

OCTOBER 2015

Changes to tax on capital gains in Brazil announced for 2016

On 22 September 2015 the Brazilian Government published Provisional Measure 692 which creates a progressive regime for income tax due on capital gains realized on the sale of assets and rights by individuals. The Provisional Measure is principally directed at individuals resident for tax purposes in Brazil, though it will apply by extension to gains realized on certain disposals of Brazilian based assets by non-resident individuals and legal entities.

Brazilian legal entities are not subject to income tax on capital gains, since any gains realized are subject to income tax on corporate profits.

Currently capital gains in Brazil are taxed at a standard flat rate of 15%. Under the aforementioned Provisional Measure, as of 1 January 2016 this standard rate will only apply to the first R\$ 1 million of the chargeable gain. That portion of the chargeable gain between R\$ 1 million and R\$ 5 million will be taxed at the marginal rate of 20%. That portion of the gain between R\$ 5 million and R\$ 20 million will face a marginal tax rate of 25% and the top slice of the gain above R\$ 20 million will be taxed at 30%.

As an anti-avoidance measure, envisaging possible piece-meal asset disposals at lower marginal tax rates, particularly shareholdings, the Provisional Measure provides that as of a second disposal of shares in the same company, the chargeable gain should be added to the gain on the earlier operation for the purposes of calculating the tax due, from which can be deducted the tax paid on the earlier operation(s). Whether this implies that a part disposal of an asset in 2015 would eventually be subject to a higher tax rate on a subsequent disposal after 1 January 2016 remains to be seen.

Additionally, under the prevailing legislation, the applicable rate of 15% is increased to 25% when Brazilian assets are disposed of by individuals or entities resident in so-called tax haven jurisdictions. Whether this rate of 25% will change in 2016 is also not clear.

The publication of the Provisional Measure is clearly aimed at encouraging taxpayers to anticipate gains that may be planned for 2016, with a view to realizing them this year and thus taking advantage of the current flat tax rate.

In light of the above, taxpayers should therefore seriously consider bringing forward to 2015 the completion date on large asset disposals that may be otherwise scheduled for completion in the New Year.

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