

# MEMORANDUM TO CLIENTS

09.25.2015

## Provisional Measure no. 692

On September 22, 2015, in an extra issue of the Federal Gazette, there was published Provisional Measure no. 692 ("MP no. 692/15"), which raised the income tax rate on capital gain for individuals, as well as changed the rules for enrollment in the Reducing Tax Litigation Program ("PRORELIT").

Beginning January 1, 2016, there will be four tax levels for the taxation of individuals' capital gain on sale of assets.

Earnings not in excess of R\$ 1,000,000.00 will continue to be taxed at the current rate of 15%. Additionally, there were created three new levels for taxation: a 20% rate for earnings between R\$ 1,000,000.00 and R\$ 5,000,000.00; a 25% rate for earnings between R\$ 5,000,000.00 and R\$ 20,000,000.00; and a 30% rate for earnings over R\$ 20,000,000.00.

It should be noted that exemptions currently provided by the law, and other special rules, have not been revoked and remain in force.

MP no. 692/15 also stipulates that, for multiple sales of assets which make up the same legal property, from the second transaction onwards, the capital gain must be added to the earnings of the previous operations, minus the tax previously paid.

As per the Provisional Measure, a group of stocks or shares of the same corporation is considered an asset that "makes up the same legal property," which may be questioned. In this regard, this statute is treating several events (multiple sales of assets), which ought to be taxed separately, as if they were a single event.

Furthermore, article 2 of MP no. 692/15 states that capital gains earned by corporations taxed under "Simples Nacional" (the Federal Simplified Tax System for Small Businesses), derived from the sale of fixed assets, are subject to the same tax rates (between 15% and 30%). The rules described above for multiple sales of assets are applied.

Regarding PRORELIT, the special tax litigation program created by MP no. 685/15, the new Provisional Measure postponed the deadline for application until October 30. Also, the upfront payment, which is a mandatory requirement for participation in the program, previously set at 43% of the consolidated tax debt, was lowered to 30%, if the taxpayer chooses to make a lump sum payment.

Finally, there was created the possibility to make the advance payment in up to three installments. If the payment is split into two installments, it must amount to 33% of the consolidated tax debt, and, if it is split into three installments, it must amount to 36% of the consolidated tax debt.

**Souza, Schneider, Pugliese e Sztokfisz Advogados** is entirely available to assist its clients and to furnish legal advice regarding this subject.

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