Tax aspects of investing in the Latin America financial markets

Digitalization of information by tax authorities and the ability to attract investment

2016 Latin America Tax Summit, Rio de Janeiro
Focus session – Monday 29 February
Investing in the Latin American financial market

Roberto Haddad
Tax Partner, KPMG in Brazil
Data Analytics
Technological advances

Despite being based on Chile’s model, Brazilian Sped has proved to bring several improvements, being an example for many countries, as India and China.

Individual Taxpayers can get in contact with the Brazilian Federal Revenue (BFR) and transmit its information through mobile apps.

All ancillary obligations started to be transmitted digitally

More control on labor compliance

Digital environment for the taxpayer

BFR was awarded in the category of Government with Information Technology Project for Business due to this project. (IT Leaders Award)

Automatic processing of tax credits

Challenge: High costs to implement the system

Source: KPMG International*, 2016

*Created by KPMG Brazil based on information provided by Brazilian Federal Revenue (BFR).
Brazil currently is on SPED’s environment. Most ancillary obligations are digital and cross-checking is easier, which is proved to be an effective way to avoid tax evasion.

Technology benefits

Due to the development of SPED environment, Brazilian Federal Revenue (BFR) was benefited with:

— **Cost reduction**: due to the rationalization and simplification of ancillary obligations;

— **Quick access to information**;

— **Possibility to cross-check information**;

— **Reduction of time in processing information**: Credits and refunds are faster and cross-checking is easier.
What are the tools used by BFR to perform the data analytics?
Data Analytics

HARPIA

BFR’s system that cross-checks a high amount of data and make a correlation between them.

Helps tax auditors to be more accurate on the election of the taxpayers to be inspected.
ContÁgil

The system performs the cross-check of external and internal data from BFR covering tax, social security and customs matters.
Data Analytics

SAFIS

Supports tax auditors’ field work.
Data Analytics

SISCOL

Used for the register of tax debts and the final results from tax inspections
Data Analytics

E-Safira

System used for the issuance of tax assessments related to the taxes governed by BFR
Cross-checking data

Around 26 thousand taxpayers were notified in order to check inconsistencies.

For FY2015, it is expected that $40 billion dollars will be assessed by BFR.
Cross-checking data

- Increase in the number of tax assessments over the last years.
- One of the main reasons was the technological instruments for cross-checking data.

Source: BFR's Audit Plan for 2014-2015
Cross-checking data

Following the same rational...

<table>
<thead>
<tr>
<th>Tax return</th>
<th>Calendar Year</th>
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<tbody>
<tr>
<td>EFD Fiscal</td>
<td>2009</td>
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<td>EFD Contribuições</td>
<td>2012</td>
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<table>
<thead>
<tr>
<th>Year</th>
<th>Tax collection in BRL billion</th>
<th>Increase</th>
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<tbody>
<tr>
<td>2010</td>
<td>90</td>
<td>-</td>
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<tr>
<td>2011</td>
<td>109</td>
<td>21%</td>
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<tr>
<td>2012</td>
<td>116</td>
<td>6%</td>
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<tr>
<td>2013</td>
<td>190</td>
<td>64%</td>
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</table>

BFR Action Plan

BFR is comparing all data received from ancillary obligations to identify divergences.

BFR is connected with State and Municipal tax authorities to identify inconsistencies in the returns provided by taxpayers.
Cross-checking data

BFR also analyses the following information in order to verify discrepancies.

- Financial transactions;
- Credit card expenditures;
- Payments;
- Regulatory agencies information; and
- Invoices;
Cross-checking data

Recent Supreme court precedent allowed BFR to access taxpayer’s bank account *without* the need of any *judicial intervention*
A bit of curiosity

In case Brazilian tax laws were printed in A4 paper in font size 12, they would correspond to 6 times the Burj Khalifa building, the tallest buildings in the world.
Our neighbours

Technology advances are a reality for most of the countries.

In Latin America many countries are heading to a completely digital tax environment:

- **Argentina**: From 2015 the Argentinian Federal Revenue (AFIP) can have online all data related to IVA (payment, goods movements...).

- **Chile**: RUT and RIAC’s system are important tool to prevent tax evasion, since helps the Chilean IRS’s inspections.

- **Peru**: Peru have established the “Proyecto de Cuenta Única” with the purpose to create an unique data base with tax relevant information.

- **Mexico**: The program “Buzón Tributario” is the online communication service that interact and exchange digital documents with the fiscal authorities in a fast, reliable and safe way.
Multinational enterprises are demanded to disclose high-level information related to their global business and transfer pricing practices.

Information shared with other jurisdictions on a periodic basis.

Mandatory disclosure rules can require voluntary disclosure from taxpayers (the users) and/or planners (promoters or advisors) of potential avoidance schemes.

Information shared with other jurisdictions as soon as possible.

Despite not being a member of OECD, Brazil joined the BEPS Project, and as a G20 member, it also coordinates the initiative.
Key instruments

The effective international exchange of information became a reality due to the following instruments:

— Convention on Mutual Administrative Assistance in Tax Matters:
  — Developed in 1988 and amended in 2010, counts with 94 participant jurisdictions.
  — Provides the ideal instrument to swiftly implement automatic exchange of information.

— Foreign Account Tax Compliance Act (FATCA)
  — Adopted by the US government in 2010;
  — In force by many countries, represents a significant political momentum for putting in place a global automatic exchange standard developed.
**Key instruments**

— **Common Report Standard (CRS):**

— In 2013 OECD agreed on the text of the Common Reporting Standard to implement the Automatic Exchange of Information (AEOI) standard.

— As a result of that process 94 jurisdictions are now committed to implement the CRS by 2017 or 2018 and ensuring the effective automatic exchange of information with their respective relevant exchange partners.

— **Example of information that can be cross-checked:**

— Income;

— Gross proceeds from the sale of financial assets

— Account balances

— Director's fees
Key instruments

— **JITSIC Network:**
   — Provides tax administrations with an agile mechanism for information exchange and collaboration, while ensuring that all exchanges of information are in accordance with the provisions of an effective bilateral or multilateral tax convention or a tax information exchange agreement.

— **Country-by-country (CbC) report package**
   — As a way to comply with BEPS 13 action plan OECD have implemented the CbC Report in 2015.
   — Multinational Enterprises (MNEs) must report annually and for each tax jurisdiction in which they do business the information set out therein.
   — The package also contains agreements models, to be implemented in the future, in order to facilitate the exchange of country-by-country reports among tax administration.
Where does Brazil stand?

— e-Financeira is the Brazilian instrument that complies with FATCA;
— Disclosure of more information than FATCA requirements;
— Banks, Insurance companies, Investment Funds Managers are responsible to file the e-Financeira, reporting the following data:
  ✓ Year-end balances;
  ✓ Payment activities;
  ✓ Investment activities, including increase of the investment or its realization;
  ✓ Monthly gross income;
  ✓ Exchange operations; and
  ✓ Transfer of funds abroad.
  ✓ Withdrawals;

— Obligation to report monthly activities or month-end balances that exceed BRL 6,000 for entities and BRL 2,000 for individuals.
Where does Brazil stand?

— FATCA measures have already been implemented;

— BFR have access to most tax related information of their taxpayers, which fastens and makes the inspections more efficient;

— Convention on mutual administrative assistance in tax matters have been already approved by the congress and shall be in force in 2016;

— Brazil have been rated by OECD as a Largely compliant jurisdiction;

— Automatic Exchange of Financial Information in Tax Matters (AEOI) measures are expected to be implemented in 2018.
General tax update for foreign and external financial investors ....
Financial Services market - Mexico

Israel Alvarez
Tax Partner, KPMG in Mexico
Agenda

— Sale of shares by a Foreign Resident.
— Dividends by a Foreign Resident.
— Interests by a Foreign Resident.
Sale of shares by a Foreign Resident

— The **source of wealth** will be considered to be **located in Mexican territory** when the **person** who **issued** the shares or securities is a Mexican resident or when more than 50% of the accounting value of said shares or securities derives directly or indirectly from real properties located in Mexico.

— **25% tax** on the gross transfer value (**general rule**).

— **35% tax** on net gain (**election**), complying with the following requirements.
Dividends by a Foreign Resident

— The source of wealth shall be considered to be in Mexican territory when the person that distributes such items resides in Mexico.

— Legal entities that distribute dividends or profits described in this section shall withhold the tax at the 10% rate which shall be applied over the dividends or profits.

— Legal entities have to provide to the persons a certificate evidencing the amount of the dividend or profits that is distributed and the tax withheld. The tax paid shall be considered definitive.

— It is applicable treaties to avoid double taxation.
Interests by a Foreign Resident

— The source of wealth will be considered to be located in Mexican territory when:

  — The capital is placed or is invested in Mexico or

  — When the interest is paid by a Mexican resident or a foreign resident with a permanent establishment in Mexico.

— The tax rate may be 4.9%, 10%, 15%, 21%, 35%, it depends on the beneficial owner of the interest.
Interests by a Foreign Resident

The **interest are exempt** when:

— Interest **derived from credits extended to the Federal Government** or to the Central Bank and from bonds issued by them acquired and paid abroad.

— Interest **stemming** from term credits for three or more years **extended or guaranteed by foreign resident financing entities** engaged in promoting exports by granting loans or guarantees under preferential conditions.
Interests by a Foreign Resident

The interest are exempt when:

— Interest derived from credits granted or guaranteed under preferential conditions by foreign resident financing entities to institutions authorized to receive tax-deductible donations under this Law, provided that the latter use the credits to carry out assistance or charity activities.

— Interest derived from credits extended to the Federal Government or the Central Bank and from negotiable instruments issued by the Federal Government or by the Central Bank, placed in Mexico among the general investing public, provided that the effective beneficiaries thereof are foreign residents.
Financial Services market - Argentina

Fernando Quiroga Lafargue
Tax Partner, KPMG in Argentina
Agenda

— Non related fiscal issues affecting global investment

— Foreign investors fiscal framework versus local investors

— Information exchange: International agreements signed by Argentina

— Conclusion
Non related fiscal issues affecting global investment

- The default and financial isolation
- Demand of back up deposit for incoming investment
- Exchange restrictions
- Strong limitations to pay back royalties and dividends to head offices
- Local capital market size
New Argentine environment

El gobierno nacional levantó las restricciones cambiarias
Política Argentina 16/12/2015

Holdouts; La Argentina presentará una propuesta de pago
El Cronista Comercial 02/02/2015

Eliminan restricciones para fomentar ingresos de capitales
El Cronista Comercial 30/12/15

Eliminan el encaje para ingresar dólares al país
Clarín 16/12/2015

Standards & Poors subió nota de Argentina
BAE Negocios 4/2/2015

El gobierno emitirá bonos para pagar acreedores en default profusional 4/2/2016

Gesto de EEUU, ayudará al país a volver a los mercados
La Nación 22/1/16

Tras el cepo los plazos fijos en dólares ya crecieron USD 2000 millones
El Cronista Comercial 5/2/16

Eliminan el encaje para ingresar dólares al país Clarín 16/12/2015

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Tras el cepo los plazos fijos en dólares ya crecieron USD 2000 millones
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Agenda

— Non related fiscal issues affecting global investment

— **Foreign investors fiscal framework versus local investors**

— Information exchange: International agreements signed by Argentina

— Conclusion
Public Bonds

**Foreign Investors**

- **Income Tax**
  - Sales exempted
  - Interest exempted
  Exemptions applicable even if income is taxable in foreign investors’ country

- **Wealth Tax**
  Exempted

**Local investors**

- **Income Tax**
  - Individuals
    - Sales exempted
    - Interest exempted
  - Corporations
    Levied 35% (tenure and sales)

- **Wealth Tax**
  Exempted
Stocks listed in local stock market

Foreign Investors

- **Income Tax**
  - **Sales levied**
    - 15% tax rate over 90% presumed rent, or
    - 15% tax rate over actual income value
  
Applicable even when buyer and seller are from abroad

Local investors

- **Income Tax**
  - **Individuals**
    - Sales exempted
  - **Corporations**
    - Levied 35% (when stocks sold)
## Stocks listed in local stock market (cont I)

<table>
<thead>
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<th>Foreign Investors</th>
<th>Local investors</th>
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<tbody>
<tr>
<td><strong>Income Tax</strong></td>
<td><strong>Income Tax</strong></td>
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<tr>
<td>— Dividends levied</td>
<td>— Dividends</td>
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<tr>
<td>— 10% over dividends</td>
<td>— Individuals</td>
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<tr>
<td>— Regardless the levying of equalization tax</td>
<td>• Levied 10%</td>
</tr>
<tr>
<td></td>
<td>• Regardless the levying of equalization tax</td>
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<tr>
<td></td>
<td>— Corporations</td>
</tr>
<tr>
<td></td>
<td>• Not applicable</td>
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<tr>
<td></td>
<td>• Regardless the levying of equalization tax</td>
</tr>
</tbody>
</table>
Stocks listed in local stock market (cont II)

Foreign Investors

- **Tax treaties**
  - Income Tax
  - **Sales**
    - Italy exempted
    - 10% limit with Spain, UK, Netherlands, Denmark, Sweden and Switzerland
    - Exempted intragroup sales

Foreign Investors

- **Tax treaties**
  - Income Tax
  - **Dividends**
    - 10% limits prevents equalization tax: Australia, Belgium, Canada, Denmark, Finland, Norway, Netherlands, UK, Sweden and Spain.
Stocks listed in local stock market (cont III)

Foreign Investors

- Wealth Tax
  - Levied 0.5 % over accounting equity (except branches)

Local Investors

- Wealth Tax
- Individuals
  - Levied 0.5 % over accounting equity
- Corporations
  - Not applicable
### Stocks listed in local stock market (cont IV)

#### Foreign Investors

Assessment of taxable income (Income Tax)

**In USD**

- Investment: USD 100,000
- Purchase date: 4/2004
- Currency rate: April 04: 1 USD = 2.85 $ (Arg)
- Sales price: USD 100,000
- Taxable Income: USD 0.

**In $ (Arg)**

- Investment: $ (Arg) 285,000
- Purchase date: 4/2004
- Currency rate April 04: 1 USD = 2.85 $ (Arg)
- Sales price: $ (Arg) 1,500,000
- Present currency rate: 1 USD = 15 $ (Arg)
- Taxable Income: $ Arg 1,215,000
- Taxable Income (in USD): 81,000
Public offering corporate bonds

**Foreign Investors**

- **Income Tax**
  - Sales exempted
  - Interest exempted
  Exemptions applicable even if income is taxable in foreign investors’ country

- **Wealth Tax**
  - Exempted

**Local Investors**

- **Income Tax**
  - Individuals
    - Sales exempted
    - Interest exempted
  - Corporation
    Levied 35 % (withholding)

- **Wealth Tax**
  - Individuals levied (between 0,5 % to 2,5 %)
  - Corporations not levied
Public offering mutual funds

<table>
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<tr>
<th>Foreign Investors</th>
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<tbody>
<tr>
<td><strong>Income Tax</strong></td>
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<tr>
<td>- Sales and redemption exempted</td>
</tr>
<tr>
<td>- Interest exempted</td>
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<tr>
<td>Exemptions applicable even if income is taxable in foreign investors’ country</td>
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<tr>
<td><strong>Wealth Tax</strong></td>
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<tr>
<td>- Exempted</td>
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<tr>
<td>Corporations in tax havens levied 0.75 %</td>
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<tr>
<th>Local investors</th>
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<tr>
<td><strong>Income tax</strong></td>
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<tr>
<td>- Individuals</td>
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<tr>
<td>- Sales and redemption exempted</td>
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<tr>
<td>- Interest exempted</td>
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<tr>
<td>- Corporations</td>
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<tr>
<td>Levied 35% (redemption time)</td>
</tr>
<tr>
<td><strong>Wealth Tax</strong></td>
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<tr>
<td>- Individuals: Levied</td>
</tr>
<tr>
<td>- Corporations: Not levied</td>
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<tr>
<td>Derivatives</td>
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</tbody>
</table>

### Foreign Investors

- **Income Tax**
  - Income not levied

### Local Investors

- **Income Tax**
  - Individuals
    - Usual operators levied
  - Corporations
    - Levied 35%
Agenda

— Non related fiscal issues affecting global investment

— Foreign investors fiscal framework versus local investors

— Information exchange: International agreements signed by Argentina

— Conclusion
Cooperating Jurisdictions

PAÍSES, DOMINIOS, JURISDICIONES, TERRITORIOS, ESTADOS ASOCIADOS Y REGÍMENES TRIBUTARIOS ESPECIALES, CONSIDERADOS COOPERADORES A LOS FINES DE LA TRANSPARENCIA FISCAL

Decreto Nº 589/2013

<table>
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<th>Countries</th>
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<td>Albania, República de</td>
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<td>Australia, Mancomunidad de</td>
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<td>Belice</td>
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<td>Bermudas</td>
<td>Bermudas, Territorio Británico de Ultramar de</td>
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<td>Bolivia</td>
<td>Bolivia, Estado Plurinacional de</td>
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<td>Brasil</td>
<td>Brasil, República Federativa de</td>
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<td>Cooperating Jurisdictions</td>
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<td><strong>Bulgaria</strong></td>
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<td><strong>Ciudad del Vaticano</strong></td>
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<td><strong>Corea del Sur</strong></td>
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<td><strong>El Salvador</strong></td>
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<td><strong>Eslovaquia</strong></td>
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| **Bulgaria, República de** |
| **Caimán, Islas**         |
| **Canadá**                |
| **Camerún, República de** |
| **Checa, República**      |
| **Chile, República de**   |
| **Chipre, República de**  |
| **China, República Popular** |
| **Ciudad del Vaticano, Estado de la** |
| **Colombia, República de** |
| **Corea, República de**   |
| **Costa Rica, República de** |
| **Croacia, República de** |
| **Cuba, República de**    |
| **Curazao, País de**      |
| **Dinamarca, Reino de**   |
| **Ecuador, República del** |
| **El Salvador, República de** |
| **Eslovaca, República (Eslovaquia)** |
Cooperating Jurisdictions

<p>| Eslovenia             | Eslovenia, República de         |
| España                | España, Reino de               |
| Estados Unidos        | Estados Unidos de América      |
| Estonia               | Estonia, República de          |
| Filipinas             | Filipinas, República de        |
| Finlandia             | Finlandia, República de        |
| Feroe                 | Feroe, Islas (o Islas Faroe)   |
| Francia               | Francesa, República (Francia)  |
| Gabon                 | Gabón, República de            |
| Georgia               | Georgia                        |
| Ghana                 | Ghana, República de            |
| Gibraltar             | Gibraltar                      |
| Grecia                | Helénica, República (Grecia)   |
| Groenlandia           | Groenlandia                    |
| Guatemala             | Guatemala, República de        |
| Guernsey              | Guernsey, Bailiazgo de         |
| Honduras              | Honduras, República de         |
| Hong Kong             | Hong Kong                      |
| Hungría               | Hungría                        |
| India                 | India, República de la         |
| Indonesia             | Indonesia, República de        |
| Irlanda               | Irlanda, República de          |
| Isla de Man           | Man, Isla de                  |
| Islas Vírgenes Británicas | Islas Vírgenes Británicas, Islas |
| Islas Turcas y Caicos | Turcas y Caicos, Islas        |
| Islandia              | Islandia, República de         |</p>
<table>
<thead>
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<th>Cooperating Jurisdictions</th>
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<tbody>
<tr>
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<td>Noruega, Reino de</td>
</tr>
<tr>
<td>Nueva Zelanda</td>
<td>Nueva Zelanda</td>
</tr>
<tr>
<td>Panamá</td>
<td>Panamá, República de</td>
</tr>
<tr>
<td>Países Bajos</td>
<td>Países Bajos, Reino de los</td>
</tr>
</tbody>
</table>
## Cooperating Jurisdictions

<table>
<thead>
<tr>
<th>Paraguay</th>
<th>Paraguay, República del</th>
</tr>
</thead>
<tbody>
<tr>
<td>Perú</td>
<td>Perú, República del</td>
</tr>
<tr>
<td>Polonia</td>
<td>Polonia, República de</td>
</tr>
<tr>
<td>Portugal</td>
<td>Portuguesa, República (Portugal)</td>
</tr>
<tr>
<td>Reino Unido</td>
<td>Reino Unido de Gran Bretaña e Irlanda del Norte</td>
</tr>
<tr>
<td>República Dominicana</td>
<td>República Dominicana</td>
</tr>
<tr>
<td>Rumania</td>
<td>Rumania</td>
</tr>
<tr>
<td>Rusia</td>
<td>Rusia, Federación de</td>
</tr>
<tr>
<td>San Marino</td>
<td>San Marino, Serenísima República de</td>
</tr>
<tr>
<td>Sint Maarten</td>
<td>Sint Maarten, Islas de</td>
</tr>
<tr>
<td>Senegal</td>
<td>Senegal, República de</td>
</tr>
<tr>
<td>Seícheles</td>
<td>Seícheles, República de</td>
</tr>
<tr>
<td>Singapur</td>
<td>Singapur, República de</td>
</tr>
<tr>
<td>Sudáfrica</td>
<td>Sudáfrica, República de</td>
</tr>
<tr>
<td>Suecia</td>
<td>Suecia, Reino de</td>
</tr>
<tr>
<td>Suiza</td>
<td>Suiza, Confederación</td>
</tr>
<tr>
<td>Túnez</td>
<td>Tunecina, República</td>
</tr>
<tr>
<td>Turkmenistán</td>
<td>Turkmenistán</td>
</tr>
<tr>
<td>Turquía</td>
<td>Turquía, República de</td>
</tr>
<tr>
<td>Ucrania</td>
<td>Ucrania</td>
</tr>
<tr>
<td>Uganda</td>
<td>Uganda, República de</td>
</tr>
<tr>
<td>Uruguay</td>
<td>Uruguay, República Oriental de</td>
</tr>
<tr>
<td>Venezuela</td>
<td>Venezuela, República Bolivariana de</td>
</tr>
</tbody>
</table>
Agenda

— Non related fiscal issues affecting global investment

— Foreign investors fiscal framework versus local investors

— Information exchange: International agreements signed by Argentina

— Conclusion
Capital markets investment

#foreign investors enjoy more fiscal benefits
Financial Services market - Brazil

Roberto Haddad
Tax Partner, KPMG in Brazil
Brazilian tax updates on financial market
Brazilian tax environment for foreign investors

- STRAIGHTFORWARD RULES FOR FOREIGN INVESTMENTS
- CAPITAL REPATRIATION: DIVIDENDS, INTEREST ON NET EQUITY, INTEREST ON DEBT
- NO INCOME TAX ON STOCK MARKET INVESTMENTS
- NO EXCHANGE CONTROLS
- BRAZIL IS FASTLY IMPLEMENTING EXCHANGE OF INFORMATION AGREEMENTS
Country Overview

— Brazil is not an OECD-member

— Brazilian TP rules are not OECD-based

— Brazil have entered DTT with 32 jurisdictions (some of the exceptions are US and UK)
How to invest in Brazil: Investing in the Brazilian Financial Market

— According to legislation, non-resident investors, whether individuals or legal entities, may invest their funds in the same financial and capital market instruments and operational modalities available to resident investors.

— Investors must hire a legal representative in Brazil (a financial institution) and fill the form attached to Resolution 4.373/2014.

— Tax exemptions for investments in stocks and governmental bonds for foreign investors (non privileged tax jurisdictions).
## Investment Vehicles

<table>
<thead>
<tr>
<th>Credit Receivables Investment Funds (FIDCs)</th>
<th>Multi-Strategy Funds</th>
<th>Real Estate Funds (FII)</th>
<th>Private Equity Funds (FIPs)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Portfolio:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Investments can be only made by qualified investors</td>
<td>• Multi-Strategy Funds can invest in several risk factors, without any special commitment.</td>
<td>• Investments in real estate projects, shares of fixed income funds and/or fixed income securities related to FII’s activity</td>
<td>• Investments can be only made by qualified investors</td>
</tr>
<tr>
<td>• At least 50% of resources should be invested in credit receivables.</td>
<td>• Any financial investment, in accordance with limits established in the by-laws and CVM Regulation.</td>
<td>• 100% of fund’s net equity should be invested in FII’s activities</td>
<td></td>
</tr>
<tr>
<td>• Derivatives are optional, provided the objective is to hedge spot positions.</td>
<td>• Investments abroad: Funds for professional’s investor up to 100% and other funds for qualified investors up to 40%.</td>
<td>• The by-laws of the fund shall establish the criteria to be observed for the definition of companies that may be the object of investment by the fund.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• The fund must have influence in the strategy and operations of the invested companies.</td>
<td></td>
</tr>
</tbody>
</table>
Investment vehicles

FIP

- Income and capital gains received by the FIP are usually not subject to WHT in Brazil
- No WHT on disposal or amortization of FIP quotas for non-residents that hold up to 40% of interest and dividends and that are not located in a low tax jurisdiction
- Premium opportunity when including a vehicle owned by the FIP to acquire Target (when there is genuine business purpose)
- IOF tax (currently the tax rate is 0%)

Tax efficient vehicle

A
B
C
Investors

Abroad
Brazil

FIP

Holding

Target Co.

Just corporations (S/A)

Shares and dividends must not exceed 40% limit
**Investment tax rates**

<table>
<thead>
<tr>
<th></th>
<th>WHT</th>
<th>IOF</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stock</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Fixed income</td>
<td>0% - 15%*</td>
<td>0%</td>
</tr>
<tr>
<td>Variable income</td>
<td>0% - 15%*</td>
<td>0%</td>
</tr>
<tr>
<td>FII</td>
<td>20%</td>
<td>0%</td>
</tr>
<tr>
<td>FIP</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>FIDC</td>
<td>0%</td>
<td>0%</td>
</tr>
</tbody>
</table>

* The tax rate can change depending on the type of investment.
## Capital repatriation

### Dividends
- ✓ No WHT on dividends
- ✓ IOF zero-rated
- ✗ No tax deduction in Brazil
- ✗ Trapped cash – no repatriation until sufficient earnings to pay dividends

### Interest on loan
- ✓ Interest deduction for Corporate Income Tax in Brazil (subject to thin cap rules)
- ✗ WHT of 15% on interest (25% to tax haven).

### Interest on net equity
- ✓ Interest deduction for Corporate Income Tax in Brazil
- ✓ IOF zero-rated
- ✗ WHT of 15% on interest (25% to tax haven). Under discussion to raise to 18%.
- ± Treatment on beneficiary country

### Exit
- **Brazilian Fund (“FIP”)**
  - Disposal of Brazilian company: No WHT
  - Disposal of FIP: No WHT (40% of minimum shares/dividends)
- **Non resident Investor**
  - Disposal of a Brazilian company: 15% of WHT (25% when paid to tax haven). New rates under discussion in Congress.
Current changes in Brazil

Government’s measures for improving budget, including the increase or reinstatement of taxes

- Temporary Contribution on Financial Operations (“CPMF”)
- Amendment to the Interest on Net Equity (“INE”) Mechanism
- Individuals’ Capital Gain Taxation
Main tax changes

Temporary Contribution on Financial Operations ("CPMF"): 

- September 22, 2015: project to amend the Brazilian Constitution (PEC 140), allowing the CPMF to be reinstated

- Contribution levied on every bank transaction (deposits and withdrawals)

- Rate of 0.20% (possible increase to 0.38%)

- Applicable for 4 years, starting as of 2016 (last quarter)
Main tax changes

Changes in the Interest on Net Equity (“INE”):

✓ Increase of the WHT rate from 15% to 18%; and

✓ Cap of the Government’s long-term interest rate (“TJLP”) to 5% (it was set at 7% for the fourth trimester of 2015)

*The provisional measure still needs to be approved by the Congress.*
Main tax changes

**Individuals’ Capital Gain Taxation:**

- Currently, individuals are subject to a 15% tax on capital gains
- Proposal of new WHT rules and rates (starting as of January 1, 2017):

<table>
<thead>
<tr>
<th>Value</th>
<th>Tax rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Until R$ 5.000.000</td>
<td>15%</td>
</tr>
<tr>
<td>From R$ 5.000.000 to R$ 10.000.000</td>
<td>17.5%</td>
</tr>
<tr>
<td>From R$ 10.000.000 to R$ 30.000.000</td>
<td>20%</td>
</tr>
<tr>
<td>More than R$ 30.000.000</td>
<td>22.5%</td>
</tr>
</tbody>
</table>

- In case it is approved, new rules may be also applicable to non-residents
- Still needs final approval from congress.
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Financial Services market - Colombia

Jessica Massy
Tax Director, KPMG in Colombia
Foreign capital investments

Abroad

Colombia

Foreign Investors

- Shares
- Debt bonds
- Other investments
### International capital investments in Colombia

<table>
<thead>
<tr>
<th>Direct Investments</th>
<th>Portfolio Investments (*)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-listed shares or equities</td>
<td>Listed shares or equities</td>
</tr>
<tr>
<td>BOCEAS</td>
<td>Securities (TES, Bonds, CDTs)</td>
</tr>
<tr>
<td>Fiduciary businesses (e.g., trusts)</td>
<td>Collective portfolio</td>
</tr>
<tr>
<td>Immovable property</td>
<td>Securities listed on the foreign stock quotation systems (e.g., Pacific, Avianca)</td>
</tr>
<tr>
<td>Contributions in partnership or joint venture contracts</td>
<td>Derivatives</td>
</tr>
<tr>
<td>Investments in private equity funds (**)</td>
<td>Money market operations (repos)</td>
</tr>
</tbody>
</table>

(*) Foreign Investment Funds and/or Managed Accounts  
(**) They are closed collective portfolios that invest at least 2/3 of the contributions in assets or unlisted securities (Title 14 of Book 1 of Decree 2555 of 2010)
### Foreign Investment in Colombia (*)

<table>
<thead>
<tr>
<th>Direct Investments</th>
<th>Portfolio Investments</th>
</tr>
</thead>
<tbody>
<tr>
<td>General regime applicable to non-residents and foreign entities without residence or domicile</td>
<td>Section 18-1 of the Colombian Tax Code (“CTC”)</td>
</tr>
<tr>
<td>Double Tax Conventions (“DTC”)</td>
<td>DTC</td>
</tr>
</tbody>
</table>

**Income tax 33% or 40%**  
**Capital gains tax 10%**

(*) Decree 2080 of 2000 and Decree 4800 of 2010
Foreign portfolio investments

Foreign Investors

Abroad

Colombia

Administrator

- Brokerage firms
- Trusts
- Investment management companies

Investments
General regime of Foreign Portfolio Investments

— Administrator Obligations:

- **Tax ones**: Decree 4800 of 2010 referred to the taxation of investment funds of foreign capital provided in Section 18-1 of the Tax Code.
- **Exchange ones**: Present consolidated exchange declarations to the Central Bank.
- **Informative ones**: to be supplied to exchange and/or inspection and surveillance authorities (in heads of each investor).
- The others that the authority of inspection and surveillance determines in exercise of its powers.
### Tax regime

- **Income taxpayer**

- **Withholding tax: final payment**

The administrators will act as withholding agents and will apply all withholding taxes except in the case of dividends.

- **General Income tax: withholding rate: 14%. If the investor is located in a tax haven, the rate will be 25%,**

In the case of dividends the payer withholds when applicable at a 25% rate.

- **Income taxpayers non liable to file income tax returns (withholding taxes are final taxes), except when more than 10% of the outstanding shares of the company where the investment is made during one taxable year is sold, event in which the administrator would be required to file an income tax return on behalf of the investor.**

If taxable the transaction will be subject to tax at a rate of 33% (non-resident individuals) or 40% (foreign legal entities – rate for FY 2016).

- **Losses generated until 2012 can be carried forward until 2013. Losses generated as of 2013 can be carried forward without time limits.**

- **Excesses of withholding taxes can only be offset in the calculations done within the following year**

- **Treaties to avoid double taxation can be applied**
Foreign Portfolio Investments

— Section 18—1 of the CTC (as modified by Act 1607 of 2012)

Negotiation of derivate financial instruments:
The results are determined as the net value resulting from the payments and accruals made in favor and against, directly or indirectly, to the investor, from the liquidation and accomplishment of all derivative financial instruments that have expired or terminated in the taxable period. In the case of swaps, the results obtained before the maturity which correspond to the liquidation of each flow of an instrument, are part of the taxable base of the period in which such results are paid or accrued.

Bonds with yields and/or discounts
Income derived from the positions in the portfolio and of its disposal which are determined following the procedure for withholding tax on financial returns from fixed rate bonds provided for residents.

Repo operations, simultaneous operations and securities lending arrangements:
The profits are determined as the net amount of payments or credits on accounts made, directly or indirectly, in favor of or against the investor. The withholding tax (if any) is applied over the profits obtained by the investor after the final liquidation (close) of the operation concerned (i.e. a repo or simultaneous operation or a securities lending arrangement).

Other cases
The results are determined as the net value resulting from the payments and accruals made in favor and against, directly or indirectly, to the investor, in connection to the respective operation.

- Net administrative expenses incurred in Colombia
- Losses from previous periods*
= Monthly taxable base or losses from the period
  25% Investors domiciled in tax havens
  14% Other cases

* Losses from previous periods, which are synonymous with net administrative expenses incurred in Colombia.
Financial Services market - Chile

Mauricio López Lastra
Tax Partner
Chilean Tax System

March 2014
Announcement of a major Tax Reform

July 2015
Chilean IRS Instructions of Tax Reform Implementation

September 2014
Enactment Law 20,780
Tax Reform Law

February 2016
Enactment Law 20,899
Tax Reform Simplification
Chilean Taxation: highly challenging environment
## 2 “Optional” Corporate Taxation Systems

<table>
<thead>
<tr>
<th><strong>Cash Distribution System</strong></th>
<th><strong>Flow-through System (profit attribution)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>— 27% Corporate Tax.</td>
<td>— 25% Corporate Tax.</td>
</tr>
<tr>
<td>— Vast majority of taxpayers.</td>
<td>— Only electable for partnerships, individual liability companies, individual entrepreneurs, communities, joint stock companies and section 58 N°1 taxpayers (all must have individuals with residence in Chile and/or taxpayers without domicile in Chile as shareholders, partners or proprietaries).</td>
</tr>
<tr>
<td>— Maintains integration of CIT and Final Taxes, but only a 65% CIT credit is offset able against final taxes.</td>
<td></td>
</tr>
<tr>
<td>— Full CIT Credit is granted under a DTT.</td>
<td></td>
</tr>
</tbody>
</table>
New Complexity

Before

After
Substance over Form:

First introduction of GAAR in Chile
Entry into Force in September 2015
AEOI (FATCA and CRS)

October 2013: Chile signs MAAT

March 2014: Chile signs IGA 2 of FATCA

September 2014: Tax Reform includes several IRS mechanism to obtain information from taxpayers

October 2014: Chile ascribes the Declaration on AEOI in Tax Matters, compromising to fully endorse AEOI by 2018.
Change of paradigm: Free Flow of Tax Information
AEOI (FATCA and CRS)

October 2013: Chile signs MAAT
March 2014: Chile signs IGA 2 of FATCA.

September 2014: Tax Reform includes several IRS mechanism to obtain information from taxpayers

October 2014: Chile ascribes the Declaration on AEOI in Tax Matters, compromising to fully endorse AEOI by 2018.

- Several sworn statements from taxpayers.
- Information crossover
- **Global characterization of taxpayers** (information about corporate group belonging, source of financing, payment effectuated to companies resident abroad, among others).
- Information about electronic gambling, digital commerce, online application and digital services.
- Possibility to access Bank Information
Investing in Chile: Obstacles and fiscal pressures

2014’s Tax Reform and the 2016 simplification Law generates a new paradigm.

Market will have to be adjusted for new rules.

More powers give to the tax authorities.
But you know …

KPMG

Cutting through complexity
Foreign Investment Tax Structure

Summary

Equities – Dividend (Income)
Dividend paid by Chilean corporation to non-residents are subject to a 35% WHT. CIT credit, if any, is creditable against it.

Equities – Capital Gains
Listed Shares with stock market presence may be non-taxable income, insofar as the requirement of Art 107 if Chilean Income Tax Law (ITL) are met. 35% tax rate for equities with no stock presence, if the seller is habitual in the sale of shares.
Foreign Investment Tax Structure

Summary

- Dividends paid on the underlying shares: subject to taxation according to general rules.
- Capital gain obtained in the alienation of the ADRs: considered a non-Chilean source income and therefore, non-resident alienators would not be subject to taxation upon it.
- Flow Back: the Chilean tax authority have rules that the conversion of the ADR into local shares is a mere substitution of assets, not implying a sale or acquisition. Thus, in principle, no capital gain arises from it.
- Capital gain on the alienation of the shares obtain in the flow back: where the ADR is exchanged for the shares represented by it, the shares acquired through the flow back could be eligible for the capital gain exemption for listed shares with a stock exchange presence under Art.107 ITL, as long as all requirements of said article are met.

Same treatment applicable to ADRs.
Foreign Investment Tax Structure

Summary

Time Deposit in foreign currency and CLP
- 0% stamp tax.
- 4% WHT on interests.
- 35% for capital gain tax (in case the deposit is sold before maturity).

Short Selling
- 0% tax rate for equities with stock presence at the stock exchange market.
- 35% tax rate for equities with "no stock presence" (general tax regimen).
- Premium is subject to the general regime taxation (35% total tax burden).

Securities Lending
- No taxes applicable to the lending of the stocks.
- Dividend paid to lend shares are subject to 35% WHT on dividends, according to general regime.
- Premium is subject to 35% total tax burden according to general regime.
Foreign Investment Tax Structure

Summary

Repos

- 35% capital gain tax at the sell.
- If the Repos are established over bonds subject article 104, capital gain would be considered as non taxable, as long as requirements set forth in such disposition are fulfilled.

Fixed Income

Capital gain

- Capital gain obtained in the alienation of bonds subject to Article 104 ITL would be considered as non taxable as long as requirements set forth in such disposition are fulfilled.
- 35% for other kind of bonds.
- Note: Special Tax analysis if double taxation agreement is in place.

Fixed Income

- Interest

- A reduced WHT rate of 4% applies to interest on all publicly offered, local or foreign currency, fixed income bonds.
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