

OVERVIEW - Law 14,754/2023

Changes in the taxation of foreign investments by individuals

FOREIGN FINANCIAL INVESTMENTS

Income taxation on foreign financial investments held by individuals with tax residency in Brazil.

FOREIGN CONTROLLED COMPANIES AND ENTITIES

Taxation of profits from foreign companies and other entities, directly or indirectly controlled by individuals with tax residency in Brazil.

INVESTMENT FUNDS IN BRAZIL

Periodic taxation of income from open or closed-end funds. Maintenance of specific taxation regimes for certain funds.

FOREIGN TRUSTS

Taxation of income and capital gains related to assets and rights subject to foreign trusts.

FOREIGN FINANCIAL INVESTMENTS

SCOPE

Income from any foreign financial investment, held by individuals with tax residency in Brazil, such as interest-bearing bank deposits, virtual assets, current accounts, fixed and variable income securities, credit operations, shares of investment funds (except those treated as entities controlled abroad, which have a specific taxation regime), among others.



MAIN CHANGES

TAXATION

- 15% IRPF (individuals income tax) on the annual income.
- Income shall be informed in the IRPF Annual Adjustment Statement and will be subject to IRPF within the ascertainment period in which the income is actually received by the individual.
- Possibility of tax credit for income tax paid in the country of origin of the income, provided that:
 - the offset is provided for in international agreements, treaties, and conventions or there is reciprocity of treatment; and
 - the income tax paid abroad is not refundable or offsetable abroad.

COMPENSATION OF LOSSES

- Possibility of offsetting losses incurred in financial investments abroad with income of the same nature, provided that the losses are evidenced by appropriate and reliable documentation.



FOREIGN CONTROLLED COMPANIES AND ENTITIES

SCOPE

Profits of foreign companies and other entities, directly or indirectly controlled by individuals with tax residency in Brazil, including investment funds and foundations.

MAIN CHANGES

COMPANIES AND ENTITIES SUBJECT TO THE NEW RULES

- one located in a country with favorable taxation;
- one benefited from a privileged tax regime; or
- one that generates own active income lower than 60% of total income, with the concept of "own active income" understood as operational revenues obtained directly by the controlled entity.
 - Revenues excluded from the concept of own active income: interest, royalties, dividends, equity interests, rentals, capital gains (except in the sale of equity interests or permanent assets acquired more than 2 years ago), financial investments, and financial intermediation.
 - Exceptionally, the following revenues may be considered as own active income: interest, investments, and financial intermediation, in the case of financial institutions; rentals, in the case of real estate development or construction companies; and dividends and equity interest, in the case of entities that hold direct or indirect interests in controlled or affiliated entities that generate own active income exceeding 60% of total income.

CONCEPT OF CONTROL

- Companies and other entities, whether incorporated or not, including investment funds and foundations, are considered controlled if the individual:
 - **directly or indirectly** holds, alone or together with other parties, rights that ensure predominance in corporate resolutions or the power to elect or dismiss the majority of administrators; or
 - **directly or indirectly**, alone or together with related parties, holds more than 50% participation in the social capital or in the rights to profit or receive assets in the event of liquidation.

MAIN CHANGES

TAXATION

- 15% IRPF rate on profits earned by entities controlled abroad, which will be taxed on December 31st of each year.
- Taxation of profits of controlled entities regardless of any distribution resolution, in proportion to the individual's participation.
- Possibility of IRPF deduction from income tax due abroad by the controlled entity and its non-controlled investments, provided that it is not refundable or compensable abroad.
- Controlled entities abroad that do not meet the requirements of Law No. 14,754/2023 will have their profits taxed when effectively made available to the individual resident in Brazil, but the individual may choose to tax the profits according to the new tax regime (on December 31 of each year).

INVESTMENT FUNDS



SCOPE

Income from investments in investment funds established in Brazil, open or closed-ended.

MAIN CHANGES

GENERAL REGIME OF FUNDS: Periodic taxation of income

- Income is subject to withholding income tax ("come quotas") periodically (in **May** and **November** of each year), or on the date of distribution, redemption, or repurchase of quotas, the first to happen.
- 15% rate for long-term funds (over 365 days) and 20% for short-term funds (equal to or less than 365 days).
- A complementary rate shall apply to meet the total regressive rates of 22.5% to 15%, provided for in Law 11,033/2004, on the date of distribution of income, redemption or repurchase of quotas.
 - Example: in the case of a short-term investment, a 20% rate will be applied, but there may be a complementary taxation of 2.5% for a total rate of 22.5% on the date of distribution of income, redemption, or repurchase of quotas, if the investment period is less than 180 days.
 - Similarly, in the case of a long-term investment, a 15% rate will be applied, but there may be a complementary taxation of 2.5% for a total rate of 17.5% on the date of distribution of income, redemption, or repurchase of quotas, if the period is up to 720 days.

MAIN CHANGES

FUNDS WITH SPECIFIC REGIMES: Taxation of income on distribution, redemption, or repurchase of quotas.

Investments	Requirements for non-application of periodic taxation	Taxation (IRRF)
FIP	Investment entity and compliance with allocation, classification, and reclassification requirements of the portfolio, established by the CVM (currently provided for in CVM Resolution No. 175/22).	15%
ETF, except fixed income ETF	Investment entity, compliance with allocation, classification, and reclassification requirements of the portfolio, established by the CVM, and shares traded on stock exchanges or organized over-the-counter markets in Brazil.	15%
FIDC	Investment entity and portfolio composed of at least 67% of credit rights, according to CMN regulations (CMN Resolution No. 5,111/2023).	15%
FIA	Portfolio composed of at least 67% of financial assets specified by law, regardless of classification as an investment entity.	15%
Funds of funds	Investment of at least 95% of net worth in FIP, ETF (equity), FIDC (those classified as investment entities), FIA, REIT, Agribusiness Investment Fund, Innovation and Equity Investment Fund, and Infrastructure Investment Fund.	15%
Non-resident investors	Not subject to periodic taxation, provided they are not located in a country with favorable taxation. Zero rate/exemption for investments in: government bond funds, FIP, REIT, publicly distributed securities or securities, fixed income ETFs, credit rights funds, and funds with investors exclusively resident or domiciled abroad.	15% or zero rate/exemption (specific investments)
REIT and Agribusiness Investment Fund (FIAGRO)	Must have at least 100 investors. Exemption will not be granted to affiliated individual investors holding 30% or more of the total units or receiving income exceeding 30% of the total fund income.	Exemption
Innovation and Equity Investment Fund (FIP-IE) and Innovation and R&D Investment Fund (FIP-PD&I)	Law No. 14,754/2023 did not modify the requirements established in Law No. 11,478/2007.	15%
Fixed Income ETF	Law No. 14,754/2023 did not modify the requirements established in Law No. 13,043/2014.	15% to 25%

CONCEPT OF INVESTMENT ENTITIES

- Funds with professional management structure, at the fund level or its investors, represented by agents or service providers with powers to make investment and divestment decisions discretionarily, with the purpose of obtaining returns through appreciation of invested capital and/or income.
- Other requirements: **CMN Resolution No. 5,111/2023**.

TAXATION OF FUND INCOME STOCK

- Income earned by funds until 12/31/2023 that were not subject to periodic taxation and are subject to this regime as of January 2024 must be taxed by IRRF at a rate of 15%.
- IRRF must be paid in cash by 05/31/2024 or in up to 24 successive monthly installments, with the first installment due by 05/31/2024.

FOREIGN TRUSTS



SCOPE

Income and gains from assets and rights subject to foreign trusts.

MAIN CHANGES

OWNERSHIP OF ASSETS AND RIGHTS

- Assets and rights subject to trusts abroad:
 - will remain under the ownership of the settlor after the trust is established and
 - will pass to the beneficiary's ownership upon distribution by the trust to the beneficiary or the settlor's death, the first to happen.
- The transfer of assets and rights from the settlor to the beneficiary will be considered as a gratuitous transfer and will consist of a donation if it occurs during the settlor's life or a *causa mortis* transfer if resulting from the settlor's death.

TAXATION

- Income and capital gains related to assets and rights subject to the trust will be subject to IRPF by the owner (settlor or beneficiary).
- If the trust holds a controlled entity abroad, this will be considered as held directly by the owner of the assets and rights subject to the trust, with the taxation rules for investments in entities controlled abroad applied.