

Brazil: the Tax Amnesty Law



On January 14th, 2016, the Brazilian Law 13.254/2016 was published, determining a Special Tax Regime and Foreign Currency Market Regulation (known as "RERCT") which allows a regularization of tax and currency-related situations¹.

The Tax Amnesty Law is a "chance" for taxpayers to regularize their situation with regard to lawful resources, assets and rights which have not been declared or were incorrectly declared after being sent or kept abroad, or repatriated. The President of the Federal Republic of Brazil has approved with partial veto the Law Project, not changing substantially the draft bill approved by the Federal Senate on December 15th, 2015².

Solely those who were tax residents or domiciled in Brazil by December 31st, 2014, owning or holding the resources, assets and rights by that time or in previous periods can be covered by the Law Project, even if they are not legally the holders of such assets, and as long as they were not previously convicted of any of the following crimes:

- Crimes against the tax system;
- Tax evasion;
- Evasion of social security contribution;
- Falsifying public or particular documents, and their use;
- Foreign exchange operations to support tax evasion; and
- Money laundering crimes and concealment of assets, rights and values³.

Furthermore, this law does not cover politicians, public servants and all those who hold public positions, as well as their spouses, relatives and relatives by affinity.

Those who are willing to join the Amnesty Program should file a specific regularization declaration with the Brazil Federal Revenue, within the 210 days after the Brazil Federal Revenue enacts the regulation of the RERCT⁴. This declaration should contain:

- An identification of the taxpayer;
- A description of the resources, assets and rights, and respective value in local currency;
- Information to prove their nature, origin and ownership; and
- A declaration from the taxpayer referring that the income derives from a lawful economic activity.

Additionally, a copy of this declaration should be delivered to the Central Bank of Brazil.

On the other hand, the income earned in 2015 should not be included in this declaration, since it solely covers the non-disclosed amounts existent by December 31st, 2014.

When filing the declaration with the Brazil Federal Revenue, the individual or entity willing to join this program should pay a 15% income tax on the amounts reported for regularization, as well as a 15% penalty on those amounts (corresponding to 100% of the income tax due). However, amounts up to BRL 10.000,00 are exempt from the 15% penalty.

The payment of the 30% charge results in an exemption of further penalties, legal charges and interest for default.

After this payment, the individual or entity can opt for keeping the amounts abroad or to repatriate them, as this regime does not oblige the taxpayer to repatriate the income, but simply to declare it.

In case the taxpayer opts for repatriating the income, a financial institution enabled to operate in the foreign exchange market should present the membership statement to RERCT, and follow the due procedures. If the amounts involved are higher than USD 100.000,00, the taxpayer should request and authorize the foreign financial institution to send information of these amounts as at December 31st, 2014 to the local financial institution, which will communicate it to the Brazil Federal Revenue.

Consequently, the Amnesty Program allows certain tax and currency-related crimes to become exempt from criminal liability, such as the ones mentioned above. Therefore, provided that the above requirements are met, there will no longer be any currency or financial obligations deriving from the non-disclosure of lawful resources, assets and rights.

(1) Tax regularization programs have been adopted already by several countries, such as EUA, England, Spain, Italy, Netherlands, Germany, France, Portugal, Sweden, Switzerland, Chile, Australia and South Africa

(2) The possibilities of repatriation of works of art, jewels, precious metals and resources on behalf of third parties, as well as payment of the income tax and penalties in installments were rejected

(3) As determined in law 9.613/1998

(4) Which is expected to happen by March 15th, 2016

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