

CHANGES TO THE TAXATION ON FOREIGN ASSETS AND FINANCIAL INVESTMENTS

Provisional Measure No. 1,171/2023



Provisional Measure No. 1,171/23, published last Sunday (April 30, 2023), changes taxation on tangible and intangible assets held abroad by Brazilian residents. Such changes are effective as of its publication, but the National Congress will still review the text and may convert it into a law. This shall occur within the next 60 days, and may be extended for another 60 days.

Check below the key changes proposed by the Provisional Measure.

INDIVIDUALS

UNTIL DECEMBER 31, 2023

- Taxation under cash basis, regardless of the funds entering Brazil.
- Taxation according to the type of income.
- Dividends, profits and income in general: according to the progressive tax rate schedule for assessing the IRPF tax (0% to 27.5%).
- Capital gains, and interest earned from financial investments: 15% to 22.5%.
- Impossibility to offset gains and losses in different types of financial investments.
- Taxation levied on foreign exchange transactions on investments originating in Brazilian currency (BRL).
- Exemption from income tax levied on the sale of assets acquired by non-residents.
- Possibility to offset taxes paid to countries with which Brazil has a tax treaty or reciprocity.

EFFECTIVE JANUARY 1, 2024

- Earnings received abroad from financial investments (to the widest extent possible), profits and dividends will be considered income from capital invested abroad. Taxation will no longer depend on the type of income.
- Foreign-derived income will be subject to IRPF tax without possibility of tax deduction adjustments on the taxable base, under the following tax rates:

Annual income	IRPF tax rate
Up to BRL 6,000.00	0%
From BRL 6,000.00 to BRL 50,000.00	15%
Above BRL 50,000.00	22.5%

- Impossibility to offset gains and losses in different types of financial investments.
- Taxation on all exchange rate variation transactions, regardless of the origin of the investment.
- Foreign-derived income from financial investments will be reported in the Individual Tax Return separately from other income and capital gains earned in Brazil.
- Revocation of the tax exemption levied on capital gains on the sale of tangible and intangible assets acquired by non-residents.
- Possibility to offset taxes paid to countries with which Brazil has signed a tax treaty or reciprocity.

FOREIGN-OWNED COMPANIES (PIC)

UNTIL DECEMBER 31, 2023

- The net income of the period may consider profits and losses incurred.
- IRPF tax is deferred while income remains in the undistributed profits account.
- IRPF tax is only levied when profits are effectively distributed to shareholders (cash basis).
- Information about owners' equity (shares or quotas) held by individuals abroad is reported in the "Assets" part of the Annual Statement.
- As for income accrued by December 31, 2023, taxation will be levied when it is effectively distributed to the shareholders (cash regime) but considering the new tax rates, as provided for in MP No. 1,173/2023.

EFFECTIVE JANUARY 1, 2024

- The income of the PIC is the net profit of the period: losses incurred as from 2024 may be offset, and profits/dividends from invested companies in Brazil may be deducted.
- Profit distribution will be taxed every year on December 31, whether or not the profit was effectively distributed to the shareholders (accrual basis). Rates will range from 0% to 22.5%.
- Income tax paid abroad may be deducted from payable IRPF tax.
- Income will be reported in the Individual Tax Return.
- The shareholders' taxable and undistributed income will be added to the cost of acquisition of the investment in the Individual Tax Return.
- Taxation on the exchange rate variation of the principal amount will take place via capital gains when the investment is sold or liquidated, including via capital return.

NOTE: these new tax rules are valid for companies headquartered in tax havens - low or nil tax jurisdictions, or by companies subject to privileged tax regimes, or by companies that earn predominantly passive income.

TRUST

UNTIL DECEMBER 31, 2023

- As per COSIT Consultation No. 41/2020, according to Brazil's Internal Revenue Service, the IRPF tax is levied on foreign-sourced amounts received by beneficiaries of trusts.
- Except for the above understanding, Brazil did not have a specific rule on taxes levied on foreign-derived income received from trusts.

EFFECTIVE JANUARY 1, 2024

- Income and capital gains regarding assets held in trusts will be treated as settlor's earnings until they are effectively distributed or transferred to the beneficiary.
- After the assets held in the trust are transferred to the beneficiary, whether settlor is still alive or because he/she passed, the ownership of such assets will be transferred to the beneficiary.
- Assets held in trust will need to be reported in a separate part of the Brazilian Annual Tax Return at their costs of acquisition. With the new rule, the trust has become a "transparent" entity for tax purposes.
- If the trust owns a company abroad, such company will be considered as directly owned by the individual tax resident in Brazil.
- Income and capital gains earned by the trust will be subject to IRPF tax, regardless of their respective distribution, according to the new tax rates provided for in MP No. 1,171/2023.
- The distribution of trust assets will be considered donation or inheritance. Therefore, if a complementary law enforces the payment of ITCMD tax (estate and gift tax), Brazilian States may levy ITCMD tax on distributions received from trusts.

NEW

POSSIBILITY OF ADJUSTMENT TO THE MARKET VALUE OF ASSETS HELD ABROAD

- Possibility to adjust the value of the assets held abroad to their market value as of December 31, 2022.
- Tax will be levied on the difference between the market value and the cost of acquisition at the rate of 10%.
- Assets subject to market value: **(i)** financial investments; **(ii)** shares and quotas held in foreign entities; **(iii)** real property; **(iv)** vehicles, airplanes, boats; **(v)** assets held in trusts.
- The option to readjust to the current market value may be made separately, asset by asset held abroad.
- Deadline to make the payment of the tax: November 30, 2023.
- Specifically regarding companies headquartered abroad, individuals who have opted to update the market value until December 31, 2022 may opt, separately, to update the market value for 2023, on December 31, 2023, and pay the IRPF tax at the rate of 10% until May 31, 2024.
- The procedure for the update of the value is pending regulation by the Brazilian Internal Revenue Service.

Our Wealth Planning Team will be happy to provide more information about this topic.

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