

## VGL NEWS

---

DECEMBER/05

SPECIAL EDITION No. 6

---

### **Law 11,196/05 – Changes in Tax Legislation**

In our Portuguese Special Edition No. 39 we discussed Provisional Measure 252/05, the so-called “Good MP” (the acronym “MP” stands for *medida provisória* or provisional measure).

An MP is a rule with force of law originated by motion of the president. Unless debated and approved by Congress within 60 days (a period renewable a single time for an equal period), an MP expires and is cancelled and all action taken in reliance thereon during its term of effectiveness is deemed null and void. Such was the fate of the Good MP that earned its name because rather than aggravating the tax burden, as so often has been the case, its provisions actually granted some measure of tax relief and incentives. The opposition faced by the Good MP was not so much as to its contents, but to the use of an MP, a controversial type of normative act, instead of an ordinary law to govern the matter.

To remedy things, in particular, uphold action taken by taxpayers with basis on the Good MP while it was in force, and ensure the applicability of the Good MP features going forward, Congress passed Law No. 11,196 that was promulgated on November 21, 2005. The major changes brought about by the Law concern the time of payment of taxes, all as highlighted below.

#### **Term for Payment of Taxes**

Articles 70 through 75 Law 11,196 extended these payment terms as follows:

#### **Withholding Income Tax (“WHT”)**

For those taxable events occurring on and after January 1, 2006, WHT should be paid as follows:

- a) On the date of the taxable event, whenever:
  - (i) Income is attributed to persons resident or domiciled abroad; and
  - (ii) Payments are made to unidentified beneficiaries;
- b) By the third business day following the 10-calendar day interval of the calendar month in which the taxable events occur, in the case of:
  - (i) Interest on equity and financial investments, including those attributed to persons resident or domiciled abroad, and lottery-linked savings financial products;
  - (ii) Prizes, including those distributed in the form of assets and services, obtained in contests and drawings of any type and profits deriving from such prizes; and

## **VELLOZA, GIROTTO E LINDENBOJM**

*Advogados Associados*

- (iii) Fine or any other entitlement payable or credited by an entity even though on account of indemnification, to a natural person or entity, including exempted by reason of breach of contract;
- c) By the last business day of the month following the period of ascertainment in the case of income and capital gains distributed by real estate investments funds; and
- d) By the last business day of the first 10-calendar day interval of the calendar month following that in which the taxable events occur, in all other cases, exception made to those that follow:
  - (i) In December of 2006, when payments shall be made by the third business day of the following first 10-calendar day interval, for taxable events that occur in the first and second 10-calendar day intervals, and by the last business day of the first 10-day interval of the month of January 2007, for the taxable events that occur in the third 10-day interval;
  - (ii) In December of 2007, when payments shall be made by the third business day of the second 10-calendar day interval, for taxable events that occur in the first 10-calendar day interval, and by the last business day of the first 10-day interval of the month of January 2008, for the taxable events that occur in the second and third 10-day intervals.

### **Tax on Credit Transactions, Insurance, Foreign Exchange and Securities Transactions (“IOF”)**

For taxable events that occur on and after January 1, 2006, the payment of IOF should be made as follows:

- a) By the third business day following the 10-calendar day interval in which the taxable events occur, in the case of the acquisition of gold deemed as a financial asset; and
- b) By the third business day following the 10-calendar day interval of collection or booking of the tax, in all other cases.

### **Provisional Contribution on Financial Transactions (“CPMF”)**

In accordance with the sole paragraph of article 10 of Law No. 9,311/96, as amended by Law No. 11,196/05, the payment or withholding and payment of CPMF shall be made no less often than once every 10-calendar day interval, as shall be regulated by the Minister of Finance.

### **Social Contribution on Profit (“CSLL”), Social Integration Tax (“PIS”) and Social Contribution Tax (“COFINS”)**

Article 35 of Law No. 10,833/03 provides that amounts withheld in respect of payments made by one entity to another in return for certain services, including, among others, services relating to credit advisory, marketing, credit management, risk assessment, and management of payables and receivables. Pursuant to Law No. 11,196/05, such amounts should be paid by the last business day of the 15<sup>th</sup> calendar day period following that 15<sup>th</sup> calendar day period in which payment to an entity supplier of goods or provider of services, rather than the last day of the following week.

**Transactions Performed in the Forward Market - Effects on the Determination of IRPJ, CSLL, PIS and COFINS**

Pursuant to article 110 of Law No. 11,196/05, financial institutions and all other institutions authorized to operate by the Central Bank of Brazil must compute as earnings or expenses in the transactions carried out in forward markets, for the purposes of determination of the base of calculation of PIS, COFINS, corporate income tax and CSLL:

- a) the difference, ascertained on the last business day of the month, between the fluctuation of the rates, prices or indexes traded (difference of curves), the balance of which is to be determined at the time of settlement of the contract, assignment or termination of the position in the cases of:
  - (i) swap and forward transactions;
  - (ii) futures and other derivatives subject to daily or periodic financial adjustments of position whose underlying contract assets are spot interest rates or fixed income investments;
- b) the result of the algebraic sum of the adjustments ascertained monthly in the case of the markets mentioned above whose underlying contract assets are goods, currencies, floating rate assets, forward interest rates or any other asset or economic variable for which application of the above criterion is not possible; and
- c) the result ascertained at settlement of the contract, assignment or termination of position, in the case of options and other derivatives.

Transactions performed over-the-counter shall have their losses deducted only if they have been registered in a system that has criteria to ascertain if the trading prices are consistent with market prices.

The Executive Branch shall lay down the regulations relating to these transactions.

**Hedging Transactions in Foreign Exchanges**

Hedging transactions carried out in forward markets in foreign exchanges shall have their earnings and expenses appropriated by the result:

- (i) of the algebraic sum of the adjustments ascertained monthly in the case of contracts subject to adjustments of position; and
- (ii) obtained in the settlement of the contract, in the case of all other derivatives.

**Transactions Outside of Foreign Exchanges**

Expenses or losses incurred in transactions performed outside of foreign exchanges may not be deducted in the determination of PIS and COFINS.

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