Law No. 14,754/2023 Taxation of Offshore Investments, Controlled Foreign Entities, and Investment Funds

Publication
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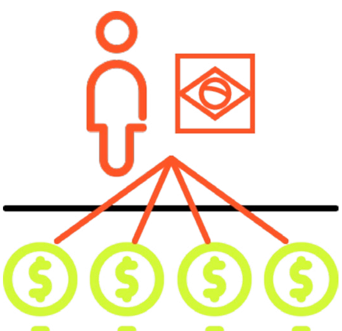
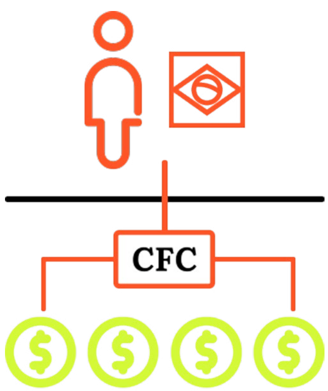
Effects
Effective from January 1, 2024



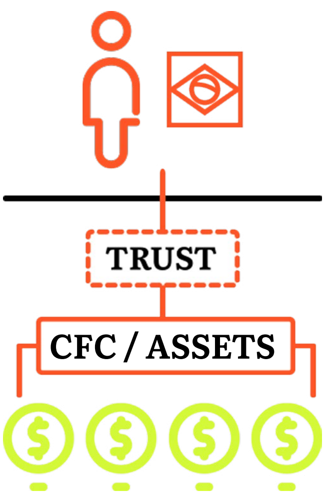
Financial Investments Abroad:

_ Annual calculation in the annual Tax Return ("DAA") for individuals
_ Single tax rate: **15%**
_ Tax islevied on the annual income, without any deductions
_ Definition of financial investments includes: interest-bearing deposits, interest-bearing deposit certificates, virtual assets (as per regulation), interest-bearing accounts, redeemable insurance policies, shares of non-controlled investment funds, credit operations, among others
_ Capital gains from assets and rights that are not financial investments follow the general capital gains rule
_ Tax is levied upon the availability of income (e.g., receipt, redemption, amortization, alienation, maturity, and settlement)
_ Tax on foreign exchange rate variation, except for the variation in non-interest-bearing current or debit/credit card deposits, and exemption for foreign exchange variation in cash transactions up to the limit of $5,000.00
_ Possibility of deducting tax paid in the country of origin of the income, subject to Tax Treaty, Tax Convention, or reciprocity of treatment, except if eligible for reimbursement/refund/compensation abroad in the same calendar year
_ Possibility of offsetting realized losses, only once, with income earned in similar operations abroad, as well as with any income from controlled entities or gains from subsequent assessment periods

Controlled Foreign Entities (structures):
_ Taxation of annual profits of entities on 31/12 of each year, calculated individually in a balance sheet according to Brazilian accounting standards, converted into Brazilian Reais at the exchange rate on the last business day of December
_ Single tax rate: **15%**
_ Applicable to companies in tax havens, countries with favored taxation regimes, or whose own active income is less than 60% of their total income (passive income exceeding 40%)
_ Includes holdings, funds, and foundations considered controlled: control for deliberations and election of directors, or 50% of the share capital, held directly or indirectly, including related parties (e.g., blood relatives and affiliates up to the third degree and partners, considering stakes of 10% or more of the capital)
_ Profits calculated individually by each controlled entity, excluding results from controlled entities, concerning each share of participation, which will determine their result individually, following IFRS or Brazilian accounting standards (mandatory to follow Brazilian accounting standards for entities in tax havens)
_ Profits calculated and taxed annually are included in the DAA and form part of the cost of acquiring dividend credit to be received, indicating the year of origin; when distributed, they reduce the cost of this credit and are not taxed again, with no tax on positive foreign exchange rate variation (if any)
_ Possibility of deducting from the profit of the controlled entity abroad the portion of profits from investments in Brazil, gains from other investments made in Brazil that have been taxed at a rate equal to or greater than 15%, as well as losses incurred after 01/01/2024 and taxes paid abroad
_ Profits generated until 31/12/2023, or from non-controlled entities, will be taxed only when made available to its shareholders (e.g., payment, credit, remittance, or credit operations)
_ Foreign exchange rate variation of the principal invested in controlled entities will constitute the capital gain in the alienation, write-off, or liquidation of the investment, or upon return of capital
_ Reorganizations of controlled entities abroad considered "opaque" (non-transparent) must be treated at market value when transferring assets and rights



_ Option of **"Tax Transparency"**: Irrevocable and unretractable option, regarding each controlled entity, to declare directly the assets and rights held by the controlled entity, attracting general taxation of financial investments abroad; any subsequent transfers to other controlled entities must be evaluated at market value, subject to taxation in case of gain, depending on the nature of the income.

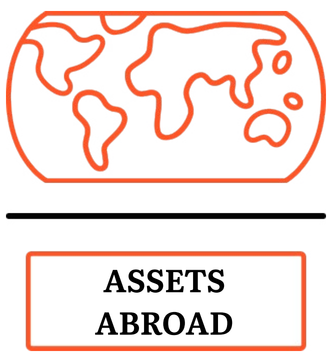


Trusts

_ Tax treatment of trusts generally considers them as transparent, with the assets remaining under the ownership of the settlor or the beneficiary after distribution
_ Possibility of considering the transfer of ownership before distribution in the case of irrevocable trusts.
_ Assets and rights transferred to the trust remain the property of the original owner of the trust assets and rights (settlor)
_ Transfer to beneficiaries or to the trust, as applicable, is understood as a donation (in life) or inheritance (cause of death), attracting the incidence of ITCMD (Brazilian Estate and Gift Tax)
_ Taxation by individuals of assets held by the trust, according to their nature
_ Provision for updating the trust deed regarding information supply obligations by the trustee
_ Definition of trust and related concepts, applying the same rules to contracts with similar characteristics that do not qualify as controlled entities

Update of the Value of Assets and Rights Abroad

_ Authorized optional update of the value of assets and rights abroad, including general assets and interests in controlled entities, to their market value on December 31, 2023
_Taxation of the update at a definitive rate of 8%, to be paid by May 31, 2024
_Option valid for financial investments, controlled entities, real estate, vehicles, etc
_Calculation of the value of assets by the exchange rate on the last business day of December 2023
_Values resulting from the update will be included as additional acquisition cost of the assets (or credit of dividends to be received)
_Foreign exchange rate variation between the taxed value on December 31, 2023, and the dividend received later will not be taxed if positive or deducted if negative
_The option can be made separately for each asset or right held abroad, except for assets reported in the last DAA, or assets such as jewelry, precious metals, foreign currency in cash, works of art, and antiques of historical value
_For assets acquired with funds originally in foreign currency, their acquisition cost must be calculated by the exchange rate on the last business day of December 2023



Repealed

_ Specific rule for calculating capital gains on the alienation of assets and rights abroad, including:

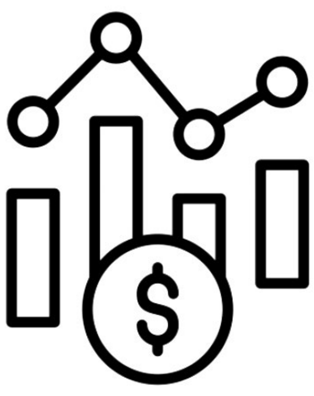
- Exemption from income tax on capital gains on the alienation or liquidation of assets abroad, acquired as a non-resident
- Exemption from taxation on the foreign exchange variation of assets acquired originally in foreign currency

Investment Funds

General Rule

_ With holding of periodic income tax (IRRF) ("*come-cotas*") applies to all funds formed as open or closed-end condominiums, with the exceptions below, at the following tax rates:
- 15% tax rate as a general rule, supplemented as per Article 1 of Law No. 11,033in case of distribution, amortization, or redemption of units
- 20% tax rate for funds with an average term equal to or less than 365 days, supplemented as per Article 6 of Law 11,53 in the case of distribution, amortization, or redemption of units

_ Periodic incidence of IRRF shall occur on the last business day of May and November, oron the date of distribution of income, amortization, or redemption of units, whichever occurs first
_ Calculation basis of IRRF in the case of periodic incidence: positive difference between the net asset value of the unit on the immediately preceding day and the acquisition cost of the unit
_ Calculation basis of IRRF on redemption: positive difference between the redemption price of the unit and the acquisition cost of the unit
_ Calculation basis of IRRF on amortization: positive difference between the amortization price and the portion of the acquisition cost of the unit calculated based on the proportion that the amortization price represents of the net asset value of the unit
_ FIP, ETF and FIDC not classified as investment entities: calculation basis will not include the positive or negative counterpart resulting from the valuation, by net asset value or fair value, of units or shares issued by legal entities domiciled in the country representing control or coalition members of the funds' portfolios



Exceptions to the General Rule

_ Not subject to periodic taxation (exception to the "*come-cotas*" mechanism):
- FIP, Exchange Traded Fund - ETF, except Fixed Income ETF, and FIDC classified as investment entities and, even when not classified as investment entities, FIAs that falls within the parameters established by the Law
  - FIDC and FIAs must be composed of at least 67% of receivables and specified financial assets, respectively
- REIT, Agribusiness Investment Fund (Fiagro), FIP-IE, FIP-PD&I, Fixed Income ETF, investment funds covered by Law No. 12,431, investments by residents or domiciled abroad in public securities funds, FIPs or FIEE, and funds composed exclusively of residents or domiciled abroad

Concept of Investment Entities

_ Defines as investment entities funds that have a professional management structure, at the level of the fund or its quotaholders, represented by agents or service providers with powers to make investment and divestment decisions on a discretionary basis, with the purpose of obtaining return through appreciation of invested capital or income, in the manner to be regulated by the CMN

Minimum Number of Quotaholders for IRRF Exemption

_ For REIT and Fiagro quotaholders to benefit from the exemption provided for in Law No. 11,033, such funds must have at least 100 quotaholders

Transition Rules

_ Rule: Revenues generated until 31/12/2023 in investments in funds not subject to periodic taxation will be appropriated pro rata tempore and will be subject to the incidence of IRRF at the rate of 15%, in up to 24 monthly and successive installments, adjusted by SELIC

_ Alternative: To pay IRRF on the income from investments in the funds covered by the aforementioned article at the rate of 8%, in two stages: (i) the first on income until 30/11/23, in 4 equal, monthly and successive installments, with the first due on 29/12/2023; and (ii) the second on income between 01/12/23 and 31/12/2023, in full, to be paid by the last business day of May 2024