
Tax incentives to Information Technology - Current Scenario

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Information technology was benefited by the Provisional Measure nº 252/05, later converted into Law nº 11.196/05, also known as "Law of Good." This law, besides amend several provisions of the Federal tax law, also has some tax advantages, among them the Special System of Taxation for Exportation of Information Technology Services – (REPES in Portuguese abbreviation).

According to Law nº 11.196/05, is considered as beneficiary of REPES the legal entity which mainly performs activities of software development and information technology services, and because of that, agrees to export equal or greater than sixty percent of its annual gross revenue, resulted from sale of these goods and services.¹

REPES is part of the incentives package created by Brazilian Government with the purpose of intensifying the IT national companies and support the consolidation of these companies in the economy.

The Provisional Measure nº 428/08 which reduced the mentioned percentage to 60%

¹ Article 2 – It is considered as beneficiary of REPES the legal entity which performs activities of software development and information technology services, and, because its option for REPES, takes commitment to export less than 60% (Sixty percent) of its annual gross revenue from sale of goods and services referred in this article. (Writing amended by Law nº 11.774, 2008).

- in original writing, law required the commitment to export 80% of the annual gross revenue - gave to the Executive the opportunity to reduce this percentage to 50 % (Fifty percent).

With the conversion of the latter provisional measure (nº 428/08) into Law (nº 11.774/08), the paragraph 3 of Article 2 of Law 11.196 was amended (Law of Good). In this paragraph, companies that wish to participate in the REPES had obligation to renounce the cumulative PIS/COFINS, and it was impossible for software companies which legal system is cumulative, as income gained by IT companies are excluded from the non-cumulative program, resulting from activities of software development and its licensing or assignment of right of use, as well as analysis, programming, installation, configuration, consultancy, technical support and maintenance or software updating, also consisted in software and electronic pages.

In that time, Federal Revenue adjusted this failure through the regulation which determined that provisions of section XXV of art. 10 of Law 10.833 of December 29th, 2003 ² are not applied to legal entities which participate in REPES.

² XXV - revenue earned by companies of information technology services, resulting from activities of software development and its licensing or assignment of right of use, as well as analysis, planning, installation,

By the new wording given by Law 11.774/08, the legal entity is also a beneficiary from REPES if performs activities mainly for software development and provision of IT services.

As part of these incentives, Law nº 11.196/05 establishes that in case of sales or import of new goods for development of software and information technology services in the country, it is suspended the requirement of contribution to PIS and COFINS, as well as PIS/COFINS-Importation. Or when such goods are purchased or imported by legal entity which is beneficiary of REPES, for integration in its fixed assets. The same rule applies in case of sales or import of services with the same scope.

The Law of Good also stipulates that the adherence to REPES is subject to the tax regulation of legal entities in respect of taxes and contributions controlled by Federal Revenue in Brazil, and may have their adherence canceled if: i) breach in the agreement of exportation defined therein, ii) verify that the beneficiary did not meet the requirements or conditions for adherence, and finally, iii) the own company requests it.

Adhesion to REPES, however, is not allowed to legal entity that participates in the SIMPLES (Integrated Payment System for Taxes and Contributions of Small Business).

Another benefit provided by the law to companies that join REPES is the suspension of the requirement of the Industrialized Product Tax - IPI, in importation of goods listed by the

configuration, consulting, technical support and maintenance or upgrade software, including software and electronic pages. (Included in Law nº 11.051, 2004).

Executive³ to be used for the integration to its fixed assets, since such goods do not have similar in the domestic market.

Law Nº 11.196/05 also states that the suspension of payments for taxes defined therein will be exempt since the terms and conditions for companies were analyzed.⁴

REPES, in fact, is not the only incentive with the aim of promoting the increase of investment in innovation. Besides these benefits in Law of Good, we may mention in addition, the Law on Information Technology (Law nº 10.176/01), the Law of Innovation (Law nº 10.973/04), as well as Law nº 8387 / 91, which created the *Zona Franca de Manaus*.

In the Law of Good itself, we may emphasize the tax incentives for technological innovation, expressed in Article 17 to Article 26, which has been the most significant incentives already obtained by the companies.

Along with the mentioned law, some government agencies also promote programs addressed to companies in information technology, especially in the field of innovation, as an example of BNDES which established the PROSOFT, also the Ministry of Science and Technology through SIBRATEC; and SEBRAE through Proimpe, among others.

The fact is that market for software in Brazil is growing considerably during these years. For example, in the period between 2004/2006, the information technology

³ Established under Decree nº 5713.

⁴ The terms will be determined based on the average obtained from the calendar year subsequent to the start of the use of acquired goods under the REPES, during the period of three (3) calendar years. The period of start using can not be more than one (1) year counted from the acquisition.

industry grew 21.4%, and the software and services (only) grew 23.0%.⁵

In order to have Brazil as a prominent 'player' in this competitive scenario is very important to create new incentives programs and tax exemptions, especially regarding employees payrolls, as well as the maintenance and improvement of existing programs, so that improve the conditions for development of this important and fundamental sector of the economy.

Our sector in Almeida Advogados has a highly specialized team in analysis and development of opinions and projects related to the information technology industry. We are always at your disposal for any other information relating to the matters mentioned in the referred article.

⁵ Source: ABES.