



# Film Financing and Television Programming

## A Taxation Guide



For more than a decade, the KPMG Film Financing and Television Programming Taxation Guide has been recognized as a valued reference tool for industry professionals, filled with information drawn from the knowledge of the KPMG International global network of member firm media and entertainment Tax professionals. The 2022 edition is a fundamental resource for film and television producers, studio and streaming production executives, tax executives, finance executives, and attorneys involved with the commercial side of production.

Doing business across borders can pose major challenges and may lead to potentially significant tax implications, and a detailed understanding of the full range of potential tax implications can be as essential as the actual financing of a project. The Guide helps industry executives assess the many issues surrounding cross-border business conditions, financing structures, and issues associated with them, including development costs and rules around foreign investment. Recognizing the role that tax credits, subsidies, and other government incentives play in production financing, the Guide includes a robust discussion of relevant tax incentive programs in each country.

Each chapter focuses on a single country and provides a description of commonly used financing structures, as well as their potential commercial and tax implications for the parties involved. Key sections in each chapter include:

### *Introduction*

A thumbnail description of the country's industry contacts, regulatory bodies, and financing developments and trends.

### *Key Tax Facts*

At-a-glance tables of corporate, personal, and value-added (VAT) tax rates; normal nontreaty withholding tax rates; and tax year-end information for companies and individuals.

### *Financing Structures*

Descriptions of commonly used financing structures in production and distribution, and the potential commercial tax implications for the parties involved. This section of each chapter covers rules surrounding co-productions, partnerships, equity tracking shares, sales and leaseback, subsidiaries, and other tax-efficient structures.

### *Tax and Financial Incentives*

Details regarding the tax and financial incentives available from central and local governments as they apply to investors, producers, distributors, and actors, as well as other types of incentives offered.

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### *Corporate Tax*

Explanations of the corporate tax in the country, including definitions, rates, and how they are applied.

### *Personal Tax*

Personal tax rules from the perspective of investors, producers, distributors, artists, and employees.

### *Streaming Tax Considerations*

Provides a look at the unique tax issues that need to be addressed in this evolving segment of the industry. With considerations such as identifying tax collection and reporting obligations in a variety of jurisdictions, understanding international tax implications is essential for streaming providers.

### *KPMG and Member Firm Contacts*

References to KPMG and other KPMG International member firms' contacts at the end of each chapter are provided as a resource for additional detailed information.

Please note: While every effort has been made to provide up-to-date information, tax laws around the world are constantly changing. Accordingly, the material contained in this publication should be viewed as a general guide only and should not be relied upon without consulting your KPMG or KPMG International member firm Tax advisor.

Production opportunities are not limited to the countries contained in this Guide. KPMG and the other KPMG International member firms are in the business of identifying early-stage emerging trends to assist clients in navigating new business opportunities. We encourage you to consult a KPMG or KPMG International member firm Tax professional to continue the conversation about potential approaches to critical tax and business issues facing the media and entertainment industry.

We look forward to helping you with your film and television production ambitions.

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The following information is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230.

The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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# Brazil

## Introduction

The Brazilian film industry has brought in 17 million spectators to movie theaters (data from ANCINE prior to the COVID-19 pandemic). Since 1994, with the issuance of Plano Real, Brazil has enjoyed a degree of economic stability with a broad basis for the industry's growth.

The country has produced many critically acclaimed films in recent years. Notable successes include *Behind the Sun*, *Quatrilho*, *Four Days in September*, *Central Station*, and *Elite Squad*, which received a BAFTA Award for Best Film Not in the English Language nomination and an Oscar nomination in the best foreign language film category; *Elite Squad* also won the best film award at the Berlin Film Festival, won a Golden Globe award for best foreign language film, and won the best film award at the International Berlin Film Festival.

The drama, *City of God*, received four Oscar nominations (directing, cinematography, film editing, and writing/adapted screenplay). The film has a "footprint" reminiscent of Italian neorealism. An important influence perceived during decades of Brazilian filmography and present in several works, such as *Keeper of Promises* (1962), *Pixote* (1981), and *Carandiru* (2003).

There are also successful co-productions between Brazil and other foreign partners, such as *Rio: The Movie* (with the United States, directed by Carlos Saldanha from *Ice Age*), *Waste Land* (with the United Kingdom, which received an Oscar nomination for Best Documentary Feature and won the Audience Award for World Documentary at the Sundance Film Festival), and *Blindness*, an adaptation of the 1995 novel of the same name by Portuguese author José Saramago. The film was written by Don McKellar and directed by Fernando Meirelles. *Blindness* premiered as the opening film at the Cannes Film Festival on May 14, 2008 and was released in Canada as part of the Toronto International Film Festival on September 6, 2008.

*The Way He Looks*, about a blind teenager searching for independence, got 27 wins and 22 nominations, in Guadalajara, Berlin, Athens, Chicago, etc.

Other important films have been produced in Brazil in recent years: blockbuster comedies, such as the productions of the famous comedian Paulo Gustavo (deceased as a result of COVID-19) and *Just Another Christmas*; comedies with a slight surrealist touch, such as *Get the Goat*; dystopian dramas, such as the celebrated *Bacurau* (2019), which won awards at festivals in Cannes, Munich, Lima, and Montreal; documentaries, such as *Pelé*, about the most famous soccer star in Brazil, or the political film *The Edge of Democracy*; and dramas like *7 Prisoners*, *The Second Mother*, and *The Dreamseller*.

The Brazilian government considers film production an important industry, and, as a result, a series of incentives to promote the local production of films and their distribution both locally and abroad have been introduced during the last few years. The growth of the film industry in Brazil can be illustrated by the number of national film festivals and events promoted by ANCINE (Brazilian Agency of Cinema) as well as by national hubs for the development of the cinema industry.

Paulínia and Gramado are the main examples of cities involved in initiatives focused on the cinema industry. Paulínia (located in the State of São Paulo) is a cinematographic hub and has hosted a local film festival since 2008. Gramado (located in the State of Rio Grande do Sul) has hosted a renowned film festival annually since 1969, in which foreign productions may participate in a separated category for

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foreign full-length films. Many other cities in Brazil also promote their own film festivals, such as Rio de Janeiro, which hosts Rio’s Festival and Anima Mundi (Brazilian International Animated Film Festival).

Brazil has been encouraging filmmaking for many years. In 2010, the Federal government issued “Screen Quota” (Decree 7.414), an initiative to foment national film production that imposes a minimum quota of films produced in Brazil to be regularly displayed in local movie theaters. This initiative may also be extended to international co-productions duly approved by ANCINE.

## Key Tax Facts

Corporate income tax rate	25% <sup>*1</sup>
Social contribution tax on profits rate	9%
Highest personal income tax rate	27.5%
Service tax rates	2–5%
Sales tax rates	0% – 25%
Excise tax rates	0% – 330% (in general 10 – 15%)
Normal nontreaty withholding tax rates: Dividends	0%
Interest	15% or 25% <sup>*2</sup>
Royalties	15% or 25% <sup>*2</sup>
Services	15% or 25% <sup>*3</sup>
Tax year-end: Companies	December 31
Tax year-end: Individuals	December 31

<sup>\*1</sup> 15% plus 10% on the amount of profit annually exceeding R\$240,000.

<sup>\*2</sup> 25% tax rate in case the nonresident is located in a tax haven for Brazilian tax purposes.

<sup>\*3</sup> Rate may vary according to the type of service rendered and the location of the nonresident, whether in a tax haven jurisdiction or not, or in a country that has signed a Double Tax Treaty with Brazil (subject to further analysis of actual facts and circumstances).

<sup>\*4</sup> Please note that the current Bill of the Brazilian Tax Reform (PL 2,337/21) foresees the reduction of the Brazilian nominal combined CIT rate to 26%, along with the reintroduction of dividend WHT at the standard rate of 15%. The project is under analysis of the Brazilian Senate and due to the upcoming presidential elections in Brazil, the Tax Reform has lost momentum and is not expected to be approved during FY 2022.

## Film Financing

### Financing Structures

Today, very few sectors of the economy are off-limits to foreign investors. For instance, foreign ownership of media services was prohibited until a 2002 amendment of the Federal Constitution removed the prohibition and allowed foreign investment in a media service provider entity limited to 30% of shareholding interest.

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With respect to film or video productions, the Brazilian legislation does not impose legal impediments to foreign investors. Nevertheless, ANCINE requires that a Brazilian producer must be hired by foreign producers to develop foreign audiovisual projects in Brazil (except for journalistic productions). In this case, the local producer will act as a representative before ANCINE.

### Co-production

Any kind of co-production effort should be subject to the law applicable to ordinary businesses. Under Brazilian tax laws, entities engaged in film production and distribution can conduct their investments either through a branch, a limited liability company (*sociedade limitada*), or a corporation (*sociedade anônima*).

In general, a co-production is an engagement of residents and nonresidents working together in a project recognized by the authorities of both countries.

Currently, Brazil has co-production agreements with Argentina, Germany, Canada, Chile, Israel, Spain, France, India, Italy, Portugal, Venezuela, and the United Kingdom. There are also multilateral instruments such as the Latin-American co-production agreement and the Ibero-American cinematographic integration convention. Agreements have also been negotiated with South Africa, New Zealand, China, and Russia

In addition, international co-productions are usually considered national projects in their countries of origin. In Brazil, co-production should be considered national provided that the project is registered before ANCINE and fulfills the requirements set forth in international co-production agreements (if applicable) or Brazilian law.

### Branch of a Foreign Entity

Multinational Enterprises (MNEs) generally use limited liability companies or corporations instead of operating under a branch given all the bureaucratic procedures that are associated with a branch's incorporation in Brazil. Currently, the formation of a branch of a foreign corporation requires prior approval from the Federal Government through a specific authorization from the Ministry of Industry and Commerce, which may be a very lengthy process.

### Sociedade Limitada

A *Sociedade Limitada* (Ltda.) tends to be the most common approach for foreign companies intending to incorporate Brazilian subsidiaries. This is generally the case because a *Limitada* is not required to be audited or to publish its financial statements (provided that the legal entity presents a gross revenue lower than BRL 300,000,000 or an amount of assets lower than BRL 240,000,000). In a *Limitada Company*, the responsibility of the quotaholders for liabilities of the company is, with few exceptions, limited to the amount of the unsubscribed capital of the company. If the capital is fully subscribed, the quotaholders' responsibility is limited to their participation in the society.

Currently, no minimum capital requirements are imposed, except for some activities (such as banks and insurance companies) and for visa purposes in the case of non-residents moving into Brazil to manage the company.

A *Limitada* may have one or more quotaholders (as per article 1,052 from Law n.10,406/02), who may be of any nationality. Companies, as well as individuals, may be quotaholders of a *Limitada*. Non-resident quotaholders must grant a power of attorney to a representative in Brazil to receive service of notice and act on their behalf at meetings of the quotaholders.

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According to the changes introduced by Law 14,195/21, the administration of the *Limitada* can be performed by a resident or a nonresident of Brazil (conditioned to the constitution of a legal representative in the Country).<sup>1</sup>

As of January 11, 2003, the new Brazilian Civil Code entered into force and new rules were introduced for *Limitadas*, including rules with respect to the number of quotaholders necessary to approve certain changes in corporate documents and the inclusion of the *Limitada's* corporate activities in its corporate name. It is necessary to point out that these rules approximated the corporate requirements applicable to an S.A. (see below) to the *Limitada*.

The Individual Limited Liability Entity (EIRELI) created by Law 12,441/11, was extinguished from the Civil Code and replaced by the Unipersonal Limited Company (SLU), created by Law 13,874/19, which is formed by only one partner, with limited liability, and does not require a minimum amount of equity.

### *Sociedade Anônima*

The organization and operation of a *Sociedade Anônima* (S.A.) in Brazil is subject to Law 6,404/76—also known as Corporations' Law, amended by Laws 9,457/97, 10,303/01 11,638/07, 11,941/09 (which introduced several modifications into Corporations' Law as a harmonization between BR-GAAP and IFRS) and 14,195/21. Corporations' Law was designed to stimulate the development of the Brazilian capital market and to provide additional protection for minority shareholders.

The S.A.s may be publicly held (in this case supervised by the Brazilian Securities Exchange Commission – CVM) or privately held, depending on whether their securities are accepted for trading in the securities market.

No minimum capital requirements are imposed for corporations, except in specific instances (i.e., some activities).

There are other forms of business organizations; however, they are unlikely to be used by a foreign investor.

## Tax and Financial Incentives

### Fostering of Cultural Projects

The social isolation imposed by the measures to handle the COVID-19 pandemic immediately affected the cultural sector in Brazil (and worldwide), with the suspension of its activities in theaters, cinemas, and concerts, etc.

Law 14,017/20, also known as *Lei Aldir Blanc*, named in honor of a Brazilian music composer, was the first initiative taken by the Government with the aim of supporting the cultural sector due to the implications caused by the pandemic. This law provided the release of BRL 3 billion from the National Culture Fund (in Portuguese, *Fundo Nacional de Cultura* – FNC) in 2020 to provide emergency actions for assisting artists and cultural centers and to invest in public notices.

On March 15, 2022, the Brazilian Senate approved the Bill of Law 73/2021 (pending Presidential approval), also known as *Lei Paulo Gustavo*, named in honor of a Brazilian actor, which also provides the release of approximately BRL 3.8 billion for application of emergency actions aimed at fighting and mitigating the effects of the COVID-19 pandemic on the cultural sector.

<sup>1</sup> Article 5 modifies article 146, §2 of Law n. 6,404/76.

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### Incentives for Film Production in Brazil

Film productions in Brazil may take advantage of two main sets of tax incentives, which are set forth in Laws 8,685/93, also known as *Lei do Audiovisual* (for audiovisual projects only) and 8,313/91, also known as *Lei Rouanet* (for cultural projects in general).

It is important to mention that companies that calculate their taxable income under the presumed profit system are not allowed to benefit from the incentives provided by *Lei Rouanet* and *Lei do Audiovisual*. For more details regarding the corporate income tax computation, please refer to the “Corporate Taxation” section.

According to Law 8,685/93, focused on Brazilian audiovisual projects previously approved by ANCINE, there are two types of incentives that may grant income tax reductions until 2024:

- (i) in the case of investments in independent Brazilian film productions through the purchase of quotas of distribution rights negotiated on the stock market, the individual may deduct up to 3% of its income tax due and the legal entity may deduct the investments from its income tax computation as well as from the income tax due (up to 1%); and
- (ii) in the case of sponsoring independent Brazilian film productions, the individuals/legal entities may deduct the expenses related to the sponsorship from the income tax due up to 6%/4%, respectively. However, expenses incurred with the sponsorship should not be deductible for corporate income tax computation purposes. In principle, legal entities taking advantage of the tax incentives mentioned herein should observe a limit of 4% of the maximum deduction of the income tax due.

Also, regarding the withholding tax assessed on amounts remitted abroad in consideration for the acquisition of rights/exploration of licenses related to the transmission of films and events in Brazil, the audiovisual tax incentive may grant a tax reduction of 70% of the WHT levied provided that the amount is reinvested in the local development of independent productions in Brazil.

In order to qualify for the tax benefits of the *Lei do Audiovisual*, projects must satisfy the following requirements:

- At least 5% of the project must be self-financed or third-party financed.
- Maximum financing amount of BRL 4 million (for income tax deduction incentive) and BRL 3 million (for withholding income tax reduction incentive); and
- ANCINE’s approval for the project subject to investment/sponsorship.

As for *Lei Rouanet*, this tax incentive may also grant tax reductions on the income tax due both by individuals and legal entities. In general, lines, donations, or sponsoring amounts invested to cultural projects directly or by way of a specific fund (National Culture Fund – FNC) may be deducted from the income tax due. In order to be eligible for this tax incentive, the cultural project should be preapproved by the Ministry of Culture or, when applicable, ANCINE.

As seen below, the *Rouanet* tax incentive establishes two distinct limitations for tax reduction on the income tax due.

For instance, a legal entity supporting general cultural projects by way of donations and sponsorships may deduct up to 40%/30% of these amounts from the income tax due, respectively, provided that this deduction does not exceed 4% of the income tax due.

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Type of cultural project	Generic limitation		Total limitation
General cultural projects	Individuals	80% of the amount donated 60% of sponsorship	6%
	Legal entities	40% of the amount donated 30% of sponsorship	4% (considering incentives from <i>Audiovisual</i> )
Special cultural projects	Individuals	Amount donated/sponsorship	6%
	Legal entities	Amount donated/sponsorship	4% (considering incentives from <i>Audiovisual</i> )

Please note that the sum of investments in *Lei Rouanet* and *Lei do Audiovisual* together may not exceed 6%/4% of individuals/legal entities' income tax payable, respectively.

#### Local Tax Benefits for Encouraging Cultural Activities

Besides the initiatives from the Federal Government such as *Audiovisual* and *Rouanet*, states and municipalities also have developed incentive programs to attract investments and foment cultural activities.

States, such as Rio de Janeiro, São Paulo, Minas Gerais, Santa Catarina, Goiás, Acre, Roraima, Pará, Bahia, Ceará, Maranhão, Piauí, Rio Grande do Norte and Rio Grande do Sul, grant tax incentives focused on the development of culture. In general, investors and sponsor companies may deduct from the ICMS due the amount invested in cultural projects. In the same way, several municipalities also offer incentives to reduce the ISS due by companies that support or sponsor local cultural projects.

As a general rule, companies should be in compliance with their ordinary tax obligations in order to be eligible for the tax incentives.

#### Bank Financing

In addition to the tax benefits available, some federal development banks can also support Brazilian independent motion pictures with financial investments.

The National Bank for Economic and Social Development (BNDES) operates a series of funding programs designed to stimulate the growth of Brazilian-owned industry, mainly through subsidized-rate financing. BNDES offers specific loans for companies intending to establish or expand facilities for the production of goods considered important to the social well-being of the population, finances the acquisition of such goods and promotes the expansion of private capital ownership by underwriting share issues. As a general rule, nonresident companies may qualify for BNDES acquisition financing provided that local content of the equipment meets minimum requirements.

Also, BNDES has a specific financing program called *Cinema Perto de Você* (Theaters Near You). This program is designed to support the construction and improvement of movie theaters in specific cities indicated by ANCINE.

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## Other Financing Considerations

### CONDECINE

Provisional Measure 2,228-1/01, most recently altered by Law 14,173/21 and ANCINE Normative Instruction No. 147/19, introduced several changes in the film industry. The most significant change was the creation of a special contribution titled “Contribution for the Development of the National Cinema Industry” (CONDECINE), which is levied on the marketing and promotion, production, and distribution of commercial motion picture and video works.

CONDECINE shall be duly paid once every 12 (twelve) months, by title of audiovisual work, by audiovisual market segment in which it is publicly communicated, according to the value defined in regulation by the Federal Executive Branch, pursuant to § 5 of art. 33 of Provisional Measure 2.228-1/01:

- I. The audiovisual market segments are as follows:
  - a) - Exhibition Rooms;
  - b) - Broadcasting of Sounds and Images;
  - c) - Mass Electronic Communication by Signature;
  - d) - Domestic Video; and
  - e) - Other Markets.
- II. The following segments are understood as Other Markets:
  - a) - Video on demand (Revoked by article 33-A of Law n. 14,173/21);
  - b) - Audiovisual in mobile media (Revoked by the article 43 of Normative Instruction n. 105/2012);
  - c) - Audiovisual in collective transport; and
  - d) - Audiovisual in a restricted circuit;
  - e) - Audiovisual advertising on the Internet (Repealed by the article 2 of Normative Instruction No. 147/2019)

Also, CONDECINE is assessed at a rate of 11% on the amounts paid to nonresident producers, distributors, or intermediaries, in consideration for the commercial use of motion picture or video works, or their purchase or import. An exemption of CONDECINE may take place in case the entity invests an amount correspondent to 3% of the income paid, credited, used, remitted, or delivered in Brazilian video and audio productions approved by ANCINE.

CONDECINE will be due on the date of the payment, credit, use, or remittance of the income related to commercial use, acquisition, or import of motion picture or video work.

CONDECINE may be reduced to:

- i) 20% in the case of Brazilian non-advertisement motion picture or video work
- ii) 20% in the case of audiovisual works destined to the market share of exhibition movie theaters explored upon six copies and in the case of motion picture or video works for TV or radio produced twenty years before the registry of the contract with ANCINE; or
- iii) 10% in the case of Brazilian advertisement work performed by microenterprises and small businesses, with a maximum cost of BRL 10,000.

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Also, it is important to mention that sports events, journalistic motion pictures, export operations of national motion pictures or video works, and the broadcast of national content are exempt from CONDECINE.

The taxpayers liable for CONDECINE are the following entities:

- i) Owners of the commercial rights or licenses in Brazil;
- ii) Producers, in the case of Brazilian works, or owners of the exhibition license, in the case of foreign works;
- iii) Withholding entity/individual responsible for the payment, credit, use, remittance, or delivery of the income from the commercial use, acquisition or import of motion picture or video
- iv) Concession or permission holding companies for telecommunications services (in case of CONDECINE due upon the rendering of services); and
- v) The legal representative of the foreign programmer in Brazil, in the case of advertising audiovisual work produced with the direct participation of local advertising company and broadcasted on international channels.

Note that tax treaties between Brazil and other countries do not cover CONDECINE (not included in income tax definition). Considering that CONDECINE should be levied on the Brazilian payer, the nonresident may not be entitled to a tax credit.

#### *Contribution for Intervention at the Economic Domain (CIDE)*

CIDE is a special contribution levied on payments to nonresidents in the form of royalties and technical services at a rate of 10%. This contribution is imposed on the Brazilian payer (and not on the nonresident).

Initially, CIDE was applicable only to certain royalties and services rendered involving the transfer of technology. However, as of January 1, 2002, CIDE applies to all types of payment, credit, use, remittance, or delivery of technical services and royalties income related to the use of trademarks and copyrights.

Note that until December 31, 2013, the taxpayer was allowed to take a tax credit of 30% of the CIDE paid to be offset against subsequent CIDE payments related to royalties from the use of trademarks and copyrights.

There is a controversy with respect to a potential overlap of CONDECINE and CIDE contributions in remittances of copyrights to foreign beneficiaries.

#### *Compliance of Central Bank Regulations*

The Brazilian Central Bank (BACEN) imposes foreign exchange controls for both inflow and outflow of funds into/from the country. In general lines, the investor should provide proper documentation to the private bank responsible for the transaction, which should be registered in Central Bank's electronic system (RDE).

Financial transactions involving the remittance of rental income of home video and films may be performed through any Bank authorized by the Central Bank to operate in the foreign exchange market.

New Law 14,286, issued on December 30, 2021, has consolidated and streamlined many foreign exchange rules, along with foreign and national capital flow regulations, with the aim of creating flexibility in the Brazilian exchange market and reduce legal uncertainty. The new rules will enter into force in January 2023.

#### *Brazil*

## Corporate Taxation

Currently, corporate income tax (IRPJ) is assessed at a rate of 15%, plus a surtax of 10% on the amount of taxable income exceeding R\$240,000 per year.

In addition to the corporate income tax, there is also a social contribution (CSLL) charged at a 9% tax rate.

There are two main methods for income tax and social contribution tax computation—the actual profit system and the presumed profit system.

### Actual Profit System

Under the actual profit system, taxable income is net accounting profit adjusted for nondeductible expenses and nontaxable revenues. Taxpayers on the actual profit system may choose to calculate tax on a quarterly basis or on an annual basis. The election is made at the beginning of each calendar year and may not be changed for the remainder of the year. Under the quarterly basis regime, taxable income is computed and paid quarterly.

It is important to mention that some companies are legally obliged to be in the actual profit system, such as financial institutions, factoring companies, or entities that accrue revenue higher than R\$78 million per year.

### Presumed Profit System

If certain conditions are met, Brazilian entities may elect the presumed profit system to calculate taxable income. Under the presumed profit system, taxable income is deemed to be equal to a fixed percentage of gross revenues. The applicable profit percentage depends upon the activity of the company and differs for corporate income tax and social contribution on profits.

For example, for companies engaged in render of services, a 32% of deemed profit margin is applied. To reach the taxable income, the presumed profit (which is obtained by multiplying the gross revenue by the presumed profit margin) is increased by revenues other than sales revenue, such as income from financial transactions and capital gains.

Note that only companies with gross revenues lower than or equal to R\$78 million per year, which are not financial institutions or factoring companies, that do not earn profits or gains from abroad and that do not qualify for a tax exemption or reduction of corporate income tax or social contribution on profits may participate in the Presumed Profit System.

### Withholding Income Tax Obligations

The remittance of payments abroad is generally assessed by withholding income tax, which rates depend upon the nature of the payment, the residency of the beneficiary, and the existence of tax treaties between Brazil and the country where the beneficiary is located. The most common rates range from 15% to 25%. As a general rule, income paid to beneficiaries located in tax haven jurisdictions for Brazilian purposes is subject to 25% withholding tax.

The following are the main withholding tax rates applicable to payments made to nonresidents:

- Interest – 15%
- Interest on net equity – 15%
- Royalties – 15%
- Technical service and technical assistance fees – 15%
- Non-technical service fees – 25%
- Lease and rental fees – 15%

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Regarding the amounts paid to foreign producers and distributors related to income derived from the exploration of foreign audiovisual productions of its acquisition or importation, withholding income tax should be assessed at a standard 15% rate.

As to the amounts remitted abroad for the acquisition or remuneration in consideration of any type of right, including rights of transmission of films and events, WHT should be levied at a standard 15% tax rate.

The following are currently not subject to withholding tax (some requirements may apply):

- Dividends (if related to post-January 1996 profits) – 0%
- Interest and commission on export financing – 0%
- Interest and commission on export notes – 0%
- Export commissions – 0%
- Interest on certain government bonds – 0%
- Rental fees for aircraft and ship – 0%
- Air and sea charters, demurrage, and container and freight payments to foreign companies – 0%
- International hedging – 0%

As mentioned previously, the Bill of the Brazilian Tax Reform (PL 2,337/21) foresees a reduction in the nominal CIT combined rate to 26% and the reintroduction of dividend WHT at the rate of 15%. Interest on net equity payments may be revoked. The project is still under analysis of the Brazilian Congress, with no expected timeline for conclusion/or approval.

### Transfer Pricing

The Brazilian transfer pricing regime is applicable to import and export operations involving goods, services, and rights carried out with related parties located overseas or with parties located in low tax jurisdictions or under a privileged tax regime.

It is important to note that despite the Brazilian request to join the Organization for Economic Co-Operation and Development (“OECD”), Brazilian transfer pricing rules do not follow OECD guidelines yet nor are the Brazilian transfer pricing rules based strictly on the arm’s length principle as it applies in other jurisdictions. Most of the transfer pricing methods provided under Brazilian tax law are based on predefined deemed profit margins.

If the taxpayer does not meet the transfer pricing parameters in Brazil, an adjustment in the income tax basis of the Brazilian taxpayer shall apply. The test is performed on an annual basis and the adjustment is limited to the time span where the related-party/low-tax jurisdiction/privileged tax regime status applies.

In relation to payments of royalties abroad, transfer pricing rules may not apply depending on the type of the right involved. In this case, the deductibility of the expenses may be subject to a more stringent deductibility limitation (1% to 5% of the revenue related to the royalty).

## Indirect Taxation

### Customs Duties

#### Import Tax (II)

In principle, the applicable rate depends on the fiscal code of the goods, set on Mercosur’s (South Cone Market) Common External Tariff (TEC). The Mercosur Agreement provides that all member countries (Argentina, Brazil, Paraguay, Uruguay, and Bolivia (as soon as the process adhering is complete) must apply the same import duty on goods from third-party countries, except for certain goods listed in each

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country's exception list (this list is generally driven by political or economic reason, e.g., the protection of local industry, the essentiality of the product to the importer country). Customs duty rates among Mercosur countries are zero-rated, provided the products have a Mercosur certificate of origin. Mercosur origin rules are generally based on minimum local added value and changes in the classification of the product.

### *Importation*

Brazilian legislation provides for the mandatory registration of all foreign or domestic motion pictures, home video, and television contracts distributed and transmitted within Brazil with the Ministry of Culture (Audiovisual Development Bureau).

Brazilian entertainment law provides that Brazilian film labs must produce the film prints that will be distributed within Brazil.

The importation of marketing materials is subject to duties, which may vary according to the item. Posters and black-and-white stills must be printed in Brazil, while negative and color stills may be imported.

### *Excise Tax*

Excise tax (IPI) is a federal tax levied on the import and manufacture of products. In many aspects, IPI mechanics is similar to VAT, since it is charged on the value aggregated to the products. As a general rule, the IPI paid on a prior stage can be used to offset the IPI debts generated in subsequent operations. Similar to the import tax, the applicable rate depends on the tax classification of the product (NCM Code).

IPI also has a regulatory nature, i.e., the Federal government may increase (or decrease) IPI's rates at any time as a way to implement financial and economic policies.

Additionally, IPI rates can be higher for nonessential products such as cigarettes, perfumes, etc. Export transactions are not subject to IPI.

### *ICMS (State VAT)*

ICMS is a state tax levied on the import and physical movement of products. Rates may vary from 4% to 12% for interstate transactions and from 17% to 35% for intrastate or import transactions, which may vary according to the type of product involved.

ICMS is a noncumulative tax, and therefore, the ICMS paid on a prior stage may be used to offset the ICMS tax levied in subsequent operations. Export transactions are not subject to ICMS.

### *Service Tax*

Service tax (ISS) is a municipal tax assessed on revenues in connection to render of services. While ISS is a municipal tax, services subject to ISS are defined by a federal law (Complimentary Law 116/03). The applicable rate depends on the legislation of each municipality and on the service rendered. Rates may range from 2% to 5%.

Complimentary Law 116/03 introduced important changes to the ISS legislation. As of January 2004, ISS also applies to the import of services, which should be withheld by the Brazilian entity.

Furthermore, Complimentary Law 116/03 also provides an ISS exemption for revenues generated from the export of services. However, the definition of exported services specifically excludes services rendered in Brazil that showed results within the country (even if the Brazilian entity receives the payment from abroad).

### *PIS/COFINS*

PIS (Social Integration Program) and COFINS (Social Security Financing Contribution) are charged on gross revenues through two regimes: cumulative and noncumulative. Revenues related to export transactions are immune from these contributions.

### *Brazil*

Entities that are subject to the PIS/COFINS cumulative regime will be subject, in general, to a 0.65% tax rate for PIS and 3% tax rate for COFINS. On the other hand, PIS/COFINS taxpayers under the noncumulative regime are subject to a 1.65% (PIS) and a 7.6% (COFINS) rate and are allowed to recognize a tax credit for PIS/COFINS paid on certain inputs.

As a general rule, entities may opt between the noncumulative or the cumulative regime of PIS/COFINS. However, some companies are obliged to adopt the cumulative system, such as entities assessing corporate income taxes under the presumed profit system, financial institutions and health insurance companies, among others.

#### *Tax on Financial Transactions (IOF)*

IOF is a financial tax levied on financial transactions such as credit, exchange, insurance, securities, etc. The main IOF rate assessed on most currency exchange transactions is 0.38%.

On March 15, 2022, the federal executive branch issued Decree 10,997/2022, amending Decree 6,306/2007, which regulates Tax on Financial Transactions (“IOF”). Pursuant to Decree 10,997/22, IOF rates, applicable to foreign exchange transactions, will be gradually reduced to zero.

Among the modifications introduced by Decree 10,997/2022, one of the most relevant refers to the inflow of funds into Brazil, deriving from foreign loans, which will, as of March 16, be subject to IOF at a 0% rate, regardless of the average term of the loan.

The changes introduced by Decree 10,997/2022 are part of the procedures Brazil will have to adopt in its request to join the OECD.

## Personal Taxation

### Resident

Residents of Brazil, whether from a foreign nationality or not, are subject to tax on their worldwide income. Individuals reporting income received from abroad may take a credit on their annual tax return for taxes paid in the country of origin, provided that a reciprocal tax treatment takes place.

Income subject to tax includes all monetary remuneration and fringe benefits. In the case of expatriates, the main items in this category are the cost of travel for family home leave and allowances for housing, educational, and medical or other expenses. Any reimbursement of taxes paid is included in taxable income. Nonmonetary fringe benefits, such as the use of a company car or country club membership, are also included in taxable income. No distinction is made between personal expenses reimbursed by the company to the employee and personal expenses paid directly by the company. Moving allowances are usually nontaxable, but in certain circumstances, they may be treated differently.

Also, it is important to mention that nonresident individuals' earnings received in Brazil are subject to withholding income tax. They must communicate to the source of the payment the condition of nonresident.

### *Concept of Residency*

#### **Permanent Visa Test**

Individuals transferring to Brazil on a permanent basis are subject to tax as residents upon the date of arrival.

On departure, the individual must report his or her income and pay any taxes due up to that date. The taxpayer will receive a final tax clearance (granting him or her nonresident tax status) that will enable him or her to request Central Bank permission to repatriate all assets held in local currency, provided that these assets have been properly reported on the annual tax returns.

### Brazil



Permanent working visas are generally granted to applicants who will perform management activities as business administrators, general managers, or directors of Brazilian companies (duly appointed as so in the company's articles of association).

The Brazilian company has basically two options to formalize the recruitment of an individual with a permanent visa: (i) with an employment contract, where the company will pay a monthly salary and will incur other labor charges, as well as being included in the Brazilian company's payroll; or (ii) without an employment contract, where the company will pay a pro labore remuneration in Brazil. Specific rules must be observed for the issuance of a permanent visa for a nonresident contracted to manage companies in Brazil.

### **Temporary Visa Test**

A temporary visa is granted to foreign individuals under specific conditions, such as teachers, researchers or scientists, artists, and individuals under technical assistance agreements or render of services agreements involving transfer of technology, among many others.

Individuals rendering services involving the transfer of technology agreements may be granted with a temporary visa valid for two years (renewable for an equal period) or a work authorization valid for one year (for emergency situations or agreements not comprehended in the first situation) may be granted.

A temporary visa may also be applicable to artists and technicians related to entertainment activities to be performed in Brazil. The visa should be valid for 90 days and is not applicable to foreign artists with labor contracts with Brazilian entities.

Foreign individuals under labor contracts with local entities should hold a temporary visa of two years (subject to extension). The Brazilian employer must file the visa application and provide the required documents in order to hire the foreign employee.

Further, on January 24, 2022, the Brazilian authorities published Normative Resolution n. 45 ("RN 45") in the country's official gazette regulating the new temporary visas and residence permits for "digital nomads," who are immigrants who can perform their work activities for a foreign employer remotely from Brazil, by using information and communication technologies (ICT) and also can perform this activities in Brazil as visitors, being subject to the length of stay and other immigration regulations applicable to them.

All applicants for "RN 45" must prove their "digital nomad" status in order to be granted this visa, by presenting a declaration that they continue their economic activities remotely via ICT. Candidates should also prove they have a minimum monthly income of USD 1,500, or at least USD 18,000 as their available balance in bank accounts when applying for this visa. Additionally, other documents can be required, such as a private medical insurance and a criminal clearance certificate issued by their home country's authorities.

### **Business Visa**

With a business visa, the foreigner is allowed to participate in business meetings, conferences, and summits, visit potential clients, study the Brazilian market, etc. However, the employee must not perform any kind of work for a local company during his stay in Brazil and cannot receive any Brazilian-sourced remuneration, in order to avoid penalties such as fines and deportation. Business visa limits the permanence of the individual to 90 days (renewable for an equal period).

In any case, please note that eventual income earned from a Brazilian source should be subject to taxation in Brazil.

## **Brazil**

### Capital Gains

Starting from 2017, when the Provisional Measure 692/2015 was converted into Law 13,259/2016, a nonresident's capital gains derived from the sale of an asset located in Brazil are subject to a progressive capital gains tax system as follows:

Progressive Capital Gain Tax Rates	
Gain Amount	Rate
Less than R\$5 million	15%
Between R\$5 and R\$10 million	17.5%
Between R\$10 and R\$30 million	20%
Over R\$30 million	22.5%

### Allowances and Deductions

Taxpayers may deduct on income tax computation amounts paid to Social Security (INSS) and any alimony payments. A special deduction of R\$189.59 (applicable as of calendar year 2015) per month and per dependent is granted as well. Unreimbursed medical and dental expenses are allowed as deductions only on the annual tax return, as well as educational expenses, limited to R\$3,561.50 per student (applicable as of calendar year 2015).

### Tax Rates

Income tax is withheld at source on a monthly basis from 7.5% to 27.5% depending on income level (see below). This withholding tax is applicable only to payments made by Brazilian entities. When an expatriate is on a split-payroll basis, the amount paid abroad should not be subject to Brazilian withholding tax, but is subject to monthly tax, which must be paid by the end of the month following the month in which the income was received.

Progressive Income Tax Table		
Gain Amount	Rate	Deduction
Up to BRL 1.903,98	Exempt	-
Between BRL 1.903,99 and BRL 2.826,65	7,50%	142,80
Between BRL 2.826,66 and BRL 3.751,05	15,00%	354,80
Between BRL 3.751,06 and BRL 4.664,68	22,50%	636,13
Over BRL 4.664,68	27,50%	869,36
Special deduction	0,00%	189,59

Social Contribution withheld by Brazilian employers:

Progressive Social Security Table	
Gain Amount	Rate
Up to BRL 1.202	7,50%
Between BRL 1.212,01 and BRL 2.427,35	9,00%
Between BRL 2.427,36 and BRL 3.641,03	12,00%
Between BRL 3.641,04 and BRL 7.087,22	14,00%

### Brazil

### Annual Tax Return

Annual returns must be filed by the end of April, reporting income earned in the previous calendar year.

All resident taxpayers are required to file as part of their tax return an annual statement of personal assets and liabilities held at December 31 of the taxable year in Brazil or abroad. Any increase in net assets not attributable to reported taxable or nontaxable income may be subject to tax.

The Brazilian Central Bank also imposes tax return filing for resident individuals or entities on an annual basis reporting all assets located abroad with a value equal to or exceeding US\$100,000.

## Digital Media

Currently, there is a major discussion in Brazil regarding taxation of some digital media operations, such as over-the-top content and advertising over the internet. Currently, the taxation of operations is not quite comprehensively regulated in Brazil. Consequently, providers of such services may be subject to a suboptimal tax environment, where a number of different taxes with a high tax burden may apply.

Local industry members are discussing with the Brazilian government that the lack of regulation for the services provided by nonresidents may be particularly unfair for the Brazilian competitors (such as local cable providers), which are subject to regular tax implications in Brazil and to the regulatory requirements imposed by ANCINE and other Governmental Agencies. Within this context, the Brazilian Government is studying measures to standardize this market for nonresidents, which may result in a significant change to the business environment for the companies involved in such activities in Brazil.

We call your attention to the following Bills of Law, under analysis of the Brazilian Congress:

- Bill of Law No. 2,358/2020 (Digital Contribution for Intervention at the Economic Domain - CIDE-Digital)
- Bill of Complementary Law No. 131/2020 (Digital Social Security Financing Contribution - COFINS-Digital)
- Bill of Complementary Law No 218/2020 (Digital Services Social Contribution - CSSD)
- Bill of Complementary Law No 241/2020 (Especial Digital Services Social Contribution - CSESD)
- Bill of Law No 640/2021 (Internet Contribution for Intervention at the Economic Domain - CIDE-Internet)

In general terms, these Bills of Law introduce a tax rate ranging from 1% to 10% that will be levied on the following activities:

- Advertising to Brazilian users;
- Availability of a digital platform that allows interaction with the objective of selling goods or providing services directly between users, provided that one user is located in Brazil;
- Transmission of data from users located in Brazil collected during the use of digital platform or generated by these users;
- Provision of digital services to advertisers or their agents;
- Streaming or download of digital contents;
- Online games, apps and e-software online, as well as their updates;
- Electronic apps that enable economic transactions or transactions of any digital content between users;
- Bets commercialized through electronic channels;

### Brazil

- Advertising, sponsorships, or merchandising;
- Content targeting;
- Collection, distribution, or treatment of data relating to users;
- Incentive or influence for the use of services;
- Payment platforms;
- Exploitation or dissemination of image, text, video, or sound related to natural or legal persons.

As mentioned previously, these projects are still under analysis of the Brazilian Congress with no expected timeline for conclusion / approval.

## Brazil

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