




International Tax

## Brazil Tax Alert

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### PIS/COFINS exemption on certain financial income reinstated

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The Brazilian government enacted a decree on 20 May 2015 (Decree 8,451/15) that reinstates the exemption from PIS/COFINS (social security contributions on revenue) on certain financial income arising from the fluctuation of foreign exchange rates. Decree 8,451/15 amends a decree issued on 1 April (Decree 8,426/2015) that reinstated the PIS/COFINS on financial income, including income derived from hedging transactions, for taxpayers under the "noncumulative regime,"<sup>1</sup> at rates of 0.65% and 4%, respectively; such income had been exempt since April 2005. The new rates were to apply as from 1 July 2015.

Decree 8,451/2015, which will apply as from 1 July 2015, now withdraws the changes introduced by Decree 8,426/2015 by bringing back the exemption for income arising from the following:

- Exports of goods and services;
- Any liabilities of the corporate taxpayer, including loans and financing; and
- Hedging transactions carried out on the stock exchange, futures and over-the-counter market to protect the rights and obligations of the investor, provided the contract is related to the trade and business of the legal entity.

Decree 8,451/15 also provides new rules with respect to how companies account for exchange-rate variations used in the calculation of various taxes (IRPJ, CSLL, PIS and COFINS). Taxpayers will be able to elect to be taxed on foreign exchange rate variations on a cash or an accrual basis to the extent that, in a particular calendar month, the variation (positive or negative) exceeds 10%. The 10% variation will be determined based on the US dollar rates on the first and last day of the calendar month, and the change in the cash or accrual basis taxation may be effected in the month following the month in which the 10% variation was exceeded. A change can be made any time the monthly 10% threshold is exceeded, and will be valid for the entire calendar year; however, if the 10% variation occurred from January through May 2015, the change of regime must be made in June 2015.

<sup>1</sup> Under the noncumulative regime, PIS/COFINS generally apply at a combined rate of 9.25%, but taxpayers can offset PIS/COFINS paid on certain transactions with tax credits. A lower rate of 3.65% is levied under the cumulative regime, but no tax credits are granted.

Notably, Decree 8,451/2015 does not change the 1.65% PIS and 7.6% COFINS rates (combined rate of 9.25%) that apply to interest on net equity (these rates were not affected by the April 2015 decree).

#### **Comments**

Decree 8,451/2015 aims to provide some relief to taxpayers that experience large foreign exchange rate variations. However, it is important to note that the other provisions in Decree 8,451/2015 remain valid, and that income derived from domestic transactions, foreign exchange gains on loan transactions where the Brazilian entity is the lender, etc. will continue to be subject to the 0.65% and 4% rates as from 1 July 2015.

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