Executive summary
The President of the Federal Republic of Brazil has sanctioned the Law Project, which allows the regularization or repatriation of funds, assets and rights of legal origin, remitted or held abroad by Brazilian tax residents, and which has not been reported to the pertinent authorities.

The Fiscal Amnesty Law - Repatriation of unreported assets
On 13 January 2016 the President of the Republic approved, with partial veto, the Law Project, which regulates the Brazilian Amnesty of undisclosed funds, assets/capital of legal origin, remitted or held abroad by Brazilian tax residents at 31 December 2014 and not duly reported to the Brazilian tax authorities.

According to the text approved by the President of the Republic, those who are eligible to adhere to the Special Tax Regime and Foreign Currency Market Regulation (so-called “RERCT”) are individuals or entities who present to the Brazilian tax authorities, with a copy to the Brazilian Central Bank, a specific detailed regularization declaration, containing a comprehensive description of the nature, amount and origin of the resources, assets and rights, remitted or held abroad, owned by them at 31 December 2014, and pay the pertinent tax and penalties due.

Individuals or entities that are willing to join the Amnesty Program to regularize non-disclosed amounts, assets or rights, remitted or held abroad, should file a specific declaration with the Brazilian tax authorities and pay the tax and penalties due. With this, certain tax-related crimes will be exempt from criminal liability, for example: (i) Crimes against the tax system; (ii) Tax evasion; (iii) Evasion of social security contribution; (iv) Falsifying public and particular documents; (v) Ideological falsehood; (vi) Use of false documents; (vii) Foreign exchange operation to promote tax evasion; (viii) Money laundering crimes and concealment of assets, rights and values, related to the above-mentioned tax-related crimes.

Furthermore, the recently-approved text also establishes that politicians, public servants and all those who hold public positions, as well as their spouses and next of kin, may not join the proposed RERCT.

The Law Project approved by the President of the Republic establishes the charge of 15% income tax on the amounts reported for regularization. There is also a penalty of 100% of the income tax due, which corresponds to the penalties due for the non-disclosure of the amounts held abroad. Paying the 30% charge (15% tax plus 15% penalty) exempts further penalties, legal charges and interest for default.

The value to be considered when calculating the tax and penalty shall be the market value for assets held in local currency. For assets held in foreign currencies, the pertinent value must be converted into US dollars and subsequently converted to local currency (Brazilian Real) using the exchange rate ruling on 31 December 2014.
Therefore, the taxpayer who voluntarily joins the RERCT will bear a tax burden equivalent to 30% of the amount to be regularized.

After joining the RERCT, the taxpayer may decide to repatriate/internationalize or not, the regularized assets/capital reported. If the decision is to repatriate the assets/capital remitted or held abroad, a financial institution in the country that is authorized to operate in the foreign exchange market should complete the pertinent procedures, upon presentation of the membership statement to RERCT.

The Law Project approved by the President of the Republic does not bring important changes in comparison with the text previously approved by the Federal Senate on 15 December 2015, with the exception of the possibility of repatriation of jewels, works of art, precious metals, among others, as well as resources on behalf of third parties. The President of the Republic has also rejected the possibility of installment payment of the income tax due and penalties, i.e., the payment must be made in a single installment.

Next steps
It is expected that the Brazilian tax authorities will enact the regulation of the RERCT by 15 March 2016. After the Brazilian revenue authorities publish the regulation, the deadline for taxpayers to join the RERCT will be 210 days.

Taxpayers that are willing to join the Amnesty Program should file a specific declaration with the Brazilian tax authorities and pay the tax and penalties due. Individuals should also amend their Annual Income Tax Return for the calendar year 2014 and later, including the Brazilian Central Bank Report, if applicable. For corporate entities, the regularized assets should be included in the account records related to the calendar year to join the Amnesty Program and later, as well as the Brazilian Central Bank report, if applicable.

The EY Brazil tax team remains available for any clarifications about the fiscal amnesty law, and further analysis case by case.

Carlos Martins
Partner • People Advisory Services
Tel: +55 11 2573-5033
Email: carlos.martins@br.ey.com

Lenie François M. Ah-Time
Executive Director • People Advisory Services
Tel: +55 11 2573 4055
Email: lenie.ah-time@br.ey.com

Carolina Rotatori
Senior Manager • People Advisory Services
Tel: +55 11 2573 5113
Email: carolina.rotatori@br.ey.com

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