



International Tax

## Brazil Tax Alert

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### Government reopens tax amnesty program

#### Contacts

Cristina Arantes Berry  
caberry@deloitte.com

Marcelo Natale  
mnatale@deloitte.com

Karina Roiuk (New York ICE)  
karoik@deloitte.com

Jeferson Silva (Hong Kong ICE)  
jefersonsilva@deloitte.com

The Brazilian government published a law on 20 June 2014 (Law No. 12,996, 2014) that reopens the tax amnesty program created in 2009 (under Law 11,941/09, "Refis da Crise"). The amnesty 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. The conditions are less stringent than otherwise would apply. However, unlike previous programs, the new amnesty requires taxpayers to make an up-front payment of a portion of the consolidated tax debt.

The program applies to debts related to federal and social security taxes that were due up to 31 December 2013. (State and municipal taxes are not included in the amnesty program.) Taxpayers that applied for relief under a previous amnesty program (such as REFIS, PAES, PAEX or the regular (ordinary) recovery payment plan) also may benefit from the new program provided certain requirements are met.

The amnesty provides for generous reductions in self-assessed penalties and penalties assessed by the tax authorities, "isolated penalties" (e.g. penalties arising from a lack of, or insufficient, monthly estimated prepayments of corporate income tax and social security taxes), short-term interest (SELIC) and legal charges. The following reductions and payment schedules are available to participating taxpayers:

Debts paid in:	Applicable discounts			
	Penalties	"Isolated" penalties	Interest	Legal charges
One installment	100%	40%	45%	100%
Up to 30 monthly installments	90%	35%	40%	100%
Up to 60 monthly installments	80%	30%	35%	100%
Up to 120 monthly installments	70%	25%	30%	100%
Up to 180 monthly installments	60%	20%	25%	100%

As noted above, the new amnesty program requires an upfront payment of a portion of the consolidated amount of the taxpayer's outstanding debt. Five

consecutive monthly installments must be made starting from the month in which the taxpayer elects to participate in the amnesty. The payment should correspond to:

- 10% of consolidated debt of up to BRL 1 million, after the reductions indicated in the table above; and
- 20% of consolidated debt exceeding BRL 1 million, after the reductions mentioned above.

In determining the up-front percentage, the taxpayer must consider the gross amount of the tax debt, before the reductions mentioned above. In other words, the application of the 10% or 20% is based on the gross debt, and once the appropriate percentage is determined, it is applied to the net tax debt after the reduction, regardless of whether the post-reduction amount is above or below BRL1 million.

Monthly installments paid under the amnesty program are subject to interest, calculated at the SELIC rate. Net operating losses (NOLs) may be used to offset penalties (self-assessment and punitive) and interest arrears (at a 25% rate in the case of corporate income tax NOLs and a 9% rate in the case of social security taxes NOLs).

## Comments

The enactment of Law 12,996/2014 provides taxpayers, including those that did not participate in previous amnesty programs, a new opportunity for relief in connection with existing federal tax debts that were due up to 31 December 2013. The program may provide substantial reductions of penalties and interest. Taxpayers should reassess their tax positions to consider the costs and benefits of participating in the tax amnesty program.

The federal tax authorities are expected to issue guidance on how to calculate the consolidated debt (e.g. debts to be consolidated, amount of NOLs that may be utilized, treatment of debts with preliminary injunctions, etc.).

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