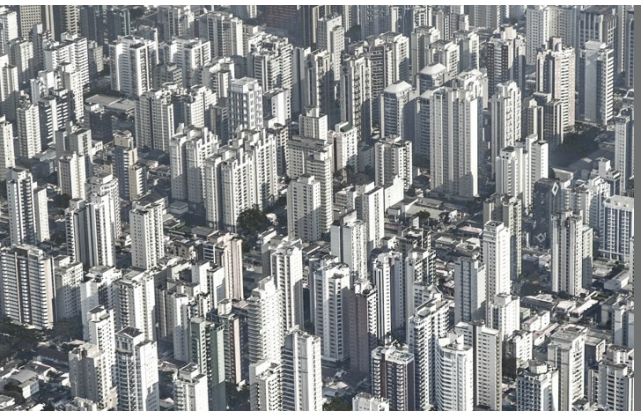

REAL ESTATE

# FEDERAL REVENUE SERVICE CLOSES QUESTIONING ON TAXPAYER IDENTIFICATION OF SUB-CONDOMINIUMS

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The decision by the Federal Revenue Service of Brazil (RFB) to include sub-condominiums among entities required to register with the National Register of Corporate Taxpayers (CNPJ) is a measure that should contribute to the administrative efficiency of businesses structured in the form of condominiums. The change was announced on December 29, 2016, with the amendment of Article 4, item II, of Federal Revenue Rule No. 1,634/2016.

The provision requires that sub-condominiums that have been established by a condominium agreement must be registered with the CNPJ in the capacity of affiliates of the condominiums of which they are part. With the change, the RFB puts an end to a discussion that had already reached the Judiciary due to the lack of legal provision for separate registration and as a result of the agency's denials of these requests. It is important to note, however, that this change does not mean the segregation of in rem liability for debts contracted by the different sub-condominiums in relation to the master condominium.

Context. Due to the growing demand for nearby areas for leisure, work, and housing in large urban centers, it is increasingly common to have multi-purpose real estate developments consisting of condominial sectors with quite different purposes such as residential, commercial, shopping centers, hotels etc. The relationship between these various sectors is complex, as there are very heterogeneous interests and concerns among the condominiums.

In order to facilitate the management of this type of multipurpose development, it is common to create different condominial sectors, the "sub-condominiums", that take care of their specific interests, leaving to the "master condominium" the more complex issues that affect all the condominiums. However, without the possibility of assigning an individualized taxpayer registration for each of the sub-condominiums, this administrative segregation ended up being hampered in practice.

How to apply. The new instruction solves accounting and tax problems that hindered the management of these multipurpose developments. In order to obtain a taxpayer identification as an affiliate of the sub-condominiums, it is necessary that the establishment of these sub-condominiums be provided for in the agreement registered with the competent Real Estate Registry. At the time of registration of the taxpayer identification of the condominium, the registration of sub-condominiums, as affiliates, is also done.

In Rem liability. Although administrative segregation by CNPJ facilitates the operation of multipurpose developments, as well as the oversight activity, it does not separate the liability for civil, tax, labor, and social security debts incurred by the sub-condominiums. Thus, it is still very important to regulate the legal autonomy between the master condominium and the sub-condominiums in the bylaws.


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