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"Tax Recovery Program"

Law no. 11.941, which converted Provisional Measure no. 449/08 into law, was published on May 28, 2009.

While the MP granted only the payment in installments, the new law provides for the forgiveness of debts with the National Treasury of up to R\$ 10,000. In addition, tax debts of individuals or legal entities due until 11.30.08 may be paid in up to 180 monthly installments.

MAIN MEASURES:

PERIOD FOR ADHESION

The final term to join the program extends to 11.30.09.

BENEFITS

1. SMALL AMOUNT DEBTS

Debts whose total consolidated amount is equivalent to up to R\$ 10,000, due for 5 (five years) or more, shall be forgiven (article 14).

The limit is to be considered per debtor and separately in relation to (article 14, § 1):

1.1. debts arising from social contributions (article 11 of Law no. 8,212/91);

1.2. debts recorded as collectible by the Federal Government, within the Office of Attorney-General of the National Treasury, arising from social contributions (article 11 of Law no. 8,212/91);

1.3. other debts administered by the Federal Revenue Office of Brazil (concerning IPI, the total number of establishments of the legal entity shall be considered); and

1.4. other debts recorded as collectible by the Federal Government, within the Office of Attorney-General of the National Treasury administered by the Federal Revenue Office of Brazil.

2. TAX DEBTS ADMINISTERED BY THE FEDERAL REVENUE OFFICE / OFFICE OF ATTORNEY-GENERAL OF THE NATIONAL TREASURY

Tax debts, including those arising from social contributions (article 11 of Law no. 8,212/91), recorded or not as collectible, may be paid in installments with the following benefits (article 1, § 3):

No. of Installments	Fine Discount		Interest in Arrears and Discount	Legal Charge Discount
	Default and Ex-officio	Single		
One (payment in cash)	100%	40%	45%	100%
30	90%	35%	40%	100%
60	80%	30%	35%	100%
120	70%	25%	30%	100%
180	60%	20%	25%	100%

2.1. COFINS - PROFESSIONAL CORPORATIONS

Debts originating from the lack of payment of the Contribution to COFINS of professional corporations, related to professional services of a regulated profession, may be included in this program (article 1, § 13).

2.2. LIMITS

The minimum amount of each installment may not be less than (article 1, § 6):

- (i) R\$ 50.00 for individuals; and
- (ii) R\$ 100.00 for legal entities.

2.3. TAX LOSS AND CSLL - NEGATIVE BASIS

The amounts corresponding to the fine (default or ex-officio) and interest can be liquidated, even in debts recorded as collectible, by using tax losses and the negative tax basis of the Social Contribution on Net Income ("CSLL") (article 1, §§ 7 and 8).

3. DEBTS ARISING FROM UNDUE USE OF IPI CREDITS

IPI debts deriving from the undue use of credits related to the acquisition of input levied at a zero tax rate or untaxed input may be paid in installments with the following benefits (articles 2 and following articles):

No. of Installments	Fine Discount		Interest in Arrears and Discount	Legal Charge Discount
	Default and Ex-officio	Single		
One (payment in cash)	100%	40%	45%	100%
30	90%	35%	40%	100%
60	80%	30%	35%	100%
120	70%	25%	30%	100%
180	60%	20%	25%	100%

3.1. LIMIT

The minimum amount of each installment may not be less than R\$ 2,000.00 (article 2, I).

3.2. PARTIAL CONSOLIDATION

Taxpayers are not required to consolidate all the existing debts deriving from the undue use of the IPI credits mentioned above; at the time of the request, they are to state those that they wish to include in the installment plan (article 2, II).

4. THE REMAINING BALANCE OF DEBTS CONSOLIDATED IN THE REFIS, PAES AND PAEX PROGRAMS, AS WELL AS IN THE INSTALLMENT PLANS PROVIDED FOR IN LAWS NO. 8,212/91 (SOCIAL CONTRIBUTIONS) AND NO. 10,522/02 (CADIN)

Taxpayers that still have a balance of tax debts consolidated in these Programs and/or Installment Plans may give up on such and opt for the installment plan below, with the following benefits (article 3, § 2):

Installment / Program	Fine Discount		Interest in Arrears Discount	Legal Charge Discount
	Default and Ex-officio	Single		
REFIS	40%	40%	25%	100%
PAES	70%	40%	30%	100%
PAEX	80%	40%	35%	100%
Social Contributions (Law no. 8.212/91)	100%	40%	40%	100%
Cadin Law (Law no. 10.522/02)	100%	40%	40%	100%

4.1. LIMITS

The minimum amount of each installment may not be less than:

(i) in case of REFIS debts, 85% of the average of the 12 last installments due in the Program, prior to the enactment of MP 449/08;

(ii) in case of REFIS debts in which an exclusion or termination of the Program has occurred within 12 months, 85% of the average of the installments due in such Program, prior to the enactment of MP 449/08; and

(iii) in the other events, 85% of the amount of the last installment due in the month prior to the enactment of MP 449/08.

4.2. INSTALLMENT DEBTS ISSUED DURING THE EFFECTIVENESS OF MP 449/08

Taxpayers that adopted the installment plan provided for at the time MP 449/08 was in force may opt for a re-installment plan, following the rules set forth in the current program (article 1, § 12).

INTEREST

The installments will be adjusted according to the of the Special System of Clearance and Custody ("SELIC") will be required for Federal Bonds.

DEBT CONFESSION

The option for debt installment is considered an irrevocable and irreversible (out of court) confession of the consolidated debts (article 5).

WAIVER

In order to opt for the debt installment, the taxpayer is required to expressly and irrevocably waive any judicial proceedings, including any lawful allegation that may base them, by way of a protocol for motion to dismiss the proceeding with final and unappealable decision. Any deposits in court will be reverted to the Federal Government's treasury, and will be considered for purposes of deduction of the amount consolidated in the program (article 6).

GUARANTEES

The posting of a guarantee or asset inventory will not be necessary, except if the asset has been attached through a judicial debt collection action (article 11).

EXCLUSION

The late payment of three installments, whether consecutive or not, shall result in the exclusion from the program, and for such, a due notification to the taxpayer is required. Only delays exceeding 30 days shall be deemed as default (article 1, § 9).

In the event of termination, the original amount of the debt shall be ascertained and the due legal surcharges shall be applied, deducting the paid installments from the total amounts (article 1, § 14).

TAX ASCERTAINMENT OF REDUCTIONS

The installment equivalent to the amount reduction of fines, interest and legal charges may not be computed in the ascertainment of the tax basis of federal taxes (IR, CSLL, PIS and COFINS) (article 4, sole paragraph).

ADVANCE PAYMENT – INSTALLMENT AMORTIZATION

The taxpayer may advance the payment of installments –provided the amount of each amortization is equivalent to the amount of at least 12 installments– with a discount at the payment of the advance installments (article 7).

SUSPENSION AND EXTINCTION OF PUNISHMENT

Similar to what has happened in the Refis and Paes Programs, the criminal subjective right to punish shall be suspended, and the criminal punishment shall be extinguished upon the full payment of the debts. In the event of termination of the installment plan, with the consequent exclusion of the taxpayer, such suspension shall be ceased and the effects of criminal liability returned, since criminal statute of limitations does not take place during the mentioned suspension period of the right to punish (articles 68 and 69).

PERSONAL AND JOINT LIABILITY

The individual that becomes liable for not paying the taxes due by the legal entity may carry out the following, fully or partially (article 1, §§ 15 to 17):

- (i) the payment of the debts; or
- (ii) the installment payment, provided it is made with the approval of the legal entity.

In case an installment payment is opted for:

- (i) the individual shall be jointly liable, along with the legal entity, for the installment debt;
- (ii) the enforceability of the tax credit will be suspended and the following applied: (ii.1) the effects of joint liability, pursuant to article 125 of Law no. 5,172/66 (National Tax Code - CTN); and (ii.2) the interruption of the statute of limitations, by way of the taxpayer's recognition of the debt at the time of adhesion to the installment plan (article 174, IV, of the CTN); and
- (iii) the judgment at administrative level will be suspended.

In the event of termination of the installment plan, the legal entity shall be demanded to pay the remaining balance, including the due legal surcharges, deducting the paid installments from the due amount.

When debts corresponding to any criminal actions are fully paid, the consequent extinction of punishment shall ensue (article 69, sole paragraph).

REGULATION

The Federal Revenue Office and the Office of Attorney-General of the National Treasury shall issue a rule regulating the present program within 60 days (article 1, § 3).

ESTE BOLETIM É MERAMENTE INFORMATIVO E RESTRITO AOS CLIENTES DO VGL. DÚVIDAS E ESCLARECIMENTOS SOBRE AS MATÉRIAS AQUI VEICULADAS DEVERÃO SER DIRIGIDAS AO NOSSO ESCRITÓRIO.

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