



**PROVISIONAL MEASURE  
1.185/2023**

**GOVERNMENT  
GRANTS**

**Main changes according to the final text approved by the Brazilian Congress**

On 12/20/2023, the Federal Senate approved the final text of Provisional Measure (MP) n. 1.185/2023, which aims to change the tax treatment of government grants/subsidies.

The bill of law is now waiting presidential sanction.

**NEW TREATMENT FOR GOVERNMENT GRANTS**

The objective of MP 1.185/23 is to modify the fiscal treatment of government grants (like tax incentives granted by States on the State VAT, i.e., ICMS), in such a way that the current benefit of excluding these values from the taxable income would be replaced by the granting of a tax credit. This credit would be calculated only on the parts of subsidies properly intended for investment (altering the concept of what qualifies to be treated as a government grant)

**HIGHLIGHTS OF THE NEW REGULATION:**

**Taxation of Subsidies**

The values of fiscal incentives (subsidies) are subject to taxation under IRPJ, CSLL, PIS, and Cofins.

**Tax Credit**

Excluding subsidies from taxable income (34%) is replaced by the granting of a 25% tax credit..

**Utilization**

Offsetting against other taxes administered by the Brazilian Tax Authorities or reimbursed within 24 months.

**Accounting for Capital Reserves**

The constitution of capital reserves for fiscal incentives becomes irrelevant for the utilization of the fiscal credit (amounts can be distributed to shareholders)

**Note:** The amounts of subsidies utilized in the past (according to Law 12.973/2014 and Complementary Law 160/2017) must continue to be subject to reserve.



**Changes to the scope and concept of what incentives can be treated as a government grant. Tax credits for government grants as per MP 1185 shall be:**

- i) related to the implementation or expansion of an economic enterprise;
- ii) related to the expenses of depreciation, amortization, depletion, or leasing or renting;
- iii) taxed by corporate income tax;
- iv) recognized after the company's qualification request to the RFB (Brazilian Federal Revenue).

**Registration with the Brazilian Tax Authorities**

Requirement for prior registration with the Brazilian Federal Revenue, accompanied by the submission of a specific concession act for the subsidy.

**Update!** If no response is received from the Brazilian Tax Authorities within 30 days of submitting the registration request, the legal entity will be deemed registered.

**Taxation of the Tax Credit**

The tax credit will not be subject to taxation for the purposes of IRPJ, CSLL, PIS, and Cofins.

**Formation of the Tax Credit**

The tax credit shall be constituted in the ECF for the calendar year in which the revenues from subsidies are recognized.

**Interest on Equity**

Change in the rules of Interest on Equity (JSCP), making it more restrictive. For instance, the reserve account for tax incentives should no longer be included in the base of JSCP.

**ON TAX SETTLEMENT AND SELF-REGULARIZATION**

- Possibility of joining the tax settlement or self-regularization for companies that have taken advantage of subsidy benefits until 2023, in accordance with Law 12,973/2014, with reductions in debt amounts.
- The settlement is applicable to taxpayers currently disputing these debts administratively or in court, while self-regularization is applicable to taxpayers who administratively excluded subsidies from IRPJ/CSLL.
- The conditions for the settlement/self-regularization are:

Debt Reduction	Payment	Remaining Balance
80%	Up to 12x	None
50%	Payment, without reduction, of at least 5% of the debt in 5 installments	Up to 60 installments
35%	Payment, without reduction, of at least 5% of the debt in 5 installments	Up to 84 installments

- **IMPORTANT NOTE!** Participation is contingent upon the taxpayer fully accepting the new rules introduced by the MP, with no possibility of administrative or judicial dispute.

**CONTROVERSIAL ISSUES – Subject to judicial debate**

- ICMS incentives given in the form of presumed credits – judicial debate to uphold the STJ's position regarding the Federal Pact for the application of old rules.
- Contradiction between MP and LC 160 – undermining of benefits.
- Participation in the settlement/self-regularization linked to acceptance of the new legislation.
- Change through MP and not by Complementary Law – STF ADI 7551.