

FOREIGN VESSEL OPERATING IN BRAZILIAN WATERS AND GENERAL INFORMATION FOR TEMPORARY ADMISSION AND REPETRO SYSTEM

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RESUMO

Este artigo tem como objetivo principal falar sobre o Sistema de Admissão Temporária no Brasil na área da Indústria do Petróleo e Gás, ele aborda de modo geral o Regime Aduaneiro Especial de Exploração e de Importação de bens destinados às atividades de pesquisa e de lavra das jazidas de petróleo e gás natural - REPETRO. Aborda esclarecimentos sobre a rotina utilizada no dia a dia nas importações e exportações de Navio Sondas, Rebocadores, Plataformas de Petróleo, bem como as peças e partes de reparos na substituição das referidas embarcações. Ele se fundamenta na legislação da Secretaria da Fazenda da Receita Federal do Brasil, na legislação da Capitania dos Portos do Rio de Janeiro, e também nas regulamentações da Agência Nacional do Petróleo ANP, Dada a complexidade julgo importante tal análise visando um maior controle e principalmente fazer a coisa certa para evitar eventuais autuações fiscais das empresas habilitadas ao regime do REPETRO, por falta de conhecimento da legislação.

Palavra Chave: Admissão Temporária, Legislação, Repetro.

ABSTRACT

This article aims talk about the Temporary Admission System in Brazil in the area of the Oil and Gas Industry, it addresses generally the Special Customs Regime Exploration and import of goods intended for research activities and mining of deposits oil and natural gas - REPETRO. Addresses clarification of the routine used in everyday life in imports and exports Ship probes, Tugs, Oil Platforms, as well as pieces and parts to repair the substitution of those vessels. It is based on the law of the Secretary of the Treasury Internal Revenue Service of Brazil, the legislation of the Province of the Rio de Janeiro Port, and also the regulations of the National Petroleum ANP agency, Given the complexity I consider important such analysis designed to further control and mainly do the right thing to avoid possible tax assessments of companies qualified to REPETRO regime for lack of knowledge of the law.

KEYWORDS: Temporary Admission, Legislation, Repetro

INTRODUCTION

The REPETRO is a computerized control system for management of special customs regime REPETRO, this regime established by Decree 3161 of 09/26/1999, currently governed by Decree 6,759 / 2009 (Customs Regulation), which provides special treatment for imports and export of specific equipment for use in research activities and exploitation of oil and natural gas fields. The REPETRO is a special customs regime that allows the import of specific equipment to be used directly in research activities and exploitation of oil and natural gas fields, without the incidence of federal taxes - II,

IPI, PIS and COFINS, as well the additional shipping renovation of the merchant marine - AFRMM. These taxes remain with their enforceability suspended for the period of use in the scheme and its extinction provided for in case of re-export of equipment admitted to the regime. The REPETRO shall apply to the single attached goods Instruction Normative RFB 844, may also be applied to machines and spare equipment, tools, appliances and other parts, to ensure the operability of the single attachment property, provided that their use is directly related to the research activities and exploitation of oil and natural gas. The REPETRO provides control of imports and exports under the REPETRO, serving broadly the specifications contained in the RFB Normative Instruction 844/2008 and 119/2000 ADE COANA. Its scope of control reaches from the attachment of property to exploration contracts, through length of stay, contract transfer, and generation of RCR, RPR and TR allowing full traceability of all documents associated with the admission of records in the system, plus all forms of extinction and admissibilidades under the laws.

WHO CAN USE THE REPETRO

- Which holds a license or authorization, pursuant to Law No. 9478 of August 6, 1997, to exercise in the country, the activities referred to in Art. 1; and
- Hired by the legal person referred to in paragraph I for the provision of services for the implementation of the activities object of concession or authorization, as well as their subcontractors.
- Company based in the country formally designated by the legal entity mentioned in item I, to promote the import of goods that are chartering object, rental, operational or loan lease, since it linked the implementation of the provision of contract services agreement between them.

CHARACTERISTICS REPETRO:

- No taxation of inputs of equipment admitted to the regime, despite being used in economic activities;
- Ability to receive and transfer assets to other special customs regimes;
- Shared use of property;
- Export without leaving the customs territory;
- Import under the drawback scheme of raw materials, semi-finished products and parts or components for the manufacture of REPETRO object goods for subsequent submission to the fictitious export procedure- Shared use of property;
- Export without leaving the customs territory;
- Import under the drawback scheme of raw materials, semi-finished products and parts or components for the manufacture of REPETRO object goods for subsequent submission to the fictitious export procedure

KEY FEATURES OF REPETRO:

- Import Declaration extraction automatically Siscomex
- Control of all admissions

- Taxes Control Suspended
- Contract Control
- Control and generating RCR - system of granting Application
- Control and generation of TR - Disclaimer
- Control and generation RPR - Extension of Application of the regime
- Shared use of Control of goods
- Control Inventory
- Export Control Ficta
- Control Claims
- Inventory Movement
- Goods Destruction
- Goods delivery RFB
- Dwell Time Expired
- Inventory of Merger
- Order for consumption
- Re-export
- Beneficiary Transfer
- Transfer Agreement
- Arrangements for Transfer
- Deadline Extension Control
- Nationalization of control Goods
- Contracts traceability, ADE'se historical and admissions
- Input and output Traceability items in the scheme by serial number
- Cargo Products via Excel spreadsheet
- Load Sub-items via demand for screen
- Inventory Charge via excel spreadsheet
- Dynamic Generator reports
- Drive integrated Items to Invoice Module

There are Basically Three Types of Temporary Admission:

- Regular Temporary Admission - with total suspension of payment of taxes on imports - returning abroad without change giving him new individuality. Ex sample, fair, research, repairs, demonstration, sports competition, cultural activities etc;
- Temporary Admission for inward - with tax payment suspension - for processing purposes (processing, assembly, renewal, reconditioning, packaging, reconditioning), maintenance, repair or restoration of foreign goods, which are to be returned, modified, to the country of origin;
- Temporary Admission for economic use - to pay taxes proportional to the length of stay in the country when treating up of goods with economic utility. Ex. Operational leasing In the specific case of the Oil Industry, it is basically only used the 1st and 3rd.

At the end of this article has a demonstration of the calculation of taxes on Temporary Admission Normal without payment of taxes and Temporary Admission Proportional with payment of monthly taxes for the term of the contract.

From 2013 Year the IRS of Brazil has set a limit of US \$ 25,000.00 to not allow this value goods admitted temporarily, in this case the taxes are paid normally.

All relating to REPETRO system is done by SISCOMEX - Integrated Foreign Trade System

The Integrated Foreign Trade System - SISCOMEX, established by Decree No. 660 of 09/25/92 is the systematic management of Brazilian foreign trade, which integrates the related activities of the Secretariat of Foreign Trade - SECEX, the Federal Revenue of Brazil - RFB and the Central Bank of Brazil - BACEN, the registration, monitoring and control of the different stages of export operations.

Since 1993, with the creation of SISCOMEX, all administrative processing on exports was computerized. Operations are now recorded via system and analyzed "on line" by the agencies that operate in foreign trade, both so-called organs "managers" (SECEX, RFB and Central Bank) as the organs "consenting", which act only in some specific operations (Ministry of Health, Department of the Federal Police, the Army Command etc.).

In designing and developing the system were harmonized concepts, classifications and codes, making it possible to adopt a single stream of information handled by computerized means, allowing the elimination of various documents used in the processing of transactions.

The fully computerized export registration system allowed an enormous gain in agility, reliability, quick access to statistical information, etc. cost reduction

- Access to SISCOMEX IMPORT is done by connecting with Serpro so that operations that require Import License can be made.
- SISCOMEX has been constantly improved, having incorporated the Electronic Drawback Module in November 2001.
- The following formalities are basically necessary for any foreign vessel contracted by a Brazilian entity to operate in our territorial waters and import materials and goods in Temporary Admission.

- Obtaining import license at DECEX (L.I.).Mandatory for used equipment
- Registration of financial operation - ROF – at Central Bank.
- Obtaining an operating authorization from the Port Captaincy.
- Obtaining an operating authorization from the Port Captaincy.
- Registration of the company with the Customs;

4-1 Federal Taxes Suspended (I.I, IPI, PIS ,COFINS) *.

4-2 State Duty ICMS (1,5% on Exploration or 3,0% on Production).

- Temporary admittance with the Custom’s Office of the jurisdiction of the place of the vessel’s operations, or at the port of her first entrance in Brasil.

5-1 Proportional Payment Duties: Import License Mandatory for used equipment, Payment 1% of the total duties/month for the validity of the contract;

5-2 State Duty ICMS (VAT) Total ICMS tax under the proportional value in Rio de Janeiro 16%.

- Temporary inscription with the Port Authority of the jurisdiction of the place of the vessel’s operation.
- To obtain license from customs for the Repetro’s fiscal benefits, for import and export goods related to the Oil & Gas exploration and production activities.
- To have informatized inventory control system dully approved by customs.
- When corresponding, obtaining “ HOMOLAGATION “ of the Helipad with the DPC, Board of Aviation of the Navy and the Dept. of Civil Aviation of the Ministry of Aviation.

As requested, we detail below the various steps normally taken for formalizing these legal requirements:

The registration of the financial operation is formality under charterer direct responsibility and will allow the remittance of amount in foreign currency due to the contract and is linked to the import license as per instruction nr 2/97 of DECEX and article 30 of the circular instruction nr 2731/96 of the Central Bank of Brazil. (For time charter contracts period superior than 360 days).

For the L.I. it is required by Decex two different technical evaluation reports and notorized copies of the contract. The authorization from the Port Captaincy is obtained by means of a communication sent to say body by charterer.

For Registration of the Company with the - Customs, the Following Documentation Shall be Presented:

- Articles of Incorporation or bylaws - initial and subsequent alterations - 2 certified copies.
- Inscription card as a corporate taxpayer (“CNPJ”) - 2 certified copies.
- Two certified copies of the identity cards and individual taxpayer registration cards (CIC/CPF) of the directors or attorneys-in-fact responsible for the company.
- Powers of attorney appointing legal representatives.

With Regard to the Process of Temporary Admittance with the Customs, we Would Advise as Follows:

The Process is Prepared with the Following Documentation:

- Registration Certificate of the Country of Origin, duly translated by a sworn public translator.
- Copies of the certificate of temporary inscription
- Concession contract or ANP'S license.
- Notarized copies of correspondent contract.
- Inventory of spare parts and equipment on board.
- Technical evaluation report.
- Power of Attorney given by the rig's owner to the Brazilian Company who will handle the contract as per enclosed forms.
- Negative Certificate for Federal Tributes.
- Certificate of Regularity issued by INSS.
- Certificate of Regularity for F.G.T.S.
- Informatized inventory control system dully approved by customs.
- Licensing granted by custom's for the Repetro fiscal benefits

In the case of a vessel belonging to third parties, i.e., a foreign owner, the contracting thereof by the company shall be proved (Bareboat charter party or an equivalent document), or alternatively, a power of attorney there from, granting management powers with regard to the contract and representatives before Brazilian Federal public organs, among which must be included the possibility of SIGNING TERMS OF RESPONSIBILITY WITH ANY AUTHORITIES, in guarantee of taxes and/or any other taxation or financial obligations.

With Regard to the “ TECHNICAL EVALUATION REPORT “, we would Suggest the Following:

These reports are accepted when issued by an independent surveyor, either an individual or a legal entity, established or not in Brazil, and in accordance with current regulations, if issued abroad, in order to be accepted in Brazil it is subject to notarial and consular legalization, recognition of the Consul's signature by the Ministry of Foreign Affairs and translated into Portuguese by a sworn public translator.

Compulsorily the evaluation report must state full description of the rig/boat, list of equipments existing on board, place and date of her construction resume report of her actual conditions, market value reposition value reconstruction value and her time life.

It is very important to mention here that normative instruction 04/2001 of the Federal Revenue Secretary will oblige that the correspondent bond to be presented to Custom's for all tributes suspended due to temporary admission regime, have to be granted by one bank or by insurance policy in favour of said Secretary. The conclusion of this formality will be directly connected to the fullfilment of this legal compliance.

For Purposes of Temporary Inscription with The Port Authority, The Respective Request Shall Be Prepared with the Following Documents:

- Registration Certificate from the country of origin
- Certificate of Tonnage.
- Load line Certificate.
- Certificate of Classification of hull.
- Certificate of Classification of machinery
- Safety Certificate of Radiotelegraphy or Radiotelephony.
- Safety Equipment Certificate
- Safety Construction Certificate
- License for functioning of Radio Station issued in the country of origin.
- Technical evaluation report.
- Declaration by the Classification Society relating to the latest docking
- Proform Invoice based on in the Technical Evaluation Report;
- Mandatory Documents to Present to Customs:
 - 13-1 Administrative procedures (Digital DCTS and RAT- Temporary Admission Requirement)
 - 13-2 Import Declaration + Invoice or Proform Invoice;
 - 13-3 Documents for guarantee if Temporary Admission for Suspend duties, by Guarantee Letter with documents:
- Company Article of al changes from guarantor;
- Power of Attorney if the responsible person is not mentioned on company article of incorporation;
- ID and CPF- Individual Taxpayer Registration from the Guarantor;
- Last Financial Statement (Net equity higher them R\$ 5.000.000,00), declared to IRS in December of the year before the year of guarantee presented;
- Account book page showing the last annual report registered at Commercial Board;
- Company Register (CNPJ);
- Corporate Income Tax Declaration;
- Federal Liabilities Overdue Certification CND (Federal Revenue and Union);
- Debit Clearance Certificate by the Brazilian Social Security Institute (INSS).
- J) CND OF FGTS – Time of Service Guarantee Fund Debit certification;

Summary of Documents Required:**By Normative Instruction # 1.145/13 for Temporary Admission**

- Performa Invoice;
- b Inventory;
- Certification of Property;
- Charter Contract and all amendments
- ADE – Declaratory Executive ACT of current Importer;
- Import License;
- SODEA form;
- Contract Summary signed by the contractor.

By Normative Instruction # 1.361/13 for Proportional Admission

- Performa Invoice;
- Certification of Property;
- Operating Charter Contract and Service contract

Note: Navy authorization – Issued after main asset arrived.

For purposes of issue of the crew's license card or safety manning card by the Port Authority, our Office must be informed as soon as possible, of the composition of the vessel's crew, including officers, sailors, industrial workmen, technicians, ship's stewards catering personal, divers, etc.

The vessel will be subject to inspection, during which the items relating to safety, and general conditions will be verified. The Port Authority will make a concurrent inspection for purposes of confirming the drinking abroad and licensing of the radio station.

In order to avoid delays, we would suggest that the vessel be adapted as far as possible to requirements of Brazilian legislation. After conclusion of the temporary admittance process, spare parts sent from abroad for the vessel can be imported and cleared under the customs transit regime.

We would emphasize that the checking of the spare parts existing on board the vessel is very strictly made, and presentation of the inventory translated into Portuguese, clearly defining the contents - is essential.

In order to obtain the Approval (“HOMOLOGAÇÃO”) of the ship's helideck from the D.P.C., Board of Aviation of the Navy and Board of Civil Aviation of the Air Ministry, the respective request is to be made to the Board of Ports and Coasts, at least 30 days ahead in relation to the vessel's arrival date, and prepared with the following documents:

- Helideck registration card - in 5 copies (filled out and signed).
- Overhead Plan - in two copies, with scales showing area and details of the Helipad

- Sectional Plan - in two copies, with scales showing the obstacles of the ship (heights and distances) in relation to the helipad
- License or Approval issued by the authority of vessel's country of origin for the helipad on board, are not acceptable approvals issued by classification societies.

A temporary approval must first be obtained, that will permit operations and usage of the helipad for 60 days, at the end of which inspection shall be made by technicians of the Ministry of the Navy, Board of Aviation that will give final approval.

Temporary visas item "V" must be obtained for all the crew and foreign technicians, with a list and complete description thereof to be sent, with the necessary precedence, to the Department of Immigration in Brasília, with indications of which consulate abroad should issue them. Business visas, tourist or any other are completely inadequate for these purposes and will submit bearers to heavy fines.

We consider as extremely important in order to avoid any interruption in the operation that request of temporary helideck license, should start with considerable antecedent of the date of entry of the vessel to the country.

SPARES

It is also very important to mention here the correct form for shipment of spares to Brasil.

It have to be consigned as follows:

Master o/r. _____

c/o (Name of the company and addresses)

The commercial invoice have to be presented in original via (copies not acceptable) with full and itemized description of the goods its individual prices and its physical nature (ex-rubber ring, steel plates).

In the commercial invoice and AWB/B/L have to be inserted following declaration:

Peças de reposição destinadas ao navio/plataforma _____

SEM COBERTURA CAMBIAL

Also please note that the laws in force are imposing restrictions for the importation of greases, oils, paints, chemical products and others consumables, which have to be imported definitively fully observed rules in force valid for ordinary importations.

In case additional enlightenment about this matter be necessary, please do not hesitate to contact us.

CONCLUSIONS

The Temporary Admission Regime for Import and export vessels, platforms, supply for parts etc is quite complex and requires in addition to knowledge on the matter, daily dedication, to follow routine mortifications of legislation

The Repetro System was designed as a tool for development of oil activity in Brazil, representing a significant tax savings for companies that fit in the qualification profile, either by suspension of federal taxes, either by reducing the tax

basis and even exemption ICMS, however it is necessary to repeat the deep knowledge of the rules that are tax savings does not turn into prejudice for lack of compliance with standards regents.

CACULATION OF TAXES ON ADMISSIO TO THE CONTRACT TIME			
8430.41.30	NCM		TX DO 10/06/2015
	2,10% PIS	0,8725	Tx FOB 2,5931 Valor FOB 700.000.000,00
	10,65% COFINS	1	Tx Frete 0 Valor Frete -
	0,00% ICMS	1,146131805	Tx USD
	14,00% II	100%	
	0,00% IPI	100,00%	
	100,00%		
	100,00%		
TRIBUTOS SUSPENSOS			
VA		1.815.170.000,00	
II		254.123.800,00	
IPI		-	
TX SISC.		214,50	
PIS		38.118.570,00	
COFINS		193.315.605,00	
ICMS		-	
TOTAL		485.558.189,50	
ICMS			
ON EXPLORATION 1,5%		27.642.186,01	
ON PRODUCTION 3,0%		56.139.284,98	
Prazo do contrato 1,0			
1,00000000%			
VALOR DO TR 485.558.189,50			
TOTAL 485.558.189,50			
Valores no TR			
II		254.123.800,00	
IPI		-	
TX SISC.		214,50	
PIS		38.118.570,00	
COFINS		193.315.605,00	
TOTAL		485.558.189,50	
Note: In this case Federal Taxes will be suspended :(R\$ 485.558.189,50), and the ICMS (VAT will be paid at the rate of 1.5 or 3.0% depending on the area of operation			

CACULATION OF TAXES PROPORTIONAL ON ADMISSIO TO THE CONTRACT TIME			
8905.90.00	NCM		TX DO 12/12/2014
	2,10% PIS	0,7329	Tx FOB 2,5931 Valor FOB 700.000.000,00
	10,65% COFINS	1,0224	Tx Frete 0 Valor Frete -
	16,00% ICMS	1,395006	Tx USD
	14,00% II	100%	
	0,00% IPI	84,00%	
	100,00%		
	84,00%		
Valor total			
VA		1.815.170.000,00	
II		254.123.800,00	
IPI		-	
TX SISC.		214,50	
PIS		38.118.570,00	
COFINS		193.315.605,00	
ICMS		345.746.707,52	
TOTAL		831.304.897,02	
meses 30			
dias 1,00			
Valor Proporcional 1 MÊS			
VA		18.151.700,00	
II		2.541.238,00	
IPI		-	
TX SISC.		214,50	
PIS		381.185,70	
COFINS		1.933.156,05	
ICMS -		3.457.507,52	
TOTAL		8.313.301,77	
Prazo do contrato 1,0			
1,00%			
TRIBUTOS FEDERAIS			
II		254.123.800,00	
IPI		-	
PIS		37.737.384,30	
COFINS		193.315.605,00	
TOTAL		485.176.789,30	
TR = TERMO DE RESPONSABILIDADE			
In this case the Federal and State tax rate of 1% will be debited from the bank account of the taxpayer.			

LEGEND: II – Import Tax;

IPI – Industrialization Tax;

PIS – Social Contribution Tax;

COFINS- Social Security Financial Contribution Tax.

ICMS If client do not have the Court Injunction IN 1415

ICMS Proportional tax payment according to the contract period.

SVA- Digital System for Document Validation

SODEA - Requirement for Digital Certification from IRS

VA - Valor Aduaneiro

REFERENCES

With the Collaboration of the Customs Brokers:

1. Murilo Cesar Berrini da Fonseca from Cardoso & Fonseca Despachadoria;
2. Manuel Constantino de Almeida Marques da Silva from MS Logística

Ato Declaratório COANA/COTEC/RFB nº 119, de 05 de Setembro de 2000;

1. Customs Regulations - Decree No. 3.161 of 02/09/1999 Replace by
2. Customs Regulations - Decree No. 6.759 of 05/02/2009;
3. Normative Instruction IN RFB 0004/01
4. Normative Instruction IN RFB 0844/2008
5. Normative Instruction IN RFB 1070/2010
6. Normative Instruction IN RFB 1089/2010
7. Normative Instruction IN RFB 1284/2012
8. Normative Instruction IN RFB 1361/13
9. Normative Instruction IN RFB 1.415/13
10. Ordinance Instruction IN RFB 692 & 693/ 2015

Standard Maritime Authority - NORMAN No. 4 FROM 27 December 2013;

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RESOLUTION ANP Nº 19, FROM 17 JUNE 2013. AGÊNCIA NACIONAL DO PETRÓLEO, GÁS NATURAL

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