

Legal Bulletin
May 2014

New Tax Benefits for Foreigners Investing in Brazilian Funds

On April 15, 2014, the Brazilian National Congress approved Provisional Measure No. 627 of November 11, 2013. The Measure (119 articles long), which is expected to be signed into law (or partially vetoed) by President Dilma Rousseff within the coming days,ⁱ brings about several important changes, including exchanging the accounting standard used in Brazil for tax purposes for the International Financial Reporting Standards (IFRS), adopted for corporate/accounting purposes since year 2008, and exempting dividends distributed in excess of profits calculated from 2008 to 2013 according to the previous accounting standard.

Of special interest to foreign investors, the Measure exempts from income tax such income – including capital gains – earned by non-resident investors not located in low tax jurisdictions (low tax jurisdictions as defined by applicable law) as is derived from investment funds exclusively held by foreigners, provided that the funds invest exclusively in demand deposits (*depósitos a vista*) or assets that are not taxable for foreigners not located in low tax jurisdictions. For instance, investment funds exclusively trading shares on the stock exchange would qualify for this exemption.

Should the fund's by-laws expressly limit its investment to foreign individuals, qualifying assets also include several that are exempt for individual investors (such as Real Estate Investment Funds (*Fundos Imobiliários*), as determined by Article 3 of Law No. 11.033 of December 21, 2004).

These new rules are welcomed by foreign investors, who now receive the same benefits as if they were directly investing in these Brazilian assets without an interposing fund.

The Measure also considers "capital gains" earned by qualifying non-resident investors on the sale or amortization of stakeholder participation in Brazilian Private Equity Funds (*Fundos de Investimento em Participações - FIP*) to be subject to income tax at a zero rate. This provision was needed to the extent Brazilian tax authorities could interpret the laws currently governing the taxation of FIP foreign investors as exempting only their "income" and not "capital gains" (even though there are grounds to defend the legal provisions currently in effect already exempt capital gains by considering income broadly as including capital gains). The new rules under the Measure guarantee capital gains arising from the sale of FIP shares (particularly non-stock exchange sales) shall not be taxable going forward, but there is a chance that the Brazilian IRS may refute the claim for non-taxation of past transactions.

All new rules above will become effective upon signing of the Measure into law.

São Paulo

Av. Brig. Faria Lima, 2601
12th floor - 01452-924
São Paulo, SP - Brazil
Phone. +55 11 3555 5000

Rio de Janeiro

Praia de Botafogo, 440
15th floor - 22250-908
Rio de Janeiro, RJ - Brazil
Phone. +55 21 3503 2000

Brasília

SBN Q 1, Bl B, n. 14, Ed. CNC
2th floor - 70714-900
Brasília, DF - Brazil
Phone. +55 61 2109 6070

contato@levysalomao.com.br

Ana Carolina Monguilod
amonguilod@levysalomao.com.br

ⁱ A Provisional Measure is an "act"-type Presidential Decree effective immediately, subject to approval by the House of Representatives and Senate within 60 days (extendable for additional 60 days). Provisional Measure No. 627/13 will become law, after being signed by the President and published in the Federal Government's Official Gazette.