TAX

PRESUMED PROFIT REGIME: COURT SUSPENDS INCREASE

03 FEBRUARY 2026

AUTHORS

FERNANDO COLUCCI
PARTNER / SÃO PAULO

BRUNA MICHAELA DI CARLO
LAWYER / SÃO PAULO

As widely reported, Complementary Law No. 224, published on December 26, 2025 (LC 224/25), was enacted amid the federal government's efforts to strengthen tax collection and restore fiscal balance.

The statute introduced a linear 10% reduction in various federal tax incentives and benefits provided for in the 2026 federal budget. It also imposed a 10% surcharge on the presumption percentages used to calculate Corporate Income Tax (IRPJ) and Social Contribution on Net Profit (CSLL) under the presumed profit regime. The surcharge applies to companies opting for this regime whose annual gross revenue exceeds BRL 5 million.

Although framed as part of a reduction in tax benefits, the measure, in practice, increased the presumed tax base of IRPJ and CSLL, thereby raising the tax burden of a significant number of companies operating under the presumed profit regime.

The increase took on more concrete contours following regulations issued by the Federal Revenue Service. Normative Instructions RFB Nos. 2,305/2025 and 2,306/2026 established that the BRL 5 million annual revenue threshold must be verified on a proportional quarterly basis. Since the presumed profit regime is assessed quarterly, the annual ceiling was effectively divided into BRL 1.25 million per quarter. If a company's gross revenue exceeds this amount in a given quarter, the surcharge applies immediately to that period, with effects that may extend to subsequent quarters.

In practice, this mechanism may result in the payment of IRPJ and CSLL on an increased presumed basis even if, by the end of the calendar year, the company's total gross revenue does not exceed the annual BRL 5 million threshold. The regulation itself acknowledges this possibility, allowing for subsequent offsetting, compensation, or refund of amounts unduly paid.

Nevertheless, the requirement of immediate payment — and the corresponding cash flow impact — makes the measure particularly sensitive from a financial standpoint, especially for companies with seasonal revenues, which may experience significant distortions throughout the fiscal year.

The amendments have been widely criticized, as they expose a structural issue: the presumed profit regime does not constitute a tax benefit, but rather a simplified method for determining taxable income, offered as an alternative to the actual profit regime for companies not legally required to adopt it. This understanding was expressly reaffirmed by the tax authorities themselves in COSIT Consultation Solution No. 06/2026, published on January 30, 2026. Although addressing a different matter (investment subsidies), the Federal Revenue Service stated that alternative tax calculation methods do not qualify as tax benefits.

From this perspective, including the presumed profit regime among the "benefits" subject to a 10% reduction alters the legal nature of the regime and transforms a calculation method into a mechanism for increasing the tax burden.

In this context, the increase in the presumed profit percentages not only modifies the dynamics of IRPJ and CSLL calculation, but also gives rise to a significant legal debate concerning the limits of legislative and regulatory authority in redefining the tax framework applicable to companies that have opted for this regime.

The Judiciary's First Response

This debate has already reached the courts. Several lawsuits have been filed challenging the validity of the increase introduced by LC 224/25.

The first known decision on the matter was rendered by a Federal Court in Rio de Janeiro on January 28, granting, on a preliminary basis, relief in favor of the taxpayer.

In that case, the arguments widely advanced by the legal community were expressly raised: the presumed profit regime cannot be characterized as a tax benefit, as it constitutes a statutory method for determining the taxable base of IRPJ and CSLL, provided for in Article 44 of the National Tax Code (CTN), alongside the actual profit regime and the arbitrated profit method.

Accordingly, there would be no "benefit" to be reduced under LC 224/25, but rather a calculation method whose parameters were altered for revenue-raising purposes.

It was further argued that the linear increase in presumption percentages is not supported by any demonstration of an actual rise in corporate profitability and may result in the taxation of non-existent income, in violation of:

> the constitutional concept of income;

- the principle of ability to pay;
- the principle of equality (isonomy); and
- free competition.

In addition, the measure allegedly infringes legal certainty and the protection of legitimate expectations, since the amendment was enacted at the end of December 2025 with immediate effects as of January 2026.

In assessing the request for a preliminary injunction, the 1st Federal Court of Resende recognized the legal plausibility of the taxpayer's claims.

The decision emphasized that the presumed profit regime is a lawful method for determining the taxable base, involving the waiver of the calculation of actual profit and the deduction of actual expenses in exchange for a simplified and objective system.

At least at this preliminary stage, the court found it questionable to equate the presumed profit regime with a tax benefit. It also noted that conditioning the surcharge solely on revenue levels may, in practice, result in the taxation of fictitious income.

Upon acknowledging the concrete risk of imminent harm — given the quarterly assessment of IRPJ and CSLL, the immediate financial impact, the effects on cash flow, and the possibility of tax assessments and enforcement measures — the court granted the injunction to suspend the enforceability of the tax credit arising from the additional 10%. The ruling ensured the company's right to calculate and pay taxes based on the previous presumption percentages and prevented collection measures while the case remains pending.

The controversy is only beginning. The decision confirms that there are consistent legal grounds to challenge the increase. Companies affected by the measure should carefully evaluate their specific circumstances and the advisability of pursuing judicial remedies to safeguard their rights.