

DEMAREST

CLIENT ALERT

LAW NO. 14,754/23

Taxation of offshore assets and investment funds

DECEMBER, 2023

MAIN CHANGES OF LAW No. 14,754/23



Changes Individual Income Tax (“IRPF”) levied on foreign assets in the form of **financial investments** and **profits and dividends** from **controlled foreign corporations** (“CFC”).



Establishes automatic and annual IRPF on the **profits of “Qualified” CFCs**, regardless of distribution, for individuals residing in Brazil.



Establishes tax transparency for purposes of taxing assets held by foreign **trusts** (disregarding the trust).



Introduces periodic taxation on closed-end investment funds in Brazil.



ENTRY INTO FORCE

Except for the transition rules, Law No. 14,754/23 enters into force as of January 01, 2024

OFFSHORE ASSETS

INCOME FROM FOREIGN INVESTMENT

DEMAREST

NEW SYSTEM FOR TAXING FOREIGN INVESTMENT

- ❑ **IRPF: 15%** - income tax paid abroad may be recovered (*treaty or reciprocity*).
- ❑ **Tax Base:** annual income and gains from financial investments and CFCs, such as:
 - ✓ Securities;
 - ✓ Dividends, including from CFCs, **except for previously taxed profits of "Qualified" CFCs**.
- ❑ **Date:** when perceived or distributed (*Cash Basis*).
- ❑ **Losses:** may be offset against income and gains of the same nature. Accrued losses may be carried forward.
- ❑ **Assessment:** ascertained separately when preparing the Individual Income Tax Return ("DIRPF") for the corresponding fiscal year.

CAPITAL GAINS FROM OTHER ASSETS AND INTEREST IN CFCs

Capital gains on the sale or liquidation of assets not classified as financial investments, including on the sale or redemption of interest in **CFCs**, remain subject to the **current rules for taxation of capital gains**.



CURRENT TAXATION

CAPITAL GAINS FROM FOREIGN ASSETS (TRANSACTION)

Up to BRL 5,000,000	15%
Between BRL 5,000,000 and BRL 10,000,000	17.5%
Between BRL 10,000,000 and BRL 30,000,000	20%
Above BRL 30,000,000	22.5%

INCOME DERIVED ABROAD (FISCAL YEAR)

Up to BRL 24,511.92	0%
From BRL 24,511.93 to R\$ 33,919.80	7.5%
From BRL 33,919.81 to BRL 45,012.60	15.0%
From BRL 45,012.61 to BRL 55,976.16	22.5%
Above BRL 55,976.16	27.5%

LAW 14,754/23

INCOME AND GAINS FROM FOREIGN INVESTMENT (FISCAL YEAR)

All amounts earned in the year, including gains from currency variations	15%
--	-----

CAPITAL GAINS ON ASSETS NOT CLASSIFIED AS FINANCIAL INVESTMENT (TRANSACTION)

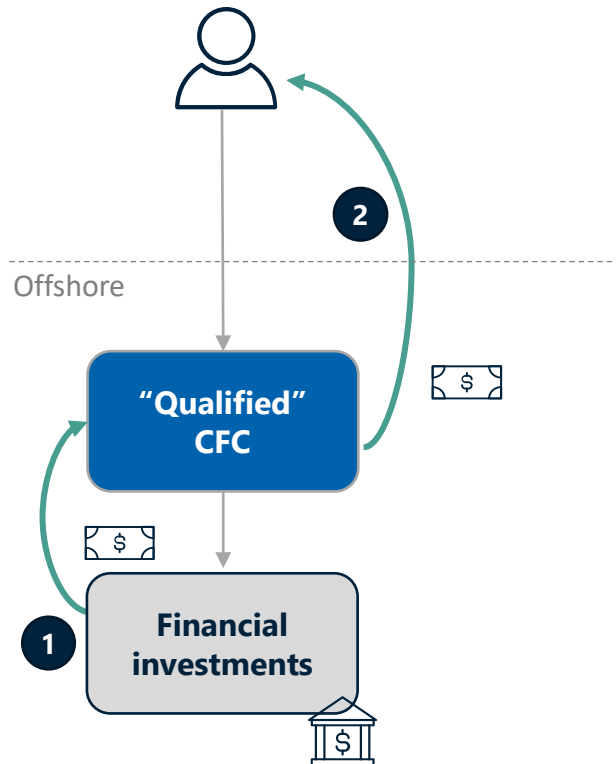
Up to BRL 5,000,000	15%
Between BRL 5,000,000 and BRL 10,000,000	17.5%
Between BRL 10,000,000 and BRL 30,000,000	20%
Above BRL 30,000,000	22.5%

OFFSHORE ASSETS

"QUALIFIED" CFC

DEMAREST

Individual



Profits accrued until December 31, 2023, will be taxed when distributed according to the rule for foreign assets

1 "QUALIFIED" CFC REGISTERS PROFIT	
CURRENT RULE	LAW 14,754/23
<ul style="list-style-type: none"> No taxation 	<ul style="list-style-type: none"> 15% IRPF on the entity's profit sharing, according to the December 31 balance sheet, less the income tax paid abroad Annual taxation, regardless of distribution Specific deductions are allowed, including profits originating in Brazil and the entity's losses The taxed amount will be recorded as a dividend receivable. The currency variation on the credit will not be taxed upon distribution
2 "QUALIFIED" CFC DISTRIBUTES PROFITS TO THE INDIVIDUAL	
CURRENT RULE	LAW 14,754/23
<ul style="list-style-type: none"> Up to 27,5% of IRPF (progressive rates) on distributed dividends 	<ul style="list-style-type: none"> No taxation if already taxed in (1) 15% on dividends not yet taxed



ATTENTION! AUTOMATIC TAXATION ONLY APPLIES TO INVESTMENT IN "QUALIFIED" CFCs

A **CFC** is any foreign entity in which the individual:

- ✓ holds (directly/indirectly/individually or jointly with other parties, including by voting agreements) rights that ensure its **predominant position in corporate resolutions** or the **power to elect or dismiss the majority of its managers**; **OR**
- ✓ has (directly/indirectly/individually or jointly with related persons) more than a **50% stake in the entity's equity, profits, or assets**.

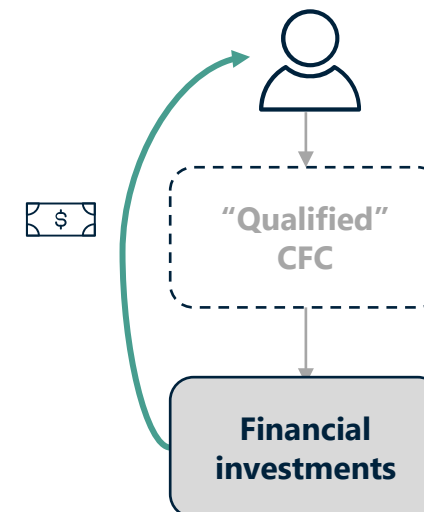
"Qualified" CFCs are CFCs that:

- ✓ Reside in **low tax jurisdictions** or benefit from **preferential tax regime**; **OR**
- ✓ With **over 60% of passive income considering its total income**, with few exceptions provided by the law.

OPTING FOR THE TRANSPARENCY OF A "QUALIFIED" CFC

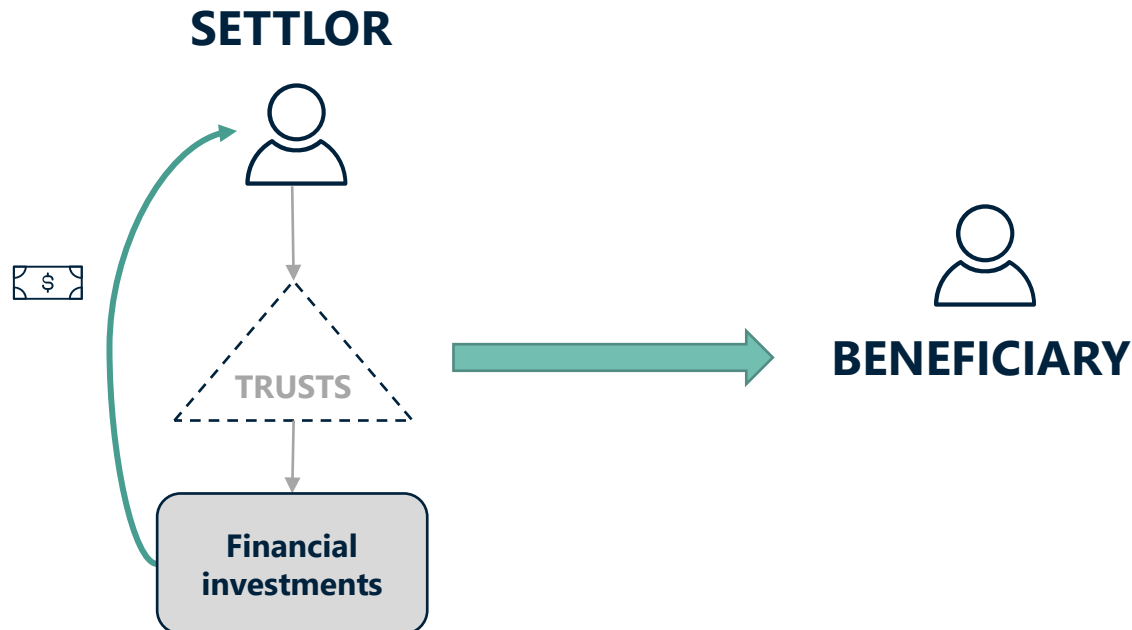
- **Effects:** the individual reports and taxes its stake in the "Qualified" CFC's assets and rights according to the applicable tax regime as if held directly.
- **Option:** **(a)** per CFC, separately; **(b)** it is irrevocable and irreversible for the entire term that the individual owns the investment; **(c)** must be made by all individual investors residing in Brazil (if there is more than one).

INDIVIDUAL



TAX TREATMENT GIVEN TO TRUSTS

- **Ownership:** trusts will be transparent for tax purposes. Its assets must be declared in DIRPF and taxed by the **settlor** (*the person who creates the trust*) according to the type of asset.
- **Distribution:** transfer of ownership to the beneficiary will be considered effective on the distribution of the trust's assets by the trustee or the settlor's death, whichever occurs first. The distribution will be deemed as a **gift** if it occurs during the settlor's life or **inheritance**, after the settlor's death.



IRREVOCABLE TRUST

The distribution to the beneficiary may be deemed to have occurred at an earlier time if the settlor irrevocably renounces the right to a portion of the trust's assets

UPDATE OF ACQUISITION COST IN FOREIGN ASSETS

- ❑ Individuals holding foreign assets, including in "Qualified" CFCs or via trusts, may **update the reported acquisition cost** in assets held on December 31, 2023, to their market value, taxing the difference.
 - ❑ IRPF will be levied at an **8%** rate on the gain equivalent to the positive difference between the market value and the acquisition cost reported on December 31, 2023.
 - ❑ The option can be exercised separately for each asset.
 - ❑ IRPF must be paid by **May 31, 2024**, following the filing of the DIRPF.
 - ❑ No deductions can be applied to the tax base, rate, or amount due.
-



THE FOLLOWING ASSETS CANNOT BE UPDATED:

- assets or rights that have not been reported in the DIRPF for the 2022 fiscal year or those acquired in 2023;
- assets or rights that have been sold or liquidated before the date on which the option is formalized;
- foreign currency in kind, jewelry, precious stones and metals, works of art, antiques of historical or archaeological value, pets or sports animals, and genetic material from animal reproduction, subject to registration in general, even if in fiduciary lien.

1 PERIODIC TAXATION

- ❑ Establishment of a **biannual automatic taxation regime** (“*come-cotas*”) for closed-end funds – taxation in May and November.
- ❑ The periodic Brazilian Withholding Income Tax (“**IRRF**”) will be levied at **15%** for long-term funds and **20%** for short-term funds. Additionally, a **supplementary IRRF** will be assessed according to the difference between the regressive rates from 22.5% to 15% and the *come-cotas* rate levied upon the redemption, amortization, or sale of the fund’s quotas.
 - ✓ **Exceptions:** Private Equity Investment Funds (“**FIP**”), Stock Investment Funds (“**FIA**”)*, Exchange Traded Funds of variable income (“**ETF-VI**”), and Credit Rights Investment Funds (“**FIDC**”) will **NOT** be subject to periodic taxation, provided that they qualify as investment entities. Therefore, its investors will be taxed only on distribution or disposal.
 - ✓ **Investment entities:** funds that are equipped with a professional management structure at the level of the fund or its investors when organized as funds or investment vehicles, represented by agents or service providers with **powers to make investment and divestment decisions on a discretionary basis** (*in the form regulated by the Brazilian Monetary Council “CMN”*).

Points of attention: FIA’s will not be subject to periodic taxation even if they are not classified as investment entities, provided they invest at least 67% of their portfolio in eligible shares and assets admitted to trading on a stock exchange or organized over-the-counter market in Brazil or on a stock exchange abroad.



GOVERNMENT VETO

The Executive Branch vetoed the provision that restricted the definition of stock exchange and organized over-the-counter markets to centralized multilateral negotiation systems



2 ACCRUED EARNINGS TAXATION

- ❑ Law No. 14,754/23 establishes that the **IRRF will be levied** on earnings accrued by closed-end funds at a **15% rate**.
 - ✓ **Accrued earnings:** positive difference between the equity value of the quota on December 31, 2023, and its acquisition cost.
 - ✓ **Payment term:** (i) lump sum in May 2024 or (ii) in up to 24 monthly installments as of May 31, 2023 (adjusted by SELIC).



Individuals residing in Brazil may **anticipate the payment at a discounted IRRF rate of 8%**.

The individual must fully pay the tax to be entitled to the benefit.

- Four monthly installments (from December 2023 to March 2024) on the earnings accrued up to November 31, 2023.
- Lump sum payment (May 2024) for earnings accrued in December 2023.



come cotas taxation and, particularly, on the accrued earnings is questionable - main point of discussion in the former MP 806/17

3 CORPORATE REORGANIZATIONS

- ❑ As of January 2024, corporate reorganizations, such as spin-offs, mergers, and fund transformations, will be **liable to IRRF**.
- ❑ The IRRF will be levied over the **positive difference between the equity value of the quota** on the corporate event and its acquisition cost. It will be calculated at the tax rate applicable to the investor on the corporate event's date.
 - ✓ **Exception:** the following are not subject to IRRF: **(i)** transactions involving funds subject to the same taxation; **(ii)** transactions without transfer of ownership over the quotas; and **(iii)** transactions that do not result in the transfer of the fund's assets to the investor.

4 NON-RESIDENT INVESTORS ("NRI")

- ❑ The tax treatment extended to investors registered under CMN Resolution No. 4,373/14 ("**4,373 NRI**") remains unchanged.
- ❑ **General Rule:** 15% IRRF for 4,373 NRIs not residing in low-tax jurisdictions.
- ❑ **Investment in FIAs:** remain subject to 10% IRRF (except for those in low-tax jurisdictions).
- ❑ Investments of NRIs **not** residing in low-tax jurisdictions will **not** be subject to *come-cotas*.



5 OTHER EXCEPTIONS

☐ Law No. 14,754/23 **does not apply** to:

- i. Real Estate Investment Funds (“**FII**”) and Investment Funds in Agroindustrial Production Chains (“**FIAGRO**”);
- ii. NRI investing in funds that invest in government bonds (Law No. 11,312/06);
- iii. NRI investing in FIP and Venture Capital Investment Funds (“**FIEE**”) (article 3 of Law No. 11,312/06);
- iv. Private Equity Funds for Infrastructure Investments (“**FIP-IE**”) and Investments in Research, Development, and Innovation-Intensive Enterprises (“**FIP-PD&I**”);
- v. funds referred to in Law No. 12,431/11;
- vi. funds held exclusively by NRI (article 97 of Law No. 12,973/14).
- vii. Fixed Income ETF; and
- viii. funds that invest, directly or indirectly, at least 95% of their portfolio in FIP*, ETF-VI*, FIDC*, FIA, FII, FIAGRO, FIP-IE, FIP-PD&I e Investment funds referred to in Law No. 12,431/11.

**only when classified as investment entities and comply with the other requirements provided for by law*

6 FII'S AND FIAGRO'S

Additional requirements regarding the IRFF exemption on income distributed by FIIs and FIAGROs were included:

Limitation of participation	
Current rule	Not applicable to an individual investor who holds quotas representing 10% or more of the fund's quotas or its income
Law No. 14,754/23	Not applicable to the group of associated individual investors that holds quotas representing 30% or more of the fund's quotas or its income

Minimum number of investors	
Current rule	FII's e FIAGRO's with at least 50 investors
Law No. 14,754/23	FII's e FIAGRO's with at least 100 investors



Assessment via MEP (FIP, ETF-VI, and FIDC not classified as investment entities): gains and losses resulting from the Equity Method ("MEP") **will not be taxed**, as long as these are controlled in separate accounts. The **liquidation of assets** by the fund or the **income distribution** to investors (disposal or amortization) will trigger the taxation of the MEP balance.



Funds with segregated portfolios (ICVM 175): each class of quotas must be regarded as a separate fund for tax purposes.



Fund's Manager: the fund's manager is liable for collecting the IRRF due on the amortization and liquidation of the fund and on the earnings accrued until 2023. The investor must transfer the money to pay the tax. The quotas cannot be assigned if the fund's manager has no cash to collect the IRRF by the deadline. If the IRRF is not paid on time, the manager will not be liable for the tax by notifying the tax authorities, informing the taxpayer's CPF or CNPJ and the taxable income amount.



Financial institutions and equivalents are responsible for withholding and collecting the IRRF levied on investments in quotas of investment funds that they intermediate.



Usufruct on fund quotas: taxation will be determined based on the beneficiary of the income.

DEMAREST'S TAX TEAM

DEMAREST



ANDRÉ NOVASKI

Partner
anovaski@demarest.com.br
+55 11 3356 2003



ANGELA CIGNACHI

Partner
acignachi@demarest.com.br
+55 61 3243 1161



CARLOS EDUARDO ORSOLON

Partner
ceorsolon@demarest.com.br
+55 11 3356 2186



CHRISTIANO CHAGAS

Partner
cchagas@demarest.com.br
+55 11 3356 2004



DOUGLAS MOTA

Partner
dmota@demarest.com.br
+55 11 3356 1888



GISELE BOSSA

Partner
gbossa@demarest.com.br
+55 11 3356 1809



KATIA ZAMBRANO

Partner
kzambrano@demarest.com.br
55 11 3356 1545



MARCELLO PEDROSO

Partner
mppedrosa@demarest.com.br
+55 11 3356 1818



MARCELO ANNUNZIATA

Partner
mannunziata@demarest.com.br
+55 11 3356 2187



PRISCILA FARICELLI

Partner
pfaricelli@demarest.com.br
+55 11 3356 1716



ROBERTO CASARINI

Partner
rcasarini@demarest.com.br
+55 11 3356 2002



THIAGO AMARAL

Partner
tamaral@demarest.com.br
+55 11 3356 1571



VICTOR LOPES

Partner
vlopes@demarest.com.br
+55 11 3356 1692