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CLIENT ALERT

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THE BRAZILIAN FEDERAL REVENUE OFFICE ASSERTS THE SOCIAL CONTRIBUTIONS SHOULD NOT BE LEVIED ON MEAL ALLOWANCE PAID THROUGH TICKET OR CARD

This Friday, January 25, 2019, the Federal Revenue Office released the Consultation nº 35/2019 which deals with the social security contribution levied on meal allowance paid in cash, *in natura* or either through ticket or card.

The General Taxation Secretariat of the Federal Revenue Office (Cosit) concluded that:

- The amount paid to employees in cash should be considered in the tax basis for the calculation of employers' and employees' social security contributions;
- The amount paid *in natura* covers both meal baskets and meals supplied by the employers to its employees in cafeterias and should not be considered as basis for the calculation of social security contributions;
- The payment made through tickets or cards should not be considered in the tax basis for the calculation of the employers' and employees' social security contributions as of November 11, 2017.

The last conclusion of this answer to a consultation is relevant considering that on 2 January 2019, through the Consultation nº 288/2018, the same office advised that the meal allowance paid either through ticket or card would be included in basis for the calculation of the social security contributions.

The Federal Revenue Office emphasizes that this new understanding is applicable only to the taxable events that took place after November 11, 2017, date in which the Brazilian Labor Reform (Law n. 13.467/2017) came into force.

This new understanding is a result of the language introduced in the 2nd paragraph of article 457 of the Brazilian Labor Code by Law n. 13.467/2017, which explicitly determines that the amount paid in the form of meal allowance should not be considered as tax basis for any labor benefits or social security contributions, except when paid in cash.

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Such understanding may create an opportunity for employers that provide their employees with meal ticket or card, allowing a reduction of the tax costs associated with the meal allowance and even the recovery of the amount unduly paid of social security contributions since the Labor Reform came into force.

Our Labor and Tax teams are available to clarify any questions about the foregoing, as well as to advise about the proceedings that should be adopted in order to recover any amount of social security contributions unduly paid.

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