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Brazilian Federal Police investigate suspected corruption at Brazil's Administrative Council of Tax Appeals

On 26 March 2015, the Brazilian Federal Police announced they have been conducting an ongoing criminal investigation (Operação Zelotes) since 2013 of suspected corruption at Brazil's Administrative Council of Tax Appeals (CARF), an agency within Brazil's Finance Ministry. Brazil's Internal Revenue Service (RFB) and the Internal Affairs of the Ministry of Finance and the Federal Public Ministry are also participating in the investigation. As a result of the investigation, CARF has reportedly as of 31 March suspended consideration of pending cases until further notice. Taxpayers should be aware, however, that deadlines for appeals, etc., continue to apply.

The investigation is reportedly focused on CARF cases since 2005 in which it is suspected that CARF rulings inappropriately reduced or nullified tax fines and assessments imposed on certain companies. To date, the Federal Police have not released any official information as to the names of those being investigated, although the Brazilian press has reported the names of 29 of the purported 70 plus companies under investigation. In addition, the Federal Police on 27 March raided CARF headquarters and the offices of several companies and individuals in connection with the investigation.



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Brazil's Administrative Council of Tax Appeals - CARF

Brazilian law allows taxpayers to appeal tax disputes with tax authorities before entering litigation in a judicial court.

Regarding federal taxes, after receiving a tax notice, taxpayers may appeal to the Office of the Brazilian Federal Revenue Service (*Delegacia da Receita Federal do Brasil de Julgamento*, or DRJ). If this appeal is not successful, taxpayers may file another appeal with CARF. CARF has over 200 members and is composed of tax authority officials and taxpayer representatives. Cases are usually considered by teams of six councilors.

According to news articles about the investigation, some CARF councilors would allegedly find in favor of the taxpayers, unduly reducing or eliminating taxes owed, in exchange for cash payments based on a percentage of the tax under dispute.

“Operação Zelotes” (Operation Zealots)

Operation Zealots reportedly began as a result of an anonymous letter reporting that CARF would provide favorable rulings in return for a percentage of the tax relieved.

Federal investigators have reportedly identified suspect administrative decisions related to 74 tax disputes with amounts at issue totaling billions of dollars.

The identity of the suspects remains confidential for now, but leaks published in the Brazilian press suggest the involvement of Brazilian and non-Brazilian (including United States) companies, private banks, consulting firms and lawyers, as well as CARF councilors and former councilors. The suspects allegedly used third-party businesses, such as law and consulting firms, to disguise both their actions and the flow of money. Media outlets have reported that some of the firms being investigated may have direct or indirect relationships with CARF councilors and former councilors.

Implications

While much remains uncertain, it is expected that the investigation will lead to prosecutions and extensive changes within CARF. The suspects may face charges in Brazil of influence peddling, corruption, criminal conspiracy and money-laundering, which carry prison sentences of up to 30 years. Depending on the outcome, the implications for participants may be far reaching if their activity

constituted violations of applicable anti-bribery and corruption laws in their home country or other jurisdictions.

In addition, the Brazilian Government has now established a study group to evaluate and propose changes to CARF's current structure. The group is to complete its study within 30 days of its first meeting, but there may be an additional 30-day extension.

If the investigation establishes that tax rulings were manipulated, it is expected that those cases would be dismissed and a new analysis would begin. The new analysis would be conducted under CARF. If the original decision is not favorably confirmed, the taxpayer would be required to pay the taxes owed, along with interest and penalties. Depending on the circumstances, the taxpayer may also be subject to criminal charges and penalties.

Taxpayers with active cases before CARF, those that were considering a CARF ruling, and those that have already received one, may wish to discuss those cases with their tax advisors to understand whether their situation may be affected by the investigation.

For additional information with respect to this Alert, please contact the following:

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