



BRAZIL – 2009 BUSINESS ENVIRONMENT

Currency: Brazilian Real (BRL)

Foreign exchange control: In general, companies do not need prior authorisation for foreign exchange transactions, although a record of the transaction must be filed (online) with the Central Bank.

Accounting principles/financial statements:

Publicly traded companies and non-public companies with assets exceeding BRL 240 million or gross revenue exceeding BRL 300 million must have outside auditors. Only publicly traded companies must publish annual account reports in Brazilian GAAP. IFRS will be required as from calendar year 2010. Annual reports, balance sheets, income statements and minutes of annual meetings must be published in the *Diario Oficial* and another well-known newspaper. A closed corporation must also publish its financial statements if shareholder equity is equal to or greater than BRL 1 million.

Principal business entities: Foreign companies may engage in business in Brazil by acquiring an existing company or by forming a local subsidiary. Many foreign firms choosing the latter route prefer to establish a limited liability company (sociedade por quotas de responsabilidade limitada) or limitada. This form has fewer formalities and less public disclosure than the other option, one of several types of sociedade anônima (SA). Other types of organisation are less suited to foreign investment.

TAX ID NUMBER

CNPJ: “Cadastro Nacional da Pessoa Juridica” - Unique registry of taxpayers.

The CNPJ or registers is managed by the Federal Administration, it holds the registry's information of the legal people and some entities not characterized as such.

The structure is as follows:

CNPJ: 01.394.536/0001 - 81

01.394.536 (MAIN RECORD NUMBER OR REGISTRY OF INSCRIPTION OF THE COMPANY)

0001 (HEADQUARTERS THAT IS THE SINGLE HOLDER HAVE A MAIN OFFICE)

If it is 0002.0003.0004.0005 (means that has 2.3.4.5 Branches respectively) 81 (Validation Number of the company) and it lasts only with the tax payer.

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 agents or representatives that are domiciled in the country and have the power to legally bind the foreign seller or through a domestic branch of the foreign seller. A representative acting as an agent, with the final transaction concluded by the nonresident company abroad, will not give rise to a legal presence in Brazil.

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 that are authorised by law. Brazilian companies may opt to be taxed on actual or presumed income. The “*Lucro Real*” method is based on actual annual or quarterly taxable income, and the “*Lucro Presumido*” method is based on estimated or deemed taxable income. Qualifying small enterprises with annual gross income not exceeding BRL 2.4 million may elect to be taxed under a simplified regime (for corporate income tax, the tax on manufactured products (IPI), the social contributions on gross income, VAT on sales and services (ICMS), the 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.



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Capital gains – Capital gains are treated the same as ordinary income (subject to restrictions on the offsetting of capital losses against ordinary profits in certain cases). Capital gains realised by nonresidents on investments registered with the Central Bank are subject to a 15% withholding tax. If the capital gains are derived by a tax haven resident, the rate is increased to 25%. Foreign investors on the financial market may be subject to different rates.

Losses – Losses must be segregated as “operational” or “non-operational”. Non-operational losses may be set off only against non-operational gains. Tax losses incurred in 1 fiscal year may be carried forward indefinitely but the amount of the carryforward is limited to 30% of taxable income in each carryforward year. Carryback of losses is not allowed.

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 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 15%, as from April 2008.

Alternative minimum tax – No

Foreign tax credit – A foreign tax credit for qualifying foreign taxes paid is available to offset (up to) the domestic tax (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. Under a recent expansion of R&D incentives, an exclusion is allowed from the corporate income tax base of 60% to 100% of R&D project expenses; an IPI reduction on the acquisition of assets; accelerated depreciation of R&D assets; and a credit for withholding tax due on royalty payments. Subsidised financing remains 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. Under a tax relief program for exporters, firms that earn at least 80% of their revenue from exports are exempt from PIS/PASEP and COFINS (both described below) on investments in industrial goods and technology.

Withholding tax:

Dividends – No withholding tax is imposed on dividend distributions to nonresidents that are paid out of profits earned as from 1 January 1996.

Interest – Interest paid to nonresidents is generally subject to a 15% withholding tax unless reduced by an applicable tax treaty. The rate is 25% if the recipient is domiciled in a tax haven.

Royalties – The general withholding tax rate on royalty payments and technical service and technical assistance fees, administrative assistance and similar payments to nonresidents is 15% unless reduced by an applicable tax treaty. Payments for technical services that do not involve the transfer of technology are subject to a 25% or 15% withholding tax. Thus, even though technical services are included within the scope of royalties, the tax authorities may charge a % rate, if not specifically addressed in a tax treaty. The Contribution for the Intervention in the Economic Domain (CIDE) also is imposed at a rate of 10% (CIDE was abolished with respect to software payments as from 1 January 2006).

Branch remittance tax – No



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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 1.0%. Rural property tax is an annual 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 and are discussed below.

Social security – Employers are required to make a contribution of 8.5% of wages to each worker's deferred-salary account at the Length of Service Guarantee Fund (FGTS). Employers also must contribute 20% of an employee's wages to the National Institute for Social Security (INSS), the country's public pension system, as well as a maximum of 8.8% on other social security taxes.

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 the 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. Eligible export companies are exempt as long as funds actually entered the country. The importation of goods and services is subject to PIS and COFINS at a combined rate of 9.25%. The tax on services (ISS) is a municipal tax imposed on the supply of services, other than services subject to ICMS. There is also a financial transactions tax (IOF). The banking tax (CPMF) was abolished in 2008.

Anti-avoidance rules:

Transfer pricing – Brazil's transfer pricing rules only apply 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 rather use fixed margins to calculate the transfer price. Additionally, transfer pricing rules require a cross-border loan agreement to be registered with the central bank for interest to be fully tax deductible. Otherwise, interest is deductible up to LIBOR + 3%.

Thin capitalisation – No, but the transfer pricing rules may affect the deductibility of interest expense.

Controlled foreign companies – Profits earned by CFCs and certain foreign affiliates (non-controlled subsidiaries) of Brazilian entities are included in the base for calculating the IRPJ and CSLL liability of the Brazilian controlling or parent company. Profits earned by CFCs and non-controlled subsidiaries of Brazilian companies will be considered available to the controlling or parent company in Brazil (and subject to taxation) at the end of each fiscal year.

Other – General anti-avoidance rules apply.

Disclosure requirements – No **Transfer pricing** – Brazil's transfer pricing rules only apply 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



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Other – General anti-avoidance rules apply.

Disclosure requirements – No

Administration and compliance:

Tax year – Calendar year

Consolidated returns – No

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 June. Corporate taxes (IRPJ and CSLL) are usually 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 only on the taxpayer, with the only possibility of an appeal dependent on the existence of inconsistent separate decisions, in which case an affected taxpayer may request a final statement that binds all taxpayers who have received decisions on the same facts/law.

Value added tax:

Taxable transactions – IPI is a federal-level single-stage VAT-type tax levied on the manufacture of goods in Brazil and the import of goods. Exports are exempt. ICMS is a VAT levied by the Brazilian states on the circulation of goods and the provision of interstate and inter-municipal transportation and communications services. The tax applies even when a transaction and the provision of services start in another country.

Rates – The national VAT (IPI) rates depend on the type of product, at an average rate of 20%. The state VAT (ICMS) is levied at rates ranging from 7%-25%.

Registration – IPIS and ICMS calculation must be kept in proper fiscal books. No registration is required.

Filing and Payment – IPI and ICMS are paid monthly. IPI calculation should be included in the annual corporate income tax return. ICMS filing varies according to the state. Generally a monthly return is required.

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

Tax treaties: Brazil has concluded more than 30 tax treaties.

Tax authorities: Brazilian Revenue Service.

International organisations: Latin America Integration Association, Mercosur, WTO



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