

1-1-1986

Brazil

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Recommended Citation

Brazil, 17 U. Miami Inter-Am. L. Rev. 371 (1986)

Available at: <http://repository.law.miami.edu/umialr/vol17/iss2/10>

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BRAZIL

The following is a review of recent Brazilian developments in tax, labor and import and export law.

I. LEGISLATIVE AND ADMINISTRATIVE RULINGS

Guarantees by State Entities

The President of the Republic signed Decree No. 91.271 on May 29, 1985. This decree forbids autonomous federal government entities, state companies, mixed-capital companies, and other entities whose share capital is controlled by the Federative Republic of Brazil, from granting any *aval* guarantees, sureties, or other guarantees for obligations assumed by individuals and legal entities (DOU-1, May 30, 1985).

Fixed-Income Bills

(a) The Minister of Finance issued Ordinance No. 282/85, by which the government taxes gains made on financial transactions with fixed-income bills, when made by individuals on non-financial legal entities for terms of less than 90 days (DOU-1, May 27, 1985).

(b) The Secretary of Federal Revenue issued Normative Instruction No. 41/85 which establishes that whenever a financial institution issues fixed-income bills and repurchases or redeems them in advance or on the due date, directly or through an associated or interdependent legal entity, the difference between the amount paid and the updated amount of the investment shall be subject to withholding of income tax (DOU-1, May 27, 1985).

Discounts for Alimony

Normative Instruction No. 47/85 of the Secretary of Federal Revenue concerns individuals and public or private entities that are obligated by a judicial settlement or decision, to discount from the income amounts owed to third parties by way of alimony or support. These parties must now supply the beneficiaries with a document evidencing the income actually paid in the base period and the name, CPF number, and address of the individual from

whom such alimony or support was discounted (DOU-1, May 30, 1985).

Agrarian Reform

The Minister of Agrarian Reform and Development submitted a proposal to Congress for the first National Agrarian Reform Plan. Agrarian Reform will be carried out through pluriannual programs, and specific action in priority areas, to attain a few basic objectives. A major objective is ensuring socio-economic progress and the right of citizens to do rural work. This would entail restructuring at the Land Management Administration. Restructuring would involve redistributing land by primarily eliminating very large and very small estates. Such a plan would increase productivity and ensure the governmental position on social justice.

Ministry of Agrarian Reform and Development

The President of the Republic sanctioned Law No. 7.319 of June 11, 1985. This law creates the position of Minister of Land Reform and Development. The earnings, advantages and power of the position is commensurate with other Ministers of State. The creation of this position extinguishes the position of Extraordinary Minister of Land Administration Matters (DOU-1, June 12, 1985).

Delegation of Authority

The President of the Federal Senate issued Resolution 1 of 1985-CN, delegating authority to the President of the Republic to promulgate a law to restructure the Ministry of Health and the Ministry of Social Security and Assistance. The President of the Federal Senate also issued Resolution 02 of 1985-CN, delegating authority to the President of the Republic to promulgate a law creating the Special Office for Affairs of the Amazon Region (SEARA) (DOU-1, May 30 and 31, 1985).

Foreign Labor

The Secretary of Immigration of the Ministry of Labor issued Ordinance No. 006/85. This ordinance requires that Brazilian organizations, entities and companies that hire foreign labor on either a permanent or temporary basis to include specially approved

clauses which grant such an exceptional request (DOU-1, June 4, 1985).

GATT Tariffs

The Coordinator of the Tax System issued Act. No. 17/85 which declares that tariff concessions made by Brazil under the General Agreement on Tariffs and Trade (GATT) extend to imports of goods from the Soviet Union and China, by the application of the most favored nation clause contained in Article 2 of the Brazil-USSR Trade and Payments Agreement, and in Article 2 of the Brazil-China Trade Agreement, enacted by Decrees Nos. 56.521/65 and 83.282/79, respectively (DOU-1, May 31, 1985).

Central Bank Resolutions

At a meeting held on June 5, 1985, the National Monetary Council passed several resolutions involving the Central Bank of Brazil. The most important of these resolutions are:

- (a) Resolution 1.017/85 authorizes assignments and acquisitions of credits for loans, financing between credit, and financing investment companies and investment banks. It also permits acquisitions of credits from commercial banks by credit, financing and investment companies;
- (b) Resolution 1.019/85 establishes new minimum periods for the receipt of fixed-term deposits, with or without certificates, by commercial banks, investment banks, development banks and Banco do Brasil, S.A.;
- (c) Resolution 1.021/85 establishes the requirements for administrative positions in financial institutions and other entities authorized by the Central Bank of Brazil. Candidates for these positions must have an academic degree and have at least two years experience in management positions or at least three years experience as a consultant in public or private financial institutions;
- (d) Resolution 1.022/85 approves the Regulations that amend and consolidate the rules for the formation and operation of Open-End Mutual Investment Funds;
- (e) Resolution 023/85 transforms the former 157 Funds into Mutual Stock Funds;
- (f) Resolution 1.025/85 enables private pension funds and insurance companies to reduce the compulsory investment in federal government bonds from 35% to 20% of their technical reserves,

but shall continue to invest 10% in state bonds.

Withholding Tax

The Minister of Finance issued Ordinance No. 303/85, which permits companies to pay a twenty-five percent Income Tax exclusively at source, based on the so-called liberalities given to shareholders on October 20, 1983 (the effectiveness date of Decree-law No. 2.065/83). The system of taxing payments, income, and other omissions exclusively at source reduces the company's profit and is a benefit for the shareholders. This system was created by article 8 of Decree-law No. 2.065/83 (DOU-1, June 18, 1985).

Advance Payment of Income Tax

The Coordinator of the Economic/Fiscal Information System issued Declaratory Act CIEF No. 010/85, rectifying Declaratory Act No. 009/85 and establishing the new list of income which is subject to Minister of Finance Ordinance No. 238/85, which reduced the period for companies to pay their income tax by ten days (DOU-1, June 14, 1985).

New Dates for Payment of Income Tax

The President of the Republic sanctioned Law No. 7.329 of June 27, 1985, which alters the period for payment of corporate income tax. Accordingly, each corporate income tax prepayment, installment or quota, as referred to in Decree laws No. 1.967/82 and 2.031/83, shall be paid on or before the last business day of the second ten-day period of the month in which the payment falls due (DOU-1, June 28, 1985).

The Minister of Finance also issued Ordinance No. 331/85, which provides that the income tax withheld at the payment source shall be paid on the last business day of the second ten-day period of the month, in the following cases: (a) income on fixed-income bills, including discounts on short-term financial investments; (b) redemption of Readjustable National Treasury Bonds in the case of the exchange value referred to in article 1 of Decree-law No. 2.014/83; (c) payment or credit of interest; and (d) payment or credit of gross income on financing of future transactions on the Stock Exchange (DOU-1, June 28, 1985).

New Date for Payment of IPI Tax

The Minister of Finance issued Ordinance No. 330/85, which provides that the Tax on Manufactured Products (IPI), that becomes due as of July 1, 1985, shall be paid on the last business day of the first fifteen-day period of the second month, following the month in which the fact that gave rise to the tax occurred (DOU-1, June 28, 1985).

Further Central Bank Resolutions

At a meeting held on June 28, 1985, the National Monetary Council approved several decisions which were issued as Central Bank resolutions and published in DOU-1 of July 1, 1985:

- (a) Resolution 1.029/85 alters the percentage of the compulsory deposit made by commercial banks on cash deposits;
- (b) Resolution 1.030/85 reduces the amount of the compulsory deposit made by banks on term deposits. Accordingly, commercial, investment and development banks must now deposit with Central Bank eleven of the balance of their term deposits as determined on the last business day of each month, including interest and monetary correction for the period from the date of contracting the deposit;
- (c) Resolution 1.031/85 increases the rate of income tax withheld on gains made on open market investments;
- (d) Resolution 1.032/85 increases the income tax withheld on investments in pre-fixed private bills;
- (e) Resolution 1.033/85, eliminates the rebate on income tax paid on remittances of interest on foreign loans.

Foreign Loans

The Department of Control and Registration of Foreign Capital (FIRCE) issued FIRCE Communique No. 157/85 which determines that lending of Resolution 63 loans for renewals of credits under Resolutions 1.010/85 and 1.012/85 is subject to the prior authorization of FIRCE (DOU-1, June 27, 1985).

Adjustment of Residential Rent

The President of the Republic sanctioned Law No. 7.335 of July 4, 1985, extending the effectiveness of Law No. 7.069/82 until July 31, 1986. According to this law, the adjustment of residential

rents is limited to eighty of the National Consumer Price Index (INPC) (DOU-1, July 5, 1985).

Government Agencies' New Economic Package

The President of the Republic issued the following Decrees as part of an economic package, as published in DOU-1, of July 8, 1985:

- (a) Decree No. 91.403 of July 5, 1985 prohibits the government agencies of direct administrations from engaging anyone to fill positions or jobs;
- (b) Decree No. 91.404 of July 5, 1985 establishes ways to contain the expenses of government agencies of indirect administrations until December 31, 1985;
- (c) Decree No. 91.405 of July 5, 1985 creates Commissions which evaluate government projects and determine the public interest in continuing these undertakings;
- (d) Decree No. 91.406 of July 5, 1985 alters the dates for companies, employers, and self-employed workers to pay their contributions to Social Security. The contributions shall now be paid on or before the tenth business day of the month following the repayment month or on the day immediately preceding the business day if the tenth business day is not a banking day.

New Withholding Tax Table

The Minister of Finance issued Ordinance No. 334/85 which adjusts the schedule for the withholding income tax. Salary income of up to Cr\$ 1.172 thousand and self-employment income of up to Cr\$ 469 thousand per month will now be exempt from withholding tax (DOU-1, July 5, 1985).

The Secretary of Federal Revenue then issued Normative Instruction No. 57/85 which approved the new withholding tax table and determined the discounts allowable on the net monthly income of salaried workers subject to the withholding tax (DOU-1, July 8, 1985).

Open Market Investments

In Circular No. 942/85, the Central Bank clarified that the new rates of withholding tax, established by Central Bank Resolution No. 1.031/85 for capital gains made on investments on

the open market, shall apply to income paid or credited as from July 8, 1985 (DOU-1, July 4, 1985).

National Informatics and Automation Council

The President of the Republic signed Decree No. 91.433 on July 12, 1985, again altering Decree No. 90.754/84 which concerns the organization and operation of the National Informatics and Automation Council (CONIN). According to the new decree, CONIN shall meet twice a year, and shall submit the First National Informatics and Automation Plan to the President of the Republic for approval and subsequent examination by Congress (DOU-1, July 15, 1985).

Taxation of Income from Fixed-Income Bills

In Normative Act No. 20/85, the Coordinator of the Tax System set forth for determination, the percentages of income produced by fixed-income bills with pre-established monetary correction, as provided for in Central Bank Resolution No. 1032/85. It shall only be applied to fixed-term deposits, with or without the issue of certificates, bills of exchange accepted by financial institutions, and endorsable bearer or registered debentures made or issued as from July 1, 1985 (DOU-1, July 19, 1985).

Environmental Protection

The President of the Republic sanctioned Law No. 7.347 of July 24, 1985, which provides for public court action to determine liability for damages caused to the environment, consumers, property, landscape, and towns. Liability for damages can also be assessed for artistic, aesthetic and historical objects of value according to the social requirements of protection to the environment. Legal action shall be filed in the courts of the jurisdiction where the damage occurs (DOU-1, July 25, 1985).

Education Budget

The President of the Republic sanctioned No. 7.348 of July 24, 1985, which directs the Federal Government to allocate at least thirteen percent of its tax revenues each year. The States, Federal District and Municipalities shall also allocate at least twenty-five

percent of their tax revenues to the maintenance and development of education, with special emphasis on elementary schooling (DOU-1, July 25, 1985).

National Consumer Defense Council

The President of the Republic signed Decree No. 91.469 of July 24, 1985, which creates the National Consumer Defense Council (CNDC) in order to assist the President in formulating and conducting the National Consumer Defense Policy. The Council shall examine and propose action for the protection of consumer rights and interests, and shall create means of technical and financial support for similar organizations (DOU-1, July 25, 1985).

Purchases of Gold

The Central Bank of Brazil issued Circular Letter No. 1.257/85. In it, regulations for companies that intend to engage in the refined gold market and sales to the Central Bank are discussed. The selected institution shall be called "operator" and shall satisfy at least the following requisites: (a) it shall be authorized by the Central Bank to deal in the Brazilian gold market; (b) it must have a tradition in gold trading; and (c) it must offer guarantees to cover the difference between the transacted value and the value obtained by the Brazilian Mint House (DOU-1, July 25, 1985).

National Private Insurance Council

The President of the Republic signed Decree No. 91.429 of July 11, 1985, altering the composition of the National Private Insurance Council (CNSP), which shall be made up of the following members: (a) the President of the Brazilian Reinsurance Institute; (b) the Superintendent of the Private Insurance Authority; (c) The President of the Central Bank of Brazil; (d) The Director of Rural and Industrial Credit and Special Programs of the Central Bank of Brazil; (e) the President of the National Housing Bank; (f) the Director of the Foreign Trade Department of Banco do Brasil; (g) a representative from the Ministries of Transportation, of Industry and Commerce and of Social Security and Assistance; (h) a representative from the Planning Office of the Presidency of the Republic; and (i) five representatives from private enterprise, appointed by the President of the Republic. The representatives will be cho-

sen from Brazilians who have the necessary personal qualifications for a two year, renewable term of office. Five deputies that satisfy the same conditions will also be appointed for two years and will be eligible for reappointment (DOU-1, July 12, 1985).

Science and Technology

The Minister of Science and Technology issued Ordinance No. 53/85, creating a Commission for Scientific and Technological Development Incentives. The purpose of this ordinance is to: (a) evaluate the granting of tax, exchange, and financial benefits for activities in the area of science and technology; (b) make studies to perfect the legislation on incentives for scientific and technological research in the tax, exchange, financial, marketing, and administrative areas. These incentives will nationalize materials imported for research work in coordination with the government and the production sector. The incentives will also facilitate the entry and exit of goods and individuals into and out of the country which will further scientific and technological development (DOU-1, July 23, 1985).

Taxation of Capital Market Investments

The Secretary of Federal Revenue issued a press release stating that income derived from securities referred to in Resolution 1.031/85 (establishing new withholding tax rates for gains made on open market investments), if issued prior to June 30, 1985, shall continue to be subject to the provisions of Resolution 772/82 of the Central Bank of Brazil. In addition, the provisions of Resolution 1.032/85 (increasing the rates of withholding tax for investments in pre-established private securities) do not apply to income derived from book debentures or nonendorsable registered debentures, which should be taxed according to Decree-law No. 2.133/84. The provisions regarding the taxation of discounts on securities with pre-established monetary correction do not apply if the transaction is made with federal, state or municipal government bonds or with agrarian or Electrobras bonds.

Export Documents

The Central Bank of Brazil issued DECAM Communique No. 847/85, amending DECAM Communique No. 823/85, by establish-

ing new rules for the remittance export documents. According to the new system, exporters are authorized to remit the documents abroad directly, if confirmed and accepted by the bank authorized to deal in exchange and if required by the importer in the letter of credit.

Air Transport

The President of the Republic signed Decree No. 91.481 of July 25, 1985, extending for another 180 days the period established in article 12 of Decree No. 90.802/85. Article 12 of Decree No. 90.802/85 regulates the procedure of authorization for foreign companies to operate in Brazil in the field of air transport and related services (DOU-1, July 26, 1985).

Amendments to Legal Provisions

The Minister of Justice issued Ordinance No. 479/85, authorizing the National Press Department to publish bills of law or proposals that imply amendments to existing legal provisions (DOU-1, July 29, 1985).

Inquiries as to Tax Classification of Goods

In Normative Instruction No. 59/85, the Secretary of Federal Revenue established rules for inquiries to be made regarding the tax classification of goods. Inquiries as to the correct classification should be made in writing and submitted to the Federal Revenue Office of the tax domicile of the interested party, on a specific form to be created by the Coordination of the Tax System (DOU-1, July 29, 1985). The Coordinator of the Tax System then issued Execution Norm No. 32/85, containing the form and establishing the administrative routine for inquiries on the tax classification of goods (DOU-1, July 30, 1985).

Foreigners' Statute - Amendment

The Technical Commission organized as a result of Minister of Justice Ordinance No. 227/85 submitted a report proposing substantial changes in Law No. 6.815/80 (the Foreigners' Statute), as amended by Law No. 6.964/81. The main changes being proposed are the possibility of foreigners being permitted to enter Brazil

without a visa in only exceptional cases; the extension of the period of tourist visas to two years; the granting of permanent visas to foreigners for the specific purpose of working for up to five years in regions of Brazil that require their professional specialty; and the requirement for foreigners to hand in and renew their Brazilian identity cards every four years (DOU-1, July 31, 1985).

Securities Commission

At a meeting held on August 2, 1985, the Securities Commission informed representatives of the financial market about nine projects to be undertaken by the Securities Commission in the next few years. The following are the proposed changes: (a) regulation of the Stock Exchanges and Brokers; (b) specific legislation on public utilities and on areas subject to restrictions and control (state companies); (c) the emergence of foreign capital on the Stock Exchanges; (d) regulation of Corporation Law as to dividend policies; (e) regulation of Corporation Law as to right of withdrawal; (f) regulation of Corporation Law as to insider trading and liability of officers; (g) regulation of Corporation Law as to transfer of control; (h) regulation of Corporation Law in general; and (i) taxation of dividends.

Authorization for Foreign Loans

The Department of Control and Registration of Foreign Loans (FIRCE) of the Central Bank of Brazil issued FIRCE Communique No. 163/85, determining that applications for authorization to enter into foreign loan transactions already allowed by the Central Bank of Brazil under Decrees No. 65.071/69 and No. 84.128/79 shall, as from August 5, 1985, be submitted to the Central Bank agency with jurisdiction over the head office of the applicant. Furthermore, the Communique establishes that applications for authorization submitted by entities interested in taking foreign loans, in the cases described in item 1 of Article 2 of Decree No. 65.071/69, shall continue to be made directly to the FIRCE Department in Brasilia (DOU-1, August 2, 1985).

Disposal of Assets by Financial Institutions

The Central Bank of Brazil issued Circular Letter No. 262/85, establishing the deadlines for the disposal of assets that are not to

be used by financial institutions. Those assets that were acquired before January 13, 1983 must thus be disposed of by January 14, 1986; the assets acquired between January 14, 1983 and January 13, 1985 must be disposed of by January 14, 1986 and the Central Bank will only consider the possibility of extension of these periods in certain conditions. Those assets that were acquired after January 14, 1985 will have to be disposed of within one year of the accounting entry for the acquisition, which may be extended twice at the discretion of the Central Bank. The Circular also determines that the value of assets acquired before December 31, 1983 and not yet disposed of should be monetarily corrected every month as of January 1985. Such correction shall be based on the book value shown on the balance sheet as of December 1984, divided by the value of the ORTN in the same month (DOU-1, August 9, 1985).

Republic of South Africa

The President of the Republic signed Decree No. 91.524 of August 9, 1985, establishing restrictions on relations between Brazil and South Africa. Among the activities restricted are: the exchange of any cultural, artistic, or sports activities; oil and fuel exports; the supply of arms and related material of any type, including the sale or transfer of arms and ammunition, military vehicles and equipment, paramilitary police equipment, and spare parts for any of the above products (DOU-1, August 13, 1985).

Central Bank Resolutions

On August 15, 1985 the National Monetary Council made several decisions which were issued as the following Central Bank resolutions and published in DOU-1, August 16, 1985:

- (a) Resolution 1.037/85 exempts micro-companies from the Tax on Financial Transactions (IOF);
- (b) Resolution 1.038/85 requires that financial and other institutions, authorized to operate by the Central Bank within the capital market area, shall publish their financial statements and independent auditor's opinion in the Official Gazette of the Federal Executive or of the State of their head office, and in a widely-circulated local newspaper;
- (c) Resolution 1.041/85 states that the use of independent auditors, as required by Resolution 1.007/85, is optional for credit cooperatives;

- (d) Resolution 1.044/85 provides that credit, financial and investment companies shall expressly include the following in their loan agreements: (1) monthly and annual interest rate; (2) credit opening costs; (3) actual monthly and annual interest rate of the transaction, including credit opening costs; (4) IOF tax; and (5) the total amount to be paid by the borrower; and
- (e) Resolution 1.045/85, excluding Brokerage Companies and Securities Distributor Companies from limited public attendance hours.

Special Office for Informatics

The Special Office for Informatics (SEI) and the Superintendent of the Manaus Free Zone (SUFRAMA) released a list of 24 groups of products manufactured in the Manaus Free Trade Zone, which are no longer considered to be "informatics goods," permitting them to be freely sold without the prior consent of SEI. They include color and closed-circuit TV sets, video cassettes, video cassette cameras, tape recorders, AM/FM receivers, clock radios, photographic accessories and equipment, and several domestic appliances.

Export Exchange

The Central Bank in its Circular No. 945/85 established that noncompliance with rules applying to export exchange, in particular those governing the remittance abroad of the corresponding documents, constitutes an exchange violation subject to the penalties of current law and regulations. Further, Circular No. 945/85 is applicable to banks authorized to operate these exchanges and to exporters, the latter being liable to suspension or cancellation of their registration as an exporter at the Foreign Trade Department of Banco do Brasil S.A. (CACEX) (DOU-1, August 16, 1985).

II. JUDICIAL AND ADMINISTRATIVE DECISIONS

Similarity of Commercial Names

Provided that commercial names are not identical or so similar that they can be confused, subsequent registration of a commercial name is not illegal according to the decision of the Second Chamber of the Second Instance Court of Parana on Appeal No. 623/83.

Tax Liability

In cases of adjustment of the monetary correction of the net worth through the extension of loans to stockholders when the company has reserves or retained earnings, the difference of taxation in the company is the liability of the company and not of the stockholder that received the loan (Decision No. 104-4.438 of the the Chamber of the First Taxpayers' Council).

Attachment of Professional Tools

Under procedural law, assets cannot be attached if they are instrumental, though not indispensable, to the practice of a profession. For example, the telephone is manifestly instrumental in a law practice and cannot be attached if installed in the office of an attorney actively performing such activity (Civil Appeal No. 95.915 of the 6th Panel of the Federal Court of Appeals, Reporting Judge Eduardo Ribeiro, DJU, August 15, 1985).

Disguised Distribution of Profits

Payment by a quota-holder to the company, on the respective due dates, of promissory notes issued by the quota-holder in favor of a creditor who endorsed them to the company, of which in turn it is the debtor, does not constitute a loan by the company to the quota-holder (Decision No. 103-06.253 of the Third Chamber of the First Taxpayers' Council).

Income Tax on Remittance Abroad

While establishing the non-incidence of income tax on the remittance of foreign exchange for payment of services rendered abroad, Precedent 585 of the Federal Supreme Court requires that companies providing such services do not operate in Brazil. Income tax will be due in the event that a part of the services rendered abroad was performed by companies which also operate in Brazil (Decision No. 102.20.460 of the Second Chamber of the First Taxpayers' Council).

Aval Sureties on Promissory Note

The *aval* guarantor of a promissory note is liable only for the

obligations shown on the note. These obligations do not include any permanence fee or any interest and contractual penalty (Decision of the First Panel of the Federal Court of Appeals on Extraordinary Appeals No. 103.697 and 97.579, Reporting Judge Neri da Silveira, DJU of August 2, 1985).

Extra-Judicial Liquidation of Financial Institutions

In cases of extra-judicial liquidation of financial institutions, the Central Bank of Brazil may not merge or join the companies that are being liquidated (Decision of the Federal Court of Appeals on Civil Appeal No. 87.451, Reporting Judge Lauro Leitao).

Professional Service Companies

For a company engaged in rendering services in one or more professions to be entitled to the favored tax treatment afforded under article 9, paragraph 3, of Decree-law No. 406/68, all the partners must be professionals qualified to render the services that constitute the company's business purpose. The company will not be entitled to such favored tax treatment if the professional qualification of the partners is not for the specific services rendered by the company or if they are so qualified but do not actually work for the company and restrict their contribution to capital and seeking a profit. A company that renders laboratory analysis and medical electricity services, in which there are four partners but only two are physicians, is not entitled to the fixed rate of the Services Tax for each professional under article 9, paragraph 3 (Decision of the First Panel of the Federal Court of Appeals on Extraordinary Appeal No. 105.854, Reporting Judge Rafael Mayer, DJU of August 2, 1985).

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