

REPETRO: RELEVANT ISSUES

**Ronaldo Carvas Carraça
Gustavo Goiabeira de Oliveira
Thomas Banwell Ayres**

After Petrobras' monopoly break-up for the research, mining and production of oil, especially with the Constitutional Amendment no. 09/95, it has become necessary to establish mechanisms so as to encourage activities in the privately-directed E&P sector. In that scenario it emerged the special regime for the temporary admission customs for goods related to exploration and production of oil and natural gas, the Repetro, set forth by Decree no. 3161/99 at the first time.

Currently the Customs Regulation (Decree No. 4.543/02) figures as the legal support of such instrument, with its regulations set forth in the RFB Normative Instruction No. 844/08. It is important to stress that such special arrangements may only be granted until December 31st, 2020. The basic scope of such special regime is to encourage the development of a heavy industry linked to the oil and gas sector, and enable its modernization without relying on direct investments. These goals are set to be accomplished by suspending the taxes over imported products (II, IPI, PIS/PASEP, COFINS, AFRMM and ICMS).

Any company holding a concession or authorization to carry out exploration and productions (E & P) activities in the Brazilian territory, after having being duly granted the title for these activities by winning a public bidding series, may be entitled to request such benefit. Nonetheless, the party who has been granted the concession by the government may move freely within its own scope of managerial activity, so it may contract companies to delegate certain E & P services. Such renderers of services, which have been subcontracted, are also qualified to apply for REPETRO.

The Repetro has the following tools to use according to the operation:

a) Temporary Admission:

It is the import of goods itself, but for a fixed period of time. It is the main instrument of Repetro. In this import special regime it is required the provision of guarantees in the amount of suspended tax. After this period of temporary admission, the goods should be: **(i)** re-exported, **(ii)** delivered to the Federal Revenue Services free of any charge, **(iii)** destroyed, **(iv)** transferred to another customs special regime, or **(v)** dispatched to consumption, which means the good will remain in Brazil. In the case of this last option it will be required the full payment of taxes which may have been previously suspended.

Concerning these required guarantees, they may consist of a cash deposit into an escrow account, pledge of federal bonds or guarantee from a reputable third party or customs insurance in favour of the Federal Government. Exceptionally, the companies are given immunity from these requirements if the amount of the suspended tax is less than R\$ 20,000.00.

b) Fictitious export:

It is the export without the removal of goods from the Brazilian customs territory, but through all legal procedures of a common export.

As an example, a Brazilian shipyard builds an oil-drilling platform and sells it to a foreign company. The latter, in turn, rents it to a Brazilian company that operates such a platform in Brazil. In this case the platform remains in Brazilian national territory and is delivered directly to the contractor party in Brazilian territory.

c) Drawback:

It is the import of raw materials, goods and inputs for further processing and export the result of the industrial process

As an example, a Brazilian shipyard acquires a raw material as input to the production of ship-platform of floating Production, Storage and Offloading (FPSO). After the production, ship-platform is sold to foreign company, which rents for the Brazilian company; that shall operate in Brazil. In this case the ship-platform remains in Brazil and is delivered directly to the contractor party in Brazil.

As noted, the legal instruments mentioned above may be combined, and in the most complex scenario all three instruments may be used jointly.

It is important to emphasize that Brazilian Law had already provided for the Temporary Admission and "Drawback" in other **legal texts** other than the Repetro rules, but in both cases the general rules of the Customs Regulation should be more respected in a legislative hierarchy, and in such situations the suspension of the taxes shall not be as simplified.

Another relevant aspect lies in the duration of the special regime, which is limited by the concession contract, authorization or service, depending on the case, and may be extended to the length of stay of the goods if requested in due time.

The RFB Normative Instruction no. 844/08 foresees several provisions serving as requirements for one to take advantage of the benefits provided for by Repetro. Such requirements are, among others: **(i)** Legal person holding a concession or authorization, or contracted by one of the above to provide services related to it, **(ii)** is tax resident in Brazil, **(iii)** Keep an electronic accounting system, allowing the RFB to perform monitoring in compliance with the special regime at any time.

In the past there years there has been a huge controversy about which goods could be subject to the temporary admission system under the Repetro rules. The SRF Normative Instruction no. 87/00 unveiled a list of goods that could be subject to acceptance by Repetro. On one hand stand the taxpayers, understanding that this list is not restricted, in other words, it might also be extended to assets that may not be covered within the list, on the other hand, the defenders of the interests of the revenue services, agree that this list is literal, in accordance with Article 111, paragraph first of the National Tax Code (Law 5172/66).

This imbroglio was forwarded to the Taxpayers' Council (Conselho de Contribuintes), which in our view, has correctly judged the matter by rendering an opinion that the E&P sector is a very dynamic sector, and as a result of that, technology has a key role. Therefore, bearing in mind that law cannot leave national economy development unshielded, this list of goods could not be interpreted restrictedly, or it will make the application of such special regime virtually impossible.