







FEDERAL LAW CREATES INFRASTRUCTURE DEBENTURES WITH TAX BENEFITS

Our specialists in Capital Markets, Infrastructure and Tax Law prepared this exclusive material with an analysis of Law No. 14,801/2024, enacted to create a new category of infrastructure debentures with tax benefits for issuers

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LAW NO. 14,801/2024 CREATES A NEW CATEGORY OF INFRASTRUCTURE DEBENTURES

EXCLUSIVE CHARACTERISTICS OF THE DEBENTURES UNDER LAW NO. 14,801/2024

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ELEGIBLE SECURITIES: Debentures, with potential foreign exchange rate fluctuation, under the terms and conditions yet to be regulated.
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ELEGIBLE INVESTORS: Prohibition on acquisition by individuals or entities related to the issuer, including those resident or domiciled outside Brazil, as defined by law.
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TAX BENEFIT FOR THE ISSUER: (i) deduction of interest paid or incurred for corporate income tax/corporate contribution on net profit ("IRPJ"/"CSLL") purposes; and (ii) 30% exclusion of the total interest of the debentures from the tax base applicable to IRPJ/CSLL, except for transactions characterized by abuse of form or lack of substance (to be defined by an act of the Executive Branch).
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INVESTOR TAX REGIME: Taxation will observe the same regulations applicable to fixed-income investments. New provision for withholding income tax ("IRRF") at a 10% rate for exempt funds ([see table below](#)).
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MINISTERIAL APPROVAL: The requirement for prior ministerial approval can be waived for projects in these sectors, subject to the requirements of the regulations yet to be published.
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FINE FOR FAILURE TO ALLOCATE FUNDS: The Federal Revenue Office of Brazil ("RFB") can apply a 20% fine on the amount of the debentures and their corresponding proceeds acquired by related parties. The issuer can be held jointly and severally liable if fraud, simulation, and transactions with connected persons abroad, or other events established by law, are proven.

Taxation on the new category of debentures (Law No. 14,801/2024)

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|--|--------------|
| Income earned through exempt funds such as private equity funds ("FIP"), quota investment funds investing in private equity funds ("FIC-FIP"), emerging companies investment funds ("FIEE"), credit rights investment funds ("FIDC"), upon the redemption, amortization, and transfer of quotas or upon the distribution of profits. | 10% |
| Non-Resident Investor ("INR") under Resolution 4,373 (not located in a tax haven and not benefiting from a privileged tax regime) | 15% |
| Individuals (definitive taxation) and corporations located in Brazil (advance payment of IRPJ on actual or presumed profit) | 22.5% to 15% |
| INR Resolution 4,373 (located in a tax haven or benefiting from a privileged tax regime) | 25% |

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VALIDITY AND EFFECTS

| Tax regulations | Term for reimbursement of costs, expenses or debts | Other provisions |
|------------------------------|--|------------------------------|
| As of publication of the Law | Transition regime (see table below) | As of publication of the Law |



Discussion on the immediate effect of the increased withholding income tax (“IRRF”) on income paid to INR in a privileged tax regime or interest arising from funds raised abroad paid to a foreign related party.

MAIN CHANGES TO LAW NO. 12,431/2011 (INCENTIVIZED DEBENTURES)

1. Issuance of securities to raise funds abroad

- **Change:** Law No. 14,801/2024 introduces a specific provision for securities issued to raise funds abroad, with the following IRRF rates on interest:
 - 0%: INR (not located in a tax haven and not benefiting from incentivized tax regimes);
 - 25%: INR (located in a tax haven or benefiting from incentivized tax regimes); and
 - 30%: INR – **related party to the entity in Brazil.**

2. Ministerial approval

- **Change:** Specific ministerial approval will not be necessary for each and every project, provided that the sector is deemed a priority in a regulation yet to be published by the Executive Branch.
- **Note:** Currently, for incentivized debentures (Law No. 12,431/2011), prior ministerial approval is required, in compliance with Federal Decree No. 8,874/2016, except for priority projects (“PPI”), which depend on a presidential decree.

3. Term for reimbursement of costs, expenses and debts

- **Change:** Prior to the change introduced by Law No. 14,801/2024, the eligible period for reimbursement was 24 months, from the closing of the public offering. The amendment established a timetable extending this period, as shown in the table below.

COMPARATIVE ANALYSIS – INCENTIVIZED DEBENTURES (LAW NO. 12,431/2011) AND INFRASTRUCTURE DEBENTURES (LAW NO. 14,801/2024)

| Regulations | Incentivized Debentures <i>Law No. 12,431/2011</i> | Infrastructure Debentures <i>Law No. 14,801/2024</i> |
|---|---|---|
| Fund borrower (always a corporation) | (i) Special-purpose entity (“SPE”); (ii) concessionaires; (iii) permission holders; (iv) authorization holders; (v) lessees; (vi) controller of the previously listed entities. | (i) SPE; (ii) concessionaires; (iii) permission holders; (iv) authorization holders; (v) lessees; (vi) controller of the previously listed entities. |
| Eligible securities | Debentures, FIDC quotas and real estate receivable certificates (“CRIs”) issued by December 31, 2030, subject to the requirements established by law. Specific requirements for FIDC quotas and CRIs. | Debentures issued by December 31, 2030, subject to the requirements established by law. |
| Eligible investors | Any investor, subject to the applicable taxation. | Any investor, subject to: (i) the applicable taxation; and (ii) prohibition on acquisition by issuer-related parties, including those located abroad, as defined by law. |
| Tax benefit for the issuer | Not applicable. | The issuer can: deduct the interest paid or incurred from the IRPJ and CSLL calculation basis, under the terms permitted by law; and (ii) exclude 30% of the sum of the interest on the debentures paid in that fiscal year from the IRPJ and CSLL calculation basis. |
| Tax regime applicable to investors | <p>General regulation: proceeds (including gains) subject to the following IRRF tax rates:</p> <ol style="list-style-type: none"> 0%: individuals, INR Resolution 4,373 (not located in a tax haven) and sovereign funds (even if located in a tax haven); and 15%: corporations located in Brazil (definitive taxation), including financial institutions (art. 77, I, of Law No. 8,981/1995). <p>For interest resulting from <u>cross-border loans</u> for the implementation of infrastructure projects, subject to registration with the Brazilian Central Bank (BCB), upon the issuance of securities <u>abroad</u>, the IRRF will be levied according to the following rates:</p> <ol style="list-style-type: none"> 0%: INRs (not located in a tax haven and not benefiting from privileged tax regimes); 25%: INRs (located in a tax haven or benefiting from privileged tax regimes); and 30%: INRs deemed to be a related party. | <p>Taxation will follow the regulations applicable to fixed-income bonds with specific changes, except for financial institutions (art. 77, I, of Law No. 8,981/1995), which were exempted from withholding income taxation.</p> <p>Income (including gains) are subject to the following IRRF rates:</p> <ol style="list-style-type: none"> 10%: for exempt funds such as FIP, FIC-FIP, FIEE, FIDC, upon redemption, amortization and transfer of quotas or upon distribution of profits; 15%: Foreign investors – INR Resolution 4,373 (not located in a tax haven and not benefiting from privileged tax regimes); 22.5% to 15% (regressive): individuals (definitive taxation) and corporations located in Brazil (advance payment of the IRPJ); 25%: Foreign investors – INR Resolution 4,373 – located in a tax haven or benefiting from a privileged tax regime. |
| Ministerial approval | New regulation to be published addressing the criteria for projects exempt from ministerial approval. | New regulation to be published addressing the criteria for projects exempt from ministerial approval. |
| Use of funds | Investment projects deemed as a priority (“priority projects”) in the sectors of infrastructure or those involving intensive economic production in research, development and innovation, in compliance with Federal Decree No. 8,874/2016. | Projects deemed as a priority according to the new regulation (to be published). |
| Term for reimbursement of costs, expenses or debts | <ul style="list-style-type: none"> ✓ <u>Until February 09, 2025:</u> 24 months ✓ <u>From February 10, 2025, to February 09, 2026:</u> 36 months ✓ <u>From February 10, 2026, to February 09, 2027:</u> 48 months ✓ <u>As of February 10, 2027:</u> 60 months | <ul style="list-style-type: none"> ✓ <u>Until February 09, 2025:</u> 24 months ✓ <u>From February 10, 2025, to February 09, 2026:</u> 36 months ✓ <u>From February 10, 2026, to February 09, 2027:</u> 48 months ✓ <u>As of February 10, 2027:</u> 60 months |
| Sectors | (i) Logistics and transportation; (ii) Urban mobility; (iii) Energy; (iv) Telecommunications; (v) Radio; (vi) Water and sewage treatment; (vii) Irrigation; (viii) Education; (ix) Health; (x) Public safety and prisons; (xi) Urban parks and conservation units; (xii) Cultural and sports equipment; and (xiii) Housing and urban renovation | To be defined by the new regulation. |
| Fine in the event of improper use of funds | 20% of the issuance amount, to be applied by the RFB on the issuer or assignee; the issuer’s controller is held jointly and severally liable. | 20% of the amount not invested in the project, to be applied by the RFB on the issuer; the issuer’s controller is held jointly and severally liable. |
| Cross-border issuances | 0% IRRF on interest resulting from the issuance of bonds abroad, increased by 30% in the event of payment to related parties. | The new regulation will address the acquisition of debentures by foreign related corporations, provided that the acquisition is carried out in connection with the issuance and placement of related securities abroad. |
| Coexistence of benefits provided for in both regulations | The legislation is not clear as to whether the benefits can be cumulated. Regulations on the subject have yet to be published. | The legislation is not clear as to whether the benefits can be cumulated. Regulations on the subject have yet to be published. |

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CHANGES TO REGULATIONS APPLICABLE TO FUNDS SUBJECT TO LAW NO. 12,431/2011 (INCENTIVIZED SECURITIES INVESTMENT FUNDS)

- **Change:** These funds are expected to invest at least 85% of their net equity in securities listed in article 2 of Law No. 12,431 (incentivized securities). With the new law, these 85% will accrue on the reference amount (and not on the net equity), equivalent to the lower of the fund's net asset amount and the average of the fund's net assets over the 180 days prior to each calculation date.
- **Note:** The change was made to provide greater flexibility in calculating the minimum percentage, given that unforeseen or sudden variations in the amount of the fund's net assets can occur, depending on the performance of its target assets. The previous regulation only considered the status on the calculation date.

CHANGES TO FUNDS REGULATED BY LAW NO. 11,478/2007 (FIPs for Infrastructure "FIP-IE" and FIPs for Innovation, Research and Development "FIP-PD&I" – PRIORITY PROJECTS)

➤ Allocation

- **Change:** Sectors included in Law No. 12,431 will also be eligible for investment by Priority Project FIPs.
- **Note:** The change was made to reconcile the sectors addressed by both laws, as their purpose is to incentivize fund raising for investment projects, especially FIP-IEs and FIP-PD&Is.

➤ Framework Period

- **Change:** These funds have up to 360 days, after registration with the Brazilian Securities Commission ("CVM"), to initiate operations, and the term for qualification is now 24 months. Prior to the new law, the maximum term for the start of operations and for qualification was 180 days after registration with the CVM.
- **Note:** The change aimed at extending the deadlines imposed for the start of operations and qualification of the FIP-IEs and FIP-PD&Is, seeking to allow the manager adequate time to establish, structure and/or invest in infrastructure projects.

➤ Expansion of Projects

- **Change:** Expansion of existing and implemented projects or those already under implementation. Changes can be implemented in a new corporation or in an existing corporation, provided that they result from a concession agreement, a permission, a lease or an authorization entered into or granted by a governmental authority. Prior to the new law, the expansion of projects required the constitution of a new corporation.
- **Note:** With regard to the project and its expansions, the change provides greater flexibility, thus allowing concentration in a single corporation.

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CAPITAL MARKETS



JOÃO PAULO MINETTO
PARTNER
jminetto@demarest.com.br
+55 11 3356 1626



LETÍCIA WANDERLEY
PARTNER
lwanderley@demarest.com.br
+55 11 3356 1988



LUIZ FELIPE EUSTAQUIO
PARTNER
leustaquio@demarest.com.br
+55 11 3356 2282



MAIARA MADUREIRA MENDES
PARTNER
mamendes@demarest.com.br
+55 11 3356 2252



PAULA MAGALHÃES
PARTNER
pcmagalhaes@demarest.com.br
+55 11 3356 1959



THIAGO GIANTOMASSI
PARTNER
tgiantomassi@demarest.com.br
+55 11 3356 1656

INFRASTRUCTURE



BRUNO AURÉLIO
PARTNER
baurelio@demarest.com.br
+55 11 3356 1853



IZABELLA REIS
PARTNER
ireis@demarest.com.br
+55 11 3356 1872



MARINA FERRAZ AIDAR
PARTNER
mfaidar@demarest.com.br
+55 11 3356 1711



RENAN SONA
PARTNER
rsona@demarest.com.br
+55 11 3356 2089



VÍRGÍNIA MESQUITA
PARTNER
vmesquita@demarest.com.br
+55 11 3356 1761

TAX



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
mppedroso@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