

More Details

A. CORPORATE INCOME TAX AND SOCIAL CONTRIBUTION ON NET PROFITS (IRPJ and CSLL)

Reduction of the IRPJ and the CSLL tax rates

| <i>Federal Government's original bill</i> | <i>Bill presented by Celso Sabino</i> |
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| <ul style="list-style-type: none"> Reduction of current tax rate from 15% to 12.5% in 2022 and from 12.5% to 10% as of 2023. The IRPJ surtax of 10% remains in force. | <ul style="list-style-type: none"> Reduction of the current tax rate from 15% to 6.5% as of 01/01/2022. The IRPJ surtax of 10% remains in force. |
| <ul style="list-style-type: none"> Not within scope. | <ul style="list-style-type: none"> Reduction of the current CSLL rate from 9% by up to 1.5% (that is, up to 7.5%), to offset the reduction in the COFINS revenue expected for 2022, as a result of the review of federal tax incentives referred to in Chapter IX of the Bill. The reduction will be definitive and will occur in multiples of five hundredths. The tax rates shall be published within 15 days from the enactment of the new Law. |

Taxation of profits and dividends distributed:

| <i>Federal Government's original bill</i> | <i>Bill presented by Celso Sabino</i> |
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| <ul style="list-style-type: none"> Imposition of a general withholding income tax (WHT) rate of 20%: final taxation for individuals and non-resident investors (except for investors domiciled in low tax jurisdictions or subject to privileged tax regimes), and credit for Brazilian legal entities stockholders, which can be offset against the WHT due on its own distributions (the proposal does not provide for a waiver over profits recognized until the end of 2021); | <ul style="list-style-type: none"> Imposition of a general WHT rate of 20%, but the following exemption applies: <ul style="list-style-type: none"> i. Profits or dividends distributed to a legal entity in Brazil that either controls, is under common corporate control or holds 10% or more of the voting capital of the distributing legal entity, provided that this investment is evaluated based on the equity method of accounting; ii. Profits distributed to a legal entity domiciled in Brazil by a legal entity whose sole purpose is to perform real estate activities and which has at least ninety percent of its revenues submitted to the tax regime foreseen in Article 4 of Law No 10,931/2004. (RET); iii. Profits distributed as a result of securities corresponding to the application of resources under Article 5 of Law No. 11,053/2004 (provisions and technical reserves of supplementary pension funds, insurance company, FAPI and life insurance with survival coverage) and; iv. Profits received by individuals in Brazil from a legal entity subject to the presumed profit regime that has earned, in the previous calendar year, gross revenues lower than BRL 4,800,000.00 and that does not fit the hypotheses provided for in § 4 of Art. 3 of Complementary Law No. 123/2006. |
| <ul style="list-style-type: none"> Increased WHT tax rate of 30% for distributions made to non-resident investors located in low tax jurisdictions or subject to a privileged tax regime; | <ul style="list-style-type: none"> Excluded. |

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| <ul style="list-style-type: none"> ▪ Exemption applicable to monthly dividends up to BRL 20,000.00, for profits distributed by small entities and small sized companies (ME and EPP). | <ul style="list-style-type: none"> ▪ Excluded (maintains the current exemption for small entities and small sized companies (ME and EPP) opting for the Simples Nacional regime). |
| <ul style="list-style-type: none"> ▪ Taxation of capitalized profits limited to the scenarios of capital reductions implemented within the 5 previous or subsequent years. ▪ The acquisition cost of the new shares issued upon a tax-free profit capitalization corresponds to zero. The treatment applicable to capital reduction carried out before 2022 is unclear. | <ul style="list-style-type: none"> ▪ Capitalized profits not subject to taxation, provided that no capital refund by means of capital reduction has been implemented within the 5 previous years . ▪ "5 previous years" requirement applicable only to capital reductions (refunds) and dissolutions taking place after 2022. ▪ Acquisition cost of the shares received by the shareholder, as a result of a tax-free capital increase, corresponds to zero. |
| <ul style="list-style-type: none"> ▪ Distribution of dividends in kind to be made at the market value of the assets and rights, except if the market value is lower than the dividends to be distributed. | <ul style="list-style-type: none"> ▪ Maintained. Brazilian Federal Revenue to regulate the legal provision. |
| <ul style="list-style-type: none"> ▪ In case of dividends paid to investment funds, the net value of the WHT can be added to the cost of acquisition of shares for the purpose of determining the tax due upon sale, amortization or redemption of shares, or the mandatory WHT on investments ("come-cotas"). | <ul style="list-style-type: none"> ▪ Maintained, but dividends are subject to 5,88% WHT. ▪ In case of funds held by less than 100 quota holders or by quotaholders holding more than 25% of the fund's quotas, dividends must be transferred/ distributed to the investors. Except for transfers to other investment funds, the fund administrator is responsible for collecting the supplementary tax. |
| <ul style="list-style-type: none"> ▪ Securities Lending: not within scope | <ul style="list-style-type: none"> ▪ Securities Lending: specific taxation regime applicable to dividends paid to borrowers and to the subsequent transfers to lenders. |

Scope of Disguised Distribution of Profits Rules amplified (DDL):

| <i>Federal Government's original bill</i> | <i>Bill presented by Celso Sabino</i> |
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| <ul style="list-style-type: none"> ▪ Amplification of the scope of DDL rules in force, i.e. (i) removes reference to the term "notoriously", (ii) expands the concept of related parties to include trusts of any kind and (iii) includes new hypotheses, such as (a) forgiveness of debt, (b) licensing/assignment under favorable conditions; (c) acquisition, consideration for leasing, rent, etc., ▪ Disguised profits distributed subject to 20% WHT (with gross-up of the calculation basis). ▪ Applicable to legal entities subject to the presumed profit, to the arbitrated and to Simples Nacional regimes. | <ul style="list-style-type: none"> ▪ Same wording, but no longer provides for the gross up of the WHT. ▪ DDL rules applicable to legal entities not subject to actual profit regime, "as appropriate". ▪ The following expenses are not considered DDL: (i) acquisition of vehicles, aircraft and vessels that, by their nature, are compatible with the activity of the rural producer (legal entity) and (ii) short term training of the shareholder of the legal entity compatible with the main economic activity of the legal entity. |

Changes to the Actual Profit (and CSLL tax basis)

| <i>Federal Government's original bill</i> | <i>Bill presented by Celso Sabino</i> |
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| <ul style="list-style-type: none"> ▪ Extinction of the Annual Profit Method (Lucro Real annual). Only Quarterly Profit Method allowed, with the possibility of offsetting tax losses in the following three quarters of the year without the 30% limitation (apparently there is no limitation for the offsetting of credits within the calendar-year); | <ul style="list-style-type: none"> ▪ Maintained. |
| <ul style="list-style-type: none"> ▪ Additional mandatory scenarios for application of the Actual Profit Method (Lucro Real Annual): (i) all activities related to credit securitization; (ii) real estate revenues or royalties > 50%; (iii) exploitation of copyright or image rights; | <ul style="list-style-type: none"> ▪ Mandatory adoption of the actual profit regime limited to credit securitization activities. |

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| <ul style="list-style-type: none"> ▪ Surplus and goodwill: aims to avoid situations where there could be double deduction of such amounts; <ul style="list-style-type: none"> ◦ Goodwill: no tax amortization for mergers and splits carried out as from 2023; | <ul style="list-style-type: none"> ▪ Excluded |
| <ul style="list-style-type: none"> ▪ Acquisition cost of investments: <ul style="list-style-type: none"> ◦ In cases where an investor acquires additional interest in a controlled entity, goodwill registered in the company's net equity can be considered in the book value of the investment, a similar restriction to the one imposed to the goodwill applies, i.e., the realization of 1/60 by each month following the acquisition of the investment; ◦ Foreign investment: the exchange variation of the investments abroad shall not be considered in the acquisition cost of the investment at the moment of the determination of the capital gain or loss. | <ul style="list-style-type: none"> ▪ Excluded |
| <ul style="list-style-type: none"> ▪ Intangible assets: minimum 20 year term for deductibility /amortization of intangible assets that do not have a different/specific legal or contractual term. | <ul style="list-style-type: none"> ▪ Minimum term of 10 years for deductibility /amortization of intangible assets that do not have a different/specific legal or contractual term. |
| <ul style="list-style-type: none"> ▪ Interest on Equity ("IOE"): nondeductible expense as from 2022. | <ul style="list-style-type: none"> ▪ Revocation of the IOE institute as a whole, not only the deductibility. The entry into force is conditioned to the increase to 99,9% of the participation of the States, the Federal District and Municipalities in the proceeds of the collection of the CFURH and of the CFEM, as well from the entering into force of the additional CFEM. |
| <ul style="list-style-type: none"> ▪ Share-based compensation: restrictions to the deduction of the expenses, permissible only in relation to payments to employees. | <ul style="list-style-type: none"> ▪ Instead of just limiting to payments to employees, reference is made to the general rule of deductibility of remuneration. |
| <ul style="list-style-type: none"> ▪ CSLL: aims to standardize its tax basis with the IRPJ tax basis. | <ul style="list-style-type: none"> ▪ Maintained, except for the non-deductibility of losses generated by debentures and incentive funds. |
| <ul style="list-style-type: none"> ▪ No changes to the Research and Developments tax incentives (Law No. 11,196 / 2005) nor to the incentives for training staff of companies in the information technology sectors - IT and information and communication technology - ICT (Law No. 11.774 / 2008) | <ul style="list-style-type: none"> ▪ Excess excluded from the IRPJ and CSLL tax bases may be used within the three immediately following quarters. |
| <ul style="list-style-type: none"> ▪ No changes to the treatment applicable to payments for the use of transgenic technology or license of cultivars by third parties. | <ul style="list-style-type: none"> ▪ For the purpose of interpreting art. 74 of Law No. 3470/1958 and art. 12 of Law No. 4,131/1962, the amounts transferred to a non-related party in Brazil for the use of transgenic technology or license of cultivars by third parties shall not qualify as royalties. The registration of the related agreements with regulatory agencies will not be mandatory for the purpose of deducting these amounts from the calculation of the taxable bases of the IRPJ of the legal entity that acts in seed multiplication. |

Capital reductions at market value:

| <i>Federal Government's original bill</i> | <i>Bill presented by Celso Sabino</i> |
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| <ul style="list-style-type: none"> ▪ Capital reductions must be carried out, as a rule, at market value (except in case the book value is higher than the market value) | <ul style="list-style-type: none"> ▪ Maintained, but book value may be used in case of assets or rights delivered to a shareholder of a legal entity domiciled in Brazil that, as from the beginning of the calendar year prior to the capital reduction until the period of twelve months after the event, remains the controller of the legal |

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| | <p>entity that is performing the capital reduction or is under common corporate control;</p> <ul style="list-style-type: none"> ▪ Gains and losses resulting from the evaluation of the asset or right at market value, evidenced in sub-accounts, are not subject to taxation; ▪ Gains resulting from an evaluation at market value in the invested legal entity may not be considered in the investing legal entity as part of the cost of the asset or right that gave rise to it for the purpose of determining capital gain or loss and the calculation of depreciation, amortization, or exhaustion; ▪ Valuation at market value is not mandatory in cases of capital reduction carried out by a legal entity abroad to an individual or legal entity in Brazil. |
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Capital contributions abroad at market value:

| <i>Federal Government's original bill</i> | <i>Bill presented by Celso Sabino</i> |
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| <ul style="list-style-type: none"> ▪ Capital contributions must be carried out, as a rule, at market value (also applicable to transactions with nature and effects similar to the capital contribution, including transfer to trusts) | <ul style="list-style-type: none"> ▪ Excluded |

Unincorporated Special Partnership (“Sociedades em Conta de Participação”): :

| <i>Federal Government's original bill</i> | <i>Bill presented by Celso Sabino</i> |
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| <ul style="list-style-type: none"> ▪ Obligation to adopt the same tax regime of the ostensive partner. | <ul style="list-style-type: none"> ▪ Excluded |

Indirect transfer of Brazilian companies' shares. Capital gains tax:

| <i>Federal Government's original bill</i> | <i>Bill presented by Celso Sabino</i> |
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| <ul style="list-style-type: none"> ▪ Taxation of capital gains triggered by the indirect disposal of assets located in Brazil. Aims to reach the scenario where the market value of the disposed interest abroad derives substantially from the assets located in Brazil. <ul style="list-style-type: none"> ○ Applicable when in a period of 12 months preceding the date of the transfer, the market value of assets located in Brazil is = > 50% of the market value of the transaction AND transfer of = > 10% of the ownership or of economic benefits of the (foreign) legal entity; or (ii) market value of the assets located in Brazil > USD 100M AND transfer of = > 10% of ownership of economic benefits of (foreign) legal entity; ○ Form and term of collection to be established by the Brazilian Federal Revenue. | <ul style="list-style-type: none"> ▪ Excluded |

Reduction of the WHT over payments without cause or to non-identified beneficiary

| <i>Federal Government's original bill</i> | <i>Bill presented by Celso Sabino</i> |
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| <ul style="list-style-type: none"> ▪ Not within scope. | <ul style="list-style-type: none"> ▪ Reduction of the WHT tax rate over payments without cause or to non-identified beneficiaries from 35% to 30%. |

Presumed Profit - bookkeeping:

| <i>Federal Government's original bill</i> | <i>Bill presented by Celso Sabino</i> |
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| <ul style="list-style-type: none"> ▪ Mandatory bookkeeping for legal entities opting for the presumed profit method . | <ul style="list-style-type: none"> ▪ Maintained, except for legal entities that meet the cumulative requirements (Cash Book and gross revenue of less than BRL 4,800,000.00 in the previous calendar year). |

B. FINANCIAL AND CAPITAL MARKETS

Bonds or Securities:

| <i>Federal Government's original bill</i> | <i>Bill presented by Celso Sabino</i> |
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| <ul style="list-style-type: none"> ▪ End of taxation as per the regressive rates from 22.5% to 15% according to the term of the investment; ▪ 15% flat tax rate | <ul style="list-style-type: none"> ▪ Excluded. |

Changes to the tax exemption rules for the sale of low value goods and rights:

| <i>Federal Government's original bill</i> | <i>Bill presented by Celso Sabino</i> |
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| <ul style="list-style-type: none"> ▪ Not within scope | <ul style="list-style-type: none"> ▪ Maintenance of the capital gains tax exemption in case of sale of low value good and rights, whose unit sale price corresponds to BRL 35,000.00 per month. ▪ End of exemption over income and gains earned on investments in bonds or securities traded on organized securities markets or in any other place, including sale of shares. |

Investment Funds:

| <i>Federal Government's original bill</i> | <i>Bill presented by Celso Sabino</i> |
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| <ul style="list-style-type: none"> ▪ Open-end funds: 15% flat tax rate and annual periodic taxation ("come-quotas") only in November; ▪ FIAS - Access Market exempted until 2023; | <ul style="list-style-type: none"> ▪ Excluded (the income and net gains or capital gains earned by the portfolios of investment funds continue to be exempted from the IR), with the exception of the taxation applicable to dividends mentioned in the specific table above; ▪ Come-quotas maintained for November of each year; ▪ FIAS - Access Market exempted until 2023. |
| <ul style="list-style-type: none"> ▪ Stock funds: no relevant changes. The only controversial aspect is that the fund could only have 67% of stocks in its portfolio. | <ul style="list-style-type: none"> ▪ Stock funds: on the one hand, it refers to stocks or other similar assets (eg, subscription receipts, BDRs, etc.), but on the other hand, it requires a minimum 75% of these assets for the portfolio of the investment fund. |
| <ul style="list-style-type: none"> ▪ Funds with different classes of stocks: not within scope. | <ul style="list-style-type: none"> ▪ Funds with different classes of stocks: the applicable tax regime should be determined according to the characteristics of each class of stocks, which does not necessarily coincide with the fund's regime. |
| <ul style="list-style-type: none"> ▪ FDICS: not within scope. | <ul style="list-style-type: none"> ▪ FDICS: come-quota regime not applicable to FIDCs that comply with certain requirements (< 75% of credit rights, no quotaholder holds more than 25% of the fund's quotas). |
| <ul style="list-style-type: none"> ▪ Market Index Investment Fund: not within scope. | <ul style="list-style-type: none"> ▪ Market Index Investment Fund: now subject to a special tax regime. |

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| <ul style="list-style-type: none"> Closed-end funds: 15% flat tax rate, introduction of annual periodic taxation ("come-quotas") and taxation of the accrued profits on January 1st, 2022 (at 15% or 10% rate, depending on the collection date) | <ul style="list-style-type: none"> Closed-ended funds: taxation of the inventory on 01/01/2022 at 15%, if paid in a single installment until November 30, 2022, and at the decreased rate of 10%, if paid in a single installment until May 31, 2022 (or if paid in 12 monthly and successive installments). <p>Excluded from the regime:</p> <ul style="list-style-type: none"> FIIs and FIAGROs; Funds composed exclusively by INR; Investment Funds in Participations, Investment Funds in Quotas and Investment Funds in Emerging Companies qualified as investment entities; Equity Investment Funds that do not qualify as an investment entity; FIAFs e FIC-FIAFs; FIP-IE and FIP-PD&I; FIDCs; Market-Index Investment Funds Investment funds and investment funds in quotas that, on the date of publication of the Law, expressly foresee in their regulations the non-extendable expiration until December 31, 2022. |
| <ul style="list-style-type: none"> FIPs: introduction of two taxation regimes depending on its qualification or not as an investment entity. | <ul style="list-style-type: none"> Maintained, clarifying that to calculate the taxable income, in addition to the paid in capital of the fund, the cost of acquisition of the shares in the event of acquisition in the secondary market must be considered. Revocation of the 40% test requirement for the application of the zero rate of WHT for the "Normative Rulings 4373" outside of paradise that invest in FIPs that qualify as an investment entity. |
| <ul style="list-style-type: none"> Real estate funds: termination of the exemption for Individuals and a flat tax rate of 15%. | <ul style="list-style-type: none"> Excluded. |

Transactions on the stock exchange market:

| <i>Federal Government's original bill</i> | <i>Bill presented by Celso Sabino</i> |
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| <ul style="list-style-type: none"> 15% flat tax rate, including day-trade Quarterly determination period (rather than the current monthly regime) End of "whistleblower" ("dedo-duro") Requirements for deduction of losses in transactions carried out on the organized over-the-counter market Establishes presumption for the acquisition cost of assets traded on the stock exchange (the lowest closing price in the last 60 months). | <ul style="list-style-type: none"> Maintained, but excludes from this regime the gains upon sale of FII and FIAGRO shares. |

C. INDIVIDUAL INCOME TAX (IRPF):

Creates anti-deferral rules for Brazilian individuals:

| <i>Federal Government's original bill</i> | <i>Bill presented by Celso Sabino</i> |
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| <ul style="list-style-type: none"> Automatic taxation of profits derived by offshore companies located in tax havens or operating under a privileged tax regime. | <ul style="list-style-type: none"> Excluded |

Changes the Monthly Progressive Table ("Tabela Progressiva Mensal"):

| <i>Federal Government's original bill</i> | <i>Bill presented by Celso Sabino</i> |
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| ▪ increase of the exemption threshold to monthly income of BRL 2,500.00; | ▪ Maintained |

Limitation to the simplified discount in the Individual's Income Tax Return:

| <i>Federal Government's original bill</i> | <i>Bill presented by Celso Sabino</i> |
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| ▪ Applicable only to taxpayers with taxable earnings not exceeding BRL 40,000; | ▪ Maintained |

Allows the step-up of the tax costs of real estate properties located in Brazil:

| <i>Federal Government's original bill</i> | <i>Bill presented by Celso Sabino</i> |
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| ▪ Optional step-up of real estate tax costs subject to a 4% capital gains tax rate (applies to real estate properties located in Brazil acquired with resources of lawful origin until December 31, 2020). Procedure to be regulated by the Brazilian Federal Tax Authorities. | ▪ Maintained |

Possibility to step-up resources, goods or rights held abroad at 6%:

| <i>Federal Government's original bill</i> | <i>Bill presented by Celso Sabino</i> |
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| ▪ Not within scope. | ▪ Individuals in Brazil may opt step-up the acquisition cost of resources, goods or rights of lawful origin kept abroad and informed in the Income Tax Return for the calendar year 2020 but means of a one-time taxation of 6% |

D. OTHER RELEVANT ASPECTS

Unlike the original bill, the Bill of Law presented by Deputy Celso Sabino proposes changes to the Corporate Income Tax (IRPJ) tax incentives rules. For example, in the case of legal entities subject to the actual profit regime, the Bill of Law increases from 1% to 2,3% the limit of the deduction from the IRPJ due of expenses with donations to Funds for Children and Teenagers and with sponsorships or donations to sports and para-sports projects. In the case of investments and sponsorships made by legal entities in Brazilian audiovisual projects, according to Law No. 8,685/1993, the limitation is increased, respectively, from 1% to 2,3% and from 6% to 9,2%.

In addition, the Bill of Law increases the isolated limit for the deduction of the expenses listed in Article 5 of Law No. 9,532/97 from 4% to 9,2%, including the deduction of expenses incurred with the Workers' Food Program (*Programa de Alimentação ao Trabalhador*) and of expenses with donations and sponsorships in favor of cultural projects foreseen in the Rouanet Law (*Lei Rouanet*).

The Bill of Law also includes a specific chapter related to the revocation of some tax incentives related to PIS/COFINS, PIS/COFINS-Import, Import Tax (II) and Excise Tax (IPI) intended for certain industry sectors, such as chemical and pharmaceutical and tax incentives that apply to vessels, aircraft and their parts and pieces and on the gross revenue from the sale of natural gas and natural coal for thermoelectric plants.

Other chapters refers to (i) legal certainty in the application of the tax legislation, providing, for example, that the tax ancillary obligations related to taxes and contributions administered by the Brazilian Federal Revenue may not be required before ninety days, counted from the publication of the normative act that creates it and that in case of a tie in the judgment of the administrative proceeding referred to in art. 25 of Decree No. 70.235/1972, the main or ancillary issue decided will be resolved in favor of the taxpayer, even if it relates to formal (procedural) issues and (ii) of the distribution of revenues from financial compensation for the exploration of mineral resources - CFEM, which were subject to a recent legal alert issued by our office.

Finally, several legal provisions were revoked by PL 2337/2021 and we recommend a detailed analysis, depending on the case at hand.