

Law 14,754/2023

Taxation of assets held abroad by individuals and taxation of income in Investment Funds in Brazil

December, 2023



Assets held abroad by individuals



Financial investments and other assets held abroad

	Law 14,754/2023	Previous tax regime
Income and gains realized on financial investments (effectively received).	<p>Rate: 15%*.</p> <p>When: Individual income tax (IRPF) must be paid in the Annual Tax Return for individuals (DAA) at a rate of 15%.</p> <p>*Possibility of updating the value of assets and rights - taxation at a rate of 8%.</p>	<p>Rate: Progressive rates - up to 27.5% for income and ranging from 15 to 22.5% for capital gains.</p> <p>When: IRPF must be paid by the last business day of the following month.</p>
Loss offset	Possibility of offsetting losses (properly documented)	Impossibility of offsetting losses
Foreign tax credit	Possibility of offset, if based on a treaty or reciprocity agreement.	Possibility of offset, if based on a treaty or reciprocity agreement.
Gains related to foreign assets not classified as financial investments (ex. vehicles, artworks, and real estate.)	<p>Rate: Progressive rates ranging from 15% to 22.5%, with monthly collection.</p> <p>*Gain from the sale of equity interest in a non-controlled and non-exchange-traded entity, although it may be considered a financial investment (15% tax rate), is not expressly listed in the illustrative list contained in Law 14,754/2023.</p>	<p>Rate: Progressive rates ranging from 15% to 22.5%, with monthly collection.</p>
Virtual assets and digital wallets	Subject to a 15% tax rate, included in the definition of financial investments.	Taxed as capital gain, subject to progressive rates ranging from 15% to 22.5%.
Non-interest-bearing checking account deposit	Exemption maintained for positive exchange rate variation.	Exemption for positive exchange rate variation
Goods and rights acquired with income originally earned in foreign currency	Exemption repealed as of 1.1.2024.	Exemption - the tax base for capital gains did not include foreign exchange variation.
Assets and rights abroad acquired while in a non-resident status	Exemption repealed as of 1.1.2024.	Exemption from the gain obtained on disposal.

Controlled foreign entities (Offshore)

	Law 14,754/2023	Previous tax regime
<p>Profits of controlled entities (held directly or indirectly)</p> <ul style="list-style-type: none"> i. located in tax havens (JTF) or beneficiaries of privileged tax regimes (RFP); or ii. with passive income exceeding 40%. 	<p>Rate: 15%*.</p> <p>When: Annually, on December 31, in the Annual Tax Return for individuals (DAA).</p> <p>*Possibility of updating the value of assets and rights - taxation at a rate of 8%.</p> <p>*Profits will be calculated individually in the annual balance sheet of the controlled company, which must be prepared in accordance with international standards (IFRS) or Brazilian standards, the latter being mandatory in the case of JTF or RFP.</p> <p>*Profits of controlled entities that are not subject to automatic taxation will be taxed at the time of actual distribution.</p>	<p>Rate: Progressive rates up to 27.5%.</p> <p>When: After distribution, by the last business day of the following month.</p> <p>*Profits calculated until December 31, 2023, will be taxed only at the time of actual distribution for Brazilian individuals.</p>
Unrealized profits (of the entities commented above)	There is no provision for exclusion. Possibility of opting for the transparency regime and declaring assets, rights, and obligations as if they were held directly by the individual (irrevocable and unalterable option).	There was no specific discipline.
Tax loss carryforward	Possibility of deducting losses from periods starting on January 1, 2024, and prior to the date of profit calculation.	There was no specific discipline.
Capital reduction	Positive exchange rate variation subject to progressive rates of 15 to 22.5%.	There was no specific discipline (the application of progressive rates of 15 to 22.5% was defended).
Capital contribution	Assets and rights must be assessed at market value at the time of transfer.	Possibility of contribution at cost (without taxation).
Foreign tax credit	Possibility of offset	Possibility of offset

Foreign Trusts

- Trusts will be treated as **transparent** for tax purposes, so that the income and capital gains related to the assets and rights subject to the trust will be subject to the IRPF tax in accordance with specific rules applicable to each asset and will be considered:
 - Under the ownership of the trustee after the establishment of the trust.
 - Under the ownership of the beneficiary:
 - i. upon distribution to the beneficiary or the death of the settlor, whichever occurs first; or
 - ii. in the case of an irrevocable trust.
- The change of ownership will be considered a donation or inheritance, depending on the time of the transfer.
- As of December 31, 2023, assets and rights subject to a trust must be declared directly by the holder in the DAA for the acquisition cost.
- The trust deed or the respective letter of wishes must be amended within **180 days** to include a provision that obliges the trustee, in an irrevocable and unrevocable manner, to comply with the provisions of the law.



Succession Planning (cont.)

Foreign assets

- The time is right to analyze, on a case-by-case basis, the options for **updating the values** of assets and rights abroad and the option to adopt the **transparency regime** for offshore entities.
- It is worth remembering that, in conjunction with the approval of Law 14,754/2023, the approval of Constitutional Amendment Proposal No. 45/2019 (“**PEC 45/2019**”) by the Federal Senate also propels discussions. This is because, in addition to addressing the reform of indirect taxes, it aims to change some rules relating to the **ITCMD**, proposing the adoption of progressive rates based on the value of the share, legacy or donation.
- This change may lead to a considerable increase in the ITCMD rate, especially in States that currently do not adopt progressivity or the maximum allowable rate, such as the State of São Paulo (current rate of 4%).

What to do?



Now is the time to **REASSESS** your investments abroad and **EXPLORE** the available alternatives for anticipating succession planning.

Succession Planning (cont.)

Foreign assets



Important deadlines

Option for the transparency regime: The individual who opts for the tax regime of transparency in relation to the shares held on December 31, 2023, must **indicate their option in the DAA to be filed in 2024**, within the deadline, for the year-calendar of 2023, to take effect as of January 1, 2024*. In addition, they must:

- Replace the participation in the entity with the underlying assets and rights in the 'assets and rights section' of the same DAA and allocate the acquisition cost to each of those assets and rights, considering the proportion of the value of each asset or right to the total value of the entity's assets on December 31, 2023;
- Report the underlying obligations in the 'debts and real encumbrances section' of the DAA at a value of 0;
- Tax the income earned from the assets and rights from January 1, 2024, and apply the rules provided for the respective assets.

**The individual who opts for the transparency tax regime regarding controlled entities acquired from January 1, 2024, must exercise their option in the first DAA following the acquisition.*

Option to update assets and rights: The individual may choose to update the value of assets and rights held abroad, as reported in their DAA, to the market value on December 31, 2023, and pay the difference between the value and the acquisition cost at a final rate of 8%.

- The option may be exercised jointly or separately for each asset or right abroad.
- The tax must be **paid by May 31, 2024**.
- The option must be exercised in the manner and within the deadline to be established by the RFB.

Domestic funds



Come-cotas

Domestic funds

- Income from investments in mutual funds will be subject to the withholding income tax on the last business day of May and November, at the general rates of 15% or 20% ("**come-cotas**"), depending on the classification of the fund as short-term or long-term.
- The mentioned incidence will be anticipated in cases where distribution of income, amortization, redemption, or disposal of fund shares occurs (at the time of realization).
- The remaining percentage necessary to reach the investor's regular tax rate will be applied to the income at the time of realization.



Extent of the law

Closed-end investment funds, except for funds subject to specific treatments (FIP, FIA, FIDC, FII, ETF, among others).



Exceptions to the General Rule

Domestic funds

- A specific regime was established as an exception to the *come-cotas* system for FIP, FIA, FIDC, and ETF classified as 'investment entities' and meeting the other requirements set forth in Law 14,754/2023.
- For these cases, income from investments in the funds will be subject to withholding income tax (**WHT**) at a rate of 15% only on the date of income distribution, amortization, redemption, or sale of shares.

Exception:



Even if not classified as "investment entities," funds that directly or indirectly invest a minimum of 95% of their net equity in certain funds, including FIP, FIA, FIDC, ETF, will also be exempt from the new *come-cotas* regime.

Taxation of accumulated earnings

Domestic funds

As a transition rule, two possibilities are provided for the taxation of accumulated earnings (not taxed yet - the so-called "inventory of earnings") that were typically not subject to *come-cotas* and will be subject as of the year 2024:

- WHT at a rate of 15% on the inventory, to be paid in full by May 31, 2024, or in 24 installments with the incidence of Selic interest; and
- As an alternative for individuals residing in the country, WHT at a rate of 8% on the income in two stages*:
 - a. In the first stage, payment of tax on income determined until November 30, 2023.
 - b. In the second stage, payment of tax on income determined from December 1, 2023, to December 31, 2023.



*Once the option is exercised, the income tax on the income from item (a) must be paid in 4 equal, monthly, and consecutive installments, with due dates on December 29, 2023, January 31, 2024, February 29, 2024, and March 29, 2024. The tax due on item (b) must be paid in full, at the same due date as the WHT due in the periodic taxation of the month of May 2024.



Corporate transactions

Domestic funds

As of 2024, in the events of merger, spin-off or transformation, income corresponding to the positive difference between the net asset value of the unit on the date of the event and its acquisition cost, will be subject to WHT at the applicable rate for fund investors on the date, except:


- i. Events that involve, exclusively, funds subject to the same tax regime.
- ii. Events that do not imply a change in the ownership of units or the distribution of assets by the fund to the investors.

Transactions carried out until December 31, 2023, will not be subject to the mentioned rule provided that:

- Fund is not subject to *come-cotas* in 2023, and
- The resulting fund's tax rate is equal to or greater than the rate applicable prior to the event.

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