



**CAPITAL GAIN EARNED BY LEGAL ENTITIES DOMICILED
ABROAD IN INSTALLMENT SALES**

Law 13259/16 introduced progressive income tax rates (from 15% to 22.5%) on capital gains earned by Brazilian individuals as of January 1, 2017. Until December 31, 2016, the tax rate levied was of 15%. In August 2017, Normative Instruction 1732 of the Brazilian Federal Revenue Service (“RFB”) clarified that such progressive tax rates were also applicable to the capital gains earned by legal entities domiciled abroad “in the sale of assets and rights of the non-current asset located in Brazil”.

In Ruling 663, of December 27, 2017, the General Tax Coordination (“COSIT”) understood, in summary, that (i) the income tax rate applicable to capital gains arising from sales with payments in installments is the one in force at the moment of the taxable event (and not upon each payment) and (ii) confirmed that capital gains earned by non-residents from the sale of assets and rights in Brazil are subject to the same tax regime applicable to Brazilian individuals.

In the case analyzed by COSIT, the consulting party acquired, in 2016, shares of a Brazilian company from a Spanish legal entity with the payment of the price in two installments due in 2016 and 2018.

COSIT understood that:

- (i) The legislation in force on the date of the taxable event determines the applicable tax treatment (article 144 of the Brazilian Tax Code). As the taxable event occurs at the moment the ownership of the shares is transferred (2016), the capital gain earned by the Spanish legal entity is subject to 15% income tax, regardless if the payment of the price is made in installments;
- (ii) The capital gain earned by non-residents shall be calculated and taxed in accordance with the rules applicable to Brazilian individuals (article 18 of Law 9249/95), unless there is a rule stating otherwise; and
- (iii) Likewise Brazilian individuals, non-residents may pay the income tax levied on capital gains arising from sales with payments in installments proportionally to the amount of each installment.

We point out that the understanding issued on COSIT Rulings shall be observed by all instances within the RFB and shall be applied to all taxpayers that are in the same situation presented in the Ruling.

This newsletter 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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