KPMG

GMS Flash Alert

2017-044 | March 7, 2017

Brazil – "Early Withdrawal" Possibilities for Inactive FGTS Accounts

The Brazilian federal government has promulgated Provisional Measure nº 763/16[1] to allow employees who have resigned or have their employment contract terminated for just cause prior to December 31, 2015, to withdraw their FGTS[2] (Government Severance Indemnity Fund for Employees) amounts *before* the end of a "three-years of inactivity in the fund" wait period. Up until the PM nº 763/16, rules mandated, with some exceptions, a three-year wait.

WHY THIS MATTERS

Employees who resigned or have their employment contract terminated for just cause prior to December 31, 2015 will be entitled to withdraw the amounts deposited in their FGTS inactive accounts. This will be a financial "windfall" for these employees.

This represents an important change in the law that affects international assignees who have participated in the FGTS. Such assignees who return to their home countries or have started another international assignment may immediately withdraw funds from their FGTS accounts, whereas previously they had to wait until after an uninterrupted period of inactivity that lasted three years. These changes apply to employees who were not dismissed by the company (in other words, if they retire or their assignment comes to an end).

Background

The FGTS is a monthly contribution made by the employer on the employee's behalf, to a specific account registered under the employee's name in a government bank, at 8 percent of the employee's monthly remuneration. Note that it is not a withholding or deduction from the employee's wages – it is a cost fully paid and remitted by the company. The purpose of this fund is so the employee can eventually use the amounts deposited under special conditions, such as retirement or dismissal without just cause.

Upon dismissal without just cause or after three years without contribution to the fund (the fund is inactive) – among other circumstances such as disease or serious illness or retirement, for example – the individual can withdraw the amounts.

Extension of FGTS Rules

Under the new changes introduced by PM nº 763/16, employees who resigned or have their employment contract terminated for just cause prior to December 31, 2015, will be able to withdraw the FGTS amounts *prior* to this inactive three-year period for the fund.

In addition, the employees are entitled to receive a profit-sharing payment according to the FGTS's investment performance.

KPMG NOTE

- Individuals can check by means of a Web site to research their inactive accounts as per the Provisional Measure.
- The amounts can be withdrawn from March 2017 to July 2017. The payment schedule is defined as per the date of birth of the individuals.
- FGTS amounts can be withdrawn in Brazil at the "Caixa Economica Federal" or abroad through the Brazilian Consulate, in those countries where such a procedure is permitted.

FOOTNOTES:

1 *Medida Provisória nº 763, de 22 de dezembro de 2016*, published in *Diário Oficial da União* de 23.12.2016 – this changes some articles of the Federal Law 8.036/90 that regulates the FGTS.

2 FGTS stands for "*Fundo de Garantia do Tempo de Serviço.*" It is a type of "personal reserve savings" scheme for employees.

Contact us

For additional information or assistance, please contact your local GMS or People Services professional or one of the following professionals with the KPMG International member firm in Brazil:

Valter Shimidu
Partner/GMS – Labor and Social Security
Tel. + 55 (11) 3940-3269
vshimidu@kpmg.com.br

Ana Rennar
Senior Manager/GMS – Labor and Social Security
Tel. + 55 (11) 3940-8136
arennar@kpmg.com.br

The information contained in this newsletter was submitted by the KPMG International member firm in Brazil.

www.kpmg.com

kpmg.com/socialmedia

Flash Alert is a GMS publication of KPMG LLP's Washington National Tax practice. To view this publication or recent prior issues online, please click here. To learn more about our GMS practice, please visit us on the Internet: click here or go to http://www.kpmg.com.