

LAW RE-ESTABLISHES PROHIBITION ON OFFSETTING IRPJ AND CSLL

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Taxpayers will no longer be able to offset federal tax credits with debts related to the monthly collection due to IRPJ and CSLL estimates, according to Law No. 13,670/2018, published on May 30 (inclusion of item IX in paragraph 3, article 74, of Law No. 9,430/1996). In 2008, Presidential Decree No. 449 had already included this restriction in tax legislation, but it was not converted into law, and the measure ceased to be effective as of 2009.

According to the explanatory memorandum of Law No. 13,670/2018, the purpose of the rule is to prevent the offsetting of debts that constitute an advance of the tax due in order to expedite the collection of debts and to inhibit the presentation of undue offsets.

However, this restriction tends to generate significant cash flow impacts for taxpayers, who must make monthly disbursements to pay the estimates.

There is a good legal basis to support the argument that the limitation would not be applicable to the calculation of the monthly advances by interim balance sheet suspension or reduction. This is because, while the estimate is a presumption of realized profit, suspension or reduction of the interim balance sheet reflects an effective calculation of the real profit for the period and, in this sense, would be outside the scope of the law.

It is worth noting, however, that the estimates and the suspension or reduction of the interim balance sheet system are collected under the same revenue code, which may cause an operational restriction on the taxpayers at the time of registration of the PER/DCOMP. In this case, it is recommended that taxpayers file a preventive judicial measure to effect offsets.

According to Law No. 13,670/2018, the new rule came into effect on May 30, 2018, the date of its publication. However, we believe that the prohibition on offsetting estimates could only be effective if the principle of legal certainty is observed. In this regard, taxpayers may also run into practical restrictions on the registration of PER/DCOMP, and preventive judicial measures are necessary to carry out offsets.

