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## LEGAL LETTER / JULY 2017

### LEVY OF IRRF AND CIDE ON THE REMUNERATION OF SOFTWARE AS A SERVICE (SAAS)<sup>1</sup>

*Ricardo M. Debatin da Silveira and Gabriel Caldiron Rezende<sup>2</sup>*

*The Brazilian Federal Revenue Service (RFB) has issued an unprecedented ruling regarding the levy of the withholding income tax (IRRF) and contribution for intervention in the economic domain (CIDE) on the remuneration for the authorisations for remote access and use of software as a service (SaaS).*

1. By means of COSIT Ruling 191, published on March 29, the RFB stated that the *Imposto de Renda Retido na Fonte (withholding income tax)* and *Contribuição de Intervenção no Domínio Econômico* (a Brazilian contribution to finance the stimulation of Brazilian technological development) are levied on the remuneration paid abroad in return for the authorisations for remote access and use of *Software as a Service (SaaS)* remotely stored (cloud).

2. The RFB understood that the granting of authorisation by a foreign company to access SaaS is not the same as selling the software, as in such a hiring model the user (client) neither acquires nor interferes on the software. The client will only have access to the contracted resources from a distance, as the software will still be owned and managed by the foreign company, responsible for all its functionalities.

3. Thus, in short, the RFB deemed that the company that provides SaaS offers benefits to its users that are characterised as technical services, because they rely on expertise in data processing and derive from automated structures with clear technological content.

4. For this reason, the RFB expressly denied the exemption from the CIDE – established by article 2, paragraph 1-A of Law 10168/2000 – applicable to the payment for the

<sup>1</sup> This article was first published by **International Tax Review** in July 2017 on [www.internationaltaxreview.com](http://www.internationaltaxreview.com)

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license to use and right to sell or distribute computer programs when there is no transfer of technology.

5. In this scenario, the RFB held that payments made abroad in return for authorisation for access and use of SaaS are subject to the 15% IRRF rate and the 10% CIDE rate.

6. This is an important administrative precedent because it evidences the current understanding of the federal tax authorities regarding the levy of these two taxes on the very important technological activity at issue, which has no specific tax regulations.

7. The RFB has issued several rulings regarding agreements involving the rights to sell or distribute and to use software, but this is the first specific ruling about the SaaS, which is a technology being increasingly used and with a high market relevance.

8. It should be noted that, although it was not analysed by the RFB, the understanding set forth in COSIT Ruling 191/2017 may also lead to the charge of the federal social contributions on the import of services (PIS-import and COFINS-import) on the payments at issue.

9. Finally, we point out that this ruling is binding upon the RFB.

São Paulo, July 2017

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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.