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INSURANCE SERVICES

**FREQUENTLY ASKED QUESTIONS
NEW BRAZILIAN TAX LEGISLATION
AND PRIVATE PLACEMENT
LIFE INSURANCE (PPLI)**

Considering the recent Brazilian tax legislation concerning Private Placement Life Insurance (PPLI), Law No. 14,754/2023, and Normative Instruction N°. 2,180/2024, we have prepared this Q&A for clients, financial advisors, and attorneys seeking to analyze the validity and enforceability of this wealth planning solution for Brazilian fiscal residents. Our study examines whether this tool is to be recommended as a

sophisticated wealth planning structure, with tax deferral effects, and to address strict local inheritance rules (forced heirship) and the new 8% inheritance tax recently enforced in Brazil.

Our work is based on the legislation in force at the time of preparation, recent jurisprudence and administrative regulations.

UNDER WHAT CONDITIONS CAN A PRIVATE PLACEMENT LIFE INSURANCE POLICY BENEFIT FROM INCOME TAX DEFERRAL AND/OR BE TOTALLY TAX-EXEMPT UNDER BRAZIL'S NEW REGULATIONS (LAW 14,754 AND PLP 108/2024)?

Law 14,754 has broadened the definition of financial investments to include insurance policies (Article 3, S1), impacting the tax treatment of redeemable insurance policies.

- **Redeemable insurance:** treated as a financial investment or a controlled entity if the investor can intervene in investment decisions, both taxed at a 15% rate regardless of profit distribution.
- **Non-redeemable insurance:** treated as a life insurance benefit due to its compensatory nature,

with the following fiscal implications (Articles 9 and 16, Law 14,754):

- Income tax deferral benefit while the policy is outstanding.
- Tax exemption (no inheritance, no income tax) when paid upon death, provided that the policyholder did not intervene in investment decisions throughout the policy period, and the policy was paid in one sole installment.
- Subject to capital gains at rates ranging from 15% to 22.5% and up to 27.5% if the policy benefit is **paid before** the insured's death.

WHO SHOULD CONTRACT THE POLICY?

The contract must be signed abroad. Brazilian local regulations prohibit international insurance companies from offering insurance products in Brazil.

CAN A PRIVATE INVESTMENT COMPANY (PIC) CONTRACT THE POLICY?

Yes, provided that the PIC does not fall under the definition of a controlled entity and is taxed accordingly.

WHEN IS A CORPORATION CONSIDERED TO BE A BRAZILIAN CONTROLLED FOREIGN CORPORATION (CFC) AND BE SUBJECT TO AUTOMATIC TAXATION BY THE BRAZILIAN *RECEITA FEDERAL*?

According to local Brazilian laws, CFC are entities, incorporated or not, including investment funds and foundations, controlled by an individual resident in Brazil, either individually or combined with related persons, such as close family members, that hold:

- a. Rights that ensure preponderance in corporate deliberations or the power to elect/remove directors and officers.
- b. More than 50% stake in the share capital.

There are two criteria for a foreign entity to be subject to the automatic taxation of its profits on 31 December of each year:

1. **Jurisdictional criteria:** entity must be organized in a jurisdiction of favored taxation or a privileged tax regime.

2. **Passive income criteria:** the rule includes companies abroad with own active income of less than 60% of total income, including royalties.

Clarification that the calculation of the profit of the entity controlled abroad will follow the accounting standards of the Brazilian commercial legislation.

The profits of the foreign-controlled entity are determined individually, in the annual balance sheet of the entity, directly or indirectly owned abroad, excluding from the results of the direct or indirect entity the portion related to the interests of this entity in other subsidiaries (including subsidiaries formed as investment funds).¹

UNDER BRAZILIAN LAW, WHICH COUNTRIES ARE CONSIDERED TAX HEAVENS SO THAT THE PIC AUTOMATICALLY FALL INTO THE CFC CATEGORIZATION AND THUS SUBJECT TO BRAZILIAN TAXES?

Normative instruction No. 1037/2010 listed the following jurisdictions: Bahamas, Cayman Islands, British Virgin Islands and Panama.

Final comments

Although Law N°. 14,754/2023, regulated by Normative Instruction no. 2,180/2024, establishes that insurance policies that are redeemable, should be treated as financial investments, we can still resort to PPLI for a beneficial tax treatment, if the insurance policy is directly contracted by an individual and its value is non-redeemable. Additionally, it is important to state that the influence of the asset manager is crucial for the PPLI to be classified as an insurance contract resulting with a death benefit to favor beneficiaries and not a capital gain from an investment portfolio.

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To schedule a call with our team, please contact us at contact@untitled-slc.com.

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1. Allowed the offsetting of losses calculated from 2024 with subsequent profits, and possibility of offsetting income tax paid abroad on the profit and income of the controlled entity. Exchange variation of the main value applied in the entity abroad will compose the taxable capital gain at the time of disposal, write-off or liquidation of investments, including through return of capital.



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