
COVID-19: Postponement of the collection of federal taxes

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In the face of the public calamity plaguing Brazil there has been considerable discussion on the measures that the Federal Government will adopt along tax lines, especially given the impossibility to fiscal obligation compliance with the paralyzation of industrial/commercial activities.

Within this scenario, it is important to point out Ministry of Finance (MF) Directive no. 12 of 2012.

This Directive establishes the possibility of postponing the due dates of federal taxes for 90 (ninety) days. The Directive, however, was never regulated by the Brazilian Internal Revenue Service (RFB) or The Attorney General's Office of the National Treasury (PGFN).

To apply this benefit, thus, can be called for in two ways: 1) judicially or 2) administratively.

The judicial means is being sought by many taxpayers with success, certainly providing immediate comfort towards guaranteeing the postponement. We are representing a number of our clients to this end and to date there has not been a single outcome in the negative in their respect.

Immediate recourse via the Judiciary, however, may not be the best option, as we explain below.

The use of the judicial measure is increasing, posing the imminent risk of Federal Government financing collapse. Thus, it is possible that actions might be taken by the PGFN to nullify these decisions, which might result in even greater loss to taxpayers.

As we always evaluate the best options for our clients, we identify the possibility of obtaining postponement via the administrative ambit, without the taking of any action judicially, at least at this turbulent time.

The advantage of the administrative means is that, in the case of its being questioned, said questioning can be addressed administratively and, subsequently, judicially, as well as permits the possibility of the company being benefited by a decision of the Federal Government automatically guaranteeing the postponement.

Contrastingly, direct use of the juridical means could result in the relief being sought being denied and the foregoing of the administrative remedy.

Our Tax team is available to discuss the pros and cons of these options in accordance with the particular situation of each company.

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