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Brazil eSocial Launch Is Postponed Again, But Employers Should Not Ignore It

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After agonizing months of uncertainty for employers, on August 31, 2016, Brazil's eSocial Steering Committee issued a new resolution postponing the eSocial digital bookkeeping program's implementation deadlines, the first of which was scheduled for September 2016. Although it likely would have been impossible to implement such a huge program so quickly when companies have had no time to test the system, it is nonetheless a relief to have word of an official postponement.

eSocial

The System of Digital Bookkeeping of Fiscal/Tax, Social Security and Labor Obligations ("eSocial") is a Brazilian federal government project to unify the transmission of employment and work-related data to the following federal government institutions: Caixa Economica Federal, the Brazilian government bank that manages the Employee Savings Fund ("FGTS") system; Social Security Institute ("INSS"); Social Security Ministry ("MPS"); Labor and Employment Ministry ("MTE"); and Internal Revenue Services ("RFB").

The eSocial system will affect all individuals and entities that engage workers, regardless of their size, including rural producers, professionals, employers of domestic workers, and service receivers. These individuals and entities will have to use the eSocial system to record events, payments, and contributions relating to each work/employment relationship. Generally, employers will record in the eSocial system data referring to hiring, leaves, working hours, prior notice of termination, termination, payroll information such as compensation and other payments, payroll taxes, and payments of taxes and contributions, and health and safety information.

Employers already are required to report most of that data, although through several separate systems and in much less detail. The eSocial

platform has 43 forms, with 2,392 fields. If a company has 1,000 employees, it will have to send at least 2,000 forms per month, with up to 130 fields each, just relating to payroll.

According to Brazilian authorities, the eSocial tool will simplify and expedite the information process by eliminating duplicated information and forms, such as the distinct filings for tax withholdings, social contributions, and employment data (e.g., GFIP, RAIS, and CAGED), among others. However, it also will allow the authorities (labor, social security, FGTS and internal revenue) to monitor and audit employers, so employers must improve the quality and accuracy of the information provided to avoid penalties.

Delays

Back in May 2014, we reported that the mandatory implementation of the eSocial program would start running from the date on which a final version of the eSocial Orientation Manual was published. At the time, we were still on Manual 1.1 and the authorities had promised to provide companies with at least six months of testing before enforcing the use of the program.

In 2015, the Steering Committee passed four resolutions establishing the timeline for implementation, setting the September 2016 deadline for large companies to fully operate under the new program. A simpler version of the program was implemented in 2015 for “domestic” employers (i.e., those who employ household employees).

Although the program for domestic employers was a lot simpler and required considerably less information, there were several glitches and setbacks since its inception in late 2015; only recently do all of its features appear to be working properly.

Employers with revenues in 2014 over R\$78,000,000 (then, equal to approximately \$29,000,000 USD) were required to be using the system by September 2016, but the government was unable to open the system for tests, and thus it became clear that it would be impossible to continue with the established deadlines.

The difficulties in creating such a platform and the political and economic crisis of the past two years have contributed to the delay. However, employers should not believe that the eSocial will never be implemented, because it will be a massive tool for the government to increase revenues and tighten the control systems, both of which the government needs.

New Implementation Deadlines

Resolution # 2 of the eSocial Directive Committee, issued on August 31, 2016, establishes the following new deadlines:

- Companies with revenue of R\$78,000,000 in 2016 (approximately \$24,000,000 USD as of today) must start using the system on January 1, 2018 (“group 1”)
- Other companies must start using the system on July 1, 2018 (“group 2”)
- Reports relating to health and safety will be mandatory six months after the company starts using the system

The resolution further states that the system should be open for company testing no later than July 1, 2017. It also reaffirms that non-compliance with the deadlines, providing incorrect information, or omitting information will be subject to penalties established in the specific laws.

What is Next?

We believe this is the last postponement, and thus employers should pay attention to these deadlines, as they are fast approaching.

It is likely that some companies falling under group 1 will now fall under group 2, since the economy in Brazil has deteriorated considerably since 2014 and many companies' revenues have significantly dropped. Employers should evaluate under which group they now fall based on their current and forecasted revenues for 2016.

Companies falling under group 1 will likely need to be ready before the end of December 2017, since between the system's glitches and the holidays (January 1st is a holiday!), companies may have a hard time meeting the deadline.

Companies already familiar with the system layout should also check the changes introduced by the newly issued Manual and Layout version 2.2, which is now available online (in Portuguese only) at <http://www.esocial.gov.br/Leiautes.aspx>.

eSocial Series

There is little to no information on the eSocial requirements in English. To give some practical guidance and raise awareness about certain issues for companies with subsidiaries in Brazil, we at Littler are launching this eSocial Series, which will be posted on our Littler website (www.littler.com) and distributed to clients worldwide.

Stay tuned.