

# The Supplementary Income Tax on the Remittance of Dividends Abroad Revisited

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After the manuscript of my article on the Supplementary Income Tax<sup>1</sup> had been mailed to the publishers of the *Bulletin for International Fiscal Documentation*, the Secretary of Federal Taxation issued Ruling 49 of 14 August 1982 in which he accepted part of my views set forth in that article.

The text of this Ruling reads:

The Secretary of Federal Taxation using his legal powers decides:

- I. The Supplementary Income Tax, based on Article 43 of Law 4,131 of 3 September 1962 amended by Article I of Law 4,390 of 29 August 1964, will be computed on the basis of the values of the foreign currency established in exchange agreements in relation to the benefits of values remitted, these values being equal to the rate of conversion on 31 December of the last year of the three-year period in which the excess amount of benefits remitted was paid.
- II. The Supplementary Income Tax will constitute a debt of the foreign recipient and must be deducted from the results or benefits, remitted in accordance with the law at the moment that they are distributed, credited, paid or used.

If we use the example set forth in my article,<sup>2</sup> the following example can be given:

	Capital	Ranges	Excess value in the range rate	Tax
FRR <sup>3</sup>		12 to 15%	30	12
Computation	1000	15 to 25%	100	50
		above 25%	230	138
Total			<u>360</u>	<u>200</u>

It is assumed that during the three years in question, the distributing company paid the normal 25% withholding tax on dividends on the distribution. This tax is computed in U.S. dollars converted into the Brazilian national currency, the cruzeiro, at the foreign exchange rate in force on the date of remittance.

However, for the Supplementary Income Tax, the exchange rate in force on 31 December of the pertinent three-year period will determine the rate at which the distribution must be converted into cruzeiros. Thus, if it is assumed that the Brazilian company distributed and remitted the income at an average rate of 150 cruzeiros per U.S. dollar, and if it is further assumed that on 31 December of the pertinent three-year period the rate of the cruzeiro is 200 per U.S. dollar, the Supplementary In-

come Tax must be paid in conformity with the latter rate. In the above example, this would mean that the tax is not U.S. \$200  $\times$  150 = 30,000 cruzeiros, but U.S. \$200  $\times$  200 = 40,000 cruzeiros.

The second section of the Ruling establishes that the Supplementary Income Tax due may be deducted from its taxable base. The Brazilian tax authorities had previously ruled that this tax should be deemed part of the remittance made.<sup>4</sup>

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1. "Brazil: The Supplementary Income Tax on the Remittance of Dividends Abroad - Legal Nature and Computation", in 36 *Bulletin for International Fiscal Documentation* 8-9 (1982) at 395.

2. Id., 401.

3. Id., 399.

4. Id., 399.

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