

ARTICLE

Companies Need to Prepare for eSocial



A Companies need to prepare for increased inspection as from October 2014, when eSocial will become effective. Launched experimentally in 2013, the project requires employers – irrespective of the size of the company – to send a single form with labor, social security, tax and fiscal information to the federal government.

If, on the one hand, the eSocial will decrease bureaucracy by enabling information to be made available to all the authorities involved, such as the Ministry of Labor, Social Security, the Brazilian Social Security Institute (INSS), the Brazilian Federal Revenue Service and the Brazilian Savings Bank (CEF), on the other hand, experts believe the project is likely to increase inspection on the companies.

Flavia Lepique, partner in charge of Castro, Barros, Sobral, Gomes Advogados’s labor practice, claims companies will have to make adjustments. “It will be necessary to review all the labor, social security and tax procedures, for this measure will increase tax inspection on the companies.” The system will also require the inclusion of a new routine and the conduction of prior planning for contracting purposes.

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“eSocial does not bring forth any new legal requirements. However, current inspection leaves several gaps behind. Because of the digital process, it will be necessary to train people to assertively feed the system with information, in real time; any mistakes may turn out to be very expensive”, Flavia says.

Flavia also commented the fact that it is necessary to update Brazil’s labor laws. In her opinion, the Brazilian Consolidated Labor Laws (CLT), which date back to the 1930s, were drafted by former President Getúlio Vargas focusing on industrial labor. However, most of

Brazil’s GDP is currently concentrated in the services industry. As a result, the complex legislation oftentimes curbs formal labor contracting and, in some cases, even hinders workers themselves.

The implementation of the digital system will open way for the filing of new employment disputes, for employees will also have access to the information inputted in the system. In the US, where this digitalization process has already occurred, labor laws are governed by union agreements and state laws – in order to ensure the law is adapted to the needs of each profession.



SCHEDULE

The project implementation date has been postponed three times for entrepreneurs to adapt to the new system. According to the new schedule, companies taxed according to the taxable income regime must send the mandatory data via eSocial by October 2014. The period to deliver the documents ends in January 2015, when other companies will also be included in the project.

ARTICLE

What to Expect of Brazil's Internet Law?



Brazil's Internet Law is currently Bill No. 2126, of 2011, pending Senate approval, which sets forth the principles, guarantees, rights and duties relative to the use of the internet in Brazil. It took a long time before the government, civil society and the private sector managed to arrive at a consensus on the matter. The bill had been pending approval of the House of Representatives since October 2013 and was finally approved on April 23, 2014.

According to Alexandre Lyrio, CBSG's partner in charge of the firm's intellectual property practice, the bill that regulates internet use is based on a significant contradiction found in

the Brazilian Constitution. "The bill has been criticized essentially because of the prevalence of Freedom of Expression in detriment of other fundamental rights. The National Association of Federal Police Officers criticized the bill in July 2012. It grants the right to freedom of expression online as an absolute value, above all others, therefore denying the existence of other fundamental rights provided for in the Constitution, such as Honor. These rights are equivalent in the Brazilian Constitution", Lyrio says.

Civil Liability of Internet Providers

The bill uses the American model, known as notice and take down. However, the national version determines the provider must only remove offensive or defamatory content from the internet upon judicial order. As such, only in the event of non-compliance with the order would there be liability. "Those who oppose

the model claim that failing to comply with legal orders is a violation in itself – and even a crime. Additionally, demanding the victim resort to the Judiciary Branch to cease an ongoing violation exposes the victim to the cost, the slowness and the consequent permanence of the violation. As a result, greater emphasis is given to the right of the internet providers – though the victim's danger in delay (*periculum in mora*) is far more dangerous", Lyrio claims.

Providers have quite a sensitive take on the issue – to begin with, it is impossible to control content. Secondly, it is unreasonable to require the provider to make a value judgment on the notices. Thirdly, providers are incapable of making such value judgment, for it is completely unrelated to their corporate purpose. "Legal entities have a defined purpose. Attributing an obligation that is not in line with its activity, especially of a jurisdictional nature, creates quite a dangerous precedent".

CBSG HAS NEW PARTNERS



TAX LAW

Francisco Lisboa Moreira joined CBSG in 2010; he holds a degree in Law from the Federal University of Rio de Janeiro (UFRJ) and a graduate degree in Tax Law from the State University of Rio de Janeiro (UERJ/CEPED). Moreira has a LLM in International Taxation from the New York University School of Law. Moreira is part of CBSG's Tax Law Practice, with particular focus on planning and consulting.



CORPORATE LAW II

Helen Gaudio Valente Figurelli has been working at CBSG since 2006, with particular focus on international trade, environment and corporate/business law. Figurelli holds a degree in Law from the Federal University of Rio Grande do Sul (UFRGS), she has a LLM in International Private Law and Foreign Trade from Université Paris II – Panthéon-Assas and a graduate degree in Environmental Corporate Law from Fundação Getúlio Vargas (FGV).



CORPORATE LAW I

Fernanda Alves Wolf joined CBSG in 2001, and her practice focuses on corporate, M&A, commercial, bank and real estate agreements, financing and structured finance. Wolf holds a degree in Law from the Federal University of Rio Grande do Sul (UFRGS) and holds degrees from the American University, Washington College of Law (US), as well as a graduate degree in Civil Law from the State University of Rio de Janeiro (UERJ).



CORPORATE LAW III

Tiago Franco da Silva Gomes holds a degree in Law from the University of São Paulo, where he also completed his LLM and is currently a doctoral candidate. Gomes joined CBSG in 2006, and his practice focuses on corporate contracts and transactions, regulatory, competition, litigation and arbitration law.