

**VELLOZA, GIROTO E LINDENBOJM***Advogados Associados*

## VGL NEWS

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### IOF/FX - Changes in some the IOF Regulation Provisions

Decree no. 6,983, dated October 19th, 2009, and published on October 20th, 2009, amended the Decree no. 6,306, of December 14th, 2007 ("**IOF Regulation**") for certain IOF triggering events relating to foreign exchange transactions ("**IOF/FX**"). Later on, Decree no. 6,984, dated and published on October 20th, 2009, in an extra edition of the Brazilian Official Gazette, elucidated on some aspects of Decree 6,983/09.

The IOF/FX levied on the inflow of financial resources via the settlement of foreign exchange transaction ("**FX transaction**") for foreign investments in the Brazilian financial and capital markets was raised from zero percent rate (0%) to two percent rate (2%), according to the current item XXI of the First Paragraph of Article 15 of the IOF Regulation (the "**Relevant Article 15**"). On the other hand, the IOF/FX rate under FX transaction settlement for the remittance/outflow of such financial resources abroad remains at zero percent (0%), pursuant to the item XXII of the Relevant Article 15.

In addition, it also remains at zero percent rate (0%) the IOF/FX on the FX transaction settlement for the remittance abroad of "interest on net equity" and dividends (item XII of the Relevant Article 15), both earned by the foreign investor and relating to those financial transactions listed in items XXI and XXII before mentioned (i.e. relating to Brazilian financial and capital markets' investments).

The former and currently revoked rule which determined the IOF/FX zero percent rate (0%) for financial investments made by foreign investors in the Brazilian financial and capital markets established as a condition that such foreign investment had to be regulated by the Brazilian National Monetary Council ("CMN"); however, such condition is not reflected in the new regulation (item XXI of the Relevant Article 15), meaning that all inflow of financial resources into Brazil via FX transactions by foreign investors with the intention of investing in the Brazilian financial and capital markets will be subject to the IOF/FX at two percent rate (2%), for FX contracts being settled (IOF/FX triggering event) as of October 20, 2009 (please see comments below on the new Decree 6,984/09) and on, regardless of the regulatory channel adopted, or if the investments are performed in or outside Brazilian exchange regulated market, or if the investments are classified as fixed-income or variable-income; being in any case the remittance/outflow abroad of such resources subject to IOF/FX zero percent rate (0%).

Item XVIII of the Relevant Article 15 was modified only to adjust such rule's legal basis, which is the Law N. 11,828 of November 20, 2008.

Finally, Decree 6,984/09 elucidated on the effectiveness of the new IOF/FX rules: although the new rules are in effect as of Oct. 20, 2009, such new rules will only apply to FX contracts entered into as of Oct. 20, 2009. This clarification was meant to preserve the previous zero rate to FX contracts entered into before Oct. 20, 2009, and only settled on or after Oct. 20, 2009.

Please note a special feature of IOF tax: according to Brazilian Constitutional principles, the IOF tax (including IOF/FX) is not subject to **(a)** the so-called “ex-post-facto-law principle”, that is, is not subject to any legal waiting period for new rules/increase in tax rates to be in force, and **(b)** the “principle of legality”, from which changes on IOF rules can be introduced by a mere presidential decree or Ministry of Finance ruling. Thus, any IOF rule can be revoked at anytime, without prior notice, by a mere presidential decree or Ministry of Finance ruling. Such special feature is caused by the own nature of IOF, defined by Brazilian scholars as a ‘parafiscal’ tax, which means that the primordial purpose of this tax is to regulate certain aspects of the country’s politics and economic situation by inducing/dissuading some sort of behaviors by the taxpayers. Especially regarding IOF/FX, this tax may be used by the Federal Government as a device for the controlling the flow of funds from and to Brazil.

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São Paulo	Rio de Janeiro	Brasília
<p>&gt; Av. Paulista, 901 17º e 18º andares Bela Vista - São Paulo - SP CEP 01311-100 Tel.: (55-11) 3145.0055 Fax: (55-11) 3145.0050</p>	<p>&gt; Rua da Assembléia, 10 Sala 1801 Rio de Janeiro - RJ CEP 20011-901 Tel.: (55-21) 2509.0055 Fax: (55-21) 2509.1568</p>	<p>&gt; SRTV Sul, Quadra 710 Cj. D, nº 100 Sala 234 Brasília - DF CEP 70340-000 Tel.: (55-61) 323-8848 Fax: (55-61) 426-7308</p>

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