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Impossibility to impose tax on donations and inheritances of non-Brazilian residents

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The Brazilian Federal Supreme declared that **the Donation and Inheritance Tax (ITCMD) collected by the Brazilian States from *non-Brazilian residents* is unconstitutional.**

According to the STF decision, the ITCMD collection is considered unconstitutional due to the absence of a Complementary Law issued by the National Congress regulating the matter as determined by the Federal Constitution. The decision produces effects for tax events occurring after April 20, 2021 - the date of publication of the decision - and for ongoing judicial lawsuits in filed by taxpayers that have not paid the tax in relation the same past tax events.

More specifically, the decision comprises any collection by the States in the following hypotheses:

- **Donations in case the donor of assets and rights located in Brazil has residence abroad; and,**
- **Inheritance of assets and rights located in Brazil if the deceased person was a non-Brazilian resident or had his inventory processed abroad.**

By way of examples, non-Brazilian resident is anyone who does not reside (live) in Brazil on a permanent basis (no longer intends to live in Brazil), or who (i) leaves Brazil on a permanent basis, on the departure date, or after 12 consecutive months of absence, if he does not communicate his definitive departure from the country; (ii) leaves Brazil on a temporary basis, as of the day following that in which he completes 12 consecutive months of absence; or (iv) enters Brazil with a temporary visa and stays up to 183 days, consecutive or not, within a period of up to 12 months.

In June this year, the STF set forth a 12-month deadline for the National Congress to issue the Complementary Law with general rules for the ITCMD imposition by the States on gifts and inheritances from foreign residents. Thus, it is likely that, by June 2023, the ITCMD will be imposed in the above-mentioned hypotheses.

Therefore, the non-Brazilian residents that intend to donate assets and right should carry out such donations before the issuance of the above-mentioned Complementary Law, which must occur up to June 2023.