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NEWSLETTER/ JANUARY 2016

REGULARIZATION OF FUNDS, ASSETS OR RIGHTS HELD ABROAD

Rosiene Soares Nunes and Mauro Takahashi Mori¹

1. Law No. 13,254 was published on January 14, 2016 creating a special tax regime named RERCT (Regime Especial de Regularização Cambial e Tributária). The RERCT aims at the voluntary regularization of funds, assets or rights with licit origin remitted to or held abroad or repatriated to Brazil, but not declared to Brazilian public authorities or declared with omission or incorrectness in relation to essential data.
2. Funds, assets and rights with licit origin are those acquired with resources from activities allowed or not forbidden by law, such as bank deposits, financial investments, insurance policies, credit card deposits, retirement or pension funds, credits from loans to individuals or legal entities, payment of shares issued by foreign entities, brands, patents, software, properties, vehicles, aircrafts, vessels etc. It is important to mention that jewelry, gemstones and metals, works of art, antiques with historical or archeological value, animals and genetic materials for animal reproduction are not subject to regularization.
3. Individuals or legal entities residing or domiciled in Brazil on December 31, 2014 (even if currently not residing in Brazil) who held undeclared or incorrectly declared assets up to that date may adhere to the RERCT, even if they no longer held these assets on December 31, 2014. The estate under a succession procedure in course on December 31st, 2014 may also be included in the RERCT. Individuals sentenced in criminal lawsuit for forgery, fraudulent misrepresentation, non-authorized foreign currency exchange transaction, among other crimes, cannot adhere to the RERCT, and neither can those who, on January 14, 2016, held office in directive or elective public positions, as well as their spouses and relatives related by blood or marriage up to the second degree or by adoption.

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4. In order to adhere to the RERCT, the individual or legal entity shall file a unified declaration of regularization of assets with the Brazilian Federal Revenue Service (“**RFB**”), with copy to the Central Bank of Brazil. In addition to the declaration, the individual/entity shall rectify **(i)** the annual income tax return (DIRPF) of the calendar year 2014 (individuals); **(ii)** the Brazilian Capital Abroad Statement (DCBE) related to the calendar year 2014 (individuals and legal entities, as applicable); and **(iii)** the accounting records of the calendar year of adherence to the regime and subsequent years (legal entities).

5. The assets shall be reported based on their market value on December 31, 2014, and the amounts in foreign currency shall be converted into Reais by the exchange rate of the last business day of December 2014. The individual/entity shall be subject to the payment of Income Tax, as capital gain, at the rate of 15% over the market value of the reported assets (deductions of the tax basis and discounts to the acquisition cost are not allowed), and of a penalty of 100% of the tax due. It is important to mention that the payment in installments of the tax and of the penalty due are not allowed, although initially permitted in the bill of the Law. The penalty shall not be due in case the individual/entity held available amounts deposited in accounts held abroad up to the limit of R\$ 10,000 per individual/entity, converted into US dollars on December 31, 2014.

6. The income earned in the calendar year 2015 deriving from the declared assets shall be included in the statements related to the calendar year of adherence to the regime and the following years. The voluntary disclosure principle shall apply (thus, dismissing the payment of penalties) in case the necessary corrections are made up to the last day of the deadline for the adherence to the RERCT.

7. The individual/entity that adheres to the RERCT may opt to repatriate or not the funds. In case they do, the transfer shall be made by an authorized financial institution upon delivery of the filing certificate of the unified declaration. Whenever the balance of financial assets is above US\$ 100,000, the individual/entity shall request and authorize the financial institution abroad to remit this information to an authorized financial institution in Brazil, which shall provide said information to the RFB.

8. The filing of the declaration, and the full payment of the tax and penalty will result **(i)** in the extinction of criminal liability in relation to tax crimes, tax evasion, forgery of public or private documents, fraudulent misrepresentation, concealment of assets, among other crimes, provided that such measures are adopted prior to the final criminal decision; **(ii)** in the release of tax liabilities related to the non-compliance of tax obligations and in the reduction of 100% of penalties and legal charges related to taxable events up to December 31, 2014; **(iii)** in the release of the penalty for the late or non-filing of the



Declaration of Brazilian Capitals Abroad; and (iv) in the release of penalties applied by the Securities and Exchange Commission of Brazil and other regulatory agencies. The extinction of liability will also be applicable to intermediary individuals/entities holding the assets.

9. The taxpayer who presents forged declaration or documents shall be excluded from the RERCT. In this case, all amounts related to tax, penalties, and interests shall be due and charged, without prejudice to civil, criminal, and administrative liabilities.

10. The adherence to the RERCT shall be made within 210 days as of the act of the RFB, which shall regulate Law No. 13,254/2016.

São Paulo, January 2016

This legal letter contains information and general comments on the matter. In specific cases, it is advisable to rely on proper legal assistance before adopting any concrete actions relating to the matters dealt with herein.