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**Dividend Remittances
Abroad:** Implications
of Law No. 15,270/2025

Law No. **15,270/2025** was recently published, representing a significant reform in income tax legislation by reinstating taxation on the distribution of profits and dividends, ending the full exemption that had been in place since 1996.

The rule establishes a 10% Withholding Income Tax (WHT) on dividends remitted to beneficiaries abroad. However, a transitional regime has been established to preserve the exemption for profits accrued up to the year 2025.

The modifications are relevant, particularly regarding the requirements to qualify for the transitional rule: the distribution must be formally approved by December 31, 2025, and the payment must strictly follow the schedule originally stipulated, with a recommendation to settle payments by 2028. Also noteworthy is the resolution of the apparent conflict between the new law and the Brazilian Corporations Law (Law 6,404/1976) to ensure the validity of deferred payments.

The **Tax Law team** at William Freire Advogados is available to clarify any questions regarding this matter.



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1. Background and Scope of Analysis

1.1. Law 15,270/2025 Dividend Tax Reform

Law 15,270/2025 (originating from PL 1,087/2025) represents a significant reform of Brazilian income tax law. Among its measures, the law reinstates taxation on corporate profits distributed as dividends, ending the full exemption that had been in place since 1996.

For domestic individual shareholders, the law introduces a 10% withholding tax on monthly dividend payments exceeding R\$50,000 from a given company. For non-resident shareholders (individuals or legal entities abroad), the law imposes a flat 10% withholding tax on all dividends remitted overseas, with no value threshold.

This 10% rate may be reduced under applicable tax treaties and distributions to foreign governments, sovereign wealth funds, and qualifying foreign pension funds remain exempt.

1.2. Transitional Exemption for Pre-2026 Profits

Recognizing the need to avoid retroactive taxation of profits earned under the previous legal framework, the law provides a transitional grandfathering rule. This is codified as §5 of amended Article 10 of Law 9,249/1995, which **preserves the income tax exemption for profits and dividends accrued through the 2025 tax year**, as long as certain conditions are satisfied.

In broad terms, the conditions require that: **(i)** the profits must relate to results accrued up to December 31, 2025; **(ii)** the distribution of those profits be **formally approved by the competent corporate body by December 31, 2025**; and **(iii)** the dividends must become exigible (due and payable) in accordance with civil or corporate law, with the **payment (or crediting/ delivery) occurring within the timeframe originally set in the 2025 approval act**.

When these conditions are met, the affected dividends “shall not be subject to withholding income tax, under the terms of the caput of this article” – effectively treating them as still exempt under the old rules.

2. Operation of §5, Article 10 of Law 9,249/1995 (Amended by Law 15,270/2025)

2.1. Text of the Provision

Section 3 of Law 15,270/2025 amends Article 10 of Law 9,249/95 by adding paragraphs including the new §4 and §5. For context, Article 10 caput originally established that profits or dividends calculated from January 1996 onward, if paid or credited by a Brazilian company (taxed under real, presumptive or arbitrated profit regime), were not subject to income tax withholding and were not included in the taxable income of the beneficiary in Brazil.

The amendment retains that general rule for domestic distributions, but introduces §4 to tax non-resident payouts: “Profits or dividends paid, credited, delivered, employed, or remitted abroad shall be subject to withholding income tax at the rate of 10%”. Immediately following, §5 sets out the **exceptions** – i.e. cases that remain exempt under the original rule. In English translation, §5 reads:

*“§ 5. The following profits and dividends shall not be subject to withholding income tax, under the terms of the caput of this article: **I – those relating to results accrued up to the 2025 calendar year: (a) whose distribution has been approved by 31 December 2025; and (b) that are enforceable under civil or corporate law, provided that their payment, credit, employment, or delivery occurs under the terms originally established in the act of approval.**”*

In essence, §5(l) creates a carve-out preserving the tax exemption for profits up to 2025 **if and only if** (a) the company’s shareholders or quotaholders formally approve the dividend distribution by the end of 2025, and (b) the right to receive those dividends is established in that act in such a way that the timing of payment (or crediting) follows exactly what was approved. If these conditions are satisfied, the distribution is treated “under the terms of the caput,” meaning no withholding tax is due.

2.2. Enforceability and “Originally Established” Payment Terms

A key phrase in §5(l)(b) is that the dividends must be exigíveis nos termos da legislação civil ou empresarial, i.e. enforceable in accordance with civil or corporate law, **provided that**

they are paid or credited **in the manner and timing originally stipulated in the 2025 approval act**.

This implies that when the shareholders (or board, in the case of interim dividends) approve the distribution, they should specify **when** and **how** the dividend will be made available to the shareholders. The exemption is conditioned on not deviating from that original timetable.

The policy intent is to prevent companies from exploiting the exemption by declaring a dividend in 2025 (to qualify) but then unduly postponing payment or altering terms later. As long as the company adheres to the schedule set in the 2025 deliberation, the dividends remain exempt from the new 10% tax even if the actual payment occurs in subsequent years.

However, if the payment is delayed beyond what was “originally established,” or if no specific payment schedule was set at the time of approval, there is a risk that the tax authority could argue the condition was not met and attempt to levy the tax.

Therefore, careful drafting of the corporate act (shareholders’ resolution) approving the dividend is crucial – it should clearly state the amount of the dividend and the intended payment date(s) or timeline.

2.3. Scope of Exemption Residents and Non-Residents

Notably, §5 is not by its terms limited to either domestic or foreign beneficiaries; it describes profits/dividends meeting the above criteria as not subject to withholding tax period. This means it shields such distributions regardless of whether the shareholder is a Brazilian resident individual, a Brazilian company, or a non-resident entity.

In the domestic context, this transitional rule complements the new Imposto sobre a Renda das Pessoas Físicas Mínimo (IRPFM, a minimum personal income tax for high earners). The law explicitly provides that dividends from profits up to 2025, if approved by 2025 and paid on the original schedule, will not count toward the individual shareholder’s IRPFM calculation. Specifically, Article 16-A of the Income Tax Law (Law 9,250/1995), as amended, enumerates that such amounts (distributed through 2028 per the rule) are excluded from the IRPFM tax base.

For non-resident recipients, IRPFM is not applicable, so the main benefit of §5 is avoiding the 10% withholding tax. In summary, §5 ensures that **no new Brazilian tax** will apply to distributions of pre-2026 profits, as long as the required steps (approval by 2025 and payment per plan) are followed. It effectively grandfathered prior accumulated earnings to maintain the investors’ legitimate expectation of tax-free repatriation under the old regime.

The subsequent sections examine how the timing requirements under this rule differ for residents versus foreign shareholders and how corporate form and law affect compliance.

3. Timing Requirements: Residents versus Non-Resident Beneficiaries

3.1. Mandatory Payment Window for Resident Individuals

For distributions to Brazilian **resident individuals**, Law 15,270/2025 effectively imposes a deadline by which the exempt dividends must be paid. While §5 of Article 10 (in Law 9,249/95) itself does not explicitly set a final payment date, the related provisions in the personal income tax law do.

As mentioned, the exclusion of pre-2026 dividends from the IRPFM (minimum tax) is conditional on those dividends being **paid in 2026, 2027, or 2028**. In other words, a Brazilian individual shareholder has a **“payment window” extending through the 2028 calendar year** to actually receive the dividend and still enjoy full exemption.

If the dividend is paid after 2028, it would fall outside the grace period contemplated in the IRPFM rules. The consequence is the dividend would likely then be counted as part of the individual’s income for purposes of the IRPFM additional tax (which applies from 2026 onward).

In practical terms, for **Brazilian resident** shareholders, companies should aim to complete the payment of grandfathered dividends by December 31, 2028. This provides up to three years after 2025 to spread out distributions (for example, in installments across 2026–2028) if desired, without triggering the new taxes.

3.2. No Statutory Deadline for Non-Residents Literal Interpretation

By contrast, for **non-resident beneficiaries**, the statute as written **does not set an explicit final payment date**.

Section §5(l)(b) only requires payment occur “under the terms originally established” in the approval, with no outer limit like 2028 mentioned in that clause. Indeed, the law, in the context of withholding on cross-border dividends, did not directly impose a deadline analogous to the IRPFM-related window.

A literal reading of §5 suggests that as long as the distribution was approved by end of 2025 and the timing of payment adheres to what was decided then, the exemption holds, even if that payment happens beyond 2028.

In theory, a Brazilian company could, for example, approve on December 30, 2025 a dividend to its foreign parent, specifying that it will be paid in, say, 2030 – and under the letter of §5, that dividend would still “not be subject to withholding” because it was part of the 2025-approved act and paid according to that original schedule.

There is **no explicit cutoff year in the law for non-resident cases**. This creates an asymmetry: foreign shareholders could enjoy a longer deferral (even indefinite) of tax-free payout, whereas resident individuals are effectively capped at 2028. It is important to note that this asymmetry may not have been intentional, and it raises policy and anti-avoidance concerns (an indefinite deferral for foreign investors could be seen as a loophole). Nonetheless, under a strict textual interpretation, **non-residents are not bound by the 2028 limit** – the only requirement is the payment must occur as per the original corporate resolution’s terms, whatever those may be.

3.3. Integrative Interpretation Aligning Foreign Timing with 2028


A more integrative interpretation of the law aims to harmonize the treatment of residents and non-resident beneficiaries, construing §5 in light of constitutional principles of equality and international norms on non-discrimination.

Under this reading, one would infer that the legislature intended to allow deferred tax-free distributions of pre-2026 profits only up to a reasonable horizon (through 2028) for all shareholders, and that the omission of a non-resident deadline in §5 was a drafting oversight.

Supporting this view is the notion that giving foreign investors an unlimited tax holiday, beyond what residents get, could violate the spirit of equal treatment. It might also conflict with typical OECD non-discrimination principles, which prevent tax regimes from unduly favoring non-residents over residents (or vice-versa) in comparable situations.

Additionally, allowing very long deferrals could be seen as enabling tax avoidance, which Brazilian authorities would likely move to curb via regulation. Therefore, we recommend treating 2028 as a de facto latest payment year for foreign-bound dividends as well, to err on the side of caution.

We note that the Brazilian Federal Revenue Service (RFB) may issue regulations addressing this point, and there is pending discussion in Congress (via a separate bill) about extending the approval deadline or clarifying payment timing. Until more clarity is provided, the safest course is to assume a 2028 payment deadline for all grandfathered dividends and document that in the 2025 distribution approval.



4. Corporate Form Considerations: Limitadas (**LLCs**) versus Sociedades Anônimas (**Corporations**)

Limitadas (LLCs) have more flexibility in their governance, typically operating under the Brazilian Civil Code and their contractual quotaholder agreements. **Corporations (S.A.)**, especially those that are closely held, follow a more rigid framework under Law 6,404.

With respect to dividend distributions, one critical difference lies in the timing of payment once a distribution is declared. Under general civil law principles applicable to limitadas, the company and its quotaholders have broad latitude to agree on when a declared dividend will be paid. There is no explicit statutory deadline in the Civil Code equivalent to the Corporations Law's requirement; thus, a limitada can, by quotaholders' resolution, set a future payment date even if it falls in a subsequent fiscal year.

As long as this is clearly documented and does not violate any contractual duty to minority quotaholders, it is generally permissible.

In contrast, a **sociedade anônima (S.A.)** is subject to Article 205 of Law 6,404/1976, which imposes a firm timeline: by default, dividends must be paid within a certain short period after they are declared, and in any event within the same fiscal year as the declaration.

Specifically, Article 205 §3º provides: "Dividends shall be paid, unless the general meeting decides otherwise, within 60 days from the date they are declared **and, in any case, by the end of the fiscal year.**" This is a mandatory rule for S.A.'s. The only flexibility is that the shareholders' meeting can determine a shorter or somewhat longer payment deadline than 60 days, **but it cannot extend beyond the fiscal year of declaration.**

For practical purposes, in a corporation with a calendar fiscal year, any dividend declared in 2025 must be paid by December 31, 2025 (if declared very late in December, the 60-day rule is trumped by the absolute year-end cutoff). If a corporation attempted to set a payment date in 2026 for a dividend declared in 2025, it would violate Article 205 §3º, giving shareholders the right to demand immediate payment and potentially accruing interest on the unpaid amount after year-end.

The divergence between LLCs and Corporations has direct implications for executing the §5 transitional plan:

- A **limited liability company (Ltda.)** can comfortably approve a distribution by Dec 31, 2025 and schedule the payment for any time up to 2028 (or even beyond, though 2028 is recommended). This scheduling freedom means a *limitada* can fully utilize the tax deferral window that the tax law intended – e.g., declare in 2025 but only pay the dividend in installments in 2026, 2027, and 2028. Such staggered payment should be valid as long as it was part of the original resolution. There is no internal company law obstacle to doing so. The dividend becomes a debt to the quotaholders enforceable under the Civil Code terms, but the quotaholders themselves (often identical to the foreign parent in a wholly-owned subsidiary scenario) are agreeing to that timeline. No Brazilian corporate law provision will compel an earlier payout.
- A **corporation (S.A.)**, however, cannot lawfully defer the payment beyond the fiscal year of declaration. If any Brazilian subsidiaries are organized as S.A.'s, those companies face a legal constraint: even if they approve the dividend on the last day of 2025, by law they should pay it by that same date (practically, that might mean immediately crediting the shareholder's account or making funds available). If the approval occurs earlier – say in November 2025 – they could set payment in, for example, January or February 2026 and still be within 60 days, **but that would breach the “within the fiscal year” requirement**. In fact, the 60-day allowance only helps if the declaration is near the start of a fiscal year; any declaration after November 1 would run into the year-end limit. Thus, in strict terms, an S.A. can **only enjoy the tax exemption for pre-2026 profits if it actually disburses the dividend by December 31, 2025**. This essentially nullifies the intended multi-year deferral for corporations – they would have to accelerate payment of 2025 profits to meet the corporate law rule, which is at odds with the tax law's allowance of payment in later years. This conflict is addressed below.

It should also be noted that for profits of the **2025 fiscal year itself**, there is an additional complication: most S.A.'s traditionally would not declare the 2025 year's profits as dividends until the Annual General Meeting in 2026, after closing the books. The new law, however, demands that even 2025's own profit be declared by end of 2025 to remain exempt.

This forces an acceleration of the dividend decision into 2025 (likely via an interim financial statement and an Extraordinary General Meeting), which is unusual and contrary to normal accounting practice. While limitadas also face this timing issue for 2025 profits, they might handle it more flexibly with quotaholder consent. For S.A.'s, it potentially violates corporate norms. Nonetheless, unless the law is amended, S.A.'s that want the tax break on 2025 earnings should consider deliberating a payout by Dec. 31, 2025.

5. Conflict Between Tax Law and Corporate Law – and its Resolution (LINDB Art. 2)

Law 15,270/2025's transitional provision encourages (and in the case of resident shareholders, explicitly permits) payment of certain dividends as late as 2028. However, for corporations, Law 6,404/1976 mandates payment by 2025 as discussed.

On its face, there is a contradiction: the tax law would allow a company to pay a 2025-approved dividend three years later without losing tax exemption, whereas corporate law says that same company must pay the dividend within the same year it was declared. This raises the question – if a corporation were to follow the tax law's spirit and pay in 2026 or 2027, would that payment be legally valid or could it be challenged as violating corporate law?

In addition to tax rules, Law No. 15,270/2025 established corporate law provisions, notably a special regime for the distribution of profits and dividends accrued up to 2025. In essence, profits from 2025 and prior years may be distributed tax free in 2026, 2027, and 2028, provided that the distribution was approved by 31 December 2025.

This special authorization directly conflicts with the general rule in Article 205, paragraph 3, of the Brazilian Corporations Law (Law No. 6,404/1976), which requires that dividends be paid no later than the end of the fiscal year in which they were declared (absent a contrary resolution of the shareholders' meeting, but in any case within the same fiscal year).

The Lei de Introdução às Normas do Direito Brasileiro (LINDB), which is Brazil's general law on the application of norms, provides guidance for such situations. According to Article 2, §1 of the LINDB, a later law revokes an earlier law only if it expressly states so, or if the new law is incompatible with the previous law, or if it regulates the entire subject matter of the previous law. More pointedly, Article 2, §2 of the LINDB states that a new law that establishes general or **special provisions** alongside existing ones does not repeal or modify the earlier law unless it explicitly indicates that intent.

In this case there is therefore an **apparent conflict of norms**: on the one hand, the special 2025 tax statute allows the postponement of dividend payments exceptionally; on the other, corporate law requires payment within 2025. This conflict must be resolved in light of the **principle of specialty, as per Article 2, §2 of the LINDB**.

Normative conflicts – or antinomies – arise when two legal norms from the same system, applicable under the same conditions of time, place, person, and subject matter, prescribe incompatible outcomes for a given situation. This classical problem (recognized since Justinian's Digest era) leaves the interpreter in an untenable position: it is impossible to fully obey one norm without disobeying the other. Contemporary legal theory provides a robust framework for classifying such conflicts and for resolving them based on an established hierarchy of criteria.

When a normative conflict is identified, there are three classic resolution criteria to determine which norm prevails. These criteria, also reflected in Norberto Bobbio's theory of the legal system, are **chronological**, **hierarchical**, and **specialty**¹. Under the **chronological** rule (*lex posterior derogat legi priori*), a later law overrides an earlier law to the extent of any incompatibility, provided both norms have equal standing in the normative hierarchy. This criterion accords with the principle that the more recent expression of legislative will prevails over older provisions, and is formally embodied in Article 2, §1 of the Lei de Introdução às Normas do Direito Brasileiro (LINDB).

Next, the **hierarchical** criterion (*lex superior derogat legi inferiori*) dictates that a norm of higher rank prevails over a lower-ranking norm. For example, a federal constitutional provision trumps an ordinary statute, reflecting the structured pyramid of norms.

Finally, the **specialty** criterion (*lex specialis derogat legi generali*) holds that a more specific law prevails over a more general law in case of conflict. As Bobbio elucidates, a “special law” removes from the scope of a general law a portion of its subject matter and subjects that portion to a different regulation. In essence, the special norm is tailored to particular conditions or a subset of cases, embodying the maxim *sum cuique tribuere* (to each his own) by delivering a justice more attuned to the specifics. This *lex specialis* principle is widely regarded as promoting fairness and precision in the legal system, ensuring that people or situations falling within a special category are governed by the norms crafted for those particular circumstances.

The above principles directly inform the analysis of the specific conflict between the general Corporations Law and Law No. 15.270/2025, which introduces a special tax provision. In this scenario, we have a clash between a general corporate norm and a special tax norm enacted later in time. Both norms are of the same hierarchical level (likely ordinary statutes in force federally), so the hierarchical criterion does not discriminate between them. We then consider the chronological and specialty criteria. Law 15.270/2025, being enacted after the Corporations Law, is a *lex posterior*, and to the extent it is incompatible with the older corporate rule, the later law would ordinarily prevail under LINDB Article 2, §1.

More significantly, the 2025 law is a ***lex specialis*** in relation to the Corporations Law: it addresses a specific tax situation (a particular fiscal regime or incentive applicable to corporations) whereas the Corporations Law lays down general governance rules for companies. According to the specialty principle enshrined in doctrine and implied by LINDB, the special provision **must take precedence** over the general corporate rule for that specific subject matter.

The LINDB offers the normative basis for this outcome. Article 2, §2 of the LINDB explicitly contemplates that a new law establishing “disposições especiais ao par das já existentes” (special provisions alongside existing ones) does **not** automatically repeal or amend the earlier law. Instead, both laws are meant to coexist, each governing its proper field – the special law carving out an exception to the general law without abrogating it entirely. In

1 Bobbio, Norberto. *Teoria do Ordenamento Jurídico* (1997).

practice, this means the corporate law remains in force as a general framework, but **in the event of conflict, the special tax rule applies preferentially to the cases it covers**, as an exception to the general corporate provisions.

Following the maxim *lex specialis derogat legi generali*, the tax-specific norm overrides the general corporate norm for matters within its scope. Crucially, this does not nullify the general Corporations Law wholesale; it merely ensures that **the special tax provision is “privileged” (given normative priority)** in its application to the particular situation at hand, consistent with Article 2 of the LINDB. In sum, grounded in the LINDB’s conflict-resolution rules and the doctrinal teachings of Guastini and Larenz, the legal interpretation favors the **special** (later) tax provision as the governing norm, treating the older general corporate rule as residual. This approach upholds the intent of the legislature in enacting a specialized tax regime and maintains coherence in the legal system by applying the appropriate norm to each context, which is precisely the outcome that the LINDB mandates.

Also, according to the classical doctrine of Karl Larenz, the interpreter must seek a solution that reconciles colliding norms, giving priority to each provision’s purpose within the legal order. Larenz teaches that, whenever the possible literal sense and the statutory context allow for different readings, one must prefer the interpretation that best aligns with the legislator’s intent and the statute’s objective, through a historical and teleological interpretation².

In the present case, the intent of the federal legislature when enacting Law No. 15,270/2025 was unequivocal: **to provide a fair transition to the new tax regime while shielding accumulated profits up to 2025 from taxation**, without forcing corporations to distribute them immediately (thereby avoiding undesirable financial impacts). To achieve this goal, the law created a temporary exception to the ordinary order of dividend payments.

This is a typical instance of ***lex specialis*: a special rule, applicable only to a specific category of dividends** (profits accrued up to 2025 whose distribution was approved by the end of 2025), with its own regime that **supersedes** the general Corporations Law for this limited purpose.

Following Larenz’s approach, objective teleological methods recommend giving priority to the interpretation that avoids contradictions within the legal system and ensures fairness and equality among those subject to the norm³. Applying this criterion, the solution that harmonizes the conflict **is to recognize that Law No. 15,270/2025, being special and subsequent, prevails over the general rule in Article 205, paragraph 3, of the Corporations Law, restraining its application in this specific circumstance.**

Therefore, with respect to profits covered by the special law, **the special payment timetable instituted in 2025 must prevail**, without implying a full repeal or disregard of Article 205, which remains in force for all other dividend distributions outside the exception.

2 LARENZ, Karl. *Metodologia da Ciência do Direito*. Trans. José Lamego. Lisbon: Fundação Calouste Gulbenkian, 1997, p. 352–353.

3 LARENZ, Karl. *Metodologia da Ciência do Direito*. Trans. José Lamego. Lisbon: Fundação Calouste Gulbenkian, 1997, p. 358–360.

Technically, this is a hermeneutical coordination: the general corporate rule is interpreted in a manner consistent with the special tax-corporate rule, to avoid antinomies. This prevents internal incoherence in the legal system, giving effect to both statutes in their respective material scopes. It is not possible to sustain a literal interpretation that, in practice, eliminates the difference created by the special law, for this would undermine the very meaningful context of the norm.

In other words, denying effect to the exceptional 2025 regime merely out of adherence to the literal wording of Article 205, paragraph 3, would frustrate legislative intent.

On the other hand, a more conservative reading is admitted in the scholarship, privileging formal legal certainty over teleological purpose. Under this view, Law No. 15,270/2025 did not expressly amend the Corporations Law, so corporations would remain technically required to observe the annual dividend payment deadline, under penalty of violating corporate law. This position highlights that Article 2, paragraph 2, of the LINDB, by providing that a new statute that introduces general or special provisions “alongside” existing law does not revoke or modify the prior rule², would counsel caution. The special tax rule would coexist with the general corporate rule, without derogating it. Accordingly, a corporation that declared dividends in 2025 but paid them only in 2026–2028 could incur a corporate violation (unopposability of the resolution to dissenting shareholders or potential challenges by creditors and minority shareholders regarding the enforceability of those dividends). This conservative interpretation seeks to mitigate risks, reducing the likelihood of shareholder disputes or regulatory challenges, although at the cost of sacrificing the full economic benefit intended by Law No. 15,270/2025.

Notwithstanding, the conservative reading is less persuasive from the standpoint of systematic and teleological hermeneutics. It bears emphasis that the legal interpreter must, whenever possible, construe norms so as to preserve their effectiveness and legislative purpose, avoiding results that render a special provision meaningless. In this case, the only interpretation that effectively harmonizes both statutes and gives full effect to the transitional regime is the one that recognizes the punctual prevalence of Law No. 15,270/2025 over Article 205, paragraph 3, of the Corporations Law, limited to the class of dividends governed by the special statute. This solution, grounded in the criterion of specialty, also draws support from the historical and teleological method: the temporary exception was crafted precisely to reconcile the new tax with corporations’ economic and governance realities, allowing them to distribute past results without undue haste. In short, the special tax-corporate rule should apply fully within its specific field, while the general corporate rule remains valid for all other situations. This understanding preserves coherence in the legal system and effectuates the purpose for which the legislature enacted Law No. 15,270/2025.

It should be noted, finally, that although the *lex specialis* interpretation is the most technically sound and well-founded, it is not free from practical risks. This is a recent and narrowly tailored legislative innovation whose application may raise doubts within the legal community and corporate oversight bodies.



6. Ambiguity in §5's Reference to the Caput of Article 10

Section §5 of Article 10, as inserted by Law 15,270/2025, concludes by stating that the enumerated profits and dividends “shall not be subject to withholding income tax, **under the terms of the caput of this article**”. The caput (main head) of Article 10 of Law 9,249/95, however, describes the exemption in terms that specifically reference beneficiaries domiciled in Brazil – since prior to this reform, only domestic recipients were relevant (non-resident dividends were already taxed historically until 1996, and after 1996 they were exempt too, but the statutory language emphasized domestic because foreign was governed by separate provisions).

The caput says such dividends “shall not be subject to withholding and shall not be included in the taxable income of the beneficiary, individual or legal entity, domiciled in Brazil...”. The **ambiguity** arises because §5 is clearly intended to cover cases of dividends to **non-residents** (indeed, its main purpose is to grandfather foreign remittances of accumulated profits), yet it invokes the caput, which on a literal reading applies to residents.

This awkward phrasing opens the door to a potential interpretive risk: a tax auditor might argue that when §5 says “not subject to withholding under the caput's terms,” it implicitly limits the exemption to those situations contemplated in the caput – i.e. distributions to persons in Brazil. In other words, a hostile interpretation could be that foreign-bound dividends don't fully qualify because the caput speaks of beneficiaries in Brazil, and §5 didn't explicitly mention non-residents.

This is likely *not* what the legislature intended; most likely, the reference to the caput was meant only to incorporate the idea of “exempt from withholding (and not taxed in the beneficiary's hands)” generally, rather than to impose a domicile condition. Essentially, §5 could have been more clearly worded as “shall not be subject to withholding tax (remaining tax-free, as if under the prior rules).” By inserting “nos termos do caput”, a bit of confusion was created.

We assess that it is **unlikely** that the Brazilian tax authority (Receita Federal) would adopt the draconian view that §5's exemption doesn't cover non-resident recipients. Such a stance would defeat the obvious purpose of the provision, which was to grandfather exactly those outbound payments. Moreover, the text of §5(I) itself does not distinguish the residency of the beneficiary – it neutrally says “lucros e dividendos” meeting the conditions are not taxed. The reference to the caput is better understood as a shorthand to the pre-2026 regime, not as a limitation.

Additionally, denying the exemption to foreign shareholders would likely violate constitutional principles of equality and non-retroactivity. It would also conflict with the **Supreme Federal Court's jurisprudence**, which has held that the tax exemption for profits accumulated under a prior regime cannot be retroactively withdrawn from foreign investors without breaching legal certainty. In fact, the STF (Supremo Tribunal Federal) struck down an attempt to tax profits of foreign subsidiaries that had been accrued under a previous law on the grounds of impermissible retroactivity. By analogy, if the Receita Federal tried to deny the exemption for pre-2026 profits to foreign parents, it would almost certainly face a constitutional challenge that would invoke the same jurisprudence protecting accumulated earnings from new taxation. Thus, the better view is that §5 does cover foreign remittances fully, and the mention of the caput was a drafting artifact.

There is some chance of a **technical corrections bill or another legislation** adjusting minor errors in Law 15,270/2025; if so, one fix could be to reword §5 to avoid misinterpretation. At the time of writing, no such corrective text has been passed – the law was sanctioned without vetoes, meaning even obvious issues (like the rushed 2025 distribution deadline) were not corrected. The professional consensus is that the caput reference is a material error in drafting, not an intentional carve-out.



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