



Taxation of Capital Gains Earned by Non-Residents

Normative Instruction of the Brazilian Federal Revenue Service (“IN RFB”) 1732/17, published in 29/8/17, introduced changes in IN RFB 1455/14, which previously established the levy of 15% Withholding Income Tax (“WHT”) on capital gains ascertained by legal entities domiciled abroad upon the disposal of goods and rights located in Brazil.

IN RFB 1732/17 establishes the levy of Income Tax using progressive rates, which can be calculated based on the practical table below:

Calculation Basis (BRL)	Rate (%)	Deductible Share (R\$)
Up to 5,000,000.00	15%	-
From 5,000,000.01 up to 10,000,000.00	17,5%	125,000.00
From 10,000,000.01 up to 30,000,000.00	20%	375,000.00
Higher than 30,000,00.01	22,5%	1,125,000.00

This Instruction also provides that:

- (i) The tax shall be paid until the last business day of the month following the capital gain ascertainment;
- (ii) In case the disposal occurs in installments and the second transaction occurs until the end of the calendar year following the first, the capital gains ascertained as of the second operation shall be added to the gains earned on the previous transactions, deducting the amount of tax previously paid; and
- (iii) The 15% WHT rate previously provided applies for taxable events occurred until 12/31/16, *i.e.*, the progressive rates apply as of 1/1/17.

We remind that the levy of Income Tax using progressive rates on capital gains earned by Brazilian resident individuals was established by Law 13259/16 and entered into force as of 1/1/17.

Since the publication of such Law, we understand that the progressive rates apply to capital gains earned by non-residents, regardless if they are individuals or legal entities, in light of article 18 of Law 9249/95 (“the capital gain earned by a non-resident will be calculated and taxed in accordance with the rules applicable to Brazilian residents”) and

that the rules applicable to non-residents are those that regulate the taxation of individuals that are Brazilian residents.

Finally, we remind that if the beneficiary of the gain is tax resident in a country with favorable taxation, a WHT of 25% rate applies, regardless of the amount of capital gain.

This warning 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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