TAX NEWSLETTER

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Brazilian courts consolidate position in favor of “retroactive” interest on net equity deduction

On November 12th, the Superior Court of Justice (STJ) consolidated its position in favor of companies by authorizing the deduction of interest on equity (Juros sobre Capital Próprio – JCP) related to fiscal years prior to the shareholders’ resolution that approves the payment (Theme 1319). The decision was issued under the so-called repetitive appeal procedure and, therefore, becomes binding for all pending cases.

JCP is an alternative form of shareholder remuneration that was introduced in Brazil by Law No. 9,249/1995, aiming to equalize the tax treatment for different types of capital income and to encourage the reduction of leverage ratios.

The advantage of paying JCP, for companies under the actual profit regime, is that, unlike dividends, the company can deduct the JCP amount as an expense when calculating corporate income tax (IRPJ/CSLL). Thus, it serves as a legally authorized mechanism to reduce the IRPJ/CSLL tax base in the fiscal year in which the resolution occurs.

The calculation of JCP must be performed by applying the Long-Term Interest Rate (TJLP) to the following equity accounts: (i) paid-in share capital; (ii) capital reserves (with limitations); (iii) profit reserves (except for tax incentive reserves); (iv) treasury shares; and (v) retained earnings or accumulated losses. However, the total JCP that may be deducted from the IRPJ/CSLL tax base is limited to the greater of: (i) 50% of net profit for the year before JCP deduction; or (ii) 50% of the sum of retained earnings and profit reserves.

Tax legislation allows the resolution and payment of JCP without imposing time restrictions, provided the above limits for each fiscal year are observed. Therefore, the resolution marks the moment for recognizing the JCP expense and its tax deduction, even if the amounts are calculated based on periods prior to the resolution.

Despite this understanding, Tax Authorities had been challenging the deductions made by taxpayers. In their view, the deduction of JCP calculated on equity accounts from previous fiscal years would be prohibited, under the justification that commercial law requires companies to observe the accrual basis of accounting, even for JCP payments.

The decision issued by the STJ consolidates the Court’s position against the argument advanced by the tax authority and, therefore, favors taxpayers. The thesis established by STJ is as follows: “It is possible to deduct interest on equity from the IRPJ and CSLL tax base when calculated in a fiscal year prior to the shareholders’ resolution authorizing its payment.”

As a result, companies that have not exercised the prerogative of resolving to pay JCP (and deduct the corresponding expense) may now consider taking this measure. In such cases, it is important to assess the impact of the resolution from the group’s perspective, considering effects at both the corporate and shareholder levels.

This matter requires special attention in 2025 for two reasons. First, because the government intends to increase the withholding income tax (WHT) rate applied to JCP distributions, which currently stands at 15%. Second, with the approval of Bill No. 1,087/2025 by the National Congress (taxation of dividends), any resolution to pay JCP for previous years, if made after January 2026, will reduce the company’s effective IRPJ/CSLL rate and, consequently, increase the likelihood of the definitive imposition of a 10% WHT on subsequent dividend distributions made by the same company.

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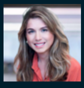
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