International Tax Law: Tax Rulings, Court Decisions, and Other Highlights

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This issue highlights the main developments in international tax law in recent months, including tax rulings issued by the Federal Revenue Service of Brazil (RFB), legislative changes, and court decisions relevant to taxpayers with cross-border operations.

>>> Tax Rulings Involving Double Tax Treaties (DTTs)

Tax Ruling 40/2025

In Tax Ruling 40/2025 (19 March 2025), the RFB rejected the application of the Brazil–Japan tax treaty to payments made by a Brazilian company to a UK-based group company. The payments were subsequently passed on to the group's Japanese parent company, which had provided the services and was the actual beneficiary of the income.

The RFB took the position that the treaty applies exclusively to residents of the contracting states. Since the payment was made to a UK entity, the Brazil–Japan treaty could not be relied on, even if the amounts were ultimately transferred to the Japanese parent.

The taxpayer had argued that the Japanese company was the "beneficial owner" of the income. However, in the RFB's view, while the OECD Model adopts this concept, it is limited to Article 10 (dividends), Article 11 (interest), and Article 12 (royalties). Article 7 (business profits), by contrast, does not allow for the application of the beneficial ownership concept. The RFB further noted that the Brazil–Japan treaty does not explicitly provide for beneficial ownership in this context, and so the taxpayer could not rely on the concept to exclude the application of withholding income tax (WHT) at the rate of 15%.

Tax Ruling 15/2025

In Tax Ruling 15/2025 (21 February 2025), the RFB rejected the possibility of claiming a tax credit in Brazil for additional Italian tax imposed on interest payments made by an Italian parent company to its Brazilian subsidiary.

The taxpayer had entered into a loan agreement with its Italian parent company, with interest based on rates consistent with Brazilian Treasury securities, in line with Brazil's transfer pricing rules at the time. The interest remitted to Brazil was subject to a 15% WHT in Italy, under Article 11(2) of the Brazil–Italy tax treaty. Years later, the Italian tax authorities determined that the interest rate did not comply with the arm's length principle, and assessed additional tax at the standard 26% rate on the excess interest, pursuant to

Article 11(8) of the treaty.

The taxpayer then asked whether the additional tax paid by the Italian parent could be credited in Brazil under Article 465 of the Brazilian Income Tax Regulations (RIR/18).

The RFB took the view that the additional tax could not be credited, since Article 23(1) of the Brazil – Italy treaty allows for a credit for foreign tax only when it is imposed "in accordance with the provisions" of the treaty. According to RFB, the excess tax charged in Italy fell outside the scope of the treaty's provisions.

Although the RFB based its decision on the treaty's wording, the RFB appears to have overlooked the purpose of tax treaties – to prevent double taxation. DTTs are not intended to create a tax obligation, but rather to limit each contracting state's power to tax.

>>> Tax Rulings on Royalty Payments

The RFB had taken the position, in 2024, that payments for software marketing and distribution rights are royalties subject to WHT, but not CIDE (an economic policy tax) or the PIS/Cofins taxes due on import transactions (Tax Ruling 177, 24 June 2024). The ruling is particularly important in the case of PIS/Cofins, as the RFB reiterated that such payments constitute royalties, not remuneration for services, and therefore were not subject to the ISS service tax. (In 2023, the RFB followed the Brazilian Supreme Court's ruling that ISS applies to software licensing fees in Tax Ruling 107).

More recently, in Tax Ruling 54 (25 March 2025), the RFB examined the WHT treatment of payments for software distribution rights under the Brazil–France DTT. The question raised by the taxpayer was whether payments to its French parent company should be treated as royalties, subject to WHT, or as business profits taxable exclusively in France, under Article 7 of the treaty.

The RFB concluded that the payments qualified as royalties under the treaty and were therefore subject to WHT at the 10% rate established in Article 12. The ruling was based on the fact that the contract granted the Brazilian company the right to sublicense and distribute the software.

>>> Tax Ruling on Trusts

In Tax Ruling 75 (30 April 2025), the RFB clarified its interpretation of the tax treatment of trusts in light of changes introduced by Law 14.754/2023 to the taxation of offshore investments and assets.

The case involved an irrevocable discretionary trust with a 150-year duration, created through the transfer of assets by a foreign legal entity. The trust was intended to preserve family assets, with distributions to potential beneficiaries limited to exceptional circumstances. The individuals named in the trust had no enforceable claim to its assets except in situations of extreme need.

Applying the tax transparency rules for trusts under Law 14.754/2023, the RFB concluded that:
(i) since the trust was irrevocable, ownership of the assets was transferred from the settlor to the beneficiaries upon its formation; and

(ii) for Brazilian tax purposes, the mere expectation of a right was sufficient for the beneficiaries to be treated as the owners of the trust assets, even in the absence of any legal or economic entitlement.

The RFB therefore took the position that the individuals named in the trust are required to declare the trust assets in their annual income tax return, and pay personal income tax on income generated by the assets, in accordance with Articles 10 and 11 of Law 14.754/2023.

The RFB's interpretation means that trust beneficiaries are required pay tax on income derived from trust assets, even if the income is not legally or economically available to them, based on a mere expectancy.

This approach appears to be incompatible with the principles of the National Tax Code (CTN) and the constitutional principles governing taxation of income.

Moreover, Law 14.754/2023 does not explicitly state that irrevocable trusts result in the automatic transfer of ownership from settlor to beneficiaries. Article 10§1 of the Law establishes a possibility, not a presumption, and its application should depend on the facts of each case.

>>> Updates on International Treaties

New treaty with Norway to avoid double taxation (Decree 12.406/2025)

On 14 March 2025, Brazil published a new treaty with Norway to avoid double taxation (Decree 12.406/2025), replacing the previous 1980 agreement.

The new treaty caps WHT on technical services at 10%, and defines "technical services" to include payment for managerial, technical, or consultancy services, but excludes services rendered by employees or educational institutions, and personal services.

The treaty also introduces reduced rates for WHT on dividends, interest, and royalties, which may be limited to 10% for:

- Dividends, when paid to a company holding at least 25% of the capital of the payor company;
- Interest, when paid to banks on loans having a term of at least five years, taken out to finance equipment or investment projects; and
- Royalties, in general, except for payments for the use of trademarks, which may be taxed at up to 15%.

The treaty's protocol equates payments for technical assistance as royalties for tax purposes.

Other notable provisions include a limitation-on-benefits clause, which restricts treaty access for arrangements lacking economic substance, and a most-favoured-nation clause, which automatically grants Norway the benefit of more favourable rates Brazil may agree on with OECD countries outside Latin America.

Also worth noting are updates to Brazil's treaties with Sweden (signed 19 March 2019) and China (signed 23 May 2022) have been approved by the National Congress under Legislative Decrees 167/2025 and 170/2025, respectively. Both treaties are now awaiting promulgation by presidential decree to come into force in Brazil.

Federal Appeal Court issues favourable decision on the application of the Brazil-Austria Treaty

The 4th Region Federal Appeal Court (TRF-4) recently handed down a decision favourable to taxpayers on the taxation of profits earned by foreign subsidiaries (Proceeding no. 5002355-27.2021.4.04.7205, decided on 8 April 2025). The court's 1st Panel unanimously decided that profits recorded by an indirect subsidiary of a Brazilian company, which were recognised via the equity method by a direct subsidiary located in Austria, were not subject to taxation in Brazil.

In the case before the TRF-4, the Austrian subsidiary's profits stemmed exclusively from profits earned by an indirect subsidiary in Madeira, which were recognised in the Austrian company's financial statements under the equity method.

The court ruled that applying the equity method to determine foreign subsidiaries' profits was contrary to the law. Moreover, the court took the view that even if the profits were attributable to the Austrian subsidiary, Article 7 of the Brazil-Austria Treaty would prevent Brazil from taxing those profits until they were actually made available to the Brazilian parent company.

The court also found that the automatic taxation regime established by Article 74 of Provisional Measure 2.158-35/01 (now revoked) was incompatible with the dividend exemption granted under Article 23(2) of the treaty.

It is worth noting that the broader question of whether Brazil's automatic taxation of foreign subsidiaries is compatible with Article 7 of its double taxation treaties is still pending before the country's Supreme Court in Appeal RE 870.214.

RFB makes changes to its list of tax havens

On 13 May 2025, the Federal Revenue Service of Brazil (RFB) issued Instruction 2.265 (IN RFB 2.265), amending Instruction 1.037/2010, which lists the jurisdictions considered to have favourable tax regimes or to offer privileged tax treatment.

IN RFB 2.265 removes the United Arab Emirates from the list of jurisdictions with favourable taxation, and excludes Austrian holding companies that do not engage in real economic activity from the group of privileged tax regimes.

The exclusion of the United Arab Emirates comes several years after the Brazil-UAE Treaty came into force under Presidential Decree 10.705 of 26 May 2021.

IN RFB 2.265 also amends the criteria for defining a jurisdiction with favourable taxation, reducing the minimum corporate income tax rate threshold from 20% to 17%. This change aligns the RFB's rules with the standard already adopted under Brazil's new transfer pricing legislation (Law 14.596/2023), which had reduced the threshold to 17%.