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flash Alert

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Brazil – New Voluntary Disclosure Program and Capital Gains Taxation Rates

by KPMG, Brazil (a KPMG International member firm)

Brazil recently changed its capital gains taxation rules and introduced a voluntary disclosure program.

A new federal law¹ has established a new voluntary disclosure program known as the Special Asset Regularization Regime (RERCT - *Regime Especial de Regularização Cambial e Tributária*)². This regime provides for the voluntary declaration of resources, rights, and assets held abroad, undeclared or declared but with omissions or inaccurate data, by resident individuals and those individuals domiciled in Brazil on December 31, 2014.

In a separate development, there are new withholding income tax rates in Brazil imposed on an individual's capital gains. Under Law 13.259/16³, withholding tax rates of between 15 percent and 22.5 percent will apply.

Why This Matters

The opportunity to regularize outstanding or undeclared/mis-reported/under-reported tax affairs should be welcome news in light of the absence of criminal prosecution and the application of lower tax rates and penalties. Concerned taxpayers should consult with their qualified tax professional to determine whether their undeclared or under-reported resources/assets/rights located abroad are captured by the new rules and the next steps they should take.

The capital gains tax rates have been modified downward in some cases, which could represent a slight decrease in the tax burden on individuals, depending on (i) the individual's residency status in Brazil, (ii) whether he is subject to Brazilian tax law, and (iii) sales of his assets located in Brazil.

Voluntary Disclosure

The RERCT applies to Brazilians and foreigners resident/domiciled in Brazil on December 31, 2014, who have been or are owners of resources/assets/rights on December 31, 2014 or before, and have not declared those resources/assets/rights to the tax authorities or declared them with some omissions or incorrect data, and intend to declare/amend them.

Covered under "resources, assets, or rights" to be declared are: bank deposits, investments, insurance policies, loans, pension, stocks, equity investments, intangible assets of any nature, trusts, properties in general, vehicles, aircraft, vessels and other chattels subject to registration in general, even so-called chattel mortgages.

Resources, assets, and rights held abroad should be declared in Brazilian currency taking their original value into consideration. The amount in foreign currency (a currency other than Brazil's) should be converted into U.S. dollars, and following that conversion, then into Brazilian currency, according to rates established by the Central Bank for December 31, 2014.

For resources already repatriated, the declaration must be made based on the value of the asset in Brazilian currency on December 31, 2014.

Plans to disclose voluntarily under the RERCT need to be executed between April 4 and October 31, 2016, with some exceptions. These exceptions are as follows: holders of public positions, jobs, and functions in management or elective offices, their respective spouses, and next of kin or equivalent, up to the second degree or through adoption, on January 14, 2016, as well as those that have been convicted in a criminal law lawsuit for the crimes listed in paragraph 1 of article 5 of the aforementioned law.

According to the RERCT, undeclared resources, assets, and rights, and their attendant equity increases, should have a 15-percent rate of tax applied according to the capital gains taxation rules at December 31, 2014. The fine that is due on the tax owed is 100 percent.

Those who regularize their undeclared resources, assets, and rights, with the tax authorities, and who pay the tax due and any applicable fines, will no longer be subject to the fulfillment of their tax obligations related thereto and will enjoy a reduction of 100 percent of any late fines applied or to be applied and of legal costs directly related to these assets and rights (tied to triggering events that occurred before December 31, 2014).

Capital Gains Taxation

There are new withholding income tax rates in Brazil imposed on an individual's capital gains. Under Law 13,259/16, withholding tax rates of between 15 percent and 22.5 percent will apply to capital gains derived by Brazilian-resident individuals, depending on the amount of the gain. This represents a slight reduction, in certain cases, of the rates that were introduced under Provisional Measure 692⁴ which had provided for rates ranging from 15 percent to 30 percent. These new rates are also applicable to capital gains derived by nonresident individuals. (For related coverage, see GMS [Flash Alert 2015-128](#), October 27, 2015.)

Under the Law, the new brackets for withholding tax rates on capital gains are as follows (figures in Brazilian Reals ("R\$")):

- 15% – capital gains up to R\$5 million;
- 17.5% – capital gains between R\$5 million and R\$10 million;
- 20% – capital gains between R\$10 million and R\$30 million;
- 22.5% – capital gains over R\$30 million.

As noted above, the new rates apply to Brazilian-resident individuals. Although not explicitly provided for in Law 13,259/16, the new rates should also apply to capital gains accrued by nonresident individuals for sales of assets located in Brazil, due to a Brazilian law that imposes the same tax treatment on capital gains derived by nonresident individuals as that imposed on Brazilian-resident individuals.

Finally, the 25-percent tax rate on capital gains for nonresidents located in low-tax jurisdictions remains unchanged.

The changes to the capital gains tax rules are deemed to begin applying from January 1, 2017.

KPMG Note

While the law states that the new rates are to apply retroactively to January 1, 2016, under Brazilian law, when a new law increases taxation it must begin to apply from the year following the year of the law's enactment; therefore the withholding tax rate changes should only be effective starting in 2017. However, the possibility of a different interpretation regarding the effective date of the new rates by the tax authorities should not be disregarded. This may be clarified under future administrative acts or formal consultation.

Footnotes:

1 Federal Law 13,254/2016 published on January 14, 2016 in the Brazilian Official Gazette (*Diário Oficial*).

2 Normative Instruction 1,627/2016 published on March 15, 2016 in the Brazilian Official Gazette(*Diário Oficial*) regulates Federal Law 13,254/2016.

3 Federal Law 13,259/2016 published on March 17, 2016 in the Brazilian Official Gazette (*Diário Oficial*).

4 *Medida Provisória Nº 692, Carregando... de 22 de Setembro de 2015. Altera a Lei nº 8.981. Carregando... de 20 de janeiro de 1995, para dispor acerca da incidência de imposto sobre a renda na hipótese de ganho de capital em decorrência da alienação de bens e direitos de qualquer natureza, e a Medida Provisória nº 685. Carregando... de 21 de julho de 2015, que institui o Programa de Redução de Litígios Tributários.* Medida Provisória Nº 692 was published in the official gazette (*Diário Oficial*) on 22 September 2015.

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BRZ 1 = EUR 0.25
BRZ 1 = USD 0.279
BRZ 1 = GBP 0.19
BRZ 1 = CAD 0.362

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The Value of Planning for Short-Term International Assignments

When you send an employee on a short-term international assignment, do you think “This should be a walk in the park, compared to the employees I send on long-term assignments. No accompanying family members, no time-consuming and expensive visas and work permits, no complicated compensation package, no tricky tax matters...”? Well, there’s a lot more to STAs than that.

This new GMS video highlights the need – right from the start – to formulate a pre-assignment process that proactively manages potential corporate and individual risks, gets all the appropriate stakeholders communicating with one another and working collaboratively, and focuses on proper planning and informed decision-making.

Please watch:

[The Value of Planning for Short-Term International Assignments](#) – (app. 7 minutes 18 seconds)

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