



## ICEbreakers: Unlocking Brazil



### Hot topics

- Guidance on levy of state VAT on software:** On March 24, 2018, the São Paulo state tax authorities issued rules that provide further guidance on the levy of the state VAT (ICMS) charged on digital goods, further to Brazil's National Finance Policy Council authorizing states to charge ICMS on goods and merchandise commercialized by way of an electronic data transfer. The provisions apply as from April 1, 2018 and provide guidance on the practical aspects of the issuance of electronic invoices by taxpayers that sell digital goods to final customers within the state of São Paulo, and permit such taxpayers to consolidate and issue a single monthly electronic invoice per city where customers are located. A special taxpayer ID and registration is required for sites and electronic platforms (regardless of whether the taxpayer already is subject to ICMS on other non-digital goods transactions), and a "generic" address should be used for this registration based on the grounds that the sites and platforms do not have a physical location. In line with previous regulations, the new rule confirms that transactions carried out prior to delivery to the end customer will be exempt from ICMS. Taxpayers involved in business-to-business transactions, therefore, are not subject to ICMS and are not required to issue electronic invoices.
- Project launched with Brazil to examine differences in cross-border tax rules:** On February 28, 2018, the OECD and the Brazilian tax authorities launched a joint project to examine the differences in the cross-border taxation standards adopted by Brazil from those prescribed by the OECD. The project is expected to last 15 months, and will analyze strengths and weaknesses in the domestic transfer pricing approach and assess the potential for Brazil to move closer to the OECD transfer pricing guidelines. A greater alignment of Brazil's tax policies to the OECD's standards is viewed as an important step for the future accession of the country to the organization.

### Other developments

- Superior Court defines concept of "input" for PIS and COFINS purposes:** In a decision issued on February 22, 2018, the Superior Court of Justice found in favor of the taxpayers in a dispute involving PIS and COFINS (federal social contributions on gross income) credits that had been pending since 2010. The decision will affect all pending lawsuits relating to credits on PIS and COFINS. The court's decision eliminates the restrictive presumption used by the tax authorities regarding the concept of an input, leaving the scope of this concept to be defined on a case-by-case basis, according to whether the expenditure is relevant or essential for carrying out the taxpayer's activity. This reflects the noncumulative principle that underlies the PIS and COFINS system. The tax administration's attorney general has announced that it will evaluate possible constitutional issues regarding the grounds used by the Superior Court in reaching its decision, to determine whether an extraordinary appeal should be filed.

### Legislative updates

**New guidance on tax treatment of investment funds no longer effective:** Provisional Measure 806/17, which was issued on October 30, 2017 and contained changes to the taxation of investment funds, has not been converted into law and, therefore, is not effective. (A provisional measure remains in force for two months and expires automatically if it is not extended for an additional two-month period or if the Brazilian House and Senate do not vote on the measure within the four-month period.)

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