

# GMS Flash Alert

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## Brazil – Update on New Capital Gains Tax Rates

This *GMS Flash Alert* serves as an update to an earlier *Flash Alert*<sup>1</sup> which reported the new withholding income tax rates in Brazil imposed on an individual's capital gains.

Under Law 13,259/16,<sup>2</sup> withholding tax rates of between 15 percent and 22.5 percent will apply to capital gains derived by Brazilian-resident individuals, depending on the amount of the gain. This represents a slight reduction, in certain cases, of the rates that were introduced under Provisional Measure ("PM") 692<sup>3</sup> which originally had provided for rates ranging from 15 percent to 30 percent (this was changed (from 15 percent to 22.5 percent) when the PM was converted into law). These new rates are also applicable to capital gains derived by nonresident individuals.

### WHY THIS MATTERS

The capital gains tax rates have been modified downward in some cases, which could represent a slight decrease in the tax burden on individuals, depending on (i) the individual's residency status in Brazil, (ii) whether he is subject to Brazilian tax law, and (iii) sales of his assets located in Brazil.

### New Rates under Law 13,259/16

Under the Law, the new brackets for withholding tax rates on capital gains are as follows (figures in Brazilian Reais ("R\$")) [R\$1 = €0.276 | R\$1 = US\$0.31 | R\$1 = £0.231]:

- 15% – capital gains up to R\$5 million;
- 17.5% – capital gains between R\$5 million and R\$10 million;
- 20% – capital gains between R\$10 million and R\$30 million;
- 22.5% – capital gains over R\$30 million.

As noted above, the new rates apply to Brazilian tax residents. Although not explicitly provided for in Law 13,259/16, the new rates should also apply to capital gains accrued by nonresident individuals for sales of assets located in Brazil, due to a Brazilian law that imposes the same tax treatment on capital gains derived by nonresident individuals as that imposed on Brazilian-resident individuals.

Finally, the 25-percent tax rate on capital gains for nonresidents located in low-tax jurisdictions remains unchanged.

The changes to the capital gains tax rules are deemed to begin applying from January 1, 2017 (Ato Declaratório Interpretativo RFB no. 3– 04/27/2016).

## FOOTNOTES:

1 Reported in GMS *Flash Alert* 2016-067, May 27, 2016.

2 Federal Law 13,259/2016 published on March 17, 2016 in the Brazilian Official Gazette (*Diário Oficial*).

3 Medida Provisória Nº 692, Carregando... de 22 de Setembro de 2015. Altera a Lei nº 8.981. Carregando... de 20 de janeiro de 1995, para dispor acerca da incidência de imposto sobre a renda na hipótese de ganho de capital em decorrência da alienação de bens e direitos de qualquer natureza, e a Medida Provisória nº 685. Carregando... de 21 de julho de 2015, que institui o Programa de Redução de Litígios Tributários. Medida Provisória Nº 692 was published in the official gazette (*Diário Oficial*) on September 22, 2015.

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## Contact us

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