



**TAXES IN  
IMPUESTOS EN AMERICA**

**2021**

THIRD EDITION / TERCERA EDICIÓN

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# Brazil



-  **Capital city:**  
Brasilia
-  **Aera:**  
8,514,876 km<sup>2</sup>
-  **Population:**  
211,049,530
-  **Language:**  
Portugues
-  **Political system:**  
Presidential  
federal republic
-  **GDP/capita  
2019:**  
USD 8,717
-  **Currency:**  
Real (BRL)
-  **ISO Code:**  
BRA
-  **Telephone code:**  
+55
-  **National day:**  
7 September



## 1. Taxes on natural persons

Natural persons in Brazil are subject to various taxes, including income tax, social security tax, and gift and inheritance tax. There is no local or state tax for natural persons.

The natural persons indicated below are considered as residents for the purposes of liens:

- A natural person who resides permanently in the country;
- Naturalized foreigners;
- Expatriates with permanent or temporary visa and local employment contract, as of the date of arrival in the country; and
- Foreigners with a temporary visa and no local employment contract, after 183 days (whether consecutive or not) of physical residence in Brazil for a period of 12 months.

Residents are subject to world income tax, with a foreign tax credit for taxes paid in the country of origin (subject to the applicability of the bilateral income tax or reciprocity treaty). Non-residents are subject to taxes on income earned in Brazil. The source of income is determined by the location of the taxpayer, regardless of where they do their work.

### 1.1 Taxable income

Residents are subject to gross income taxes, which include domestic and foreign income with foreign tax credit for taxes paid in the country of origin. Gross income is taxable whether it has been received in cash or in kind. Taxable income includes salaries, wages, bonuses, supplementary benefits, consulting fees and commissions, premiums, directors' fees and interest and dividends from outside sources.

It also includes most of the employment-related allowances, including home-based allowances and vacation leave to the home country granted by the employer. School allowances are considered indirect salaries and are subject to applicable taxes. There are no distinctions between the personal expenses paid directly by the company and the expenses that are reinstated to the individual. However, actual moving expenses are generally not subject to levies.

The formal bonuses of participation on the utility paid by a Brazilian employer to its employees are exempt only for the purposes of social security tax (INSS) and the employee liquidation fund. For the purposes of withholding of income tax, participation bonuses on profits are subject to progressive rates ranging from 0% to 27.5%. Dividends received from local sources are exempt from taxes.

## 1.2 Deductions and benefits

Taxpayers may deduct some expenses when calculating the monthly income tax obligation, as well as other expenses when entering their annual federal income tax return. The allowable deductions when calculating the monthly income tax obligation include the following:

- Social security taxes paid by the employee to federal, state or municipal entities;
- Contributions to private pension plans in Brazil, up to 12% of gross income, provided that contributions are also made to the official social insurance;
- Contributions to private pension plans in Brazil, up to 12% of gross income, provided that contributions are also made to the official social insurance;
- Payments of alimony or child support according to the judgment of a court (extraordinary limits apply for maintenance payments paid to beneficiaries resident abroad); and
- An annual standard deduction of BRL 2,275 (for the calendar year of 2020) for each dependent.

The following deductions may be applied when entering the annual return:

- Payments made by the taxpayer or by a dependent for education expenses, up to an annual limit of BRL 3,561.50 (for the 2020 calendar year);
- Payments made and not reimbursed during the year for medical or dental expenses, health insurance plans or psychotherapy or physiotherapy; and
- Documented contributions to approved cultural, artistic and audiovisual activities and donations to Councils for Children and Youth of Brazil (some restrictions apply).

Instead of specifying the deductions, the taxpayer may choose the annual standard deduction of 20% of the taxable income up to a maximum of BRL 16.754.34 (for the calendar year 2020).

## 1.3 Aliquots

The personal tax rates are indicated below (for the 2014 calendar year):

- 0% on annual income up to BRL 22,847.76 (the tax discount does not apply);
- 7.5% for the income that ranges between BRL 22,847.76 and BRL 22,847.77;
- 15% for the income that ranges between BRL 33,919.80 and BRL 45,012.60;
- 22.5% income that ranges between BRL 45,012.61 and BRL 55,976.16;
- 27.5% for income greater than BRL 55,976.17.

## 1.4 Tax on inheritances, bequests and Donations

The levy on Inheritances and Donations (ITCMD) is a State tax levied on legacy / inheritance transactions at rates ranging from 4% to 8% depending on the legislation of each Brazilian state.

## 2. Net worth tax

There is no tax on net worth in Brazil.

## 3. Real estate tax

Taxes on rural goods (ITR), on urban goods (IPTU) and on vehicles (IPVA) also apply to natural persons.

## 4. Contributions to social insurance

Social Security contributions are mandatory for individuals and legal entities in accordance with specific rules.

## 5. Taxes on legal persons

Taxes in Brazil are regulated mainly by the Federal Constitution of 1988, the National Tax Code of 1966 and the Federal Code of Income Tax. Taxes are payable by all private business entities resident in Brazil, including legal persons, limited liability companies, companies and individual companies, and subsidiaries and agencies of legal entities with main offices abroad.

Taxes are collected by the federal government and state and municipal governments.

Brazil has a complex tax system for legal persons in which the federal government collects:

- corporate income tax (IRPJ);
- social contribution tax on profits (CSLL);
- federal value-added tax or sales of manufactured goods (IPI);
- financial transaction tax (IOF);
- consumption tax on services and royalties received abroad (CIDE);
- tax on social security financing on income (COFINS);
- social Integration Program income tax (PIS / PASEP);
- contributions to employer social insurance (INSS);
- tax on rural properties. Tariffs are also collected for importation and exportation. There is no tax on branches or an alternative minimum tax.

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The Brazilian states and the Federal District of Brasilia apply a value-added tax (VAT) on the circulation of telecommunications and transportation goods and services (ICMS), as well as taxes on inheritances, donations and motor vehicles.

The municipalities and the Federal District charge taxes on services (ISS), urban real estate and transactions with urban real estate.

## 5.1 Residence

The residence of a company in Brazil is determined if the company has been registered according to the laws of Brazil.

## 5.2 Taxable income and tax rates

Resident companies are subject to world income taxes. A foreign company is subject to Brazilian taxes only if it conducts sales activities in Brazil through agents or representatives who are domiciled in the country and have legal authority to link the foreign seller to the domestic buyer, or through a local branch of the foreign seller. A representative acting as agent, with the final transaction completed by a non-resident company abroad, shall not carry legal presence in Brazil.

The corporate income tax, or IRPJ, is collected on the taxable income of an entity at a rate of 15%. In addition to the IRPJ, an additional tax of 10% is taxable on a

taxable income greater than BRL 240,000 on an annual basis.

The social contribution on profits or CSLL is collected on the entities subject to the IRPJ in order to finance the Brazilian social security system. The CSLL rate is 15% for financial institutions and 9% for other entities.

The basic income tax applies to the operating profits derived from a company in Brazil.

### 5.3 Defined taxable income

Operating income is defined as the gross revenues of operations, minus the cost of goods sold or services rendered; commercial, administrative and operational expenses, and other charges, reserves and losses authorized by law. Dividends received from other Brazilian companies and income from premiums on the issue of new shares are not included in the taxable income.

Brazilian companies may choose to be subject to taxes on real or attributed income. The Real Profit method is based on the taxable annual or quarterly real income and the Presumed Profit method is based on the estimated or attributable taxable income. The election is made annually and is documented through the form of the first tax paid at the beginning of each calendar year.

In the Real Profit system, the tax base is income before the IRPJ and the CSLL, adjusted by means of aggregates (non-deductible expenses) and deductions (non-taxable income, such as dividend income). The IRPJ and the CSLL must be paid on the last business day of the following month.

### 5.4 Real Income Regime

Legal entities subject to taxes under the real income method calculated on a quarterly or annual basis, determines the taxable income based on the income before taxes adjusted for the aggregate and non-taxable items. The choice of the real income method is mandatory for any entity that meets the following conditions:

- Total revenues from the previous calendar year in excess of BRL 78'000,000 or proportional to the number of months during which the entity was operational during the fiscal year, if it is less than 12 months;
- Financial institutions, insurance companies and other similar financial entities;
- Entities that obtain income, profits or capital gains from foreign sources;
- Entities that receive tax incentives related to the exemption or reduction of income tax;
- Entities that (during the course of the calendar year) made monthly tax payments based on the estimation system;



- Entities that carry out factoring operations. The real income method allows the taxpayer to calculate the income tax quarterly or annually.

Once the real income regime method is chosen, the taxpayer must make monthly prepayments of the IRPJ and CSLL, which reduce the final taxable obligation as of 31 December.

The attributable taxable income system (alleged profit) is an optional tax regime for companies whose gross earnings from the previous year were less than BRL 78.000.000, (as of 1 January 2014) and is calculated quarterly. The IRPJ and the CSLL are collected on the attributable income, which is determined by applying a specific percentage on the income of each quarter, plus other income and accrued capital gains. A provisional law was passed in April 2013 that increases the threshold of annual gross income from the current threshold of BRL 48.000.000 to BRL 72.000.000. To become effective (as of 1 January 2014), this Provisional Law must be approved by the Congress of Brazil and transformed into a law.

In the case of the IRPJ, the taxable income is determined by the application of the following proportions: 32% for income from services and 8% for income from sales of products and goods. For the payment of the CSLL contribution, the estimated profit margin is 32% for services and 12% for sales of products and goods. The IRPJ tax and the CSLL contribution must be paid quarterly, on the last business day of the month following the quarter.

## 6. Brazilian transitory tax regime and transitional tax

During the process of transition of Brazilian GAAP to IFRS after the approval of Law 11638/07 and due to significant changes in the accounting policies used by Brazilian organizations, the Brazilian tax authorities filed the so-called Tax Regime Transitory (RTT or Transitory Tax Regime). The RTT was optional during the calendar years 2008 and 2009 and was created to neutralize the accounting effects under IFRS from the tax approach. As of 2010, the RTT became obligatory until the Brazilian authorities issued new regulations and guidelines regarding the tax aspects of the new Law. From a practical approach, the companies that chose the RTT would calculate and pay the corporate income tax (IRPJ and CSLL) and income taxes (PIS and COFINS) based on the accounting standards in effect as of 31 December 2007, which means that any adjustment related to the IFRS norms did not affect the calculation of the tax for the purposes of the IRPJ, CSLL, PIS and COFINS under the RTT regime.

With the objective of eliminating the differences between the GAAP of the IFRS and the GAAP for taxes, the government of Brazil approved the Provisional Stipulation No. 627/13 in which it repeals the RTT regime and modifies the existing tax legislation in a broad perspective. Stipulation PM No. 627 revokes the RTT regime as of 1 January 2015, but stipulates an early election for approval, under which taxpayers can approve the modifications made by stipulation PM No. 627 that begins on 1 January 2014. In this context, the continued applicability of stipulation PM No. 627 will depend on whether a taxpayer has chosen to approve the modifications made by the PM as of calendar year 2014. If the taxpayer makes the choice, the RTT regime is automatically revoked and the new stipulations come into effect on 1 January 2014.

## 6.1 Deductions

The expenses are generally deductible if they are necessary for the activities of the company. Foreign exchange gains and losses on foreign currency obligations may be taxable on a cumulative basis or in cash, according to the taxpayer's choice for the calendar year. Under the cumulative basis, the monthly earnings for currency exchange will be subject to taxes and the exchange losses will be deductible (whether they have been realized or not). Under the cash base, foreign exchange gains or losses will be subject to taxes or deductibles only when they have been realized.

Some extraordinary provisions may restrict the deductibility of some payments, for example, royalties and fees. The supplementary benefits paid to officials are non-deductible expenses.

**Deduction of expenses corresponding to Royalties and Technical Assistance**  
Brazil has rethought its legislation on intellectual property and the country has begun to attract greater licensing, including the use of registered trademarks, technology transfer and franchises.

The National Institute of Industrial Property (INPI) regulates matters related to industrial property, that is, patents, registered trademarks, manufacturing processes, technology and knowledge. INPI's main offices are located in Rio de Janeiro and the organization maintains nine branches that provide full service and various representative offices throughout the country. All forms of property under license and technology transfer must be registered before the INPI to send royalties and fees abroad. The deductibility of the relevant expenses also depends on some registration requirements.

The INPI will not approve license agreements that restrict or control a licensee's exports or stipulate the source of imported materials or components, since such provisions violate Brazil's antitrust laws.

To register a technical assistance contract or technology transfer, it is necessary to enter a request with the INPI. These contracts are usually registered for five years, but can be extended up to five additional years. Authorities may grant an extension when additional time is needed to complete the transfer of technology. The INPI rarely authorizes extensions for a maximum of five years, but it usually allows extensions of less than five years. His authority to modify the duration of technology transfer agreements has been maintained by the courts. As a general rule, the costs of technical assistance and royalties are deductible to the extent that the following requirements are met:

- Registration of the corresponding license agreement for the use of registered trademarks, technical and scientific assistance services in the INPI;
- Observation of the maximum limit of 1% - 5% on the net earnings from the sales of goods produced with technology under license and/or with the benefit of the technical assistance provided. The 5% limit applies to global technical assistance payments and royalties, considering that trademark payments are restricted to a limit of 1%.
- The imposed restrictions may vary according to the taxpayer's industry as stipulated by the Minister of Finance.
- The registration of the agreement related to the BACEN, in case the beneficiary of the royalty or the payment of the technical assistance fees are domiciled abroad.

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The general expense deductibility rules also apply to technical assistance and royalty agreements. However, these must be necessary, regular and usual for the company's business and must be properly documented. In addition, it must be verified that the services were provided effectively.

## 6.2 Depreciation

Depreciation expenses are calculated on a straight-line basis. Fixed assets are depreciated at the rates specified for the classes of assets established unless the special provisions allow a higher rate. The annual rates are 4% for buildings; 20% for vehicles, computer hardware and software; and 10% for machinery, equipment and accessories.

An entity that operates two daily shifts can depreciate the assets used in production at one and a half times the ordinary rate. Companies that operate three daily shifts can use twice the normal rate.

Another important aspect refers to the accelerated accounting depreciation, which can be carried out based on the work shifts of the production activity. The Income Tax Law stipulates accelerated depreciation according to the number of daily work hours in which operations involving assets, including machinery and equipment, have been incurred at the following aliquots:

- one 8-hour shift: 1;
- two 8-hour shifts: 1.5;
- three 8-hour shifts: 2.

After the introduction of the new IFRS standards through Law 11638/07, the Brazilian Companies are subject, as of January 1, 2008, to the impairment tests of Tangible / Fixed Assets, which must be carried out at least where it is evidenced that the assets may be impaired (lack of profitability, obsolescence and technological changes). On the other hand, the new accounting standards issued by the Brazilian Accounting Standards Committee (CPC) order that entities must, from now on, recognize the value of fixed assets in their financial statements according to the useful life of the assets of the operation (beginning on 1 January 2009).

The bylaws stipulate that entities will adopt the depreciation method that best represents the pattern in which the future economic benefits of the asset are expected to be consumed. However, the Brazilian Supervisory Authorities issued the Standard (PN 1/11), which determines that the effects of the IFRS must be neutralized under the RTT regime and that the depreciation rates existing before the IFRS should be exempted. Please note that the RTT scheme will be automatically revoked as of 1 January 2015 pursuant to stipulation PM No. 627/13.

### 6.3 Losses

Losses should be separated as "operational" and "non-operational". Non-operating losses can only be offset against non-operating gains. The tax losses incurred during a fiscal year may be transported indefinitely, but the amount of compensation is limited to 30% of the taxable income of each year. The transfer of losses to previous exercises is not allowed.

### 6.4 Group cancellation

Brazil does not have a group rebate system. There is no consolidation of the tax in Brazil and each entity must file separate tax returns.

## 6.5 Tax on capital gains

Capital gains are treated the same way as ordinary earnings (subject to the restrictions of compensation of capital losses against ordinary earnings in some cases). Capital gains derived from a non-resident on an investment registered with the central bank are subject to a withholding tax of 15%. If the capital gain is derived from a resident of a tax haven, the rate increases to 25%. In accordance with domestic laws, the legal representative in Brazil of a non-resident buyer is liable for the withholding and payment of tax by the Brazilian Tax Authorities. In essence, this standard aims to tax any capital gain generated abroad, on transactions involving the transfer of ownership of a Brazilian investment, between companies / individuals who are not residents of Brazil.

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

## 6.6 Exemption for double taxation

Unilateral redress. Brazil offers an exoneration for double taxation of income from external sources through credit or reduction of taxes, depending on income. You can claim credit for foreign taxes paid limited to the corporate income tax obligation to the extent that income from foreign sources is included in the taxable income. The withholding of taxes is creditable, as well as the tax on the underlying income that has been paid, independently of the existence of a double tax treaty signed under some conditions.

## 6.7 Anti-evasion rules

Price transfer. Brazil's price transfer regime includes provisions aimed at preventing Brazilian subsidiaries of transnational companies from sending profits abroad through overcharging of inter-company exports or the reduction of taxable income in Brazil through the undervaluation of inter-company exports. The rules apply to cross-border transactions between related parties and transactions with entities located in tax havens.

Brazilian standards deviate substantially from the OECD's Transfer of Prices Guidelines -they do not adopt the arm's length principle, although they use fixed margins to calculate the price transfer. The outstanding characteristics of the price transfer regime are indicated below:

- Final Price Transfer calculations expire only on 31<sup>st</sup> December. The additional income tax relating to the TP adjustment must be paid before 31 January. A summary of TP information must be provided when entering the Income Tax declaration. It is summary information of all inter-company transactions, the method applied and the adjustments made. Tax-

- payers are not required to prepare a formal Report;
- Calculations must be made product by product;
- It is not possible to compensate the price transfer adjustments between different products and methods;
- The calculations must be made in local currency (R USD ) and the variation of the change cannot be adjusted during the fiscal year;
- One method must be selected per product. The selected method can be changed in the following fiscal year;
- There is a blacklist of Transfer of Prices with more than 50 places that are considered as tax havens;
- After starting a tax audit, the taxpayer cannot modify the selected methods to justify their transactions with the related parties;
- In case the application of the TP methods selected by the taxpayer are disqualified by the tax authorities during the performance of a tax audit, the taxpayer will have 30 days to submit a new TP study;
- Exclusive use of the transaction methods -uncontrolled comparable price, resale price and additional price- to determine the price of uncontrolled transactions in property, service and commercial rights;
- Regulatory fixed margins must be applied through the methods described, unless a different method is established through official information publications or investigations conducted by a technically qualified firm;
- Export data protection standards exist to avoid application of the transaction methods described;
- Regulation of transactions between Brazilian taxpayers and some agents, distributors or uncontrolled companies, or transactions with a related party or a resident party of a tax haven or a jurisdiction that allows for the absence of disclosures in this regard of the shares in the capital ; and
- Specific interest rates for cross-border loans controlled.

## 6.8 Methods Applicable to Import Transactions

- Comparable Independent Prices (PIC)

The PIC is defined as the weighted average of similar prices of goods, services or rights calculated in the Brazilian market or in other countries, in purchase or sale transactions carried out under similar circumstances. The prices established under the PIC method must be compared with the inter-company weighted average price paid by the Brazilian taxpayer for goods, services or similar rights. The application of the PIC method depends on the ability of the taxpayer to obtain and document the prices of similar third party transactions that must represent at least 5% of the total amount of the related parties' amount, in volume.

The PIC method must be applied based on the transactions recorded during the same fiscal year that is under analysis. When transactions registered during the

same period are not available, the taxpayer may rely on the transactions recorded during the previous year, provided that he makes the corresponding adjustments to the price of the transactions to justify the fluctuations of the exchange rates.

- Resale Price minus Profit (PRL)

The PRL method takes into consideration some regulatory gross profit margins, which vary depending on the sector or the activities of the taxpayer for which the products, services or rights are used. Regulatory gross profit margins can vary between 20%, 30% or 40%. The price parameter, whose starting point is a sale transaction recorded by the Brazilian taxpayer, must take into account the radius of the products, services or rights imported from the parties related to the total cost of the products, services or rights sold by The Brazilian taxpayer.

- Cost of Production plus Profit (CPL)

The CPL is defined as the weighted average production cost of the same or similar goods in the country of origin, increased by the taxes and charges applicable to exports by the country of origin and the gross profit margin of 20% calculated on the identified cost basis. For the CPL to be feasible, the related external parties must obtain detailed information regarding the production costs of the items imported by the Brazilian taxpayer.

- Import price of the commodity market (PCI)

The ICP applies only to incoming transactions with commodities. According to this method, the basis of comparison is the average price in the market of the relevant articles, adjusted based on the ascending or descending differential.

The price of the shares to be used corresponds to the average price at the date of the transaction. In cases where the share price does not exist by the relevant date, the analysis should be based on the average price of the shares for the most recent date before the date of the transaction.

## 6.9 Methods that apply to Export Transactions

- Export Sale Price (PVEx)

It is defined as the weighted average of the export sales price charged by the company to other customers or by other domestic exporters of identical or similar goods, services or rights during the same fiscal year under similar payment terms.

- Total Cost Plus Fixed Percentage (CAP)

It is defined as the weighted average cost of acquisition or production of the goods, services or exported rights increased for the taxes and taxes levied by Brazil on exports plus a profit margin of 15% calculated on the basis of the sum of the costs, taxes and liens.

- Retail Price / Wholesale in the Destination Country, less Profit (PVV and PVA)

They are defined as the weighted average price of goods, services or identical or similar rights in the country of destination in terms of similar payment, reduced by sales taxes in that country and by a profit margin of 15%, calculated at wholesale price in the country of destination (PVA) or 30%, calculated according to the retail price in the country of destination (PVV).

- PECEX

The PECEX applies only to outgoing transactions with basic products. According to this method, the base of comparison is the average price of the product in the market for the relevant articles, adjusted based on the ascending or descending differential.

## 6.10 Inter-company loans

The new price transfer rules specifically addressed to the interest paid on the financial transactions of a related party were published in December 2012 (Law 12,766 / 2012). The rules stipulate 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 or not. The limits vary depending on the type of currency approved, the interest rate (fixed or variable), etc., and consider the market rate and the differential to be determined by the Minister of Finance.

Currently, the differential varies depending on the nature of the financial transaction under analysis (that is to say, incoming or outgoing). For incoming financial transactions, where the Brazilian taxpayer pays interest to a related external party, the annual differential is limited to a maximum rate of 3.5%. For outgoing financial transactions, where the Brazilian taxpayer receives interest from a related external party, the annual differential is limited to a maximum rate of 2.5%.

## 6.11 Low capitalization

The first low-capitalization rules in Brazil entered into force on 1 January 2010 for the purposes of the IRPJ and on 16 March 2010 for the purposes of the CSLL. Under these rules, the interest paid to related parties that are not located within the jurisdiction of tax havens or that do not benefit from a preferential tax regime, can be reduced on a cumulative basis only for tax purposes. Corporate



income only if expenses are necessary for the company's activities and these two thresholds are met:

- the debt-equity ratio of the related party does not exceed 2/1 calculated based on the proportion of the debt-direct investment of capital of the related parties; and
- the debt-equity ratio does not exceed 2/1 based on the proportion of total debt-direct investment of total capital of related parties.

The interest paid to an entity or individual located in a tax haven or benefiting from a preferential tax regime (regardless of whether the parties are related) can be deducted only if the expenses are necessary for the company's activities and They reach the following thresholds:

- the amount of indebtedness of the Brazilian entity for the resident of the tax haven does not exceed 30% of the net capital of the Brazilian entity; and
- the total indebtedness of the Brazilian entity for all entities located within the jurisdiction of a tax haven or that benefit from a preferential tax regime does not exceed 30% of the net capital of the Brazilian entity.

Any excess interest will be treated as a non-deductible expense for the purposes of the IRPJ and the CSLL. There is no re-characterization of surplus interest, which means that the interest is subject to taxes and the withholding of income tax. In addition to the low capitalization limits, the price transfer rules also apply and restrict the deduction of interest.

## 6.12 Taxes on Controlled Foreign Companies

The profits obtained by the controlled foreign companies (CFC) and some foreign subsidiaries (non-controlled subsidiaries) of the Brazilian companies are included in the tax bases of the IRPJ and CSLL of a Brazilian company or parent company in control. The profits obtained by CFCs and uncontrolled subsidiaries of Brazilian companies are considered as available for the parent or controlled company in Brazil (and subject to taxes) at the close of each fiscal year. The CFC rules apply to companies that have significant investments in foreign jurisdictions, either through a subsidiary or a permanent establishment (PE). The CFC definition includes significant influence over corporate decision-making, a minimum of 20% interest on capital with voting rights in the foreign company or being a member of the "same economic group" of the foreign company.

## 6.13 Proposed changes in CFC legislation

The government of Brazil promulgated Provisional Stipulation No. 627/13 (PM No. 627) on 12 November 2013, which introduces the pertinent changes to the current regulations that regulate the current CFCs. PM No. 627, which contains

20 articles of the CFC regime, introduces measures that make the application of these rules more flexible:

The main change is that Brazilian taxpayers will have the option of making an irrevocable election (based on the calendar year) to consolidate the CFC's gains and losses until 2017; tax authorities will issue a guide on how the election will be carried out. However, this election will not be available if the CFC is a resident in a jurisdiction located in a tax haven (a jurisdiction within Brazil's black list), a jurisdiction with a privileged tax regime (a jurisdiction in the gray list) or a jurisdiction that an agreement to exchange information with Brazil has not been completed; or the income of the CFC is subject to an income tax rate of less than 20%.

The profits of a CFC that have been included in the tax base of its Brazilian parent company as a result of the adjustments of the price transfer made in relation to the transactions between the CFC and the Brazilian parent company will be excluded from any additional inclusion in the base taxable on the corporate income of the Brazilian taxpayer according to the rules that regulate the CFCs.

The losses incurred by the CFCs may be transferred by the Brazilian parent company for five years if certain requirements are met.

The payment of the corporate income tax related to the profits of the CFC may be deferred up to a maximum of five years (with a minimum of 25% paid in the year following the year relevant to the calculation), with the balance to be paid over the course of the following four years, subject to adjustments of certain interest rates. However, this option will not be available to taxpayers who are taking legal action against the application of CFC rules and who qualify for the recent tax amnesty program (for which the application must be submitted by November 29, 2013). for our warning about the tax amnesty)

In general, the application of taxes on the profits of the uncontrolled entities must be carried out at the moment in which the profits are distributed to the Brazilian entity if the requirements are met in the PM No. 627. Otherwise, the income tax of these entities will be applied when estimated on 31 December of each year.

They also apply similar rules to natural persons residing in Brazil.

Although the PMs come into effect as soon as they are issued, the Representatives of the Brazilian Parliament and Senate must vote in reference to the PM, and this must occur during the four months of publication of the PM. A PM will remain in effect for two months and will automatically expire if it is not extended for an additional period of two months, or if the Senate or Parliament does not vote for the MP over the course of the four-month period.

## 6.14 General anti-evasion rule

Supplementary Law 104 of 10 January 2001, added, among other changes in the Brazilian tax law, a paragraph to Article 116 of the Brazilian National Tax Code. Based on this paragraph, the Brazilian tax authorities are allowed to ignore the formal aspects of a transaction and analyze only its economic fund for the purposes of taxation (fund on form).

Supplementary Law 104 still lacks more regulation and, therefore, is not enforceable in theory. However, Brazilian Tax Authorities have been using Article 116 as a way to evaluate taxpayers who use the concept of the fund on the form. This matter has been discussed in Brazil's administrative tax court on a case-by-case basis.

# 7. Administration

## 7.1 Fiscal Year

The fiscal year in Brazil is the calendar year.

## 7.2 Declaration and payment

Every legal person in Brazil (including corporations, companies, subsidiaries and agencies of companies domiciled abroad) must file an annual tax return for the previous calendar year. Generally, the declaration must be submitted before the last business day of the month of June.

Corporate taxes (IRPJ and CSLL) must be paid generally over the adjusted annual profit, with monthly prepayments; you can use the tax paid in excess to compensate against future taxes. In general, corporate income tax refunds are not practical.

Other tax returns, such as Federal Tax Payments and the Calculation of the Social Contribution Statement, are paid monthly depending on the gross income. Late payments of municipal, state and federal taxes are subject to penalties and interest.

## 7.3 Consolidated Statements

Brazil does not tax the groups of companies on the basis of a consolidated tax return, neither does it allow the elimination of losses among the companies of a group.

## 7.4 Prescription Rules

Tax authorities can audit open periods of up to five years after the close of a fiscal year (31 December of each year), and the five-year statute of limitations is counted from the moment the tax return is filed. Taxes are paid monthly (pre-payments) and the same five-year period applies for self-assessment payments.

## 7.5 Fiscal Authorities

The Brazilian Collection Service, called Receita Federal do Brasil, or RFB, is the official body attached to the Ministry of Finance, responsible for the administration of the federal tax including import levies and social security contributions. The structure of the RFB consists of the Central and Decentralized units. The first is responsible for the supervision and regulation of activities, while the second, comprised of 10 regional offices, executes the directives and guidelines established by the central unit.

## 7.6 Resolutions

A taxpayer can submit a written request for a private record of progress with the decision about the tax consequences of a proposed transaction before the Tax Authorities. The request must refer to a proposed transaction related to taxes administered by the Brazilian IRS. Once the decision is considered as valid, it will be binding on the taxpayer, who must comply with the fiscal consequences without the right to appeal. The resolutions have no effect if the conditions of execution are not met or the facts are not described accurately. Resolutions are considered revoked when the relevant legislation changes.

## 7.7 Prescription requirements

In previous years, the Brazilian Revenue Service (RFB) has developed expertise in its abilities for electronic tax assessment, which has become a global reference among foreign tax authorities. Currently, there is a large amount of tax obligations and mandatory appearances that are presented by the Brazilian Authorities at the municipal, state and federal levels. Most federal tax returns can be downloaded from the RFB website and sent online through a digital certificate that is given to each taxpayer.

Brazilian corporate taxpayers operating in Brazil must also comply with the Public Digital Accounting System (Digital Public Deed System, SPED), which replaces paper accounting. The SPED is a complex and sophisticated new data requirement in which taxpayers must present monthly or annually (and not only in the case

of an audit) the accounting and tax information that is available based on the uniform electronic standard format.

The SPED can be divided into three main project categories:

- **Electronic invoicing (Electronic Fiscal Note - NF-e):** Electronic invoicing is aimed at implementing a national digital filing model that will replace the current paper documentation, simplifying tax compliance among taxpayers and allowing real-time tracking and tracking. monitoring of business transactions by the Brazilian Tax Authorities. The NF-e is a document in digital format issued and stored in an electronic format to document, for tax purposes, the circulation of goods or a service before the start of the tax event. The implementation of the NF-e has a gradual approach based on the business activity of the taxpayer.
- **Digital Tax Accounting (Digital Fiscal Deed - EFD):** The EFD is a set of monthly tax returns that will record the transactions that occurred in connection with the entry and exit of goods and services provided and acquired, including the detailed description of each transaction. The current fiscal accounting in physical form will be replaced by a single digital file, which includes all the tax books that are available to the Federal Tax on specific goods IPI, as well as the VAT calculation of the State of the ICMS. The EFD will include the following books: record of entries and exits, record of the calculation of the IPI of the Inventory Registry, record of the calculation of the ICMS and the control of the credits of the ICMS entries on the Permanent Assets (CIAP). In general, the taxpayers of the ICMS and / or IPI must present the EFD to the Brazilian tax authorities.
- **Digital Accounting (Digital Accounting Deed - ECD):** The ECD includes the replacement of the accounting books in a single digital file that must include: the general ledger, the balance sheets and the supporting documentation of the accounting entries. The implementation of the ECD is mandatory for all entities that have chosen the real income regime (Real Profit), and optional for the rest of the corporate taxpayers. The ECD is presented annually until the last business day of June of the following calendar year in which the ECD refers to the report prepared jointly by Equity Assessoria e Consultoria Contábil Ltda. in Brazil.

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