

## INTERNATIONAL CAPITAL AND FOREIGN EXCHANGE MARKET REGULATION

TITLE : 1 - Foreign Exchange Market  
CHAPTER : 3 - Foreign Exchange Contract  
SECTION : 1 - Preliminary Provisions

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1. A foreign exchange contract is a specific instrument executed between the seller and the buyer of foreign exchange, where the characteristics and conditions of the foreign exchange operation are determined.
2. Foreign exchange operations shall be recorded under the Foreign Exchange Contract and should be recorded with the Integrated System of Foreign Exchange Operation as provided in Section 2, Chapter 3, with the registration date being the same as of the date of the contract celebration. (NR)
3. Formalization of foreign exchange operations shall follow the models mentioned in appendices 1 or appendices 7 to 10 of this title.
4. The authorized institution can adapt the printing characteristics of the foreign exchange contract without previous consent by the Central Bank of Brazil, observed the completeness of the required information
5. Regarding the signatures on a foreign exchange contract:
  - a) the Central Bank of Brazil acknowledges as valid a digital signature in a foreign exchange contract using digital certificates issued in the context of Infra-Estrutura de Chaves Públicas (ICP – Brasil), remaining a responsibility of the intervening agent the adequate use of the digital certification by the client in the operation, including the responsibility of other signatories and validity of digital certificates involved.
  - b) in case of manual signature, it shall be applied after the printing of the foreign exchange contract, in not less than two originals to be delivered one to the buyer and the other to the seller of the foreign currency. (NR)
6. In case of digital certification in the context of ICP - Brasil, the agent authorized to operate in the foreign exchange market, trader of the foreign currency, shall:
  - a) use an application program for the digital signature according to the standard set by the Central Bank of Brazil/Department of Information Technology;
  - b) be prepared to make promptly available to the Central Bank of Brazil, for a term of five years from the closing of the fiscal year in which the contract has been executed, settled or written-off, as the case may be, a hardcopy of the foreign exchange agreement, including the expression “digitally signed foreign exchange agreement”;
  - c) maintain, for the same term, in electronic medium, the original file of the foreign exchange contract, digital signatures and respective digital certificates.
7. In case of manual signature, the signature of the parties intervening in the foreign exchange agreement is an indispensable requisite to be included in the copy delivered to the agent authorized to operate in the foreign exchange market, and one original of the foreign exchange agreement shall be kept in the archives of such agent for a term of five years from the closing of the fiscal year in which the contract has been executed, settled, cancelled or written-off, as the case may be.
8. Upon performing a foreign exchange operation, the intervening parties shall state to be fully informed of the foreign exchange rules in effect, especially Law no. 4131, of September 03, 1962, as amended, particularly Article 23 of such Law no. 4131, the text of Paragraphs 2 and 3 of such Article 23 shall be included verbatim in the related foreign exchange ticket. (NR)

## INTERNATIONAL CAPITAL AND FOREIGN EXCHANGE MARKET REGULATION

TITLE : 1 - Foreign Exchange Market  
CHAPTER : 3 - Foreign Exchange Contract  
SECTION : 1 - Preliminary Provisions

---

9. The settlement, cancellation and write-off of a foreign exchange contract do not eliminate any responsibility that may be attached to the parties and the intervening broker under applicable legislation and regulation arising from investigations that may be conducted by the Central Bank of Brazil.
10. The types of foreign exchange contracts and respective applications are the following:
  - a) purchase: intended for the purchase of foreign currency of clients;
  - b) sale: intended for the sale of foreign currency to clients;
    - I - (Revoked) Circular no. 3545/2011
    - II - (Revoked) Circular no. 3545/2011
  - c) (Revoked) Circular no. 3545/2011
  - d) (Revoked) Circular no. 3591/2012;
  - e) types 7 and 8: foreign exchange contract amendments, being type 7 purchase and type 8 sale foreign exchange contract amendments;
  - f) types 9 and 10: cancellation of foreign exchange contract, being type 9 purchase and type 10 sale foreign exchange contracts, used also, as an adaptation, for the write-off of foreign exchange positions;
  - g) (Revoked) Circular no. 3545/2011. (NR)
11. Other clauses agreed by the parties shall be inserted in the foreign exchange contract and should be informed to the Central Bank of Brazil only if requested. (NR)
12. (Revoked) Circular no. 3545/2011

## INTERNATIONAL CAPITAL AND FOREIGN EXCHANGE MARKET REGULATION

TITLE : 1 - Foreign Exchange Market  
CHAPTER : 3 - Foreign Exchange Contract  
SECTION : 2 - Execution and Registration with Sisbacen  
SUBSECTION : 1 - General Provisions

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1. The financial institutions and other institutions authorized to operate in the country by the Central Bank of Brazil, authorized to operate in the foreign exchange market, shall observe the following timetable for using the Foreign Exchange System., Brasilia Time (BRT), except for interbank electronic operations that are under chapter 4:
  - a) standard timetable:
    - i. record of events in the primary foreign exchange market:
      - opening: 9:00 am
      - closing: 7:00 pm
    - ii. consultations:
      - opening: 8:00 am
      - closing: 9:00 pm
    - iii. services available on the Foreign Exchange System:
      - opening: 8:00 am
      - closing: 9:00 pm
  - b) timetable of exception: under exceptional conditions and by communicating to the market the Department of Financial System Monitoring and Information Management – Desig may establish a timetable of exception for the record of events in the primary foreign exchange market.
  - c) trades after the hours above will be registered as trades occurred in the next day. (NR)
2. (Revoked) Circular no. 3591/2012
- 2-A. The information on foreign exchange transactions performed with clients and, from July 2, 2012, the information on interbank foreign exchange transactions performed by institutions authorized to operate in foreign exchange shall be sent by messaging, according to standard models disclosed in the message catalog of the Central Bank of Brazil, which contains the instructions for the design and formatting of the message, the valid field values, and the flows followed by reception processing and validation of the messages.
3. Foreign exchange brokers may, as intermediating agents in foreign exchange operations, record, edit, and cancel the foreign exchange agreement for later performance of the operation by the authorized bank.
4. The issues of contracting, amendment and cancelation can only be confirmed by the authorized bank the same day. (NR)
  - a) (Revoked) Circular no. 3545/2011
  - b) (Revoked) Circular no. 3545/2011
5. (Revoked) Circular no. 3591/2012.
6. In exceptional circumstances, the cancelation of the registration of the contract is only to correct errors and eliminate duplication, observed that:
  - a) if it occurs at a later date than the contracting date, the registration canceled due to error must be linked to the record that succeed and the registration canceled because of

## INTERNATIONAL CAPITAL AND FOREIGN EXCHANGE MARKET REGULATION

TITLE : 1 - Foreign Exchange Market  
CHAPTER : 3 - Foreign Exchange Contract  
SECTION : 2 - Execution and Registration with Sisbacen  
SUBSECTION : 1 - General Provisions

---

duplication must be linked to the record which will be kept at the base of the Central Bank of Brazil, which may determine its reversal in situations deemed inappropriate;

- b) if it occurs at the same day of the contracting the linking is optional.
7. (Revoked) Circular no. 3545/2011
8. The contracting of a foreign exchange contract cancellation comes into effect by agreement of the parties under the principles of applicable legal and regulatory order.
9. Any mention or complementary information derived from specific rules shall be included in the field "Other Specifications" of the foreign exchange contract.
10. (Revoked)
11. The following operations are recorded with Sisbacen and released from formalization of a foreign exchange contract:
- a) foreign exchange operations related to arbitrage conducted with a banker abroad or with the Central Bank of Brazil;
  - b) foreign exchange operations in which a single bank is both buyer and seller of the foreign currency;
  - c) cancellations of foreign exchange contract balances not exceeding US\$5,000 (five thousand United States Dollars), or equivalent amount in other currencies;
  - d) interbank operations with financial institutions from abroad;
  - e) sales or purchases operations of foreign currency up to US\$3,000 (three thousand United States dollars) or its equivalent amount in other currencies.
12. (Revoked) Circular no. 3545/2011.
- 12-A. The data from the foreign exchange operations should match the account balances of the financial institutions authorized to operate by the Central Bank of Brazil (NR)
- 12-B. The record of the foreign exchange transaction in a different date than the actual transaction will only be allowed in situations treated under the item 6 of this subsection, subjected to the contingency of the Foreign Exchange System or from situations resulting from factors beyond the control of the institutions authorized to operate in the foreign exchange market. (NR)
13. Institutions authorized to operate with foreign exchange shall maintain a database of their exchange operations updated and available to the Central Bank of Brazil, observed that this database replaces, for all purposes and effects, the document "General Record of Foreign Exchange Operation – RGO".
14. Tourism agencies and tourist lodging facilities authorized to operate in the foreign exchange market shall record each business day at Sisbacen – transaction PMTF, not later than 12:00 pm (BRT) the information related to its operations performed the previous day or, in case there had not been operations, an express indication of such event, by means of the same Sisbacen

## INTERNATIONAL CAPITAL AND FOREIGN EXCHANGE MARKET REGULATION

TITLE : 1 - Foreign Exchange Market  
CHAPTER : 3 - Foreign Exchange Contract  
SECTION : 2 - Execution and Registration with Sisbacen  
SUBSECTION : 1 - General Provisions

---

transaction, being understood that operations on Saturdays, Sundays, holidays and any day which is not a business day shall be incorporated to the subsequent business day.

15. Manual foreign exchange operations conducted by post located in different city of the authorized agent to operate in the foreign exchange market shall be recorded in Sisbacen not later than the first business day subsequent to the date of the event.
16. Codes identifying each type of operation are included in chapter 8.
17. Tourism agencies and tourist lodging facilities shall record their operations with Sisbacen under the following procedures:
  - a) when interlinked to Sisbacen: enter the records directly to the System, including the indication that no operation has been conducted in the day;
  - b) when not interlinked to Sisbacen: enter the records through its centralizing institution, to which the necessary information shall be transmitted on a daily basis, including, as the case may be, the indication that no operation has been conducted in the day, observed that only one centralizing institution may be elected for each city where the authorized institution operates, even in case that there are several dependencies/foreign exchange units authorized for that institution.
18. The centralizing institution mentioned in subparagraph 17.b above is freely elected by the authorized institution, being mandatory that, in addition to being interlinked to Sisbacen, the institution is authorized to operate in the foreign exchange market
19. Any change in the centralizing institution shall be notified to the Central Bank of Brazil (Department of Financial System Monitoring and Information Management - Desig) at least thirty days before the change date, under the following procedures:
  - a) the notice sent to the Central Bank of Brazil shall include express agreement of the new centralizing institution and of the institution being replaced;
  - b) the date for commencement of operations recording shall be the first business day of the appropriate week;
  - c) in the absence of notice to the contrary to the Central Bank of Brazil, as from the established date the new centralizing institution shall assume the responsibility for transmitting the data to Sisbacen, and shall gain access to all data related to the centralized institution, including past operations and consolidated records.
20. Messages from the Central Bank addressed to an agent authorized to operate in the foreign exchange market are transmitted either through Sisbacen or directly to the institution indicated by such agent as authorized to record its operations with the System, in case the agent is not interlinked to Sisbacen.
21. An agent authorized to operate in the foreign exchange market which is not interlinked to Sisbacen and its centralizing institution remain responsible for the information entered the System, and the centralizing institution is responsible for the faithful recording, with Sisbacen, of the information transmitted to it.
22. For exchange transactions contracted up to September 30, 2011:

## INTERNATIONAL CAPITAL AND FOREIGN EXCHANGE MARKET REGULATION

TITLE : 1 - Foreign Exchange Market  
CHAPTER : 3 - Foreign Exchange Contract  
SECTION : 2 - Execution and Registration with Sisbacen  
SUBSECTION : 1 - General Provisions

---

- a) any amendments, cancellations or write-offs shall be made on specific functions available in Sisbacen and are subject to the rules applicable to the operations of the kind;
- b) registration of amendment, of liquidation, of cancellation and of white-off shall be made on transaction PCAM300, or exceptionally, except in relation to amendment, on transaction PCAM500.

## INTERNATIONAL CAPITAL AND FOREIGN EXCHANGE MARKET REGULATION

TITLE : 1 - Foreign Exchange Market  
CHAPTER : 3 - Foreign Exchange Contract  
SECTION : 2 - Execution and Registration with Sisbacen  
SUBSECTION : 2 - (Revoked) Circular no. 3545/2011

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## INTERNATIONAL CAPITAL AND FOREIGN EXCHANGE MARKET REGULATION

TITLE : 1 - Foreign Exchange Market  
CHAPTER : 3 - Foreign Exchange Contract  
SECTION : 3 - Advancements on Foreign Exchange Contract

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1. An advance on a foreign exchange contract is a partial or total advance on account of the price, in domestic currency, of the foreign currency bought for future delivery, and may be granted at any time, at the discretion of the parties.
2. A cancellation of write-off off a foreign exchange contract with advance shall comply with the provisions of section 7 of this chapter.
3. In the case of export, the value of the advance shall be included in the foreign exchange contract itself, by the following annotation: "For the legal purposes and effects of Article 75 (and respective paragraphs) of Law no. 4728, of July 14, 1965, the amount of R\$\_\_\_\_\_ is hereby annotated on account of this foreign exchange contract".
4. The annotation mentioned in paragraph 3 above may be supplemented by the following expression: "Operation linked to the use of the credit obtained with (indicate the name of the banker abroad, country and city)."
5. In case of bankruptcy, extra-judicial liquidation or intervention in the financial institution granting the advance on the foreign exchange contract, the following procedures shall be observed related to the satisfaction of obligations consequent to the use of credits obtained abroad for the financing of exports:
  - a) payments shall be made based on funds received and originated from export foreign exchange contracts, the object of the advances granted, proportionally to the total funds borrowed;
  - b) in case the foreign exchange contract contains an annotation as mentioned by paragraph 4 above, the funds received from the exporter shall be used in the repayment of the respective loan made abroad, observed that, in case the exporter is in default, the payment to the banker shall be conducted in the form of sub-paragraph 5.a above.



## INTERNATIONAL CAPITAL AND FOREIGN EXCHANGE MARKET REGULATION

TITLE : 1 - Foreign Exchange Market  
CHAPTER : 3 - Foreign Exchange Contract  
SECTION : 4 - Amendment

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1. In a foreign exchange contract the following may not be changed: buyer, seller, amount in foreign currency, amount in domestic currency, code of foreign currency and foreign exchange rate.
2. Among changes admitted in foreign exchange contracts, those related to the following subparagraphs shall be necessarily recorded with Sisbacen and formalized under section 2 of this chapter:
  - a) term for settlement of the foreign exchange contract;
  - b) clauses and statements obliged for foreign exchange contracts performed up to September 30<sup>th</sup>, 2011;
  - c) foreign currency delivery form;
  - d) operation code;
  - e) payer/beneficiary abroad for foreign exchange contracts performed up to September 30<sup>th</sup>, 2011;
  - f) percentage of the anticipation of foreign exchange contracts entered starting on October 3<sup>rd</sup>, 2011;
  - g) code of the Electronic Declaratory Registration for foreign exchange contracts entered starting on October 3<sup>rd</sup>, 2011. (NR)
3. For the remaining clauses agreed in a foreign exchange contract, which allow for changes, a formal notice issued by the customers may be accepted by banks, confirming the changes agreed such notice to be an integer part of the related foreign exchange contract.

## INTERNATIONAL CAPITAL AND FOREIGN EXCHANGE MARKET REGULATION

TITLE : 1 - Foreign Exchange Market  
CHAPTER : 3 - Foreign Exchange Contract  
SECTION : 5 - Settlement

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1. The settlement of a foreign exchange contract occurs by delivery of both domestic and foreign currencies, the subject of the contract, or securities representing such currencies.
2. Prompt settlement is mandatory in the following cases:
  - a) simplified export and import foreign exchange operations;
  - b) purchase and sale of foreign currency in cash or traveler's check;
  - c) purchase and sale of gold as foreign exchange instrument.
3. Foreign exchange operations contracted for prompt settlement shall be settled:
  - a) on the same day when related to:
    - I - purchase and sale of foreign currency in cash or traveler's check; or
    - II - operations under the simplified export foreign exchange arrangement.
  - b) within two business days from the date of the contract, in the remaining cases, excluded the days that are not business days in the market for either currency involved (days that are not business days in the market for one currency and/or in the market for the other currency).
4. The contracting of export and import foreign exchange shall follow the terms established in chapters 11 and 12 of this title, respectively.
5. The following foreign exchange operations may be contracted for future settlement, such settlement to occur within:
  - a) 1,500 days, for interbank and arbitrage operations, as well as operations of financial nature which the client is the National Treasury;
  - b) 360 days, for foreign exchange operations of financial nature, subject or not to recording with the Central Bank of Brazil;
  - c) 3 business days, in case of foreign exchange operations related to investments in variable income securities subject to recording with the Central Bank of Brazil.
- 5-A. One business day is the minimum term for settlement of sale of foreign currency regarding donations starting from R\$ 100,000.00 (one hundred thousand reals).
6. It is allowed prior maturing date in operations of financial nature in respect to the one adjusted in the foreign exchange contract to all purchases and to sales related to obligations envisaged in Resolution no. 3844, of March 23, 2010.
7. Interbank foreign exchange operations may be contracted for term settlement in up to 1,500 days.

## INTERNATIONAL CAPITAL AND FOREIGN EXCHANGE MARKET REGULATION

TITLE : 1 - Foreign Exchange Market  
CHAPTER : 3 - Foreign Exchange Contract  
SECTION : 6 - Cancellation or Write-off

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1. Cancellation of a foreign exchange contract occurs by consensus between the parties and is formalized by means of a fresh contract in which the parties state the undoing of the previous legal relationship, under applicable legal and regulatory principles.
2. In case there is no consensus for the cancellation, banks authorized to operate in foreign exchange may write-off the foreign exchange contract from their foreign exchange position, under the regulatory requirements and procedures applicable to each type of operation.
3. The write-off of a foreign exchange operation represents a bank accounting operation and does not imply unilateral termination of the contract nor change the contractual relation between the parties.
4. The amount in domestic currency in a foreign exchange contract write-off is calculated based on the same foreign exchange rate applied to the contract that is being written-off.
5. Foreign exchange operations, except export foreign exchange operations, which are subject to the procedures mentioned in chapter 11 of this title, may be freely cancelled by agreement between the parties or written-off from the institutions' foreign exchange position.
6. The Foreign Exchange System does not allow the cancelation of the contracts under the operation code 46 and 47. (NR)

## INTERNATIONAL CAPITAL AND FOREIGN EXCHANGE MARKET REGULATION

TITLE : 1 - Foreign Exchange Market  
CHAPTER : 3 - Foreign Exchange Contract  
SECTION : 7 - Financial Charge

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1. In view of the provisions of Article 12 of Law no. 7738, of March 09, 1989, amended by Law no. 9813, of August 23, 1999, cancellation or write-off of a foreign exchange contract related to financial transfers from other countries or an export foreign exchange contract previous to shipment of the goods abroad or the rendering of services subjects the seller of the foreign currency to payment of a financial charge.
2. The financial charge mentioned in paragraph 1 above is calculated as follows:
  - a) on the value of the domestic currency correspondent to the cancelled or written-off portion of the foreign exchange contract;
  - b) based on the aggregate yield of the National Treasury Financing Bill – LFT, for the period between the date of the contract and the cancellation or write-off, less the foreign exchange variation during the period and the amount in domestic currency equivalent to interests calculated by the rate offered in the London interbank market (“Libor”) for the value of the foreign currency subject to cancellation or write-off.
3. The bank shall be notified of the financial charge value by the Central Bank Entry System (SLB) or any other secure mean warranting receipt.
4. The amount in domestic currency of the financial charge shall be paid by the bank purchasing the foreign currency under the following procedures:
  - a) the financial charge shall be paid within a period of five business days from the date in which the bank receives the related notification;
  - b) a value paid after the term mentioned in subparagraph 4.a above shall be added of delinquent interests and fine, under the provisions of Article 37 of Law no. 10522, of July 19, 2002;
  - c) lack of payment of the financial charge implies recording the value in Central Bank of Brazil Credits, and registering the debtor with the Unpaid Credits Information File – Cadin, under the applicable legislation and regulation in effect.
5. Expired the term mentioned in 4.a above and remaining the financial charge unpaid as a result of a decree of bankruptcy against the seller of the foreign currency or intervention or extra-judicial liquidation of the bank buying the foreign currency, the following procedures apply:
  - a) in case of bankruptcy of the foreign currency seller, the bank purchasing the foreign currency shall:
    - I - on the date of the foreign exchange contract cancellation or write-off, notify the liquidator of the bankrupt party, in the form of the appendix 12 to this title, of the existence of a financial charge, forwarding to the Central Bank of Brazil (Department of Financial System Monitoring and Information Management) a copy of the notification, with certified delivery;
    - II - upon receipt of the financial charge’s value, notify the Central Bank of Brazil, not later than the following business day, for the purpose of financial charge payment under the form mentioned in this section.
  - b) in cases of intervention or extra-judicial liquidation of the bank, the person in charge of the intervention or the liquidator shall:

## INTERNATIONAL CAPITAL AND FOREIGN EXCHANGE MARKET REGULATION

TITLE : 1 - Foreign Exchange Market  
CHAPTER : 3 - Foreign Exchange Contract  
SECTION : 7 - Financial Charge

---

- I - on the date of the foreign exchange contract cancellation or write-off, cause the charge to be collected with the seller of the foreign currency, in the form mentioned in appendix 13 to this title, forwarding to Desig, a copy of the notice with evidence that it has been delivered to the addressee;
  - II - in case bankruptcy of the seller of the foreign currency is decreed, notify the receiver, on the date of cancellation or write-off of the foreign exchange contract, of the existence of a debt related to the financial charge, in the form mentioned in appendix 14 to this title, forwarding to Desig a copy of the notice with evidence that it has been delivered to the addressee;
  - III - upon receiving the financial charge payment, notify the Central Bank of Brazil, not later than the following business day, for the purpose of the financial charge collection, as mentioned in this section, or direct transfer of the value received to the Central Bank of Brazil.
6. In cases mentioned in paragraph 5 above, the Central Bank of Brazil, upon receiving the notice from the bank buyer of the foreign exchange on the receipt of the financial charge value:
- a) presents again the notice under paragraph 3 above, in this case warranting a term of one business day from the date of the notification for collection of the financial charge;
  - b) waives the second presentation of the notice, in cases of direct transfer.
7. In cases of intervention or extra-judicial liquidation of the bank buying the foreign currency, in the absence of a bankruptcy decree for the seller of the foreign currency, delinquent interests are added, under Article 37 of Law no. 10522, of July 19, 2002, accruing from the date of the foreign exchange contract cancellation/write-off, as the case may be, recording the debt with Central Bank of Brazil Credits and the debtor with Cadin.
8. In case it proves impossible to pay the bank under intervention or extra-judicial liquidation, the debtor of the financial charge shall pay such charge directly to the Central Bank of Brazil, a case in which the buyer of the foreign currency is released from paying the financial charge.
9. The amount in domestic currency of the financial charge above shall be calculated by the following formula:

$$EF = \left| \frac{(RLFT - VTC) \times VME \times TX1}{100} \right| - \left| \frac{VME \times J \times t \times TX2}{360} \right|$$

where:

- a) EF = value of the financial charge, in domestic currency;
- b) RLFT = LFT yield from the of foreign exchange contract date to the date of its cancellation or write-off;
- c) VTC = change in purchase foreign exchange rate for the currency of operation, from the foreign exchange contract date to the date of its cancellation or write-off;
- d) VME = value of cancellation or write-off in foreign currency;
- e) TX1 = foreign exchange rate of the operation to be cancelled or written-off;
- f) J = monthly Libor, published by the Central Bank of Brazil for the currency of the

**INTERNATIONAL CAPITAL AND FOREIGN EXCHANGE MARKET REGULATION**

TITLE : 1 - Foreign Exchange Market  
 CHAPTER : 3 - Foreign Exchange Contract  
 SECTION : 7 - Financial Charge

---

operation, on the day of the foreign exchange contracting, minus ¼ of 1% (one fourth of one percent);

- g) t = number of days elapsed from the date of the foreign exchange contracting and the date of its cancellation or write-off;
- h) TX2 = purchase foreign exchange rate for the relevant foreign currency, available in Sisbacen through transaction PTAX800, option 5 – accounting rates, related to the day of cancellation or write-off.
10. LFT yield (RLFT) in the referred period of time shall be calculated based on information provided by Sisbacen transaction PTAX880, option 1, in the following way:
- a) start-date: foreign exchange contract date;
- b) end-date: last business day before the foreign exchange contract cancellation or write-off;
- c) RLFT: aggregate index (last column of the line relative to the start-date) multiplied by 100 (one hundred).
11. VTC, the change in foreign exchange rate over the period of time, shall be obtaining by the following operation:
- $$VTC = \frac{\text{Currency purchase exchange rate, available in Sisbacen, transaction PTAX800, option 5 – accounting rates, referred to the day of cancellation or write-off}}{\text{Currency sale exchange rate, available in Sisbacen, transaction PTAX800, option 5 – accounting rates, referred to the day of the foreign exchange contracting}} \times 100$$
12. The financial charge mentioned in this title is not applicable to cancellation and write-off in a value not exceeding US\$5,000.00 (five thousand United States dollars), or equivalent value in other currency provided that, in aggregate, it does not exceed 10% (ten percent) of the foreign exchange agreement value.