

MEMORANDUM TO CLIENTS

PRIVATE CLIENT, FAMILY AND SUCCESSION

December 18, 2015

Amnesty Law is approved

The Plenary of the Brazilian Senate approved Bill of Law No. 186/2015 (“Bill”), which introduces a special tax regime for repatriation and settlement of Brazilian assets held abroad (“Regime Especial de Regularização Cambial e Tributária” – “RERCT”). The Bill seeks to encourage taxpayers to bring assets and income transferred or held abroad into compliance with the regulations.

The Bill, which is one of the measures being taken by the government to balance the public accounts, presents a unique opportunity for taxpayers to regularize their assets held abroad improperly. It also grants criminal amnesty to taxpayers for crimes related to the improper maintenance of such assets.

What kind of assets are subject to RERCT?

Assets must be licit to be subject to the RERCT. This is the only requirement contemplated in the Bill related to the nature of the assets it seeks to regulate; it covers the following non-restrictive list of assets including: bank accounts, loans, financial instruments, companies’ shares or quotas, intangible assets, real estate properties, vehicles, jewelry and pieces of art. Furthermore, it is not mandatory that taxpayers adhering to RERCT repatriate their assets to Brazil. They may be kept abroad, as long as they are in compliance with the Bill.

How can taxpayers join RERCT?

Taxpayers interested in applying for RERCT must declare to Brazilian tax authorities the balance of assets they held on December 31, 2014, and pay applicable taxes and a fine.

Pursuant to the Bill, the income tax rate is set at 15% (fifteen per cent.) of the value of the assets and a penalty of 100% (one hundred per cent.) of the amount of income tax due. In practical terms, the cost for bringing such assets into compliance with the Bill is 30% (thirty per cent.). The Bill establishes that the dollar exchange rate that must be used to calculate the total balance of assets is the rate as of December 31, 2014, and therefore it is possible that the cost for regularization of such assets is reduced to an effective rate of approximately 20% (twenty per cent.), considering the significant devaluation of the Brazilian Real against the U.S. dollar since then.

Taxpayers who had no positive account balance or assets abroad on December 31, 2014

If taxpayers had no assets or funds abroad on December 31, 2014, but had maintained assets abroad improperly for a certain period of time and wish to adhere to RERCT, they must describe all criminal conduct they committed during the maintenance of such assets abroad, even if these assets were later transferred to others.

Exclusion of tax and criminal liability

The RERCT introduces amnesty for crimes related to holding unreported assets abroad. In this regard, the Bill stipulates that taxpayers will not be criminally liable for crimes committed during the maintenance of such assets improperly, including tax evasion and money laundering. By adhering to RERCT, taxpayers will avoid criminal liabilities and other penalties imposed by the Brazilian tax authorities and the Brazilian Central Bank for not reporting those assets properly.

When will the bill come into effect?

The approved wording of the Bill must be approved by the President. Therefore, when the Senate delivers the final version of the Bill to the President, she will have 15 (fifteen) business days to approve or reject it. Therefore, it is possible that the RERCT be approved before the end of 2015.

After the President's approval, the Brazilian tax authorities must further regulate the approved law within 30 (thirty) days of its publication in the official gazette. After that, taxpayers will have 210 (two hundred and ten) days 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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