Brazil

Special regime of taxation and foreign currency regularization - RERCT

Executive summary
On 11 March 2016, the Brazilian Federal Revenue Office ("RFB") issued Normative Instruction Number 1,627 (NI 1,627) regulating the Special Regime of Taxation and Foreign Currency Regularization ("RERCT"), brought by Law Number 13,254/2016. This special regime allows taxpayers to report assets and rights held overseas that have not been reported previously and to correct errors in previous reports. The deadline for reporting and paying any tax and fines due is 31 October 2016.

RERCT regulation
The NI 1,627 was published in the Brazilian Official Gazette on 15 March 2016, and regulates the RERCT, a special regime that allows taxpayers to regularize resources, assets or rights of lawful origin, remitted or held abroad, not previously reported to the RFB or reported with omission or inaccuracy. The deadline to file a report under the RERCT is 31 October 31 2016.

Who may join the RERCT?
Individuals or legal entities that were resident or domiciled in Brazil on 31 December 2014 may follow the RERCT, even though they are not residents or domiciled in the country currently.

Note that the NI 1,627 provides that taxpayers who have been convicted in criminal prosecutions and holders of public functions may not use the RERCT program.

Procedures for participating in the RERCT program
The NI 1,627 clarifies procedural issues for participating in the RERCT program. For example, a Taxation and Foreign Currency Regularization Statement ("DERCAT") must be submitted in electronic form, through the Virtual Service Center ("e- CAC") at the RFB website. The submissions will be accepted beginning 4 April 2016.

In addition to submitting the DERCAT, the tax and penalty due under the program must be paid. The amount due is a payment of tax at the rate of 15%, levied on the "Brazilian Real" amount of the reported assets subject to regularization, as well as a fine in the amount of 100% of the tax payable. For foreign currency assets, the value should be converted into US dollars and then converted into national currency (Brazilian Real), using the exchange rate on 31 December 2014, which was BRL 2.66 per US dollar.

Thus, the taxpayer who participates in the RERCT will be subject to the payment of tax and fines for failure to declare such assets, resulting in a total charge of 30% on the amount to be regularized. The tax and fine must be paid by 31 October 2016, in a lump sum payment.

In addition to submitting the DERCAT, individuals should amend their Annual Income Tax Return ("DIRPF") related to calendar year 2014 and subsequent years, as well as their Declaration of Brazilian Capital Held Abroad ("DCBE") with the Brazil Central Bank ("BACEN"), if applicable. For legal entities, the regularized assets should appear...
in financial statements for the calendar year of adherence and subsequent years. Entities should also amend their declaration to the BACEN, if applicable.

It is worth mentioning that, for the purpose of adhering to the RERCT, it is not mandatory to repatriate the assets. Therefore, the taxpayer may choose to repatriate the regularized assets or let them remain offshore.

For the regularization of financial assets exceeding USD 100,000, that will not be repatriated, the taxpayer should request and authorize the financial institution abroad to send information about the value of these assets as of 31 December 2014 to the financial institution in Brazil, which will then forward the information to the RFB.

If there is repatriation, this procedure should occur through bank transfer, by a financial institution authorized to operate in the country and to operate in the foreign exchange market.

Criminal amnesty
Additionally, the individuals and legal entities that adhere to the RERCT to regularize amounts, assets or rights held abroad, by delivering the pertinent declaration and paying the tax and fines due, will not be subject to criminal liability for the following tax-related crimes: (i) crimes against the tax order; (ii) tax evasion; (iii) social security contribution evasion; (iv) falsification of public or private documents; (v) fraudulent misrepresentation; (vi) use of false documents; (vii) exchange transaction in order to promote tax evasion; and (viii) laundering crimes or concealment of assets, rights and values, derived from the above tax-related crimes.

Next steps
The taxpayer who wants to participate in the program should collect all supporting documentation required for the DERCAT, and be aware of all the related procedures for participation, including the requirement to pay the tax and fines due by 31 October 2016.

The EY Brazil Tax Team remains available for any clarifications that may be required on the RFB NI 1,627 and can assist with the analysis of the supporting documentation and effective adherence to the program of regularization of assets abroad.

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