

Brazilian Voluntary Disclosure Program: The Cost of The Medicine for Contaminated Funds

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Co-Author: Fernando Colucci

On January 14, a voluntary disclosure program, the Special Regime for Foreign Exchange and Tax Regularization (RERCT), was enacted in Brazil. It gives Brazilian residents an opportunity to voluntarily disclose unreported funds and assets that originate from legal sources, but which have otherwise been kept outside Brazil or repatriated. More recently, the Brazilian Revenue Service (RFB) issued a normative instruction, providing further details regarding the program's implementation and use. RERCT is the first step toward getting Brazil enrolled in the global automatic exchange of financial information, *i.e.*, the common reporting standard (CRS) endorsed by the Organisation for Economic Co-operation and Development (OECD). Brazil has committed to making the first exchange of information in 2018, sharing details regarding accounts that existed as of December 31, 2016 as well as regarding accounts opened after January 1, 2017. Since Brazilian taxpayers' reporting obligations are not limited to income, but also require disclosure of the assets held by the respective legal entity or individual, the program offers a great opportunity to settle non-compliance reporting issues before the RFB starts accessing the relevant CRS information. It is worth highlighting that Brazil and the United States already implemented a "Model 1" intergovernmental agreement as to the U.S. Foreign Account Tax Compliance Act (FATCA), under which Brazil has had access to certain financial information regarding Brazilian taxpayers (individuals and legal entities) since 2014. Such access, coupled with the exchange of information that will commence in 2018, shall motivate non-complaint taxpayers to follow the program. RERCT shall allow regularization of three kinds of unreported funds or assets: (i) those remitted outside Brazil; (ii) those originated outside Brazil and never repatriated to Brazil; and, (iii) those remitted or originated outside Brazil and later repatriated to Brazil. Enrollment in RERCT will lead to the extinguishment of the liability for crimes related to the failure to report the funds and/or assets, such as money laundering, evasion of funds, crimes against the tax order, embezzlement, and promotion of outflow of funds without legal authorization. To

enroll, the legal entity or individual shall file a single statement form addressed to the RFB between April 4 and October 31, 2016. The statement form (still to be made available by the RFB) shall contain a detailed description of all funds and/or assets of any nature that were held as of December 31, 2014, with their respective value in Brazilian *Reais* on such date. Since full disclosure of non-compliant funds or assets held on or before December 2014 is imposed by law, Brazilian taxpayers following the program may not cherry pick the items to include. The amount of assets disclosed by a taxpayer through the program will be considered "income" and will subject the individual or legal entity to income tax at a 15 percent rate on the value of the funds or assets as of December 31, 2014, as converted into Brazilian Reais (BRL). In addition, a penalty at a 100 percent rate applies on the income tax, resulting in a 30 percent total nominal rate. For U.S. dollar (USD)-denominated funds or assets, the exchange rate provided by the Central Bank of Brazil on the last business day of December 2014 shall be applied (USD 1.00 = BRL 2.66). Therefore, as the current USD exchange rate floats near BRL 3.90 for USD 1.00, the application of the December 2014 exchange rate reduces the effective rate arising out of the program, from 30 percent to approximately 20 percent. *Fernando Colucci is a member of the Brazilian law firm Machado Meyer Sendacz & Opice.*

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