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CHANGES TO THE LAW REGARDING INTERNATIONAL TAX LAW

On June 20, 2014, two new normative rules of the Federal Revenue Office of Brazil ("SRFB") on international tax law were published, namely (i) o Interpretative Declaratory Act of the RFB no. 5, dated June 16, 2014 ("ADI no. 05/2014"), which, by interpreting the internal legislation and the treaties to avoid double taxation ("DTT") made with Brazil, determines the applicable tax treatment to the remittance made to non-residents for the rendering of technical services and of technical assistance, with or without technology transfer; and (ii) a Normative Rule of the RFB no. 1.474, of June 18, 2014 ("IN RFB no. 1.474/2014"), which modifies the relation of tax-favorable countries or jurisdictions and privileged tax systems.

I - Interpretative Declaratory Act of the RFB no. 5, dated June 16, 2014

ADI no. 05/2014 determines that the remittance of payments to non-residents for technical services and of technical assistance, with or without technology transfer, may be qualified as (i) royalties (article 12 of the DTT), (ii) earnings of independent professions (article 14 of the DTT) or (iii) company profits (article 7 of the DTT). According to the SRFB, in case the DTT or its protocol classify technical services and of technical assistance as royalties, the earnings remitted abroad as consideration for the services are to be taxed as such, pursuant to article 12 of the DTT, which, under the DTTs adopted by Brazil, grants the source country competition jurisdiction (subject to tax rate limitations) to tax them by the Withholding Income Tax ("WHT").

In case the rendering of services is related to the technical qualification of a person or group of people, the remittance abroad should be treated as earnings of independent professions provided for in article 14 of the DTT, which, according to the policy adopted by Brazil in the negotiation of DTTs, also authorizes the taxation by Brazil , in case the WHT is charged.

Lastly, only if, by exclusion, earnings may not be classified articles 12 (royalties) or 14 (earnings of independent professions) of the DTT, they are to be taxed as company profits and subject to the provisions of article 7 of the DTT. In the latter case, the DTT rules out Brazil's jurisdiction to tax profits, unless the activity is exercised here through a Permanent Establishment.

We point out that before the publication of ADI no. 05/2014, the matter was dealt Interpretative Declaratory Act no. 1, of January 5, 2000 ("ADI no. 01/2000"). This normative rule qualified the remuneration for technical services, without technology transfer, as Earnings Not Expressly Mentioned, subjecting them to the treatment provided for in article 21 of the DTT entered into by Brazil.

What happens is that ADI no. 01/2000 was subject to judicial opposition and the Superior Court of Justice ("STJ"), in the case records of Special Appeal no. 1.161.467/RS, recognized that the remittance abroad as consideration for the provision of services, without technology transfer, should be qualified as Company Profits, which attracted the application of article 7 of the DTT and rules out the WHT levy at the payment by the Brazilian company.

After this decision, the Attorney General Office of the National Treasury ("PGFN") issued Opinion of the

[1] In case the paying source is a Brazilian company or a permanent establishment located in Brazil.

PGFN/CAT no. 2.363/2013[2] , stating their position that the remittances could be qualified as company profits (article 7 of the DTT) or as royalty earnings article 12 of the DTT). According to the PGFN, the jurisdiction to tax earnings would be, as a rule, determined by , article 7 of the DTT, since they compose the profits of the service rendering company. However, in case the DTT treated technical services as royalties, article 12 of the DTT should be applied.

Within this context, it is because of the Decision of the STJ and of the opinion prepared by the PGFN that ADI no. 05/2014 was published, repealing ADI no. 1/00 and granting new classification, for application purposes of the DTT, of the payment remittance to non-residents for technical services and of technical assistance, regardless of there being technology transfer or not.

II - Normative Rule of the RFB no. 1.474, dated June 18, 2014

The Normative Rule in reference amended IN RFB no. 1.037/2010, in order to exclude Switzerland from the list of countries, set for in article 1, that do not tax income or that tax it at a rate lower than 20% or whose domestic legislation does not permit access to information related to the corporate or ownership structure of legal entities.

Nevertheless, despite this exclusion, Normative Rule RFB no. 1.474/2014 included the country in the list of countries having privileged tax systems in cases in which the tax treatment given to the holding company, domiciliary company, auxiliary company, mixed company and administrative company results in the charge of the tax on income lower than 20%, considering the combination of the jurisdiction for the taxation on the income exercised by the Swiss federation, its cantons and municipalities. Furthermore, the SRFB also determined that other Swiss tax regime applicable to different forms of legal entity formation or rulings from tax authorities leading to a combined taxation (of the federation, cantons and municipalities) on income at a tax rate lower than 20% will also be considered tax-favorable systems.

Lastly, in addition to excluding Switzerland from the list of countries listed in article 1 of IN RFB no. 1.037/2010, IN RFB no. 1.474/2014 also determined the exclusion of the regimes applicable to legal entities organized in Hungary under an offshore KFT structure from the list of tax-privileged systems.

[2] It is of note that this opinion was prepared at the request of the RFB itself.

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