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Advogados Associados

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Fiscal Amnesty Bill of Law

On November 18th, 2008, a Brazilian Senator presented a Bill n° 443/2008 (hereinafter simply the "Bill") which creates measures and incentives for the so-called "fiscal citizenship". Fiscal citizenship basically comprises the possibility of: (i) amending Brazilian tax returns to include assets and rights held inside or outside of Brazil not previously included in the tax returns filled by taxpayers; and (ii) repatriating funds held overseas.

According to such Bill individuals may amend their 2007 Tax Return to include assets and rights held onshore and offshore that have not been listed before independently of the date such assets or rights have been purchased.

The above mentioned inclusion would trigger the payment of income tax (herein after simply referred to as "IR") at the following rates: (i) domestic assets: 8%; and (ii) overseas assets: 15%, but if the taxpayer repatriates such assets the rate could be reduced to 8%. Moreover, in relation to rights and assets held overseas the taxpayer may include them personally or through a domestic or foreign financial institution, in the capacity of a fiduciary agent (in accordance to the criteria and conditions to be established by the Brazilian Monetary Council), and repatriate them thereafter.

The above mentioned rates shall be reduced in half if the taxpayer applies at least 50% of the assets and rights value to acquire quotas of certain mutual funds, duly regulated by Brazilian and Exchange Commission – CVM, investing in infra-structure projects, such quotas being only redeemable 5 years after their purchase date.

Moreover, individual taxpayers that do not make use of the above mentioned tax benefits may adjust the value of their assets and rights informed in the filled Tax Return bringing them to their market value as of December 31st, 2007 with an IR levy of 4% over the additional amounts thereof.

Legal entities, in the 2009 fiscal year, 2008 accounting year, may include in their declaration containing fiscal and economic information rights and assets not added into their IR and Social Contribution on Net Profits (hereinafter simply "CSLL") taxable basis including those held offshore. The amounts added into such taxable basis will be subject to an IR rate of 10% and a CSLL rate of 8% no deductions being allowed in relation to such additional amounts.

In case legal entities do not make use of the above mentioned possibility they may revalue their rights and assets to their current market value with an IR levy of 5% and CSLL of 4% over the additional amounts thereof.

The Bill brings another tax incentive (or fiscal benefit) by establishing a Fiscal Recovery Program aimed to promote the payment of due and outstanding federal tax debts taxpayers, both individuals and legal entities, may hold against Brazilian IRS. This is an opt-in opt-out program to be further regulated by tax authorities (including the possibility of consolidating all taxpayers' federal tax debts and payments of the outstanding balances in installments).

Finally, the Bill establishes that income arising out of the individuals equity investments into legal entities domiciled in tax heavens earned by individuals is subject to an IR rate of 15% on profits recognized in each fiscal year, independently of the profits actual distribution, excluded profits recognized up to December 31st, 2007 which are subject to a 2% IR rate.

All fines and/or criminal charges will not be applied and enforced for taxpayers entering into or accepting any of the fiscal benefits established by this Bill, except in case of money laundering.

We will follow periodically the discussions of this Bill in the Brazilian Senate, communicating to you any relevant updates in due course.

THIS IS MERELY AN INFORMATIVE NEWSLETTER, RESTRICTED TO VGL CLIENTS. QUESTIONS AND CLARIFICATIONS ON THE MATTERS CONTAINED HEREIN SHOULD BE ADDRESSED TO OUR OFFICE.

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