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"Sped" Rules Come Into Effect

As widely known, the Public System of Digital Accounting Recording ("Sped") will be mandatory as of January 2009 to all companies taxed by the actual profit method. Large companies operating with products, as for instance, fuel and tobacco, were already using the Sped on an experimental basis, as required by the Federal Revenue. With the new rule in force, however, all large companies will be required to send their tax information digitally, thus simplifying the so-called formal requirements (bookkeeping, etc.), required for taxpayers, as well as increasing the Tax Authorities' control over the taxpayers' actions.

Created in 2007 (Decree no. 6,022/07, pursuant to Provisional Measure no. 2,200-2/01), the Sped consists of the modernization of the current system of performance of the obligation to issue accounting books and documents, so that, through such System, the companies no longer send the Tax Authorities information recorded in different ways (allowed then), forcing them to adopt digital files, in a standardized manner.

Created by the combined initiatives of the federal, state and local tax administrations, the Sped is divided into three projects: Digital Accounting Recording ("ECD" or "Accounting Sped"), Digital Tax Recording ("EFD" or "Tax Sped") and Electronic Tax Invoice ("NF-e").

ACCOUNTING SPED (RFB Normative Ruling no. 787/07)

Required for: legal entities subject to taxation by the Corporate Income based on the Actual Profit, in relation to the accounting facts taken place as of January 1, 2009.

Scope: mandatory to digitalize Accounting Journals, Ledgers and complementary books, as well as Daily Trial Balance Sheets, Balance Sheets and entry forms proving the records made therein.

Frequency and delivery terms: the ECD will be sent annually to the Sped up to the last business day of the month of June of the year following the calendar year related to the record (in cases of termination, partial spin-off, total spin-off or merger, the ECD is to be delivered by the legal entities that were terminated, spun-off, merged, acquired, and by the acquiring legal entities, until the last business day of the month subsequent to the event).

Non-delivery Fine: failure to submit the ECD within the due time will result in a fine amounting to R\$ 5,000.00 per calendar month or fraction thereof.

Validation rules and table of codes: Cofis Declaratory Act of Enforcement no. 36/07.

TAX SPED (ICMS Agreement no. 143/06)

Required for: taxpayers of the Tax on the Circulation of Goods, Interstate and Intercity Transportation and Communications Services ("ICMS") or the Tax on Manufactured Goods ("IPI"), pursuant to ICMS Protocol 77/08, combined with COTEPE Act no. 46/08. Taxpayers may be released, provided they are previously authorized by the Inspection of their Federative unit, as well as by the Federal Revenue Office.

Scope: mandatory to digitalize Books and Records of Entries, Exits, ICMS Ascertainment and IPI Ascertainment.

Frequency and delivery terms: mandatory as of January 2009, although it awaits State regulation, which varies according to each Federative unit (São Paulo, for instance, has not yet regulated it).

Non-delivery Fine: depends on the mentioned State regulation.

Validation rules and table of codes: Cotepe Act ICMS no. 09/08.

NF-E (SINIEF Adjustment no. 07/05)

Required for: ICMS taxpayers and, as the case may be, IPI taxpayers.

Scope: replaces Model 1/1-A invoices, for the Sale to Consumers (by the Online Sale to Consumers Invoice - NFVC-On-line"), for Electrical Energy, Transportation Bill (by the CT-e), Communications, Telecommunications, and such other tax documents related to the rendering of communications services or the supply of electrical energy or piped gas.

Effectiveness: regulated by the States, already in force in São Paulo, for instance, since 2007 (Decree no. 52,097/07, combined with CAT Ruling (*Portaria*) no. 162/08).

Non-delivery Fine: depends on the mentioned State regulation (in São Paulo, for example, may reach up to 50% of the operation amount).

Validation rules and table of codes: SINIEF Adjustment no. 07/05, combined with ICMS Cotepe Act no. 22/08.

"Distinguished" and "Special" Inspection of the Federal Revenue of Brazil

The Federal Revenue of Brazil ("RFB") enacted Ruling (*Portaria*) no. 2,521, dated December 29, 2008, informing about the selection criteria of the companies to be subject to inspection in 2009 through the "Distinguished Supervision" and "Special Supervision".

I – Distinguished Supervision

The following legal entities are to be indicated for the Distinguished Supervision:

- (i) those subject to the actual or estimated profit, or profit determined by the tax authorities, whose gross annual revenue stated in the Corporate Economical and Tax Information Statement ("DIPJ") of the fiscal year of 2008, calendar year of 2007, is higher than 65 million Reais;
- (ii) those whose annual gross revenue informed in the Statement of Social Contribution Ascertainment ("Dacon"), related to the calendar year of 2007, is higher than 65 million Reais;
- (iii) those whose annual debts informed in the Statement of Federal Tax Credits ("DCTF"), related to the calendar year of 2007, is higher than 6,5 million Reais;
- (iv) those whose annual de Salary Amounts informed in the FGTS Collection Form and Information to Social Security ("GFIP"), related to the calendar year of 2007, is higher than 9 million Reais; or
- (v) legal entities whose annual debts informed in the GFIP, related to the calendar year of 2007, is higher than 3 million Reais.

II – Special Supervision

The following legal entities are to be included in the abovementioned supervision:

- (i) those subject to the actual or estimated profit, or profit determined by the tax authorities, whose gross annual revenue stated in the DIPJ of the fiscal year of 2008, calendar year of 2007, is higher than 350 million reais;
- (ii) those whose annual gross revenue informed in the Dacon, related to the calendar year of 2007, is higher than 350 million reais;
- (iii) those whose annual debts informed in the DCTF, related to the calendar year of 2007, is higher than 35 million reais;
- (iv) those whose annual de Salary Amounts informed in the GFIP, related to the calendar year of 2007, is higher than 35 million Reais; or
- (v) legal entities whose annual debts informed in the GFIP, related to the calendar year of 2007, is higher than 12 million Reais.

III – Merger, Spin-off and Amalgamation

The legal entities resulting from a spin-off, merger and amalgamation, or others indicated by the General Coordination and Special Coordination of the RFB, may also be subject to these two types of “Supervision”.

The Federal Revenue is to forward a notice to such legal entities, up to the last business day of January of each year, informing on its respective indication for the distinguished supervision.

THIS IS MERELY AN INFORMATIVE NEWSLETTER, RESTRICTED TO VGL CLIENTS. QUESTIONS AND CLARIFICATIONS ON THE MATTERS CONTAINED HEREIN SHOULD BE ADDRESSED TO OUR OFFICE.

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