

## VGL NEWS

---

NOVEMBER/05

SPECIAL EDITION No. 5

---

### **STF Declares the Unconstitutionality of the Increase in PIS and COFINS Calculation Basis**

On November 9th, 2005, the Brazilian Supreme Court (*Supremo Tribunal Federal* - STF) declared, by majority of votes (6 x 4), that the increase of the calculation basis of PIS and COFINS, established in paragraph 1 of art. 3 of Law no. 9,718/98, is unconstitutional.

The legal provision that was declared unconstitutional increased the calculation basis of PIS and COFINS to all of the revenues of legal entities, including financial revenues. Therefore, the aforementioned contributions would return to the previous status in which they were levied exclusively on gross revenues resulting from the sale of goods and/or services.

Although not specifically analyzed, we believe that the judgment should also lead to the declaration of unconstitutionality regarding the demand of these contributions from financial institutions and similar entities, established in the same law.

Marco Aurélio (reporting judge), Sepúlveda Pertence, Carlos Ayres Britto, Carlos Velloso, Cezar Peluso e Celso de Mello voted in favor of the unconstitutionality. These same Justices also considered the increase of the COFINS rate unconstitutional, but were defeated. Therefore, the increase of the rate has been maintained.

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

Velloza, Giroto e Lindenbojm Advogados Associados  
(55 11) 3145 0055  
mail@vgladv.com.br