PERT – Changes to the amnesty program introduced upon conversion of Provisional Measure No. 783 into Law No. 13,496/17

The Special Program for Tax Regularization (PERT), instituted by the Provisional Measure No. 783/2017 (MP 783), is a tax amnesty program in which the taxpayers have the possibility to pay debts within the scopes of the Brazilian Internal Revenue Service (RFB) and of the National Treasury Attorney's Office (PGFN) with discount on fines, interest and legal fees. Referred Provisional Measure was converted, in October, 24th, in the Law No. 13,496/2017 – and already regulated in accordance with the changes promoted by the RFB's Normative Ruling No. 1,752/2017 and by PGFN's Ordinance No. 1,032/2017.

In this regard, it should be noted that Law No. 13,496/2017 presented some changes to the wording of MP 783, which can be summarized as follows:
Alternatives to pay debts within the RFB's scope

To pay debts within RFB's scope, the big novelty is the increase of the reduction percentages to which interest and fines are subject, and the inclusion of a fourth payment alternative, so that the taxpayers can choose one of the following options:

<table>
<thead>
<tr>
<th>Alternative I</th>
<th>Alternative II</th>
<th>Alternative III</th>
<th>Alternative IV</th>
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</thead>
<tbody>
<tr>
<td>a) Entry of, at least, 20% in cash, which can be paid in 5 monthly installments (to maturity in December, 2017).</td>
<td>a) No entry.</td>
<td>a) Entry of, at least, 20% in cash, which can be paid in 5 monthly installments (to maturity in December, 2017).</td>
<td>a) No entry.</td>
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<td>b) The remaining balance can be paid with:</td>
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<td>b) The remaining balance can be paid with:</td>
<td>b) Payment of, at least, 24% of the debt in 24 monthly installments, with the remaining balance paid with tax losses credits; or other federal tax credits.</td>
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<td>(i) Compensation of tax losses credits, or other federal tax credits.</td>
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<td>(i) Fully payment in cash (in January, 2018) with discounts of 90% on interest, and 70% on fines; or</td>
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<td>(ii) If the credits are insufficient, the remaining balance can be paid in 60 installments, after the conclusion of the prompt payment.</td>
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<td>(ii) Payment in 145 installments, with discounts of 80% on interest, and 50% on fines; or</td>
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<td>(iii) Payment in 175 installments, with discounts of 50% on interest, and 25% on fines.</td>
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</table>

If the total debts consolidated to be included in the PERT do not overcome BRL 15 million (before the reductions of the Law No. 13,496/2017), the taxpayer that opts for the alternative III, above, have the possibility to make an entry of only 5% of the debt (instead of 7,5% - as MP 783 provided).

Alternatives to pay debts within the PGFN's scope

To pay debts within PGFN's scope, the increase of the reduction percentages to which interest and fines are subject was also provided, but the main novelty is the full amnesty of legal fees (including attorney's fees) and the possibility to use Tax Losses credits, as we can see below:
If the total debts consolidated to be included in the PERT do not overcome BRL 15 million (before the reductions of the Law No. 13,496/2017), the taxpayer that opts for the alternative III, above, have the possibility to make an entry of only 5% of the debt (instead of 7.5% as MP 783 provided).

After applying the reductions foreseen on alternative III, above, if the total of the debts to be included in the PERT do not overcome BRL 15 million the taxpayer have the possibility of:

i. use from tax losses credits, or other federal credits, to pay the remaining balance, with an eventual remaining balance paid in cash, in accordance with the number of installments expected in the modality; or

ii. payment in kind of the remaining balance with a real state, provided that it has previously been accepted by the Federal Government.

Other changes introduced by Law No. 13,496/2017

In addition to the novelties presented above, it should be noted that Law No. 13,496/2017 established that the following debts could be settled through PERT:

i. those arising from withholding tax, of third parties discount or subrogation; and,

ii. those constituted by means of an tax assessment with a charge of evasion, fraud or collusion (qualified fine - 150%).

Vetos of the President of the Republic

Regarding the vetoes made by the President of the Republic to the Law in Conversion nº 23/2017 - legislative bill that gaverise to Law No. 13,496/2017 -, it should be noted that benefits expected by the market were vetoed, such as those provided for in:
• Paragraph 10 of art. 2nd and item II of art. 4: which provided for the possibility of legal entities that opted for the Simples Nacional to join the PERT;

• Paragraph 2 of art. 11: which provided for the impossibility of excluding Refis 2000 (Law No. 9,964 / 2000), from legal entities that are opt-in, but whose monthly payment installments are not sufficient to amortize the installment debt; and,

• Art. 12, which provided that the rates of income tax, social contribution on net income, vat taxes, levied on the income earned by the assignor with the assignment of credits of tax losses credits to controlled, controlling or affiliated companies would be reduced to zero.

Moreover, it is important to highlight that in October, 31st, the Provisional Measure No. 807 was published, extending the deadline to join PERT up to November, 14th, giving more time to the taxpayers to take advantage of PERT benefits.

To have more clarifications about this matter, please contact our Business Tax Service team.

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