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## Brazil uses tax losses to encourage companies to settle disputed tax liabilities while also introducing new disclosure requirement

*A new settlement program will allow companies in tax disputes with the Brazilian Government to use otherwise unavailable tax losses to partially offset their disputed tax liabilities. In contrast, a new disclosure requirement could subject companies to severe penalties.*

In Provisional Measure 685 (MP 685), issued 22 July 2015, the Brazilian Government announced a new settlement program (PRORELIT, in Portuguese) under which companies may use tax losses to partially offset disputed tax liabilities. The Government also announced that companies must disclose information on certain tax-planning structures.

PRORELIT will permit many companies to use otherwise unavailable tax losses to partially offset disputed tax liabilities, while the new disclosure requirement will require taxpayers to file an annual return, known as a Tax Planning Declaration (DPLAT, in Portuguese), for their structures.

### Background

Currently, Brazil allows companies to offset only 30% of their taxable income with tax losses. As a result, it may take companies a very long time to use their tax losses.

To increase tax revenues that have plummeted since the economic downturn, the Brazilian Government via MP 685 will use tax losses as incentives for companies to settle disputed tax liabilities in outstanding Administrative or Judicial litigation



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cases, particularly for companies with large outstanding liabilities. While currently in force, MP 685 will expire if Congress does not approve it within the next 120 days.

### **PRORELIT**

Under PRORELIT, companies may elect to use tax losses generated through 31 December 2013 and declared by 30 June 2015, to offset Federal tax liabilities that are currently under discussion before the tax authorities or the judiciary. Companies may also utilize tax losses generated by controlled companies, parent companies, or brother-sister corporations, as long as the entities are directly or indirectly under the same control. In determining the amount of tax liability to be offset, the full 34% corporate tax rate applies (for financial institutions, the rate will be 45%).

To qualify for the settlement program, companies must pay at least 43% of their outstanding tax

debt in cash. Finally, taxpayers must relinquish unconditionally any administrative or judicial claims related to the outstanding tax liabilities.

Companies have until 30 September 2015, to make the election. Tax authorities, in turn, plan to issue detailed regulations on the procedures.

### **New disclosure requirement**

The new disclosure requirement requires corporate taxpayers to file a DPLAT for certain tax-planning structures, including any structure that avoids, reduces or postpones taxes. Taxpayers may also disclose planning structures that have not been implemented, which would have the same effect as a regular tax consultation.

Taxpayers that properly disclose will be liable only for interest, not penalties, if the tax authorities subsequently determine that a

particular structure lacks economic substance or a valid business purpose. Conversely, undisclosed structures will be deemed abusive and fraudulent, subjecting companies to penalties of up to 150% of the overdue taxes.

According to the head of the Brazilian revenue services (RFB), the new disclosure requirement will improve the relationship between tax authorities and taxpayers, reducing the potential for litigation. The requirement also aligns with the Organisation for Economic Co-operation and Development's guidelines on Base Erosion and Profit Shifting.

For planning structures implemented in 2014, the first DPLAT is due by 30 September 2015. RFB will issue further regulations on filing DPLATs at a later date.

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