

MEMORANDUM TO CLIENTS

PRIVATE CLIENT, FAMILY AND SUCCESSION

January 15, 2016

AMNESTY LAW IS PARTIALLY APPROVED

After several months of discussion, the highly anticipated law known as the Amnesty Law, Law No. 13,254/16, ("Amnesty Law"), was published yesterday in the Official Gazette. This law establishes the Special Regime for Exchange and Tax Regularization, (*Regime Especial de Regularização Cambial e Tributária* – "RERCT") which regulates funds, assets or rights, having a licit origin, transferred, held abroad or repatriated that have not been declared or have been declared improperly to tax authorities by individuals who are resident or domiciled in Brazil.

Bill of Law No. 186/15 ("Bill of Law") initially introduced RERCT and the Plenary of the Brazilian Senate, in a session held last December 15, approved it. Recently, President Dilma Rousseff vetoed portions of the Bill.

Although a significant portion of the Bill of Law was vetoed, the Amnesty Law still covers most of the wording of that Bill of Law (please click [here](#) for our memorandum to clients regarding the approval of the Bill of Law).

What was vetoed?

Below are the portions of the Bill of Law that were vetoed:

- (i) Individuals convicted in criminal proceedings are not eligible to adhere to RERCT even if the decision is still appealable;
- (ii) Funds, assets and rights of a deceased person which are subject to a pending succession proceeding cannot be included in the RERCT;

(iii) Jewelry, precious stones and metals, works of art, antiques, pets or animals used for sports and entertainment and human genetic material cannot be included in the RERCT;

(iv) Criminal amnesty does not include the following crimes: (i) identity fraud to carry out foreign exchange transactions; and (ii) embezzlement of assets, which were acquired through the commission of one of the criminal offences listed in the RERCT;

(v) Individuals who have participated, contributed, permitted or facilitated, criminal acts stipulated in the Amnesty Law are not eligible to apply for RERCT;

(vi) In relation to bringing real estate assets into compliance with RERCT, payment of the corresponding taxes and penalties due may not be made in installments;

(vii) Revenues raised from payment of fines by taxpayers who adhere to RERCT are not required to be shared amongst federal, states and municipal authorities in the same manner that is established for income tax; and

(viii) The deadline of 30 (thirty) days within which tax authorities were required by the Bill of Law to enact further regulations in respect of the Amnesty Law was vetoed.

The President's vetoes seek to prevent the broadening of the terms of the criminal amnesty in order to limit the benefit to those who improperly held assets abroad and exclude third party participants.

By approving the Amnesty Law, the government has kept to its agenda of maximizing tax collection; it has prohibited payment in installment of amounts due that relate to bringing real estate assets into compliance with the RERCT, as stated above, and it does not require allocation of the fines collected with other government entities.

What are the next steps?

Individuals interested in adhering to RERCT must await further regulations to be enacted by tax authorities, which must stipulate the procedure, documents and deadlines required for compliance with the Amnesty Law; such regulations are expected to be passed by March 15, 2016.

After the regulations are enacted, taxpayers will have a period of 210 (two hundred and ten) days within which to adhere to RERCT.

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The purpose of this memorandum is to inform our clients about important changes and developments in the area of law. We remain at the reader's disposal for any additional information that may be desired regarding the subject matter herein.

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