

Approved by the National Congress, **Bill of Law No. 4,188/2021** ("Bill 4188") amends Law No. 11,312/2006, changing requirements around the withholding income tax exemption applied to returns of certain foreign investors in Brazilian private equity investment funds ("FIPs" and "FIP Exemption").

Key Changes

Relevant amendments regarding the requirements for the FIP Exemption:

'40% Test' Suppression

Bill 4,188 suppresses the so-called "40% Test" requirement, per which a foreign investor would only be eligible for the FIP Exemption to the extent that said investor does not hold 40% or more of the quotas (securities representing interest in the fund) in an FIP, nor quotas that entitle such investor to 40% or more of the FIP economic returns (known as the "40% Test"). **This limit will no longer exist**, allowing foreign investors to hold any percentage of the FIP's quotas and still be exempt.

Portfolio Composition Restrictions

Another significant change refers to the relaxation of portfolio composition requirements for FIPs. As per the Bill, portfolio composition rules as established by Law 11,312/06 will no longer apply and FIPs will only have to meet the regulatory portfolio composition requirements as determined by Brazil's Securities and Exchange Commission (Comissão de Valores Mobiliários or CVM).

Specifically, Bill 4188 revokes the rules per which the FIP should allocate its portfolio in (i) at least of 67% in shares, subscription bonuses, or convertible debentures, and (ii) a maximum investment of 5% of net equity in debt securities, except for convertible debentures or government bonds.

Eligibility of Funds Classified as Investment Entities

In addition to repealing the above requirements, Bill 4188 limits the FIP Exemption to FIPs classified as **investment entities** (under the definition of yet-to-be-issued regulations from the Brazilian Monetary Council – CMN), consistent with recent initiatives of the Brazilian Executive Branch, notably Provisional Measure No. 1,184.



Extended Application of the FIP Exemption: Infrastructure Private Equity Funds and SWFs

According to Bill 4188, the FIP Exemption would also apply to foreign investors investing in Infrastructure Private Equity Investment Funds (FIP-IE). Moreover, sovereign wealth funds are also eligible for the FIP Exemption, even if they are resident or domiciled in favorable tax jurisdictions.

Sovereign Wealth Funds

Sovereign wealth funds are defined as offshore investment vehicles whose assets consist exclusively of funds from the country's sovereign savings.

Domicile Requirement – Favorable Tax Jurisdictions vs Privileged Tax Regimes

The so-called Domicile Requirement is maintained in the form currently provided for in Law No. 11,312/2006. As such, the FIP Exemption does not apply to quotaholders who are resident or domiciled in favorable tax jurisdictions, though there is no mention of the beneficiaries of privileged tax regimes. Bill 1488's original text had sought to broaden the Domicile Requirement and also exclude quotaholders who benefit from privileged tax regimes from the FIP Exemption. Although the House of Representatives had approved the text in this form during the first round of voting in 2022, the Senate later rejected the inclusion, and in this latest round, the House of Representatives voted to maintain the Senate's exclusion of privileged tax regimes, eliminating the reference to the concept.



Favorable Tax Jurisdictions

Favorable Tax Jurisdictions are deemed as jurisdictions that do not tax on income or tax it at a maximum rate of 20% (17% as of January 2024, per a recent change in Law) or less; or whose legislation does not provide for disclosure rules regarding an entity's corporate structure or beneficial ownership.



Bill 4188 | STATUS

1

House of Representatives
Submitted
Approved



2

Senate
Approved with amendments



3

House of Representatives
Amendments approved



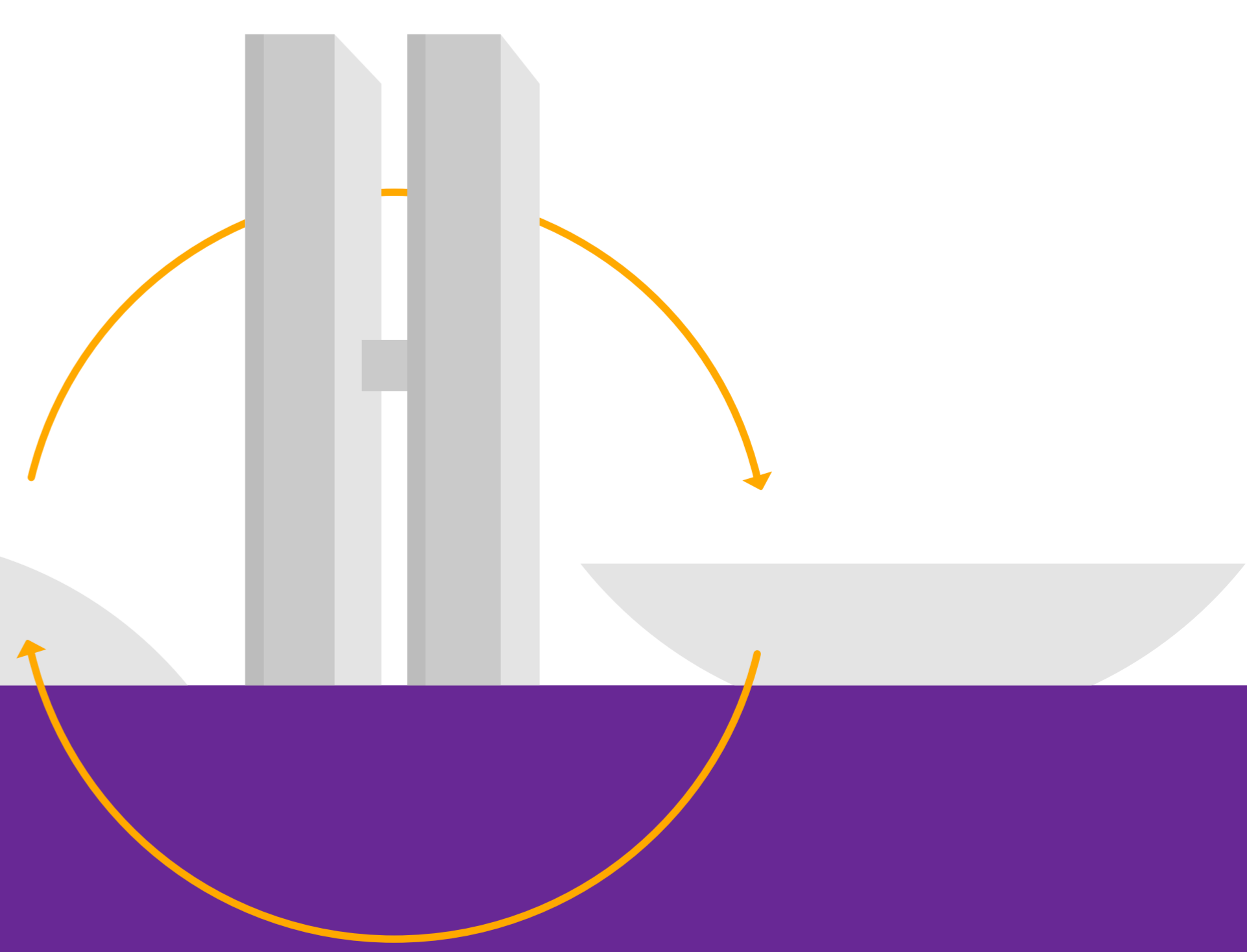
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President's Office
Assent or veto
Pending



The Senate approved Bill 4188 on July 5, 2023, albeit with some amendments in relation to the text the House of Representatives originally approved. Yesterday, the Senate's amendments were reviewed and approved by the House of Representatives. As such, Bill 4188 will be forwarded for presidential analysis.

The Brazilian President has 15 business days to either sanction or veto the bill (partially or totally). Any vetoes, if applicable, must be reviewed and voted on by the National Congress. Changes presented herein will only become effective once the new Law is officially published.



For more information on this topic, please contact Mattos Filho's [Asset Management Services & Investment Funds](#) and [Tax](#) practice areas.