



International Tax

Brazil Tax Alert

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Tax amnesty reopened, Reintegra program made permanent

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Provisional Measure (PM) No. 651 was converted into law (Law No. 13,043) and published in Brazil's official gazette on 14 November 2014, roughly four months after its enactment in July 2014. PM No. 651 contained two notable measures: a revision to the tax amnesty program and the reintroduction of the "Reintegra" program, under which exporters of manufactured goods are entitled to a tax refund of a percentage of the value of their exports (see tax alerts dated [27 June 2014](#) and [21 July 2014](#).)

PM No. 651 contained 51 articles, while Law No.13,043 contains 114 articles, including a package of measures to stimulate the competitiveness of national industry. Law No. 13,043 also addresses the tax treatment of certain financial investments, introduces tax incentives for nuclear power plants and new rules on contractual structures used by the oil and gas industry and contains changes to certain controlled foreign company rules.

Tax amnesty

The government has reopened the original tax amnesty program created by Law No. 12,996/2014 that allows taxpayers (both legal entities and individuals) to pay off their Brazilian federal tax debts under the administration of the federal tax authorities and the Office of the Attorney-General of the National Treasury under conditions that are less stringent than otherwise would apply. However, the amnesty requires taxpayers to make an up-front payment of a portion of the consolidated tax debt.

The deadline for submitting an application to participate in the amnesty is 1 December 2014.

Under the amnesty, taxpayers with debts that were due up to 31 December 2013 can use loss carryforwards generated up to that date and declared by 30 June 2014 to offset the installment payments of the debt remaining after the upfront payment. The payment can be made until 1 December 2014 under the same payment terms established by PM 651. Taxpayers that applied for the tax amnesty program during the period in which PM 651 was in force still can make the upfront payment in up to five installments.

In line with PM 651, Law 13,043 provides that, in addition to a taxpayer's own loss carryforwards, losses of Brazilian resident companies in the same economic group (controlled and uncontrolled entities held through direct or indirect ownership) may be used to offset the tax debt. The law also extends the loss utilization for controlled entities to include cases where the controlling party has an interest lower than 50%, provided the controlling party holds the majority of the voting rights.

The loss utilization provisions can be used by the taxpayer if the corporate structure has been in place from 31 December 2013 to the date the option is exercised to pay the balance of the installments using the loss carryforwards of companies in the same economic group.

Law No. 13,043 establishes an order of setoff for losses: the taxpayers' own losses must be utilized first, and then the losses of group companies.

Where loss carryforwards are utilized, at least 30% of the outstanding installment debt must be paid in cash, and the remaining installment debt must be offset against the loss carryforwards.

Reintegra program

Law 13,043 reintroduces and makes permanent the Reintegra program originally introduced in 2011 to allow exporters to recover residual tax costs incurred in the export production chain. The Reintegra program allows entities that export goods manufactured in Brazil to request a credit (which may be refunded or used to offset other federal taxes) that ranges from 0.1% to 3% of their total export revenue, depending on the type of goods exported.

Following the publication of PM 651 in July, further guidance on the Reintegra program was published on 12 September 2014, establishing that the program would enter into effect from the date the Ministry of Finance published an ordinance that set a specific credit percentage; the ordinance, published on 1 October 2014, set the credit percentage at 3%.

Law 13,043 also introduces the possibility of increasing the credit by an additional 2%, resulting in a total credit of 5%, provided the exporter can verify that the supply chain for the exported goods generated additional residual taxes and certain other requirements are met.

Reduction of social security on payroll

PM 651 also amended a law (Law 12,546/2011) that had replaced the 20% employer social security contribution on payroll with certain percentages on gross income until 31 December 2014.

Law 13,043 sets permanent percentages of 2% and 1% of gross income, effective as from 1 March 2015 and expands the scope of the reduction in rates. In cases where the 2% rate applies, the law expands the potential beneficiaries to include taxpayers engaged in activities such as storage, training, hospitality, transportation, construction and infrastructure, etc. In cases where the 1% rate applies, the law expands the benefit to companies that manufacture several products under specific IPI codes, such as food, commodities, cosmetics, personal hygiene, etc.

PIS/COFINS taxation on the sale of shares

Law 13,043 also revises the law that governs the tax treatment of income derived from the sale of shares for PIS/COFINS (social contributions on revenue) purposes. Under the new provisions, income from the sale of shares classified as “assets held for sale” (i.e. current assets) is subject to the cumulative regime for PIS and COFINS. If the shares are classified as “noncurrent assets” (i.e. investments, fixed assets and intangibles), the income will be excluded from the PIS/COFINS calculation base.

The ordinary PIS and COFINS rates under the cumulative regime are 0.65% and 3%, respectively. Law 13,034 establishes that a 4% COFINS rate will apply to income from the sale of shares, and allows taxpayers to exclude the acquisition costs of the shares from the PIS/COFINS calculation base, provided the income was subject to taxation.

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