Brazil has passed Law No. 13,254, the Repatriation Law, introducing a tax and currency exchange voluntary disclosure and amnesty program (locally known by the acronym RERCT) to stimulate the voluntary disclosure of assets, tangible and intangible, held by Brazilian tax residents:

(i) remitted abroad;
(ii) maintained abroad; or
(iii) repatriated, which, in either case, were not previously reported or, if reported, presented material errors or insufficient information to the Brazilian authorities.

This new rule covers all assets, tangible or intangible, remitted and maintained abroad not in accordance with prevailing tax and currency exchange laws, even if the funds have already been repatriated.

In this article, we summarize some of the key aspects of the Repatriation Law.

The Repatriation Law applies to any Brazilian (an individual or legal entity) who was a tax resident on December 31, 2014, and who held or has held tangible or intangible assets, including inherited ones, prior to December 31, 2014, as defined under section 2 of Normative Instruction RFB No. 208/2002.
The option to take part in the RERCT can be made within **210 days** of the effective date of a normative act aimed at providing guidelines to be issued by the Brazilian Revenue Service (RFB). This act is expected to be issued by March 15, 2016.

Voluntary disclosure is to be reported in a **special tax return (DUR)** submitted to RFB, with a copy to the Brazilian Central Bank (BACEN), along with the **full payment of the applicable tax and the penalty**, as detailed below.

The value of the total assets that are being voluntarily disclosed will be deemed income earned on December 31, 2014 and will be **taxed as a capital gain tax at a 15 percent rate**, without any deductions, discounts or acquisition costs. To determine the value of the asset in Brazilian currency, the fair value in foreign currency (other than US dollars) must be converted into US dollars by applying the BACEN exchange rate on December 31, 2014 followed by the conversion from US dollars to Brazilian currency by applying the BACEN exchange rate on that same date, which was 2.6562 R$ / 1 US$. Such capital gains tax shall be considered **as final tax** and will not allow the refund or deduction for any amounts previously paid.

The capital gains tax will be subject to a penalty of 100 percent, except in case of accounts abroad with balances less than R$10,000 per person. Therefore, the total tax burden will be 30 percent (tax and penalty) of the value of the unreported asset.

When filing the DUR, note that it must contain a **detailed description** of the tangible or intangible assets and valuation, **at market value**, of the corresponding amounts. Among such types of assets: bank deposits, investment fund’s quotas, insurance policies, loan transactions with persons or entities, stock/share capital in foreign companies, any intangible assets available abroad subject to a royalty, real estate, vehicles, aircraft or other movable asset subject to registration (although in chattel mortgage), among others.

In addition, except in case of the inexistence of a balance or ownership on the date of December 31, 2014, those assets should also be reported in (i) an amendment to the Individual Income Tax Return, referring to the calendar year 2014 and later; (ii) amendment to the BACEN return of Brazilian capital/assets abroad, in the case of individuals and legal entities that are required to report; and (iii) corporate bookkeeping related to the calendar year of application to RERCT and later, in the case of legal entities.

For the year 2015, the income earned resulting from the use, abroad or in Brazil, of the amounts deriving from assets subject to the RERCT will be taxed normally under the current tax law, and shall be included in the Individual income tax return, in the BACEN return of Brazilian capital/assets abroad, and/or in the corporate bookkeeping referred above, with the benefits of voluntary disclosure if the required amendments are delivered up to the RERCT due date.

The option for RERCT entails irrevocable and irreversible confession of the outstanding debts by the taxpayer.

The applicants for RERCT will enjoy the following amnesty benefits:

1. cancellation of tax assessments related to non-compliance with tax obligations
2. reduction of 100 percent of penalties or legal charges that are directly related to these assets, goods or rights, whose tax-triggering events occurred until December 31, 2014
3. cancellation of the penalty for lack of filing a complete and timely BACEN return
4. cancellation of the penalties that would be imposed by the Brazilian Securities and Exchange Commission (CVM), or any other federal regulatory entities
5. cancellation of the penalties defined in special laws (Laws No. 4,131/1962 and 9,069/1995 and in Provisional Measure No. 2,224/2001)
6. payment of income tax due under RERCT without any additional charges, interest or increases and
7. full criminal amnesty, including in cases of regularization of assets that were registered in the name of an intermediary – in which case, such extinction of criminal liability will be extended to that person, subject to certain conditions as set out in paragraphs 2 and 5 of section 5 of the Repatriation Law.

It is important to emphasize that the benefits mentioned in items 1 to 6 above do not reach the taxes withheld by the party responsible for the tax collection on behalf of a third party not duly transferred to the public treasury within the legal deadline.
If the applicant chooses to repatriate the funds (which, again, is not mandatory), the person (a) must use a financial institution authorized to perform a currency exchange operation in Brazil by presenting the DUR duly filed. Regarding financial assets, (b) if they exceed US$100,000, then the reporting person must request and authorize the financial institution abroad to send information about the balance of these assets on December 31, 2014 to the financial institution in Brazil, which will then forward such information to RFB. The financial institution in Brazil will not be responsible for verifying the accuracy of the information furnished by the foreign financial institution.

Finally, in accordance with section 11 of the Repatriation Law, its effects do not apply to those persons who, on the date of publication of this law, hold high-level or elected government jobs, positions or functions, including their respective spouses and relatives (consanguineous or kin), up to the second degree or by adoption. This law also does not apply to individuals who have been convicted in criminal proceedings for one of the crimes listed in paragraph 1 of section 5, even if it relates to assets subject to RERCT.

In case of any questions, please do not hesitate to contact the authors.

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