BMA ADVOGADOS

Brazil's Federal Revenue Service Broadens Royalty Rules for Software Under Tax Treaty with France

17.09.2025 3 min read

Topics

Tax BMA Review

In COSIT Tax Ruling 54/2025, the Federal Revenue Service of Brazil (RFB – *Receita Federal do Brasil*) reaffirmed an interpretation that creates legal uncertainty for technology companies by classifying payments remitted to other jurisdictions in connection with software sales as royalties, even when the license grants only distribution rights and does not include the right to use the software.

The case involved a Brazilian company controlled by a French group that markets, in Brazil, a software solution provided by its parent company under a Software as a Service (SaaS) model. The agreement granted only the right to distribute the software: the French parent did not share the source code or transfer the right to use the software, but merely authorized its resale to local customers.

The taxpayer argued that the payments do not qualify as royalties under article 12 of the Brazil–France Tax Treaty (Decree 70.506/1972), which defines royalties as remuneration for the use of copyrights, including software, or patents. Without the use or assignment of copyrights, the payment should be treated as "business profits" of the French company under article 7 of the treaty, and therefore not subject to tax in Brazil.

The RFB, however, classified the payment as a royalty, reasoning that a distribution license constitutes use of intellectual property. It therefore applied article 12 of the treaty, which allows Brazil to levy withholding tax (IRRF – *Imposto de Renda Retida na Fonte*) at a 10% rate, in this case.

The RFB's approach to software transactions has not been consistent. In some cases, it treats payments for the right to use software as technical services; in others, as royalties. If COSIT Tax Ruling 54/2025 had involved only the right to use the software – rather than the right to distribute – it is unclear whether the agency would have applied the same royalty classification or reverted to the "service" label. This uncertainty is amplified by the Brazil–France Treaty, one of the few Brazilian treaties that does not expressly equate services with royalties in its protocol. That omission matters: it would normally ensure that payments for services fall under article 7 as business profits, exempt from withholding tax in Brazil.

Criticism of the RFB's position argues that it stretches the concept of royalties beyond the limits set by the treaty and by the OECD Model Convention, both of which define royalties narrowly as payments for the use, or the right to use, copyrighted works, patents, or protected technology. A distribution license is simply an authorization to resell, which falls outside that definition.

The RFB's lack of consistency is also worrying. In COSIT Tax Ruling 107/2023, it treated SaaS payments as a technical service for a federal import tax (PIS/Cofins-Importação) and as royalties for another (IRRF withholding tax), but concluded that an economic policy tax, CIDE, did not apply. In COSIT Tax Ruling 177/2024, it decided that PIS/Cofins-Importação did not apply, on the grounds that payment for distribution rights was not a service. Earlier, in COSIT Tax Ruling 191/2017, it classified similar payments as a technical service for CIDE purposes. In short, the RFB has a variety of interpretations for each tax.

This pattern reinforces the perception that classification depends less on technical criteria and more on a revenue-driven logic, leaving taxpayers exposed to shifting interpretations.

>>> This content is part of BMA Review #88. Click here for more.