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NEWSLETTER



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Technology transfer in Brazil: the new exchange rate framework and its impacts

On December 30, 2021, Federal Law No. 14,286/21 was published in the National Official Gazette of the Union, providing for the Brazilian foreign exchange market, Brazilian capital abroad, foreign capital in the country and the provision of information to the Central Bank of Brazil (BACEN), amending a number of legislation regarding these matters. The new legislation and its changes will come into force as of December 30, 2022.

The recent law embodies a whole new exchange rate framework.. The law facilitates the purchase and sale of foreign currency with different agents and allows the opening a dollar account in Brazil by a foreign investor or in specific cases upon justification BACEN. Moreover, Law No. 14,286/21 provides for the possibility of payment of obligations due in Brazil in foreign currency.

Hence, the law is an important landmark for export and import relations, and investors, lessening the risks in transactions. More importantly, the law also affects the innovation scenery by lifting up a number of prior restrictions for technology transfer transactions.

In a very brief retrospect, from the mid-1950s onwards, Brazil imposed a number of currency containment rules, prioritizing the country's internal industrialization process. Hence, Article 14, of Law No. 4,131/1962, prohibited the remittance of royalties from a Brazilian branch or subsidiary to its foreign parent company. In 1991, Law nº 8,383/1991, revoked such prohibition, for contracts signed after December 31, 1997, as per the sole paragraph, of art. 50. However, these contracts had to be recorded with the Brazilian National Institute of Industrial Property (INPI) and registered with BACEN, respecting the limits and conditions of deductibility in the legislation in force (Ordinance of the Ministry of Finance PMF No. 436/1958), which vary from 1% to 5% of the net sales, depending on the case and industry involved.

Thus, a Brazilian subsidiary could only remit payments in connection with technology transfer to its parent company up to the above-mentioned limit, subject to penalties and repatriation of resources.



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The new Law No. 14,286/21 revokes Article 14, of Law 4,131/1962, in its entirety, and the sole paragraph, of Article 50, of Law No. 8,383/1991, amending the head of this article. As per its Article 24, expenses in connection with technology agreements (i.e. royalties in connection with trademark and patent licensing, technology transfer, franchise and expenses regarding the provision of technical assistance services) must only have their respective contracts recorded with the INPI for deductibility purposes, exempting the parties from registration with BACEN.

In conclusion, the parties need not to register the agreement with the INPI to remit royalties abroad, nor there is any limitation on such royalties, but for fair market conditions. Registration with the INPI remains mandatory for tax deductibility reasons.

It is important to note that tax deductibility is a relevant tool for Brazilian subsidiaries to foster innovation in the country, exempting a part of federal income tax payment by proving expenses, in better words, investments in connection with technology transfer.

Technological progress and innovation have always been associated with economic growth. Hence, technology transfer is an effective mechanism to reduce the technological space between developed and developing nations. Therefore, policies to promote technological advancement should walk hand in hand with economic concerns. Less developed nations have the characteristic of technological fragility – which increasingly marginalizes them from economic growth. Accordingly, the need to promote technology transfer.

Technology gaps between nations do exist. The differences between capacities and access to technologies among countries have the power to amplify the economic distance. The challenge is to promote stronger flows of technology through transfer channels and to develop the technology receptor's absorption capacities necessary for the use, adaptation and development of technology, to translate them into innovation, with the promotion of internal economic development.

Innovation is the main force driving economic development and growth. The combination of investments with the ability to absorb technology appears to be the solution. Developing countries that invest in innovation are more apt to introduce new technological advances.

There are a number of forms to advance technology transfer. The trade of goods promotes the transfer of technology embedded in such goods. Therefore, the reduction of barriers to imports can reduce the costs of technology transfer. Licensing is also an important means; however, licensee must have adequate absorption capacity. Finally, encouraging foreign investment stimulates the exchange of technology between nations.

Law No. 14,286/21 took into account these matters and inserted in its provisions forms to boost the economy and technology transfer. Although pending further regulation in some aspects, we should expect a more dynamic scenery as of December 30, 2022 in technology transactions with Brazil.

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