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International Remote Work by Brazilian Residents

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I. General rules on personal income tax

Taxation of income earned by individuals is determined according to "elements of connection" between the taxpayer and the country that seeks to tax the income. The elements of connection can be nationality, the person's place of residence, the place where the income was produced, or a combination of elements.

Since it is usually the local legislation of each country that fixes these elements of connection, conflicts may arise between two countries over taxation of the same income. For example, a person might be subject to tax in one country because the person is considered to be a tax resident, and in another country because that is where the company paying the person's salary is located.

International tax treaties and conventions seek to resolve these conflicts by determining that certain criteria will prevail over others, or by allowing taxpayers to offset tax paid in one country against tax owed in another.

II. Brazilian tax residents who work aboard | Income tax

In Brazil, individuals who are considered resident in the country for tax purposes have full tax liability, and therefore all income earned by residents is taxable in Brazil, regardless of which country is the source of payment, or where the residents' assets and bank accounts are located.[1]

Overall, the criteria for determining whether an individual is resident in Brazil are objective, and are summarized in the following table:[2]

Criteria
resides (lives) in Brazil on a permanent basis
acquired the status of non-resident of Brazil and returns to Brazil with the intention to establish residence, as from the date of arrival
leaves Brazil temporarily, or leaves Brazilian territory permanently without filing a Definitive Departure Notice in the first 12 consecutive months of absence from the country.

According to these rules, employees of Brazilian companies who leave Brazil but continue working remotely will be considered to be tax residents of Brazil, unless the employee files a Definitive Departure Notice (*Comunicação de Saída Definitiva*).

Thus, employees who are deemed to be resident in Brazil will continue to be subject to income tax in Brazil, just like employees who are physically located in the country, until they have been absent from Brazil for at least 12 consecutive months. In short, the fact that employees work outside Brazil is not enough, in itself, to change their tax status from the Brazilian perspective. As long as they are tax residents of Brazil, they have the obligation to pay tax in Brazil on their income, including any income and capital gains they may earn outside Brazil, in the country (or countries) where they are working remotely.

It's important to keep in mind that when employees leave Brazil, they may also be subject to income tax in their new country. The fact that employees continue to be residents of Brazil for tax purposes does not exclude the possibility that they may also be considered to be a tax resident of the country where they are working remotely, if the requirements under local legislation are met. In addition (among other possibilities), employees may have to pay tax on income on deposits and investments made in the country where they are working temporarily.

If there is a tax treaty between Brazil and the country where employees are working remotely, the treaty may establish rules to mitigate these conflicts.

III. Brazilian tax residents working outside Brazil | Social security contributions

When employees of Brazilian companies work remotely from other countries, another point that merits attention is the rules governing social security contributions, which may not be the same at the rules governing tax residency for income tax purposes.

As a rule, Brazilians and citizens of other countries hired in Brazil to work outside the country, or who are sent to work abroad by a company based in Brazil, have mandatory coverage by the General Social Security Regime (RGPS – *Regime Geral de Previdência*), and are required to pay social security contributions in Brazil.[3]

Just as in the case of income tax, however, different countries may have different criteria for determining whether individuals are required to contribute to their social security and pension systems, and there may be international treaties dealing with pension and social security that establish rules for resolving conflicts between local rules.

Thus, Brazilian companies that employ remote workers residing in other countries, and the employees themselves, also have to take into account the social security and pension rules of the place where the employees are located, and be aware of any social security convention that might exist between Brazil and the country in question.

NOTES:

[1] The model that uses residence as the element of connection, along with full tax liability, is increasingly common in International Tax Law, and is the model used by the Organisation for Economic Cooperation and Development as the basis for provisions under the OECD's Model Tax Convention, as noted in the Comments to the Model Convention – 21 November 2017, p. 105.

[2] Article 2 of Instruction IN 208/2002 issued by the Federal Revenue Service of Brazil – RFB.

[3] Article 12(I)(c), Law 8212/1991, article 9(I)(c) of the Social Security Regulations (Decree 3048/1999), and COSIT Tax Ruling no. 135 (2 June 2014).

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