TAX

IMPACTS OF TAX REFORM ON DISTRIBUTED GENERATION PROJECTS

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The enactment of Constitutional Amendment 132/23 introduced significant changes to the Brazilian tax system, with potential impacts on various aspects of distributed generation (DG) projects.

There are, at the moment, a series of tax incentives for distributed generation projects, such as the Special Incentive Regime for Infrastructure Development (Reidi), included by Law 14,300/22, which equates them with infrastructure projects. In addition, they have ICMS tax benefits for the acquisition of equipment for the use of solar energy, with emphasis on ICMS Conventions 52/91, 101/97 and 109/2014.

Currently, civil engineering services are also taxed by municipalities at a maximum ISS rate of 5%. In addition, ICMS Convention 16/2015 and Law 13,169/15 guarantee tax exemptions and reductions on compensated electricity, which substantially favors the financial viability of DG.

The Tax Reform will change this scenario by extinguishing PIS, Cofins, ISS and ICMS, which will result in the elimination of all these incentives. In the new system, the Contribution on Goods and Services (CBS) and the Tax on Goods and Services (IBS) will be levied on all economic activities involving goods, rights and services, tangible or intangible. This may include the supply of energy within the scope of the Electric Energy Compensation System (SCEE).

Although the Senate discussed a special regime for DG, including a differentiated treatment for the SCEE, this provision was excluded in the review process in the Chamber of Deputies. Therefore, so far, there is no provision for differentiated tax treatment for this modality in the text of EC 132/23, nor in PLP 68/24, which proposes the regulation of the Tax Reform.

Still, there is one positive aspect to be highlighted. PLP 68/2024 provides for the maintenance of Reidi, which now, in addition to suspending the incidence of CBS, will contemplate the suspension of IBS. With this, the tax benefit previously restricted to PIS and Cofins will be expanded. This improvement generates a neutrality effect in relation to the extinction of state and municipal tax benefits.

In the operational stage, companies organized in the form of legal entities, if their operations are taxed, will be able to recover the tax paid, mitigating the tax impact. However, for contracts involving individuals, there is a tendency for price increases. This increase in the cost of operations can become an additional challenge for the sector.

The Tax Reform brings, therefore, substantial changes to distributed generation projects, making it essential that agents in the sector adapt to new tax requirements and seek strategies to mitigate possible cost increases.