

November 14, 2013
2013-150

**Brazil – Court Rules on
Imposing Social Security
Taxation on Stock Options**

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flash International Executive Alert

A Publication for Global Mobility and Tax Professionals by KPMG's International Executive Services Practice

A Brazilian court has concluded that a local company (a subsidiary of a Swedish company) is not obligated to collect social security contributions on stock option transactions. The decision was issued by the Tribunal Regional (TRF - 3rd Region - São Paulo) and can be seen as an important precedent favorable to taxpayers.

However, companies must be very cautious about applying this decision to their policies since the TRF is a lower instance court in Brazil and it is not uncommon that a decision by the TRF is overturned by a higher court.

It is interesting to note, additionally, that recently the Administrative Tax Court (*Conselho Administrativo de Recursos Fiscais*, CARF) issued two unfavorable decisions against taxpayers which concluded that the equity plans granted by the companies were subject to social security because they could be characterized as salary. The good news resulting from these decisions is that, in both cases, the CARF analyzed the characteristics and details of each plan in order to help CARF reach its conclusion – this means that the risk of non-taxation might be higher or lower depending on a detailed analysis of each individual plan.

Finally, it is important to point out from a legal perspective, neither the decision by the TRF nor the decisions from CARF are binding on other taxpayers or the tax authorities.

KPMG Note

These decisions are important precedents to be considered and worth bearing in mind, at least because they emphasize the need to evaluate the characteristics of each equity plan in detail before determining the proper tax treatment. It must also be mentioned that despite the fact that taxpayers and tax practitioners may put forward favorable arguments supporting non-taxable treatment, the Brazilian tax authority's position typically is that equity plans are, in general, taxable. Therefore, there may be a risk of challenges by the tax authorities and the company may need to support its determination in court.

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