

11.24.2014

Conversion of Provisional Measure no. 651/2014 into Federal Law no. 13,043/2014

On 14 November 2014, Law no. 13,043/2014, from 13 November 2014, was published in the Official Gazette, as a result of the ratification of Provisional Measure no. 651/2014 ("MP no. 651/2014"). The new law has generated significant change to the Brazilian federal tax structure.

Among other relevant themes, Law no. 13,043/2014 rules about (i) paying-up of shares of investment clubs or funds by means of financial asset trade; (ii) Fixed Income-Indexed Funds and the issuance of securities regulated by the National Treasury; (iii) loan of stock and other securities; (iv) income tax exemption on the sale of shares of small businesses on the stock exchange; (v) incentive tax regime for credit titles and other securities; (vi) special tax refund regime for exporting companies ("REINTEGRA"); and (vii) assessment of the taxable basis of Contribution to PIS and Cofins on the sale of equity and increase of Cofins rate

(i) Redemption of shares of investment clubs or funds by means of financial asset trade

As from 1 January 2015, this new law specifies that payment of income tax due on capital gain arising from the paying-up of shares of investment clubs or funds by means of financial asset trade shall be paid by the manager of the club or fund where the assets are received.

Hence, if the assets are paid-up for an amount greater than the investor's purchase cost, the fund manager must calculate the capital gain and collect the amount due in tax.

Additionally, for the purposes of calculating the amount due in tax on the capital gain, the law determines that the investor is responsible for proving the purchase cost, under penalty of disregarding all costs involved. Article 1, paragraph 2 also states it is the investor's duty to prove the market value for which the paying-up will be made.

Law no. 13,043/2014 also determines that the investor must make all necessary resources available for the fund or club manager to duly collect income tax due.

(ii) Fixed Income-Indexed Funds and the issuance of securities regulated by the Department of the Treasury

Law no. 13,043/2014 has created a new set of rules for taxation of profits and capital gains derived from certain investment funds, as of 1 January 2015.

These specific investment funds are those whose shares are allowed to be traded on secondary markets regulated by stock-exchange, with portfolios that are composed of assets aimed at reflecting the changes and profitability of fixed income indexes (Fixed Income-Indexed Funds) and with statutes that provide for portfolios composed of at least 75% of assets that are a part of the standard fixed income index.

According to Law no. 13,043/2014, profits derived from these investments are subject to income tax, at the following rates: (i) 25%, for Fixed Income-Indexed Funds whose financial asset portfolio is set for renegotiation on a medium term equal or lower than 180 days; (ii) 20%, for Fixed Income-Indexed Funds whose financial asset portfolio is set for renegotiation on a medium term higher than 180 and equal or lower than

720 days; and (iii) 15%, for Fixed Income-Indexed Funds whose financial asset portfolio is set for renegotiation medium term higher than 720 days.

(iii) Loan of stocks and other securities

Law no. 13.043/2014 also establishes new rules for taxation of loans of stocks and other securities, as of 1 January 2015, the most relevant of which being:

• Remuneration deriving from stock loans made in entities authorized to render services of compensation and liquidation of security transactions:

Remuneration deriving from stock loans shall be taxed according to the rules for fixed income investments, which are set forth by article 1 of Law no. 11,033, from 21 January 2004.

If remuneration is set as a percentage of the value of the stocks which are being lent, the taxable basis of revenues or expenses shall be calculated on the medium average price of the stock on the day before they were lent on the upfront stock exchange market in which they are admitted to negotiation, on the business day before the loan was granted or on the business day prior to when the transaction is due, as foreseen on contract.

The responsibility for retaining and collection of the Withholding Income Tax in such cases is attributed to the party authorized to render services of compensation and liquidation of security transactions.

• Refund to the lender of the proceeds distributed by the share-issuing company:

The refund of proceedings distributed by the share-issuing company to the lender, whether it is a person or a corporation, a resident of Brazil or not, is exempt of Income Tax.

According to Law no. 13,043/2014, refunds are defined as full on the distribution of dividends.

Regarding the payment of interest on net equity, the refund is defined as full if the lender is not subject to Withholding Income Tax because of its status as a tax-free entity or an investment fund or club, or if it is a complementary social security entity, an insurance society or a Programmed Individual Retirement Fund ("FAPÍ"), when using assets derived from the proceedings, from technical reserves and funds for benefit plans of complementary social security entities, insurance societies and "FAPÍ," as well as life insurance with survival coverage clauses.

On the other hand, the refund is considered partial in respect to interests on net equity if the lender does not market its stocks on entities authorized to render services of compensation and liquidation of security transactions.

• Interests on net equity distributed by the share-issuing company on loan of shares transactions with investment clubs or funds:

Interests on net equity distributed by the company issuing the share object of the loan are subject to a 15% income tax.

The responsibility for collecting the Income tax is attributed to the fund or investment club manager or to the entity responsible for investing the provisions, technical reserves and funds for benefit plans of complementary social security entities, insurance societies and "FAPÍ," as well as life insurance

11.24.2014

with survival coverage clauses.

Income tax paid on these amounts is considered definitive, and it is not subject to refund or compensation by the borrower. Income tax must be paid no later than three business days after the end of the 10-day period as of the taxable event.

(iv) Income tax exemption when trading shares of small businesses on the stock exchange

Law no. 13,043/2014 also establishes exemption on the Income Tax due on capital gains accrued by natural persons when trading stocks which were acquired after July 10, 2014 and issued under the provisions of the small business funding incentive program.

This exemption is valid until 31 December 2030 and it is applicable only if the issuing-companies meet the following requirements: (i) have their shares admitted to negotiation on special segments, established by the stock exchange, which assures the creation of binding corporate governance rules by means of a contract between the stock exchange and the issuer; (ii) have maximum market value of up to BRL700 million; (iii) have maximum gross income of up to BRL 500 million on the year before the initial public offer; and (iv) have a maiden issue of at least 67% of the volume of the initial public offer or subsequent, if applicable.

Law no. 13,043/2014 also provides for income tax exemption on profits earned by natural persons when redeeming shares of jointly-owned open investment funds, as long as these funds: (i) have at least 67% of their assets invested in stocks whose earnings are exempt from Income Tax; (ii) have redemption terms of at least 180 days; and (iii) are denominated as "FIA-Mercado de Acesso".

(v) Incentive tax regime for credit titles and other securities

Regarding sovereign funds which carry out financial transactions in Brazil, Law no. 13,043/2014 has altered some provisions of the provisions of Law no. 12,431/2011, inasmuch as to foresee that the 0% income tax rate is applicable to proceeds of beneficiaries resident or domiciled abroad, in countries with privileged tax regimes.¹

This new law postpones until 31 December 2030 the Income Tax exemption on profits derived from infrastructure debentures made by individuals who are residents or domiciled in Brazil.

(vi) Special tax refund regime for exporting companies ("REINTEGRA")

Law no. 13.043/2014 reinstates "REINTEGRA," which was created by Law no. 12.546/2011, result of the conversion of Provisional Measure no. = 540, from 2 August 2011 into law.

This special tax refund regime allows exporting companies to apply for tax credits calculated between 0.1% and 3%² of export revenues of goods that meet the requirements set forth by Law no. 13.043/2014 – i.e., the goods must be manufactured in Brazil and the total cost of imported inputs is not to exceed the limit of the percentual exporting price.

¹ As per article 24 of Law no. 9.430/1996.

² This percentage may be increased by 2% in exceptional cases.

MEMORANDUM TO CLIENTS

11.24.2014

“REINTEGRA” will be in force as from the publication of the normative act of the Executive Branch which establishes the applicable percentage for tax credits on export revenue.

(vii) Levy of Social Contribution to the PIS (“Contribution to PIS”) and COFINS (“Cofins”) on the sale of equity

Law no. 13,043/2014 has also changed Laws no. 9,718/1998, 10,637/2002 and 10,833/2003 insofar as to the assessment regime and taxable basis of Contribution to PIS and Cofins.

According to articles 31 and 32 of the new law, revenue derived from the sale of corporate shares will be Contribution to PIS and Cofins on the cumulative regime. Regarding the assessment of the taxable basis, Law no. 13,043/2014 included paragraph 14 to article 3 of Law no. 9,718/98, according to which companies can exclude the acquisition price when assessing the taxable basis of Contribution to PIS and Cofins on the sale of equity.

Finally, Law no. 13,043/2014 raised the cumulative “COFINS” percentage applicable to revenue derived from the sale of equity, from 3% to 4%.

MEMORANDUM TO CLIENTS

11.24.2014

Team responsible for preparing Memorandum to Clients:

Igor Nascimento de Souza (igor.souza@souzaschneider.com.br)

Henrique Philip Schneider (philip.schneider@souzaschneider.com.br)

Eduardo Pugliese Pincelli (eduardo.pugliese@souzaschneider.com.br)

Cassio Sztokfisz (cassio.sztokfisz@souzaschneider.com.br)

Fernanda Donnabella Camano de Souza (fernanda.camano@souzaschneider.com.br)

Diogo de Andrade Figueiredo (diogo.figueiredo@souzaschneider.com.br)

Flávio Eduardo Carvalho (flavio.carvalho@souzaschneider.com.br)

Rafael Fukuji Watanabe (rafael.watanabe@souzaschneider.com.br)

Vitor Martins Flores (vitor.flores@souzaschneider.com.br)

Rodrigo Tosto Lascala (rodrigo.tosto@souzaschneider.com.br)

Laura Benini Candido (laura.candido@souzaschneider.com.br)

Marina Lee (marina.lee@souzaschneider.com.br)

Pedro Lucas Alves Brito (pedro.brito@souzaschneider.com.br)

Tiago Camargo Thomé Maya Monteiro (tiago.monteiro@souzaschneider.com.br)

Viviane Faulhaber Dutra (viviane.dutra@souzaschneider.com.br)

Flavia Gehlen Frosi (flavia.frosi@souzaschneider.com.br)

Thomas Ampessan Lemos da Silva (thomas.ampessan@souzaschneider.com.br)

Maria Carolina Maldonado Kraljevic (mariacarolina.maldonado@souzaschneider.com.br)

Gabriela Barroso Gonzaga Ferreira Porto (gabriela.porto@souzaschneider.com.br)

Ana Cristina de Paulo Assunção (anacristina.assuncao@souzaschneider.com.br)

Vanessa Carrilo do Nascimento (vanessa.nascimento@souzaschneider.com.br)

Sergio Grama Lima (sergio.lima@souzaschneider.com.br)

Pedro Paulo Bresciani (pedro.bresciani@souzaschneider.com.br)

Renata Ferraioli (renata.ferraioli@souzaschneider.com.br)

R. CINCINATO BRAGA, 340 • 9º ANDAR • 01333-010 • SÃO PAULO • SP
TEL 55 11 3201 7550 • FAX 55 11 3201 7558

BRASÍLIA SHOPPING • SCN QUADRA 5, BLOCO A • TORRE SUL • 14º ANDAR • SALA 1406 • BRASÍLIA • DF • 70715-900
TEL 55 61 3251 9400 • FAX 55 61 3251 9429

WWW.SOUZASCHNEIDER.COM.BR