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## LEGAL LETTER / APRIL 2017

### REOPENING OF THE BRAZILIAN SPECIAL REGIME FOR EXCHANGE AND TAX REGULARIZATION

*Rosiene Soares Nunes and Victor Bulcão Martinelli<sup>1</sup>*

1. The deadline for individuals or legal entities to take part in the Special Regime for Exchange and Tax Regularization (“New RERCT”) was reopened by Law 13428, published on March 31, 2017, which introduced considerable changes to the previous regime. The New RERCT was regulated by the Brazilian Federal Revenue Service Normative Instruction 1704 (“IN RFB 1704”), published on April 3, 2017.
2. As per the rules of the New RERCT, individuals or legal entities residing in Brazil on June 30, 2016 which have or had, prior to this date, assets, goods and/or rights abroad which were undeclared or were incorrectly declared, may adhere to the regime if they comply, until July 31, 2017, with the following conditions:
  - The Regularization Return (“Dercat”) shall be presented to the Brazilian Federal Revenue Service (“RFB”), identifying the assets, goods and/or rights abroad, among other information;
  - The income tax on the capital gain shall be paid at a 15% rate on the amount of the assets, goods and/or rights abroad (determined according to law) converted, firstly, to US Dollars at the selling exchange rate determined by the Central Bank of Brazil (“BACEN”) on June 30, 2016, and to Reais at the selling exchange rate for the same date (R\$ 3.2098), plus a 135% fine on the amount of the income tax due, reaching an effective rate of 35.25%;
  - The assets, goods and/or rights abroad must be reported: **(i)** in the rectification of Individual Income Tax Return for the calendar year of 2016; **(ii)** in the rectification

<sup>1</sup> Rosiene Soares Nunes and Victor Bulcão Martinelli are, respectively, members of the Tax Area and the Corporate Area at Machado Associados.



of Brazilian Capital Abroad Statement (DCBE) for the calendar year of 2016, for the individuals and legal entities subject to it; and **(iii)** in the bookkeeping of Brazilian legal entities for the calendar year of 2016, until July 31, 2017, and for following years; and

- In case the financial assets abroad exceed USD 100,000.00, the individual or legal entity must request and authorize the financial institution abroad to send, via SWIFT<sup>2</sup>, the balance of the assets on June 30, 2016 to a financial institution located in Brazil.

**3.** The income deriving from the assets, goods and/or rights abroad obtained as of July 1, 2016 must be included in the returns and in the bookkeeping mentioned above and the tax and interests levied on such amounts may be paid, without the late payment fine, until July 31, 2017. IN RFB 1704 allows the Individual Income Tax Return to be rectified until December 30, 2017.

**4.** Among the changes introduced by the New RERCT, we highlight:

- The possibility of including the estate whose succession was opened until the date in which it **(i)** files the Dercat (July 31, 2017) and **(ii)** comply with all other obligations;
- The alteration of the rule providing for the exclusion of a taxpayer from the regime in case the amount of the assets, goods and/or rights abroad were declared incorrectly, allowing the RFB to demand the payment of income tax, interest and applicable fines on any differences found;
- The extinction of liability for the crimes listed by Law 13254/16 for the amounts declared incorrectly if the income tax, interest and applicable fines demanded by the RFB in the previous item are paid within 30 days; and
- The possibility of complementing the amounts declared in the previous regime by paying the 15% income tax and 135% fine on the tax due on additional amounts converted to Reais based on the exchange rate of June 30, 2016.

We are at your disposal to assist with the matters detailed above.

Sao Paulo, April 2017

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<sup>2</sup> Society for Worldwide Interbank Financial Telecommunication – SWIFT.