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VELLOZA & GIROTTTO
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Decree No. 7,603, of 11.09.2011

Definition of Priority Projects for the purposes of special levying method for the Income Tax on income derived from debentures issued in accordance to Article 2 of Law No. 12,431, of 06.24.2011

On November 10, 2011, Decree No. 7,603, of 11.09.2011 (“**Decree No. 7,603/11**”) was published, regulating the requirements for the approval of investment projects considered as priority projects in the areas of infrastructure (“**Infrastructure Projects**”) or intensive economic production in research, development and innovation (“**Intensive Economic Production Projects**”) – altogether, “**Priority Projects**” – for the purposes of Article 2 of Law No. 12,431, of 06.24.2011 (“**Law No. 12,431/11**”), which establishes a special levying method for the Income Tax applicable to income derived from debentures issued by a Special Purpose Company (“**SPC**”) incorporated with the purpose of carrying out the abovementioned Priority Projects, as already commented by us in our Newsletter nº 30.

Below are our brief comments on Decree No. 7,603/11:

Priority Projects

Priority Projects are deemed to be those that result in an investment in the areas of infrastructure or intensive economic production in research, development and innovation, approved by the responsible sectorial Ministry, and whose purpose is to implement, expand, maintain, recover, adjust or modernize the following sectors (“**Sectors**”) of the economy, among others:

- (i) Logistics and transportation;

- (ii) Urban mobility;
- (iii) Energy;
- (iv) Telecommunications;
- (v) Radio broadcasting;
- (vi) Basic sanitation; and
- (vii) Irrigation

Priority Projects shall be managed and developed by a SPC, which shall be responsible for submitting such Projects to the approval of the responsible sectorial Ministry, given through the publication of an “**Approval Order**”, to be requested through the filing of a specific form, along with the data and documents defined by Decree No. 7,603/11, among which a Tax Debt Clearance Certificate related to federal taxes.

Therefore, such projects will be considered as Priority Projects (for the purposes of Article 2 of Law No. 12,431/11) only after the publication of an Approval Order issued by the head of the responsible sectorial Ministry, containing data related to the SPC as well as the description of the Project to which it is entitled, and specifying the Sector (among the ones pointed out above) to which it conforms.

A SPC can take the form of a publicly held company, with bonds/securities admitted to negotiation in the market.

The SPC, responsible for developing and managing the relevant Priority Project, shall:

- (i) Keep up-to-date, before the responsible sectorial Ministry, the list of legal entities who belong to the relevant SPC;
- (ii) When publically issuing debentures, highlight the number and the publication date of the Approval Order of the relevant Priority Project, as well as the “**Commitment**” of effectively using the funds obtained from the Government in the development of the newly approved Project, on the first page of the Prospect and of the Announcement of Commencement of Distribution, or of the Announcement of Termination and of the advertising material in case of a Distribution with Restricted Efforts. The Brazilian Securities Commission (“**CVM**”) shall be responsible for defining the means through which such Commitment shall be highlighted in the relevant public offers;
- (iii) Keep the documentation related to the use of the funds obtained from the Government for five years, counted as of the due dates of the relevant debentures, for consultation and supervision by the monitoring bodies.

The sectorial Ministry responsible for the Priority Project shall:

- (i) Inform to the unit of the Federal Revenue (“**RFB**”) with jurisdiction over the SPC’s headquarters the occurrence of any situation *evidencing* that the Priority Project has not been developed in accordance with the Approval Order, whenever such situation is acknowledged;
- (ii) Keep the “records of the analysis procedure” of the Project filed, whether through physical or electronic means, and available for consultation and supervision by the relevant monitoring bodies, for the period of five years, counted as of the conclusion of the Project.

It is worth stressing that, according to Article 2, §5º, of Law No. 12,431/11, legal entities that belong to the SPE but do not develop the relevant Priority Projects shall be subject to a penalty equivalent to 20% of the total amount of the issuance of the relevant debenture.

The head of the sectorial Ministry responsible for the analysis of the Project shall edit an Ordinance establishing minimum requirements for the approval of a project as a Priority Project and the means through which the development of such Project shall be supervised.

In the case of Priority Projects of Intensive Economic Production, the responsible sectorial Ministry shall be the Ministry of Science, Technology and Innovation, except if the Project consists in an Infrastructure Project as well.

The deadline for the issuance of debentures by an SPC for the development of approved Priority Projects is 12.31.2015.

Decree No. 7,603/11 has come into force on the date of its publication, 11.10.2011.

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

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