



**Presidency of the Republic
Office of the President
Subdirector for Legal Affairs**

ACT Nº 12.402 DATED 2 MAY 2011.

Regulates the fulfilment of tax obligations by consortia contracting with physical and legal persons; supplements the provisions of Act nº 10.168 of 29 December 2000 which institutes a federal economic tax to finance the Stimulus Programme for University-Business Cooperation for Support and Innovation; amends Acts nºs 12.249 of 11 June 2010, 9.532 of 10 December 1997, and Legislative-Decree nº 1.593 of 21 December 1977; and contains other provisions.

[Entry into force](#)

[Conversion of Transitional Measure nº 510, 2010.](#)

THE PRESIDENT OF THE REPUBLIC hereby makes it known that the National Congress decrees and has authorized the following Act:

Art. 1º Businesses forming part of a consortium within the meaning of arts. 278 and 279 of Act nº 6.404 of 15 December 1976 shall be liable for tax due in respect of the operations carried on by the consortium prorated in accordance with their participation in the undertaking, pursuant to the provisions of §§ 1º to 4º. [Entry into force](#)

§ 1º A consortium contracting in its own name with individuals and corporations, with or without a relationship of employment, will be entitled to withhold the taxes and perform the corresponding accessory obligations, the consortium members being jointly and severally liable.

§ 2º If taxes are withheld or the accessory obligations are performed by the lead business in the consortium, the joint and several arrangements specified in § 1º shall likewise apply.

§ 3º The provisions of §§ 1º and 2º also apply to the recovery of employer's social security contributions, including from the wages of contract-labour employees, and contributions intended for other entities and funds, in addition to penalties for delays in the performance of accessory obligations.

§ 4º The provisions of this article apply solely to taxes collected by the Federal Revenue Service of Brazil.

Art. 2º Art. 2º of Act nº 10.168 of 29 December 2000 shall have effect, supplemented by the following § 6º: [Entry into force](#)

“Art. 2º

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§ 6º The tax specified in this **section** shall not be levied when the contractor is an organ or entity of a central administration, autonomous public corporation or foundation of the Union, the States, the Federal District or municipalities, or the contractor is an educational or research institution situated abroad, offering a course or activity involving professional training or qualifications for civil or military officials of the respective State body, organ or entity.” (NR)

Art. 3º [Act nº 10.168 of 29 December 2000](#) shall have effect, supplemented by the following art. 2º-B: [Entry into force](#)

“Art. 2º-B. Income tax at source shall not be imposed on amounts paid, credited, delivered, used or remitted abroad by organs or entities of a central administration, autonomous public corporation or foundation of the Union, the States, the Federal District or municipalities, where said transfers are contractual payments to educational or research institutions in connection with participation in courses or activities involving professional training or qualifications for civil or military officials of the respective State body, organ or entity.”

Art. 4º Art. 65 of Act nº 12.249 of 11 June 2010 shall have effect, supplemented by the following two §§ 33 to 35:

“Art. 65.

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§ 33. Corporations that have been inactive since the calendar year 2009 or that were in receivership, administrative winding-up proceedings or in bankruptcy, that opted for payment or installment payment of debts under this article, may offset their debts in respect of the Income Tax on Corporations (IRPJ) and Social Contribution on Net Income (CSLL), calculated by granting the benefit of reduction of the penalties, interest and legal charges, under the provisions of § 3 this article, respectively, through the use of tax losses and the negative calculation basis for the Social Contribution accumulated from previous years, the value thereof being determined by applying the rate of 25% (twenty-five percent) to the amount of tax loss and 9% (nine percent) to the negative calculation basis for the social contribution.

§ 34. For the purposes of § 33, an inactive corporation that resumes its activity before 31 December 2013 shall collect the offset amounts related to income tax and the Social Contribution, together with all legal charges, and reinstate the corresponding tax loss of the Income Tax on Corporations and the negative calculation basis of the Social Contribution.

§ 35. The Federal Revenue Service of Brazil shall regulate the provisions of nos §§ 33 e 34.” (NR)

Art. 5^o Manufacturers and importers of cigarillos classified under code 2402.10.00 of the Industrial Products Tax Schedule (Tipi) are subject to special registration as specified under art. 1^o of Legislative Decree n^o 1.593 of 21 December 1977. [Entry into force](#)

Single paragraph. The provisions of arts. 27 to 30 of Act n^o 11.488 of 15 June 2007 shall likewise apply to industrial facilities that manufacture cigarettes.

Art. 6^o Manufacturers and importers of cigarillos are subject to assessment and payment of the Industrial Products Tax (IPI), contributions to the Social Integration Programme and Public Servant Fund (PIS/PASEP) and the social contribution on revenues tax (Cofins), in accordance with the same criteria for domestic and imported cigarettes, including the rules governing the following components: [Entry into force](#)

I – The classification matching of the industrial facility, in the case of the Industrial Products Tax; and

II – The tax substitution, in the case of the contribution to PIS/PASEP and Cofins.

Art. 7^o Arts. 12 and 18 of [Legislative-Decree n^o 1.593 of 21 December 1977](#), shall have effect as follows:

[“Art. 12.](#) Cigarettes intended for export shall not be sold at retail outlets in Brazil and must be marked, on the packaging of each packet or carton of 20 (twenty) units, with the items specified in art. 27 of Act n^o 11.488 of 15 June 2007, and with codes indicating their legitimate origin and with a view to preventing the clandestine introduction of such products into Brazilian territory.

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[§ 5^o](#) The Federal Revenue Service of Brazil may, in the duly specified manner, conditions and time limits, waive the application of the provisions of nos §§ 1^o and 4^o, provided that:

I – the waiver is necessary to meet the requirements of the foreign market importer;

II – the foreign importer is a corporation associated with an industrial concern according to the provisions of art. 23 of Act n^o 9.430 of 27 December 1996; and

III – there exists an appropriate license, furnished by the industrial concern, to import cigarettes to the country of destination.

[§ 6^o](#) Cigarette exporters licensed by the Federal Revenue Service of Brazil in the manner specified in § 5^o shall be exempt from Export Tax.” (NR)

“Art. 18.
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§ 3º In the case of cigarettes referred to in this **section**, the export of which has been authorized by the Federal Revenue Service of Brazil in accordance with the provisions of § 5 of art. 12, the taxes owed, as well as the fine referred to in § 1 of this article, shall be required of the industrial exporter.

§ 4º The provisions of § 3º shall apply even where the industrial concern cannot furnish a licence for the import of cigarettes into the country of destination, as specified in subparagraph III of § 5º of art. 12.” (NR)

Art. 8º Arts. 48 and 50 of [Act nº 9.532 of 10 December 1997](#) shall have effect as follows:

“Art. 48. The importer must request the Federal Revenue Service of Brazil to provide the control stamps referred to in art. 46 of Law 4502 of November 30, 1964, and in its application therefor shall provide the following information:
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III – the retail sale price when the product is marketed in Brazil.

§ 1º (Repealed).

§ 2º (Repealed).” (NR)

“Art. 50.
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I – If the imported packets of 20 units match the disclosed trademark and are properly sealed;
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.....” (NR)

Art. 9º This Act shall enter into force on the date of its publication. The following specific articles will come into effect on the following dates:

I – art. 1º, from 29 October 2010;

II – arts. 2º and 3º, from 1 January 2011;

III – arts. 5^o and 6^o, from the first day of the fourth month following publication;

IV – remaining articles, from the date of publication.

Art. 10. The following provisions shall be repealed from the date of entry into force of this Act:

I – [§§ 1^o and 2^o of art. 48 of Act n^o 9.532 of 10 December 1997](#);

II – [§ 3^o of art. 49 of Act n^o 9.532 of 10 December 1997](#);

III – [subparagraph II of art. 6^o-A of Legislative-Decree n^o 1.593 of 21 December 1977](#);

IV – [art. 11 of Legislative-Decree n^o 1.593 of 21 December 1977](#).

Brasília, 2 May 2011; 190^o Independência / 123^o República.

DILMA
Guido Mantega

ROUSSEFF

This text is not a substitute for the version published in the Official Gazette of 3.5.2011