

Brazil Tax Reform 2024 : new rules for Offshore Investments and closed-end funds in Brazil

All foreign structures and investments held by Brazilian tax residents abroad should be reviewed and many of them will certainly have to be adjusted within the next months.

This seminar covers all the changes contained in the reform: 1) New rules applicable to foreign investments a) held directly by individuals who are tax resident in Brazil; b) held through private investment companies; 2) New treatment of trusts in Brazil; 3) New treatment for Brazilian closed-end funds. This seminar will bring the most reliable **interpretations of the new rules**, clarifications on complex and questionable concepts, **illustrative examples** for better understanding of the new rules and **new strategies to overcome the changes that negatively impact private clients**.



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The Brazilian federal government enacted Law n. 14,754/2023, which introduced significant and groundbreaking new rules applicable to private clients in Brazil. As of January 1, 2024, new rules on the taxation of investments held by Brazilian tax residents abroad, including those made through private investment companies (offshores) and trusts, are in force. Law n. 14,754/2023 also introduced significant changes to Brazilian closed-end funds, including the so-called “come-cotas” regime (periodic taxation) for certain types of Brazilian investment funds, which were not subject to this taxation before. All these new rules were expected for a long time and represent the most important change in the Brazilian legislation applicable to private clients in Brazil in decades.

9.00 New rules applicable to foreign investments held directly by individuals who are tax resident in Brazil

The new legislation applies to any financial transactions performed by Brazilian tax residents abroad, including those in connection with virtual assets, savings and checking accounts, investment funds, fixed or variable income, securities, credit transactions, among others. Under the new legislation, financial transactions are subject to an annual income tax rate of 15%, with no deductions or exemptions allowed. Brazilian tax residents can also offset losses on financial investments abroad against income earned from other transactions. An optional adjustment is introduced by the new legislation: the value of assets and rights held abroad by Brazilian tax residents can be adjusted to market value on December 31, 2023. This option shall be made in May, 2024, and is applicable to financial investments, real estate or rights over real estate, vehicles, and other specific assets, including private investment companies. The positive difference between the acquisition cost and the market value of such assets or rights will be subject to income tax at an 8% rate, due on May 31, 2024.

- Understanding the new general regime and its main implications
- Who wins and who loses? When is the general regime the best option from now on?
- How does the offsetting of losses work? What are the requirements and how to avoid risks?
- FX variations: when are they exempt under the new rules? Can we avoid the taxation?
- Are there new opportunities to defer the taxation of foreign gains and profits?
- Life insurance policies: how and when would they work? What are the pitfalls?
- Step-up in the foreign assets: what to decide until May 2024? What is the best option? When does the step-up work and who should adhere to this potential benefit?

9.30 New rules applicable to foreign investments held through private investment companies

The new legislation ends with one of the main advantages of holding financial investments abroad through a private investment company: the tax deferral. Under the new rules, there will be an automatic annual taxation of profits at the rate of 15% (on December 31) as of January 1, 2024. The new rules are applicable to direct or indirect controlled entities (a) located in tax havens and (b) entities with active income greater than 60% of its total income. Profits earned by controlled entities abroad up to December 31, 2023, will only be taxed on the actual distribution, but such taxation can optionally be anticipated to the first semester of 2024, at a reduced income tax rate of 8%. The new legislation also introduces the transparency regime: Brazilian tax residents can choose to declare the assets and rights held by the foreign private investment company as if they were held directly by the individual. The choice is irrevocable.

- What private investment companies are impacted by the new rules?
- What strategies can be designed and implemented to maintain the tax deferral?
- How to best handle the concept of “controlled entity”? Is it possible to avoid it?
- Tax havens vs passive or active income: are there any escapes? How to adjust the foreign structure?
- Transparency of private investment companies: what to decide until May 2024? What is the best option? When does the transparency work and who should adhere to this potential benefit?

10.45 Coffee break

Fernando Retzler Martins leads the tax and private wealth practice of SA Law, in Sao Paulo, Brazil. He has more than 20 years of experience dealing with tax, estate and asset planning, cross border taxation and high complexity tax advisory for individuals and companies. Fernando was a partner at KPMG, where he worked both in Brazil and in Germany as leader of the Brazilian Desk, as well as a partner at Grant Thornton and the head of the tax and private wealth practices at leading law firms in Brazil. Lawyer (Universidade de Sao Paulo) and certified accountant, with a postgraduate degree in Business (Fundacao Getulio Vargas / Sao Paulo), Fernando is a Trust and Estate Practitioner (TEP), author of many technical articles, guest speaker in Brazilian and foreign universities and conferencist in Brazil and abroad. He is ranked by Chambers & Partners as one of the leading lawyers in the private wealth practice in Brazil since 2021.

Thiago Hohl is the founding partner of CH Law - Chodraui & Hohl Advogados and leads the corporate and private wealth practice of the firm, in Sao Paulo, Brazil. He has more than 25 years of experience dealing with asset and estate planning, M&A, contracts law and corporate law advisory for individuals and companies. Thiago was a partner at WFaria Advogados, one of Brazil's leading law firms, for more than 10 years, being the head of the M&A, corporate and private wealth practices. Lawyer (Universidade de Sao Paulo), with a LL.M. degree in Corporate Law (INSPER - Instituto de Pesquisa Avançada / Sao Paulo), Thiago is a Trust and Estate Practitioner (TEP), author of articles and with teaching experience in Brazilian universities, is a conferencist in Brazil and abroad.

11.00 Trusts and their new treatment in Brazil

Based on the new legislation, assets and rights within a trust will remain the property of the settlor of the trust for Brazilian tax purposes until they are distributed to the beneficiary, until the trust is converted into an irrevocable instrument or until the settlor's death, whichever occurs first. The transfer of assets and rights from the settlor's property to the beneficiary, in such events, shall be classified as a donation or inheritance, depending on the case. Income and capital gains deriving from the assets and rights transferred to the trust will be taxed to the settlor or beneficiary, depending on who is declaring them based on the abovementioned rules.

- Settlers and beneficiaries: who should declare the trust from now on and who is subject to taxation?
- What happens to existing structures that do not comply with the new rules?
- How enforceable are the new rules that aim at changing trust deeds and letters of wishes?
- Can a foreign trustee be penalized in Brazil if they do not comply with the beneficiaries' requests?
- What happens if nobody is aware of the trust in Brazil?

11.45 New treatment for Brazilian closed-end funds

As of January 1, 2024, income earned by closed-end investment funds in Brazil will also be subject to the «come-cotas» periodic taxation regime. The new legislation also provides for the taxation of the income "stock" (i.e. income earned by investment funds up to 31 December 2023), giving a few options to taxpayers on how and when to pay. The new legislation lists some situations in which the «come-cotas» regime will not be applicable, for instance, to qualified non-resident investors that are not established in tax havens. The new rules introduce specific regimes for certain types of funds, such as FIPs, FIDCs, FIAs, ETFs, FIIs and FIAGROs: the «come-cotas» regime will not apply as long as these funds meet some specific criteria.

- Understanding the new general regime and its main implications
- Taxation of accrued earnings: what are the current options, and which one is better?
- What are the real chances of litigating against the tax authorities regarding the taxation of accrued earnings?
- Funds of funds: how do they work now? Are there opportunities here?
- What funds are still tax efficient? How can they be used? What happens to and how to use FIDC, FIP, FIA, ETF, FII and FIAGRO, among other?
- Fund reorganizations: what are the new consequences? Can we avoid them?
- How to change the existing fund structure to a more tax efficient one?
- How to best handle the concept of "Investment Entity"? Is it a fluid/subjective concept?
- What about non-resident quotaholders? Can they take profit of the new legislation?
- Can an individual who is tax resident in Brazil invest through a foreign structure?

13.00 End of the seminar

GENEVA, FRIDAY 8 MARCH 2024, HOTEL PRESIDENT, 9.00-13.00 / ONLINE

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- I will attend in the conference room I will attend online on Zoom.

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