



Informatics Law Benefits

May - October/2006

Written by **Maurício Braga Chapinoti**

Marcelo Casoy Feller

Associate and legal assistant in the Tax Area of Pinheiro Neto
Advogados

In October 23, 1991 Law n°. 8.248, known as “Informatics Law”, was sanctioned and therefore modified by several normative acts, which allows companies producers of certain informatics goods to invest in Research and Development (R&D) 5% of its gross sales derived from the commercialization of incentive products as per the project elaborated by the companies itself, as of the presentation of the project proposal before the Technology and Science Ministry, so that they can enjoy the exemption and subsequently reduction of the Tax on Manufactured Products – IPI.

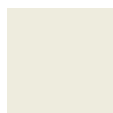
Furthermore, to stimulate the internal industry, the companies that wanted to enjoy the benefit must allocate 2,3% of its sale above mentioned in convention with centers or institutes of research, Brazilian entities of education, or still invest on the National Scientific and Technological Development Fund - FNDCT.

Since the creation of the Informatics Law, however, it has occurred a political clash between the companies that enjoyed the tax benefits granted to developing areas and the Federal Government. This happened because, with the Informatics Law bringing benefits similar for companies from outside the Amazon Development Agency – ADA – and Northeast Development Agency – ADENE – (old SUDAM and SUDENE, respectively) area, the benefits of having a company in this areas was largely affected, moreover if it is considered the freight cost to South and Southeast, becoming ADA and ADENE areas with a lack of interest by the market.

With the new Presidential Decree n°. 5.906, of September 26, 2006 (“Decree”), the percentages of reduction referent (i) to microcomputers and digital processing unities of low capacity, based in microprocessors, with the value up to R\$ 11,000.00; (ii) to unities of magnetic and optical disks; (iii) to printed circuits with electric components and established electronics; (iv) cabinets; and (v) feeding resources decreased, staying inclusively exempts, until 2014, when the production of this products will be done at the Middle West region and on the region of influence of ADA and ADENE.

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To confirm the investments realized on R&D, the company should allocate annually besides the Information Technology and Automation Policy Office (SEPIN), agency of the Technology and Science Ministry, an investment report in R&D.

Knowing that SEPIN has no determined term to analyze and verify those reports, but considering the prescription for the IPI collection, which is of 5 years, according to the wording on article 150, paragraph 4, of the National Tax Code, SEPIN notified the Federal Revenue Office, asking them to tax claim all the taxpayers that within the last 5 years collected less payments than due.

Such measure was a lot prejudicial to the companies once that without the notification in precedent years, the investments in plurianual projects followed, without the knowledge of the company that it was investing incorrectly and, therefore, several years' investments were compromised. For this reason, from the 327 companies that nowadays enjoys the tax benefits granted by the Informatics Law, approximately 300 were questioned by the SRF, referent to incorrect payment, in accordance to the information from SEPIN.

Aiming to straighten out the situation of the companies, article 4 of the Law n^o. 11.077, specify that the debt payment amounts questioned by SEPIN until December 31, 2003 (that until 2004 was approximately of 600 million reais), could be object of up to 48 (forty eight) monthly and consecutive installments. The new presidential decree complies such payment, establishing that all revenue acquired with the debt payment will be addressed to FNDCT. Moreover, for the debts consolidation, the Long Term Interest Rate – TJLP will be used.

In regard of the installment requirement, those have to be formulated in accordance to the instructions edited by the Technology and Science Ministry that must disclose some regulation referent to this soon.¹

The new decree specified what will be considered activity in R&D. Such measure will assist the market, once a big part of the official notification of the taxpayers by SRF occurred by investments that were not considered in R&D by SEPIN. Such measure increases the legal safety to companies that have benefits through the Informatics Law.

São Paulo, November 1, 2006

¹ *According to Informal understandings with SEPIN*