

NEW FRAMEWORK FOR SETTLING TAX DISPUTES

Disputes with tax authorities before administrative and judicial courts are a notorious feature of doing business in Brazil, and a central element of the so-called Brazil Cost, an expression coined long ago to designate the vast array of factors hampering productivity in the country.

According to the Government Balance Sheet, amounts in dispute relating to tax matters in 2018 involved, only at the federal level, approximately \$812bn USD (\$3.4tn BRL), or 50 per cent of Brazil's GDP that year.

Against this background, the administration has just taken an ambitious initiative aiming at the reduction of excessive litigation related to tax disputes and at greater effectiveness of credit recovery. On October 17, it issued Provisional Measure 899 (MP 899), that allows the Federal Government and taxpayers to negotiate and settle tax disputes.

The legal department of the Ministry of Economy estimates that the new framework will enable 1.9m taxpayers who currently feature as in debt with the Revenue Service for an amount exceeding \$334bn USD (\$1.4tn BRL) to become current again. In addition, the administration expects that the MP will lead to the closure of thousands of procedures currently outstanding before the federal tax court CARF, involving amounts exceeding \$143bn USD (\$600bn BRL).

MP 899 provides for two types of tax settlements. The first relates to credits registered as overdue tax liabilities; the second to credits associated with tax disputes that fulfill two requirements: the matter in dispute has to be recurrent and the dispute must be deemed legally relevant by authorities.

In the case of settlements of credits registered as overdue tax liabilities, only those classified as unrecoverable or difficult to recover, according to criteria previously established by the offices of the attorney general of the National Treasury (PGFN), will qualify. As a general rule, discounts may reach 50 per cent of the total debts and payment may be made in up to 84 monthly installments - discounts do not apply to principal, nor to amounts of fines arising from crimes or tax fraud. For individuals and small businesses, the discount may be increased to 70 per cent, and payments up to 100 monthly installments.

This arrangement is different from installment programs that have been tried before by previous administration, as MP 899 considers the profile of each debtor instead of granting significant discounts indiscriminately, including taxpayers with ability to pay their debts fully. It resembles the "Offer in Compromise" adopted by the United States Internal Revenue Service (IRS), in which facts and circumstances that are peculiar to the specific taxpayer/debtor - such as ability to pay, income, expenses and asset equity - are taken into account.

As for the settlement of matters involving relevant and recurrent disputes, the settlement shall entail the taxpayer executing a model template which is still to be issued by the Minister of the Economy. This template will set forth the requirements and the factual situations covered and may provide for discounts and payments in up to 84 monthly installments.

The transaction is already available to more than 1 million debtors with debts of up to \$3.6m USD (\$15m BRL). This noteworthy initiative does not, however, address the ultimate causes of the high litigation record – namely, the complexity of the Brazilian tax system and the uncertainty concerning the interpretation of these rules by tax authorities. Proposals aimed at tax reform, which has been named a priority by Brazilian authorities, will reportedly be one of the next steps in this administration's agenda for legislative changes.

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