

Brazil's Imminent Wealth Tax

There are several bills pending in the Brazilian National Congress aiming to create a wealth tax on "large estates" — a tax first contemplated in 1988 under the Federal Constitution. The two main bills are (i) PLP 277/2008, to which other bills are also attached (PLP 26/2011, PLP 48/2011, PLP 62/2011 and PLP 130/2012) and (ii) PLP 202/1989. Both bills are moving through the House of Representatives under different fast-track procedures.

According to the current versions of the bills, assets in Brazil or abroad would be included in calculating the taxable asset base (i.e., the estate) for the new wealth tax.

Assets in foreign trusts may also be taxable; however, depending on the final language in the bills, overseas trusts with certain governance structures could be excluded, such as those where distributions depend on the discretion of a trustee or committees. Determining whether the tax will be levied in these specific cases will require careful analysis of both the new rules (if and when enacted) and the instruments creating and governing each trust. Such analysis likely will include assessing the interaction between Brazilian law and the applicable law of the country in which the trust is constituted.

PLP 130/2012 would tax not only individuals domiciled in Brazil, but also individuals or legal entities residing abroad with respect to their assets in Brazil. The bill would also tax decedent estates in Brazil connected to these individuals.

The tax rates established in the several bills range from 0.5% to 5% of the estate, levied on an annual basis, with certain partial exemptions or exclusions. For instance, PLP 202/1989 excludes from the taxable base, for purposes of defining a "large estate" subject to taxation: (i) the value of a primary residence up to NCz\$ 500,000.00¹; (ii) tools used for self-employment up to NCz\$ 1,200,000.00; (iii) antiques, works of art or other collectibles, subject to conditions and percentage caps established by the law; (iv) investments, as defined in the law, in communications and in certain transportation, maritime (i.e., ports) and electricity-related infrastructure; and (v) other assets the possession or use of which is considered by law as having significant social, economic or ecological benefits.

The other pending bills employ a similar approach to PLP 202/1989. For instance, the most recently introduced bill excludes or partially exempts the following assets from the taxable estate: (i) a primary residence up to a limit of 20% of the total estate; (ii) tools used for self-employment up to a limit of 10% of the total estate; (iii) art and other collectibles up to a limit of 10% of the total estate; (iv) intellectual property rights retained by the creator of such intellectual property that are not held for commercial purposes; and (v) assets of small value, to be defined by law or subsequent regulations.

The most recently introduced bill also deems combined net asset values exceeding 8,000 times the monthly income tax exemption for individuals² to be a "large estate" subject to annual taxation at rates ranging from 0.5% to a maximum of 1%. For such purpose, net asset value is defined as the total assets and rights minus the obligations (liabilities) of the taxpayer.

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¹ "NCz\$" represents Brazil's official currency at the time this bill was proposed (*cruzados novos*). As this bill moves through the Brazilian Congress, new values, expressed in Brazilian Real (R\$), will need to be adopted.

² For calendar year 2013, this exemption limit is R\$ 1,710.78. The amount would be adjusted for each calendar year based on the income tax exemption limit in effect on December 31 of the relevant calendar year.

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If and when the law is enacted, the tax can only be assessed with respect to taxable events that occur after the law is in force, subject also to the dual notice period required by the Federal Constitution, which provides that the law may *not* take effect: (i) prior to 90 days from the law's formal publication following its enactment and (ii) during the same fiscal year in which the law is formally published.

If enacted, the changes may require many Brazilian resident individuals and even non-Brazilian residents with assets in Brazil to reassess their investment portfolios and estate planning vis-à-vis these new tax considerations.

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