

International Tax Brazil Highlights 2018



Investment basics:

Currency – Brazilian Real (BRL)

Foreign exchange control – Companies generally do not need prior authorization for a foreign exchange transaction, although a record of the transaction must be filed electronically with the central bank.

Accounting principles/financial statements – Publicly traded companies and nonpublic companies with assets exceeding BRL 240 million or gross revenue exceeding BRL 300 million must have external auditors. Only publicly traded companies must publish annual account reports in Brazilian GAAP. IFRS is required as from calendar year 2010. Annual reports, balance sheets, income statements and minutes of annual meetings must be published in the official gazette and another well-known newspaper. A closed corporation also must publish its financial statements if shareholder equity is equal to or exceeds BRL 2 million.

Principal business entities – These are the limited liability company (LTDA) and joint stock company (SA). Branches are uncommon, since they may operate in Brazil only through a specific ministerial decree.

Corporate taxation:

Residence – A corporation is resident in Brazil if it is incorporated in Brazil.

Basis – Resident companies are taxed on worldwide income. A foreign company is subject to Brazilian taxation only if it carries out certain sales activities in Brazil through an agent or representative that is domiciled in the country and that has the power to legally bind the foreign seller, or through a domestic branch of the foreign seller. A representative acting as an agent will not give

rise to a taxable presence in Brazil if the final transaction is concluded abroad by the nonresident company.

Taxable income – The basic income tax applies to operating profits derived by a company in Brazil. Operating profits are defined as gross operating receipts, less the cost of goods sold or services rendered; commercial, administrative and operating expenses; and other charges, reserves and losses authorized by law.

Brazilian companies may opt annually to be taxed on actual or presumed income. The “*lucro real*” method is based on actual annual or quarterly taxable income. The “*lucro presumido*” method, which is available if certain requirements are satisfied, is based on a quarterly estimated or deemed taxable income.

Qualifying small enterprises with annual gross income not exceeding BRL 4.8 million may elect to be taxed under a simplified regime (for purposes of corporate income tax, federal excise tax (IPI), federal social contributions on gross income (PIS and COFINS), state VAT on sales and services (ICMS), tax on services (ISS) and social security contributions).

Taxation of dividends – Dividends received from other Brazilian companies and income derived from premiums received on the issuance of new shares are not included in taxable income.

Capital gains – Capital gains are treated the same way as ordinary income (subject to restrictions on the offsetting of capital losses against ordinary profits in certain cases).

Capital gains derived by a nonresident on an investment registered with the central bank are subject to progressive rates ranging from 15% to 22.5%. (A 25%

rate applies if the gains are derived by a resident of a tax haven.)

Foreign investors in the financial market may be subject to different rates.

Losses – Losses must be segregated as “operating” or “nonoperating.” Nonoperating losses may be set off only against nonoperating gains. Tax losses incurred in one fiscal year may be carried forward indefinitely, but the amount of the carryforward that can be utilized is limited to 30% of taxable income in each carryforward year. The carryback of losses is not permitted.

Rate – Corporate income tax (IRPJ) is levied on the taxable profits of an entity at a rate of 15%. However, as noted below, taking into account the surtax and the social contribution on net profits, the combined nominal rate is 34%.

Surtax – In addition to the statutory corporate income tax rate of 15%, a surtax of 10% on income in excess of BRL 240,000 per year is imposed on legal entities, and a 9% social contribution tax (CSLL) is levied on adjusted net income. For financial institutions, the CSLL rate is 20%.

Alternative minimum tax – No

Foreign tax credit – A foreign tax credit for qualifying foreign taxes paid is available to offset the IRPJ and CSLL imposed on foreign-source income. Further limitations on the credit include a per-company limitation for foreign subsidiaries (some consolidation of branches and of lower-tier subsidiaries is allowed) and a per-country limitation for foreign branches.

Participation exemption – Dividends received from other Brazilian companies are not included in taxable income.

Holding company regime – No

Incentives – R&D projects and information technology qualify for some direct assistance and tax relief. An exclusion is allowed from the corporate income tax base of 60% to 100% of R&D project expenses. The IPI on the acquisition of assets is reduced and accelerated depreciation is allowed for R&D assets. Subsidized financing is available to purchase capital goods, invest in infrastructure projects and build ships. Export sectors qualify for duty drawback on imports and for special financing through an export-promotion program.

Exporters of manufactured goods are entitled to a tax refund of a percentage of the value of their export revenue, depending on the type of goods exported.

There also are regional incentives for federal and state taxes, granted by the Brazilian government.

Withholding tax:

Dividends – No withholding tax is imposed on dividend distributions to a nonresident that are paid from profits earned as from 1 January 1996. As from calendar year 2015, dividends are determined based on IFRS.

Interest – Interest paid to a nonresident generally is subject to a 15% withholding tax unless the rate is reduced under a tax treaty. The rate is 25% if the recipient is resident in a tax haven.

Royalties – The general withholding tax rate on royalty payments is 15%, unless the rate is reduced under a tax treaty. The rate is 25% if the recipient is resident in a tax haven.

Technical service fees – The general withholding tax rate on technical service and technical assistance fees, administrative assistance and similar payments to nonresidents is 15%, unless the rate is reduced or eliminated under a tax treaty. The rate is 25% if the recipient is resident in a tax haven.

Branch remittance tax – No

Other taxes on corporations:

Capital duty – No

Payroll tax – See “Social security,” below.

Real property tax – The real property tax is collected by the municipality where property is located and is calculated on a deemed “sales price” of the property. The tax rate varies by municipality, but may be estimated in the range of 0.3% to 1.5%.

Rural property tax is an annual federal tax assessed on the ownership of rural property at rates ranging from 0.03% to 20%, depending on the region and the utilization of the property. Real estate transfer taxes also apply (see “Transfer tax” below).

Social security – Employers are required to contribute 8% of wages to each employee’s deferred salary account for the severance fund, as well as 20% of an employee’s wages to the public pension system (National Institute for Social Security or INSS), and a maximum of 8.8% for other social security taxes. In some business sectors, the 20% INSS contribution has been replaced by a contribution levied on gross revenue.

Stamp duty – No

Transfer tax – A real estate transfer tax is due upon the transfer of title to real property (land, buildings). The tax rate is progressive from 2% to 6%, calculated, roughly, on the sales price. The buyer is responsible for payment of the tax.

Other – Although not corporate income taxes, the PIS/PASEP (social integration program) and COFINS (tax for social security financing) are federal taxes imposed on gross revenue at rates of 0.65% (PIS) and 3% (COFINS), where a Brazilian entity pays corporate income tax under the deemed taxable income regime.

Where a Brazilian entity pays corporate income tax based on actual income, the PIS and COFINS rates are 1.65% and 7.6%, respectively. In the latter case, the Brazilian entity may use input PIS and COFINS credits to offset its PIS and COFINS liabilities. Export companies are exempt, as long as funds actually entered the country. The importation of goods and services generally is subject to PIS and COFINS at a combined rate of 11.75% and 9.25%, respectively. The tax on services (ISS) is a municipal tax imposed on the supply of services, other than services subject to ICMS.

A financial transactions tax (IOF) is imposed on foreign exchange, credit and security transactions.

The Contribution for the Intervention in the Economic Domain (CIDE) is imposed at a rate of 10% on the importation of technical services and royalties.

Anti-avoidance rules:

Transfer pricing – Brazil's transfer pricing rules apply only to cross-border transactions between related parties and transactions with entities located in tax haven jurisdictions. The rules deviate substantially from the OECD transfer pricing guidelines; they do not adopt the arm's length principle, but use fixed margins to calculate the transfer price. The rules also provide that interest derived from a cross-border loan is subject to certain limits, regardless of whether the loan agreement is registered with the Brazilian central bank. The limits vary depending on the type of currency adopted, type of interest (fixed or variable), etc., and take into account market rates and a spread to be determined by the Minister of Finance.

For inbound financial transactions, where the Brazilian taxpayer is paying interest to a foreign related party, the annual spread is limited to a maximum rate of 3.5%. For outbound financial transactions, where the Brazilian taxpayer is receiving interest from a foreign related party, the annual spread has a minimum rate of 2.5%.

Thin capitalization – Under the thin capitalization rules, interest paid to related parties that are not located in a tax haven jurisdiction and that do not benefit from a preferential tax regime may be deducted on an accruals basis for corporate income tax purposes only if (i) the expenses are necessary for the company's activities, and (ii) both of the following thresholds are met: (a) the

related party debt-to-equity ratio does not exceed 2:1, calculated based on the proportion of related party debt to direct equity investment made by related parties; and (b) the overall debt-to-equity ratio does not exceed 2:1, calculated based on the proportion of total debt to total direct equity investment made by related parties.

Interest paid to an entity or individual located in a tax haven or that benefits from a preferential tax regime (regardless of whether the parties are related) may be deducted only if the expenses (i) are necessary for the company's activities, and (ii) both of the following thresholds are met: (a) the amount of the Brazilian entity's indebtedness to the tax haven/preferential tax regime resident does not exceed 30% of the net equity of the Brazilian entity; and (b) the Brazilian entity's total indebtedness to all entities located in a tax haven jurisdiction or benefiting from a preferential tax regime does not exceed 30% of the net equity of the Brazilian entity.

Excess interest is treated as a nondeductible expense for IRPJ and CSLL purposes. The transfer pricing rules affecting cross-border loans remain in effect, as do the general requirements for deductibility.

Controlled foreign companies – Profits earned by CFCs and certain foreign affiliates (noncontrolled subsidiaries) of Brazilian entities are included in the base for calculating the IRPJ and CSLL liability of the Brazilian controlling or parent company.

Provided certain requirements are met, Brazilian taxpayers have the option to make an irrevocable election (on a calendar-year basis) to consolidate the profits and losses of CFCs until 2022 and to carry forward losses incurred by CFCs for five years. Until calendar year 2022, a Brazilian controlling entity in certain business sectors may utilize a 9% presumed credit to offset the income tax related to CFC profits included in its taxable income.

Disclosure requirements – Related party transactions and CFC information must be disclosed in the annual income tax return. Country-by-country reporting standards were introduced as from fiscal year 2016.

Other – General anti-avoidance rules apply. Under the rules, any amount paid, credited, delivered, used or remitted directly or indirectly to an entity or individual incorporated or resident in a tax haven jurisdiction or benefiting from a preferential tax regime may be deducted only if the taxpayer can identify the beneficial "recipient" of the proceeds; provide proof that the entity or individual has the operational capacity to carry out the transaction for which the payment is made; and submit documentation showing the purchase price paid and the

receipt of the goods, rights or the use of services. (See above under "Transfer pricing" and "Thin capitalization" for additional rules specific to interest payments.)

Compliance for corporations:

Tax year – Calendar year

Consolidated returns – Consolidated returns are not permitted; each company must file a separate return.

Filing requirements – Every business entity in Brazil (including corporations, partnerships, branches and agencies of companies domiciled abroad) must file an annual income tax return for the previous calendar year by the last working day of July. Corporate taxes (IRPJ and CSLL) usually are due on annual adjusted profit, with monthly advance payments; excess tax paid is available to offset future taxes.

Penalties – Late payment of IRPJ and CSLL is subject to penalties and interest.

Rulings – While there is no advance tax ruling system, Brazil allows formal consultations on the application of tax laws to the taxpayer's specific facts. The resulting decisions are binding on all taxpayers, with the possibility of an appeal depending on the existence of inconsistent separate decisions, in which case an affected taxpayer may request a final statement that binds all taxpayers that have received decisions on the same facts/law.

Personal taxation:

Basis – Resident individuals are taxed on their worldwide income. Nonresidents are taxed only on income from Brazilian sources.

Residence – In addition to citizens, the following individuals are considered tax residents: naturalized foreigners; foreigners who hold a permanent visa (which was available for new applicants up to 21 November 2017) or a temporary visa with a local employment contract from the date of arrival; and foreigners who hold a temporary visa, but no local employment contract, after completing 183 days of residence in Brazil within any 12-month period. New visa guidelines may affect aspects of tax residence in 2018.

Filing status – There is an option for married individuals to file a joint tax return for the household.

Taxable income – Taxable income includes wages, salaries, bonuses, consulting fees and commissions, premiums, directors' fees and dividends and interest from foreign sources. It also includes most allowances connected with employment. The formal profit sharing paid by a Brazilian employer to employees is exempt only for INSS and severance fund purposes. Dividends received from local sources are tax exempt.

Capital gains – Capital gains are subject to progressive rates ranging from 15% to 22.5%.

Deductions and allowances – Instead of itemizing deductions, taxpayers may elect the standard annual deduction of 20% of taxable income, up to a maximum of BRL 16,754.

Deductions and allowances may include (subject to additional restrictions): social security taxes paid by the employee; contributions to private Brazilian pension plans (up to 12% of gross income); alimony or pension payments under a court order; expenses incurred by self-employed individuals to produce business income or to maintain the source of such income; a standard deduction per dependent up to BRL 2,275; educational expenses, up to an annual limit of BRL 3,561; unreimbursed payments for health insurance plans and medical, dental, psychotherapy and physical therapy expenses; and documented contributions to approved Brazilian cultural, artistic and audio-visual activities and donations to Brazilian Child and Youth Counsels, up to 6% of tax due or 3% if the donation is at the time the tax return is filed.

Rates – No tax is levied on annual income up to BRL 22,848. Tax is levied as follows: (1) 7.5% for income between BRL 22,849 and BRL 33,920; (2) 15% for income between BRL 33,921 and BRL 45,012; (3) 22.5% for income between BRL 45,013 and BRL 55,976; and (4) 27.5% for income exceeding BRL 55,977.

Nonresidents of a nontreaty country are taxed at a flat rate of 25% (on earned income) or 15% (on other income, except dividends paid from a Brazilian entity, which are tax-exempt).

Other taxes on individuals:

Capital duty – No

Stamp duty – No

Capital acquisitions tax – No

Real property tax – See "Real property tax" and "Transfer tax" under "Other taxes on corporations."

Inheritance/estate tax – States are authorized to tax inheritances at rates of up to 8%.

Net wealth/net worth tax – No

Social security – Employees contribute 8% to 11% to social security, depending on their salary categories.

Compliance for individuals:

Tax year – Calendar year

Filing and payment – Tax is paid on a monthly basis, either through withholding from salary or by advance payment for the self-employed.

Monthly advance payments also are required for income received outside of Brazil by Brazilian tax residents. All residents who are subject to income tax must file a final annual tax return by the last business day of April of the following year. The return must include a statement indicating all their property and rights (domestic or foreign).

In addition to filing an income tax return, a resident individual that owns more than USD 100,000 in assets abroad must report these assets to the Brazilian central bank by 5 April of each year.

Penalties – Late filing of the income tax return will result in a penalty of 1% per month on the tax due, up to 20%. A minimum penalty of BRL 166 applies if no tax was due. A maximum penalty of BRL 250,000 applies for the late or incorrect filing of the Brazilian central bank return.

Value added tax:

Taxable transactions – Brazil operates a multiple rate system, with tax levied at the federal, state and municipal levels. IPI is a federal excise tax levied on the manufacture of goods and the import of goods into Brazil. Exports are exempt. ICMS is a state VAT levied on the

circulation and import of goods and the provision of interstate and intermunicipal transportation and communications services.

Rates – The IPI rates depend on the type of product, at an average rate of 20%. The ICMS is levied at rates ranging from 4% to 25%.

Registration – IPI and ICMS calculations must be kept in proper fiscal books.

Filing and payment – IPI and ICMS are paid monthly. ICMS filing is on a monthly basis.

Source of tax law: 1988 Federal Constitution, National Tax Code of 1966 and the Federal Income Tax Code

Tax treaties: Brazil has concluded 33 tax treaties that currently are effective.

Tax authorities: Brazilian Revenue Service

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