

# RECHT & STEUERN

NEWSLETTER



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## Importance of payroll diagnosis for strategic management: INSS Credits

Leaner departments, optimize costs and seek opportunities are some of the measures adopted by companies to become winners during global crisis. But how about payroll optimization? What are the advantages that the company can have in a simple Payroll & Ancillary obligations Diagnosis? If your company is in the following situation this reading might be interesting for you.

Diagnosis of the payroll is nothing more than the complete evaluation, representing almost an internal audit, with the objective of seeking solutions for possible risks: undue payments of labor items; undue or non-existent discounts; identification of risks related to future and possible labor processes; identification of opportunities for gains related to payroll costs as well as Social Security (INSS) credits and how to appropriate them.

### Social Security

Social Security is part of the welfare system in Brazil, which consists of a set of social policies whose purpose is to support and assist citizens and their families in situations of elderly, illness and unemployment.

It is a contributory and compulsory affiliation policy, i.e. that citizens must contribute a certain percentage of their gross salary each month, in order for the State to guarantee these benefits (INSS).

When we talk about INSS credit, companies automatically understand its origin as INSS overpaid due to fault made by HR team, however, the INSS credit goes beyond simple errors and might be a great opportunity to companies.

It is known that when we talk about labor issues, we have the involvement and impact of more than one government authority, which may have divergent opinions on the same subject. A payment in payroll that sometimes is not considered as basis for INSS calculation, will be basis for calculating FGTS and/or withholding tax (IRRF).

Social Security considers for its calculation, amounts paid that have a salary nature which are classified as direct remuneration paid for the work performed, excluding those that have an indemnifying nature, which are paid without the direct provision of a job.

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Indemnity payments are one of the main sources of INSS credit due to the fact that Companies are unaware of it until a payroll diagnosis is done, since some of them need to be supported by a lawsuit in order to be entitled to apply the non-payment of INSS.

Also, we emphasize that it is common to come across an error in the effective INSS rate to be paid, that can generate credit resulting from overpayment of INSS for the last five years or even present a risk of being assessed by authorities due to INSS underpaid.

Finally, we point out that the types of credits described above and also credits due to INSS retained in invoices can be compensated monthly. However, what companies should do when the INSS to be paid monthly is lower than the amount of credit generated?

### **Compensation and Restitution of INSS credit**

The recovery of these values is one of the most dynamic subjects of the Brazilian legislation and it is also one of the ones that most attracts the interest of the contributors.

The Brazilian legislation determined that the INSS credit could be offset only with social security contributions and cannot absorb contributions destined to other entities or funds, which must be fully paid by the taxpayer.

However, with the publication of Normative Instruction RFB no. 1810, of 2018, there was the unification of the legal regimes of tax offsetting (tax and social security credits) in relation to legal entities that use the Digital Bookkeeping System of Tax, Social Security and Labor Obligations (e-Social) to calculate the contributions may, including, cross offset (between social security credits and debits or tax arrears), subject to the restrictions imposed by the legislation.

The social security contribution withheld at source may be offset and refunded provided that the withholding is highlighted in the invoice and declared in Ancillary obligation.

The process for the restitution of INSS is made via PERDCOMP or via a Restitution Request (when Perdcomp is not available), the balance and origin of the amounts must be proven by the company.

Please note that there are no specific rules regarding the period that the authorities will take to evaluate the credit. The complexity of the process lies on the request made in the IRS system (PERDCOMP), who send all information for the Social Security for evaluation (responsible for the administration of the INSS collection). If the right to restitution is recognized, the process returns to the IRS so that it can pay the restitution.

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The work methodology for Social Security Credits Recovery is made through a detailed analysis of the payrolls for the period under analysis. Through the payroll, it is possible to have detailed knowledge of the amounts that were part of the INSS calculation basis and, therefore, identify opportunities.

This work is extremely complex and delicate since sending wrong information to the tax authorities can generate problems for the company. Moreover, filing a credit recovery request with inaccurate information may result in the dismissal of the lawsuit and the loss of the right to refund the credits.

\*Author of the publications *So geht's Besteuerung von Unternehmen in Brasilien* and *So geht's Buchhaltung in Brasilien*

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