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Law No. 12,543/2011 – IOF/TVM – Derivative Contracts

Law No. 12,543/2011: conversion of MP No. 539/2011 – changes regarding the IOF/TVM applicable to derivative contracts

Today - December 09, 2011 -, Law No. 12,543, of December 08, 2011 (“**Law No. 12,543/2011**”) was published, which changes a few existing provisions regarding the Tax on Credit, Foreign Exchange, Insurance and Securities Transactions (“**IOF**”), the type levying on transactions with bonds and securities (“**IOF/TVM**”) specifically applicable to transactions involving financial derivative contracts (“**IOF/TVM Derivatives**”).

The abovementioned Law No. 12,543/2011 has legally maintained, by means of its Article 2, the institutions authorized to register derivatives contracts as tax collector agents in connection with transactions involving derivative contracts, as already set forth by MP No. 539/2011 (“**MP No. 539/2011**”) – subject of our Newsletter Special Edition No. 37, of 07.28.2011.

Please find below our brief comments exclusively regarding the new rules brought by Law No. 12,543/2011, in relation to Provisional Measure No. 539/2011:

Article 1 of Law No. 12,543/2011 – new assignments for the Brazilian Monetary Council (“CMN”) for the establishment of conditions for the negotiation of derivative contracts

Article 1 of Law No. 12,543/11 has allocated a few rules established by MP No. 539/2011 into Law No. 6,835, of 12.07.1976 (“**Law No. 6,385/1976**”), and included a few new rules in relation to the ones contained in MP No. 539/2011, as follows:

Article 1 of MP No 539/2011 (which establishes the ability of the CMN for the establishment of conditions for the negotiation of derivative contracts) was inserted, in the same terms, as item VI of article 3 of Law No. 6,385/1976. Law No. 12,543/2011 has also included new paragraphs 1 and 2,

which were not included in MP No. 539/2011 and establish that: **(i)** save for the exceptions made by Law No. 12,543/2011, the supervision of the financial and capital markets will remain to be carried out by the Central Bank of Brazil, under the terms set forth by the legislation in force; and **(ii)** the specific conditions for negotiation of derivative contracts, to be established by the CMN for purposes of monetary and foreign exchange policies, cannot be demanded in relation to transactions that are uncompleted at the date of publication of the relevant deed/rule that establishes it.

Article 4 of MP No. 539/2011 (which establishes the conditions for the validity of derivative contracts – i.e., registration in clearing houses or entities that render clearing, settlement and registration services) was inserted, without any changes, as paragraph 4 of article 2 of Law No. 6,385/1976.

Article 3 of Law No. 12,543/2011 – derivative contracts carried out by exporting legal entities for hedging purposes

Article 3 of Law no. 12,543/2011 included paragraphs 4, 5, 6 and 7 into article 2 of Law No. 8,894, of 06.21.1994 (“**Law No. 8,894/1994**”), regulating transactions involving derivative contracts carried out by exporting legal entities for hedging purposes, establishing that the exporting legal entity may, with regard to hedge transactions, subtract (deduct) from the IOF to be collected by it as a taxpayer, owed in each period, the IOF/TVM Derivatives already ascertained and collected based on the adjusted notional value of the contracts, as per letter “c” of item II of article 2 of the abovementioned Law No. 8,894/1994. In case it is impossible to make such discount, the legal entity may request the refund or offset of the respective IOF/TVM Derivatives’ amount against other tax or contributions administered by the Federal Revenue Office (“**RFB**”), except for the social contributions established by letters “a”, “b” and “c” of the sole paragraph of article 11 of Law No. 8,212, of 24 July, 1991. Paragraph 7 also sets forth that all of the abovementioned provisions (i.e., the ones given by paragraphs 4 and 5 of article 2 of Law No. 8,894/1994) shall be regulated by the RFB.

Furthermore, Law No. 12,543/2011 also establishes that the portion of IOF/TVM Derivatives discounted, refunded or offset in the form described above shall not be deductible for purposes of ascertainment of the taxable income and of the tax basis of the Social Contribution of Profits (“**CSLL**”).

Article 5 of Law No. 12,543/2011– exemption/discharge from IOF/TVM Derivatives regarding the period/triggering events occurred between 07.27.2011 and 09.25.2011

Law No. 12,543/2011 discharges/releases from the applicability of IOF/TVM Derivatives the triggering events occurred between 07.27.2011 and 09.15.2011.

Article 6 of Law No. 12,543/2011 – entry into force

Lastly, article 6 establishes that the rules set forth by of Law No. 12,543/2011 shall come into force as of the date of its publication (i.e., December 09, 2011), save for paragraphs 4 through 7 of article 2 of Law No. 8,894/1994 (inserted by article 3 of Law No. 12,543/ 2011), which shall produce effects as of the date of September 16, 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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