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eters of operation being disclosed in the legislative process, the limits of the Council's tax competence are unknown, not to mention whether the entity will be successful in reconciling the individual interests of each of the entities and maintaining harmony in tax collection.

With so many uncertainties, the new model of consumption taxation proposed in PEC 45/2019 has possible sensitive implications for the federal pact. The federative form of the Brazilian State is a constitutional cornerstone, which, in the tax system, is instrumentalized by the division of competencies among the Federal Union, States, Municipalities, and the Federal District. If before the reform there was autonomy for the entities to establish the treatment of their taxes, it is certain that the intention, to some extent, to unify consumption taxation may mitigate their tax capacity.

These and other doubts will need to be further explored in the next steps for the approval of the Consumption Tax Reform.

Next Steps

The effectiveness of PEC 45/2019 and the introduction of the consumption tax reform still depend on the approval, in two (2) rounds, by the Federal Senate, and finally, enactment by the National Congress. The process will follow the work plan released by the Federal Senate, with public hearings scheduled for August and September that are expected to culminate in the project's vote, scheduled for October 4, 2023.

It is expected that the deliberation stage in the Federal Senate will allow for broad debate, with the participation of civil society in the legislative process. This is because the success of models adopted internationally does not necessarily mean that their reproduction will have the same result in the national political and tax structure, with complexities and peculiarities inherent to Brazil.

The Tax Reform can only benefit from this interactivity because it is certain that fairer, simpler, and more efficient taxation has long been awaited by the Brazilian business environment.

*Author of the publication ***So geht's M&A in Brasilien***

The new framework for Technology Transfer Agreements in Brazil

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The landscape of technology transfer agreements in Brazil has undergone substantial transformations to address longstanding needs for innovation and economic progress. These changes, a result of both fresh legislation and the deliberations of the Brazilian Patent and Trademark Office taken place on December 2022, aim to alleviate unnecessary burdens faced by companies striving to advance scientific and technical knowledge within the country.

In this context, the General Coordination of Technology Contracts at the Brazilian Patent and Trademark Office unveiled, on August 1, 2023, the application of Ordinances No. 26 and 27, dated July 07, 2023. These ordinances bring about significant modifications in the procedural aspects governing the assessment of technology transfer agreements presented for registration.

In connection with formal aspects of the analysis, the Brazilian Patent and Trademark Office declared the:

- Elimination of the requirement for notarization and apostille/legalization by the Consulate for digitally signed foreign documents;
- Recognition of digitally signed documents without the need for ICP-Brazil authentication;
- Abolishment of the obligation for two witnesses to sign domestically executed contracts;
- Removal of the obligation to send the Articles of Incorporation along with petitions filed in connection with the registration of agreements or requests for registration of technology transfer agreements;
- Removal of the obligation for the parties to initial all pages of agreements submitted for registration; and
- Elimination of the obligation of submission of licensee's official form named "Ficha Cadastro".

Concerning aspects of the technical examination, the aforementioned Ordinances promoted the following modifications:

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1) Acceptance, in the Certificates of Registration, of the declared value of contracts involving only trademark applications; and

2) Acceptance of licensing of non-patented technology (which will be registered in the category of Technology Supply).

These advancements resonate with the resolutions of the Contracts Department of the Brazilian Patent and Trademark Office, which were endorsed during the December 28, 2022 meeting and subsequently published in Official Gazette No. 2716 on January 14, 2023. The minutes of this meeting emphasize the alignment of the Brazilian Patent and Trademark Office's protocols with internationally recognized best practices, particularly those aimed at fostering technological innovation through effective public policies.

The acceptance of contracts involving the licensing of non-patented technology is admissible in Brazilian Law as an atypical contract (Articles 425 and 104, of the Brazilian Civil Code), according to Opinion No. 00031/2021/CGPI/PFE-INPI/PGF/AGU, of the Specialized Federal Prosecutor's Office of the Brazilian Patent and Trademark Office. This form of licensing, as outlined in the Brazilian Patent and Trademark Office's deliberations, not only establishes a secure institutional, legal, and business framework but also fosters the growth of such contracts between domestic and international companies, enhances opportunities for industrial and intellectual property rights commercialization, and nurtures innovation within Brazil.

The flexibilizations indicated above are reflective of the enactment of Federal Law No. 14,286/21, which eliminated the requirement for registering technology transfer contracts for the purpose of the remittance of royalty payments abroad. However, the registration of technology transfer agreements remains mandatory for tax deductibility purposes.

Moreover, a noteworthy development is the removal of the previous cap on deductible royalties for technology transfer, a limitation rooted in Ordinance 436/58, now superseded by Law 14,596/23. This new law, enacted on June 15, 2023, brought to life a fresh set of transfer pricing regulations in Brazil aligned with international practices. Hence, instead of resorting to the old Ordinance 436/58, established at a time of stringent economic regulations, companies are now encouraged to base their terms and conditions on comparable transactions conducted between unrelated entities.

In essence, the application of the Arm's Length Principle is now in effect, demanding that transactions mirror a functional evaluation of similar market conditions. While these enhanced flexibility and transactional freedom are welcoming and beneficial, they also place companies in a position of greater responsibility, which should exercise caution and engage in comprehensive studies on industry practices and standard fair market prices.

Finally, it must be emphasized that, although the rules will become mandatory as of January 1, 2024, there is an option period for 2023, which must be made between September 1st and 31st.

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