

BRAZILIAN IRS MAINTAIN RULES RELATED TO GOODWILL

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It is well known that, traditionally, as the Holidays arrive, they bring along not only parties but also the release of several new tax rules, mostly unwanted by taxpayers. This year, however, the most important news is the *lack* of tax modifications.

One of the most threatening tax matters to international investors was the deductibility of goodwill for tax purposes.

Since the beginning of 2010, when the IFRS (*International Accounting Standards Board*) rules became mandatory in Brazil, there is a high expectation on the market that Brazilian Internal Revenue Service ("RFB") would release a normative act regarding the procedures to deduce the goodwill obtained on merger or acquisitions, considering that the accountability rules were already adjust to the new model.

It is not rare, in Brazil or abroad, differences between tax rules and accountability rules. In Brazil taxpayers have the Real Profit Settling of Accounts ("Livro de Apuração do Lucro Real" - Lalur) since 1977¹ in order to adjust commercial books, accountability and tax basis.

Thus, it is not a complete surprise that 2010 has ended without a new tax discipline to Corporation Law² - the legal

basis that brought IFRS rules to Brazilian legislation.

Please note that since 2008 Brazil has a Tax Transition Regime ("RTT") which established the "fiscal neutrality" to operations performed in 2008 and 2009. Although previously the market had not the fear of losing goodwill, 2010 was a continuation of former tax discipline.

It must be clarified that under RTT the goodwill was already being set³ according to international patterns: first the premium funded on future profitability was qualified as tangible or intangible asset, and only an eventual remain could grant fiscal deductibility.

Since the accountability rules does not reflect the tax bookkeeping, for the year of 2011 the right over goodwill under the tax rules is still granted.

Therefore, the investment in companies (shares or stocks ownership) in 2011 may be performed under the laws previously applicable, which implies possible deductibility of limited goodwill, when based on future profitability, of at least five year.

It's also important to emphasize that in this scenario, the edition of a new tax rule to discipline goodwill deductibility remains

¹ Decree-Law nº 1.598/77.

² *Lei das Sociedades por Ações* - "LSA": Law nº 6.404/76, modified by Law 11.638/2007 and Law 11.941/2009.

³ The Premium Impairment shall follow the rules of CPC/CVM nº 15 (Resolution CFC nº 1175/09)

possible, although undesirable, since it could reduce the fiscal benefit.

The Almeida Advogados law firm remains at your disposal for any clarifications regarding this subject and to advise investments considering this matter.

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