

# ORIGIN OF FOREIGN INVESTMENT

## TAXATION OF INCOME EARNED BY FOREIGN INVESTORS

In one  
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The Brazilian Federal Revenue Service (RFB) issued the Interpretative Declaratory Act (ADI) 5/2019 that provides guidance on the ascertainment of the Withholding Income Tax (WHT) rate applicable to income earned by foreign investors, regulated in articles 88 to 98 of the RFB Normative Instruction 1585/2015.

These articles establish the non-levy of WHT on income arising from investment funds and from fixed or variable income securities of investors located abroad.

Discussions arise on whether the non-levy of WHT also applies to investments in Brazil under structures in which the ultimate beneficiary is located in a tax haven, case in which the WHT would be levied (if the direct investor was located in a tax haven).

In this context, ADI 5/2019 clarifies that the jurisdiction of the direct investor in Brazil shall be considered for the purposes of the special tax regime applied to non-residents, except in cases of misconduct, fraud or sham transactions.

The fact that tax authorities made an exception to certain situations may lead to discussions on the characterization of cases as misconduct, fraud or sham.

For additional information on the matter, please contact:

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