

Exemption of service tax on exports of financial services

The Municipal Taxpayers Council of the city of São Paulo (last level of administrative jurisdiction for municipal taxes) has recently rendered an important decision unanimously stating that the export of financial advisory services by Brazilian renderers is not subject to the Municipal Service Tax ("ISS"), usually charged at a rate of up to 5% on the price of services.

Pursuant to Article 2 of Complementary Law No. 116, of July 31st, 2003, exports of services are ISS-exempt provided that the services' "result" is verified out of Brazil.

However, pursuant to an old decision rendered by the Superior Court of Justice (STJ) in disagreement with the above-mentioned law, the tax exemption would be applicable only if the service is rendered out of Brazil.

Said decision from STJ was not unanimous. Justice Teori Zavascki – currently a Justice of the Federal Supreme Court (STF) – expressed in his vote that the taxable event of ISS does not occur if the services are consumed abroad by a foreign beneficiary, and that an exported service is presupposed to be rendered in Brazil, not overseas.

Accordingly, whenever the service importer is located out of Brazil and enjoys the economic benefit arising from the service, ISS is not levied, regardless of the place where the service provider is located or the service rendered, as well as of whether or not the foreign beneficiary, in some connection with the service, purchases or sells assets in Brazil or undertakes other transactions and activities in the country.

The new precedent clearly states that service results are verified where the utility of the service is consumed or enjoyed by its foreign beneficiary, and that this can only take place where the direct beneficiary is located.

Therefore, revenues emerging from the export of financial services such as financial advisory, custody of assets, management of fund portfolios, and other similar fees are not submitted to the ISS.

On the other hand, consumption of services by non-Brazilian residents in Brazilian territory, such as bank fees charged on cash withdrawals from local ATMs, are taxable by the ISS.

The recent decision of the Municipal Taxpayers' Council will certainly encourage banks and other service providers in Brazil to challenge the ISS on exports of services, as guaranteed by law.

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