

VGL NEWS

OCTOBER/06

SPECIAL EDITION No. 8

Law 12,399/06 – STATE OF SÃO PAULO TAX REDUCTION

Law No. 12,399 of September 29th (published in the State of São Paulo Official Gazette on September 30, 2006) (“Law 12,399”), grants a reduction of interest and fines payable in respect of debts of State Value Added Tax on Sales (ICM) and State Value Added Tax on Sales and Services (ICMS) (collectively the “Taxes”).

The reduction is applicable to taxable events that have occurred up to December 31, 2005 and comprises:

- (i) Taxes that fell due and remain unpaid till date (“Original Tax Debt”), and
- (ii) Taxes that fell due the amount of which, together with the amount of past due interest and past due fine, were the subject of official rescheduling with the state tax authority (“Rescheduled Tax Debt”).

In accordance with Law 12,399 the taxpayer that pays in full the Original Tax Debt or prepays the Rescheduled Tax Debt, as the case may be, by the dates set forth in the table below will enjoy a reduction at the rates shown opposite such dates:

Payment Date (on or before)	Interest Reduction	Fine Reduction
October 31, 2006	50%	90%
November 30, 2006	50%	80%
December 22, 2006	50%	70%

Original Tax Debt and Rescheduled Tax Debt, however, are adjusted by variation of the applicable index up to the date of payment.

In the case of Original Tax Debt, the reduction of past due interest and fine directly, whereas in the case of Rescheduled Tax Debt the reduction is obtained by segregating Tax Debt principal from the items of interest and fine components which make up such Rescheduled Tax Debt and applying the reduction on each item.

Payments made in reliance on the reduction granted by Law 12,399 has the following effects:

1. The irrevocable acknowledgment of Original Tax Debt and, as a result, the (i) waiver of the right to challenge the assessment thereof, or withdrawal of any action (court or administrative) that may already have been taken to exercise and enforce such right; and
2. Ineligibility to cumulate other benefits regarding reduction of fines.

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It is important to emphasize, however, that in the case of Taxes that are being questioned in court, the granting of reduction does not discharge the taxpayer from court costs and fees, as well as the State's attorneys' fees (at the rate of 5% of the amount overdue). In the same way, the Law 12,399 does not grant a refund or offset of the amount previously collected or the release of judicial deposits, when there is a *res judicata* ruling in favor of the State of São Paulo.

In most cases, the reduction can be seen as an advantageous opportunity for the taxpayer to settle debts with the State. Cases pending court ruling should be re-evaluated. If they present little likelihood of success, the taxpayer should opt for reduction, particularly considering that in the most cases it would be entitled to credit itself for ICMS.

Lastly, we would like to inform that the State of São Paulo has just enacted Resolution No. 3, of October 2nd (published in the State of São Paulo Official Gazette on October 3rd, 2006), establishing all the procedures regarding the ICMS debts payments under the Law No. 12,399.

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

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