On 30 October 2017, the Brazilian Executive Branch published Provisional Measure (PM) No. 806/2017, which makes significant amendments, effective as of 1 January 2018, to the tax treatment of certain Brazilian investment funds. Broadly speaking, the provisions of PM 806/2017 are aimed at eliminating tax deferral structures involving Brazilian investment funds.

**Brazilian closed investment funds**

Under current tax rules, investors in Brazilian closed investment funds (so-called *fundos fechados*) generally pay tax only upon redemption or amortization of their fund shares.

PM 806/2017 subjects investors in *fundos fechados* to an estimated tax mechanism beginning on 1 June 2018. Under that mechanism, investors will be subject to an income tax withholding obligation on a semi-annual basis – every May and November; the fund administrator will be responsible for the application of the income tax withholding and payment to the Brazilian tax authority.

Additionally, PM 806/2017 establishes a toll charge mechanism under which a fund’s accumulated income will be deemed distributed to investors on 31 May 2018, and, as a result, subject to income tax withholding at that time.
To curtail potential fund restructuring transactions, beginning 1 January 2018, PM 806/2017 establishes that a fund’s income will be deemed distributed to investors and, as a result, subject to income tax withholding at the time of a spin-off, contribution, merger or transformation.

Brazilian private equity funds
Specifically, with respect to Brazilian private equity funds (so-called FIPs), PM 806/2017 establishes that the tax treatment applicable to FIPs will be based on whether the FIPs qualify as an investment vehicle under the rules of the Brazilian SEC equivalent (so-called CVM) – for instance, under the guidelines established in the CVM’s Normative Instruction (NI) No. 579 of 2016.

Under PM 806/2017, to the extent that a FIP does not qualify as an investment vehicle, then the FIP will be subject to corporate income tax as any Brazilian incorporated entity beginning on 2 January 2018. Additionally, PM 806/2017 creates a toll charge mechanism under which the accumulated income of FIPs that do not qualify as investment vehicles will be deemed distributed to investors on 2 January 2018, and, as a result, subject to income tax withholding at that time.

While the rules applicable to investors - resident and nonresident - have not been expressly changed by PM 806/2017, in practice, an investor’s returns and profits may be adversely affected as a result of the tax treatment imposed on the FIP itself under PM 806/2017.

Investment funds carved out from PM 806/2017
Under PM 806/2017, the tax treatment of real estate investment funds (so-called FII), distressed asset funds (so-called FIDC), and equity investment funds (so-called FIA) remain unchanged.

Implications
Investors should assess how PM 806/2017 may affect their Brazilian investments and holdings. The PM 806/2017 is effective 1 January 2018, but must be converted into law within 60 days (which may be extended for another 60 days) of its publication date either as issued by the Executive Branch or as amended by the Brazilian Congress. If the PM is not converted into law by such 60/120 days, then the PM will expire. The PM mandates the Brazilian tax authority to issue relevant guidance (e.g., a Normative Instruction) for the adequate implementation of the PM.
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