However, the exchange of information can only involve documents that are not confidential and that do not compromise or adversely affect acts or procedures under the authority of CADE and ANS.

A similar act was enacted jointly by CADE and BACEN (see item 20 above, section "Financial Market, Capital Market and Others").

Ideally, CADE and SUSEP should also enact a similar joint act as the difficulties to harmonize CADE and

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## TAX

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### 1) Federal Revenue Office - RFB ADMINISTRATIVE RULE No. 2176, OF DECEMBER 28, 2018

Published in the Federal Official Journal on 12/31/2018, [RFB Administrative Rule no. 2176/2018](#) establishes parameters for indication of a legal entity to be submitted to differentiated economic-tax monitoring and special monitoring to be performed in 2019.

Under the rule, the following legal entities must be indicated for the differentiated monitoring in 2019:

- a) those whose gross revenue according to the Tax Accounting Bookkeeping (ECF) for the calendar year of 2017 exceeded R\$ 250,000,000.00;
- a) those whose debts according to the Report on Federal Tax Liabilities and Federal Tax Debts (DCFT)

for the calendar year of 2017 exceeded R\$ 30,000,000.00;

c) those whose salary mass informed in the Documents for Deposit in the Unemployment Savings Fund and Information to the Social Security (GFIP) for the calendar year of 2017 exceeded R\$ 65,000,000.00;

d) those whose debts informed in the GFIPs for the calendar year of 2017 exceeded R\$ 30,000,000.00; or

e) those resulting from total or partial spin-off, merger and consolidation completed up to two calendar years prior to the monitoring, with the resulting company being defined under the terms of article 7 of RFB Administrative Rule no. 641/2015.

Also note that, once the period of the differentiated or special monitoring has expired, and in the absence of a new normative rule, the taxpayers indicated as mentioned before will still be monitored in the subsequent years.

## 2) General Coordination of Substitute Taxation - COSIT ADMINISTRATIVE RULE No. 12, OF DECEMBER 14, 2018

COSIT approved, by means of [COSIT Administrative Rule no. 12/2018](#), the Mutual Agreement Procedure Manual.

The Conventions and Agreements for the Avoidance of Double Taxation and Prevention Against Tax Evasion (CDT/ADT) entered into between Brazil and other countries envisage a specific mechanism for the settlement of disputes, called mutual agreement procedure (MAP).

The purpose of the manual is to offer relevant information to taxpayers and other interested parties with regard to the mutual agreement procedure, guiding them through the requirements that must be met in order to apply for such a procedure with RFB.

Click [here](#) to read the Manual.

## 3) *Simples Nacional* Managing Committee - CGSN RESOLUTION No. 143, OF DECEMBER 11, 2018

CGSN Resolution no. 143, published on 12/14/2018, amends CGSN Resolution no. 140/2018, which provides for the Special Unified Regime for Collection of Taxes and Contributions Payable by Micro and Small-Size Companies (*Simples Nacional*).

The new rule includes activities that may be classified under the Individual Micro-Entrepreneur - MEI regime and eliminates others, and this will affect the regime for the collection of taxes and contributions of various companies.

The Resolution may be checked [here](#).

## 4) RFB NORMATIVE RESOLUTION No. 1855, OF DECEMBER 7, 2018

Published on 12/10/2018, RFB Normative Instruction no. 1855 established the rules applicable to the



provision of information necessary for consolidation of debts under the Special Program for Tax Compliance (Pert), introduced by Law no. 13496, of October 24, 2017, and regulated, in connection with the RFB, by RFB Normative Instruction no. 1711, of June 16, 2017.

The deadline for the consolidation of the debts was 12/28/2018. Taxpayers that failed to consolidate their debts will be removed from the Pert and the collection of their debts will be resumed, considering the payments made and without any reductions and benefits under the Pert.

The taxpayer may request revision of the consolidation, which may result in recalculation of all installments payable or change of category, if applicable. Any installments payable as a result of the revision must be settled until the last business day of the month subsequent to that in which the taxpayer learned about the revision, under penalty of termination of the installment plan.

The rule may be checked [here](#).

## 5) RFB NORMATIVE RESOLUTION No. 1863, OF DECEMBER 27, 2018

[RFB Normative Instruction no. 1863/2018](#), published on 12/28/2018, provides for the National Register of Corporate Taxpayers. RFB Normative Instructions 1634/2016, 1684/2016 and 1729/2017 have been revoked.

Among other changes, the Instruction extended the period for submission of the dossier for indication of the final beneficiaries of the Brazilian and foreign companies, and also included exceptions to the requirement to indicate such beneficiaries.

The period for indication of the final beneficiaries of the Brazilian and foreign companies existing prior to the date of publication in such Instruction was extended to one hundred eighty (180) days as from the date of publication of the rule.

Such changes were indeed necessary, considering that companies and their shareholders had doubts about how to comply with such rule.

## 6) RBF NORMATIVE RESOLUTION No. 1856, OF DECEMBER 13, 2018

RFB Normative Instruction no. 1856, published on 12/14/2018, amends RFB Normative Instruction no. 1774/2017, which provides for the Digital Accounting Bookkeeping (ECD).

Among the amendments, below are the highlights:

- Legal entities that pay taxes based on presumptive profit and adopt the Cash Book are exempted from submitting the ECD, provided that they do not distribute profit or dividends not subject to withholding income tax in an amount greater than the income tax base minus the taxes and contributions to which they are subject;
- The fines applicable for failure to submit the ECD within the legal deadlines or for its submission with inaccuracies or omissions were changed.

Check the new fines [here](#).

## 7) RBF NORMATIVE RESOLUTION No. 1858, OF DECEMBER 20, 2018

The Federal Official Journal published on 12/24/2018 [RFB Normative Instruction no. 1858/2018](#), which approved the Generator Program of the Withholding Income Tax Return referring to the calendar year 2018 – 2019 Withholding Income Tax Return - Dirf.

Filing the 2019 Dirf is mandatory for legal entities and individuals that paid or credited earnings subject to withholding income tax, even if only for a single month of the calendar year, by themselves or as representatives of third parties.

The 2019 Dirf must be filed by February 28, 2019, at 11:59 p.m., Brasília time.

## 8) COSIT NORMATIVE OPINION No. 2, OF DECEMBER 3, 2018

On 12/4/2018, the Federal Official Journal published COSIT Normative Opinion no. 2/2018, which provides for the elimination of estimates through offsetting.

The amounts assessed monthly by estimate could be settled via Offsetting Declaration (Dcomp) until May 31, 2018, date when Law no. 13670/2018 came into effect prohibiting the offsetting of tax debts pertaining to estimates.

According to the opinion, the amounts assessed by estimate are merely an advance on the corporate income tax (IRPJ) and the social contribution on net income (CSLL), whose taxable events take place only on December 31 of the respective calendar year. Because of that, such amounts cannot be collected or registered as overdue federal tax liability prior to such date.

Read the entire normative opinion [here](#).

## 9) COSIT NORMATIVE OPINION No. 4, OF DECEMBER 10, 2018

On 12/12/2018, the Federal Official Journal published [Cosit/RFB Normative Opinion no. 4, of 2018](#), which ensures a uniform interpretation, in connection with the Federal Revenue Office, of the tax liability

envisaged in item I of article 124 of the Brazilian Tax Code (CTN).

According to the opinion, the joint and several tax liability referred to in this provision results from the common interest of the person held liable in the situation linked to the taxable event, which may be both the legal act that gave rise to the tax liability and the illegal act that changed the nature of the obligation.

To that effect, the link between the person to be held liable, the act, and the taxpayer or person responsible, by substitution, must be demonstrated. The Federal Revenue Office points out that the mere economic interest, without any proof of the link to the taxable event (including the illegal acts connected to it) cannot characterize joint and several liability.

According to the normative opinion, the following are illegal acts that may give rise to the liability:

- 1 - abuse of legal personality, disrespecting the equity and operational autonomy of legal entities with single management (“illegal business group”);
- 2 - tax evasion, sham transaction and other acts resulting therefrom;

3 - abuse of legal personality by using it for operations intended to eliminate or reduce taxes through artificial manipulation of the taxable event (abusive tax planning).

## 10) ANSWER TO INQUIRY NO. 6021, OF NOVEMBER 29, 2018 - Taxation Division of The Regional Superintendence of the Federal Revenue Office / Regional Superintendent of the Federal Revenue Office - DISIT/SRRF

The Regional Superintendence of the Federal Revenue Office - 6th tax region approved 4 synopses linked to COSIT Answer to Inquiry no. 529/2017.

The synopses refer to withholding income tax (IRRF), social contribution on net income (CSLL), contribution to social security financing (COFINS) and contribution to PIS/PASEP that may be levied on the amounts paid to medical cooperatives.

According to the Answer, the medical work cooperatives, in the capacity of health assistance plan companies, are not subject to such taxes being withheld at source under agreements with predefined prices.

As to payments made by legal entities governed by private law to medical work cooperatives under agreements of private health assistance plans at post-defined prices, in the modality of operating cost, or as a result of the collection of post-defined co-participation linked to an agreement with predefined or post-defined price, they are subject to withholding income tax.

Read the entire answer to the inquiry [here](#).

## 11) ANSWER TO INQUIRY No. 99,021, OF DECEMBER 11, 2018 - General Taxation Coordination - COSIT

[COSIT Answer to Inquiry no. 99021/2018](#), published on 12/14/2018, provides for the individual income tax.



According to the General Taxation Coordination, earnings from the Free Life Benefit Generator Plan (VGBL) are subject to income tax and withholding income tax, even if the beneficiary suffers from a serious disease.

## 12) COSIT ANSWER TO INQUIRY No. 99023, OF DECEMBER 11, 2018

COSIT Answer to Inquiry no. 99023/2018, published on 12/24/2018, provides for the registration in the Integrated Foreign Trade System for Services, Intangibles and Other Transactions that Produce Property Variations (Siscoserv).

According to the General Taxation Coordination, in the event of insurance purchase from an insurer domiciled abroad and paid by a purchaser residing in Brazil, such purchaser will be the principal and, as a result, responsible for recording the information with Siscoserv, even if an insurance broker domiciled in Brazil mediates the transaction.

If the insurer domiciled abroad is contracted and paid by a policyholder in favor of the importer, both

domiciled in Brazil, the policyholder will be the principal, and therefore responsible for the registration with Siscoserv.

The Answer to Inquiry also addresses other events related to the Siscoserv registration and it is available [here](#).

## 13) COSIT ANSWER TO INQUIRY No. 246, OF DECEMBER 11, 2018

[COSIT Answer to Inquiry no. 3246/2018](#), published on 12/24/2018, provides for tax on financial transactions (IOF) levied on funds from exports.

According to COSIT, IOF is not levied when the funds in a foreign currency maintained in a financial institution abroad derive from Brazilian goods and services exported to other countries by individuals or legal entities.

In this situation, there is no settlement of foreign exchange contract and, therefore, the taxable event does not take place, as defined in article 63, II, of the



Brazilian Tax Code, and in article 11 of Decree 6306/2007.

However, if the funds initially maintained in a bank account abroad are remitted to Brazil after the conclusion of the export, IOF will be levied at 0.38%, as established in the head provision of article 15-B of Decree no. 6306/2007.

As to foreign exchange transactions related to entry of revenue from exported goods and services into Brazil, the IOF will be levied on the foreign exchange transaction at zero rate, as expressly established in article 15-B of Decree 6306/2007.

## 14) COSIT ANSWER TO INQUIRY No. 247, OF DECEMBER 11, 2018

[COSIT Answer to Inquiry no. 247/2018](#) was published on 12/19/2018.

According to COSIT, any payment for liability insurance by a self-employed professional, while performing the work of an accounting technician against no salary, is not characterized as the expense

required for the receipt of the revenue and maintenance of the source, therefore, it is not characterized as deductible expense in the bookkeeping of the cash book.

## 15) SUPERIOR COURT OF JUSTICE APPROVES EIGHT PRECEDENTS IN THE LAST SESSION OF 2018

During the last judgment session of 2018, the First Section of the Superior Court of Justice approved eight new precedents on various topics in the field of public law.

Four of the eight precedents enacted refer to tax law:

**Precedent 622:** The service of a tax deficiency notice interrupts the preemptive period for the assessment of tax credit; once administrative actions are exhausted with the end of the period for filing of objection or upon notification of the final judgment (once the period granted by the administrative court for voluntary payment ends), the limitation period for judicial collection will begin.

**Precedent 625:** The administrative claim for offsetting or refund does not interrupt the limitation period for the action for recovery of undue payment, dealt with by article 168 of the Brazilian Tax Code, or the enforcement of judicial debt instrument against the Public Treasury.

**Precedent 626:** The application of Urban Real State Tax (IPTU) to property situated in an area considered by the local law as able to be developed is not contingent on the existence of the improvements listed in article 32, paragraph 1, of the Brazilian Tax Code.

**Precedent 627:** Taxpayers are eligible for the exemption from Income Tax (or for maintenance of such exemption), and they are not required to demonstrate recent symptoms of the disease or its recurrence.

The other Precedents refer to the nature of environmental damage, possibility of cumulation of pain and suffering and financial redress under the Political Amnesty Law, takeover theory (*teoria da encampação*) in the writ of mandamus and cumulation of the obligation to do/not to do with the obligation to indemnify, pertaining to environmental damage. See below:

**Precedent 623:** The environmental obligations have a *propter rem* nature, and they may be enforced against the current and/or previous owner or possessor, at the creditor's discretion.

**Precedent 624:** Pain and suffering can be coupled with the financial redress established in Law 10559/2002 (Political Amnesty Law).

**Precedent 628:** The takeover theory (*teoria da encampação*) is applied to the writ of mandamus when all the following requirements are met: a) existence of hierarchical relationship between the authority that provided information and the one that ordered the act that is being challenged; b) statement on the merits of the information provided; and c) absence of change of the authority established in the Federal Constitution.

**Precedent 629:** As to environmental damage, the defendant may be held liable for the obligation to do or not to do and for the obligation to indemnify, cumulatively.

## 16) COSIT EXECUTIVE DECLARATORY ACT No. 14, OF DECEMBER 13, 2018

[COSIT Executive Declaratory Act no. 14/2018](#), published in the Federal Official Journal on 12/24/2018, declares that the ICPC Technical Interpretation no. 21, issued by the Accounting Opinion Committee (CPC), does not include any change to or adoption of new accounting methods or criteria and that the contemplated change and adoption do not produce effects on the assessment of federal taxes.

Therefore, legal entities that adopt the accounting procedure established in ICPC 21, in receiving advances in foreign currency, should continue to recognize and measure the revenue, as determined by the tax legislation.

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## RESTRUCTURING MEASURES OF THE NEW GOVERNMENT

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### 1) PROVISIONAL PRESIDENTIAL DECREE No. 870, OF JANUARY 1, 2019

Provisional Presidential Decree no. 870/2019 enacted on 1/1/2019, restructured the bodies of the Federal Government and the Ministries.

Seven ministries were dissolved – Sports, Culture, Planning, Finance, Industry and Commerce, Labor and Public Security –, while two were created (Economy and Citizenship) to incorporate strategic sectors and make the country administration more dynamic. In total, there are 22 ministries.

In addition to making the government structure leaner, the purpose of the restructuring is to increase the integration of measures among the various bodies,

improving corporate governance and preventing incoherent and incompatible actions within the ambit of the high federal administration.

- **MINISTRY OF ECONOMY**

In the new administration, the Ministry of Economy, called a “super-ministry,” encompasses activities of the former Ministries of Finance, Labor, Planning, and Industry and Commerce.

With the end of the Ministry of Finance, SUSEP and PREVIC are now part of the new Ministry of Economy.

- **MINISTRY OF JUSTICE AND PUBLIC SECURITY**

Another significant change was made to the Ministry of Justice, which incorporated the activities of the Ministry of Public Security and is now called Ministry of Justice and Public Security.

Previously part of the Ministry of Finance, the Council for Control of Financial Activities (COAF), responsible

for intelligence initiatives to prevent money-laundering, concealment of assets and financing of terrorism, now is part of the new super ministry of Justice.

- **RIGHTS OF INDIGENOUS PEOPLES**

The Provisional Presidential Decree also changed the attributions connected to the rights of indigenous peoples. These attributions, which were previously under the authority of Funai, a body associated with the Ministry of Justice, now are divided between the Ministry of Agriculture, Cattle Raising and Supplies and the Ministry of Women, Family and Human Rights. The former ministry is responsible for demarcating indigenous lands; the latter, for the other rights of these peoples.

- **MINISTRY OF LABOR**

Another major restructuring measure taken by the new administration was to end the Ministry of Labor, whose



attributions were divided among three ministries: Economy, Justice and Citizenship. However, the constitutionality of the measure that ended the Ministry of Labor is being [questioned in the Federal Superior Court by the Labor and Democrat Party \(PDT\)](#) and by the [National Confederation of the Self-Employed Professionals \(CNPL\)](#), which understand that the measure represents the destabilization of labor and a step backward.

- NATIONAL MONETARY COUNCIL

The National Monetary Council (CMN) was restructured for it to adjust to the combination of ministries that resulted in the Ministry of Economy. The CMN was created by a law in 1964 and is responsible for developing the policy on currency and credit, defining, for example, the inflation targets to be pursued by the Central Bank.

The CMN was composed of the minister of Finance, who was the chairman of the council, the minister of Planning, Development and Management, and the president of the Central Bank. Now, it is composed of the minister of Economy, who will be its chairman, the

president of the Central Bank, and the special secretary of finance of the Ministry of Economy.

## 2) APPROVAL OF NEW CHARTER OF THE COUNCIL FOR CONTROL OF FINANCIAL ACTIVITIES - COAF

Under [Decree no. 9663, of 1/1/2019](#), the new president of Brazil, Jair Bolsonaro, approved the new Charter of COAF, which was previously governed by the terms of Decree 2799/1998, now revoked.

Among the main changes is the possibility of COAF entering into agreements of technical cooperation with public or private entities for the performance of the activities envisaged in the Anti-Money Laundering Law.

Thus, now COAF has the power to gather information in private databases about the assets of the parties under its jurisdiction, increasing the scope of its activities and investigations.

The decree creates two internal COAF bodies. The Financial Intelligence Department, responsible for

analyzing suspicious transactions reported by legal entities, and the Supervision Department, in charge of monitoring the compliance with measures against money laundering and terrorism financing.



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