

## Brazilian mining giant to settle long-running tax dispute

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Brazilian mining giant Vale recently announced that it will pay BRL 22.2 billion (about \$9.5 billion) to settle a long-standing dispute with Brazil's Federal Revenue Department (FRD) over alleged back taxes stemming from the company's overseas operations from 2003 to 2012.

In a [27 November statement](#), the company said it will pay the total sum in 180 instalments, with an initial payment of nearly BRL 6 billion (about \$2.5 billion) at the end of the month. The payment schedule was established by Law 12,865/2013, which offers favourable discounts for tax debts held by controlled foreign corporations. Provisional Measure 627, introduced on 11 November, amended Law 12,865/2013 to create even more favourable payment conditions for interested taxpayers.

Vale's decision to settle its tax dispute by participating in a special tax payment schedule (*refinanciamento fiscal*, or REFIS) effectively ends its dispute with the FRD over the payment of corporate income tax and welfare taxes on profits arising from its foreign subsidiaries.

At the core of the dispute was whether Vale was subject to taxation on tens of billions of reais under a CFC rule issued in 2001 (article 74 of Provisional Measure 2,158-34/2001) that requires Brazilian companies with controlled or affiliated foreign entities to include the profits of those entities in their tax base.

In 2003, Vale initiated legal proceedings to challenge the regulation, arguing that the rule disregards income tax treaties between Brazil and the jurisdictions in which Vale's subsidiaries are based. Since then, Vale and the FRD have been locked in a judicial tug-of-war over a total amount of BRL 45 billion (about \$19.3 billion) that the FRD claims is due for the 2003-2012 period, according to Vale's statement. (For prior coverage, see [Brazil's Supreme Court suspends tax demands on mining company](#).)

Vale's decision to settle up "allowed for a considerable reduction in the amounts in dispute, and the decision to participate in the REFIS is consistent with our goal of eliminating uncertainties and directing managerial focus on Vale's businesses," Vale CEO Murilo Ferreira said.

Vale is also awaiting a Brazilian Supreme Court decision about whether international tax treaties prevail over Brazil's CFC rule.

The Supreme Court decision will follow a landmark Supreme Court ruling earlier this year in a lawsuit filed in 2001 by an industry association challenging the constitutionality of the CFC rule. On 10 April the Court ruled that Brazilian multinationals with affiliates or subsidiaries located in jurisdictions on the Brazilian government's tax haven blacklist must pay tax in Brazil on those entities' profits. (For prior coverage, see [Brazilian multinationals are not protected by tax havens, Supreme Court rules](#).) Vale has said that it does not have any subsidiaries or affiliates in tax havens.

"Both companies and government are trying to get close to a scenario of certainty instead of uncertainty, which has been a historical problem for the Brazilian tax system," Abreu said. As for Vale, "it's not the end of the book, but the end of a chapter," he added.

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