

## BRAZIL REOPENS TAX AMNESTY UNTIL JULY 2017: IMPLICATIONS FOR BRAZILIAN RESIDENTS INCLUDING LONG-TERM EXPATRIATES

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**BRAZIL IS CURRENTLY PROVIDING ANOTHER OPPORTUNITY FOR TAXPAYERS TO REGULARISE THEIR AFFAIRS AND AVOID PROSECUTION.**

**O**n March 30 this year, the Brazilian government extended the tax amnesty for undeclared overseas assets (Federal Law 13.428/2017). The Special Regime for Tax and Exchange Legislation (or 'RERCT 2') will be in place until July 31 and applies to Brazilian residents, including long-term expatriates, with undeclared wealth outside Brazil. The law applies to anyone who was a Brazilian resident on June 30, 2016.

The amnesty does not apply to politically-exposed persons and their relatives, or to those involved in serious crimes such as drugs and money laundering.

RERCT 2 is widely considered to be the final opportunity for individuals to bring themselves in line with the Receita Federal (federal tax authorities) and avoid criminal liability, rather than face the increased likelihood of being identified in the international exchange of tax information.



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An estimated undeclared amount of R\$400bn (US\$125bn) is currently held overseas by Brazilian residents.

The 2016 amnesty resulted in a collection of R\$51bn (US\$16bn) as taxes and fines were levied at a rate of 30% of previously undeclared assets. The new amnesty has raised the taxes and fines to 35.25% of previously undeclared assets, based on their value on June 30 2016 at the exchange rate of R\$3.21 to the US dollar.

For example, the total tax and fine on an undeclared account outside Brazil with a balance of US\$1m on 30 June 2016 would be calculated as follows:  $US\$1,000,000 \times 0.3525 \times 3.21 = R\$ 1,131,525$ .

The amnesty applies to bank accounts, investment accounts, offshore companies and real estate, although tangible assets such as art and physical gold are not included in the amnesty.

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Individuals with undeclared assets who are considering not participating in the amnesty should bear in mind that Brazil will join the Common Reporting Standard (CRS) in 2018. The CRS is an OECD exercise employing the automatic exchange of information (AEI) with the aim of reducing global tax evasion.

So far almost 100 countries, including most countries in Mercosur and the EU, have signed up to the CRS and aim to be fully on board by the end of 2018.

Some countries already have bilateral agreements in place with Brazil, such as the United States and its Foreign Account Tax Compliance Act (FATCA). In this case, information sharing is already taking place, which is likely to have an impact on US citizens in Brazil, including Brazilian holders of Green Cards and those “accidental Americans” who may be considered US citizens on the basis of their parents’ ties to the US rather than on their own choices.

Most financial institutions are formally demanding that existing account holders provide Tax Identification Numbers (TINs), such as the ‘CPF’ (Cadastro de Pessoa Física) in Brazil, so as to comply

with future demands from the tax authorities of the countries in which those account holders are resident.

The requirement to provide a TIN has now become virtually obligatory when account holders wish to withdraw large amounts of money or open additional accounts.

Many Swiss and Channel Island banks, for example, are closing their doors to individuals who refuse to provide TINs. Tax evaders are running out of options and may opt to use financial institutions in less secure jurisdictions with lower levels of investor protection. However, even those jurisdictions are likely to join the CRS eventually, post-2018.

Even if some individuals are able to close overseas accounts in 2017, the Brazilian tax authorities will still have access to historic account balances and account holder identities from the initial CRS information exchange date of January 1, 2017.

Expatriates and Brazilians with reporting obligations in more than one country should seek specialist cross-border advice to ensure they are compliant in Brazil and their countries of domicile and/or citizenship.

In the case of expatriates who held certain undeclared assets

prior to gaining residency status in Brazil, it may be sufficient to rectify historic asset declarations, within the annual tax return, and only pay tax and penalties on chargeable events such as realized gains. Therefore we recommend, again, that specialist advice should be sought.

We advise eligible taxpayers not to procrastinate but to take action as soon as possible, given the tight time-scale for collating relevant account information, and to accurately complete the electronic amnesty return (DERCAT). It is worth reiterating that the taxes and fines must be paid by the deadline of July 31 2017.

In summary, if you believe you may be affected and need to bring your financial affairs up to date via the new amnesty, we suggest you speak to a suitable advisor and ensure a timely and accurate declaration.

This is an excellent opportunity to achieve peace of mind and to review your entire financial planning strategy while enjoying free access to your newly declared assets. ●

DISCLAIMER: THIS ARTICLE DOES NOT CONSTITUTE TAX ADVICE AND WE RECOMMEND THAT INDIVIDUALS SHOULD SEEK BESPOKE AND QUALIFIED TAX ADVICE IN THEIR RELEVANT JURISDICTIONS.