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TAX

Brazil's Newest Production Development Policy (PDP)

The Brazilian Government recently announced a new Production Development Bill - *Política de Desenvolvimento Produtivo* or *PDP*, which aims to reduce overall financing and tax burdens currently withering the production sector. The goal is to trim taxes affecting 25 industries (such as agribusiness, nanotechnology, biotechnology) and grant access to affordable financing for those economy sectors in a struggle to encourage Brazilian companies to invest in their production capacity.

The *PDP* intends to boost investment levels to 21% of Brazil's GDP by 2010 by changing tax regulations. Another *PDP* goal is to increase foreign sales of value-added products such as software.

The expected value of tax and financing incentive should exceed 21.4 billion BRL (12.8 billion USD).

From a tax perspective, the *PDP* points out different tax measures. Some of them already proposed under Provisional Measure (MP) 428/08 and others to be the object of future bills.

- term reduction for using *PIS/COFINS* tax credits on fixed assets;

- extension of the accelerated depreciation incentive until 2010;

- broadening of the special regimes *REPORTO* and *RECAP*;

- *IOF* exemption on financing between taxpayers and *BNDES* or *FINEP*;

- zero withholding income tax rate on payments to non-resident's service providers in cases where services are related to Brazilian export transactions as well as marketing of Brazilian products abroad;

- specific accelerated depreciation for the automotive parts sector and capital goods production sector;

- special Income Tax deduction of software companies' expenses associated with personnel training;

- tax exemption of *IPPI*, *PIS* and *COFINS* on parts and raw materials used in the construction of new ships by Brazilian companies;

- Please note that most of the tax benefits and changes announced under the *PDP* are still pending discussions and final approval by the Congress.

According to the *PDP*, exports are forecasted to rise to 208 billion BRL by 2011. The tax forfeiture is expected to reach over BRL 20 billion (USD 12.5 billion) and some BRL 40 billion of investments in technology by 2010.

Disclosure of shareholders

The *CVM* (Brazil's Securities and Exchange Commission) updated the regulations regarding disclosure of shareholders of Brazilian publicly-traded companies.

Previously, *CVM* Instruction 525/2007 provided the disclosure of the announcers' name and qualification, including the National Corporate Tax Registration number (*CNPJ*) or the National Individual's Tax Registration number for the following:

- direct or indirect controlling shareholders;

- shareholders that vote for members of the Fiscal Board of Directors;

- any person, company or group of people acting together or representing the same interest that casts either a direct or indirect participation corresponding to 5% or higher in a type or class of share representing the equity of a publicly held company.

This disclosure process was applicable up to the last level of shareholding, i.e. the individual person holding the shares.

The new regulation (*CVM* Del. 541/2008) estates the disclosure requirements applies up to the

individual shareholder regarded as the controlling individual, directly or indirectly, of the relevant entity.

The new rule also applies to foreign companies and individuals which have securities traded in Brazil as BDR's (Brazilian Depositary Receipts) and also to Initial Public offerings requiring registration with *CVM*.

Central Bank enacts new resolution regarding nonresidents' financial applications

Foreign investors are now required to contract simultaneous foreign exchange operations in the event of the first transfer of funds from variable-rate income investments (stock and merchandise and futures markets, as regulated by the National Monetary Council – *CMN*, as well as acquisition of stocks in Initial Public Offers or subscription of shares) to other investments available in the financial and capital markets. Please note that, for the means of this provision, the investments in derivatives that imply predetermined earnings do not fall under the concept of variable-rate income.

The local legal representative of the foreign investor must keep proper records in order to allow the individual identification of all investment transfers carried out in the financial and capital markets. The new measures were implemented by the Brazilian Central Bank through Resolution 3,547, published on March 14, 2008 and apply to the funds that entered the country as of March 17, 2008.

New fiscal procedures applicable to consortia ("*consórcios*")

On March 28, 2008, the Brazilian Federal Revenue (RFB) published Normative Instruction nr. 834, establishing new fiscal procedures applicable to *consortia* (and to the legal entities participating in it) under the terms of articles 278 and 279 of Law 6,404/76. This specifically regards the following federal taxes: income tax (*IRPJ*), social contribution on profits tax (*CSLL*), excise tax (*IP*) and gross revenues taxes (*PIS* and *COFINS*). The new provisions can be briefly summarized as follows: (i) the revenues, costs, expenses, rights and obligations derived from the consortia's activities are subject to the same tax regime as the legal entities that form it; (ii) when determining the actual, presumed or arbitrated profit and the *CSLLs* assessment basis, each participating entity will apportion its revenues, costs and expenses proportionate to their equity participation; (iii) the participating firms will calculate the *PIS* and *COFINS* related to the consortia's activities proportionate to their equity participation, observing the specific legislation; (iv) to the extent of this instruction, the sharing of *PIS* and *COFINS* and *IP* credits and debits among the participating entities will not be allowed.

For more information, contact an international corporate tax professional:

São Paulo

Marianne S. Munhoz
+55 11 2183-3182
mmunhoz@kpmg.com.br

Ericson Amaral,
+55 11 2183-3375
eamaral@kpmg.com.br

Luiz Dardes,
+55 11 2183-3188
ldardes@kpmg.com.br

Murilo Mello,
+55 11 2183-3261
murilomello@kpmg.com.br

Rio de Janeiro

Roberto Haddad
+55 21 3515-9469
robertohaddad@kpmg.com.br

Julio Chamarelli de Cepeda
+55 21 3515-9133
jcepeda@kpmg.com.br

If you have any questions or comments or wish to update your data, include other professionals or remove your name from the distribution list, please send an e-mail to kpmgbraziltax@kpmg.com.br.

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