

## **Registration Of Foreign Legal Entities With Brazilian Tax Authorities**

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In October 2002, the Brazilian Internal Revenue Service (Secretaria da Receita Federal) issued Normative Instruction No. 200/02 (later amended by Normative Instruction No. 251/02), which, among other things, complemented the rule originally instituted by Normative Instruction No. 167/02 regarding the registration with the Brazilian Federal Taxpayers' Registry of Legal Entities (Cadastro Nacional da Pessoa Jurídica - CNPJ) of entities domiciled abroad.

Pursuant to the general rule set forth in Normative Instruction No. 200/02, all legal entities domiciled abroad that have assets or rights in Brazil subject to a public registry must be entered in the CNPJ.

The new normative instruction innovated by expressly establishing that the obligation of registration with the CNPJ encompasses entities domiciled abroad that have equity holdings in Brazilian companies, as well as bank accounts and investments in the financial and capital markets in Brazil. Any foreign entity that already held these assets and rights should have been entered in the CNPJ by December 30, 2002.

Thus, foreign companies that have made direct investments in Brazil, through the acquisition of shares or quotas representing the capital stock of Brazilian companies, are now required to be registered not only with the Central Bank of Brazil, but also with the CNPJ.

With this new rule, the tax authorities adopted, with regard to foreign entities, the same treatment previously reserved for non-resident individuals. Indeed, since the issuance in August 2002 of Normative Instruction No. 190/02, individuals resident outside of Brazil holding certain assets and rights in Brazil, including shares or quotas of companies, investments in the financial and capital markets, real estate, etc, must be registered with the Brazilian Federal Taxpayers' Registry of Natural Persons (Cadastro da Pessoa Física).

It should be stressed that the obligation of registration with the CNPJ of foreign entities possessing real estate, vehicles, vessels and aircraft in Brazil, initially introduced by Normative Instruction No. 167/02, is reproduced in Normative Instruction No. 200/02 and, therefore, continues to be in effect. In these cases, however, registration with the CNPJ of the foreign entity that already had such assets should have been made by November 29, 2002.

On the other hand, Normative Instruction No. 200/02 made it clear this duty to register does not apply to foreign entities that hold industrial property rights (trademarks and patents) in Brazil, settling the controversy concerning this matter that had arisen following the enactment of Normative Instruction No. 167/02.

In order to register with the CNPJ, the foreign entity must appoint as its attorney-in-fact an individual resident in Brazil, who is in good standing with the federal tax authorities. Such individual shall be placed in the position of manager of the assets and rights held by the foreign entity in Brazil, and shall be responsible for this entity before the Brazilian Internal Revenue Service. As the tax authorities recently explained in Interpretative Act No. 23/2002, the attorney-in-fact shall only be held accountable for the information presented to the Brazilian Internal Revenue Service and for the fulfilment of ancillary obligations (presentation of statements, declarations etc) set forth in the tax legislation.

The application to register the foreign entity with the CNPJ shall be made by the appointed attorney-in-fact, who shall transmit to the Brazilian Internal Revenue Service, via the Internet, the appropriate forms, containing certain information on the foreign entity and its shareholders, and, subsequently, send the following documents, by mail, to the department of such governmental authority with jurisdiction over his/her tax domicile:

- (i) a request form (Documento Básico de Entrada);
- (ii) a copy of the act of incorporation of the foreign entity or other similar instrument; and
- (iii) a power of attorney granting to the attorney-in-fact powers to represent the foreign entity in all matters before the Brazilian Internal Revenue Service and to manage the assets and rights held by the foreign entity in Brazil, as well to be demanded and to receive summons.

The documents referred to in items (ii) and (iii) above must be accompanied by a sworn translation and be duly legalised at the Brazilian consulate abroad responsible for the foreign entity's place of domicile.

After the application is presented to the Brazilian Internal Revenue Service and the authorities confirm that there are no problems with such application, the proof of registration with the CNPJ shall be made available to the foreign entity, via the Internet.

It should be noted that Normative Instruction No. 200/02, as amended by Normative Instruction No. 251/02, established certain specific rules applicable to foreign entities and investment funds constituted abroad and registered with the CNPJ for the exclusive purpose of making investments in the financial and capital markets in Brazil, in accordance with the rules of the Brazilian National Monetary Council. In these cases, for instance, registration with the CNPJ will require the presentation to the Brazilian Internal Revenue Service of, among other documents, the contract executed with the financial institution that will be representing the foreign entity or the investment fund in Brazil. Moreover, the individual acting for the foreign entity or the investment fund before the Brazilian Internal Revenue Service must be the person that holds this same position with regard to the financial institution.

Finally, Normative Instruction No. 200/02 makes reference to a statement (Declaração Anual de Informações da Pessoa Jurídica Domiciliada no Exterior -DAIP-Exterior), which apparently will have to be presented annually to the Brazilian Internal Revenue Service by foreign entities registered with the CNPJ. It is expected that the DAIP-Exterior will soon be regulated in a further normative act to be issued by the Brazilian tax authorities.