

NEWSLETTER No. 114

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SUMMARY

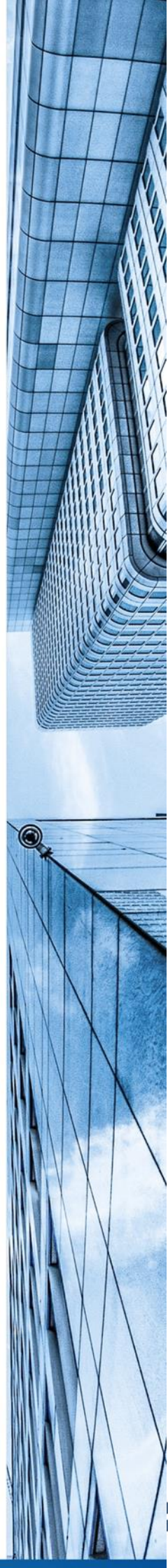
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FEDERAL REVENUE SERVICE ISSUES NORMATIVE INSTRUCTION TO REGULATE TAXATION OF OFFSHORE ENTITIES

On March 13th, 2024, the Federal Revenue Service of Brazil — RFB published RFB Normative Instruction no. 2,180/2024 (“[RFB NI no. 2,180](#)”), to regulate articles 1 to 15 of Law no. 14,754/2023 (dealing with taxation of the income obtained by individuals residing in Brazil from financial investments and investments in trusts and other controlled foreign entities).

In this regard, RFB NI no. 2,180 covers the taxation of the income obtained by individuals who reside in Brazil from non-remunerated deposits abroad, foreign cash, financial investments and investments in controlled entities and trusts maintained abroad. It also governs the option of taxpayers to update the value of their assets and rights held abroad, as set forth in Law no. 14,754/2023.

Among the main provisions of RFB NI no. 2,180 are the following:

General provisions

- (i) The income obtained by individuals residing in Brazil from (i.1) financial investments abroad; or (i.2) profits and dividends from controlled foreign entities, are subject to Income Tax on Natural Persons (“[IRPF](#)”), to be reported on the Annual Tax Return (DAA) and taxed at the rate of 15% (without the possibility of reducing the calculation base); and
- (ii) In the case of assets and rights abroad held jointly, each party must comply with his/her/its tax obligations in relation to the portion of the asset or right held thereby. In case of impossibility of exact division of the assets or rights, the value must be distributed equally among the parties.

Exchange rate variation

- (iii) The exchange rate variation on foreign currency deposits and the amounts of debit and credit cards held abroad are not subject to IRPF, as long as such deposits (iii.1) are not remunerated; and (iii.2) are held in a financial institution abroad that is recognized and authorized to function by the monetary authority of the country in which the institution is located. This absence of IRPJ also applies to the use, including cash withdrawals, of financial resources deposited in current accounts or via credit and debit cards abroad;
- (iv) The exchange rate variation of foreign currency held in cash is not subject to IRPF up to the limit of the alienation of the currency in the calendar year equivalent to US\$ 5,000.00; and
- (v) The exchange rate gains received on the alienation of foreign currency in cash, whose value on alienation exceeds US\$ 5,000.00, will be fully subject to IRPF at the progressive rates of 15% to 22.5%, depending on the value of the gains.

Financial investments

- (vi) According to RFB NI no. 2,180, foreign financial investments are defined as “any financial transactions carried out outside the country, for example including remunerated bank deposits, remunerated certificates of deposit, current accounts with earnings, shares of investment funds (except those treated as controlled foreign entities), financial instruments, insurance policies whose principal and earnings can be redeemed by the insured or by the respective beneficiaries (except insurers treated as controlled foreign entities), certificates of investment or transactions involving prize-linked savings account deposits, retirement or pension funds, fixed-income or variable-income bonds, credit transactions, including loans of financial resources, in which the debtor has foreign residence or domicile, derivatives and equity investments (except those treated as in controlled foreign entities), including the rights of acquisition, such as subscription warrants and purchase options”;
- (vii) The virtual assets or financial arrangements with virtual assets, including digital portfolios with earnings, that are digital representations of another financial investment abroad, or whose nature or characteristics fit under this definition, will also be considered as financial investments. Additionally, the virtual assets or financial arrangements with virtual assets will be considered as located abroad, irrespective of the location of the issuers of virtual assets or financial arrangements with virtual assets, when held in custody or traded by institutions located abroad;
- (viii) Individuals who reside in Brazil can offset the losses suffered from financial investments abroad (as long as duly proven by a valid and trustworthy document) against the earnings generated by financial investments abroad in the same calculation period. In the event the losses exceed the gains, the difference can be offset against profits and dividends from controlled foreign entities, as long as these have been reported on the annual tax return (DAA) in the same calculation period; and
- (ix) Individuals who report income from financial investments abroad can deduct from the IRPF the tax on income paid in the country of origin of the income, when: (ix.1) such netting is specified in an international treaty or convention signed with the country of origin for the purpose of avoiding double taxation; or (ix.2) reciprocity of treatment exists in relation to the income generated in Brazil.

Controlled foreign entities

- (x) The profits obtained by foreign entities abroad controlled by individuals residing in Brazil are subject to IRPF at the rate of 15% when reported on the DAA, when classified under one or more of the following hypotheses: (x.1) they are located in a country or dependency with favored taxation or are the beneficiaries of a privileged tax regime; or (x.2) they obtain active income lower than 60% of their total income;

- (xi) The profits will be taxed annually in accordance with the portion of the participation of the individual in such profits, independently of any deliberation regarding the actual distribution of such profits;
- (xii) The profits of the controlled entities will be ascertained in individualized form based on the annual balance sheet of the foreign entity controlled directly or indirectly, dated December 31st of each calendar year. The balance sheet in question must be prepared with observance of: (xii.1) the relevant international accounting standards (such as International Financial Reporting Standards - IFRS) or Brazilian accounting standards, at the discretion of the taxpayer; or (xii.2) Brazilian accounting standards (BR GAAP) if the entity is located in a country or dependency with favored taxation, i.e., a privileged tax regime; and
- (xiii) Instead of the annual taxation regime of the profits of foreign controlled entities, taxpayers residing in Brazil can opt for the fiscal transparency regime, in which the individual taxpayer reports the assets, rights and obligations detained by the directly or indirectly controlled foreign entity as if they are detained directly by the individual. If the fiscal transparency regime is adopted, the taxpayer must report on the DAA the underlying assets and rights at their respective acquisition cost.

Foreign trusts

- (xiv) For the purpose of RFB NI no. 2,180, the assets and rights held by a foreign trust will be considered in the following form: (xiv.1) they will remain under the ownership of the settlor after institution of the trust; and (xiv.2) they will be transferred to the ownership of the beneficiary at the moment of distribution by the trust to the beneficiary or the death of the settlor, whichever occurs first. The transmission to the beneficiary can be deemed as occurring on an earlier date if the settlor irrevocably waives the right to the portion of the assets held in trust; and
- (xv) In turn, the change of ownership of the assets held by the trust will be considered as unpaid transmission from the settlor to the beneficiary, and shall be classified as: (xv.1) a donation, if occurring during the lifetime of the settlor; or (xv.2) transmission *causa mortis* if after the death of the settlor.

RFB NI no. 2,180 took effect on the date of its publication and revoked SRF Normative Instruction 118/2000 (which covered the taxation of capital gains on the sale of assets or rights and the liquidation or redemption of financial investments acquired in foreign currency, and the sale of foreign currency in specie owned by individuals).

More information, including the full text of RFB NI no. 2,180, can be found at the website of the Federal Revenue Service (www.gov.br/receitafederal/pt-br).

START OF THE PERIOD FOR PRIVATE LEGAL ENTITIES TO REGISTER THEIR ELECTRONIC JUDICIAL DOMICILE

On February 20th, 2024, the National Justice Council — CNJ announced in its official channels that private legal entities can register their Electronic Judicial Domicile from March 1st, 2024 until May 30th, 2024.

The Electronic Judicial Domicile is legally based on art. 246 of the Civil Procedure Code and is regulated by CNJ Resolution no. 455/202, according to which the Electronic Judicial Domicile consists of a digital environment for communication of procedural matters between the bodies of the judicial branch and the parties and other stakeholders of judicial proceedings.

Further according to CNJ Resolution no. 455/2022, the registration of the Electronic Judicial Domicile is obligatory for the federal government and governments of the states, Federal District and municipalities, as well as entities of the indirect public administration, Public Prosecution Service, Public Defender's Office, Attorney General's Office and "private and public companies" (i.e., private and public legal entities), for the effects of receiving summonses and subpoenas.

Besides this, individuals ("natural persons") can also register their Electronic Judicial Domicile to carry out consultations to obtain information in public databases and to receive summonses and subpoenas.

The obligation to register the Electronic Judicial Domicile does not apply to micro-enterprises and small businesses that already have an electronic address recorded in the integrated system of the National Network for Simplification of Registration and Legalization of Companies and Businesses (Redesim). In these cases, the electronic registration in the Redesim will be considered as registration of the Electronic Judicial Domicile.

The registration of the entities specified in CNJ Resolution no. 455/2022 has already been under way since 2023, in steps. Between February 16th and August 15th, 2023, financial institutions had to register their Electronic Judicial Domicile. In the case of other private legal entities, the registration must occur between March 1st and May 30th, 2024. In turn, the bodies and other entities of the public administration must register their Electronic Judicial Domicile starting in July 2024 (on dates to be specified). And natural persons can optionally carry out this registration as of October 2024 (again on dates to be specified).

The voluntary registration of the Electronic Judicial Domicile must be carried out via the Digital Platform of the Judicial Branch (www.domicilio-eletronico.pdpj.jus.br), which can be accessed with the e-CNPJ number of legal entities. After accessing the Platform, they will have to follow the registration steps indicated, which will include concordance with the Platform's adhesion instrument, confirmation of the data extracted from the database of the Federal Revenue Service and indication of the electronic address for receipt of notices (including summonses and subpoenas).

Through the Digital Platform of the Judicial Branch it is also possible to link branches to parent companies without the need for separate registration of each branch. This also applies to affiliated companies, which must access the Platform and confirm a request for linkage.

Finally, after the end of the period for voluntary registration of the Electronic Judicial Domicile by private legal entities, that registration will become compulsory, based on the data of the Federal Revenue Service. According to the CNJ, in these cases a risk exists of the imposition of penalties and missing of procedural deadlines.

More information, including the full text of CNJ Resolution no. 455/2022, can be found at the CNJ's website (www.cnj.jus.br).

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