

RFB PUBLISHES NORMATIVE RULING TO REGULATE ARTICLE 25-A OF DECREE 70,235/1972

DECEMBER, 2023

OVERVIEW

On December 21, 2023, the Brazilian Federal Revenue Service ("RFB") published the **Normative Ruling No. 2,167/2023** to establish guidelines for the application of **article 25-A of Decree 70,235/1972** (introduced by Law 14,689/2023) in cases where the Administrative Council of Tax Appeals ("CARF") ruled in favor of the Brazilian National Treasury by a **tie-breaking vote**.



Fine and Tax Representation

- ✓ Exclusion of the fine due to infringement, upheld by a tie-breaking vote; and
- ✓ Cancellation of tax representation for criminal purposes.



Specific application of this Normative Ruling

- ✓ This Normative Ruling will be applied exclusively to the part of the administrative dispute resolved through a tie-breaking vote.



Categories

- ✓ Payment on demand with reduced default interest and exclusion of the fine;
- ✓ Payment in up to 12 monthly and successive installments with reduced default interest and exclusion of the fine;
- ✓ Credits from tax losses and negative Corporate Tax ("CSLL") calculation basis; and
- ✓ Special judicial orders.

INFORMATION ABOUT THE REQUEST REGARDING THE INTENTION TO PAY

Deadline: The taxpayer must formalize the request to express the intention to pay the debts within 90 days*

- From the notification of the final administrative decision rendered by the CARF; or
- the publication of Normative Ruling No. 2,167/2023, in case the judgment occurred during the effective term of Provisional Decree 1,160, of January 12, 2023, and before the publication of this Normative Ruling.

*The enforceability of the payable tax liability will be suspended during this period.

Consequences: Irrevocable and irreversible statement of the debt, as well as express acceptance that all information and notifications regarding the settlement of tax liabilities will be submitted via the e-CAC system.



EFFECTS AND CONDITIONS ATTACHED TO THE REQUEST

- **Conditioned to payment of the entire debt or the first installment.**
- The approval implies the **suspension of the enforceability** of the tax liability and the effects of **the debtor's registration** in the Informative Register of Unpaid Credits of the Federal Public Sector ("CADIN").
- If the request is denied, taxpayers may file an **administrative appeal**.



INSTALLMENT PROGRAM

- **INSTALLMENT AMOUNTS** – Result of **the division of the consolidated debt** (after the exclusion of the fine, of the interest reductions, and of the potential use of credits from tax losses and negative basis of the CSLL or writ of payments) **by the number of installments indicated in the request (up to 12)**.
- **MATURITY** - From the second installment on, the maturity changes to **the last business day of each month**.
- **CALCULATION** - During the request review period, the taxpayer must manually calculate the installment amount. **After the request has been approved, the issuance of the Document for the Collection of Federal Revenues ("DARF") will occur directly on the e-CAC system.**
- **EXCLUSION** - **A taxpayer who fails to make payment for any installment for a period exceeding 30 days will be removed from the installment program.**

USE OF CREDITS FROM TAX LOSSES AND NEGATIVE CSLL CALCULATION BASIS



Credits calculated and notified to the RFB within the period established by the applicable tax legislation can be used.



Credits from tax losses and negative CSLL calculation basis **cannot be used in any way for offsetting purposes, at any time, except** in the event of termination of the installment program provided in the Normative Ruling No. 2,167/2023.



The deadline for RFB confirmation of the utilized credits will be five years from the date of the request, under the penalty of tacit approval.



If the use of these credits is **denied**, the taxpayer may **pay in cash the outstanding balance unduly amortized with the unrecognized credits**, plus late payment interest, or file an **appeal** against the refusal to use the credits.



QUESTIONS? CONTACT US!



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