



International Tax

Brazil Tax Alert

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Tax amnesty programs re-opened and expanded

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Brazil's president signed a law on 10 October 2013 (Law No. 12,865/2013) that introduces a tax amnesty that will offer taxpayers an opportunity to pay off their Brazilian tax debts in installments and under less stringent conditions than otherwise would apply.

The new law reopens the most recent special amnesty program, which allowed discounted installment payments to be made for tax debts (REFIS IV, which covered tax debts that were due by 30 November 2008), to taxpayers that have not previously applied for relief under that amnesty. The law also introduces a new amnesty for taxes owed under specific regimes:

- Brazilian taxes on revenue (PIS/COFINS) due from financial institutions and insurance companies: Tax debts that were due by 31 December 2012 can be paid in a lump sum or in installments over a 60-month period. The available discounts will be: 80%-100% of penalties; 40%-45% of interest charges; and 100% of legal charges.
- Brazilian taxes on revenue (PIS/COFINS) that relate to an inclusion in the tax base of Brazilian state VAT tax (ICMS) that is the subject of a dispute before the courts: Tax debts that were due by 31 December 2012 can be paid in a lump sum or in installments over a 60-month period. The available discounts will be: 80%-100% of penalties; 40%-45% of interest charges; and 100% of legal charges.
- Corporate income taxes (IRPJ and CSL) due on foreign income accruing to controlled and affiliated entities (under the CFC rules): Tax debts that were due by 31 December 2012 can be paid over a period of up to 120 months. The available discounts will be 100% of penalties; 40%-100% of interest charges; and 100% of legal charges.

The constitutionality of the laws giving rise to the three tax levies with respect to which the amnesties will be granted has been—and still is—the subject of significant and enduring controversy before the Brazilian Supreme Court. Until the Supreme Court issues a final decision on these issues, the government is eager to provide taxpayers with an incentive to abandon their appeals before the courts by allowing them to pay the corresponding tax debts through an installment program. Taxpayers might thus enjoy a more favorable outcome than would ultimately transpire in the event of an adverse decision from the courts. If taxpayers are willing to take advantage of the amnesty offered, this could have

the added advantage of increasing Brazil's tax revenues and easing this year's budget constraints.

Comments

Companies should carefully evaluate the applicability of the tax amnesties covered by Law 12,865 to their particular situations to determine whether participation would be beneficial, especially in light of any ongoing proceedings in the courts.

Companies have until 31 December 2013 to enroll in the re-opened REFIS IV program and until 29 November 2013 to enroll in the special programs related to the other issues (PIS/COFINS and IRPJ/CSL).

The Brazilian tax authorities plan to issue regulations on how the debts should be reported and on the corresponding payments to be made.

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