

TAX REFORM: HOW TO TAKE PREVENTIVE MEASURES AND BE READY

TozziniFreire Advogados and PwC Brazil have been structuring preventive actions with their clients aiming to anticipate the impacts of the Brazilian Consumption Tax Reform and help the most affected areas of companies to deal with the new taxation system.

TOZZINIFREIRE AND PWC BRAZIL PROVIDE:

1. Assessment and roadmap of the Tax Reform

In this phase, the activities aim to engage key personnel from the areas impacted by the tax reform, with a dynamic workshop on the topic, interviews with the main business areas, mapping the key processes affected (fiscal areas and others), and indicating the intersections of these processes, all to project and better understand the post-reform scenario.

2. Impact diagnosis on tax burden and pricing

At this stage, an analysis of the current tax structure of companies (**the “as is” scenario**) is conducted, identifying **the tax residues of ICMS, IPI, PIS/COFINS, and ISS**, as well as indicating the new credits and debits mapped according to the new system (**the “to be” scenario**), including considerations for the transition phase, as well as a conceptual review of assessments and ancillary obligations. In summary, our analyses encompass:

- (a) understanding of financial impacts per year during the transition period;
- (b) quantification of the impact from the gradual loss of any tax benefits;
- (c) identification of suppliers that affect the margin;
- (d) the need for price adjustments and contract renegotiation; and
- (e) the need for and manner of financial and strategic management to maintain cash stability for companies.

3. Contract review from a tax perspective

In this phase, the scope of work involves analyzing contracts with clients and suppliers, addressing the key elements necessary for compliance with the changes resulting from the tax reform for the legal area (contracts). In this context, our activities and deliverables include:

1. Identification, in conjunction with the legal/contracts teams, of supply contracts, contracts with clients, financing contracts, contracts related to real estate (leases, leasing, loans, shopping centers, “built to suit”), banking contracts, “intra-company” contracts, etc., to evaluate the pricing formation clauses and taxes, all for identifying the potential impacts of taxation by ICMS, IPI, ISS, PIS, and COFINS, as well as CBS, IBS, and, if applicable, IS (Selective Tax).
2. Recommendations for changes (if necessary) in the aforementioned clauses, depending on the type of contract being examined, and suggestions for the approach/negotiation of the proposed changes.
3. Recommendations for modifications in the contractual models established by the client that already include, depending on the type of contract examined, the potential impacts of the reform.

Such changes referred to in “b” and “c” may consist of the insertion of: (i) re-indexing clauses (automatic adaptation) or renegotiation clauses (semi-automatic adaptation) of the price; (ii) mechanisms tied to the pricing determination method; (iii) provisions regarding the utilization/appropriation of tax credit due to compliance with the legal obligation to issue the fiscal document; among others.

The adaptation before the reforming law becomes fully effective allows the client to have contractual mechanisms for revising contract values, thereby mitigating the need to litigate for contractual rebalancing, invoking one of the legal grounds for review, and internalizing the mechanisms and criteria for such readjustment.

TozziniFreire’s Tax and Litigation teams are available to answer any questions regarding this subject.

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