Brazil, France

Treaty between Brazil and France – Brazilian tax authorities confirm no withholding tax on payments for technical service and technical assistance

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Following the change in the position of the General Office of the National Treasury's Attorney (see Brazil-1, News 12 February 2014) and of the Internal Revenue Service (see Brazil-2, News 24 June 2014) on the application of tax treaties, the Brazilian tax authorities published, on 1 July 2015, Private Letter Ruling 153/2015 (Solução de Consulta COSIT 153/2015) regarding the interpretation and application of the Brazil-France tax treaty (the Treaty).

Accordingly, income paid by Brazilian sources to individual or legal entities resident in France in consideration for technical services or technical assistance, with or without transfer of technology, is not subject to withholding tax in Brazil.

The position above results from the application of article 7 of the Treaty whereby, concisely, profits of a French enterprise can be taxed only in France, unless such profits are attributable to a permanent establishment of the French enterprise located in Brazil.

The application of article 7 in the case of the Treaty is due to the fact that this treaty neither characterizes payments in consideration for technical services or technical assistance as royalties nor do the services provided in the specific case of the ruling fall within the scope of the provision on independent professional services and independent workers.

Brazilian tax authorities currently recognize that the payments made by Brazilian sources to foreign beneficiaries in consideration for the rendering of services and technical assistance, whether or not involving transfer of technology, are subject to application of the tax treaties signed by Brazil, as follows:

(i) payments fall within the article on royalties when the corresponding protocol establishes that technical services and technical assistance are subject to the same tax treatment as royalties;
(ii) payments fall within the articles that deal with independent professional services and independent workers when technical services or technical assistance involves technical skills of a person or group of persons, provided that the corresponding tax treaty allows the taxation in Brazil and except when item (i) above applies; or
(iii) payments fall within the scope of the article on business profits, except when item (i) or (ii) above applies.

Private Letter Ruling 153/2015 is binding on the Brazilian tax authorities and is applicable to any taxpayer falling within its scope.

See also

Brazil-1, News 12 February 2014
Brazil - Corporate Taxation - Country Surveys sections 6.3.3., 6.3.4.
Brazil - Corporate Taxation - Country Analyses sections 7.3.3.2., 7.3.4.3., 7.3.4.4., 7.3.4.5.
Brazil - Individual Taxation - Country Surveys sections 6.3.1.2., 6.3.1.5.
Brazil - Individual Taxation - Country Analyses sections 7.3.1.3., 7.3.1.4., 7.3.2.3., 7.3.2.4.
Brazil - France Income Tax Treaty (1971)