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Reverse mergers and the controversial decision by STJ

March 14 - 20, 2010

Written by • **Giancarlo Chamma Matarazzo**

Tax partner at Pinheiro Neto Advogados

The Brazilian press has recently published that the Superior Court of Justice (STJ) rendered a decision¹ purportedly ruling out the possibility of a debt-ridden company absorbing a profitable company (which is known as “reverse merger”). There are at least three facts showing that this conclusion is groundless.

First of all, the STJ has not rendered a decision on the merits. A detailed reading of the STJ decision shows that the taxpayer’s appeal was not even accepted for review with regard to this point, as such review would focus on factual matters (thus falling beyond the STJ authority as per Precedent 7). Consequently, the statements that the STJ has adjudicated on this issue are technically wrong. Transcriptions from the opinion issued by the reporting justice are only related to the judgment rendered by the Regional Federal Court (TRF), and should not be confused with an STJ decision on the merits.

The second fact is that the STJ decision is not innovative when compared to the stand taken by the Administrative Tax Appeals Board (CARF). Administrative decisions on “reverse merger” issues have already settled that these transactions must be real and effective within the context of legitimate corporate restructuring activities.

According to the case records, the absorbing company was a dormant entity (without assets or employees), which took over the name, Board of Directors and headquarters of the absorbed company. This is not only a reverse merger issue, but rather a more complex transaction whose legal validity was subject to its contextual characteristics.

The third fact is that the decision in point is valid only for the parties directly involved, as there are some events and circumstances specifically applying to them. In other words, no legal rationale was analyzed, but only a set of specific facts that had been entertained by TRF but were not even reviewed by STJ (which, as noted above, cannot address matters as of fact).

¹ Special Appeal No. 946707 – RS (2007/0092656-4)



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The only conclusion that can be drawn from this first STJ decision on the matter is that the STJ will not entertain disputes over tax planning activities when only the facts involved are to be reviewed. In these cases, a decision will be rendered by the second instance judicial authorities (TRF and the Court of Appeals).

This being so, unlike what was aired in the press, the STJ has not entertained the legal validity of “reverse merger” deals. Potential legal issues related to reverse mergers may in the future be judged by STJ. But for the time being, discussions over this matter remain unchanged: the validity of reverse mergers deserves a case-by-case analysis of the underlying facts and circumstances and their compliance with prevailing tax and commercial laws.

São Paulo, March 23, 2010.