

Investment in the US: Brazilian tax aspects



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Prof. Dra. Ana Cláudia Akie Utumi
ana.utumi@utumilaw.com


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Prof. Dra. Ana Cláudia Akie Utumi

ana.utumi@utumilaw.com



- Membro: Practice Council do International Tax Program da New York University School of Law; Conselho da Fundação Visconde de Porto Seguro; 2010-2017 Comitê Científico Permanente da IFA – International Fiscal Association; Diretoria da ABDF/IFA Brasil
- Chair-Elect do Financial Planning Standards Board (FPSB), entidade internacional responsável pela certificação CFP® - Certified Financial Planner
- Chair da filial brasileira do STEP – Society of Trust and Estate Practitioners
- Vice-Chair do WIN – Women of IFA Network - Global Committee e Co-Chair do WIN Brasil
- Professora do Mestrado Profissional do IBDT e do LL.M in International Tax da University of Zurich
- Professora convidada de cursos de pós-graduação, incluindo, MBAs da FIPECAFI, e Especialização em Direito Tributário do IBET
- Doutora em Direito Econômico-Financeiro (USP). Mestre em Direito Tributário (PUC/SP, 2001). MBA em Finanças (IBMEC/SP, 1996). Graduada em Direito (USP) e Administração de Empresas (FGV). Certified Trust and Estate Practitioner (“TEP”). Certified Financial Planner (“CFP”)
- Frequentemente incluída entre os profissionais de maior destaque na Área Tributária por publicações especializadas. Premiada em 2015 como Best Female Tax Lawyer in Latin America (Euromoney America’s Women in Law Awards)

@prof_ana_utumi 

@Ana_Utumi 

<https://www.linkedin.com/in/anautumi/> 

Investment in the US: Brazilian tax aspects

Direct investments

Investments via offshore companies

Real estate investments

Trusts



Taxation on Foreign Sourced Income

- General rule
 - Any income generated by labor or capital, or combination of both
 - Includes foreign sourced income, deriving from capital located abroad, or activities developed therein
 - Regardless the actual transfer of the funds to Brazil
 - Worldwide basis

Individual Income Tax – IRPF

- IRPF based on progressive rates – maximum 27.5%
 - Taxation on worldwide basis by Individual Income Tax
 - Taxation upon availability of the income
 - Foreign sourced income: taxation Regardless the actual transfer of the funds into Brazil

| Calculation base (BRL monthly) | Rate % | Amount to be deducted |
|--------------------------------|-----------|-----------------------|
| Up to 1,903.98 | Exemption | - |
| From 1,903,99 to 2,826,65 | 7.5 | 142.80 |
| From 2,826.66 to 3,751.05 | 15 | 354.80 |
| From 3,751.06 to 4,664.68 | 22.5 | 636.13 |
| More than 4,664.68 | 27.5 | 869.36 |

Taxation on Gains - Concept of capital gains

Gains obtained in any transaction that implies in transfer or assignment of assets or rights from one person to another

- Sale and purchase of assets
- Swap / Exchange of assets/rights
- Assignment of rights etc.

Including gains obtained in financial investments abroad

- Financial transactions performed through financial institutions

Also includes foreign exchange variation in case of investments performed with funds generated in Brazil

- Investments abroad with funds obtained outside Brazil - IR/GC exemption on FX effects

Taxation on Foreign Sourced Gains

- Income Tax on Capital Gains (IR/GC)

| Annual amount of gains | Applicable rate |
|---------------------------|-----------------|
| Up to BRL 5MM | 15.0% |
| From BRL 5MM to BRL 10MM | 17.5% |
| From BRL 10MM to BRL 30MM | 20.0% |
| More than BRL 30MM | 22.5% |

Ancillary obligations when investing abroad

- 1. Include the assets (quotas of funds, shares of offshore companies, financial investments, etc.) directly belonging to the Brazilian resident individual in the annual statement of assets, which is part of the annual income tax return
 - Declaration based on cost value
 - All the assets above USD 1,6k must be declared
 - Lack of declaration is tax evasion – deemed as a unjustified income and subject to 27.5% + 150% penalty + interest

- 2. Declare the investment abroad to Brazilian Central Bank (except if the investment is less than USD 1,000,000)
 - Declaration of assets based on market value
 - Obligation to declare assets under trust as well

Ancillary obligations when investing abroad

- 3. Calculate the income tax (IRPF or on capital gains) whenever there is a taxable event
 - Direct or indirect distribution of profits
 - Realization of gains
 - Liquidation/redemption of financial transactions

- 4. Pay the corresponding tax until the last business day of the following month

- 5. Include the relevant income or gains and the corresponding tax paid in the annual income tax return

1. Direct investment in financial assets in the US

Advantages

- Taxation of financial income as *capital gain*
- Applicable rate lower than IRPF applicable on ordinary income
 - 15% up to BRL 5MM of gains per year
- Any income tax paid in the US is creditable in Brazil

Disadvantages

- Taxation upon any changes of financial investment
 - Upon liquidation or redemption of any investment
- Necessity of controlling each and every dollar that the individual receives
 - Ex: upon receipt of coupons, necessary to pay Income Tax on Gains in the following month, even if there is no transfer of funds to Brazil
- More complex control
- Not possible to offset losses

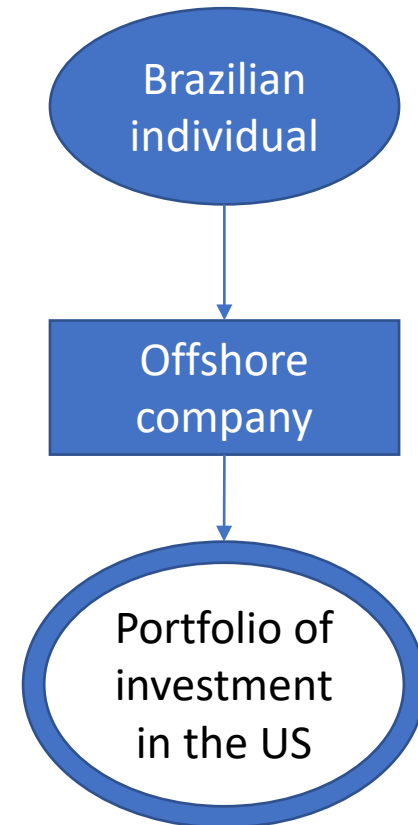
2. Investment in the US by means of offshore company

Advantages

- Portfolio effect – possibility of offsetting gains and losses
- No CFC for individuals - Deferral of Taxation
 - Taxation upon distribution/use of profits

Disadvantages

- Upon distribution/use of profits, taxation by IRPF with maximum rate of 27.5%
- Cost of compliance/maintenance of the company
 - Minimum substance
- Any income tax paid in the US is not creditable in Brazil



2. Investment in the US by means of offshore company

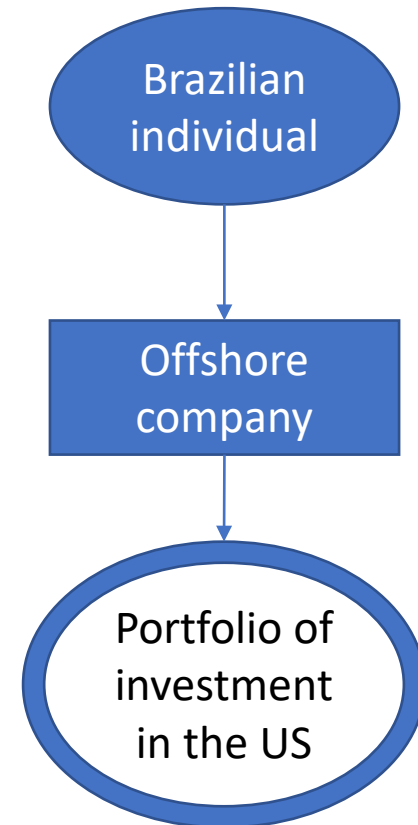
Use of funds sitting in the offshore company

Possibility of reducing capital instead of distributing profits

Capital reduction – Taxation of foreign exchange gains, if any, except if investment with proceeds obtained outside Brazil

Important to prepare the necessary Corporate documents to demonstrate the capital reduction

Sale of shares by Brazilian individual – Taxation as capital gain



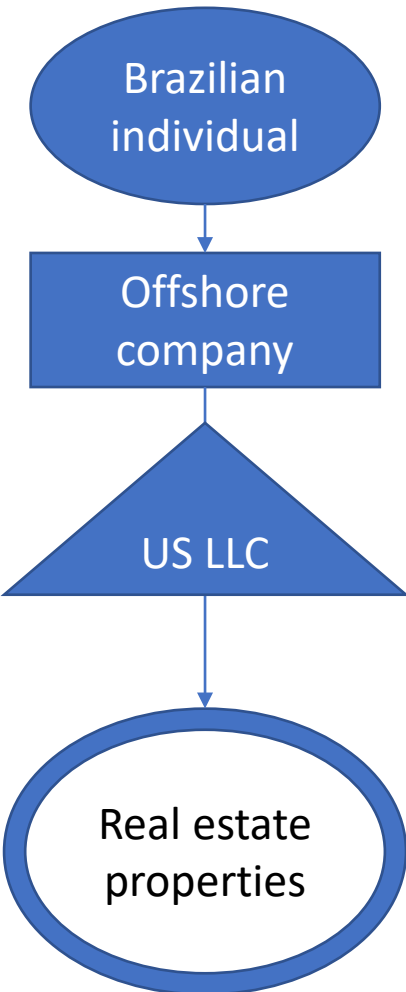
2.1. Investment in the US through foreign investment funds

- Offshore funds may qualify as corporate participation or as financial investment
 - To be financial investment
 - Ideally no legal personality
 - Ex: Luxembourg FCP
 - If there is legal personality – discussion on the substance of the fund
 - Necessary to be a well-structured fund, with professional management by financial institution, including NAV calculation, fund management, portfolio management, custodia of assets and quotas, auditing, etc.
 - Qualifying as financial investments, all redemptions are subject to taxation as capital gains

Qualifying as financial investment:

- Taxation as capital gains (lower Taxation)
- Portfolio Effect

3. Real estate investment in the US



- As the LLC is a disregarded entity, and the US law considers LLC profits as immediately belonging to shareholders
 - Important to have an offshore company as a blocker
 - Avoid the Brazilian tax authorities to consider the US LLC profits as immediately distributed to the Individual
 - Sale of properties under the structure
 - Not taxable in Brazil while there is no distribution of profits by the offshore company

4. Fiduciary Structures

- Use of fiduciary structures is NOT a tax planning for Brazilian families
 - There is no concept of fiduciary ownership in the Brazilian law
 - Except for credit transactions, in which the creditor retains the ownership until the debtor finishes paying, but in this case the asset stays in the full possession and responsibility of the debtor
 - Law project to create trust in Brazil



4. Fiduciary Structures and Brazilian Taxation

No clarity
in the law

Trust/foundation is a “mere intermediary” (position of the tax authorities upon tax amnesty) or “owner” of the assets?

All distributions by trusts are taxable as “ordinary income”?

- Most recent tax authorities’ position in a response to a consultation)

4. Fiduciary Structures and Brazilian Taxation

- Position of most part of the market in Brazil
 - Revocable trust
 - assets remain, for Brazilian tax purposes, in the possession of the settlor
 - Distributions from the trust treated as capital reduction or distribution of profits, depending on whether the distribution involve principal or income
 - Irrevocable trust
 - disposition of the assets to the trustee
 - Subject to State Gift Tax (ITCMD) and risk of withholding income tax
 - Exclusion from the settlor´s statement of assets in the income tax return
 - Distributions from the trust treated as ordinary income

Possibility of using Corporate settlor structure to avoid having a Brazilian individual as the settlor


Thanks so much!


Prof. Dra. Ana Cláudia Akie Utumi

Utumi Advogados

ana.utumi@utumilaw.com

www.utumilaw.com

@prof_ana_utumi 

@Ana_Utumi 

<https://www.linkedin.com/in/anautumi/> 