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# WHAT WILL COME AFTER THE VOLUNTARY DISCLOSURE PROGRAM IN BRAZIL?

## Opportunities and threats

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# AGENDA



- The End of “Hidden Assets Era”: Transparency!
- Brazilian Voluntary Disclosure Program (VDP): tax and criminal amnesty
- Who could not apply for Brazilian VDP?
- Challenges for VDP applicants.
- If it happens as expected...
- New market
- Different purposes, different strategies.

WHAT WILL COME AFTER THIS?



# TAX TRANSPARENCY: THE END OF “HIDDEN ASSETS ERA”!



- Automatic Exchange of Information (AEOI), Common Reporting Standard (CRS)
- First Exchange Date 30 September 2017.
- Brazil intended first information exchange by September 2018
- Mutual Administrative Assistance in Tax Matters – 107 jurisdictions
- CRS Multilateral Competent Authority Agreement – 87 jurisdictions
- Base Erosion and Profit Shifting (BEPS) Project: corporate tax transparency
- Data Leaks – Panamá Papers, HSBC, ...

# BRAZILIAN VOLUNTARY DISCLOSURE PROGRAM TAX AND CRIMINAL AMNESTY



- Special Program for Tax and Monetary Compliance of Undeclared Assets (RERCT – Programa de Regularização Cambial e Tributária) remitted or kept abroad, or subject to repatriation into Brazil, by resident taxpayers.
- Filing period: April 4 to October 31, 2016, with data base as of December 31, 2014.
- RERCT tax and penalty: 15% income tax levied on assets value converted into Brazilian currency on Dec 31, 2014 and penalty of 100% calculated on the due tax.
- Total: 30% of assets value converted into Brazilian Currency as of Dec 31, 2014 (Fixed exchange rate of USD 1 = BRL 2.66).
- IRS collected US\$ 14 bi – Assets US \$ 42 bi
- Congress working on a 2<sup>nd</sup> edition for RERCT

# THOSE LEFT BEHIND...



## WHO COULD NOT APPLY FOR BRAZILIAN VDP?

- A person ...
  - ...that has been convicted for listed crimes at the time of filing of the application
  - ... that was not a tax resident in Brazil on Dec 31, 2014
  - ... whose assets are from illicit activities
  - ... that was a politically exposed person (PEP), as defined by the law, on Jan 14, 2016:

“Those who, on January 14, 2016, are public officer, public employee or hold public functions, whether elected or appointed, and also to their spouses and relatives by blood, marriage or adoption up to second degree.” (Art. 11)

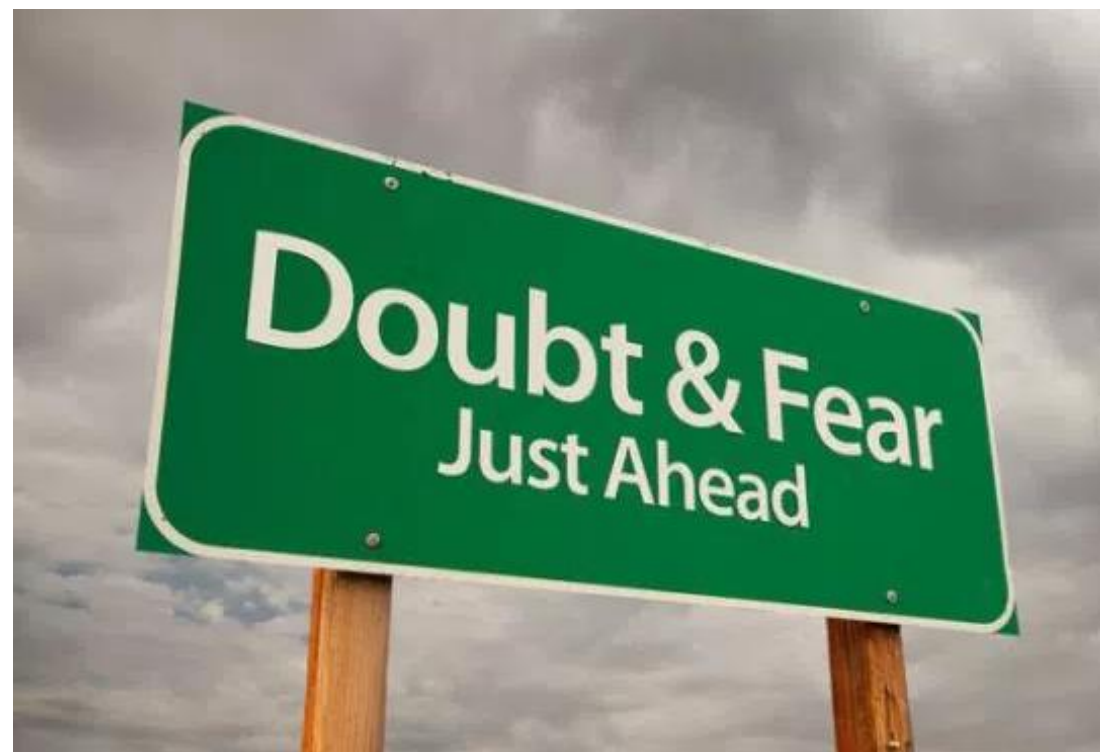
## WHO COULD NOT ENTER IN VDP?

- PEP in 14 January 2016
- Spouses and relatives of PEP
- Relatives by marriage
- Despite the absence of link between the time the person was working for public sector and the time he/she earned the funds used to acquire the undeclared assets.
- Despite the personal activities of spouses and relatives or personal situations like inheritance.
- Without clear exception for relatives of ex-spouses.



## ALTERNATIVES FOR THOSE LEFT BEHIND

- A possible second round for VDP.
- Several strategies with no guarantee of success:
  - ... new tax residence,
  - ... insurance,
  - ... expenses,
  - ... jurisdictions out of CRS strings
- And Fear!



AND FOR VDP APPLICANTS...



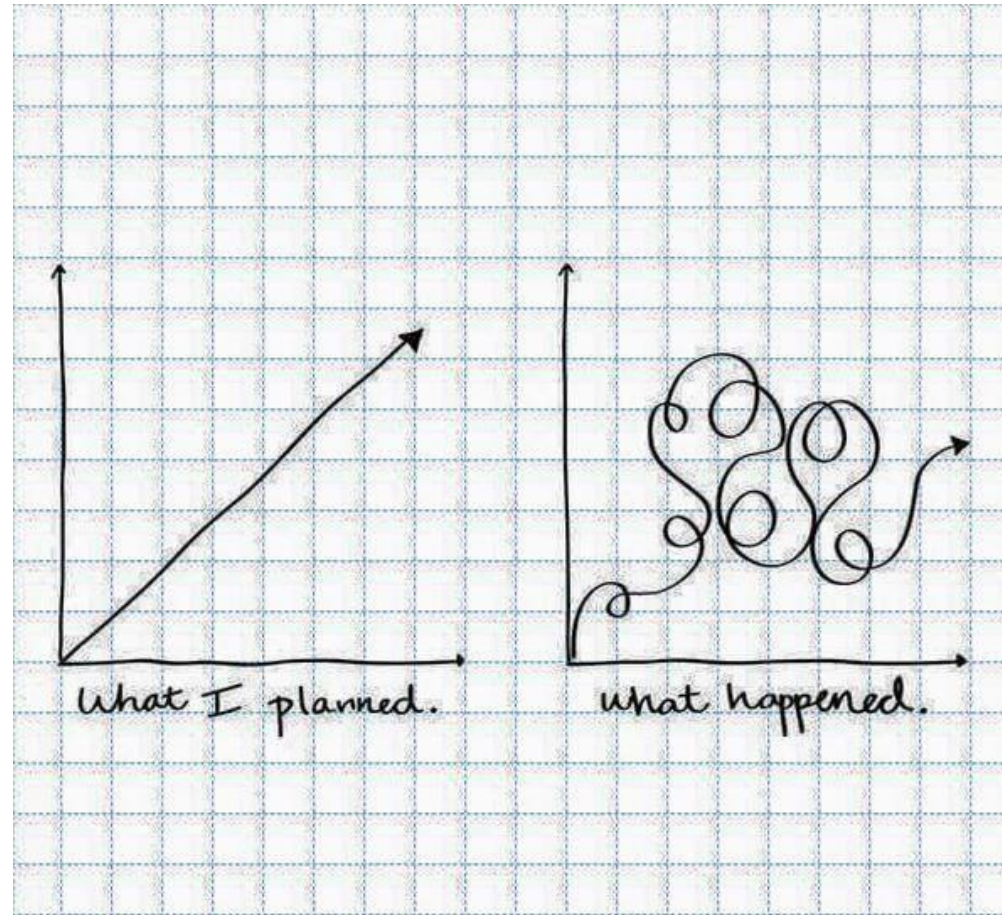
# CHALLENGES FOR VDP APPLICANTS.

- Revenue Department has 5 years to review the DERCAT and the value attributed to reported assets, although they must present evidences that the information inserted by the VDP applicant is incorrect
- During the VDP audit, documents and information could drag other people to investigations. It can be a problem when they have not applied for VDP or when they were not allowed to enter in VDP.
- Divergence of Revenue Service interpretation of VDP Law (Picture in December/14 or movie since 2011 till December/14?) and uncertainty about the prosecutors' s interpretation of VDP Law.
- Additional Taxes: Once included in VDP, assets are deemed to be reported assets since January 1, 2015. Therefore, income and capital gains derived from these assets, when earned after 31 December 2014 should be properly taxed, considering their effective due date. Because these taxes due dates have already occurred for 2015 tax events, interest and penalties must be added to the tax amount to be paid.
- It is expected that VDP applicants will face tougher future tax audits (and their companies too!).

# VDP AUDIT

- Law was not enough clear and objective as desirable in a criminal amnesty – the reason of the Q&A provided by tax authorities.
- During six months the interpretation of tax authorities changed... what can be expected in 5 years?
  - What is the appropriate evidence to explain to tax authorities transactions and activities that were outside the “official financial world”?
  - How to deal with interpretations distant from the literal sense of law?
  - How to obtain documents to evidence licit origins distant in time?
- They have already started with 7 applicants that caused 98% of the difference between declared and paid amounts.
- It is possible to predict many years of litigation derived from a long list of uncertainties...

# WILL IT HAPPEN AS PLANNED?



## IF IT HAPPENS AS EXPECTED...

- Declared Assets will generate taxes on income and gains on the near future... then, the government ability to support relevant public projects will increase.
- With declared assets, Brazilian clients over the world will choose better their investments because they will not be forever attached to services providers only to keep “secrecy”.
- Families will access new international markets to invest their assets.
- Financial investments abroad will be driven by reduction of tax burden, with new and acceptable corporate and tax structure, always with payment of taxes.
- Brazilian companies will be financed with the “recent declared” funds of its stakeholders.

# NEW INTERNATIONAL FINANCIAL PRODUCTS?



## NEW MARKET

- Brazilians will become more and more sophisticated in international financial world – it is a good opportunity for new financial products and structures.
- Brazilian problems with compliance will not disappear completely, but many people will comply with law because they don't want the high burden of undeclared Assets anymore – fiduciary, accounting, tax and legal services will be necessary.
- With the development of financial international markets for Brazilian clients, the domestic financial market will create new products - Clients will require more from their bankers.



# STRATEGIES AND PLANS...



## DIFFERENT PURPOSES, DIFFERENT STRATEGIES

- Tax advisors with transnational background will be needed to help clients with their specific purposes and views.
- With the expected tax changes like the adoption of CFC rules for individual in Brazil and higher rates for estate taxes, clients will need advice for changes in their structures to adjust their trusts, funds, off shores to future new trends.
- Succession plans, inheritance tax planning, retirement plans, insurance and other instruments for specific needs will be considered strategies for different goals – they will not be mere excuses for undeclared assets.

## CONTACT INFO



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