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International banks provide impetus to Brazilian tax amnesty program

Law 13.254 of 13 January 2016 created the so-called Special Regime for the Exchange and Tax Regularization (RERCT) in relation to assets and funds held abroad by individuals and/or entities resident in Brazil that have not previously been declared for tax purposes or which have been incorrectly declared.

In summary, the law allows for immunity from criminal prosecution in relation to assets and rights held on 31 December 2014 by individuals and entities resident in Brazil, with a legal origin but not previously declared to the RFB or BACEN, in consideration for payment of 30% of the market value of the assets/rights as at 31 December 2014. Specifically, the law provides for payment of tax, considered as a capital gain, at the rate of 15%, plus a fine equating to 100% of such amount, representing an effective tax rate of 30% of the market value of the assets declared. The deadline for carrying out this regularization and for payment of the tax and fine is 31 October 2016.

On 11 March 2016 the Brazilian Tax Authorities issued Normative Instruction RFB 1.627 (IN 1.627) setting out the prescribed regulations and procedures under which overseas assets may be regularized under the RERCT. This IN creates a declaration, known as Declaration of Exchange and Tax Regularization (DERCAT), which will be submitted in electronic format, containing the required information and appropriate declarations as to licit origin of the assets now declared.

In addition to the DERCAT, there are other obligations for the taxpayer such as the filing of amended tax returns for

calendar years 2014 and 2015 and submission of asset returns to BACEN for the same period. In addition, for funds over US\$ 100,000 a Brazilian financial institution will be required to intermediate in the communication of banking information from a foreign financial institution to the RFB.

Naturally, in view of the novel nature of this legislation, a number of doubts and queries have arisen in relation to the same, some of which are being clarified by the RFB and many more under review by the legal profession. Nonetheless, within the ambit of a new era of compliance and transparency, marked by the exchange of information provisions either introduced or being introduced under the FATCA and MCAA, the RERCT may represent a unique opportunity for certain Brazilian residents.

Recent press reports to the effect that major international banks are effectively forcing their clients to sign up for the RERCT, upon pain of having their bank accounts closed or restricted, will no doubt be seen by the RFB as providing a welcome impetus to the RERCT program.

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