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In connection with the equity offerings of our common shares, an electronic registration was issued in the name of the depositary with respect to the ADSs and is maintained by the custodian on behalf of the depositary. This electronic registration was carried out through the Brazilian Central Bank Information System-SISBACEN. Pursuant to the registration, the custodian and the depositary are able to convert dividends and other distributions with respect to the common shares represented by ADSs into foreign currency and remit the proceeds outside Brazil, to the holder of ADSs. In the event that a holder of ADSs exchanges such ADSs for common shares, the custodian must update the registry of the investment with the Brazilian Central Bank within five business days after the exchange. In order to receive the common shares the investor must have a registration with the Brazilian Central Bank and the CVM pursuant to Resolution 4,373. Until such registration has been obtained, the holder will not be able to receive the common shares.

In addition, if the foreign investor resides in a “tax haven” jurisdiction or is not an investor registered under Resolution No. 4,373, the investor will be subject to less favorable Brazilian tax treatment than a holder of ADSs.

See “Item 3D. Key Information–Risk Factors–Risks Relating to our Common Shares and ADSs–If holders of ADSs exchange the ADSs for common shares, they risk losing the ability to remit foreign currency abroad and Brazilian tax advantages” and “Item 10E. Additional Information–Taxation–Material Brazilian Tax Consequences.”

10E. Taxation

The following discussion, subject to the limitations set forth below, summarizes certain Brazilian and United States tax considerations relating to the ownership of our common shares or ADSs. This discussion does not purport to be a complete analysis of all tax considerations in those countries and does not address tax treatment of shareholders under the laws of other countries. Shareholders who are resident in countries other than Brazil and the United States, along with shareholders that are resident in those two countries, are urged to consult with their own tax advisors as to which countries’ tax laws could be relevant to them. This summary is based upon the tax laws of Brazil and the United States as in effect on the date of this annual report, which are subject to change, possibly with retroactive effect, and to differing interpretations. Any change in such law may change the consequences described below.

Although there presently is no income tax treaty between Brazil and the United States, the tax authorities of the two countries have had discussions that may culminate in such a treaty. No assurance can be given, however, as to if or when a treaty will enter into force or how it will affect the U.S. holders of common shares or ADSs.

Material Brazilian Tax Consequences

General. The following discussion summarizes the principal Brazilian tax consequences of the acquisition, ownership and disposition of common shares or ADSs, as the case may be, by a holder that is not considered domiciled in Brazil (“Non-Brazilian Holder”), for purposes of Brazilian taxation.

This discussion is not a comprehensive discussion of all the tax considerations that may be relevant to a decision to purchase our common shares or ADSs and is not applicable to all categories of investors, some of which may be subject to special rules, and does not specifically address all of the Brazilian federal income tax considerations applicable to any particular holder. It is based on the tax laws of Brazil as in effect on the date of this report, which are subject to change, possibly with retroactive effect, and to differing interpretations. Each prospective purchaser is urged to consult his own tax advisor about the particular Brazilian federal income tax consequences of an investment in our common shares or ADSs.

Taxation of Dividends . Dividends, including stock dividends and other dividends paid in kind, paid by us to the depositary in respect of the ADSs, or to a Non-Brazilian Holder in respect of the common shares, are currently not subject to income withholding tax, provided that they are paid out of profits generated as of January 1, 1996. Dividends paid from profits generated before January 1, 1996 may be subject to Brazilian withholding income tax at variable rates, according to the tax legislation applicable to each corresponding year.

In this context, it should be noted that Law No. 11,638 dated December 28, 2007 significantly altered the Brazilian corporate law in order to align the generally accepted Brazilian accounting standards more closely with the International Financial Reporting Standards ("IFRS"). Nonetheless, Law No. 11,941 dated May 27, 2009 introduced the Transitory Tax Regime ("RTT") in order to render neutral, from a tax perspective, all of the changes provided by Law 11,638. Under the RTT, for tax purposes, legal entities should observe the accounting methods and criteria as in force on December 31, 2007.

Profits determined pursuant to Law 11,638/07 ("IFRS Profits") may differ from the profits calculated pursuant to the accounting methods and criteria as in force on December 31, 2007 ("2007 Profits").

While it was a general market practice to distribute exempted dividends with reference to the IFRS Profits, Normative Ruling No. 1,397, issued by the Brazilian tax authorities on September 16, 2013, has established that legal entities should observe the accounting methods and criteria in force on December 31, 2007, or 2007 Profits, in order to determine the amount of profits that could be distributed as exempted income to its beneficiaries.

Any profits paid in excess of said 2007 Profits ("Excess Dividends") should, in the tax authorities' view and in the specific case of non-resident beneficiaries, be subject to the following rules of taxation: (i) 15% withholding income tax ("WHT"), in case of case of beneficiaries domiciled abroad, but not in Low or Nil Tax Jurisdiction (as defined below), and (ii) 25% WHT, in case of beneficiaries domiciled in Low or Nil Tax Jurisdiction (as defined below).

In order to mitigate potential disputes on the subject, Law No. 12,973, dated May 13, 2014, in addition to revoking the RTT, introduced a new set of tax rules, or the New Tax Regime, including new provisions with respect to Excess Dividends. Under these new provisions: (i) Excess Dividends related to profits assessed from 2008 to 2013 will be exempt; (ii) potential disputes remain concerning the Excess Dividends related to 2014 profits, unless our company voluntarily elects to apply the New Tax Regime in 2014; and (iii) as of 2015, once the New Tax Regime is mandatory and has completely replaced the RTT, dividends should be considered fully exempt.

Taxation of Gains . According to Law No. 10,833, enacted on December 29, 2003, capital gains realized on the sale or disposition of assets located in Brazil by a Non-Brazilian Holder, regardless of whether the sale or the disposition is made to another non-Brazilian resident or to a Brazilian resident, is subject to taxation in Brazil. Accordingly, on the disposition of the common shares, which are considered assets located in Brazil, the Non-Brazilian Holder will be subject to income tax on the gains assessed, following the rules described below, regardless of whether the transactions are conducted in Brazil or abroad and with a Brazilian resident or not. Regarding the ADSs, although the matter is not free from doubt, arguably the gains realized by a Non-Brazilian Holder on the disposition of ADSs to another non-Brazilian resident are not taxed in Brazil, based on the argument that ADSs would not constitute assets located in Brazil for purposes of Law No. 10,833/03. However, we cannot assure of how Brazilian courts would interpret the definition of assets located in Brazil in connection with the taxation of gains realized by a Non-Brazilian Holder on the disposition of ADSs to another non-Brazilian resident. Thus, the gain on a disposition of ADSs by a Non-Brazilian Holder to a resident in Brazil (or even to a non-Brazilian resident in the event that courts determine that ADSs would constitute assets located in Brazil) may be subject to income tax in Brazil according to the rules described below for ADSs or those applicable to the disposition of common shares, when applicable. It is important to clarify that, for purposes of Brazilian taxation, the income tax rules on gains related to disposition of common shares or ADSs can vary depending on the domicile of the Non-Brazilian holder, the form by which such Non-Brazilian holder has registered its investment with the Central Bank and/or how the disposition is carried out, as described below.

The deposit of common shares in exchange for ADSs may be subject to Brazilian income tax on capital gains at the rate of 15%, or 25% in case of a Non-Brazilian Holder located in a Low or Nil Tax Jurisdiction (as defined below), if the acquisition cost of the common shares is lower than (1) the average price per common share on a Brazilian stock exchange on which the greatest number of such shares were sold on the day of deposit or (2) if no common shares were sold on that day, the average price on the Brazilian stock exchange on which the greatest number of common shares were sold in the 15 trading sessions immediately preceding such deposit. In such case, the positive difference between the average price of the common shares, calculated as above, and the corresponding acquisition cost, may be considered a capital gain. In some circumstances, there may be arguments to support that such tax treatment is not applicable in case of Non-Brazilian Holders registered under Resolution No. 4,373 ("4,373 Holder") that are not Tax Haven Holders and is not resident in a Low or Nil Tax Jurisdiction (as defined below). The withdrawal of ADSs in exchange for common shares should not be considered as giving rise to a capital gain subject to Brazilian income tax, as far as the regulatory rules in respect to the registration of the investment before the Central Bank are duly observed.

Gains assessed on the disposition of common shares carried out on the Brazilian stock exchange (which includes the transactions carried out on the organized over-the-counter market):

- are exempt from income tax when assessed by a Non-Brazilian Holder that (i) is a 4,373 Holder and (ii) is not resident in a Low or Nil Tax Jurisdiction (as defined below); or
- are subject to income tax at a rate of 15% in any other case, including the gains assessed by a Non-Brazilian Holder that (i) is not a 4,373 Holder and/or or (ii) is a 4,373 Holder resident in a Low or Nil Tax Jurisdiction (as defined below). In these cases, a withholding income tax of 0.005% on the sale value shall be applicable and can be later offset with the eventual income tax due on the capital gain.

Any other gains assessed on a disposition of the common shares that is not carried out on Brazilian stock exchanges are subject to income tax at a rate of 15%, except for a resident of a Low or Nil Tax Jurisdiction (as defined below), which, in this case, is subject to income tax at a rate of 25%. In case the gains are related to transactions conducted on the Brazilian non-organized over-the-counter market with intermediation, the withholding income tax of 0.005% on the sale value shall also be applicable and can be offset with the eventual income tax due on the capital gain.

In the case of a redemption of common shares or ADSs or a capital reduction by a Brazilian corporation, the positive difference between the amount effectively received by the Non-Brazilian Holder and the acquisition cost of the common shares or ADSs redeemed is treated as capital gain derived from sale or exchange of common shares not carried out in a Brazilian stock exchange market and is therefore subject to income tax at the rate of 15%, or 25%, as the case may be.

As a general rule, the gains realized as a result of a disposition transaction of common shares or ADSs are determined by the difference between the amount realized on the sale or exchange of the shares or ADSs and their acquisition cost.

There can be no assurance that the current preferential tax treatment for Non-Brazilian holder of ADSs and 4,373 Holder of common shares will continue.

Any exercise of preemptive rights relating to the common shares or ADSs will not be subject to Brazilian income tax. Any gain on the sale or assignment of preemptive rights relating to our common shares or the ADSs by a Non-Brazilian Holder of common shares will be subject to Brazilian income taxation according to the same rules applicable to the sale or disposition of these shares.

Taxation on Interest on Shareholders' Equity . (see "Item 8 Financial Information–A. Consolidated Statements and Other Financial Information–Dividends and Dividend Policy–History of Dividend and Interest on Shareholders' Equity Payments and Dividend Policy").

In accordance with Law No. 9,249, dated December 26, 1995, as amended, Brazilian corporations may make payments to shareholders characterized as distributions of interest on the company's shareholders' equity as an alternative to making dividend distributions. Such interest are calculated by reference to the TJLP as determined by the Central Bank from time to time and, for tax purposes, cannot exceed the greater of:

- 50% of net income (after the social contribution on net profits but before taking such distribution and the provision for corporate income tax into account) related to the period for which the payment is made; and
- 50% of the sum of retained profits and profit reserves as of the date of the beginning of the period for which the payment is made.

The Brazilian Corporate Law establishes that interest attributed to shareholders' equity in respect of the common shares paid to shareholders who are Non-Brazilian holders, including Non-Brazilian holders of ADSs, are subject to Brazilian withholding income tax at the rate of 15%, 25% in case of a resident of a Low or Nil Tax Jurisdiction (as defined below) or where applicable local laws impose restrictions on the disclosure of the shareholding composition or the ownership of investments or the ultimate beneficiary of the income derived from transactions carried out and attributable to a Non-Brazilian holder. The distribution of interest on shareholders' equity may be determined by our board of directors. We cannot assure you that our board of directors will not determine that future distributions of profits may be made by means of interest on shareholders' equity instead of by means of dividends.

The amounts paid as distribution of interest on shareholders' equity are deductible for corporate income tax and social contribution on profits purposes, both of which are taxes levied on our profits, as far as the limits and rules described above are observed by us.

Low or Nil Taxation Jurisdictions. On June 4, 2010, Brazilian tax authorities enacted Normative Ruling No. 1,037 listing (i) the countries and jurisdictions considered as Low or Nil Taxation Jurisdiction or where the local legislation does not allow access to information related to the shareholding composition of legal entities, to their ownership or to the identity of the effective beneficiary of the income attributed to non-residents and (ii) the privileged tax regimes, which definition is provided by Law No. 11,727, of June 23, 2008. On December 12, 2014 the Brazilian Revenue Service issued Rule 488 reducing the concept of Tax Favorable Jurisdictions to those that tax the income below the rate of 17% (previous concept adopted a 20% maximum rate for that purpose), which will probably result in an amendment to the list provided under Normative Ruling No. 1,037. However, please note that Rule 488 does not apply to 4,373 Holders.

Although we believe that the best interpretation of the current tax legislation could lead to the conclusion that the above mentioned "privileged tax regime" concept should apply solely for purposes of Brazilian transfer pricing and thin capitalization rules, we cannot assure you that subsequent legislation or interpretations by the Brazilian tax authorities regarding the definition of a "privileged tax regime" provided by Law No. 11,727 will also apply to a Non-Brazilian Holder on payments of interest on shareholders' equity.

Notwithstanding the above, we recommend that you consult your own tax advisors regarding the consequences of the implementation of Law No. 11,727, Normative Ruling No. 1,037, Rule 488. If the Brazilian tax authorities determine that the concept of "privileged tax regime" applies to WHT levied on payments made to a Non-Brazilian Holder, the WHT applicable to such payments could be assessed at a rate up to 25.0%.

Taxation on Foreign Exchange Transactions ("IOF/Exchange"). Pursuant to Decree No. 6,306/07, the conversion into foreign currency or the conversion into Brazilian currency of the proceeds received or remitted by a Brazilian entity from a foreign investment in the Brazilian securities market, including those in connection with the investment by a Non-Brazilian holder in the common shares and ADSs may be subject to the Tax on Foreign Exchange Transactions, or IOF/Exchange. Currently applicable rate for most foreign currency exchange transactions is 0.38%.

However, currency exchange transactions carried out for the inflow of resources into Brazil by a 4,373 Holder are subject to IOF/Exchange at (i) 0% rate in case of variable income transactions carried out on the Brazilian stock, futures and commodities exchanges, as well as in the acquisitions of shares of Brazilian publicly-held companies in public offerings or subscription of shares related to capital contributions, provided that the issuer company has registered its shares for trading in the stock exchange (ii) 0% for the outflow of resources from Brazil related to these type of investments, including payments of dividends and interest on shareholders' equity and the repatriation of funds invested in the Brazilian market. Furthermore, the IOF/Exchange is currently levied at a 0% rate on the withdrawal of ADSs into shares.

In any case, the Brazilian federal government may increase the rate at any time, up to 25.0%. However, any increase in rates may only apply to future transactions.

Tax on Transactions Involving Bonds and Securities ("IOF/Bonds"). Pursuant to Decree 6,306/07 the IOF/Bonds may be imposed on any transactions involving bonds and securities, even if the transactions are carried out on a Brazilian stock exchange. The rate of IOF/Bonds applicable to transactions involving common shares is currently zero. In particular, the IOF/Bond also levies at a zero percent rate on the transfer of shares traded on the Brazilian stock exchange with the purpose of the issuance of depository receipts to be traded outside Brazil. The Brazilian federal government may increase the rate of the IOF/Bonds at any time by up to 1.5% per day of the transaction amount, but only in respect of future transactions.

Other Brazilian Taxes . There are no Brazilian federal inheritance, gift or succession taxes applicable to the ownership, transfer or disposition of common shares or ADSs by a Non-Brazilian Holder. Gift and inheritance taxes, however, may be levied by some states of Brazil on gifts made or inheritances bestowed by Non-Brazilian Holders to individuals or entities resident or domiciled within such states in Brazil. There are no Brazilian stamp, issue, registration or similar taxes or duties payable by holders of common shares or ADSs.

Material U.S. Federal Income Tax Consequences

The following discussion, subject to the limitations and conditions set forth herein, summarizes certain U.S. federal income tax consequences of the purchase, ownership and disposition of Embraer common shares and ADSs. This discussion only applies to beneficial owners of Embraer common shares or ADSs that are “U.S. Holders” (as defined below) that hold common shares or ADSs of Embraer as capital assets (generally for investment purposes). This discussion does not address all aspects of U.S. federal income taxation that may be applicable to a U.S. Holder, including, gift, estate, alternative minimum and Medicare contribution tax consequences, or the tax consequences to U.S. Holders subject to special treatment under U.S. federal income tax law, including:

- partnerships and other entities classified as partnerships for U.S. federal income tax purposes;
- tax-exempt entities;
- dealers and traders in securities or foreign currencies;
- insurance companies;
- certain financial institutions;
- persons who own Embraer common shares or ADSs as part of an integrated investment, including a straddle, hedging or conversion transaction, comprising the Embraer common shares or ADSs and one or more other positions for tax purposes;
- persons whose functional currency is not the U.S. dollar for U.S. federal income tax purposes;
- persons who actually or constructively own 10% or more of Embraer’s voting stock;
- persons who acquired Embraer common shares or ADSs pursuant to the exercise of any employee stock option or otherwise as compensation; and
- persons holding Embraer common shares or ADSs in connection with a trade or business conducted outside the United States.

In addition, there is no discussion of state, local, or non-U.S. tax considerations of the purchase, ownership and disposition of Embraer common shares or ADSs. The discussion is based upon the provisions of the Internal Revenue Code of 1986, as amended, or Code, its legislative history, existing final, temporary, and proposed U.S. Treasury regulations, rulings and other pronouncements of the U.S. Internal Revenue Service, or IRS, and judicial decisions as of the date of this annual report. Such authorities may be repealed, revoked or modified (with possible retroactive effect) so as to result in U.S. federal income tax consequences different from those discussed below.

This discussion is also based in part on the representations of the depositary and the assumption that each obligation in the deposit agreement and any related agreement will be performed in accordance with its terms.

Shareholders are urged to consult their own independent tax advisors concerning the U.S. federal income tax consequences of the ownership of Embraer common shares and ADSs in light of their particular situations, as well as any consequences arising under the laws of any other taxing jurisdiction.

As used herein, the term “U.S. Holder” means a beneficial owner of Embraer common shares or ADSs representing Embraer common shares that is (1) an individual who is a citizen or resident of the United States, (2) a corporation, or other entity taxable as a corporation, created or organized in or under the laws of the United States, any State or the District of Columbia, (3) an estate the income of which is subject to U.S. federal income taxation regardless of its source or (4) a trust (i) that is subject to the supervision of a court within the United States and the control of one or more U.S. persons as described in Section 7701(a)(30) of the Code or (ii) that has a valid election in effect under applicable U.S. Treasury regulations to be treated as a U.S. person. Except where specifically described below, this discussion assumes that we are not a controlled foreign corporation or a passive foreign investment company, or PFIC, in either case, for U.S. federal income tax purposes.

If a partnership (or an entity treated as a partnership for U.S. federal income tax purposes) holds Embraer common shares or ADSs, the tax treatment of such partnership and each partner will generally depend upon the status of the partner in such partnership. Partnerships that hold Embraer common shares or ADSs, and partners of a partnership holding such common shares or ADSs, are urged to consult their own tax advisors regarding the consequences of the purchase, ownership and disposition of Embraer common shares or ADSs.

In general, for U.S. federal income tax purposes, a U.S. Holder who is a beneficial owner of an ADS will be treated as the owner of the underlying Embraer common shares that are represented by such ADS. The U.S. Treasury has expressed concerns that parties to whom ADSs are pre-released before shares are delivered to the depository, or intermediaries in the chain of ownership between holders of ADSs and the issuer of the security underlying the ADSs, may be taking actions that are inconsistent with the claiming of foreign tax credits by holders of ADSs. Accordingly, the creditability of any Brazilian taxes could be affected by actions taken by such parties or intermediaries. Deposits or withdrawals of underlying common shares by U.S. Holders for ADSs will not be subject to U.S. federal income tax.

Distributions on Embraer Common Shares or ADSs

For U.S. federal income tax purposes, the gross amount of any distributions (including distributions of notional interest charges attributed to shareholders’ equity) paid to U.S. Holders of Embraer common shares or ADSs (including Brazilian withholding taxes imposed on such distributions) will be treated as a dividend, to the extent paid out of current or accumulated earnings and profits of Embraer as determined under U.S. federal income tax principles. Such a dividend will be includable in the gross income of a U.S. Holder as ordinary income on the date received or accrued by the U.S. Holder. To the extent that the amount of any distribution exceeds Embraer’s current and accumulated earnings and profits for a taxable year (as determined under U.S. federal income tax principles), the distribution will first be treated as a tax-free return of capital to the extent of a U.S. Holder’s adjusted tax basis in the Embraer common shares or ADSs, and thereafter as capital gain. We do not expect to maintain calculations of earnings and profits in accordance with U.S. federal income tax principles, and unless and until such calculations are made, U.S. Holders should assume that a distribution is paid out of earnings and profits and will be treated as a dividend for U.S. federal income tax purposes.

Dividends paid by Embraer will not be eligible for the dividends received deduction allowed to corporations under the Code.

The amount of any cash distribution paid in *reais* will be included in a U.S. Holder’s gross income in an amount equal to the U.S. dollar value of the *reais* calculated by reference to the exchange rate in effect on the date the dividend is received or accrued by the U.S. Holder, in the case of Embraer common shares, and by the depository, in the case of ADSs, regardless of whether the *reais* are converted into U.S. dollars. If the *reais* received as a dividend are not converted into U.S. dollars on the date of receipt, a U.S. Holder will have a tax basis in the *reais* equal to their U.S. dollar value on the date of receipt. Any gain or loss realized on a subsequent conversion or other disposition of the *reais* will be treated as U.S. source ordinary income or loss for U.S. federal income tax purposes.

Subject to the discussion above regarding concerns expressed by the U.S. Treasury and a number of other complex limitations and conditions, a U.S. Holder will generally be entitled to claim a U.S. foreign tax credit in respect of any Brazilian withholding taxes imposed on dividends received on Embraer's common shares or ADSs. U.S. Holders who do not elect to claim a credit for foreign taxes may instead claim a deduction in respect of such Brazilian withholding taxes. Dividends received with respect to the Embraer common shares or ADSs will be treated as foreign source income for U.S. federal income tax purposes, and will be "passive category income" for purposes of calculating foreign tax credits in most cases, subject to various limitations. The rules relating to computing foreign tax credits or deducting foreign income taxes are extremely complex, and U.S. Holders are urged to consult their own independent tax advisors regarding the availability of foreign tax credits with respect to any Brazilian withholding taxes in regards of dividends paid on Embraer's common shares or ADSs.

Subject to certain exceptions for short-term and hedged positions, the amount of dividends received by certain non-corporate U.S. holders (including individuals) with respect to the Embraer common shares or ADSs may be eligible for a reduced rate of taxation if the dividends represent "qualified dividend income." Dividends paid on the Embraer common shares or ADSs will be treated as qualified dividend income if (1) the Embraer common shares or ADSs are readily tradable on an established securities market in the United States, (2) the U.S. Holder meets the holding period requirement for the common shares or ADSs (generally more than 60 days during the 121-day period that begins 60 days before the ex-dividend date) and (3) Embraer was not in the year prior to the year in which the dividend was paid (with respect to a U.S. Holder that held Embraer common shares or ADSs), and is not in the year in which the dividend is paid, a passive foreign investment company, or PFIC. Under guidance issued by the IRS, the ADSs of Embraer should qualify as readily tradable on an established securities market in the United States so long as they are listed on the NYSE. In the case of Embraer common shares held directly by U.S. Holders and not underlying an ADS, it is not clear whether dividends paid with respect to such shares will represent "qualified dividend income." U.S. Holders holding Embraer common shares directly and not through an ADS are urged to consult their own independent tax advisors.

Based on its audited financial statements as well as relevant market and shareholder data, Embraer believes that it was not a PFIC for U.S. federal income tax purposes with respect to its 2016 taxable year. In addition, based on Embraer's audited or projected financial statements and current expectations regarding the value and nature of its assets, the sources and nature of its income, and relevant market and shareholder data, Embraer does not anticipate becoming a PFIC for its 2017 taxable year. However, because this determination is based on the nature of Embraer's income and assets from time to time, involves the application of complex tax rules, and since Embraer's view is not binding in the courts or the IRS, no assurances can be provided that Embraer will not be considered a PFIC for the current, or any past or future tax year. The potential application of the PFIC rules is further discussed below.

Sale, Exchange or Other Taxable Disposition of Embraer Common Shares or ADSs

A U.S. Holder will recognize a taxable gain or loss on any sale, exchange or other taxable disposition of Embraer common shares or ADSs in an amount equal to the difference between the amount realized on the sale, exchange or other taxable disposition and the U.S. Holder's adjusted tax basis (determined in U.S. dollars) in the Embraer common shares or ADSs. Such gain or loss will generally be capital gain or loss and will be long-term capital gain or loss if the Embraer common shares or ADSs have a holding period of more than one year. Certain non-corporate U.S. Holders (including individuals) may be eligible for preferential rates of U.S. federal income tax in respect of long-term capital gains. The deductibility of capital losses is subject to limitations under the Code.

Any gain or loss recognized by a U.S. Holder from the sale, exchange or taxable disposition of Embraer common shares or ADSs generally will be gain or loss from U.S. sources for U.S. foreign tax credit purposes. Consequently, if a Brazilian withholding tax or capital gains tax is imposed pursuant to a sale of Embraer common shares or ADSs, U.S. Holders who do not have sufficient foreign source income might not be able to derive effective U.S. foreign tax credit benefit in respect of such Brazilian withholding tax or capital gains tax. The rules relating to foreign tax credits, including the amount of foreign income taxes that may be claimed as a credit in any given year, are extremely complex and subject to limitations. U.S. Holders are urged to consult their own independent tax advisor regarding the application of the foreign tax credit rules to their particular circumstances.

Deposits and withdrawals of Embraer common shares in exchange for ADSs will not result in the realization of gain or loss for U.S. federal income tax purposes.

Passive Foreign Investment Company Rules

If, during any taxable year of a non-U.S. corporation, 75% or more of the corporation's gross income consists of certain types of "passive" income, or the average value during a taxable year of the "passive assets" of the corporation (generally assets that generate passive income) is 50% or more of the average value of all the corporation's assets, the corporation will be treated as a PFIC under U.S. federal income tax law. If a corporation is treated as a PFIC, a U.S. Holder may be subject to increased tax liability upon the sale of its stock, or upon the receipt of certain dividends, unless such U.S. Holder makes an election to be taxed currently on its *pro rata* portion of the corporation's income, whether or not such income is distributed in the form of dividends, or otherwise makes a "mark-to-market" election with respect to the corporation's stock as permitted by the Code. Currently, a U.S. Holder who owns common shares or ADSs in any year that Embraer is a PFIC in excess of certain de minimis amounts and fails to qualify for certain other exemptions would be required to file IRS Form 8621 to report such holdings. In addition, as discussed above, a U.S. Holder would not be entitled to (if otherwise eligible for) the preferential reduced rate of tax payable on certain dividend income. As stated above, although no assurances can be given, based on Embraer's operations, projections and business plans and the other items discussed above, Embraer does not believe that it (or its predecessor) was or currently is a PFIC, and does not expect to become a PFIC for subsequent taxable years.

U.S. Holders are urged to consult their own independent tax advisors regarding the potential application of the PFIC rules and related reporting requirements to the common shares or ADSs and the availability and advisability of making an election to avoid the adverse tax consequences of the PFIC rules should Embraer be considered a PFIC for any taxable year.

Information Reporting and Backup Withholding

In general, payments of dividends on Embraer common shares or ADSs, and payments of the proceeds of the sale, exchange or other disposition of Embraer common shares or ADSs, paid within the United States or through certain U.S.-related financial intermediaries to a U.S. Holder are subject to information reporting and may be subject to backup withholding at a current maximum rate of 28% unless the U.S. Holder (1) is a corporation or other exempt recipient or (2) in the case of backup withholding, provides an accurate taxpayer identification number and certifies that no loss of exemption from backup withholding has occurred. Backup withholding is not an additional tax. The amount of any backup withholding from a payment to a U.S. Holder will be allowed as a credit against the U.S. Holder's U.S. federal income tax liability, provided the required information is timely provided to the IRS. A U.S. Holder generally may obtain a refund of any amounts withheld under the backup withholding rules that exceed its U.S. federal income tax liability by filing a timely refund claim with the IRS.

In addition, certain U.S. Holders are required to report to the IRS information relating to an interest in the common shares or ADSs, subject to exceptions (including an exception for common shares or ADSs held in accounts maintained by certain financial institutions), by attaching a complete IRS Form 8938, Statement of Specified Foreign Financial Assets, with their tax returns for each year in which they held an interest in the common shares or ADSs. U.S. Holders are urged to consult their own tax advisors regarding the effect, if any, of this information reporting requirement on their acquisition, ownership and disposition of the common shares or ADSs.

10F. Dividends and Paying Agents

Not applicable.