

# *ITS*Newsalert

## Brazil: Changes to capital tax rates approved

International  
Tax Services  
(ITS) Newsalert,  
Brazil  
March 2016

On March 16, 2016, the President approved the conversion into law of Provisional Measure 692 (PM 692/2015) by Law No. 13,259/2016. The key issue contemplated by PM 692/2015 being the change to capital gains rates for individuals and non-residents.

Pursuant to Law No. 13,259/2016, capital gains earned by individuals arising on the alienation of Brazilian assets and rights of any nature are subject to income tax at the rates below. Currently, the Brazilian tax legislation provides that non-residents should be subject to the same rules as Brazilian individuals.

1. 15% on the portion of the gain not passing BRL 5 million;
2. 17,5% on the portion of the gain exceeding BRL 5 million and not passing BRL 10 million;
3. 20% on the portion of the gain exceeding BRL 10 million and not passing BRL 30 million; and
4. 22,5% on the portion of the gain that passes BRL 30 million.

Further, capital gains derived by a company, arising on the alienation of non-current assets or rights, should also be subject to the above rates - except for companies which apply the actual, presumed or arbitrary profit methods (being the key methods of calculating tax for Brazilian entities).

The text of the law provides that the law should enter into effect from the date of publication, producing effects from January 1, 2016. While a number of paragraphs specifically dealing with how the law would treat capital gains in relation to transactions occurring prior to December 31, 2015 were removed from the final text converted into law, there remains a question around the validity of the law during 2016, where the amendments result in an increase in tax due.

Taxpayers undertaking or intending to undertake reorganizations, sales or acquisitions of Brazilian investments should consider how the changes to the rates may impact their transactions. Further, taxpayers should monitor challenges in relation to the constitutionality of the law in respect of transactions resulting in an increase to the tax due for the 2016 tax year.

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