

Brazil Tax Update

Normative Instruction 949/09 –
Managing the Transitory Tax Regime (RTT)

Issue July 2009

Brazilian corporate tax system has been experiencing a complex chain of changes due to the issuance of Provisional Measure 449/08 and Federal Law n. 11,638/2007, responsible, among others, for introducing the Transitory Tax Regime (RTT), previously discussed.

On the subject and with the intent of regulating some pending aspects of the abovementioned new tax and accounting system, Normative Instruction n. 949, issued in June 16th of 2009 by the Brazilian Revenue Department, was established with the purpose of regulating the mentioned RTT and creating the Transitory Fiscal and Accounting Control (FCONT).

Transitory Tax Regime (RTT)

The legislation in discussion (IN SRF 949/2009) states that, for legal entities subject to the RTT regime, all modifications inserted by Laws n. 11,638/07 and 11,941/09 which changes the recognition criteria of income, costs, and expenses indicated in accounting books will not have any effect on the calculation of the actual profit and on the taxable amount of the CSLL. In this case and for tax purposes, the methods that were in force in December 31st of 2007 must prevail.

Normative Instruction 949/2009 also introduced the applicability of the RTT in relation to the presumed profit system of income tax calculation, establishing the procedures that must be observed in order to guarantee the fiscal neutrality of the new accounting standards. The same purpose was applied by such legislation when it determined the applicability of the RTT regime to the PIS/Pasep and COFINS federal contributions.

Transitory Fiscal and Accounting Control (FCONT)

Additionally, the Normative Instruction under analysis has also instituted the Transitory Fiscal and Accounting Control (FCONT), responsible for auxiliary record and mandatory for all companies subject to both actual profit method of calculation and RTT.

The legislation in discussion states that the FCONT represents a double entry bookkeeping system applied over

equity and result accounts which takes into consideration the methods and criteria applied by the tax legislation. The use of the FCONT system is indispensable to the accomplishment of fiscal adjustments and it cannot be substituted by any other control or calculation chart.

Finally, IN SRF 949/2009 sets forth that the FCONT must be electronically submitted to the fiscal authorities' appreciation until midnight of November 30th, 2009, by means of a software that will be made available as from October 15th on the Revenue Department's website.

Contact

Fernando Retzler Martins

KPMG AG

Wirtschaftsprüfungsgesellschaft

T +49 (89) 9282-1060

F +49 (1802) 11991-2300

fretzler@kpmg.com



The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination.

© 2009 KPMG AG Wirtschaftsprüfungsgesellschaft, a subsidiary of KPMG Europe LLP and a member firm of the KPMG network of independent member firms affiliated with KPMG International, a Swiss cooperative. All rights reserved.