TAX & CUSTOMS

CLIENT ALERT

MAY/2019

FEDERAL REVENUE SERVICE ISSUES NORMATIVE RULING REGARDING THE OBLIGATION OF PROVIDING INFORMATION OF OPERATIONS WITH CRYPTOASSETS

On May 7th, 2019, the Federal Revenue Service published Normative Ruling N. 1.888, which established and regulated the obligation of providing information of operations with cryptoassets to the Federal Revenue Service.

Following the trend of international tax policy, this is another chapter of the evolution of tax inspection procedures considering the digital economy, whose major guideline is to bring more transparency to digital transactions, as the more reliable is the environment, the greater the confidence of potential investors.

In fact, even though this is another tax ancillary obligation, which may involve increase in compliance costs, this new tax regulation tends to be beneficial to this digital transactions environment. Accordingly, the obligation of providing all relevant details regarding transactions with cryptoassets may assure additional legitimacy, credibility to the players and, ultimately, attract new investors, with different profiles (including, for instance, sectors that tend to be more conservative, such as financial institutions or major corporate groups).

According to the new rules, information shall be provided through the Coleta Nacional system, made available in the Federal Revenue System's virtual center of services (e-Cac). The layout will be defined in a specific act to the published in 60 days counted from the publication of the Normative Ruling.

Normative Ruling also indicates the definition of some concepts:

- Cryptoasset: the digital representation of value indicated in its own unit, which price can be expressed in local or foreign currency, electronically traded by the use of cryptography and of distributed ledger technologies, that can be used as investment method, instrument for the transfer of values or access to services, and that is not qualified as a currency; and

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- Exchange of cryptoasset: the legal entity, even if not financial, that offers services related to transactions using cryptoassets, including intermediation (including the provision of environments for the performance of sale and acquisition transactions involving cryptoassets carried out by users of its services), negotiation or custody, and that can accept any payment methods, including other cryptoassets.

Federal Revenue Service indicated as responsible for the provision of such information (i) the exchange of cryptoassets domiciled in Brazil and (ii) the individual or legal entity domiciled in Brazil in the hypothesis of transactions performed by exchanges domiciled abroad or transactions not performed by exchanges (in this hypothesis, the report will be only mandatory if the monthly flow of the transactions with crypto assets exceeds R$ 30 thousand - – individually or jointly considered).

As a rule, the Normative Ruling sets forth that all transactions that result in the transfer of cryptoassets must be informed (there is a list delimiting the transactions that must be informed – sale and acquisition, trade, donation, payments in kind, issuance, etc.).

Information to be provided refer to the date and kind of transaction, its holders, the cryptoassets used, the amount of cryptoassets negotiated, the amount of the transaction in Reais, the amount paid as fees for services charged for the performance of the transaction and the address of the wallet related to the remittance and receival, if applicable. For transactions carried out by an exchange domiciled abroad, the same information are required in addition to the necessity of identification of the exchange (in this case, however, it is not necessary to indicated the holders).

The Normative Ruling also establishes the terms for provision of information by the responsible taxpayers. Information related to individual transactions must be informed to RFB monthly until the last business day of the month following the one in which the transactions were performed. Besides that, exchanges of cryptoassets domiciled in Brazil for tax purposes may disclose, annually, until January of the following year, information referring to each user of its services in December 31st of each year, such as the balance of currencies, in Reais, the balance of each kind of cryptoassets, in their own units and the acquisition cost of each kind of cryptoasset, in Reais, as declared by the user of their services.

Finally, the Normative Ruling also establishes the terms for provision of information by the responsible taxpayers and the penalties applicable to the lack of provision or omission of information, besides the provision of incorrect, incomplete or inexact information (for instance, fines can range from fixed amounts of R$ 100 up to 3% of the value involved in the transactions).

Our team is prepared and entirely available to provide further details on the matter.

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