

JOSÉ MAURÍCIO MACHADO	ISABEL A. BERTOLETTI	LUÍS ROGÉRIO G. FARINELLI	JÚLIO M. DE OLIVEIRA
CARLOS AUGUSTO DA CRUZ	EDMILSO GOMES DA SILVA	CRISTIANE M. S. MAGALHÃES	ROSIENE SOARES NUNES
MAURI BÓRNIA	LISIANE B. H. MENOSSI PACE	RICARDO M. DEBATIN DA SILVA	DANIEL LACASA MAYA
RENATA ALMEIDA PISANESCHI	ERIKA YUMI TUKIAMA	PAULO ROGÉRIO GARCIA RIBEIRO	ROBERTO FLEURY A. CAMARGO
LUCIANA FELISBINO	GUSTAVO DE FREITAS LEITE	MAURO TAKAHASHI MORI	RENATO SILVEIRA
ROCHELLE RICCI	SORAIA MONTEIRO DA MATTA	CAROLINA ROMANINI MIGUEL	JULIANA MARI TANAKA
LANA PATRÍCIA PEREIRA BAPTISTA	MARCEL AUGUSTO SATOMI	SUZANA CAMARÃO CENCIN	EDUARDO AMIRABILE DE MELO
GABRIEL CALDIRON REZENDE	MIRELLA ANDREOLA DE ALMEIDA	LORENA MORAIS XIMENES CAMPOS	FERNANDO FARINELLI
PEDRO CAVALCANTI BOTELHO	ANDRÉ T. JUNQUEIRA AMARANTE	STEPHANIE JANE MAKIN	ANDRÉ BLOTTA LAZA
AMANDA ALVES BRANDÃO	RAFAEL OKANO P. DE OLIVEIRA	DANIELA CATTUCCI CARONE	FERNANDO V. A. TELES DA SILVA
PALOMA YUMI DE OLIVEIRA	NATHÁLIA DE A. MARQUES FRAGA	RAFAELA SCORZA DE A. CASTRO	GUILHERME LANZELLOTTI MEDEIROS
RAFAEL GOUVEIA BELLO	LÚCIO BRENO PRAVATTA ARGENTINO	NATÁLIA MAZIERO DE OLIVEIRA	ROGÉRIO GASPARI COELHO
CAIO FINK FERNANDES	AMANDA DE OLIVEIRA GOMIDE	RENATA DALLA TORRE AMATUCCI	DANIELLE RAMOS DA SILVA
RENATA ÁBUD DE OLIVEIRA	MABEL DE ÁVILA SANTOS	ROBERTO MAGNO RIBEIRO NETO	MARTHINA GASQUES TEIXEIRA
IVA MARIA SOUZA BUENO	AMANDA REGIANI ZELI	DANIELLA CAMARGO DE BARROS	FELIPE MUTTI DE ALMEIDA MONTEIRO
CAETANO THOMAZ F. ANTUNES	MANUELA CURTO DUARTE SILVA	KRISTINE MONTEIRO JENSEN	STELLA LAMARDO GROTHGE
FELIPE CASSAROTTI DE SOUZA	GUSTAVO BONI DOS SANTOS	VICTOR BULÇÃO MARTINELLI PINTO	BEATRIZ DE CARVALHO EDINALDO
RODRIGO GONZAGA DE OLIVEIRA	RENATO CARVALHO DE CASTRO	CASSIO M. GUALBERTO NEVES	KAROLINA DE MELLO PEREIRA
INGRID CRISTINA SILVA DE SOUZA	EMANOIL CONSTANTINO SAMIOTIS	GABRIELLA OLINTO DOS ANGELOS	VICTOR ANTONIO BRUNO MOREIRA
JOSÉ MARIA QUEIROZ JUNIOR	MARIA ALMEIDA SANCHES	DEBORA FREIRE GONÇALVES	
RAFAELLA TCHAKERIAN HAKIM	GABRIELE M. HOLLAND RONDON	GABRIEL BARONI DE ANDRADE	
PRISCILA DORMEIA GUILHOMÉ	MARIANA MARIOT PRADO	JULIA RODRIGUES ANDRADE	
ISABELLA G. PEREIRA BARRETO	ANA CAROLINA GEORGES. E CASTRO	RODRIGO COLOZIO TRUJILLO	



SÃO PAULO
 AV. BRIGADEIRO FARIA LIMA, 1656
 11º ANDAR (01451-918)
 SÃO PAULO - SP - BRASIL
 T. + 55 11 3819 4855

BRASÍLIA
 COMPLEXO BRASIL XXI - BLOCO A
 SHS QUADRA 06 CONJ. 6 - SALA 808
 ASA SUL (70316-100)
 BRASÍLIA - DF - BRASIL
 T. + 55 61 3039 8081

RIO DE JANEIRO
 PRAÇA FLORIANO, 19 - 4º ANDAR
 CENTRO (20031-050)
 RIO DE JANEIRO - RJ - BRASIL
 T. +55 21 3550-3000

CONSULTOR
 NELIO B. WEISS

www.machadoassociados.com.br

LEGAL LETTER / OCTOBER 2017

BRAZIL INCREASES TAX BENEFITS FOR THE OIL AND GAS SECTOR¹

Luis Rogério Godinho Farinelli, Fernando Telles da Silva, and Mabel de Ávila Santos²

The federal government has amended the customs and tax treatment applicable to the oil and gas sector to boost investment and provide tax certainty.

- Provisional Measure (PM) 795 and Decree 9128, published on August 18 2017, bring changes to the legislation concerning the customs and tax treatment related to the exploration, development and production of oil, natural gas, and other hydrocarbon fluids. They aim to improve the tax and customs legislation applicable to the oil and gas (O&G) industry, establishing clear tax rules to provide legal certainty to the companies and tax authorities, and encouraging investments in the sector.
- PM 795, which will come into force on January 1 2018, will allow the full deduction of expenses related to the exploration and production of oil and natural gas from the taxable bases of the corporate income tax (IRPJ) and social contribution on net profit (CSLL). A similar provision was only applicable to Petrobras, and now the deduction has been extended to other O&G companies.
- Moreover, companies will be allowed to fully deduct the charges regarding the exhaustion of assets formed until December 2022, as well as depreciation charges of machinery, equipment and facilitation instruments used in O&G activities.
- PM 795 amended Law 9481/1997, establishing new percentages for the application of a 0% rate of the withholding income tax (IRRF) on remittances abroad, in the event of simultaneous execution of charter or vessel lease agreements, as well as service agreements, related to the exploration and production of oil or natural gas, executed between related companies.

¹ This article was first published by **International Tax Review** in October 2017 on www.internationaltaxreview.com

² Luis Rogério Godinho Farinelli, Fernando Telles da Silva, and Mabel de Ávila Santos are members of the Tax and Customs area of **Machado Associados**

5. Accordingly, as of January 1 2018, the new percentages applying to the total value of the agreements (i.e. vessel lease/charter and services agreements, executed simultaneously) for IRRF exemption purposes, will be the following:

- 70% for vessels with floating production units or storage and unloading systems (formerly 85%);
- 65% for vessels with a drilling-type system for drilling, completing and maintaining wells (formerly 80%); and
- 50% for other types of vessel (formerly 65%).

6. In the case of simultaneous execution of charter or vessel lease agreements, as well as of service agreements, related to the activities of transportation, handling, transfer, storage and regasification of liquefied natural gas, executed between related parties, the application of the 0% IRRF rate is limited to 60% of the total value of the agreements.

7. We emphasise that the new percentages do not apply to vessels used on maritime support (i.e. executed for the logistic support to ships and installations in national territorial waters and in the economic zone, performing research and exploitation of minerals and hydrocarbons).

8. Furthermore, the PM allows companies to adopt the new percentages for events that occurred until 2014 by paying (in one lump sum or in 12 instalments with interest) in January 2018 the IRRF differences plus interest, without penalties, provided that the companies give up pre-existing administrative proceedings and judicial lawsuits regarding such amounts.

9. The provisions of Law 9481/1997 were amended to include new conditions regarding the definition of the service providers and chartering entities deemed as related parties, as of the publication date of August 18 2017, of PM 795/2017.

10. Additionally, the PM clarifies that the definition of a fixed percentage for the applicability of the 0% IRRF rate does not change the terms of the agreement and the nature of the lease/charter agreement for purposes of the (non) levy of the contribution for intervention in the economic domain (CIDE), and social contribution on the imports of goods and services (PIS-import and COFINS-import). Also, it clarifies that an IRRF tax rate of 25% applies to remittances abroad to entities located in tax havens or an underprivileged tax regime, calculated on the total amount of the remittance.

11. Further, the PM provides that, until December 31 2019, the profit earned abroad by a directly or indirectly controlled or related company, regarding the activities performed in Brazil in the oil and natural gas industry, should not be included in the calculation of the IRPJ and CSLL of the Brazilian parent company.

12. Another relevant development was the introduction of a new special import regime with the suspension of federal taxes for goods imported on a permanent basis, which are intended for the activities of exploration, development and production of oil, natural gas and other hydrocarbon fluids, comprising the import duty (II), excise tax (IPI), PIS-import and COFINS-import. This new import regime with tax suspension was designed to eliminate distortions in the REPETRO temporary admission regime.

13. The PM also granted the suspension of payment of federal taxes on imports or domestic acquisitions of raw materials, intermediate products, and packaging materials to be applied in the production of finished products destined to be used in the O&G activities. The taxes suspended were the II, IPI, PIS-import, COFINS-import, PIS, and COFINS. The suspension will be in force for up to one year, extendable for a total period not exceeding five years. Exceptionally, in justified cases, the term can be extended for a period exceeding five years, in compliance with the regulations to be issued by the Brazilian Federal Revenue Service (RFB).

14. According to the PM, the tax suspensions will be converted into an exemption or 0% rate if the imported goods or the product manufactured with the tax benefit is fully applied on the activities of exploration, development and production of oil, gas and other hydrocarbon fluids.

15. Moreover, the suspensions described above will only be applied to events commencing before December 31 2040, according to the recently published RFB Normative Instruction 1743/2017.

16. The PM entered into force on the date of its publication, but must be converted into law within 120 days by the National Congress, under penalty of losing its effectiveness retroactively.

17. In what regards the REPETRO, the latest novelty refers to the extension of the regime until December 31 2040, by the publication of Decree 9128/2017.

18. Established in 1999, the REPETRO was created to attract and enable investments in the O&G sector. The regime extension until 2040 is justified by the long maturation cycle of the investments in the sector.

19. The Decree also included, in the list of customs benefits comprised by the REPETRO, the import of goods for permanent stay with suspension of federal taxes levied on imports, as described above.

20. Finally, the Decree clarified that the goods admitted under the REPETRO until December 31 2017 will be subject to the previous ruling, until the end of the concession date. However, the said goods may be migrated to the new rules between January 1 and December 31 2018.

21. The publication of these rules is intended to provide a more secure and stable environment to the O&G players, taking into consideration the next bid rounds and the urgent need for collection of significant concession signing bonus by the federal government, to reduce the public deficit.

São Paulo, October 2017

MACHADO ASSOCIADOS INFORMS:

- On September 16, Rochelle Ricci, partner in the Contracts and Real Estate areas, was part of the roundtable on “Fraud, Privacy and Data Protection” in the II Fórum Médicos S/A, at the WTC, in São Paulo. The event, about entrepreneurship, careers and management of medicine in Brazil, happened on September 15 and 16, at the same time of ExpoClínicas.
- Rochelle Ricci, partner in the Contracts and Real Estate areas, participated in the event “Compliance Challenges for Companies and Administrators”, on September 26, at the Spanish Chamber in São Paulo. Among the many issues that were addressed on that day, the topic of Rochelle’s lecture was “Compliance in the Supply Chain/Third Parties”.
- On September 28, Carolina Romanini Miguel, member of the Indirect Taxes area, gave a class about “Electric Energy Law – Taxes”, during the 6th edition of the “Extension Course in Energy Law” of the Brazilian Institute of Studies of Energy Law (IBDE). The course took place in IBDE’s headquarters in São Paulo. The full program can be accessed here.
- From 8 to 13 of October, Ricardo M. Debatin da Silveira, partner of the Indirect Taxes area, and Gustavo de Freitas Leite, partner in charge of the Rio de Janeiro office and member of the Corporate/Contracts and Oil & Gas areas, represented Machado Associados in the annual conference of the International
- From 24 to 28 October, Luis Rogério G. Farinelli, partner of the Indirect Taxes, International Taxation, and Transfer Pricing areas will participate in the WTS Global Meeting 2017, in Miami. Among the activities during this period, Farinelli – who is a member of the board of WTS Global – will meet with the other members to discuss the next steps of the world alliance. After that, the TDM (Tax Directors’ Meeting) will happen, an event organized by WTS Global with lectures for tax directors of multinational clients of the network. Farinelli will represent Brazil on the panel “Tax Incentives and Opportunities in Latin America”. The event will be attended by over 50 countries, members of WTS Global, as well as by representatives of Lataxnet. Machado Associados is the firm that represents WTS Global in Brazil and a co-founder of Lataxnet, an alliance formed by 18 South-American firms that has recently joined WTS Global.
- The 2nd International Taxation Forum (FIT) will take place in São Paulo, from 7 to 10 of November, with the topic “Transparency and Development”. Júlio M. de Oliveira, partner of the Indirect Taxes and Tax Litigation areas, will be part of the roundtable that will discuss the topic “ICMS: current and controversial topics”, on November 9, from 5:30 to 6:30 PM. The event will be promoted by the FBT – Faculdade Brasileira de Tributação, at Auditório do Sescon/SP.



Bar Association (IBA) 2016, Sydney, Australia. The event was attended by lawyers from more than 130 countries, and featured technical presentations regarding the most varied areas of Law.

- On October 18, Júlio M. de Oliveira, partner of the Indirect Taxes and Tax Litigation areas, has chaired the roundtable on “Federal Taxes” during the 21st Brazilian Congress of Tax Law, in São Paulo. The event, promoted by Instituto Geraldo Ataliba – IDEPE, addressed the “Major Tax Topics in Higher Courts”.
- Machado Associados is one of the recommended Brazilian offices in M&A and Project development for IFLR1000 "Financial and Corporate 2018" research. This year, Renata Almeida Pisaneschi and Luciana Felisbino - partners in the Corporate and Contracts areas - were recognized again as leading M&A lawyers.
- Luís Rogério G. Farinelli, partner in the Direct Taxes, International Taxation and Transfer Pricing areas, has been recently appointed as Latin America’s representative on the board of WTS Global, an international network of firms with focus on the tax area and present in more than 100 countries. Machado Associados is the firm that represents WTS Global in Brazil and a co-founder of Lataxnet, an alliance formed by 18 South-American firms that has recently joined WTS Global.

This legal letter contains information and general comments on the matter. In specific cases, it is advisable to rely on proper legal assistance before adopting any concrete actions relating to the matters dealt with herein.