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Indirect Tax Alert

News from EY Americas Tax

Brazil's tax reform proposal would affect taxpayers participating in certain special regimes, including customs incentives

Brazil's proposed Contribution on Goods and Services (CBS for its Portuguese acronym) could apply to taxpayers that were not previously subject to PIS and COFINS Contributions (Social Security Contributions on Sales) due to their participation in special regimes, including customs incentives.

Background

Currently, Brazil has several special regimes that either suspend or exempt eligible taxpayers from certain taxes, including PIS and COFINS Contributions, upon importation, as long as the taxpayers meet the regime's requirements.

On 21 July 2020, Brazil proposed a bill (see EY Global Tax Alert, *Brazilian Government proposes new federal VAT as first phase of comprehensive tax reform*, dated 22 July 2020) that would replace existing PIS and COFINS Contributions with CBS. The new tax, which is intended to function as a federal value-added tax (VAT), would apply to local sales (gross revenue) and imports of goods and services but not to exports.

Special regimes not revised for CBS purposes

In keeping with the proposed elimination of PIS and COFINS Contributions, the bill would amend Brazil's special regimes to remove references to those taxes. It would not, however, revise those regimes to exempt eligible taxpayers from CBS or suspend CBS's application if they meet the regime's requirements. As a result, certain regimes would lose what is considered their only incentive (i.e., the PIS/COFINS suspension). Examples of these regimes include: RECAP, REIDI and Reintegra.

Proponents of leaving the special regimes unmodified for CBS purposes note that taxpayers could offset CBS paid against other taxes due or claim a refund. As such, the exemptions or suspensions that would otherwise apply under the special customs regimes would be unnecessary from the Government's standpoint.

Possible effects of CBS imposition on taxpayers

By not modifying special regimes to include CBS in the list of taxes that do not apply to eligible taxpayers, the bill would effectively impose CBS on taxpayers that were not previously subject to PIS and COFINS Contributions. While those taxpayers could offset CBS against other taxes or claim a refund of CBS paid, their cash flow could still be disrupted if the CBS refund process is slow or complicated. Cash-flow disruptions could particularly affect sectors with large investments, as they would not have budgeted for this issue.

Looking ahead

The National Congress must still debate the bill and could amend it significantly as part of the legislative process. As long as the special regimes remain unmodified for CBS purposes, however, companies will need to determine the real effects of having CBS charged on their purchases. They should also consider reviewing their procurement forecast to determine if they could request suspensions/exemptions for anticipated orders under the current special customs regimes while the potential reform is debated.

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