

memorandum to clients

01.14.2016

Law no. 13,254/2016 – Special Tax and Currency Exchange Regularization Regime

Law no. 13,254, of January 13, 2016 (“Law no. 13,254/2016”), which enacts the Special Tax and Currency Exchange Regularization Regime (“RERCT”) was published on today’s issue of the Federal Gazette.

RERCT’s Goals

The RERCT allows eligible persons to normalize the reporting of assets remitted or maintained abroad in violation of Brazilian currency exchange and tax regulations, even if already repatriated, after the payment of a 30% tax on their market value – 15% of Income Tax and 15% of Penalties. The market value of the assets shall be converted to Reais with the exchange rate from 12.31.2014, of BRL 2.6562. After the payment and the adoption of the procedures set forth by the RERCT, these persons will no longer be liable to punishment for violations to tax and currency exchange regulations, such as tax evasion and money laundering. Eligible persons may choose between keeping the assets abroad, or repatriating them into Brazil.

Eligible Persons

The following persons are eligible for the benefits of the RERCT: **(a)** individuals who resided or were domiciled in Brazil as of 12.31.2014; or **(b)** estates of deceased individuals existing at that date, as long as the parties involved **(c)** were never convicted of any of the felonies mentioned in the Law; and **(d)** do not or did not hold a position, a job or a function of public nature, as a director or an elected member of a board, nor are or were related to such a person as a spouse, a blood relative or an in-law, up to the second degree or by adoption.

Targeted Assets

The RERCT targets assets **(a)** of lawful origin, i.e., those which “are derived from activities which are permitted or which are not prohibited by the law,” as well as the object, the product or the profit of the unlawful acts for which the RERCT provides amnesty; **(b)** which, before 12.31.2014, were **(c)** remitted or maintained abroad in violation of Brazilian currency exchange and tax regulations, or **(d)** repatriated in violation to these regulations, and **(e)** regardless of whether the assets are still owned by the same person who violated said rules.

Application Procedures

In order to apply for the RERCT, eligible persons must **(a)** submit a Standard Regularization Statement (“DUR”) to the RFB, which must contain a description of the assets, their market value in Brazilian Reais, or, in case the assets are no longer owned by the person submitting the statement, a description of the felonies (which will be mention in detail below); **(b)** present a copy of the DUR to the Brazilian Central Bank (“BCB”); **(c)** amend the Individual Income Tax Return (“DIPF”) for calendar year 2014, in order to include the assets which were previously undeclared, or partially or incorrectly declared; **(d)** amend the Statement of Brazilian Capital Abroad (“DCBE”) for calendar year 2014 before the BCB; **(e)** in the case of legal entities, to book the assets in 2016.

Regarding the income derived in 2015 originated from the assets which are reported in the DUR, the subject must **(f)** report it on his/her DIPF, DCBE and accounting records related to this period. It must not be

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included in the DUR, as it is only supposed to reflect the state of undeclared assets as of 12.31.2014.

If the reporting person chooses to repatriate the assets being declared, **(g)** it should be done through a financial institution authorized to perform currency exchange operations in Brazil, and with the submission of a copy of the DUR. Regarding financial assets, **(h)** in case their amount exceeds USD 100,000.00, “the individual must request and authorize the financial institution abroad to report the balance of these assets as of 12.31.2014 to the financial institution in Brazil, which will forward the information to the RFB. The financial institution in Brazil will not be responsible for verifying the accuracy of the information furnished by the foreign financial institution.”

After the RFB regulates the subject, eligible individuals will have 210 days to submit the DUR and to pay the tax and the fine due, as described on the following topic.

Assessment of amounts due

Applicants to the RERCT must **(a)** pay Income Tax calculated at the rate of 15% and **(b)** pay a fine at the rate of 15%, resulting in a combined percentage of 30%. No fine will be levied on assets under BRL 10,000.00 per person, or the equivalent in U.S. dollars, using the exchange rate of BRL 2.6562, which converts to the total amount of USD 3,764.77.

The tax and fine rates **(c)** apply over the market value of the assets, which is determined based on the documents listed on the Law. The market value of **(d)** must be converted **(d.1)** from U.S. dollars to Brazilian Reais, using the exchange rate of BRL 2.6562, or, **(d.2)** in case the assets are denominated in another foreigner currency, first they must be converted from the other currency to U.S. dollars as per the sales exchange rate determined by the BCB on 12/31/2014, and then from U.S. dollars to Brazilian Reais using the exchange rate of BRL 2.6562. If the assets have already been repatriated, **(d.3)** the market value shall be the market value in Brazilian Reais as of 12/31/2014.

From the assessed amount, **(e)** no deductions of costs or expenses, or acquisition costs discounts, will be permitted.

Regardless of the point in time when the undeclared equity increase took place, **(f)** there will be no late payment penalties, i.e., no interest and no late payment fine of up to 20%.

As previously explained, the income received in 2015 originated in the assets which are reported in the DUR, must not be included in the DUR, only in the DIPF, DCBE and accounting records related to this period. This income **(g)** must be taxed according to the normally applied tax regime.

Benefits

Applicants to the RERCT will receive full amnesty from the felonies committed to hide assets, namely:

- Some tax felonies, especially those set forth in Law no. 8,137/1990, in Law no. 4.729/1965 and in the Criminal Code;
- Some fraud crimes, especially those set forth in the Criminal Code, if committed within the scope of the aforementioned tax felonies;
- Currency Evasion Crime, set forth in Law no. 7,492/1986;



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- Money laundering criminal offenses, set forth in Law no. 9,613/1998, if related to the other felonies mentioned herein mentioned; and
- Smuggling, set forth in the Criminal Code, if related to the other felonies mentioned herein;

The declaration of the assets within the RERCT “shall not be in any way used as the sole evidence or element for the purpose of the investigation duty or on criminal procedures, as it will not be used to fundament, whether directly or indirectly, any tax or currency exchange administrative proceeding related to the assets declared thereon”. Likewise, if the applicant should be excluded from the RERCT due to non-compliance to technical requirements, “the beginning or the continuance of an investigation proceeding regarding the origin of the assets being regularized will only be permitted if there is documental evidence not related to the taxpayer’s declaration”.

The amnesty of the aforementioned felonies entails “the extinction of all the financial and currency exchange control obligations, both principal and secondary, including those which are merely formal, which would otherwise be enforceable regarding the assets being declared”.

By applying to the RERCT, eligible individuals:

- Will no longer be punishable for failure to submit the DCBE and other declarations to the Brazilian Securities and Exchange Commission (“CVM”), or to other federal regulatory entities, especially with regard to the penalties set forth in Law no. 4,131/1962, in Law no. 9,069/1995 and in Provisional Measure no. 2,224/2001; and
- Will receive remission from federal taxes and from penalties, connected with violations of Brazilian federal tax regulations, which otherwise would be charged over the regularized assets.

It should be noted, however, that this benefit does not apply to withholding taxes not duly transferred to the State.





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