

# GMS Flash Alert

2023-246 | December 20, 2023



## Brazil – Important Changes to Individual Taxation, Reporting Foreign Income and Assets

On December 12, 2023, the Brazilian government approved Law Project No. 4.173/2023, converting it into Law No. 14.754/2023<sup>1</sup> (the “Law”). This Law changes some taxation rules applicable to individuals, such as the taxation and reporting of foreign income (financial investments, controlled entities, and trusts) by individuals residing in Brazil, rules related to funds constituted in the form of a “closed condominium” (*condomínio fechado*); it also revokes some other provisions.

The Law has effect from January 1, 2024.

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### WHY THIS MATTERS

After many years without significant changes to the individual income tax and reporting legislation in Brazil, there was a Provisional Measure (“MP”) No. 1,171/2023 published in May 2023, which already anticipated some significant changes to individual income taxation and assets reporting in Brazil. (For prior coverage, see [GMS Flash Alert 2023-096](#), May 10, 2023.)

A few months after the MP was no longer in effect, the Brazilian government published Law No. 14.754/2023, impacting all tax residents in Brazil who receive earnings from foreign sources and/or hold assets and rights abroad, with effect from January 1, 2024.

International assignees outside of Brazil but subject to Brazilian tax law and Brazil-inbound assignees subject to Brazilian tax law – and their employers and tax service providers – should make themselves aware of these changes as different forms of income will be taxed under new rules. And several favorable rules for capital gains on sales of assets held overseas, and exchange rate gains on assets acquired abroad have been repealed. This could create issues around timely compliance and payment of any tax owed, as well as taxpayer liability.

Employers may need to consider their budget projections for assignments due to the changes. Furthermore, employers may need to make the necessary payroll adjustments and update hypothetical taxes for tax-equalized assignees.

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## **Main Aspects of Law No. 14.754/2023**

### **Financial Investments Abroad**

As from January 1, 2024, taxation of foreign income received by resident individuals in Brazil will occur on an annual basis, in the annual income tax return, and it will be subject to an income tax rate of 15 percent, without any deductions. If income tax is paid abroad and/or there are losses on investments, these may be offset, considering requirements under the law.

### **Profits Abroad**

The profits of entities controlled abroad that: (i) are domiciled in a tax haven/privileged tax regime, or (ii) have their own active income lower than 60 percent, calculated from January 1, 2024, regardless of distribution, will also be subject to a 15-percent income tax rate.

Alternatively, the individual may choose to declare the assets and rights held by the controlled entity, directly or indirectly, abroad as if they were held directly by the individual, with taxation occurring when income is in fact received.

### **Capital Gains Taxation**

The Law revokes the exemption previously applied to capital gains (profit) on the sale of assets held abroad by tax residents in Brazil, when the asset had been acquired during their period of non-tax residence.

### **Exchange Rate Variance**

Previously, gains from the exchange rate variance on assets acquired abroad with earnings originally received in foreign currency were considered tax exempt in Brazil. The Law has also revoked this exemption, and the exchange rate variation to Brazilian Reais is now computed as part of the calculation basis for the capital gains calculation.

### **Foreign Assets and Rights Value Update**

Tax residents in Brazil can now choose to update the value of rights and assets held abroad that are disclosed on their individual income tax return as per their respective market value as of December 31, 2023. As such, the difference between the market value and the acquisition cost of the asset will be taxed at an 8-percent tax rate.

The option must be exercised as per the rules and deadlines to be set forth by the Brazilian tax authorities, and it has already been announced that the updates can be applied collectively or separately for each asset or right abroad, with the applicable tax payable by May 31, 2024.

Assets and rights ALLOWED to have their value updated are the following:

- financial investments;
- properties in general, or assets that represent rights to real estate;
- vehicles, aircraft, vessels, and other movable property subject to registration in general, even if in fiduciary sale; and

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- ownership of subsidiary entities.

Assets and rights that CANNOT have their value updated are the following:

- assets and rights that have not been reported in the 2023-2022 Brazil income tax return (filed by May 31, 2023), or acquired during the 2023 calendar year;
- assets and rights that have been disposed of, written off, or settled on a date prior to when the option addressed by this Law is formalized; and
- foreign currency in cash, jewels, stones, and precious metals, pieces of art, antiques of historical or archeological value, domestic or sport animals, and animal-based reproduction genetic material subject to registration in general, even if these are subject to conditional sale.

## Trusts

The assets and rights included in a trust structure abroad will be considered as:

- under the ownership of the settlor after the establishment of the trust;
- under the ownership of the beneficiary at the time of distribution by the trust to the beneficiary or at the settlor's passing (whichever occurs first).

The Law also states that income and capital gains related to the assets and rights owned by the trust to be earned from January 1, 2024, will be considered earned by the holder of such assets and rights on the respective date and subject to applicable individual income taxation.

Additionally, it has determined rules for taxation if the trust has a foreign subsidiary, and it defines that the possible distribution of the trust to the beneficiary will have the legal nature of inheritance or donation, depending on the nature of the event.

As from January 1, 2024, the trust's assets and rights must be reported directly by the holder in the holder's Brazil annual income tax return in terms of their acquisition cost. Moreover, the Law also sets out the guidelines clarifying amendments to trust reporting in previously-filed income tax returns, and includes the definitions of trust, trustee, settlor, and beneficiary, among others.

## Closed Condominium Funds

The Law also states that the funds constituted in the form of a closed condominium will be subject to progressive withholding, by applying a 15-percent-rate of taxation every May and November via a "come-quotas" system. Then, on the date of distribution of income, amortization, redemption, or sale of (the remaining) quotas, the rate applies to the complementary percentage as necessary to bring the total of the regressive rates from 22.5 percent to 15 percent. There will be exceptions set forth in the legislation.

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## KPMG INSIGHTS

The Law enacted by Brazil's new government contains a number of changes that alter the tax treatment of individual income, whether that income comes from employment or financial investments overseas. The trust regime has undergone some important reforms. And the valuation of foreign assets for Brazilian tax residents – and, hence, their taxation – will change, as well.

For new assignees inbound to Brazil, pre-departure and/or on-arrival conversations with those who will be subject to Brazilian tax law should include mention of applicable tax rates, thresholds and brackets, exemptions, valuation rules for overseas assets they hold, reporting requirements, and the impact on the assignee.

Employers and employees concerned about the effects of the above-noted changes and how to budget for and otherwise plan the employee's assignment and establish responsibilities around compliance, should contact their qualified tax professional or a member of the Global Mobility Services team with KPMG in Brazil (see the Contacts section).

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## FOOTNOTE:

1 To see (in Portuguese) Law No. 14,754/2023 (*Lei n. 14,754, publicada no Diário Oficial da União, em 13/12/2023*), [click here](#).

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## 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:



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

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