

MEMORANDUM TO CLIENTS

TAX

May 10, 2016

SEFAZ Resolution No. 1.003/2016 regulates
ancillary obligations related to oil circulation transactions

On Friday, May 6th, SEFAZ published in the Official Gazette Resolution No. 1.003/2016 ("2016 Resolution"), which was signed on May 5, 2016, amending Resolution SEFAZ No. 720/2014. The 2016 Resolution establishes ancillary obligations related to transference ("circulação") of oil from extraction wells to the concessionaire company.

The 2016 Resolution has its legal basis in Law No. 7,183/2015, which was addressed in our memorandum to clients late last year ([click here](#) for the full version of that **memorandum**).

As widely disseminated by the media, Law 7,183/2015 was challenged in the direct unconstitutionality action (*Ação Direta de Inconstitucionalidade*) No. 5481 seeking a preliminary injunction. Considering that there has not yet been any decision in that lawsuit, taxpayers who transfer oil from the extraction wells to the concessionaire company must comply with the provisions of the 2016 Resolution as of the date of its publication, unless they request and are granted a preliminary injunction avoiding the collection of ICMS, which is a tax similar to VAT tax, charged on the transference of oil from extraction wells to the concessionaire company.

The 2016 Resolution stipulates that the concessionaire must, by May 9, 2016, issue an electronic invoice detailing the amount of oil produced in the month of April 2016.

The highlights of the 2016 Resolution are as follows:

- (I) the taxpayer is the concessionaire's main branch located in the state of Rio de Janeiro that transfers oil from the extraction wells;

- (II) in the case of a consortium, each consortium member must issue an electronic invoice including the amount of oil produced proportional to its share in the consortium;
- (III) the provisions of the Digital Tax Bookkeeping legislation must be complied with by taxpayers, who/which must include the electronic invoice from the subsequent month in the Digital Tax Bookkeeping for the previous month, pursuant to article 153, paragraph 3 of the 2014 Resolution;
- (IV) the electronic invoice for the month of April 2016, which must be issued by May 9, 2016, must also include the amount of oil produced in the last 3 days of March 2016.

Please note that the 2016 Resolution, in accordance with the provisions of Law 7,183/2015, indicated that only concessionaires are required to pay ICMS.

Attorneys in the Tax Practice

The purpose of this memorandum is to inform our clients about important changes and developments in the area of law. We remain at the reader's disposal for any additional information that may be desired regarding the subject matter herein.

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