

## TAX NEWSLETTER

## INCREASE OF THE SOCIAL SECURITY CONTRIBUTION ON PAYROLL

All of the Brazilian companies that are employers are required to pay, on a monthly basis, the Social Security Contribution Destined for the Financing of Special Retirement and of the Benefits Granted as a Result of the Level of Labor Incapacity Arising from Risks in the Work Environment (SAT/RAT Contribution).

The SAT/RAT Contribution, levied on the total compensation paid by urban employers, was calculated by the employer at a rate of 1%, 2% or 3%. This rate was determined according to the level of risk in the work environment derived from the main business activity of the company.

As of January 1<sup>st</sup>, 2010, federal tax authorities began to apply specific percentages to the rate of 1%, 2% or 3% of the SAT/RAT Contribution, so-called Social Security Accident Factor (*Fator Acidentário Previdenciário*, or FAP)

The application of the FAP may imply a reduction of up to 50% of the rate of the SAT/RAT Contribution, or an increase of up to 100% of this rate. As a result, the application of the FAP may significantly modify the amount due as SAT/RAT Contribution, considering that the rates of this contribution may now vary from 0.5% to 6%.

The FAP was imposed unilaterally by federal tax authorities for each particular company employer, based on the number of work-related accidents and diseases involving the employees of such company, in comparison with other companies predominantly carrying out the same type of business activity.

The calculation of the FAP, carried out by tax authorities, took into account the results obtained from indexes related to the frequency, gravity and costs of said work-related accidents and diseases, according to a methodology approved by the National Social Security Council (*Conselho Nacional de Previdência Social*).

We understand that it is possible to dispute, in the judicial level, the application of the FAP, to the extent that the entering into force of this FAP implies a rate of the SAT/RAT Contribution which varies from taxpayer to taxpayer, according to a methodology that is not provided for under law, but, instead, only in infra-legal provisions, subject to modification at any time, what breaches various provisions of the Brazilian Federal Constitution and of the Brazilian National Tax Code.

In addition, tax authorities have not made available all of the data and elements necessary to enable taxpayers to confirm the appropriateness of the calculation of the indexes

connected with work-related accidents and diseases involving the employees of the respective company, which are used for the purpose of calculation of the FAP.

If there is a dispute in the administrative level concerning the calculation of the FAP, it is also possible to dispute, simultaneously, the charging of the SAT/RAT Contribution at the increased rate. In this case, both discussions would be maintained simultaneously. Particular characteristics of each case must be assessed.

We recommend an analysis of the effects of these new rules with respect to each particular company and, when these new rules imply an increase of the SAT/RAT Contribution, we recommend the filing of a judicial measure seeking to dispute and avoid, upfront, the imposition of the SAT/RAT Contribution at the increased rate.

This newsletter aims at commenting on the main changes recently occurred on the Tax Legislation. For further enlightenments, our professionals are at your disposal.

#### Contacts

---

**Silvania Conceição Tognetti**  
Tel: (11) 2179-5234  
sct@bmatax.com.br

**Débora Bacellar de Almeida**  
Tel: (21) 2114-7603  
dba@bmatax.com.br

**José Otávio Haddad Faloppa**  
Tel: (11) 2179-5235  
jof@bmatax.com.br

**Fábio Alves Maranesi**  
Tel: (11) 2179-5234  
fai@bmatax.com.br

**Gabriel Lacerda Troianelli**  
Tel: (11) 2179-5235  
glt@bmatax.com.br

**Luciana Loureiro Terrinha**  
Tel: (21) 3824-5855  
llt@bmalaw.com.br

**Sergio André Rocha**  
Tel: (21) 2114-7604  
sar@bmatax.com.br

**Vivian Casanova de Carvalho**  
Tel: (21) 2114-7604  
vcc@bmatax.com.br

**Alexandre Tadeu Seguin**  
Tel: (11) 2179-5234  
ats@bmatax.com.br

**Lígia Regini da Silveira**  
Tel: (21) 2179-5277  
lrd@bmalaw.com.br

**Maurício Faro**  
Tel: (21) 3824-6033  
mpf@bmalaw.com.br