

AN ALERT FROM THE BDO INTERNATIONAL TAX PRACTICE

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SUBJECT

BRAZIL UPDATE TAX REPORT ON TAX PLANNING STRATEGIES

DATE/TIMING

Effective date of new tax planning disclosure requirement delayed until Tax Authorities issue a Normative Instruction providing more details.

AFFECTING

This requirement affects all Brazilian taxpayers that engage in certain transactions that result in some type of tax benefit (e.g., elimination, reduction, or deferral of taxes).

BACKGROUND

On July 22, 2015, the Brazilian government published Provisional Measure ("PM") 685 which contains the rules with respect to the reporting of certain tax planning strategies. In general, Provisional Measures are valid as of the date of the publication but require review by the Brazilian Congress within 120 days. If no further regulation is issued after this period, they lose their effect.

DETAILS

PM 685 requires taxpayers to submit a report by September 30 of each year that will disclose all relevant information on every individual transaction that was concluded in the prior year and that resulted in some type of tax benefit specifically those transactions that:

- ▶ lacked any purpose other than tax savings;

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- ▶ were structured in an “unusual” manner because either the form of the transaction was abusive or structured to avoid the form of a typical contract; or
- ▶ involved activities that will be specifically listed in regulations to be issued by the Brazilian tax authorities.

The report will be reviewed by the tax authorities. If the tax authorities conclude that the transaction or transactions should be disregarded, the taxpayer will be notified of their intention to collect, within 30 days, the amount of taxes not paid, including interest for late payment, but without any penalties. Furthermore, the failure to submit the report will be considered a willful omission resulting in the application of interest and an increased penalty of 150%, as well as potential criminal consequences.

HOW BDO CAN HELP

All Brazilian taxpayers should carefully review the tax consequences of pending transactions and determine whether the transaction must be disclosed. BDO can review and consult with taxpayers to assist them to adequately decide and comply with this new requirement.

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