

Approved Bill No. 4,173/2023

which amends the taxation of financial investments and assets held by Individuals abroad, and the taxation of closed-end investment funds



The Congress of Brazil approved yesterday Bill No. 4,173/2023 (PL 4,173/23), which amends the taxation rules for assets and rights held by individuals abroad. Additionally, the text of Provisional Measure No. 1,184/2023 (MP 1,184/23) was also incorporated into the Bill, amending the taxation rules for closed-end investment funds.

THE MAIN CHANGES INTRODUCED BY PL 4,173/23, APPLICABLE FROM JANUARY 1, 2024, ARE AS FOLLOWS:



TAXATION OF FOREIGN ASSETS

All income earned abroad from financial investments (including, among others, cryptocurrencies and digital wallets, credit operations, profits, and dividends) will be subject to Individual Income Tax (IRPF), without deduction adjustments to the taxable base, **at a rate of 15%**.

Losses from financial investments of the same nature can be offset. If the loss exceeds the gain, the difference can be offset against profits and dividends from controlled foreign companies and can be carried forward for offsetting gains in subsequent periods.

Foreign tax paid but not deducted in the calendar year cannot be deducted in subsequent calendar years.

The following rules apply in the case of **companies held abroad**, located in tax havens or entities benefiting from a privileged tax regime or that generate less than 60% of their own active income:

i. Profits should be taxed by the shareholders on December 31 of each year, regardless of their actual distribution to shareholders (accrual basis), at a rate of 15%.

ii. The financial statements must comply with Brazilian law or international accounting standards (IFRS), at the taxpayer's discretion, except when the company is located in a tax haven or is a beneficiary of a privileged tax regime, in which case the financial statements must strictly follow Brazilian law.

iii. Profits of controlled companies, as well as income and gains from other investments in Brazil, can be deducted, provided they are taxed at a rate equal to or greater than 15%.

iv. Taxed and undistributed profits must be included as an additional acquisition cost of the investment in the Annual Adjustment Declaration.

v. The exchange rate variation between the date of annual profit taxation and the actual receipt will not be taxed.

The taxpayer can choose to declare the assets and rights held by the foreign-controlled entity as if they were held directly by the individual (transparent entity for tax purposes):

i. The option can be exercised individually for each offshore company owned by the individual.

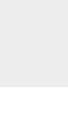
ii. The option is irrevocable and valid for the entire period in which the individual owns the offshore entity.

iii. Each asset will be taxed according to its nature.

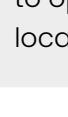
iv. If the offshore entity has more than one shareholder, the option must be exercised by all shareholders who are residents in Brazil.

Trusts: trusts are considered transparent entities for tax purposes. Therefore, the income and capital gains earned by the trust must be taxed directly by the holder, at a rate of 15%, regardless of their actual distribution.

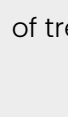
MAINTAINED RULES:



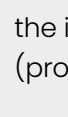
Exemption from Individual Income Tax for the sale of foreign currency up to \$5,000.



Exemption from taxation of exchange rate variation on a current account (provided it is not remunerated and held in a financial institution authorized to operate in the country in which it is located), and debit and credit cards.



Possibility of offsetting tax paid in countries that have signed a double taxation treaty with Brazil or that have reciprocity of treatment.



Rule applicable to all foreign companies: the taxation of the exchange rate variation of the principal will occur through capital gains at the time of the sale, disposal, or liquidation of the investment, including capital return (progressive rates from 15% to 22.5%).

POSSIBILITY OF UPDATING THE VALUE OF ASSETS AND RIGHTS ABROAD

Possibility to update the value of assets and rights abroad to the market value as of 12/31/2023.

Taxation of the difference between the market value and the acquisition cost at a rate of 8%.

Assets eligible for updating: (i) financial investments; (ii) foreign company stocks and shares; (iii) real estate; (iv) vehicles, aircraft, vessels; (v) assets held by trusts.

Assets acquired in 2023 are not eligible for updating.

Deadline for tax payment: 05/31/2024.

Foreign exchange variation related to the profit of the foreign subsidiary: any gains/losses resulting from the foreign exchange variation between the acquisition cost of the dividend to be received as of December 31, 2023, and the actual receipt will not be subject to taxation/deduction.

The method for exercising the option to update assets abroad is still pending regulation by the Brazilian Federal Revenue Service.



TAXATION APPLICABLE TO CLOSED-END FUNDS

Starting from 01/01/2024, closed-end funds will be subject to periodic taxation on the last business day of May and November ("come-cotas"):

Short-term funds:

20%

Long-term funds:

15%

Exception: a specific tax regime will be maintained without the application of the come-cotas for Private Equity Funds (FIP), Equity Investment Funds (FIA), Credit Rights Investment Funds (FIDC), and Fixed Income ETFs that are investment entities (with a professional management structure and discretionary investment decision-making, to be regulated by the CMN) and that meet the other requirements specified by the legislation. In this case, they will be subject to a 15% tax only on amortization, alienation, or redemption of fund shares and on income distribution.

Real Estate Investment Funds (FII) and Agricultural Real Estate Investment Funds (FIAGRO): income is exempt from income tax for individuals, provided that the fund has at least 100 unit holders. The exemption will not apply to the group of related individuals up to the second degree, representing 30% or more of the total units, or holding units that grant the right to 30% or more of the total income earned by the fund.

TRANSITION RULES

Income derived from investments in closed-end funds that were not subject to periodic taxation until 12/31/2023 and will be subject to come-cotas from 2024 onwards should be proportionally allocated until 12/31/2023 and will be subject to Withholding Income Tax (IRRF) at a rate of 15%.

The income will correspond to the positive difference between the asset value of the unit on December 31, 2023, including the income allocated to each unit holder, and the acquisition cost.

The due IRRF will be withheld by the fund administrator and can be paid in a single installment (in cash) until 05/31/2024 or in up to 24 monthly and successive installments, with the first installment due by 05/31/2024, with interest based on the SELIC rate.

In the absence of IRRF payment within the above-mentioned deadlines, the fund will be prohibited from making distributions or transfers of funds to unit holders and will be unable to make new investments until the full tax payment is settled.

If the tax is not paid on time due to the unit holder's failure to provide the necessary resources, the administrator must provide the Brazilian Federal Revenue Service with information regarding the investor, the amount of income, and the tax calculated, and the administrator's responsibility for withholding and remitting the tax in this scenario will be waived.

Alternatively, individuals may choose to pay IRRF on the income from investments in funds that were not subject to periodic taxation at a rate of 8%, following these steps:

i. Payment of the tax on the income earned until 11/30/2023, in 4 (four) equal monthly and successive installments, due on 12/29/2023, 01/31/2024, 02/29/2024, and 03/29/2024; and

ii. Payment of the tax on the income earned from 12/01/2023 to 12/31/2023, in a lump sum, on the last business day of May 2024.

OUR TAX TEAM IS AVAILABLE TO ANSWER ANY QUESTIONS YOU MAY HAVE ON THE SUBJECT VIA EMAIL AT:

✉ TAX.BLUZ@BAPTISTALUZ.COM.BR