

NEWSLETTER No. 78

MARCH 2021



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SUMMARY

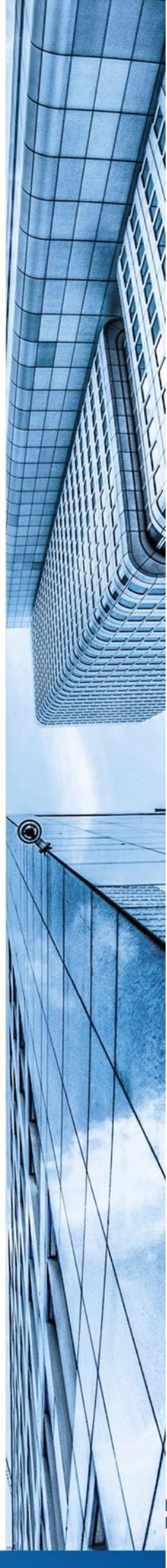
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**SUPREME COURT DECIDES THAT STATES CANNOT TAX
DONATIONS AND INHERITANCES RECEIVED FROM ABROAD**

3

**LAW ENACTED ESTABLISHING FORMAL INDEPENDENCE OF
THE CENTRAL BANK OF BRAZIL**

3



SUPREME COURT DECIDES THAT STATES CANNOT TAX DONATIONS AND INHERITANCES RECEIVED FROM ABROAD

On February 26, 2021, the Federal Supreme Court (STF) decided (in Extraordinary Appeal 851.108) that the states and the Federal District do not have competence to charge the Tax on Causa Mortis Transmission or Donation of Assets or Rights (ITCMD) on donations and inheritances received from abroad.

According to Article 155, § 1, III, of the Federal Constitution, to be effective, the ITCMD must be regulated by a complementary law regarding situations (i) where the donor has or had domicile or residence abroad; or (ii) where the decedent had residence or domicile abroad or the estate was processed abroad. However, so far no such complementary law has been enacted.

In his leading opinion, Justice Dias Toffoli, the reporting judge of the case, stated that the states cannot charge the tax when the donor has or had domicile or residence abroad or the decedent had assets, residence or domicile abroad or the respective estate was processed abroad, precisely because of the absence of the complementary law required by the Constitution.

The STF, sitting en banc, ruled by majority vote that the states cannot rely on concurrent competence to legislate on any matter while the enactment of a federal complementary law on the matter is pending, since this type of enabling law is necessary to establish the competence of the states on the theme.

Therefore, following ruling was issued, classified as having general repercussion by the STF, meaning it is binding on all other courts: “It is forbidden for the states and the Federal District to establish the ITCMD in the hypotheses referred to in Art. 155, § 1, III, of the Constitution of the Republic without the intervention of the complementary law required by the referred constitutional provision.”

More information, as well as the entire content of the decision (in Portuguese) can be found at the website of the STF (<http://portal.stf.jus.br>).

LAW ENACTED ESTABLISHING FORMAL INDEPENDENCE OF THE CENTRAL BANK OF BRAZIL

On February 25, 2021, Complementary Law 179/2021 was published, specifying the objectives of the Central Bank of Brazil (BACEN) and the appointment and dismissal of its president and directors (“Law”).

The Law establishes that the basic objectives of the BACEN are to assure the stability of prices, pursue the stability and efficiency of the National Financial System, smooth out the fluctuations in the level of economic activity and pursue full employment.

Besides this, the Law establishes that the BACEN shall have sole competence to conduct monetary policy so as to comply with the targets set by the National Monetary Council (CMN).

Further according to the Law, the “Collegial Directorate” of the BACEN shall be composed of nine members, one of them its president. All the members of the Directorate shall be appointed by the President of the Republic, subject to confirmation by the Senate, with term in office of four years. The term of the president of the BACEN shall start on January 1st of the third year of the four-year term of the President of the Republic, with the terms of the other directors having the following timing:

- (i) Two directors will have terms starting on March 1st of the first year of the term of the President of the Republic;
- (ii) Two directors will have terms starting on January 1st of the second year of the term of the President of the Republic;
- (iii) Two directors will have terms starting on January 1st of the third year of the term of the President of the Republic; and
- (iv) Two directors will have terms starting on January 1st of the fourth year of the term of the President of the Republic.

The Law establishes that the president and directors of the BACEN can only be reappointed to another term once, by determination of the President of the Republic, with observance of the staggered term structure described above.

Article 5 of the Law enumerates the specific situations where the President of the Republic can determine the dismissal of the BACEN president and directors: (i) at the request of the person in office; (ii) in case of a disease or injury that incapacitates the person; (iii) in case of a conviction, with all appeals exhausted, for commission of acts of administrative improbity or other crimes for which the penalty includes ineligibility to hold public positions; and (iv) when the person repeatedly and demonstrably shows insufficient performance to attain the objectives of the BACEN (in which case the CMN has responsibility for submitting the proposal for dismissal).

Finally, the Law forbids the president and directors, after leaving office, from participating in the corporate control or exercising any professional activity directly or indirectly (with or without a

formal employment relationship) with institutions of the National Financial System. This “blackout period” lasts six months counted from the end of the term, justified dismissal or resignation. The former president and directors receive compensation during that period.

More information, as well as the full text the Law (in Portuguese), can be found at the website of the Central Bank of Brazil (<https://www.bcb.gov.br>).

The Newsletter of Moreira Menezes, Martins Advogados is an exclusively informative publication, and it should not be entertained, for any purpose, as a legal opinion, suggestion or guideline given by the Office.
