



CHANGES TO THE REGISTRATION OF FOREIGN CAPITAL AND SAFEKEEPING OF DOCUMENTS FOR FUTURE VERIFICATION OF NON-RESIDENTS' CAPITAL GAIN

The changes brought at the end of 2016 by Resolution 4533/16 and Circular 3814/16 of the Central Bank of Brazil ("BACEN") to the registration of foreign investments in Brazil may affect the calculation of capital gain earned by non-residents on the sale of assets in Brazil, subject to the withholding income tax in Brazil.

Since 2000, the registration of foreign investments had been made on SISBACEN, in the Electronic Declaratory Registration – Direct Investment module ("RDE-IED"). As of January 2017, the registration is made directly on BACEN's website (<https://www3.bcb.gov.br/ied/dologin>) in the Foreign Investment Registration System ("New RDE-IED").

To change the system, BACEN automatically transferred the data previously registered in the RDE-IED on SISBACEN. However, it should be noted that the New RDE-IED presents only the value in national currency of the investment held by foreign investors in Brazilian companies, based on the last record made by the declarant on SISBACEN. There is no indication of the corresponding value in foreign currency.

Although it is possible to consult the exchange contracts in the New RDE-IED and so individually check their value in foreign and national currency, the same does not occur in relation to reinvestments, corporate restructurings, among others, in which there is no closing of exchange contracts.

BACEN informally understands that it is neither required nor necessary to present the value of the investment in foreign currency in the New RDE-IED and the interested person would be responsible for the calculation of the value of the investment in foreign currency, for any other purposes.

These limitations can affect the calculation, in foreign currency, of the capital gain by individuals and legal entities not resident in Brazil in case of sale of the investment in companies in Brazil. Although Normative Instructions 1455/14 and 208/02 of the Brazilian Federal Revenue Service established, in articles 23 and 26, respectively, that the capital gain earned by non-residents will result from the positive difference between the sales price and the acquisition cost, both in Reais, there are good arguments to sustain that such calculation should be made by comparing the sales price and acquisition cost, both in foreign currency.

In view of the above and considering that transaction "PRDE600 – Investimento Estrangeiro Direto – Declarante" (Direct Foreign Investment – Declarant) on SISBACEN will be available for consultation up to December 31, 2017, it is highly recommended that the companies that

receive foreign investment save and/or print the historical registration screens to be kept in their files, mainly those related to the Consolidated Investment Statement (that shows the value of the investment recorded in foreign currency) as additional evidence to prove the acquisition cost in foreign currency.

This newsletter contains information and general comments on legal matters that may interest our clients and friends. It does not represent the legal opinion of our firm on the subjects addressed herein. In specific cases, readers should rely on proper legal assistance before adopting any concrete action relating to the matters addressed herein.

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