

Our introduction to Brazil's business and legal environment helps you to understand the Brazilian market and economy

Doing Business and Investing in Brazil



PwC – Brazil – Information and Documentation Center

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Any reader who would like a more detailed discussion of the subjects dealt with herein is cordially invited to contact a partner in any of our offices.



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Doing Business and Investing in Brazil

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Foreword

In the last few years, Brazil has emerged as a stronger and more attractive global player. A high degree of economic diversification, combined with a strong domestic consumer market and a broad selection of trading partners, bolstered by a well regulated financial system, have been keys to successfully mitigating the effects of the international economic crisis.

Unemployment in Brazil is low, wages are rising and the level of foreign direct investment is high. There are plenty of opportunities, particularly in agribusiness, oil and gas, mining, retail, capital projects and infrastructure, and in catering to a growing demand for education and healthcare.

For all these reasons, Brazil is surely a target for many business leaders around the world. However, as with any other emerging economy, Brazil presents issues and challenges that businesses must consider prior to establishing operations here. With our 2012 edition of *Doing Business in Brazil*, PwC aims to provide an introduction to the business and legal environment, helping you understand the Brazilian market and economy.

This publication does not intend to offer an exhaustive analysis, but rather provides general observations and guidance about the many questions PwC has encountered from clients doing business in Brazil. Certain businesses or industries may be subject to specific legal requirements not referred to in this guide. In addition, certain projects may require specialist advice and appropriate accounting and legal advice from one or more of our dedicated teams.

Fernando Alves
CEO
PwC – Brazil

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Investment climate

Chapter 1 | *Brazil - A profile*

Investor considerations

- Brazil is the world's fifth largest country. With an estimated population of 194 million in 2012, it is also the world's fifth most populous country after China, India, the United States and Indonesia.
- The Brazilian economy is large by almost any standard. Brazil has the 7th largest economy in the world in terms of Gross Domestic Product (GDP) derived from purchasing power parity (PPP) calculations (Source: International Monetary Fund's (IMF's) World Economic Outlook Database, October 2012).
- Very rich biodiversity.
- Abundant agricultural, mineral and energy potential.
- Enormous internal growth potential.
- Broad industrial base and infrastructure and a diversified economy.
- Fast-changing business conditions.
- Social inequality.
- Extensive bureaucracy.

Geography and climate

Brazil is the world's fifth largest country, occupying an area of 3,287,000 square miles (8,514,000 square kilometers), equivalent to almost half of the entire South American continent. It borders all South American countries except Chile and Ecuador, having a total border length of 9,777 miles (15,735 kilometers). Its coastline runs for more than 4,578 miles (7,367 kilometers), mostly along the South Atlantic Ocean. Brazil comprises 26 states and the Federal District of Brasília, the capital city. Its comparative landmass is slightly smaller than the USA.

Brazil is made up of five main geographical regions:

- North (mainly the Amazon basin).
- Northeast (roughly east from 46° west longitude and north from 16° south latitude).
- Southeast (the coastal states south of the Northeast region down to São Paulo, plus the state of Minas Gerais).
- South (from the state of Paraná southwards).
- Central-West (the states of Mato Grosso, Mato Grosso do Sul, Goiás and the Federal District).

Over half of Brazil's landmass lies at about 650 feet (200 meters) above sea level, but only a fraction of that rises above 3,000 feet (915 meters). The highest peaks have an altitude that is less than 10,000 feet (3,050 meters) and only six of these exceed 9,000 feet (2,745 meters): two in the far North and four in the Southeast.

Arable land is found mainly in the Central-West and South regions, but this is changing as a result of the need to develop land for agriculture throughout the rest of the country, particularly in the Central-West and the North. Brazil's river system is extensive: the Amazon and its tributaries, which are great rivers in their own right, drain over half of Brazil's land mass. Other large rivers include the São Francisco river in the Northeast and the Paraná and Paraguay rivers in the Southwest, both of which are tributaries of the River Plate.

The equator runs north of the Amazon river and the Tropic of Capricorn crosses the state of São Paulo. Most of Brazil therefore lies in the tropical zone, with only the South lying in the temperate zone. The South experiences occasional below zero temperatures. The North is hot, humid and rainy. Along the coast the tropical heat is tempered by sea breezes and inland, especially along the Central Plateau, the higher altitude keeps temperatures down. Humidity is high all along the coast and rainfall is heavy. The inland Northeast region contains drier land.

Brazil has nearly every type of climate, except for harsh wintry weather. The country does not suffer from earthquakes and hurricanes, but rainstorms, drought and frost do occasionally cause considerable damage.

The country boasts some spectacular scenic beauty, particularly along the coastline.

History

Inhabited by indigenous people for thousands of years, Brazil was discovered by Europeans in 1500 when the Portuguese navigator Pedro Álvares Cabral landed on its coast. Brazil became a Portuguese colony and remained so for over 300 years. Brazil declared its independence from Portugal in 1822, when a constitutional monarchy was established. A federal republic was proclaimed in 1889. Democratic administrations have been interrupted twice since. From 1930 to 1945 the country was subject to the civilian dictatorship of Getúlio Vargas. In 1964, following political, economic and social unrest, a new administration was established by the military and considerable economic growth and development was achieved during the next 20 years, although not without political and social repercussions. Democracy was restored in 1985.

A new constitution was enacted by Brazil's National Congress in 1988, which upheld the presidential system while simultaneously decentralizing political power. The Brazilian constitution is lengthy, consisting of 250 permanent articles and 94 provisional articles. In recognition of possible flaws in the wording, the Constituent Assembly made an express provision for its review. This review is behind schedule. Several amendments have already been approved.

Political system

The federal republic has three independent branches: executive, legislative and judicial.

The President heads the executive branch and oversees a number of executive departments, the heads of which are appointed and are known collectively as the Cabinet. The Cabinet is answerable to the President. Unlike in many parliamentary democracies, the Cabinet's members need not be members of the legislative branch. Besides the executive departments, there are a number of independent agencies, many of which are regulatory.

Legislative power is exerted by a National Congress consisting of a Senate and a House of Representatives. There are 81 senators, three from each state and from the Federal District of Brasilia. The total membership of the House of Representatives totals 513 representatives. The number of representatives per state is determined by the size of its population. Voting is compulsory at the age of 18, but 16- and 17-year-olds, the over-70s and the illiterate are free to choose whether to vote or not.

The judicial branch consists of a system of federal, state and local courts throughout the country, headed by the Federal Supreme Court. The federal courts rule on the constitutionality of laws and, on appeal, decisions of those lower courts to which the Federal Union is party. The Supreme Court's decisions are final and cannot be appealed. The state and municipal courts act independently of the federal courts, within the bounds of the Constitution.

State governments follow a pattern similar to that of the federal government. Each state has a governor who is its chief executive, and power is divided among the state's executive, legislative and judicial branches.

Brazil is governed under a democratic regime in which the head Executive and Legislative positions are occupied by people's representatives elected by direct voting. Candidates applying for positions in the Executive and Legislative are organized in political parties of a wide range of ideological lines.

Legal system

The principal source of Brazilian civil law is the Civil Code, which dates from 2002, and subsequent legislation. The legal system is slow and cumbersome.

Population and social patterns

Brazil's population is roughly 194 million (2012) and estimated to be growing at about 1.17% per year.

About 42% of the population is under 24 years and 11% is 60 years and over.

The average life expectancy is 73.1 years.

A reduction in poverty has been witnessed, especially among those living in extreme poverty (with income of up to one-quarter of the minimum wage per capita).

Table I - Population distribution in July 2012 (Estimated)

Estimated Population - July 1, 2012	
Brazilian Regions and States	Estimated Population
Brazil	193,946,886
North	16,318,163
Rondônia	1,590,011
Acre	758,786
Amazonas	3,590,985
Roraima	469,524
Pará	7,792,561
Amapá	698,602
Tocantins	1,417,694
Northeast	53,907,144
Maranhão	6,714,314
Piauí	3,160,748
Ceará	8,606,005
Rio Grande do Norte	3,228,198
Paraíba	3,815,171
Pernambuco	8,931,028
Alagoas	3,165,472
Sergipe	2,110,867
Bahia	14,175,341
Southeast	81,565,983
Minas Gerais	19,855,332
Espírito Santo	3,578,067
Rio de Janeiro	16,231,365
São Paulo	41,901,219
South	27,731,644
Paraná	10,577,755
Santa Catarina	6,383,286
Rio Grande do Sul	10,770,603
Midwest	14,423,952
Mato Grosso do Sul	2,505,088
Mato Grosso	3,115,336
Goiás	6,154,996
Distrito Federal	2,648,532

Source: Brazilian Institute of Geography and Statistics (IBGE).
at <http://www.ibge.gov.br/home/estatistica/populacao/estimativa2012>.

São Paulo is one of the fastest-growing cities in the world.

Brazil's most populous state is São Paulo, with an estimated 41.9 million inhabitants, followed by Minas Gerais (19.8 million) and Rio de Janeiro (16.2 million).

The majority of Brazilians are of European or African descent. Apart from the original Portuguese settlers, others who have settled in Brazil and significantly influenced its culture include Germans (mainly in the southern states), Italians and Japanese (mainly in the state of São Paulo). There are many other smaller ethnic communities in the larger cities, representing most nationalities. The jungle regions are populated by indigenous tribes who are few in number.

Language

The official language of Brazil is Portuguese. There are no significant local dialects or other deviations from the official language, but a number of words and phrases differ from those used in Portugal. English is the foreign language most used by the business community.

Religion

The predominant religion is Roman Catholicism. Many other religions are also practiced, introduced by immigrants of different creeds that settled in Brazil. There is freedom of religion and religion is not a source of unrest.

Education

Government-subsidized (free) and private educational facilities from primary school through university, offer full- or part-time curricula. The government also subsidizes national apprenticeship training programs to prepare people for work in various industrial and commercial sectors. The government also provides an educational program to reduce illiteracy. About 80% of the adult population is considered to be literate and approximately 9.5% of enrolled students go on to higher education. Improvements in public education levels have been observed in the last decade. However, the general level of education continues to require improvement.

Living standards

Reduction of social gaps has been high in the latest governmental programs. In the past decade, the expansion of the number of citizens in the middle class and the reduction of population living in extreme poverty indicate social improvements that convert into economic growth and steady evolution of GDP.

Cultural and social life

With its mixed background of Portuguese, Italian, German, Japanese, East European and African immigrants, Brazil offers a broad spectrum of cultural and social activities, which vary by region. Most major cities support cultural institutions. Leisure and recreational activities take place mainly outdoors, taking advantage of the favorable climate. There are many clubs that offer extensive sports and social facilities.

The Economy

General description

The Brazilian economy is large and diverse by almost any standard. Brazil has undergone several programs of privatization of state-owned companies, with the biggest taking place in 1998 when the state-owned telecommunication companies were sold. Nearly all of the former state companies are in the private sector. There continues to be considerable state and semi-state participation in various strategic sectors, such as transport and utilities.

Natural resources and agriculture have been the traditional mainstay of the economy, supported by abundant human resources. Since the 1960s, however, an emphasis has been placed on industrial development, financed largely by international loans and investments. As a result, exports today reflect a much more balanced mix of commodities and manufactured items.

The profile of imports became more restricted during the 1970s and 1980s, because of import substitution and the scarcity of foreign exchange. This situation is changing, following the lowering of trade barriers and the increased opening of the economy to globalization.

The wealthiest areas of Brazil, in which industrialization and a modern regional economy have taken hold, are the Southeast and the South. In contrast, the Northeastern and Central-Western regions are predominately agricultural and relatively poor because economic and social programs have not yet been modernized. The Northern region, dominated by the Amazon rainforest, has a low population density and remains virtually unexplored.



Major trends are summarized in Table I.

I. Major Economic Trends

Indicators	2009	2010	2011	2012
GDP (US\$ million)	1,625,636	2,143,921	2,475,066	2,252,628
Real GDP Growth (% per year)	(0.33)	7.53	2.73	0.9
Unemployment rate (as% of labor force)	6.8	5.3	4.7	4.6
General price index - IGP-DI (% per year)	(1.43)	11.30	5.00	8.10
Consumer price index - IPCA (% per year)	4.31	5.91	6.50	5.84
Exchange at rate year's end (R\$/US\$)	1,7412	1,6662	1,8758	2,0435
Public sector deficit (% of GDP)	3.34	3.28	2.61	2.47
Public sector debt (% of GDP)	42.1	39.1	36.4	35.1
Goods exported (US\$ million)	152,995	201,915	256,040	242,580
Goods imported (US\$ million)	127,722	181,768	226,246	223,149
Trade balance (US\$ million)	25,272	20,147	29,794	19,431
Current account balance (US\$ million)	(24,302)	(47,273)	(52,480)	(54,246)
International reserves (US\$ million)	238,520	288,575	352,012	373,147
Foreign direct investments (US\$ million)	25,949	48,506	66,660	65,272
Total foreign debt (US\$ million)	277,563	351,941	404,117	428,382*

*Jan-Set

Sources: Banco Central do Brasil (Brazilian Central Bank) at <http://www.bcb.gov.br/?INDECO>. Fundação IBGE.

Mineral and energy resources

Brazil is rich in natural resources and has some of the largest iron ore deposits in the world. Brazil is one of the world's largest producers of tin, quartz and niobium, and one of the three largest producers of iron ore, manganese and tantalum.

The Brazilian steel industry ranks amongst the nine largest in the world. Many other metals, minerals and precious stones are also mined on an increasing scale.

Brazil's natural resources also include petroleum and hydropower. Most of Brazil's electricity comes from hydropower and it possesses extensive untapped hydroelectric potential, particularly in the Amazon basin. The Itaipu dam in the extreme southwest is the second world's largest hydroelectric power plant in terms of energy generation.

Petrobras' recent oil and gas discoveries in the pre-salt area could place Brazil amongst the top oil-exporting countries in the world.

The declining place of fossil fuels as the main source of energy will fuel future demand for agro-energy. Brazil has been developing successful initiatives in renewable energy sources for many years, including agro-energy sources. As a result of its expansion of the ethanol sector, focusing on efficiency and productivity, Brazil is now acknowledged as a world leader in bio-energy. Brazil's production of alcohol from sugarcane has been an example of its bio-energy success. Brazil looks to repeat this success by producing alcohol from other types of biomass. The alcohol sector in Brazil is currently undergoing a major expansion, with heavy investment being made by national and international groups.

With all of these resources at its disposal, Brazil is now encouraging foreign investors to engage in the mineral and energy sectors.

Agriculture, fisheries and forestry

Vast areas of land in Brazil are suitable for, or adaptable to, agriculture.

The country has made long-term investments in agricultural research and now has some of the most advanced tropical agricultural technology in the world. This has allowed agribusiness to develop, with increased production and exports. Brazil is currently the world's biggest producer of the following products: coffee, sugar and orange juice. Brazil also produces about 31% of the global output of soybeans, at 82.5 million tons.

Brazil is the main exporter of the following products: soybeans, coffee, sugar and orange juice. Other important crops include maize, cocoa, tobacco and beef. Agribusiness performance has improved in the last five years, primarily driven by exports of soybean and soy products, beef and poultry. The Brazilian poultry population has been growing continuously, with great advances in productivity. The production cost of Brazilian chicken meat is amongst the lowest in the world, which makes it extremely competitive.

It is believed that Brazil will continue to be one of the leading global exporters of poultry and an important player in meats in general. Overall, Brazil is capable of both meeting its own domestic demand and making significant contributions to meet the world's growing food demand, thanks to successive production and productivity records.

As has already been hinted at, Brazil occupies an outstanding position in the biofuels and bioelectricity sectors. These sectors have the capacity to make the global energy matrix greener and more renewable. These sectors in Brazil are stimulated by initiatives launched by international research institutes, entities engaged in the promotion of ethanol and the growing presence of multinationals investing in the sector.

The fishing potential along the 4,578 miles (7,367 kilometers) of coastline is significant but has not yet been fully exploited.

Forest areas still abound, particularly in the Amazon basin. Brazil's Forest Code ensures the conservation of permanently protected areas, legal reserve areas and forests along rivers margins. The advance in land clearing mainly affects the Central-West and North regions.

Clearance of land is controlled by environmental entities through increased enforcement, as a result of greater popular awareness of the issue.

II. Brazil has global leadership positions in the main agricultural products (2012/13)

	Production	Global share	Exports	Global share
Soybeans (thousand tons)	82,500	31%	38,400	39%
Corn (thousand tons)	71,000	8%	17,500	19%
Beef (thousand tons)	9,375	16%	1,450	16%
Poultry (thousand tons)	13,005	16%	3,582	36%
Pork (thousand tons)	3,330	3%	645	9%
Sugar (thousand tons)	37,500	28%	25,000	45%
Ethanol (million liters)*	20,300	24%	1,100*	16%*
Coffee (thousand bags 60kg)	55,900	38%	32,950	28%
Orange Juice (thousand tons)*	1,260	57%	1,230	82%

*Due to the lack of recent data, information about ethanol and orange juice refer to 2011.

Source: United States Department of Agriculture (USDA) and ISO Ethanol Year Book 2012 . 2012. Adapted by PwC Agribusiness Research & Knowledge Center.

Main Foreign Trade Goods (US\$ billion)

Exports	2009	2010	2011	2012
Coffee	4.28	5.76	8.73	6.46
Soybeans	11.42	11.04	16.30	17.45
Orange Juice	1.62	1.77	2.38	2.28
Sugar	8.38	12.76	14.94	12.84
Meats	10.65	12.39	14.28	14.40
Tobacco	3.00	2.76	2.89	3.20
Iron and ore	13.25	28.92	41.82	30.99

Source: Brazilian Ministry of Development Industry and Foreign Trade (MDIC). 2012. Adapted by PwC Agribusiness Research & Knowledge Center.

Manufacturing

Major manufacturing industries include petrochemicals, steel, automobiles, mining, cement, paper and related products, agribusiness and food processing. There is huge potential for expansion in all sectors. However, there continue to be restrictions on foreign investments in certain sectors.

High-tech industries

The high-tech sector mainly entails the assembly of imported components and parts. Multinationals dominate in this sector, although there are several large Brazilian groups. As in other parts of the world, in the past few years Brazil has witnessed the creation of new start-up businesses in the internet sector and an increase in venture capital being invested in these types of businesses.

Service industries

Service-providing industries are a significant and growing part of the economy. There is good growth potential in the tourist and information services areas. Business services are considered to be fairly sophisticated at the current time. Multinationals have a strong presence in advertising, computer services and management consultancy. Many large industrial groups have their own distribution networks. Apart from restrictions in the banking, financial services and telecommunications and some other sectors, foreign investors are permitted to operate in service industries.

Transport and communications

Since government-controlled railroads were privatized as part of the Brazilian National Privatization Program, there has been significant investment in the development and modernization of the railroad network. This network is mainly located in the Southeast and South regions, although there are plans for some major extensions in the North and Central-West regions. Urgent investment has been earmarked for the Northeast region.

Despite the improvements in the rail network, road transport still dominates both long-distance and intercity traffic. However, most major federal and state highways are in a poor state of repair. Nearly all road transport and haulage companies are privately owned. The government intends to privatize those remaining roads which have not yet been privatized.

Brazil's air transport infrastructure is well developed. The majority of airline company voting stock is in private hands. The government has recently carried out a privatization of three major airports in São Paulo and Brasília and a relevant investment in infrastructure is expected in light of the World Cup in 2014 and Olympic Games in 2016 in Rio de Janeiro.

Urban transport continues to present significant problems in major centers. Limited subway systems are now functioning in Rio de Janeiro and São Paulo - mainly in the latter, which has expanded its network. However, until a more extensive network is developed, subways will not significantly alleviate the problems affecting urban transport. Many companies provide private bus services for their employees.

The potential of Brazil's waterways and coastal transport has not yet been exploited.

The postal system, which is government-controlled, has made considerable progress over the past few years and compares favorably with the postal systems in Europe and in the United States. Private courier services are also widely available, offering both local and international delivery services.

As mentioned earlier, Brazil's telecommunications system is now in the private sector. Telecommunications companies are controlled and supervised by the National Telecommunications Regulatory Agency (ANATEL). (See chapter 6 for further details).

Trade balance and foreign trade

Brazil's trade balance and principal foreign-trade products are summarized in Tables III and IV.

III. Trade Balance (US\$ millions)

	2009	2010	2011	2012
Trade Balance – FOB	25.3	20.1	29.8	19.4
Export	152.9	201.9	256.0	242.6
Import	127.7	181.8	226.2	223.1

Source: Brasil. Ministério do Desenvolvimento, Indústria e Comércio Exterior. Secretaria de Comércio Exterior. DEPLA (Brazilian Ministry of Development Industry and Foreign Trade).
At http://www.desenvolvimento.gov.br/arquivos/dwnl_1358532633.doc

IV. Principal Foreign Trade Products (US\$ millions)

Exports	2009	2010	2011	2012
Primary products	62.0	90.0	122.5	113.5
Semi-manufactured products	20.5	28.2	36.0	33.0
Manufactured products	67.3	79.6	92.3	90.7
Special operations	3.2	4.1	5.3	5.4
Total	153.0	201.9	256.0	242.6

Source: Brasil. Ministério do Desenvolvimento, Indústria e Comércio Exterior. Secretaria de Comércio Exterior. DEPLA (Brazilian Ministry of Development Industry and Foreign Trade), at http://www.desenvolvimento.gov.br/arquivos/dwnl_1358532707.doc

Brazilian Exports – Top Products – Descending Order (January-December 2012)

Description	FOB Prices (US\$)	Share%
Grand Total	242,579,775,763	100.00
Total of the items described below	157,288,162,600	64.86
Iron ore and iron ore concentrates	30,989,292,517	12.77
Crude oil	20,305,876,591	8.37
Soybean, including soybean crush	17,455,200,216	7.20
Whole cane sugar	10,030,103,067	4.13
Frozen, fresh or chilled chicken meal (including edible offal)	6,732,381,151	2.78
Meal and residues from the extraction of soybean oil	6,595,457,488	2.72
Coffee beans	5,721,720,964	2.36
Corn	5,287,267,448	2.18
Fuel oil (diesel oil etc.)	5,039,034,073	2.08
Aircraft	4,746,598,532	1.96
Wood chemical paste	4,700,438,179	1.94
Frozen, fresh or chilled cattle meat	4,494,880,017	1.85
Semi-finished iron and steel products	3,841,699,402	1.58
Parts and spare parts for automobiles and tractors	3,777,556,020	1.56
Passenger automobiles	3,724,764,941	1.54
Tobacco leaf and surplus	3,197,303,248	1.32
Refined sugar	2,814,469,786	1.16
Ferroalloys	2,787,913,165	1.15
Semi-finished gold goods for non-monetary use	2,341,157,579	0.97
Ethanol	2,186,191,155	0.90
Earthmoving and drilling machines and equipment, etc.	2,181,322,688	0.90
Cotton	2,104,430,857	0.87
Cargo vehicles	2,082,220,453	0.86
Ethylene, propylene and styrene polymers	2,079,428,957	0.86
De-haired leather and hide, other than raw leather and hide	2,071,454,104	0.85
Other	85,291,613,163	35.14

Source: Brasil. Ministério do Desenvolvimento, Indústria e Comércio Exterior. Secretaria de Comércio Exterior (Brazilian Ministry of Development Industry and Foreign Trade), at http://www.desenvolvimento.gov.br/arquivos/dwnl_1358532852.doc

Brazilian Imports – Top Products – Descending Order (January-December 2012)

Description	FOB Prices (US\$)	Share%
Grand Total	223,149,130,318	100.00
Total of the items described below	99,918,518,190	44.81
Crude oil	13,405,739,345	6.01
Passenger automobiles	9,566,747,498	4.29
Parts and spare parts for automobiles and tractors	6,771,471,931	3.03
Fuel oil (diesel oil etc.)	6,711,698,984	3.01
Drugs for human and veterinary medicine	6,113,616,532	2.74
Integrated circuits and electronic micro-assemblies	4,248,640,651	1.90
Naphthas	4,192,993,317	1.88
Transmission or receiving devices components	3,630,109,255	1.63
Potassium chloride	3,512,818,128	1.57
Natural gas	3,336,130,497	1.50
Heterocyclic compounds and related salts and sulfonamides	3,079,989,375	1.38
Gasoline	3,008,376,949	1.35
Coal, including coal powder (but non agglomerated)	3,006,339,110	1.35
Cargo vehicles	2,993,192,079	1.34
Instruments and devices for measuring, testing etc.	2,870,872,226	1.29
Electric engines, generators and transformers and related parts	2,868,901,807	1.29
Parts and components for automatic data processing machines	2,608,524,943	1.17
Bearings and gears and related parts and components	2,407,894,487	1.08
Automatic data processing machines and related components	2,406,114,206	1.08
Insecticides, formicides, herbicides and related products	2,245,806,264	1.01
Pumps, compressors, fans etc., and related parts	2,240,313,150	1.00
Aircraft engines and turbines and related parts	2,200,521,823	0.99
Machines and equipment for earthmoving, drilling etc.	2,200,001,618	0.99
Flat-rolled iron and steel products	2,154,009,791	0.97
Fertilizers containing nitrogen, phosphorus and potassium	2,137,694,224	0.96
Other	123,230,612,128	55.19

Source: Brasil. Ministério do Desenvolvimento, Indústria e Comércio Exterior. Secretaria de Comércio Exterior (Brazilian Ministry of Development Industry and Foreign Trade), at http://www.desenvolvimento.gov.br/arquivos/dwnl_1358533197.doc

Brazilian Exports – Major Trading Partners (US\$ FOB)

Rank		Grand Total (Countries)	Period	Share%
2011	2012	242,579,775,763	January-December	100.00
1	1	China	41,227,540,253	17.00
2	2	Unites States	26,700,844,268	11.01
3	3	Argentina	17,997,706,375	7.42
4	4	Netherlands	15,040,703,654	6.20
5	5	Japan	7,955,713,348	3.28
6	6	Germany	7,277,061,407	3.00
18	7	India	5,576,930,397	2.30
11	8	Venezuela	5,056,025,298	2.08
7	9	Chile	4,602,202,699	1.90
8	10	Italy	4,580,695,491	1.89
9	11	United Kingdom	4,519,433,795	1.86
10	12	Korean Republic	4,501,090,479	1.86
14	13	France	4,107,434,716	1.69
16	14	Mexico	4,003,013,124	1.65
12	15	Belgium	3,741,600,482	1.54
15	16	Spain	3,688,731,614	1.52
13	17	Russian Federation	3,140,815,887	1.29
21	18	Canada	3,079,926,642	1.27
17	19	Saudi Arabia	3,000,113,126	1.24
22	20	Singapore	2,942,605,467	1.21
19	21	Colombia	2,834,522,131	1.17
24	22	Egypt	2,711,858,469	1.12
20	23	Paraguay	2,617,509,020	1.08
28	24	Hong Kong	2,458,113,007	1.01
27	25	United Arab Emirates	2,456,755,780	1.01
29	26	Peru	2,415,202,868	1.00
26	27	Taiwan (China)	2,341,218,935	0.97
25	28	Uruguay	2,186,314,270	0.90
30	29	Iran Islamic Republic	2,183,927,959	0.90
32	30	Thailand	2,071,292,106	0.85
		Other Countries	45,562,872,696	18.82

Source: Brasil. Ministério do Desenvolvimento, Indústria e Comércio Exterior. Secretaria de Comércio Exterior (Brazilian Ministry of Development Industry and Foreign Trade), at http://www.desenvolvimento.gov.br/arquivos/dwnl_1358532717.doc

Brazilian Imports – Major Trading Partners (US\$ FOB)

Rank		Grand Total (Countries)	Period	Share%
2011	2012	223,149,130,318	January-December	100.00
2	1	China	34,248,498,759	15.35
1	2	United States	32,357,065,136	14.50
3	3	Argentina	16,444,100,381	7.37
4	4	Germany	14,208,929,793	6.37
5	5	Korean Republic	9,097,657,556	4.08
7	6	Niger	8,012,213,606	3.59
6	7	Japan	7,734,742,074	3.47
8	8	Italy	6,199,258,024	2.78
11	9	Mexico	6,075,066,118	2.72
10	10	France	5,909,561,571	2.65
9	11	India	5,042,842,814	2.26
12	12	Chile	4,164,608,910	1.87
15	13	Spain	3,540,131,191	1.59
16	14	United Kingdom	3,505,449,374	1.57
18	15	Bolivia	3,431,044,276	1.54
21	16	Algeria	3,197,862,010	1.43
13	17	Saudi Arabia	3,192,910,861	1.43
25	18	Taiwan (China)	3,168,809,017	1.42
17	19	Netherlands	3,106,404,977	1.39
14	20	Canada	3,072,137,103	1.38
20	21	Russian Federation	2,790,714,060	1.25
19	22	Switzerland	2,765,777,601	1.24
22	23	Thailand	2,503,918,456	1.12
23	24	Malaysia	2,083,632,123	0.93
28	25	Belgium	2,074,108,349	0.93
24	26	Sweden	1,980,589,808	0.89
29	27	Uruguay	1,818,925,592	0.82
27	28	Indonesia	1,735,848,039	0.78
31	29	Austria	1,523,724,906	0.68
26	30	Australia	1,288,016,433	0.58
		Other Countries	26,874,581,400	12.02

Source: Brasil. Ministério do Desenvolvimento, Indústria e Comércio Exterior. Secretaria de Comércio Exterior (Brazilian Ministry of Development Industry and Foreign Trade), at http://www.desenvolvimento.gov.br/arquivos/dwnl_1358533104.doc

Tips for business visitors

Currency

The monetary unit is the Real (R\$), plural: Reais. The Real is divided into 100 units called centavos.

The Brazilian Central Bank (the BCB or the Bank) allows the official exchange rate to float freely, but foreign exchange (forex) trading is restricted to authorized dealers. The Bank intervenes when there are signs of speculative operations. There is an active parallel exchange market that, although illegal, is quoted in the daily newspapers, as well as an official tourist rate that normally approximates the parallel rate.

The official bank sale exchange rates as at December 31, 2012, are as follows:

	R\$
\$ 1	2.04
£ 1	3.30
€1	2.69

The parallel exchange rate at the same date was US\$ 1 = R\$ 2.18.

International time

Brazilian Standard Time in relation to Greenwich Mean Time (GMT) and to U.S. Eastern Standard Time (EST) is as follows:

Zone	Hours	
	Behind GMT	Ahead of EST
Eastern Brazil	3	2
Western Brazil	4	1

Daylight saving time runs from October to February, when the clocks are put forward by one hour.

Business hours

The working day, Monday to Friday, is normally eight hours for commercial offices, typically from 8:30 a.m. or 9:00 a.m. to 5:30 p.m. or 6:00 p.m., with a lunch break of between sixty and ninety minutes. A minority of factories operate on Saturday mornings. Most retail outlets are open on Saturdays and Sundays as well as working days. Banks are generally open to the public from 10:00 a.m. to 4:00 p.m. and government offices from 9:00 a.m. to 5:00 p.m. Both are closed on Saturdays and Sundays.

Bank holidays

Brazil has the following bank holidays:

New Year's Day	January 1
Shrove Tuesday (Carnival)	Date varies
Good Friday	Date varies
Tiradentes Day (National hero)	April 21
Labor Day	May 1
Corpus Christi	Date varies
Independence Day	September 7
Brazil's Patron Saint Day (Nossa Senhora Aparecida)	October 12
All Souls' Day	November 2
Proclamation of the Republic	November 15
Christmas Day	December 25

Holidays that fall on a Saturday or Sunday are not moved to a weekday.

In addition to the above, municipal authorities are permitted to decree three additional holidays, normally on dates of local significance. The most celebrated of these is Carnival (Mardi Gras) in February/March each year, when business virtually comes to a standstill from Monday to Wednesday.

Weights and measures

Brazil uses the metric system, but some traditional or unusual measures still appear in real-estate transactions.

Dates and numbers

Dates are usually written in the order of day, month, and year; e.g., 1 May 1996 or 1/5/96.

Numbers are written with a full stop to denote thousands and a comma to denote fractions; e.g. R\$ 2.000,50 (two thousand Reais and fifty centavos).

Local customs

Business is generally conducted in a fairly formal manner, especially in the large cities. Business meetings are rarely held at breakfast time, although business lunches and dinners are common. Business entertainment often involves attending social events.

Research Sources

- Banco Central do Brasil (BCB) (Brazilian Central Bank).
- Brasil. Agência Nacional de Aviação Civil (ANAC) (National Civil Aviation Agency).
- Brasil. Agência Nacional de Transportes Terrestres (ANTT) (Brazilian Agency for Land Transportation).
- Brasil. Banco Nacional de Desenvolvimento Econômico e Social (BNDES) (National Bank for Social and Economic Development).
- Brasil. Ministério do Desenvolvimento, Indústria e Comércio (MDIC) (Brazilian Ministry of Development, Industry and Foreign Trade).
- Fundação Getúlio Vargas (FGV) (Getulio Vargas Foundation) Fundação Instituto Brasileiro de Geografia e Estatística (IBGE) (Brazilian Institute of Geography and Statistics).
- Brasil. Instituto Brasileiro de Geografia e Estatística (IBGE) (Brazilian Institute of Geography and Statistics).



Chapter 2 | *Business environment*

Investor considerations

- Fast-changing business conditions.
- Considerable bureaucratic interference and regulation.
- Multiple taxes and high taxation rates.
- Inflation is under control.
- Abundance of semiskilled and unskilled labor.
- Brazil is a commodity powerhouse.
- Tax incentives are negotiable in some locations.
- Saw industrial modernization during the last decade.
- Underinvestment in infrastructure matrix.

Industrial climate

Brazil's governments have customarily supported free enterprise and the free-trade system. However, some state and semi-state entities still control part of the public utility sectors and the petroleum industry is still a government monopoly (with the exception of distribution). Oligopolistic situations also exist in a few sectors. There is considerable bureaucratic intervention: regulations change constantly and there are complex labor and tax codes. On the other hand, there is a motivated work force and the development of labor-intensive industries and ventures directed toward exporting is encouraged.

Generally speaking, Brazil was a relatively closed economy in the 1970s and 1980s. However, trade liberalization took place in the 1990s, resulting in the lifting of trade barriers and protective practices. Local manufacturers are now more competitive internationally.

Overview of industry

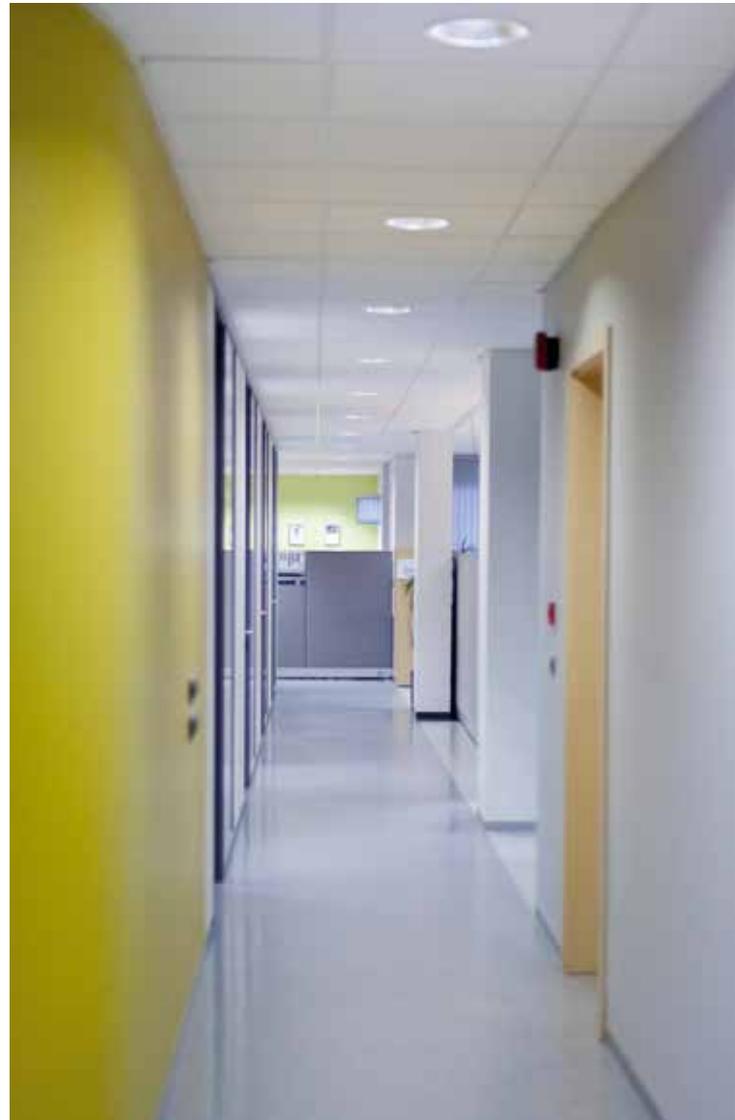
The Brazilian economy is fairly broad-based, including almost every type of industry imaginable. It is a mixed economy and includes listed companies, state monopolies, semi-state companies, foreign-owned companies, joint ventures, closely-held companies, family enterprises, and many small businesses operating in various formats. Financial markets and an active stock market exist. The São Paulo Stock Exchange (BM&FBovespa) has become one of the ten largest exchanges in the world in market capitalization. A number of Brazilian companies have raised billions of dollars in recent initial public offerings (IPOs) and these have been amongst the world's top fundraising operations.

Brazil is widely acknowledged as a global commodities powerhouse and, as has been said, is the leading exporter of a great variety of items including animal produce (meat and chicken), grain (mainly soy and beans) and sugar.

The state-owned oil and gas company Petrobras, one of the largest of the world, has announced the discovery of a mega oil field in the so-called pre-salt layer off the São Paulo state coast. This region boasts huge potential volumes of oil and could place Brazil amongst the top oil exporting countries in the world. Massive investment in this sector is expected in the years ahead.

Aims of government policy

The general policy of Brazilian governments has been to promote overall economic growth and to fight poverty. However, this policy has been adversely affected over the years by the political situation, problems related to servicing and reducing the foreign debt, and tough economic measures that have been taken to shackle inflation, including the adoption of high interest rates.



Economic development plans

There is a clear political need to improve the overall living conditions of low-wage earners by assuring adequate housing, health care and food supplies at reasonable prices. As a consequence, the specific objectives of recent governments have been as follows (in no particular order):

- Achieving a more even distribution of income and wealth, on both an individual and a regional basis.
- Maintaining inflation at manageable levels through containment of government expenditure and control of monetary expansion.
- Maintaining foreign-trade surpluses.
- Establishing an energy-expansion program.
- Developing the agricultural sector.
- Upgrading the labor force by intensifying educational, training, health and social welfare programs.
- Strengthening the local capital market by encouraging personal savings and attracting foreign capital.
- Privatizing certain public-sector companies.
- Reducing the so-called Brazil Cost, which consists of the costs related to doing business in Brazil, which may diminish investment opportunities.

There is a general recognition that uncertainties concerning the political and economic climate over the years have deprived Brazilian business of the necessary investment to modernize and become internationally competitive. The country is now viewed by most of the international community as a much more predictable place in which to invest.

Brazil's performance during the 2008/2009 international financial crisis

Brazil overcame the international economic turbulence and crisis in 2008/2009 and emerged from it stronger and a more attractive place in which to do business. Brazil was the first Latin American country, and probably one of the first countries worldwide, to have emerged from the international recession.

Although the global environment remains difficult and the export sector is therefore continuing to struggle - a fact made more difficult by the strongly appreciated Real - Brazil's sheer size (2011 GDP of approximately US\$ 2.477 trillion) and the strength of its domestic demand (60% of GDP) have made an economic recovery possible. A highly diversified economy and diverse trading partners, as well as a solid financial system – leveraged by active regulators and the Bank - have also helped to counter the effects of the crisis in Brazil.

The economic impact of the global financial crisis and falling demand has therefore been less severe for Brazil than for the USA, Europe and Asia. This can also be seen to have been a consequence of successful long-term joint public and private growth initiatives in Brazil. A combination of factors, such as nearly two decades of political and currency stability, the pursuit of fiscal discipline, high international reserves, solid macroeconomic indicators (based on a strong focus on inflation control) and the strengthening of the middle class' consumption power, have led Brazil to this enviable position. Furthermore, credit is due to the government for reacting promptly to the crisis, by implementing anti-cyclical measures to sustain the consumption of durable goods and the flow of credit, particularly for the automotive and construction industries and for households. These measures have contributed to lower unemployment and the economic recovery.

Overall, then, there has been increasing recognition worldwide that Brazil was one of the most successful countries in managing the impact of the crisis.

Financial and strategic investors are thus aware of the opportunities presented by Brazil in the new economic world we are entering. They realize that Brazil is the place to be. Cross-border merger and acquisitions and strong capital markets will play an important role. Witness the fact that Brazil has been chosen as the host nation for the 2014 FIFA World Cup while Rio de Janeiro has also been elected to host the 2016 Olympics. Couple that with the fact that long-term strategies and investments (including pre-salt oil exploration opportunities) are now top of the agenda and Brazil can be seen for what it is: a potential economic powerhouse.

The country's social and economic inequality is also being addressed and the government has made significant inroads against poverty (through programs like the Bolsa Família welfare program). These initiatives are expected to yield results in the medium and long term. Regions like the Northeast now face the challenge of reaching out for opportunities that are already available in the rest of the country.

Despite these successes and aspirations, Brazil will require close attention as it prepares itself for the future. The country has huge infrastructure demands and a need for further public and private investment in education and healthcare. Top priorities on the government's agenda will need to include structural tax reforms and tight controls over government expenditure, in order to spur Brazil's economic growth.

Regional/special industry development

The government and most states seek to promote and attract new investment, generally in all types of industry, and provide assistance to investors seeking to obtain financing and advisory services. Tax incentives are commonly negotiable and are granted at federal, state and municipal levels.

Free-trade zones

Brazil has a long-term free-trade zone in the city of Manaus (Zona Franca de Manaus) which will remain in place until 2023. A number of multinational companies have operations in Manaus, mainly in the electronics and automotive sectors (see Free-trade zones in Chapter 4).

Financial services

Brazil has some of the most sophisticated financial institutions in the world. The largest Brazilian banks are amongst the most solid banks globally. All the major international banks operate in the country. Moreover, the government has established several financial aid credit facilities to further the development and modernization of key sectors. However, financial center operations and offshore financial services are not available. For information on available banking and financial services see Chapter 7.

Public/private sector cooperation and relations

The private sector has many industrial, commercial and banking associations at state level that cooperate with, and have access to, ministries and senior government officials. There are also national confederations in various sectors of the economy. The National Confederation of Industry, made up principally of leading businessmen, meets regularly with various ministers responsible for economic affairs.

Industrial/management relations

Brazil has a large labor force, but many workers are semiskilled and unskilled. There is a shortage of technical and skilled personnel.

Trade unions are a force to be reckoned with in the country and can be quite militant. Fringe benefits and social security costs are a significant element of overall labor costs. For more details of industrial/management relations, see Chapter 10.

Overseas trade relations

Membership of trade blocs

Brazil is a member of the Latin American Integration Association (ALADI), the World Trade Organization (WTO), formerly the General Agreement on Tariffs and Trade (GATT), and the Common Market of the Southern Cone (MERCOSUR), whose members currently include Brazil, Argentina, Paraguay and Uruguay, with Chile, Bolivia, Peru, Colombia, Ecuador and Venezuela being associated countries. Under the MERCOSUR treaty agreement, tariffs are abolished; the movement of labor, goods and services is unrestricted; capital investment is encouraged; macroeconomic policy is coordinated; and foreign-trade policies and tariffs for non-member countries are harmonized.

Exports

Brazil encourages exports by offering a number of incentives, including duty exemptions or reductions for imported materials that are used in exported goods, value-added-tax (VAT) benefits, special financing arrangements and others. For more details on investment incentives see Chapter 4.

Trade barriers

All imports and exports are controlled by the foreign trade department of the BCB (Departamento de Operações de Comércio Exterior - DECEX). For many years, local industry was protected from imports and the overall tariff burden was high. In general terms, trade barriers were set up because of the need to industrialize and to develop local industries, but also because of the foreign-debt situation. In the last few years, however, import duties and trade barriers have been gradually reduced and imports of various products are encouraged when local prices are higher than international prices, or when there is a shortage of local products. For more information on exporting to Brazil see Chapter 8.

Chapter 3 | *Foreign trade and investment opportunities*

Investor considerations

- Foreign investment is generally welcome.
- Brazil is the leading territory for investment opportunities in Latin America.
- Large potential consumer market and a growing and thriving middle class.
- Export-based enterprises are generally favored.
- Foreign investors are eligible for most available incentives.
- Restrictions on foreign ownership exist in several sectors, including aviation and publishing.
- There have been favorable changes in the business culture and a spread of corporate governance and best practices.
- Robust performance of IPOs and merger and acquisition (M&A) markets in recent years.
- Has been awarded Investment Grade rating by all major agencies.
- Convergence of local accounting and auditing standards with International Financial Reporting Standards (IFRS).

Investment climate

Government attitudes towards foreign investment

The Brazilian constitution states that foreign investment should be in the national interest and is welcome provided it represents a long-term commitment to economic development, particularly in those areas that are high on the government's list of priorities. These include the development of agriculture, technology and labor-intensive industries and the manufacture of goods that are currently imported and goods that will increase exports.

Foreign direct investment was rising significantly until the year 2008. However, a considerable contraction was witnessed in 2009 following the global credit crunch, as shown in the table below (figures are in millions of US dollars):

2005	2006	2007	2008	2009	2010	2011	2012
21.552	22.231	31.948	42.850	30.444	48.500	66.660	66.536

All forms of investment are welcome, as long as they do not contravene local policy regarding foreign investment and national security. Restrictions on foreign ownership are imposed mainly for national security reasons in the areas of defense and air transport.

Trade policy

Brazil is generally supportive of free trade, but high tariffs are imposed on many imports.

Taxation policy

The federal tax system is not biased against foreign investment and there are no tax incentives that favor foreign investors specifically. Save a few exceptions, foreign investors are generally entitled to the same tax treatment and incentives as their local counterparts. Various states and municipalities actively seek foreign investment. For more information on tax incentives see Chapter 4.

Local competitor attitudes towards foreign investment

In general, local business people welcome foreign investment. Certain sectors have lobbied hard to protect their activities by various means, including the imposition of trade barriers and restrictions on foreign investment. Such lobbying was quite successful in the past but this is gradually changing as governments seek greater efficiency and competitiveness.

Labor attitudes towards foreign investment

If foreign investment and management can be seen to create jobs and compete on an equal footing with Brazilian business, they tend to be embraced by workers. (For details on foreign individuals see Chapter 19 – Taxation of Individuals and Chapter 10 – Industrial relations and Social Security in the section Expatriate Personnel in Brazil).

Special investment opportunities

- In general, Brazil is an attractive investment opportunity for companies interested in the following:
- Tapping into the local market's considerable potential. Brazil has many dissatisfied consumers.
- Taking advantage of the abundant raw materials and natural resources.
- Using the sizable and growing labor force.
- Locally producing items that are currently imported.
- Using Brazil as a manufacturing base for exports, especially exports that take advantage of Mercosur arrangements and their associated opportunities
- Improving infrastructure is now a priority (including railways, motorways, ports, airports, water and waste treatment and power generation).
- Taking advantage of the massive investments which are expected in relation to the huge pre-salt oil reserves, the 2014 FIFA World Cup and the 2016 Olympic Games.

Subject to local legislation, it is generally possible to import most vital components and consumables if there is inadequate local production of these items, although there are restrictions in specific areas, and bureaucratic delays and high import duties can nullify the advantages of importing.

Planning guide for foreign investors

National and local government policy considerations are as follows:

- The federal government and the states generally support free enterprise and free trade.
- Foreign investment is generally welcome but needs to provide benefits to Brazil and its citizens, i.e. job and wealth creation.
- Local and foreign investors are, in general, treated the same.
- Current policy favors the lessening of bureaucratic interference and the deregulation of business, except business related to infrastructure, such as telecommunications, energy utilities, petroleum, water supply and healthcare, which are subject to extensive regulatory oversight.

Investment possibilities/restrictions

- Federal and state governments generally have an open attitude towards foreign investment.
- In general terms, 100% foreign ownership is possible.
- There are some restrictions on foreign ownership of financial institutions, communications companies, entities in certain other strategic sectors and rural land.
- Joint ventures with local partners may be favored but are not essential.

Prior approval or registration

- Prior approval is not required except in rare circumstances.
- Registration of foreign investment with the Central Bank is a requisite for repatriation of capital and remittance of dividends and profits.
- A permit is required to operate a financial institution.
- Registration requirements vary at state level.



Possible business structures

- For foreign investors, the most common form of doing business is through an incorporated subsidiary or limited-liability company.
- Branches are difficult to form and depend on Presidential Decree approvals. It is more straightforward in terms of bureaucracy and approvals to establish corporations (sociedades por ações) and private limited-liability companies (limitadas).
- In general, there are no minimum capital requirements, except in the case of financial institutions.
- While joint ventures do not require the participation of a local entity, it is generally helpful to have such participation.

Setting up or acquiring a business

- Foreign investors generally incorporate new companies or acquire existing enterprises.
- Setting up new companies is relatively straightforward and inexpensive. It normally takes about a month.
- A Brazilian holding company may be set up in order to acquire a business.
- Asset or share acquisitions should be planned with care.

Investment incentives

- Foreign investors are generally eligible for available incentives.
- The federal government offers tax incentives in certain underdeveloped or strategic areas.
- Many state and local governments also offer incentives to attract investment.

Location/industries

- Location is generally determined by key business factors.
- Regulations concerning various aspects of business (e.g., indirect tax rates and incentives) vary from state to state.
- Special federal programs reward investments in the poorer North and Northeast regions.
- Discussions with state development agencies are recommended.

Finance

- Foreign-controlled companies can be listed on the stock exchanges in order to raise capital through public subscriptions or the issuing of debentures.
- A wide range of credit and financial services is available from local and foreign banks operating in Brazil.
- Long-term financing is available from investment companies and government investment banks.

Work force and labor costs

- A plentiful labor supply exists but many workers are semiskilled or unskilled.
- Payroll charges and taxes tend to be higher than in other countries.

Market studies

Carrying out market studies is advisable. PwC Brazil can assist in such studies and in other phases involved in establishing Brazilian operations, as well as in potential investment and acquisition analyses.

International financial services and offshore operations

- Brazil is not a center for international financial services and offshore operations.

Information and assistance

- Any further information and assistance may be obtained from PwC offices throughout the country. For the addresses of our offices, see the inside cover of this Guide.



Doing business

Chapter 4 | *Investment incentives*

Investor considerations

- Local and foreign investors are generally treated equally as regards investment incentives and tax concessions.
- There are no special federal tax incentives to attract foreign investors.
- Many state and local governments offer investment incentives in the form of reductions in indirect taxes.
- Tax concessions are available for choosing to locate in the poorer Northeast and Amazon regions, including reductions in federal income tax.
- Incentives are available for the promotion of exports.

Investment policy

Foreign investment is generally welcome and actively sought, particularly if it brings new technology, creates new jobs, develops agriculture and increases exports or decreases imports.

There are a wide variety of federal programs designed to encourage economic development and to promote regional development. These programs tend to favor operations in the poorer Northeast (SUDENE) and Amazon (SUDAM) regions. Several programs provide export incentives.

State and local governments also encourage investment and they generally offer incentives to attract local and foreign investors.

There are no specific incentives for establishing holding companies and regional administrative offices, and there are no tax havens or offshore financial facilities. There is a free-trade zone in Manaus and fiscal benefits apply in areas of the Western Amazon region (see *Free-trade zones* below).

Tax concessions

Few federal tax concessions are available to local and foreign investors. Those that exist are designed to accelerate the development of certain less developed regions and of industries considered to be of importance to the economy. However, in general, there are no tax concessions specifically designed to attract foreign investors.

State and local tax concessions vary depending on the importance of the prospective investor to the area.

Regional incentives

Regions affected

The following regional agencies are responsible for development in the listed states:

SUDENE (Northeast region)

Alagoas
Bahia
Ceará
Espírito Santo
Maranhão (part)
Minas Gerais (part)
Paraíba
Pernambuco
Piauí
Rio Grande do Norte
Sergipe

SUDAM (Legal Amazon)

Acre
Amapá
Amazonas
Maranhão (part)
Mato Grosso
Pará
Rondônia
Roraima
Tocantins

Eligibility

In general, incentives are available to both local and foreign-controlled companies. However, the granting of incentives depends on approval by the federal government agencies SUDENE and SUDAM in respect of the implementation of new industrial projects or the planned expansion, diversification or improvement of an existing industry. SUDENE and SUDAM evaluate not only a project's technical and economic feasibility, but also its suitability as part of the region's overall economic development.

Tax incentives

For the Northeast and Amazon regions, the investment incentive plans administered by SUDENE and SUDAM, respectively, offer certain fiscal benefits to companies operating approved projects. These are as follows:

- 75% reduction of the income tax and non-refundable surcharges due on operating profit (lucro de exploração), for a maximum period of ten years, for implementation, expansion, diversification and improvement projects submitted and approved from August 24, 2000, to December 31, 2018, relating to economic segments considered to be a priority for the development of these regions.
- 12.5% reduction of income tax and non-refundable surcharges, from January 1, 2009, until December 31, 2013, for legal entities which maintain economic enterprises that participate in the development of these regions. Legal entities which own such projects may apply for the abovementioned reduction of 75%, within a period of ten years, provided that their activities fall into economic segments considered by the government to constitute a priority for the development of these regions.

The corporate income tax reduction cannot be distributed to the company's quotaholders/ shareholders and must be booked and kept as a subsidy reserve (capital reserve), to be used only for capital increases or offsetting existing losses.

Certain state VAT (ICMS) incentives are also made available to certain businesses, depending on the nature and peculiarities of the project.

Non-tax incentives

For companies in the Northeast and Amazon regions, low-cost loans or loan guarantees are granted by government development banks, such as the Bank of Northeast Brazil (BNB), the Amazon Bank (BASA) or the National Bank for Social and Economic Development (BNDES).

Special tax regimes

Special tax regimes are provided by Brazilian legislation to benefit some specific economic activity sectors; the main special tax regimes are described below. (Please note that, in most cases, taxpayers must comply with the application requirements due for each special tax regime, as well as other special requirements and ancillary obligations.)

- Digital Inclusion Program – Grants 0% tax rate for PIS and COFINS; applicable for sales that take place until December 2014. Corporate Income Tax (CIT) exemption, calculated on the operating profit (lucro de exploração), may also be granted.
- Incentive for the Auto and Auto Parts Industries located in the North, Northeast and Midwest regions – Grants IPI presumed credit as compensation for PIS and COFINS. Expires in December 2020.
- Incentives for the Computer and Automation Industry – Grants gradual reduction of IPI, with variable applicable rates. Expires in December 2019.
- Incentives for the Technological Industry – Allows costs and expenses for staff training in software development to be excluded from net income.
- PADIS (Support Program for the Technological Development of the Semiconductor Industry) – Grants a 0% tax rate for Import Tax, PIS/COFINS, PIS/COFINS-Import, IPI and CIDE. CIT exemption, calculated on the operating profit (lucro de exploração), may also be granted. Expiration date varies, being between December 2020 and January 2022.
- PATVD (Support Program for the Technological Development of the Digital Television Equipment Industry) – Grants a 0% tax rate for Import Tax, PIS/COFINS, PIS/COFINS-Import, IPI and CIDE.
- RECAP (Special Regime for the Acquisition of Capital Goods for Export Companies) – Grants suspension of PIS/COFINS and PIS/COFINS-Import.
- RECINE (Special Tax Regime for the Development of the Cinematographic Exhibition Activity) – Grants suspension of PIS/COFINS, PIS/COFINS-Import, IPI and Import Tax.
- REIDI (Special Incentive Scheme for Development of Infrastructure) – Grants suspension of PIS/COFINS and PIS/COFINS-Import.
- RENUCLEAR (Special Regime of Incentives for the Development of Nuclear Power Plants) – Grants suspension of IPI and Import Tax. Applicable for acquisitions and imports that take place before December 2015.
- REPENEC (Special Incentive Regime for the Development of Oil Infrastructure in the North, Northeast and Midwest) – Grants suspension of PIS/COFINS, PIS/COFINS-Import, IPI and Import Tax.

- REPES (Special Tax Regime for the Export Platform of Information Technology Services) – Grants suspension of PIS/COFINS, PIS/COFINS-Import and IPI.
- REPORTO (Tax Regime to Stimulate the Modernization and Extension of the Port Structure) – Grants suspension of Import Tax, IPI, PIS/COFINS and PIS/COFINS-Import. Applicable for some acquisitions and imports that take place until December 2015.
- RET (Special taxation regime) – The real estate developers that opt for this regime are subject to corporate income (IRPJ), social contributions (CSLL), PIS and COFINS taxes at a combined rate of 6%. This rate is applied to the gross revenues from the sale of real estate assets. The 6% unified tax rate is further reduced to 1% for those residential projects that are considered to be of social interest – houses with a fair market value of up to BRL 85,000 (approximately US\$ 41,595). This combined reduced rate of 1% is available until December 31, 2014, for projects initiated from March 31, 2009.
- RETAERO (Special Regime of Tax Incentives for the Brazilian Aviation Industry) – Grants suspension of PIS/COFINS, PIS/COFINS-Import and IPI.
- Technological Innovation Benefits – Allows (i) deductible expenses, (ii) full depreciation, (iii) accelerated amortization, and (iv) deduction up to 60% (reaching up to 80% in some cases) of some expenses for CIT purposes. This incentive also grants reduction to a 0% tax rate for Withholding Income Tax (WHT) levied on some remittances abroad, as well as reduction of IPI,
- Law 12, 715, published on September 18, 2012, brought about a few changes to some of the abovementioned incentives and also created a few new tax incentives, as follows:
- INOVAR-AUTO (Incentive Program for Technical Innovation and Consolidation of the Motor Vehicles' Supply Chain) – Grants IPI presumed credit. In principle, the application to this regime will be able to take place only until March 31, 2017.
- REPNBL-Redes (Special Tax Regime of the Broadband National Program for Implementation of Telecommunication Networks) – Grants suspension of PIS/COFINS and IPI. Applicable for construction, implementation, expansions or upgrades of telecommunication networks that take place until December 31, 2016.
- REICOMPE (Special regime for the manufacturing of computer equipment under the One Computer per Student Program (PROUCA)) – Grants suspension of IPI, PIS/COFINS, PIS/COFINS-Import, Import Tax and CIDE. This incentive also grants IPI exemption on the sale of computer equipment under PROUCA. Expires on December 31, 2015. PROUCA aims to promote digital inclusion in public schools or private schools for non-profit purposes with a focus on disabled people. PROUCA was re-established by this provisional measure with new terms. The new version will also expire on December 31, 2015.

Special tax incentives for the FIFA Football World Cup (2014)

Law 12,350, published on December 21, 2010, introduced a series of exemptions on federal taxes. Federal Decree 7,578/2011 and Normative Instructions 1,173, 1,174, 1,176/2011 set out the main requirements for entitlement to the tax incentives under Law 12,350. Please find below the main programs introduced by this legislation.

RECOPA

RECOPA is a special tax regime for the construction, expansion, reform or modernization of football stadiums which will host the official matches of the 2013 Confederations Cup and the 2014 World Cup, to take place in Brazil. A specific license is required prior to being able to take advantage of the associated benefits.

Legal entities that hold construction/reform projects approved by the Ministry of Sports may be entitled to the following benefits:

- I. Suspension of II, IPI and PIS/COFINS-import on the import of machinery, working instruments, equipment and construction materials to be used in, or incorporated in, the construction of football stadiums.
- II. Suspension of PIS/COFINS and IPI on local acquisition of the abovementioned goods.
- III. Suspension of PIS/COFINS-import on import of services by the RECOPA beneficiary
- IV. Suspension of PIS and COFINS on local provision of services to RECOPA's beneficiaries.

Other incentives for the 2014 FIFA World Cup

The Brazilian Government also grants tax benefits to those involved with the organization of FIFA's 2013 and 2014 Football Cups in Brazil, provided that these entities involved, and the events themselves, have been licensed by the Brazilian tax authorities, based on a list provided by FIFA.

These benefits include tax exemptions on the import of certain perishable goods or merchandise for use and consumption in the organization of the events promoted by FIFA and its related entities. These benefits do not apply to the import of durable goods and equipment, which shall be imported through the Special Temporary Admission Customs Regime (which also involves the suspension of taxes).

Law 12,350 also sets out a series of exemptions on federal taxes granted exclusively to certain bodies: (i) to FIFA itself and related entities domiciled abroad; (ii) to FIFA's Brazilian subsidiary and to the Brazilian Broadcasting Channels; (iii) to FIFA's service suppliers established in Brazil; and (iv) to non-resident individuals hired for, or engaged to work in, the events. Furthermore, acquisitions carried out by FIFA or its subsidiary in the local market shall be exempt from indirect taxation.

These exemptions will apply to taxable events that take place between January 1, 2011, and December 31, 2015.

Plano Brasil Maior

In August 2011, the Brazilian Government announced several measures that aim to benefit local manufacturers and exporters of goods and services, as part of its *Brasil Maior* (Greater Brazil) plan. The Government's plan focuses on increasing national competitiveness through incentives for technical innovation, research, added value in production, as well as on providing clear advantages for exporters. A number of regulatory provisions have already been issued under the plan and the main benefits may be summarized as follows:

From December 2011 to December 2014, payroll costs are to be reduced in certain industries (including IT, clothing, leather, footwear, furniture manufacturers among others). Instead of the current employer contributions to social security (20% on payroll), a fixed rate of 1.5% (2.5% for IT services) will apply to the companies' gross revenue. Please note that Law 12,715, published on September 18, 2012, has set forth changes regarding the mentioned tax rates: they were reduced to 1% and 2% depending on the type of business activity.

Direct investment incentives

Aiming to boost the long-term credit and financing market, in connection with infrastructure projects in Brazil, on December 31, 2010, the Brazilian government issued Provisional Measure 517, which was converted into Law 12,431, published on June 27, 2011. The main provisions of this law are briefly detailed below:

Zero rate income tax for bonds and securities held by non-resident investors

Income tax is reduced to zero on earnings remitted to non-residents (except those located in countries or jurisdictions that do not tax income or tax it at a rate lower than 20%), in relation to (i) publicly traded bonds and securities issued by private companies (excluding financial institutions) purchased from 01 January 2011; (ii) closed-end credit rights investment funds, regulated by the Securities Commission (CVM) and not issued by financial institutions; and (iii) real-estate receivables certificates. In order to benefit from the zero rate over earnings, besides complying with a few different requirements, the funds raised by the issuer of the mentioned bonds and securities must be assigned to the funding of investment projects, including those directed to research, development and innovation (RD&I), within the requirements set forth by legislation.

WHT reduction – Brazilian-resident parties investing in debentures issued by SPEs

Income derived from debentures and other bonds, issued before December 31, 2015, that fulfill the abovementioned requirements and that are issued by specific purpose companies (SPEs) set up for the development of infrastructure projects, or projects for intensive economical production in RD&I considered as a priority by the Brazilian government, are granted a WHT reduction to: (i) a zero rate, if paid to individuals; and (ii) a 15% rate, if paid to Brazilian-resident companies.

WHT reduction – Investment funds investing in debentures issued by SPEs

Income earned (i) by the owners of specific investment funds that invest at least 85% of their net equity in the abovementioned debentures; as well as (ii) by the owners of investment funds that invest at least 95% of their financial resources in the investment funds described in item (i) will be subject to: (a) a zero rate of WHT if they are individuals or foreign investors not based in tax havens and who invest in Brazil under the National Monetary Council Resolution 2,689; or (b) a 15% rate of WHT if they are Brazilian-resident companies.

Equity Investment Funds – FIP-IE and FIP-RD&I

With the objective of increasing investment in new infrastructure projects and fostering intensive economic production in RD&I projects, the Brazilian government has created the Equity Investment Funds for Infrastructure Projects (FIP-IE) and the Equity Investment Funds on Research, Development and Innovation (FIP-RD&I), respectively.

The abovementioned new projects must be carried out by SPEs that are incorporated as corporations, in the following areas: energy, transport, basic sanitation, irrigation and other areas deemed to be a high-priority by the Government. Existing projects may also be included in the event that an expansion takes place, if the expansion is treated as a new project and segregated in a specific purpose company.

The respective investment funds –FIP-IE and FIP-RD&I – must invest at least 90% of their equity in any security issued by the abovementioned SPEs. Further, the funds must have at least five quotaholders, and no quotaholder must hold more than 40% of the fund's quotas.

Income from redemption of quotas, including liquidation, is taxed at 15%. Any gain on disposal of the related fund's quotas will be taxed (i) at 0% for individuals who carry out these operations on or outside the stock exchange; and (ii) at 15% for legal entities, whether in operations on or outside the stock exchange.

Industrial policies

Brazil has several industry policies to incentivize national production. These policies relate to four pillars: foreign trade, industry incentives, investment and innovation.

In January 2007, the Brazilian government created the Growth Acceleration Program (PAC) which includes measures to stimulate private investment and increase public investment in infrastructure, improve the quality of public spending, as well as to control the expansion of public spending within the framework of the Federal Administration.

Foreign trade

Free-trade zones

The Manaus free-trade zone (*Zona Franca de Manaus – ZFM*) was created in 1967 to attract industry and commerce to the Amazon region. Foreign goods imported to the ZFM are free of customs duty and IPI, provided they are consumed or manufactured within the zone or are exported abroad. Sales or transfers of these goods to other parts of Brazil require payment of the previously exempted taxes. Foreign-controlled subsidiaries may establish assembly operations and enjoy the same benefits as local companies. Sales from other parts of Brazil to the Manaus free-trade zone are also entitled to certain tax benefits. Some of these fiscal benefits also apply to the Western Amazon region, which covers the states of Acre, Amazonas, Rondônia and Roraima.

There are other free-trade zones (FTZs) that have been created with the aim of promoting the development of the border regions in the North of the country. These FTZs are demarcated areas where Import Duty and IPI levied on imports of goods for consumption, re-exportation, processing of fish, mineral resources, agricultural and forest raw materials which will be used in agriculture and fish farming activities, tourist facilities and ship construction and repair, are suspended. The first FTZ outside of Manaus was created in Tabatinga (Amazonas province) in 1989. FTZs have also been created in Boa Vista (Roraima), Macapá and Santana (Amapá) and Guajará-Mirim (Rondônia).

Export processing zones

Export processing zones (EPZs) are industrial districts where companies operate with tax suspension, currency exchange freedom (they are not required to convert into Brazilian Real the foreign currency obtained with exports) and with simplified customs procedures. They also receive favorable income tax treatment. Authorized companies must produce or process in these zones merchandise that is exclusively for export. There are 23 EPZs in Brazil at different pre-operational stages. An EPZ in Acre is already in place.

Export incentives

The various incentives available to exporters include the following:

Under the Special Customs Drawback Scheme, suspension and exemption can be obtained in respect of import duties, Federal VAT (IPI) and State VAT (ICMS) and other taxes and charges relating to imported goods that are used in the manufacturing of products for export. Currently, these benefits are also made available for local purchases as well, at a federal level. However, states do not yet offer the incentive relating to ICMS.

Exemption from Federal VAT (IPI), State VAT (ICMS), Tax for Social Security Financing (COFINS) and contributions to the Employees' Profit Participation Program (PIS) on exports of manufactured products.

Exemption from WHT, under certain conditions, levied on remittances made abroad for payment of expenses relating to promotion, advertising and market research for Brazilian products, including booth rental, leasing, maintenance of offices and commercial representations, depots and warehouses; and export commission paid to overseas agents, except when paid to countries considered to be tax havens, in which case the tax is levied at the rate of 25%.

Exemption from income tax levied on remittances made abroad for interest due on export financing.

Exemption from the tax on financial operations (IOF) levied on the financing of export operations with goods deposited in a customs warehouse, including those using export bills and notes of credit.

The IOF rate is reduced to zero for any export earnings and insurance operations for export credits and international freight.

ICMS is not levied on the exporting of products, including commodities and semi-manufactured products or services.

A public low-cost export financing program (PROEX), managed by Banco do Brasil, finances or equalizes interest on exports of goods and services by medium and small businesses with gross annual revenues up to \$ 60 million.

The National Bank for Economic and Social Development (BNDES) has financing programs to support big exporters, such as the BNDES Exim, which offers financing for export goods.

Export credit guarantee insurance is provided by Brazilian Insurance for Export Credit (SBCE) in two modalities: pre-credit risk (manufacturing) and credit risk (post-shipment), against commercial, political and extraordinary risks.

Other programs and special customs schemes may apply. For further information, please see Chapter 8.

Industry incentives

The import of capital goods and computer and telecommunications goods which are not available in the Brazilian market, might qualify for an Import Duty reduction, subject to government approval, in order to stimulate the broadening, modernization and restructuring of the Brazilian industrial sector. Some of these capital goods also benefit from a reduction in IPI.

Businesses in the computer and automation industries can receive an ICMS rate reduction if they obey a basic productive process (PPB) in Brazil defined by the government.

Investment and innovation

The BNDES provides low-cost financing for investment projects, the acquisition of equipment and the export of goods and services. Moreover, the bank shores up the capital structure of private entities and allocates its non-refundable finances to projects which further Brazil's social, cultural and technological development.

Capital goods acquired by companies engaged in agricultural activities may be integrally depreciated in the same fiscal year.

Special-use company incentives

In principle, special-use company incentives do not exist in Brazil.

International financial-center operations

There are no special federal concessions to encourage the establishment in Brazil of holding companies, investment vehicles, regional headquarters, administrative offices, tax-haven activities or offshore operations.

Some cities offer exemption from, or a reduction of, Tax on Services (ISS) to companies that establish their headquarters or administrative offices in the city's territory.

Incentives for investing in other countries

As a general rule, Brazil offers no specific tax incentives to individuals and companies wishing to invest abroad. However, various benefits are available for investments that result in greater export revenue for Brazil, as described earlier under *Export incentives*.

The BNDES finances the internationalization of companies. These financing operations cover investments related to new plant construction, acquisition, expansion or modernization of installed units, equity and working capital needs.

Foreign-investment incentives and strategy

It is government policy to welcome foreign investment and investment incentives are generally available to both local and foreign investors. No special privileges are given to foreign investors, but export manufacturing and import substitution are encouraged. Several tax treaties have been signed and others are currently being negotiated; see Chapter 22 and Appendix I.



Restrictions on foreign investment and investors

Investor considerations

- Foreign capital is generally treated equally to local capital.
- Foreign ownership of local companies is normally permitted except in sectors considered to be of strategic importance.
- Registration of all foreign investments with the Central Bank of Brazil is required.
- Exchange controls are in place.
- Repatriation of capital and earnings is controlled.
- Foreign ownership of rural land is restricted.

Regulatory climate

Regulatory authorities

The National Monetary Council (*Conselho Monetário Nacional* - CMN) is the exchange control and foreign investment authority. Foreign-exchange policy is controlled and supervised by the Central Bank.

Regulatory legislation

The constitution outlaws discrimination against foreigners residing in the country with regard to their basic rights of personal liberty, security and property ownership, although there are some restrictions on their ownership of rural land and certain business. Additionally, foreigners may not be employed by the government on a permanent basis.

Foreign investment is legislated by Law 4,131 of 1962 and its subsequent amendments. The exchange control regulations are set out in the rules, directives and circulars issued by the Central Bank and by the Federal Revenue Service.

Exchange-control and foreign-investment policies are established by the National Monetary Council, the president of which is the Minister of Finance. The legislative, executive and administrative aspects of these policies are the responsibility of the Central Bank, which includes a number of departments specifically concerned with foreign investment and exchange. They normally operate by means of internal directives that are not published. The Foreign Trade Department (DECEX) of the Ministry of Development, Industry and Foreign Trade (MDIC) is responsible for foreign-trade policy, along with the Brazilian Federal Revenue Office which is responsible for establishing foreign-trade procedures in Brazil.

For many years the overall policy has been to generate an exchange surplus sufficient to service Brazil's foreign debt and to build up an adequate foreign exchange reserve.

In general, tight control of foreign-currency transactions is exercised by the authorities. The fine for infringing exchange control regulations is generally limited to BRL 250,000 and is imposed by the Central Bank, according to the regulations issued by the National Monetary Council. Foreign-currency transactions may be effected through authorized financial institutions only.

Foreign currency is exchanged at different rates, depending on the nature of the transaction. The official commercial (import and export) rate is used for most trade and financial transactions and the Central Bank may intervene to control this rate. At the beginning of 1999 the National Monetary Council decided to liberalize exchange controls, letting market forces be the determining factor in this regard.

Exchange controls

Inward investment

The general policy is to admit foreign capital and to treat it in the same way as local capital. However, there are some restrictions on foreign investment in certain sectors (see below). All inward investment must be registered with the Central Bank, to ensure ultimate repatriation rights. There are no special exchange rates for certain kinds of transaction.

Registration of foreign capital and technology

Foreign capital

The basic legal concepts regulating foreign capital in Brazil are defined in Laws 4,131 of 1962 and 4,390 of 1964, which were regulated by Decree 55762 of 1965. The legal concept of foreign capital covers tangible and intangible assets.

An important concept in foreign-capital legislation in Brazil is that equal treatment should be guaranteed to all. This reflects the constitutional principle laid down in Article Five of the Federal Constitution. This principle, in Law 4,131/62 and later amendments to the Federal Constitution, affords foreign capital invested in Brazil the same legal treatment as that given to local capital, where equal conditions apply. To qualify for the remittance of profits and to ensure ultimate repatriation rights, foreign capital entering Brazil must be registered with the Central Bank. Capital remittances must be registered within 30 days. Foreign capital may take the form of cash, rights and assets sent to Brazil at fair market value, reinvested earnings, conversion of foreign-currency loans or current-account balances, liabilities and others. Reinvested earnings in this context are defined as profits earned in Brazil on registered foreign capital that have been formally allocated to increase capital. Capital increases from this source are registered in the currency of the country to which the profits could have been remitted.

Investments structured as advances for future capitalization are prohibited by the Central Bank, except those exclusively related to participation in National Privatization Programs and public service concessions, or which have been specifically authorized by the Central Bank for projects of interest to the Brazilian government.

The nationality and legal classification of an investor is irrelevant, provided that the investor resides, or is domiciled, abroad.

The Central Bank has also recognized that foreign investments directly or indirectly made in holding companies can be registered under the terms of Law 4131/62.

Prior approval from the Central Bank is no longer required for all foreign-currency loans received, but these must be documented by a formal contract stipulating the interest rate. Approval by the Bank is granted or refused after the loan transaction has actually been implemented and for this purpose the Central Bank must be informed of all loan terms. The Bank may refuse to accept loans on which interest is charged over and above the rates prevailing in the country of origin. The Central Bank's prior approval is necessary for operations relating to the conversion of certain liabilities into investment.

Technology

Technology transfer agreements, including those involving patents and trademarks, must be approved by and registered with the National Institute of Industrial Property (INPI). This approval is given or denied depending on the necessity of the services to be rendered and/or the availability of the technology within Brazil. In the case of royalties, registration of an agreement also requires proof that the related patent or trademark has been duly registered in Brazil and is still valid. In the case of technical assistance, the authorities reserve the right to verify that services have been effectively rendered. A computerized service provides information about registered patents and trademarks and the process of monitoring registration applications.

Currency accounts

The use of foreign-currency bank accounts by local or foreign investors and traders is generally not allowed although legislation makes some exceptions. However, banks authorized to deal in foreign exchange may hold local-currency funds for non-resident individuals or entities. Such bank accounts may be operated in the name of the non-residents and are often used to hold blocked local-currency funds.

Repatriation of capital and earnings

Capital may be repatriated free of tax up to the amount registered in foreign currency with the Central Bank. Any excess is considered a capital gain subject to exchange provisions and is therefore subject to withholding income tax at 15% (25% for beneficiaries domiciled in jurisdictions which Brazil considers to be tax havens).

Profits may be remitted abroad without limit, up to the level of registered foreign capital and available retained earnings. From January 1, 1996, profits/dividends distributed to non-resident beneficiaries relating to periods beginning on or after this date are not subject to WHT.

Loans may be repatriated only within the terms of the registered loan contract. Interest can be freely remitted within the loan contract terms, but is subject to WHT tax at the rate of 15% (25% for beneficiaries domiciled in jurisdictions considered by Brazil to be tax havens).

Remittances for technology transfers, including patents and trademarks, also require the Central Bank's prior approval, which will be granted only if the agreements have been previously approved and registered with the INPI. Requests for remittances that are not seen to be on an arm's length basis are normally not approved. Royalty and technical service remittances are subject to 15% WHT (or lower rates based on tax treaties). 25% WHT tax applies if the payment is made to beneficiaries domiciled in jurisdictions considered by Brazil to be tax havens.

Exchange currency for imports may be freely remitted. However, in certain cases, an import license is required if payment of the purchase price of the imports is deferred for varying periods.

Supporting documentation must be presented for approval of all applications for repatriations and remittances. Proof must also be furnished that the applicable withholding tax has been paid.

Bilateral or multilateral payment netting deals are generally not permitted. However, simultaneous exchange transactions may be carried out based on their net amount, provided that the respective exchange contracts relating to the inflow and outflow of foreign currency are settled on the same date and involve the same parties (in Brazil and abroad) as creditor and debtor.

Guarantees against inconvertibility

There are no government or similar guarantees against inconvertibility. Over the years, however, regulations related to repatriations and remittances have been respected.

Restrictions on foreign investment

Industries closed to private enterprise

The government has powers to operate directly, through concessions or through authorization, a number of activities that are considered to be a public service or of strategic importance. In practice, the federal and state governments tend to supervise activities transferred to private control through regulatory agencies operating in a number of sectors, such as telecommunications, light and power, water supply, railroads, coastal shipping, film industry, oil and gas, healthcare and health products. Nevertheless, government intervention has been diminishing over the past few years.

Government permission is required before a company can begin operating certain other types of businesses, such as banks and financial institutions, mining companies, oil refineries, maritime companies, road and air transport companies and companies involved in health products and health care.

Restrictions on foreign ownership

Except as noted below, 100% foreign ownership of local enterprises and joint ventures is normally permitted. In general, no particular types of operation are given special treatment. It is often advisable to obtain a local partner, to provide local expertise and contacts. Joint ventures with Brazilian partners are encouraged.

The restrictions on foreign investor participation may be summarized as follows:

- **Communications:**
Foreign ownership of television, radio stations or newspapers is restricted.
- **Aviation:**
Foreign ownership of Brazilian airlines is restricted.
- **Classified government contracts:**
Foreign participation in classified government contracts or access to work by other firms on such projects may be restricted.
- **Coastal and freshwater shipping:**
Such shipping may be carried out only by Brazilian companies.
- **Mining and hydroelectricity:**
Exploration and extraction of mineral resources and electricity generation may be carried out only by Brazilian nationals or entities incorporated in Brazil. These Brazilian-incorporated entities may be foreign-controlled except those operating in the frontier zone, which must be controlled by Brazilian nationals.

Other types of restrictions

Direct or indirect foreign ownership of rural land is regulated and subject to limitations to the total area that may be owned. Ownership of land near Brazil's borders is subject to further restrictions. There are no restrictions on foreign ownership of urban property.

Policy trends

Effect on foreign investment

Tight exchange and foreign-investment controls remained practically unchanged for many years, but since 2005 there has been a gradual relaxation of controls and restrictive and protectionist practices.

There has been a clear preference for foreign companies to establish themselves through subsidiaries and joint ventures rather than simply exporting to Brazil and this is likely to continue, although exceptions are made where imports are clearly cheaper than local goods.

- Foreign-exchange transactions are controlled.
- Stock markets are active and reasonably developed, but stock ownership is not widespread.
- Patent, trademark and copyright protection is available.

Chapter 6 | *Regulatory environment*

Investor considerations

- Business activities are generally regulated.
- Prohibitions normally apply equally to local and foreign-owned businesses.
- Considerable documentation and bureaucracy are involved in day-to-day operations.
- Foreign-exchange transactions are controlled.
- Stock markets are active and reasonably developed, but stock ownership is not widespread.
- Patent, trademark and copyright protection is available.

Regulation of business

The main regulatory entities concerned with business activities are as follows:

- Central Bank (BACEN): Responsible for the implementation of monetary policy, exchange controls, registration and control of foreign capital and profit remittances and the regulation of banks and financial institutions.
- Securities Commission (CVM): Responsible for the securities markets and for listed companies.
- Administrative Council for Economic Defense (CADE): Responsible for investigating and preventing unfair business practices, and for antitrust monitoring.

- National Institute of Industrial Property (INPI): Responsible for patent and trade mark registration and technological development. INPI has power over technology transfer agreements.
- Foreign Trade Department (DECEX) of the Bank of Brazil: Responsible for administration of foreign trade and control of export and import licenses.

Competition policy

In general, competition is encouraged, except in certain sectors where there are restrictions on foreign investment and investors.

Price controls

The prices of services rendered may be adjusted for inflation on a yearly basis, using an index that properly reflects the weighted variations of imputed costs.

Furthermore, several government agencies have been created to regulate, supervise and control prices in some specific areas, e.g., the National Telecommunications Regulatory Agency (ANATEL) for the telecoms industry, the Brazilian Electricity Regulatory Agency (ANEEL) for the energy industry, the National Water Agency (ANA), the National Civil Aviation Agency (ANAC) and the National Regulatory Agency for Private Health Insurance and Plans (ANS).

Control is exercised in various ways, depending on the industry or product involved and the general economic situation.

Monopolies and antitrust

CADE, a government agency, is responsible for preventing the abuse of economic power. It may investigate and punish trusts, cartels and monopolies, either on its own initiative or at the request of third parties. Members of CADE are appointed by the President of Brazil.

The Antitrust Law (Law 8,884/94) contains wide-ranging regulations to ensure free-market competition. The General CADE Superintendence is charged with enforcing these regulations. Cartels and monopolistic and oligopolistic situations in various sectors are constantly challenged.

Law 12,529, published on December 1, 2011, (effective from June 2012) requires a preliminary analysis by CADE, of certain cases where there are acts of economic concentration.

In general, there are no special restrictions on foreign investment.

Acquisitions and mergers

Except as stated in Chapter 5, there are no restrictions on acquisitions and mergers by foreign investors and the procedures are relatively simple. Central Bank permission is required when financial institutions are involved.

Securities markets

The Central Bank and the CVM are the main regulatory agencies concerned with the financial and securities markets. The stock exchange is in São Paulo.

The CVM has stated that its policy is not to discriminate against foreign investors, but to treat them in much the same way as local investors.

A public securities issuance, including an issue of debentures, may not be made without prior registration with the CVM. This will normally require adequate disclosure of information, to safeguard investor interests. Furthermore, only securities issued by companies registered with the CVM may be traded on stock exchanges and over-the-counter markets. The preparation and approval of a registration statement can be very time-consuming, but once securities have been registered, a listing for trading may usually be obtained without undue difficulty.

Companies registered with the CVM and whose securities are traded on a stock exchange are required to file periodic reports and to report significant developments. These reporting requirements also apply to companies whose stock is sold in the secondary over-the-counter market.

A cash tender offer can be made more quickly and with considerably less formality than is involved in the CVM registration process. Certain information must be submitted to the CVM in such cases and the rules for cash tender offers must be observed.

Several requirements must be fulfilled in order to be listed on the stock exchanges. For example, previous audited financial statements and other detailed information must be submitted. In addition, the particular securities for which a listing is being sought must have a sufficiently wide distribution to offer reasonable assurances that an adequate market exists. When applying these criteria to individual cases, the stock exchanges have developed minimum numerical standards for evaluating applicants for listing.

The over-the-counter market handles securities of publicly held companies that have not applied for listing on the stock exchanges. The procedures for purchase and sale of stock are more informal and are generally handled by over-the-counter brokers who establish the bid and asking price for specific issuances.

Following the recent introduction of accountability and corporate governance regulations, the stock exchange has created different categories of corporate governance, which require better practices and minimal additional rights for investors.

Reporting and disclosure requirements are described in Chapter 11.

Consumer protection

The 1990 Consumer Defense Code considerably strengthens customer rights.

The Ministry of Health maintains control over pharmaceuticals and cosmetics produced in the country or imported. Specific registration of laboratories and laboratory products is required before new products can be launched in the market. Pharmaceutical companies require a special license.

There are also various agencies concerned with standards, quality and supply of foodstuffs, including imported products, and specific regulations on weights and measures that must be observed in the consumer products sector.

Pollution control

Pollution has become a serious problem in several areas in Brazil and is consequently now one of the main issues on both the political and the economic agenda. Federal and state governments have developed programs and controls to prevent or reduce pollution, mainly in the more industrialized areas. The treatment of industrial residues and waste, to avoid and reduce pollution, must be considered when setting up new plants. The Brazilian Environment and Renewable Natural Resources Institute (IBAMA) is the federal agency in charge of establishing the general criteria for pollution control. Other agencies are required to take IBAMA regulations into account when examining applications for incentives and financing of investment projects. Pollution control is the responsibility of states and municipalities. Non-compliance with environment control regulations may result in the suspension of tax benefits, credit restrictions or even the closing down of operations.

Ecological preservation is a subject of public interest and is often covered by the local and international press. Over the last couple of years, sustainability issues have been gaining importance and have become a part of corporate concerns.

Special industries

There are specific regulations affecting the operations of financial institutions, as noted in Chapter 7. Specific regulations also apply to the insurance sector.

Licenses are required from the National Department for Mineral Prospecting (DNPM) in order to proceed with mining operations.

The Software Law (Law 9,609/98) defines software and deals with the protection of intellectual software property and the marketing of software in Brazil, as well as the registration of technology transfer contracts.

Law 8,955/94 regulates franchising activities in Brazil. Franchising agreements are valid, regardless of whether or not they are registered with competent bodies. If technology transfer is involved, the respective agreements must also be registered with the INPI and the Central Bank, in order to provide documental support for remittances abroad.

Patents, trademarks and copyright

Law 9279/96 provides special protection for intangible industrial property, which includes patents, trademarks and industrial drawings. There is also legal protection against video and audio piracy. Penalties for patent and trademark infringement include confiscation of goods, imprisonment and fines, as well as the payment of losses and damages.

Patents

A patent of invention lasts 20 years and an industrial model or design lasts 15 years from the time an application is filed with the INPI. Ownership of patents is transferable. Patent holders in other countries with which Brazil has treaties or conventions covering such matters have priority rights for filing patent applications within the periods specified.

Trademarks and trade names

Trademarks are registered with the INPI and trade names are registered with the local Board of Trade (Junta Comercial). There are a number of restrictions regarding trademarks, which are stipulated in the Industrial Property Code (Código de Propriedade Industrial). Registration is valid for ten years and may be renewed for similar periods indefinitely.

Industrial Drawings

Registration is valid for ten years and may be renewed three times for five years each time. Registration is also transferable.

Copyright

Copyright is legally protected by agreements, conventions and treaties in force in Brazil. The country is also a signatory of the Berne Convention on the protection of artistic and literary works and the Paris Convention on the protection of industrial property, the Washington Patent Cooperation Treaty, and is also a member of the World Intellectual Property Organization.

Chapter 7 | *Banking and finance*

Investor considerations

- A wide range of credit and financial services are available from an extensive banking and financial network.
- Institutional financing is available for foreign trade.
- Banking and financing business is regulated by the Central Bank.
- Banks and financial institutions are under strict government supervision in respect of their operating and accounting matters.

Banking and finance system

National Financial System

The National Financial System's (SFN) functional structure is formed by a normative system, which comprises the normative and supervisory entities, and an operative system, formed by financial institutions and other institutions authorized to operate by the Central Bank, and subsidiary bodies and enterprises regulated and monitored by other supervisory authorities.

The regulatory and supervision entities are:

- The National Monetary Council (Conselho Monetário Nacional - CMN): Oversees the financial system as a whole. The Council's Members are the Minister of Finance (President of the CMN), the Minister of Budgets and Planning and the President of the Central Bank.
- Central Bank (BACEN): Carries out traditional central banking functions and implements CMN policies.
- Private Insurance Regulator (SUSEP): Responsible for the supervision of the insurance industry
- Complementary Pensions Department (SCP): Responsible for the supervision of the complementary pension industry
- Securities Commission (CVM): Responsible for the supervision of the capital markets and the asset-management industry.

The Central Bank is the entity responsible, among other activities, for controlling and monitoring the following: lending and capital limits, compulsory deposit levels, interest rates, accounting procedures, foreign investment and the foreign-exchange market. The entities that operate in the financial market can be controlled either by government or by private institutions. The main government institutions are the following:

- National Bank for Economic and Social Development (BNDES): Implements the government's investment policy by granting loans and supervising government financing plans. It is also responsible for managing the National Privatization Program.
- Bank of Brazil: A mixed-capital federal company, this is the government's financial agency and handles all federal receipts and payments. It is also a commercial and agricultural bank.

- Federal Savings and Loans Association (CEF): A savings and mortgage bank, which also administers the Employee Severance Indemnity Fund (FGTS), PIS/PASEP (Social Integration Taxes) and the national lotteries.

The major banks in the private sector have long been organized as financial conglomerates, able to offer a full range of financial services through subsidiary and associated companies as well as associations and mergers with foreign financial institutions. The major banks are considered to be sophisticated and competitive and offer a broad range of financial services.

The Brazilian financial system can be summarized as follows:



Regulation and Supervision Entities			
CMN - National Monetary Council	BCB - Central Bank of Brazil	Financial institutions that receive demand deposits	Multiple banks Commercial banks Savings banks Credit cooperatives
		Other financial institutions	Multiple or universal banks without a commercial bank portfolio Investment banks Development banks Consumer finance companies Savings and loan companies Mortgage companies Development agencies Savings and loan associations Micro-entrepreneur credit companies
	CVM - Securities Commission	Other financial intermediaries or auxiliaries	Commodities and futures exchanges Stock exchange Securities brokers Securities dealers Leasing companies Exchange brokerage companies Representatives of foreign Institutions Independent agents for investments
	SUSEP - Private Insurance Regulator	Insurance and pension entities	Private closed pension funds Private open pension funds Insurance companies Capitalization companies Health insurance management companies
	SPC -Complementary Pensions Department	Portfolio management	Mutual investment funds Investment clubs Foreign investors' portfolios Consortium managers for self-acquisition of durable consumer goods and services
		Settlement and clearing systems	SELIC - Special system for liquidation and custody of government bonds CETIP - Centre for the custody and financial settlement of private issuances Stock exchange clearing system

Source: Central Bank of Brazil website.

Banking sector

The Brazilian banking sector is strong, diversified and adequately capitalized. Its high levels of capitalization and modern corporate governance have allowed it to deal proficiently with the recent global credit crunch. Despite the economic slowdown, credit, as well as bank deposits, have continued to increase. The current rate of growth in this respect is expected to be maintained in the years ahead.

The banking sector offers diversified structured products for wealth management investors, asset management products and insurance products (life insurance and private pension programs).

Commercial banks engage in both wholesale and retail banking and are the primary source of short- and medium-term financing. Financing loans are available to foreign-controlled companies.

Foreign loans are a frequent source of medium- and long-term financing. These loans may take two forms:

- Direct loans from the foreign creditor to the Brazilian borrower.
- On-lending by a Brazilian bank of loans obtained by it from foreign banks. These loans generally have shorter terms than the direct foreign loans.

In recent years there has been a marked increase in the volume of foreign on-lending loan agreements and an increase in the foreign investment coming into Brazil.

In addition to granting loans, commercial banks provide a wide range of financial services, such as accepting deposits, paying cheques, issuing letters of credit, dealing in foreign exchange, cash and asset management services, electronic transfers of funds, investment banking services and investment management.

Investment banks provide a valuable service to both local and foreign investors interested in acquiring medium- and long-term financing. With the assistance of an investment bank, a foreign investor may be able to obtain long-term financing through the sale of stock or debt obligations in the public market or through private placement, as well as performing M&A transactions.

Several prominent foreign banks have subsidiaries in Brazil. In addition, many foreign banks have representative offices that provide various services to their head office and to their customers.

Foreign banks have played an important credit role in lending to local companies. However, under the 1988 constitution, for foreigners to acquire a capital interest in banks they must satisfy conditions which, according to the constitution, should be stipulated by a complementary law. This law has still not been enacted and thus special authorization must be obtained for the installation of new foreign-controlled banks and for any increase in existing foreign capital interests. In recent years, there has been a noticeable increase in the number of acquisitions of financial sector companies (broker houses, custody companies and even small- and medium-sized banks) by foreign entities.

Specialized financial institutions

There are various types of non-depository financial institutions in Brazil, including leasing companies (*arrendamentos mercantis*), finance companies (*financeiras*) and savings and loan associations (*créditos imobiliários*).

Lease finance is readily available from leasing companies. Finance companies provide funding, generally secured against equipment, automobiles and consumer durables. These finance companies include subsidiaries of large manufacturing or retail companies and provide consumer financing to facilitate sales of products. Due to the higher risks and cost of funds, finance companies charge higher interest rates than commercial banks.

Factoring is also available.

Savings and loan associations accept deposits from individuals and provide financing secured against real estate and other assets to companies and individuals.

Investment institutions

Investment institutions other than investment banks include insurance companies, pension funds and investment and mutual funds. The insurance industry is regulated and there are strict controls over investment policies. Insurance premiums and types of risks covered are now influenced by market conditions. Private and public pension plans have grown significantly during the past few years. Pension funds generally invest in common and preferred stocks, corporate and government debt securities, real estate and mortgages. A wide variety of other funds are entitled to invest in Brazilian equities and government bonds, including foreign investment funds. Under recent legislation, Brazilian investment funds are now allowed to invest in overseas investment funds.

Financial markets

Securities markets

As a result of the development of the stock market in Brazil from the year 2000 onwards, regional stock exchanges had to transfer their stocks to the Brazilian Mercantile & Futures Exchange (BM&F) and to the São Paulo Stock Exchange (Bovespa).

In 2008 BOVESPA S.A. - Securities, Commodities and Futures Exchange was created by merging BM&F and Bovespa, forming one of the largest exchanges in the world in terms of market value: the second largest in the Americas, and the leading exchange in Latin America.

Among its broad range of trading products, the new Exchange offers equities, securities, financial assets, indices, interest rates, agricultural commodities, foreign-exchange futures and spot contracts.

For further information about Brazil's secondary or over-the-counter markets, please see Chapter 6.

Sources of funds

Local financing

The various forms of local financing available are briefly discussed above. The following sources are also of interest:

- Some programs offer low-cost financing. These include financing of working capital for small and medium-size businesses, purchase of capital equipment produced in Brazil (FINAME), export financing and rural credit.
- Low-cost export financing is available, principally in the following forms:
 - Advances against foreign-exchange export contracts.
 - Advances against foreign-currency export receivables.
 - Subsidized interest for the financing of production for export, based on past export history and export potential.

Export financing does not normally exceed 360 days. Various other forms of special financing are available for exports, some of which are directed towards specific sectors.

Availability to foreign investors

There are generally no restrictions on the access of foreign-controlled companies to local private-sector financing in Brazil and on their ability to invest in government securities and in listed companies.

A foreign investor has access to the Brazilian securities market through registered Brazilian investment funds. See *Portfolio* investments in Chapter 16 for further details.



Chapter 8 | *Exporting to Brazil*

Tips for exporters

- Import duties are set according to the government's current plan to promote or protect the local market and its foreign-trade balance.
- Trade barriers are wide-reaching, designed to protect the national production against imports.
- Exporters to Brazil should seek advice from local trade and tax consultants before shipment.
- Having a local agent is advisable, in order to obtain quicker customs clearance.
- Related-party sales may need special attention with regard to pricing.
- Duty deferrals are available by using customs bonded warehouses/special tax regimes.
- Customs valuation assessments have increased in recent years.

Import restrictions

After two decades of trade liberalization, Brazil has started to erect trade barriers and to use trade defense mechanisms with the aim of protecting the national industry against the effects of the world economic crisis and the boom of imports from Asian countries. Therefore, certain classes of products are subject to high import duties, import quotas or special customs procedures.

In addition to customs requirements, imports are also subject to the laws and regulations of other government agencies with which the Customs authorities cooperate in enforcement. These may, for example, prohibit or limit entry to certain ports, restrict routing, storage or use, or require special licenses, labeling or processing as a condition of customs clearance.

A few goods are subject to import licenses or permits. Import licenses are controlled by DECEX, the Brazilian Foreign-Trade Department, and the respective consenting government body. Customs clearance is given only if these additional requirements are met. This applies to all types of imports.

Foreign exporters should make certain that the Brazilian importer has provided proper information on the products to the Customs authorities in order for them to verify that information by reference to the products actually shipped and to authorize the entry of the merchandise into Brazil.

Prohibited imports include certain narcotics, obscene, immoral and seditious matter, and certain herbicides.

Imports are not normally limited by absolute annual quotas, although this does apply to certain goods. However, actual imports are monitored against those authorized.

Import duties

Customs duties

Import duty (*imposto de importação - II*) is generally levied on an ad valorem basis on the CIF value of the product. The invoice value is usually taken as the basis for calculating the customs duty, but in order to protect local products or to heavily tax non-essential items, the Foreign Trade Council may establish reference prices or apply specific tax rates. The maximum import duty is currently 35%. How essential goods are is the main criteria used to set the ad valorem rates.

Overall, the import tariff schedules contain 21 sections and 99 chapters, comprising more than 10,000 classifications. Tables classifying the goods subject to duties and tariffs are established by decrees and are published in the MERCOSUR Common External Tariff (TEC). Changes are frequent. Each MERCOSUR state party has an exception tariffs list that includes 100 products. Furthermore, MERCOSUR has created a temporary exceptions list that contains 100 products. This will be in force until December 2014.

Exemptions or reductions in import duties are granted from time to time to certain industries or enterprises considered of particular importance to the Brazilian economy, depending on the region where they are established, the nature of the goods, the resultant increase in the utilization of locally produced material, etc. Duties may also be suspended on goods imported for re-export, for further processing prior to export, or for use in preparing other products for export.

Exemptions or reductions are also granted temporarily when there are shortages of food products and essential raw materials or local prices are deemed to be abusive.

Mail-order imports of up to US\$ 3,000 are subject to 60% import duty. Exemptions are granted in the case of medicine and imports under US\$ 50, provided these are imports between individuals or are for an individual's own use. Alcoholic beverages and smoking products do not benefit from this import scheme.

Import duties must be paid before customs clearance is given.

Manaus, in the Amazon region, is the largest free-trade zone currently authorized in Brazil, and imports into this area are duty-free provided they are consumed or manufactured within the zone or are exported abroad.

Export processing zones and special free-trade areas have been created to develop certain less-developed and frontier regions, but to date most of these are not operational (Also see Chapter 4).

See also *Overseas trade relations* in Chapter 2 for details of Brazil's membership in trade blocs.

Other taxes and duties

In calculating import costs it should be noted that, with a few exceptions, IPI and social contributions (PIS and COFINS) are levied on imports. State VAT (ICMS) is also payable on imports. For details of these taxes see Chapter 21. A further import cost is the AFRMM charge, which is levied at 25% based on the amounts paid for international ocean freight, the proceeds of which are to be used for the renewal of the Brazilian merchant navy.

Port and dock taxes and charges are high by international standards. There are three types of tariffs: an *Inframar* fee (cargo loading, unloading and trans-shipment); an *Infraport* fee (movement of cargo between the cradle and the warehouse or the limit of the port area); and berthing fees.

Documentation procedures

In order to perform any international trade transaction, entities established in Brazil must first obtain an import/export permit (also known as RADAR). This permit is granted by the Federal Revenue Services and enables entities to access the international trade electronic system, SISCOMEX, in which companies register their import declarations or export registrations.

Moreover, some products may require special import licenses. If a license is required, automatic licensing may be obtained for certain products as well as under the drawback regime (see below). Non-automatic licensing is required for imports of used goods, imports under special concessions, goods subject to governmental control or tax incentives and others. Imports may be performed either through fully prepaid letters of credit, which can be financed by local banks, or through credit arrangements. Terms longer than 360 days are subject to special procedures associated with exchange currency procedures.

The following is a brief summary of the documentation procedures:

- License to use SISCOMEX – the electronic platform for register imports and exports.
- Filing of an application for a non-automatic import license, when applicable, before the goods' shipment, This should include the required general information concerning the importer, exporter, manufacturer, country and port of origin, port of unloading, description of the merchandise, FOB price in foreign currency, and supplementary documents as required (these documents do not have to be filed in advance for automatic import licenses and imports which do not require licenses).
- Payment of the application fee.
- Issue of the import license.
- Completion of the import declaration, which is the basic document for customs clearance, containing all data related to the respective import, including duties and taxes incurred. This should be carried out after arrival of the merchandise but before customs inspection.
- The inspection procedures are determined based on the type of inspection required by the Customs authority's system (green, yellow, red or grey channel). The green channel requires no inspection, the yellow channel requires only documentary inspection, the red channel requires physical and documentary inspection and the grey channel requires physical and documentary inspection, as well as special customs procedures (including price control).
- Customs clearance then finally takes place.

Other formalities may be required in certain cases, mainly for imports which are granted special concessions or tax incentives. Transportation in Brazilian vessels may also be required.

Customs and storage

Although customs and storage facilities could be improved, in general they are secure.

Ports of entry and inland transport

Generally, the port of entry chosen by the importer is made available. Inland transport is mainly carried out by trucks and HGVs and may pose problems at times of heavy seasonal activity.

Special customs schemes

Brazil has several special customs schemes that are intended to boost exports. These tax programs provide benefits in the form of exemption, suspension and refund of taxes levied on imported products or on locally purchased products, provided the goods are subsequently exported.

Brazil's special customs regimes include: drawback, temporary import, bonded warehouse and temporary export.

Drawback incentives may be in the form of suspension, exemption or refund of duties and taxes levied on imported items that are subsequently re-exported. The refund of taxes varies, depending on the circumstances. All re-exports are regulated by SECEX. The addition of a certain percentage of local content to the imported items, prior to export, is necessary.

A special program called Blue Line is also available, based on the international Authorized Economic Operator (AEO) concept. This program promotes voluntary compliance with customs obligations by offering preferential treatment in customs clearance procedures for import, export and transit transactions.

Anti-dumping measures

Law 9019/95 and Decree 1602/95 lay down anti-dumping measures. Dumping is defined as the entry of a product into the local market (including under drawbacks) at a price lower than its normal price in the country of origin. If the entry is considered a threat to the local market, anti-dumping measures are employed.

Local representation

Market surveys

Before initiating significant exports to Brazil, it is advisable to survey existing and potential markets for the particular product or service.

Local agents

Due to the bureaucratic documentation procedures and the language barrier frequently encountered, it is recommended that exporters use a local customs agent or broker. These are particularly useful in dealing with the Customs and tax authorities.

Employees/salespersons

There are generally no problems in retaining the services of employees or sales staff, provided they are not given binding powers (see immediately below).

Sales agents or subsidiaries

As discussed under Imports in Chapter 16, products shipped to Brazil and invoiced directly by a foreign supplier to its customer in Brazil, are subject to only Brazilian CIT, if the sales agent or representative domiciled in Brazil, who acts as an intermediary, has the authority to bind the overseas seller contractually. However, if the agent does have such binding powers income taxes are calculated on the deemed profit, based on a percentage of gross income (which varies depending on the activity), plus an additional surcharge of 20%. It is accordingly advisable for the formal representation agreement to expressly preclude the sales agent or representative from contractually binding the overseas principal in any sales contract.

A sales subsidiary in Brazil may be established and is subject to the same taxes as any other local company.

Sources of information

Commercial departments of Brazilian embassies and consulates abroad may provide information and assistance in this area.

- In Brazil, the following organizations provide assistance:
- The Commercial Promotion Department (*Departamento de Promoção Comercial*) of the Ministry of Foreign Affairs, in Brasília.
- Chambers of commerce.
- Industry associations.



Chapter 9 | *Business entities*

Business entity guide

Choice of entity

- The most common corporate forms used by local and foreign investors in establishing a legal entity are a corporation (*sociedade por ações*) and a private limited-liability company (*sociedade limitada*), usually called a *limitada*.

Capital requirements

- In general, corporations and *limitadas* may be wholly foreign-owned. However, Brazilian law imposes certain limitations on foreign direct investment in the following economic activities: health care assistance, coastal shipping, journalism and radio or image broadcasting, cable television, mining, hydraulic energy, highway freight, and airlines.
- All foreign investments must be registered in the Electronic Declaratory Registry for Foreign Direct Investments (RDE-IED) of the Central Bank.
- There are no legal minimum capital requirements for setting up corporations and *limitadas*, except in the case of financial institutions and certain other legal entities with specific business purposes. Additionally, there are no maximum corporate capital limitations.

Founder requirements

- The number of quotaholders in a *limitada* may not be less than two (legal entities or individuals). These may be Brazilian or foreign. Corporations may have just one shareholder, as long as the sole shareholder is a Brazilian legal entity (incorporated under the laws of Brazil). If the corporation has more than one shareholder, these may be either Brazilian or foreign (legal entities or individuals).
- The foreign quotaholder or shareholder of a Brazilian company must be legally represented by a citizen domiciled in Brazil (individual), to allow them to receive court summons, subpoenas and/or notifications on behalf of the foreign quotaholder or shareholder.
- All foreign companies or individuals that own shares or quotas in a Brazilian company are also required to be registered with the Brazilian Federal Revenue (*Receita Federal do Brasil*), and consequently to be enrolled with Federal Taxpayers' Registry for Corporate Entities (CNPJ/MF) or for Individuals (CPF/MF).
- It is usually more complex to incorporate and run a corporation than a *limitada*.

Foreign ownership participation in management

- Ownership, management control and transfer procedures are usually more flexible in a corporation.
- There are no nationality requirements for management, but a foreigner must hold a permanent visa and be domiciled in Brazil in order to be eligible for a management position.
- Union and employee participation in management is an increasing practice.

Repatriation of funds

- Dividends remitted to non-resident shareholders or quotaholders distributed from January 1996, onwards are not subject to any withholding tax.
- The initial investment may be repatriated upon sale of shares or quotas to a resident, free of tax. Capital gains, however, are subject to taxation.
- Capital gains on the sale of shares or quotas may also be remitted abroad, subject to payment of income and/or capital gains taxes, normally at the rate of 15%.
- Payments to a beneficiary resident in a country or location considered to be a tax haven are generally subject to 25% WHT.

Liquidating an investment

- A foreign shareholder or quotaholder may liquidate their investment at any time by selling their shares or quotas or upon liquidation. It should be noted that in order to repatriate investment upon liquidation, the local company must have previously registered the corporate dissolution with the Board of Trade. Moreover, the company undergoing the liquidation process must present debt clearance certificates to the Board of Trade, evidencing the payment of all labor/employment, tax and social security liabilities.

Professional advice

- It is advisable to retain professional advice at an early stage to achieve a smooth establishment process and to ensure regulatory compliance.
- Statutory audits are required only for publicly traded corporations, entities operating in the banking and financial sector, insurance companies, and for closed-capital corporations and *limitadas* considered to be large sized companies (*sociedade de grande porte*), as defined by law (company or group of companies under common control with total assets worth more than R\$ 240,000,000.00 or annual gross revenue higher than R\$ 300,000,000.00).

A detailed checklist of considerations for setting up in Brazil and in structuring an investment is given in Appendix II.

Corporate forms for business enterprises

The corporate forms for business enterprises, as well as those adopted by legal entities that provide professional services, are governed by the Brazilian Civil Code. The only exceptions are corporations, incorporated partnerships (*sociedade em comandita por ações*) and mixed corporations (*sociedades de economia mista*), which are governed by corporate legislation (Law 6,404/76).

The corporate forms in which a business may be conducted are:

1. Corporations (publicly held or closely held):

This legal entity (*sociedade por ações*), commonly known as an SA, most closely resembles a corporation in the United States and other countries and a public limited company (PLC) in the United Kingdom. This is the only corporate form that can be capitalized by private or public subscriptions and is the only type that can have its stock publicly traded.

2. Limited-liability companies:

A private limited-liability company (*sociedade limitada*), or *limitada* (Ltda.), resembles a closely held company in the United States and a private limited-liability company in the United Kingdom.

3. Individual Limited Liability Company:

A individually owned limited liability company (*empresa individual de responsabilidade limitada*), commonly known as an EIRELI, resembles a *limitada*, with the difference that it is incorporated by only one individual (a national or foreigner), who will be the sole-owner of the totality of the company's corporate capital. This new type of company was created to allow some liberal professionals (such as dentists, architects, writers, etc.) to render professional services as a legal entity.

4. Mixed-capital companies:

This legal entity (*sociedade de economia mista*) is owned by the government and investors from the private sector, with the government having the controlling interest. It takes the form of a corporation.

5. Partnerships:

- a. General partnerships: This type of partnership (*sociedade em nome coletivo*) and those referred to below (with the exception of regulated professional partnerships), are formed for business purposes. All partners (individuals only) have unlimited-liability and may take part in management. Only the partnership can be declared bankrupt.
- b. Special partnerships: This type of partnership (*sociedade em conta de participação*) is specifically formed to carry out one or more specific business ventures. The special partnership is an unincorporated entity and thus has no legal identity. It is in effect a participation account registered in the books of one of the partners, who will be responsible for representing the partnership before third parties.
- c. Limited partnerships: This type of partnership (*sociedade em comandita simples*) comprises two or more partners of two types: quotaholders with unlimited (active) and quotaholders with limited (passive) liability. The partners with unlimited-liability may only be individuals.

- d. Incorporated partnerships: This partnership (*sociedade em comandita por ações*) comprises at least one managing shareholder who has unlimited liability and limited shareholders whose liability is limited to the invested capital, regardless of whether it has been paid up. This partnership is governed by a special provision in corporate legislation.
- e. Regulated professional partnerships: This entity (*sociedade simples*) is a partnership formed by certain qualified professionals in order for them to render professional services. It is normally used by doctors, dentists and accountants.

6. Joint ventures:

A joint venture may be set up in several ways, but is always incorporated under one of the corporate forms set out in item 5 above.

7. Branches of a foreign company:

Prior governmental authorization is required for setting up a branch of a foreign company in Brazil. Due to the extremely bureaucratic requirements associated with the creation and maintenance of a branch of a foreign company, which includes the disclosure of the main corporate documents of the parent company, only a very limited number of multinationals operate in Brazil under this structure. Nevertheless, once governmental authorization is granted, the Brazilian branch will be able to function as an extension of the parent company in the pursuit of its economic activities in Brazil.

Foreign enterprise entities

One of the first decisions encountered by foreign enterprise entities undertaking direct investment in Brazil is whether to incorporate the business as a corporation (*sociedade por ações*) or a private limited-liability company (*limitada*); and whether to operate as a subsidiary of the foreign parent company or as a branch. The overwhelming majority of direct foreign investors choose the subsidiary form of operation, based primarily on the insulating effect that incorporation has on the liability of the foreign parent company for the subsidiary's acts. The need to obtain local financing may also influence the decision to operate as a subsidiary.

The tax considerations of subsidiary versus branch operations are discussed in Chapter 16.

Corporations

Organization and incorporation procedures

A corporation (*sociedade por ações* or SA) whether publicly or closely held, is organized and incorporated in accordance with Law 6404/76. If the corporation is, or eventually becomes, a publicly traded corporation, it is also subject to Law 6385/76 and the normative rulings enacted by the Brazilian Securities Commission or CVM.

Approval of corporation bylaws

An inaugural meeting of prospective shareholders must be held to approve the bylaws. This meeting must also enumerate the corporation's core activities, elect management, and confirm the capital, registered office and distribution of shares (as per the subscription list). The incorporation of a corporation must involve compliance with the following preliminary requisites:

- Subscription of all the shares into which the corporate capital stock is divided according to the bylaws. The initial subscribers must be at least two individuals or legal entities that are considered to be founders.
- Payment of at least 10% of the issue price of the shares subscribed in cash, unless specific legislation requires a higher percentage, and deposit of that cash in a bank within five days of receipt. This deposit is released when the corporation has been registered with the Board of Trade (*Junta Comercial*) or after six months if no registration is made.
- Private subscription

Corporations are incorporated by private subscription and can subsequently have their securities publicly traded. Incorporation by private subscription and subsequent transformation into publicly held corporations requires the following:

- Registration of the corporation as a publicly held corporation with the Brazilian Securities Commission or CVM.
- Registration of the proposed issuance of shares or share trading with the CVM.
- Intermediation of a financial institution for the issuance or trading of shares.

In recent years, IPOs of Brazilian corporations have played an important role in business financing, and have been responsible for the growth and consolidation of the Brazilian capital market.

- General meeting of subscribers

When all the corporate capital has been subscribed, the founders must call a general meeting to:

- Procure the appraisal of any assets contributed by shareholders as payment of subscribed capital.
- Approve the incorporation.

Elect management bodies

Upon approval of the bylaws the shareholders must elect the members of the management bodies. At the end of the meeting, the minutes should be read out for the subscribers' approval. After being read and approved, the meeting minutes must be signed by all subscribers in attendance or by the number required to validate the resolutions. The minutes must be kept at the corporation (recorded in the Corporate Shareholders' Meetings Minutes Book), and a copy certified by the chairman and/or the secretary of the meeting must be filed with the Board of Trade.

Formalities

A newly incorporated corporation acquires legal existence upon filing its incorporation documents with the Board of Trade and the subsequent publishing of this meeting's minutes in a widespread newspaper published in the location of its registered office, and in the Official Gazette (*Diário Oficial*). The certificate issued by the Board of Trade confirming the filing of the incorporation documents serves as a legal document for the transfer of assets used to pay in the capital and becomes a matter of public record.

The first officers elected at the inaugural meeting are legally responsible for the new corporation from its inaugural meeting until the required documents have been filed. They are also liable to the corporation for losses caused by late performance of the incorporation formalities. The corporation is not liable for the conduct of its initial officers until all required formalities have been complied with, unless the minutes of the first general meeting stipulate otherwise.



A minimum of thirty days is required to complete the incorporation process by private subscription. Corporations are not incorporated directly as publicly held entities. The normal practice is to apply for listing after the corporation has started doing business.

As a result of the complexity of the bylaws and capital structure, the cost for organizing and incorporating a corporation varies, but for a closely held entity the related costs are generally not less than US\$ 18,000.

Capital structure

Share capital

There is no minimum share capital requirement for a corporation, except for financial institutions and insurance companies. Share capital must be stated in local currency and may be paid in cash or by credit assignment and/or any type of asset that is susceptible of a monetary assessment. The monetary value of an asset should be based on an appraisal report which must indicate the criteria and comparative data used to formulate its conclusions, to be approved by the shareholders at a general meeting. Shareholders using assets to pay in capital may accept or reject the amount approved by the other shareholders.

All shares are nominative and may be issued with or without par value. The issue of common shares with no par value does not preclude the issue of one or more classes of preferred shares with a par value. However, when common shares are assigned with a par value, all classes of shares must have the same par value. The shares of a publicly held corporation may not be issued at a price below their assigned par value and the minimum value established by the CVM.

In general, corporations have at least two shareholders. The CVM may require a minimum number of shareholders in order to award listed status and may also establish a minimum par value. There is no statutory maximum number of shareholders.

Both common and preferred shares must be nominative and evidenced in the registered book (book-entry shares). The issue of bearer shares is prohibited. *The right to convert one type of share into another* depends on the bylaws.

Share classes

A corporation's capital may consist of common and preferred shares.

Privileges, generally priority in the receipt of dividends and reimbursement of capital with or without premiums, and restrictions attached to preferred shares must be specified in the bylaws and must be in adherence with corporate law.

Debentures

Corporations may issue debentures that afford credit rights to their holders in accordance with the terms of the debenture deed and debenture certificate. The body of law regulating the issuing of debentures and the rights of debenture holders is extensive.

Capital increases

The bylaws may authorize the board of directors to increase capital within specified limits without the need to call a shareholders' meeting. In this event, the corporation is required by law to elect a board of directors and the bylaws should specify the following:

1. The authorized capital, i.e. the amount of capital and the series and classes of shares that may be issued.
2. The body authorized to approve the capital increase.
3. Conditions to which the issue will be subject.
4. Circumstances in which the shareholders would have pre-emptive subscription rights.

Capital increases not authorized in the bylaws require the approval of shareholders in a general meeting. These increases generally result from one or more of the following:

1. Conversions of debentures or founders' shares into common or preferred shares.
2. Conversion of debt into equity.
3. Exercising of rights acquired to subscribe shares.
4. Exercising of an option to purchase shares.
5. Capitalization of profits and/or reserves.

Capital increases from public or private share subscriptions may occur only after 75% of the total capital has been paid in. Capital increases from the capitalization of profits and/or reserves must be made so that shareholders' proportional interests remain unchanged.

- Unless the bylaws state otherwise, there are no limits to the amount of financing that can be used to strengthen a corporation's capital structure.
- Capital reduction.

Capital may be reduced for the following reasons:

1. If the capital is considered by the shareholders to be excessive.
2. If the shares issued are not fully subscribed.
3. To offset accumulated losses.
4. To redeem shares.
5. To *reimburse dissenting shareholders for shares*.

If a reduction of capital is deemed to be excessive or if there is a redemption of shares, the reduction becomes effective only 60 days after the publication of the minutes of the meeting at which the decision to reduce the capital was made. During this period, secondary creditors for securities issued prior to the date the minutes are published may oppose the capital reduction. The law further provides that if debentures issued by the corporation are in circulation, the capital reduction may be made only with the prior approval of the majority of debenture holders at an extraordinary general meeting.

Other

Amounts subscribed in excess of the par value of shares issued must be classified as capital reserves, which can be used only for specific purposes. When the shares do not have par value, part of the share's issue price can be assigned as capital payment and part as capital reserve.

Shares are generally freely transferable by the shareholders, but caution must be exercised in regard to any liens and encumbrances attached to the shares, as well as when there are nationality requirements, as is the case in the banking sector.

The shareholders' liability is limited to their investment in the corporation (in the amount subscribed).

Relationship of shareholders, directors and officers

Executive board, board of directors and audit committee

In regard to the responsibilities of officers and directors and those of other oversight bodies, a corporation's bylaws should establish who is responsible for its management. This management may be carried out either by the executive board (officers) and a board of directors, or by the executive board only. Having a board of directors is a mandatory requirement in the case of publicly held and closely held corporations with authorized capital.

The board of directors is responsible for defining the corporate policy and appointing officers and independent auditors. The board does not play an executive role, and the representation of the corporation is the sole competence of the executive officers. The members of the board of directors are not required to be resident in Brazil, although in this case an attorney-in-fact must be appointed for a term equal to the member's term of office, plus three years. This attorney-in-fact must have specific powers that allow for full representation of the board member.

The executive board is composed of two or more individuals, all of whom must be resident in Brazil, regardless of whether they are shareholders. The executive officers are elected by the board of directors or by the shareholders, as the case may be. Up to one-third of the executive officers may also serve on the board of directors. There is no requirement for employees to be represented on the board of directors or in management.

The most important duties of the executive board are to represent the corporation before third parties and public agencies, undertaking obligations and exercising rights in its interest and on its behalf.

Corporations may have a permanent audit committee (*conselho fiscal*), responsible for overseeing the board of directors and the executive board. Audit committees can have sweeping powers and authority. The bylaws should determine whether the audit committee will have permanent status or whether it will operate only when convened by the shareholders. Generally audit committees have a non-permanent status.

The remuneration of executive officers, the board of directors' members and the audit committee must be established by the shareholders. The remuneration may be established as an overall amount or an amount per individual.

Executive officers are not personally liable for the obligations they undertake in the name of the corporation and in the normal course of business. However, they are liable for losses and damages caused by negligent or fraudulent conduct or caused by breaking the law or the corporation's bylaws.

Executive officers are appointed by the board of directors (or a shareholders' meeting, as the case may be) and remain in office for a specified term (no longer than three years). Their authority derives from the corporation's bylaws, from the general shareholders' meetings resolutions or from the board of directors' resolutions.

Types of meeting

Shareholders' meetings called and held in accordance with the law and the bylaws should decide all matters related to corporate business and take whatever resolutions are considered necessary for the corporation's protection and development. There are three types of corporate meetings:

1. Inaugural meetings.
2. Annual shareholders' meetings:

Must be held within four months of the end of the corporate financial year to:

- a. Approve the annual financial statements and the management report;
- b. Approve the proposed distribution of net income for the year; and
- c. Elect the executive officers or the board of directors' members, in addition to the audit committee members, if applicable, and approve the authorised capital, minimum or fixed dividends and premiums on reimbursements, if applicable.

Any other matters requiring the shareholders' approval must be submitted to an extraordinary shareholders' meeting.

Withdrawal

Shareholders dissenting from decisions on fundamental issues have the right to withdraw from the corporation and have the value of their shares reimbursed by the corporation.

Dividend payments

Dividends may be paid out of the net income for the current year or prior years and from profit reserves. In any event, they can be paid only out of a surplus. Preferred dividends may be paid out of certain capital reserves, subject to authorization in the bylaws. Shareholders have the right to receive the mandatory dividend established in the bylaws or, if the bylaws are silent on this matter, half of annual net income. The mandatory dividend may not be less than 25% of net income for the year, unless stipulated otherwise in the bylaws. The mandatory dividend may not be paid by a closely held corporation when there is unanimous agreement of the shareholders against so doing, and may not be paid whenever such payment is incompatible with the company's financial situation, regardless of whether the corporation is publicly or closely held. The net income retained for the latter reason must be transferred to a special reserve and, if not absorbed by subsequent losses, be paid out as dividends as soon as the corporation's financial situation permits. The capitalization of this special reserve is prohibited.

Liquidation and creditors' agreements

A corporation retains its corporate personality throughout the liquidation process until its legal existence is terminated. Normal liquidation occurs in the following circumstances:

4. By termination of the corporation's existence in the circumstances provided for in the bylaws.
5. By a shareholders' resolution.
6. By cancellation of the corporation's authorization to operate.
7. If a corporation is left with a single shareholder and if the minimum of two shareholders is not restored by the following year's shareholders' meeting and the corporation is not declared a sole-shareholder subsidiary (*subsidiária integral*).

Judicial dissolution may occur in the following circumstances:

1. When the incorporation of the corporation is annulled by a claim brought by any shareholder.
2. When a claim brought by shareholders representing 5% or more of the corporate capital confirms that the corporation cannot achieve its business objectives.
3. As a result of bankruptcy in a judicial liquidation.

A temporary voluntary creditors' agreement, called *recuperação extrajudicial* is available when a corporation is in financial trouble and negotiates better terms with a pool of creditors to liquidate its debts, in such a way that it does not stop producing, does not lay off employees, and maintains its core activities.

Liquidation may also occur in special cases by decision of the administrative authorities, pursuant to the appropriate applicable legislation.

Corporations can also be dissolved upon transformation, merger, amalgamation or spin-off, with all equity assigned to other companies.

Books and records

A court order can command disclosure of all books when this has been requested by shareholders representing at least 5% of the capital, when there has been a violation of law or the bylaws, or if there is suspicion of serious irregularities on the part of any of the corporation's management bodies.

Statutory audit

Except in the case of publicly held corporations, large sized companies (*sociedades de grande porte*), banks, insurance companies and other financial institutions, corporations are not required to be audited by chartered independent public accountants (see Chapter 11).

Limited-liability companies and partnerships

Incorporation procedures

The private limited-liability company (commonly known as a *limitada*), individual limited liability company (commonly known as an EIRELI) and all the types of partnerships described at the beginning of this chapter, are formed by signing a public or private deed (articles of association - *contrato social*), which defines its basic governing provisions and, as the case may be, the relationship between the quotaholders/partners. The deed (articles of association) is equivalent to a corporation's bylaws and should contain clear provisions on voting rights, management powers and transfer of capital quotas. In the case of a private limited-liability company, its name must be followed by the word *limitada* or the abbreviation Ltda., whereas, the individual limited liability company must be followed by the abbreviation EIRELI. In the case of partnerships, the name must generally include the names of the managing partners (with unlimited liability).

If the articles of association are silent, the civil code applies to *limitadas*, EIRELIs and partnerships. Corporation law may also be applied if provided for in the deed of the *limitada*.

The articles of association and any subsequent amendments to the provisions governing the entity, including transfers of capital quotas, must be filed with the Board of Trade, whereupon they become a matter of public record. There are no further disclosure requirements.

A *limitada*, an EIRELI and any type of partnership can generally be incorporated in about 45-60 days.

Capital structure

There is no minimum capital requirement for a *limitada* or a partnership and no deposit is necessary for their incorporation, with a few exceptions, such as having a foreign officer. In contrast, an EIRELI must have a minimum corporate capital of at least 100 times the Brazilian minimum wage in force at the time of its incorporation. There is no ceiling on the number of quotaholders or partners each *limitada* or partnership may have, although there must be at least two quotaholders or partners. An EIRELI, however, shall have only one owner. There are no statutory provisions regarding time limits for the paying in of capital by a *limitada*, but the articles of association must stipulate the term during which this will be done. An EIRELI must have its corporate capital fully paid up at the time of its incorporation.

The capital is divided into quotas of equal or unequal value, as specified in the articles of association (*contrato social*). In practice, the capital is usually divided into quotas of equal par value. The number of quotas and corresponding amount held by each of the quotaholders must be clearly stated. Notwithstanding the above, there is no legal requirement to divide an EIRELI's capital into quotas.

Increases and decreases in capital are made through amendments to the articles of association.

If provided in the company's articles of association, its quotas may be transferred between quotaholders or to third parties by means of amendments to the articles of association. The liability of quotaholders of a *limitada* is limited to the value of its quotas, when fully paid in, and secondarily to the total capital, when not paid in. An EIRELI may be transferred to a new individual at the sole discretion of its owner. The liability of the owner of an EIRELI is limited to the value of the company's corporate capital. Partners in general have unlimited liability in respect of the partnership's debts.

Relationship of quotaholders, partners and managers

The management of a *limitada* may be entrusted to one or more quotaholders or non-quotaholders (individuals), resident in Brazil, and the articles of association (or a specific agreement) must state their names and the extent/limits of their powers. The management of partnerships generally follows similar rules.

The responsibilities and duties of an executive officer of a *limitada* are similar to those of a corporation. Thus, in general they are personally liable only for deceit, unlawful acts or when they exceed their powers (as detailed in the articles of association).

Within the four months subsequent to the end of the financial year, the quotaholders of a *limitada* must hold a general meeting (if there are more than ten quotaholders), or pass a written resolution, to approve the management accounts and financial statements, to decide on the allocation of profits and to elect new managers, if applicable.

Limitadas must also maintain corporate books, similar to those of a corporation (except they need not maintain a Nominative Shares' Registration Corporate Book).

Limitadas, EIRELIs and partnerships are not required to publish their financial statements.

There are no specific legal provisions on profit distribution, although dividends may be paid only out of the profits (surplus), if they are legally available for distribution. A *limitada's* quotas can have unequal profit distribution entitlements.

As noted earlier, a *limitada* may be transformed into a corporation or vice-versa (or into any other corporate form).

Liquidation and creditors agreement

Limitadas, EIRELIs and partnerships may go into liquidation as a result of provisions in the articles of association or an agreement/decision between the quotaholder(s)/partner(s), because they have only a single quotaholder/partner, as a result of the end of their term, because of the expiry of an operating license, or as a result of a judicial ruling. Bankruptcy declared in a judicial liquidation is also a reason for liquidation. The conditions for withdrawal, as well as the basis of and timing for repaying quotas/partners, must be clearly established in the articles of association.

A creditors' agreement (*recuperação extrajudicial*) is also applicable to *limitadas* and commercial partnerships and EIRELIs.

Statutory audits

There are no statutory audit requirements, except in the case of large size companies (*sociedades de grande porte*).

Joint ventures

A joint venture may be implemented by a capital association through the incorporation of any chosen corporate form (legal entity), usually a corporation or a *limitada*. The formalities for entering into a joint venture agreement and disclosure requirements depend on the corporate form chosen. Foreign companies and individuals may form a joint venture with or without local participation.

A joint venture may also be implemented through a special partnership (*sociedade em conta de participação* - see above) or through the formation of a consortium, which is neither a legal entity nor a form of capital association. A consortium is used mainly in the case of major contracts for the rendering of services or for the supply of equipment. It is actually a contract, the essential feature of which is the association of two or more enterprises for the joint accomplishment of one specific undertaking. Each associate maintains its respective structure and there is no capital association.

There are no special statutory audit requirements for joint ventures. However, the aforesaid rules applicable to corporations and limited-liability companies and large size companies apply also to joint ventures.

Branches of foreign companies

In order to operate a branch, a foreign company must apply for permission from the federal government. An additional approval must also be obtained for any change in the branch's organization as a result of an amendment to the bylaws of the head office or for any other reason. The competence for authorizing the setting up of branches is currently held by the Ministry of Development, Industry and Foreign Trade.

The branch must operate under the same corporate name its head office uses in the country of origin, although it may add the expressions *do Brasil* ("of Brazil") or *para o Brasil* ("for Brazil"). The subsequent nationalization of branches, i.e. conversion into a Brazilian legal entity, is provided for in the law, and is subject to the federal government's authorization. The authorization decree and other official notices are published in the Official Gazette. These should be filed with the Board of Trade of the state where the branch will be located.

Moreover, an amount for the Brazilian branch's corporate capital must be assigned and paid in before the branch is established. However, the liability for debts and claims in respect of the branch is not limited to that amount but to the head office's capital. No minimum amount has been established for branch capital.

A branch is considered an extension – for the Brazilian operations - of the head office. Furthermore, the head office is liable for the branch's operations. Sweeping powers of administration and representation must be given to the permanent legal representative, who must be permanently resident in Brazil. No annual meeting is required.

A branch is normally closed as a result of a decision of the head office.

The books and records of a branch are kept in the same manner as for corporations (see above and Chapter 11). The foreign company must publish its financial reports, if so required in its country of origin, in the Brazilian Official Gazette as well as in a wide circulation newspaper, in addition to the branch's financial reports. Failure to do so leads to the branch's authorization being revoked.

For the tax implications of a branch for a foreign investor, see Chapter 16.

There are no statutory audit requirements.

Mixed-capital companies

The Brazilian government has a controlling interest in this type of company, which takes the form of a corporation. The other stockholders are private investors. These companies are subject to corporate law and to specific federal laws. Their activities are restricted to the activities specified in the law authorizing their formation.

Entrepreneurs

An entrepreneur is an individual who is professionally engaged in an organized economic activity involving the production of goods or the rendering of services. The entrepreneur must have civil qualifications and be registered in the Public Register before commencing their activities. By operating in this form, all of the entrepreneur's assets, personal or business, are liable for the debts incurred by the business activity.

There are no statutory audit requirements. However, the tax authorities require that adequate books and records be maintained so as to reflect the taxable income and transactions clearly. This is mandated in law. The owner of a sole proprietorship is taxed as an individual.



Chapter 10 | *Labor relations and social security*

Investor considerations

- The labor market is regulated in Brazil.
- Labor disputes are mainly resolved in judicial courts but trade unions are very participative in labor relations.
- Labor legislation is notoriously favorable to employees.
- All employees must be paid an additional month's salary each year as a compulsory (Christmas) bonus.
- Employers must contribute to various federal social security and welfare institutions.
- The social security system covers main employee risks but employers may need to increase certain benefits for middle and senior management.
- Discrimination at work is prohibited.
- Applications to bring in foreign personnel are scrutinized by the federal authorities.
- Employee dismissal is regulated by the federal government.

Industrial relations

Availability of labor

The labor force stands at approximately 107.04 million, or 56% of the total population, with about 17% employed in agriculture, 22% in industry, 18% in commerce and 43% in services. Women comprised about 43% of this workforce in 2009. A significant part of the work force is not formally registered.

In general, adequate labor is available. Semiskilled and unskilled workers are fairly abundant, hard-working and willing to learn, and are relatively mobile. Skilled labor tends to be in short supply. Personnel with proven technical, professional or management skills are growing as company in-house training and other courses take effect, but they continue to be highly sought after.

Employer/employee relations

Extensive social security laws and labor regulations govern employer/employee relations. However, foreign investors have not experienced much difficulty in the way of labor problems, principally because they follow local standards and practices.

Employer/employee relations are dealt with principally in the consolidation of labor laws (CLT) enacted in 1943 and subsequent legislation. The labor laws are applicable to all employees in regular registered jobs, except for public employees and civil servants, who have separate regulations. The labor laws make no distinction between skilled and unskilled workers or between blue-collar and white-collar workers. Therefore, all types of workers are referred to as employees. A change in the legal structure or ownership of an employer does not affect the rights acquired by employees under the labor laws.

All registered employees, including foreigners, are required to hold an employment registration book (*carteira de trabalho*) which must state their terms of employment. Employers must keep official registers or cards containing detailed information about each employee, and every year they must submit returns to the local office of the Ministry of Labor listing all employees, and also reporting the number of foreigners and minors on their books.

In general, terms of employment may not be altered except by mutual consent, but there are exceptions to this rule.

Lockouts are mentioned in the labor laws as acts subject to penalties if undertaken without prior legal authorization or if they are ruled to be abusive by the judicial labor courts.

Employees who take leave to fulfill military or civic duty must be permitted to return to their former position with the benefits corresponding to the position that would otherwise have been attained.

Employees whose terms of service are interrupted due to illness are entitled to social security allowances and upon recovery may return to their former position and obtain all accrued benefits.

Special regulations exist for the protection of minors aged 14 to 18. Apprentices must be between 14 and 24 years of age and must be undergoing occupational training. All minors must be given sufficient time off work to attend educational classes.

All industrial enterprises are required to employ apprentices and register them in National Apprentice Services. Their number may not be less than 5% or more than 15% of the total number of skilled workers employed.

Unions

Trade unions are active and are a force to be reckoned with in the metallurgy, automobile, banking and transport sectors.

The right to strike is recognized and regulated by law. The labor laws legislate for the formation of trade unions on the basis of a similarity of business interests or occupations. Unions may be organized on a citywide or merely a district basis. They may also be combined so as to form state-wide federations or nationwide confederations. As a rule, their membership must represent at least one-third of all persons engaged in the activity or occupation concerned. Membership in a trade union is not obligatory.

Amongst the prerogatives of trade unions are the rights to:

- Engage in collective bargaining, whereby they may sign contracts on behalf of all employees occupied in the activities they represent, whether union members or not.
- Receive contributions from all those employed in the occupation they represent, whether union members or not.
- Receive monthly dues from union members.
- Operate employment agencies.
- Cooperate with the government in studies and research involving the activities of the workers they represent.

Unions are regulated by the Ministry of Labor. The results of collective bargaining are subject to the decisions or approval of the labor courts.

Union representation at locations with more than 200 employees is required according to the Brazilian Federal Constitution.

Employee training programs

Government-sponsored training to improve labor standards includes the following.

- Serviço Nacional de Aprendizagem Industrial (SENAI): SENAI is concerned with all aspects of industrial training under the supervision of the National Confederation of Industry.
- Serviço Nacional de Aprendizagem Comercial (SENAC): SENAC organizes and administers commercial training under the supervision of the National Confederation of Commerce.

SENAI and SENAC are funded by a payroll levy of 1% of gross payroll. Companies that have more than 500 employees are liable to an additional contribution to SENAI of 0.2% of the gross payroll.

Employers in many sectors provide specific training schemes for their employees, mostly in-house, but also use outside consultants and/or vocational and educational programs offered by various schools.

Workers' councils

In the case of employers with more than 200 employees, an employee representative must be elected for the exclusive purpose of ensuring direct employer/employee agreements.

Profit sharing

Law 10,101/00 allows companies to distribute part of their annual net income to employees. Profit sharing must be negotiated on a company-by-company basis and disputes settled by arbitration. Amounts distributed are deductible for CIT purposes and are not subject to labor and social security contributions. The beneficiaries of these amounts are taxed on them.

Working conditions

Wages and salaries

All work of equal value must be remunerated at the same rate, irrespective of the employee's nationality, age, sex or marital status, although discrepancies are allowed for employees working in the same position for two consecutive years more than their colleagues.

A minimum wage is established by law and adjusted annually, which currently stands at approximately US\$ 331 per month. This is usually paid to rural employees and to those who occupy positions which require basic skills. The main labor law provisions concerning wages and salaries are as follows:

National Salary Policy

The National Salary Policy used to change periodically. It is currently based on free collective negotiations.

Deductions and reductions

Employers are not allowed to make any deductions from the employees' remuneration other than those resulting from advances, legal and collective bargaining agreements, and WHT and social security contributions on payroll.

Remuneration may be reduced only in extraordinary circumstances established by law.

Overtime

The additional pay for overtime work cannot be inferior to 50% of the regular wage rate. There are limits on the number of overtime hours that may be worked (a limit of two overtime hours per day is stipulated by Brazilian Labor Law). Managers are not entitled to overtime pay nor work shift control.

Night work

Work performed between 10:00 p.m. and 5:00 a.m., must be paid with an addition of at least 20% on top of the regular hourly rate. Each hour of night work is deemed to last 52.5 minutes for the purposes of this calculation.

Compensation payment

Payment must be made in local currency within the first five working days of the month. Gaps exceeding one month between successive payment dates are not permissible. The remuneration of foreign technicians hired overseas (not through a technical service agreement between a national and a foreign company) on a temporary basis to render specialized services may be stipulated in foreign currency, but payment must be made in the local currency.

Obligatory annual bonuses

Employers must pay an annual bonus, known as the 13th month salary. This bonus is equivalent to one monthly compensation (due in December) and must be paid in two equal portions: the first one upon vacation (if requested by the employee) or by November 30. The second portion must be paid by December 20. Employers' contributions to the Employee Severance Indemnity Fund (see *Termination of employment* below) and social security contribution are also due on this bonus.

Family allowance

The National Institute of Social Security (INSS) pays a small supplementary monthly allowance for all offspring under 14 years of age, for employees receiving remuneration inferior to approximately US\$ 535 per month.

Fringe benefits

Voluntary benefits normally constitute a significant additional employment cost. Some employers provide medical care and meals. Other benefits may also be granted to employees, depending on the nature of the enterprise and the position occupied by the employee. Income tax incentives exist for meals provided under approved schemes. Some companies provide private pension schemes, for which there is special legislation. Group life insurance schemes may also be available.

All employers are obliged to make reasonable provisions for the comfort and convenience of their employees. Appropriate canteen facilities must be provided on the premises if the number of employees exceeds 300. Authorities may require other special facilities to be made available where unusual conditions exist. No industrial enterprise may commence operations until working conditions have been inspected and approved by the authorities.

Employers must also supply transport vouchers to employees, which entitle them to free transport to and from work. Employees contribute the equivalent of 6% of their monthly base salary to the cost of the vouchers.

Some companies also provide meal vouchers, which employees may use in certain restaurants and other eating establishments.

If the above benefits are not granted in accordance with the labor law requirements, or if other benefits are granted which are not necessary for the employee's performance of their work (for example, payment of personal expenses), they constitute fringe benefits/part of the employee's compensation and, as such, should be registered in payroll and subject to payroll taxes and contributions..

Social security benefits are discussed below.

Work shift

The statutory work shift may not exceed eight hours daily or 44 hours weekly. In the case of employers with continuous working shifts, the working day may not exceed eight hours. Unions have been attempting to reduce the working week to 40 hours with some success, and many companies are now working a five-day week of eight hours a day.

Work shifts longer than six hours per day must be interrupted by a break/lunch period of from one to two hours, but this break may be reduced to less than one hour for enterprises that provide adequate canteen facilities, through collective negotiation with the respective union. If the daily work shift is longer than four hours but shorter than six hours, a 15-minute break must be granted. Employees who carry out continuous typing, calculating and bookkeeping work, among others, must be permitted a ten-minute break after every 90 minutes of work. Other specific rest periods are mandated depending on the type of activity performed.

The above provisions do not apply to managers and other employees occupying position of trust (white collar employees).

Paid holidays

Paid bank holidays are listed in *Tips for business visitors* at the end of Chapter 1.

Upon completion of every 12 months of service, employees are entitled to paid holidays of 30 consecutive days to be taken during the next 12-month period. Employees are entitled to an additional one-third of their monthly pay when taking annual vacation. If vacation is not granted in this period, employees must receive double their remuneration. Up to one-third of the holiday entitlement (vacation) may be paid in cash instead, if the employee so desires. In addition, employees may choose to receive 50% of their 13th month salary (see Obligatory annual bonus above).

Equal opportunities

This is not yet an important factor in industrial relations in Brazil.

Health and safety

Various regulations cover health and safety issues in relation to dangerous and unhealthy activities. Many companies have a training and education system designed to reduce the number of health and safety hazards in the work place. It should also be noted that activities listed as dangerous or unhealthy to employees involve special provisions in terms of salaries, breaks and other matters.

Termination of employment

All employers must contribute to the Employee Severance Indemnity Fund (FGTS) an amount equivalent to 8% of the gross monthly remuneration of each employee.

Contributions are credited to bank accounts in the name of each employee and accrue interest at the Reference Rate (*Taxa Referencial – TR*), equivalent to approximately 3% per year. These contributions are deductible expenses for CIT purposes. The balances in these bank accounts may be withdrawn by employees upon termination of employment under the following circumstances:

- Dismissal without cause, or where the employer and employee are considered to be mutually at fault. In the case of dismissal without fair cause, the employer is obliged to pay the employee an additional penalty equal to 40% of the accumulated balance in the employee's FGTS bank account, and 10% to a government social fund. If employer and employee are mutually at fault, the additional amount payable is 20% of the FGTS balance.
- Liquidation of the enterprise or termination of operations resulting in cancellation of the employment contract.
- Retirement in accordance with the social security regulations.
- An employer may insist on retirement when an employee reaches 70 years of age.
- Death of the employee, in which case the balance in the FGTS account is included in the deceased's estate.

Employees may use their FGTS balance at any time to purchase a personal residence under a government-approved housing financing scheme.

Normally, both employer and employee are obliged to give 30 days' notice of their intention to terminate employment. Since October 2011, a new Brazilian law provides that, in the event of termination by the employer without just cause (as defined by law), the mandatory prior notice period must be granted during the first year of work and to it is added three days for each additional completed year of work with the same employer, up to a maximum limit of 90 days.

If the work contract is terminated by the employer without such notice, compensation corresponding to the period of notice must be paid. For all employees with more than one year of service, the settlement of an employee's termination rights under the labor laws must be signed by the employee in the presence of a representative of the labor authorities or union. After notice has been given by the employer, the employee must be granted two hours' leave per day for the purpose of finding another job.

Accrued holiday pay (vacation) is also due upon termination of employment, even if the employee has not completed 12 months of work.

Social security

Social security system

The social security system is regulated by law. The system provides benefits like pensions, sickness and maternity assistance and accident insurance. In practice, many employers supplement benefits by making contributions to private medical, dental and hospital plans with a view to bettering the services provided by the government.

There is an official unemployment insurance program.

Coverage

All persons in gainful employment and their dependents are covered by the social security system, provided contributions have been paid. Foreign personnel cannot choose to forgo coverage. Contributions are forfeited if a foreigner leaves the country before qualifying for a pension, or after twelve months from the moment contributions are discontinued, provided that the minimum period was reached. The self-employed pay social security taxes for their own future benefit.

Contributions

Employees contribute each month to the social security system at the rate of 8-11% of a progressive-scale base salary, with a maximum monthly contribution of approximately US\$ 210. These contributions are withheld from payroll. Employer monthly contributions are made at 20% of the gross payroll. The contribution of financial institutions and insurance companies is 2.5% higher. In addition, employers are required to make monthly contributions to other funds and also to cover expenses with work accident insurance, which could currently amount to as much as 11.8% of gross payroll. Such contributions may be increased or reduced according to the number of work-related accidents suffered by the company. Employees and employers' contributions are deductible for income tax purposes.

Currently, payroll costs are reduced in certain industries including IT, clothing, leather, footwear, furniture manufacture among others. A fixed rate of 1 % (2% for IT services) is charged on a company's gross revenue.

For further details, see Appendix III.

Certificates showing that employers are up-to-date with their contributions are required before they can engage in certain business activities, such as public bids, real estate mortgages or sales, capital reductions, mergers and spin-offs, amongst others.

The unemployment insurance program is funded by proceeds from the Social Integration Program tax (PIS/PASEP).

Benefits

All social security system benefits are calculated on the basis of what is known as the benefit wage (*salário de benefício*). This is generally computed on the base salary used for contributions made during various periods prior to the date of claims, according to the kind of benefit. For further details, see Appendix III.

The main benefits are as follows:

Old-age pensions

Old-age pensions are paid from the age of 65 for men and 60 for women, providing at least 180 monthly contributions have been made.

Retirement pensions

Retirement pensions are normally available if an employee has worked for 35 years (men) or 30 years (women). The qualifying period of service is shorter for certain types of work, e.g. dangerous, unhealthy or fatiguing work, provided contributions have been made for at least fifteen years. Employees entitled to receive retirement pensions may continue to work for the same or a different employer.

Disability pensions

The invalid pension replaces the sickness benefit and accident insurance benefit, subject to formal approval of the government social security fund.

Sickness benefits

Sickness benefit is payable if the insured employee is unable to work for a period of more than 15 days and continues for the duration of the infirmity. It can be replaced by the disability pension.

Accident insurance benefits

When incapacitated by an accident, employees receive full pay for the first 15 days' absence and then a certain amount monthly. If it is determined that the accident victim has been left permanently incapable of working, the accident insurance payments are replaced by the disability pension.

Maternity leave

The period of maternity leave is 120 days at full pay. Spouses are allowed paternity leave of five days at full pay. Companies that apply for a special Government Program called Empresa Cidadã may guarantee an additional 60 full pay days and deduct the corresponding payment for CIT purposes.

Other benefits

Other social security benefits include pensions for the dependents of deceased beneficiaries, assistance for the dependents of insured prisoners, birth grants, maternity assistance, funeral grants, and the family allowance for offspring under 14 years of age.

All benefits are adjusted annually on the basis of official inflation indexes.

Unemployment relief

Unemployment benefit is granted under certain conditions to employees under an employment contract and domestic employees, amongst others. The respective amount is paid in up to five installments. Unemployment pay, as a general rule, is not granted to those dismissed from work for misconduct, those who stopped working without reason or those unable or unwilling to work.

International agreements

Agreements with other countries regarding the coordination of social security systems are listed in Appendix I.

Payroll costs

Labor costs (wages, salaries, fringe benefits, severance payments, payroll taxes, social security and welfare contributions, etc.) comprise a significant portion of overall production costs, as they have risen considerably as successive governments have increased contributions and benefits. As a percentage of overall production costs, labor costs are generally lower in Brazil than in North America and most European countries but are higher than in many Asian countries.

Expatriate personnel in Brazil

Work permits

There are two types of visas that allow foreigners to work in Brazil:

Temporary visas:

Provided there is an employment contract with a Brazilian company, the holder is entitled to work in Brazil for two years. The visa is renewable for as long as the contract regarding the holder's permanence in the country is valid. Foreigners are deemed to be employees of the Brazilian company and are entitled to all labor rights and are subject to the Brazilian Social Security System.

Where there is no contract, a visa is issued for foreign individuals involved in specific projects that lead to the effective transfer of know-how/technology to Brazil and the remuneration must be paid through foreign sources. In such a case, the foreigner is not considered to be an employee of the Brazilian company and is not entitled to labor rights and/or subject to the Brazilian Social Security System.

Permanent visas:

These visas may be granted to those hired to work in Brazil for an indefinite period and are generally issued to senior executives (directors) of foreign companies being transferred to Brazil and individuals with specialist skills not readily available in Brazil.

The Brazilian authorities require minimum foreign investment of approximately US\$ 300,000 per expatriate worker, duly registered with the Central Bank of Brazil. The investment can be reduced to approximately US\$ 75,000 if the company generates at least ten direct jobs during the period of two years following the foreigner's appointment in the bylaws/articles of association of the Brazilian company. In this case, the individuals are usually not entitled to labor rights but are subject to the Brazilian Social Security System.

These visas can also be granted to individuals marrying Brazilians or who have Brazilian-born offspring. In this case, the individual is deemed to be a Brazilian national. In other circumstances it is difficult to obtain a permanent visa.

Foreigners not in possession of one of the above visas may not work in Brazil. It is advisable to apply for any type of visa well in advance. Note that holders of business visas will be able to enter Brazil only to attend meetings, workshops and visit clients. These visas are valid for a maximum stay of 90 days and up to 180 days per year. These visa holders cannot be registered as employees of a Brazilian entity.

Permanent visas are valid for up to five years.

Special arrangements or concessions

Social security benefits are the same for all employees, regardless of their nationality. Contributions to the social security fund are not refunded if an employee leaves the country. Those working under a temporary residence visa are also entitled to annual holidays, standard working hours, accident insurance and social security benefits.

Foreigners arriving on permanent visas may bring with them otherwise dutiable household goods without paying duty. Duties may be imposed if these goods are sold inside Brazil before certain time limits have expired. The same applies for holders of temporary residence visas, except that these are required to repatriate all otherwise dutiable household goods when they leave.

Restrictions on employment

All employers, with a few exceptions, are required to employ Brazilian citizens in a proportion of at least two-thirds of their overall staff, both in terms of numbers and total remuneration. Exceptions may be made for skilled workers and technicians. Foreigners resident in Brazil for ten years or more, or those with a Brazilian spouse or child born in the country, qualify as Brazilians for this purpose. In the event that employees have to be made redundant as a result of downsizing, Brazilians carrying out the same duties as foreigners must be given preference as regards retention.

Living conditions

In general, living conditions in the major urban areas are similar to those in the United States or Europe, although personal security is more of an issue. High-standard accommodation is available, in both houses and apartment buildings. There continues to be considerable reliance on domestic help although the use of household appliances is high. There are no restrictions on a family accompanying foreign personnel into Brazil, although this is not necessarily so for domestic workers. Most major urban areas have adequate education facilities for the children of foreign personnel up to comprehensive school level.

Domestic help and food are relatively inexpensive by international standards. Housing costs vary from city to city but, depending on the location and quality, may well be higher than in most developed countries.

In most areas of the country an automobile is necessary for transport around the neighborhood, shopping and going to and from work. Supermarkets, delicatessens and drug stores stay open most evenings.



Audits and accounting

Investor considerations

- SA corporations are required to publish their annual financial statements.
- The annual financial statements of all listed companies and all large companies (entities with total assets of over R\$ 240 million - approximately US\$ 117 million - or annual revenue over R\$ 300 million - approximately US\$ 146 million) must be audited by an independent auditor registered with the Brazilian Securities Commission (CVM).
- Financial institutions and other entities under the jurisdiction of the Central Bank, as well as insurance companies, are required to prepare annual and semi-annual audited financial statements.
- The quarterly financial information of listed corporations and financial institutions must be filed with the respective regulator (CVM or the Central Bank) and reviewed by an independent auditor.

Statutory requirements**Digital books and records**

In January 2007, Federal Decree 6022 implemented the Public Digital Bookkeeping System (SPED), a tool that unites the activities of receipt, validation, storage and authentication of documents and books that integrate the taxpayer's commercial and fiscal bookkeeping, through a single, computerized flow of information and the use of digital certification.

SPED is an integrated initiative of the federal financial administration for three different areas: Digital Fiscal Bookkeeping (*Escrituração Fiscal Digital* - EFD), Digital Accounting Bookkeeping (*Escrituração Contábil Digital* - ECD) and Electronic Invoices (*Nota Fiscal Eletrônica* - NF-e).

The Accounting SPED – ECD tool is intended to replace the issuing of hardcopy accounting books with softcopies. The general journal (*livro diário*), general ledger (*livro razão*), auxiliary books and the trial balances and balance sheets are generated as part of a set of digital documents. The project includes the presentation of information for the federal, state and, hereafter, municipal tax authorities, as well as for the National Registration Department of Commerce (*Departamento Nacional de Registro de Comércio*), the Central Bank (BACEN), SUSEP and the Securities Commission (CVM). These accounting books must be delivered by the currently stipulated deadlines.

Audited financial statements

The annual financial statements of the following entities must be audited by independent auditors registered with the CVM, Central Bank and other government agencies, as applicable:

- Listed corporations
- Large companies, as defined above
- Financial institutions and other entities under the jurisdiction of the Central Bank
- Investment funds
- Insurance companies, and
- Private pension funds.

Financial institutions and insurance companies must also have their semi-annual financial statements audited. The quarterly financial reports of listed entities under the jurisdiction of the Brazilian Securities Commission and of financial institutions under the jurisdiction of the Central Bank must be reviewed by independent auditors.

When a closely held corporation does not have independent auditors, the company's audit committee (*conselho fiscal*) may appoint them at the corporation's expense if it is believed that this is necessary for the proper fulfillment of its responsibilities.

Even when not required by regulation or bylaws, banks and other financiers frequently require audited financial statements from borrowers.

The tax authorities do not require audited financial statements.

Internal auditors cannot be used as statutory auditors.

The accounting profession

Professional requirements

There are two classes of accountants in Brazil:

Accountants (*contadores*): Accounting graduates who are permitted to engage in all types of professional work.

Accounting technicians (*técnicos de contabilidade*): Non-graduates whose field of professional activity is restricted.

Holders of non-Brazilian university degrees in accountancy may apply to have such degrees revalidated in order to practice in Brazil. This requires sitting examinations on subjects that the state or federal universities consider not to be covered in courses taken outside Brazil.

Accountants may practice until their qualifications have been recognized and registered by the appropriate Regional Accounting Council (CRC). Only accountants (*contadores*) may work as auditors.

Auditors are required to pass a technical qualification exam before they are able to work as auditors. There is a national register of independent auditors (*Cadastro Nacional de Auditores Independentes - CNAI*) which is managed by the Federal Accounting Council (CFC) which assesses the competence and skills of accounting professionals who wish to work as auditors. Additionally, all auditors of entities regulated by the Central Bank, CVM and the Private Insurance Regulator (SUSEP) must pass the respective additional exams.

Independent auditors (individuals or firms) of listed companies in Brazil are subject to peer review, a quadrennial review of policies and specific engagements by another independent auditor under a program managed by members of the CFC and the Institute of Independent Auditors of Brazil (IBRACON).

Federal Accounting Council and Regional Accounting Council

The accounting profession is regulated by an authority called the Federal Accounting Council (CFC) which is composed of members elected by representatives of the various Regional Accounting Councils (CRCs). The elected members of the CFC in turn elect a president.

The CFC is a supervisory body which interprets how the law governing the profession is to be applied and oversees its enforcement. The CFC is called upon to resolve any disagreement at a regional level. Both the Federal and Regional Councils pass judgment on ethical matters.

Institute of Independent Auditors

The Institute of Independent Auditors, IBRACON, is a private institution founded to complement, but not substitute, the CFC, primarily in technical matters. Preparing additional auditing guidance is one of its activities. IBRACON also had initiatives to prepare accounting pronouncements until 2007, but those activities are now the responsibility of the Accounting Pronouncements Committee (CPC).

Accounting Pronouncements Committee

The CPC was created under the auspices of Federal Law 11638, which authorized the CVM, the Central Bank and other regulatory bodies and agencies to enter into an agreement with an entity for the purpose of studying and disclosing accounting and auditing principles, rules and standards and, as part of their regular activities, to fully or partly adopt that entity's pronouncements and other technical guidelines.

The CPC is mostly composed of accountants and also includes, on an equitable basis, representatives of entities that prepare financial statements, entities that audit and analyses financial statements, the CFC, the Brazilian stock exchange and universities or research institutes with renowned expertise in the accounting and capital market areas.

Auditing standards

Financial statements and the accounting principles reflected therein are representations of management. The independent auditors confirm whether the financial statements conform to published accounting principles. To do so, they must examine the financial statements in accordance with approved Brazilian auditing standards, which are fully convergent with international auditing standards (ISAs) as issued by the International Federation of Accountants (IFAC) through the International Auditing and Assurance Standards Board (IAASB).

The original IAASB numbering system is followed in Brazil, to facilitate updates or reviews. Despite the continued use of the numbering system, the structure of Brazilian standards is classified as professional (which includes the code of ethics) and technical (ISAs, ISAEs, ISRSs, ISREs). For example, instead of ISA 210 as issued by IFAC, this standard is numbered NBC TA 210; instead of ISRE 2400 this standard is numbered NBC TR 2400.

In general, auditors follow Brazilian audit standards, which are convergent with the current international audit standards issued by IAASB. However, small and medium audit firms that carry out audits in non-regulated entities do not need to apply these standards in their audits, even if such entities are required to publish their accounts. This waiver includes the audits of the small and medium entities (SMEs) that do not have debt or equity instruments traded in public market, are not financial institutions, as defined by the Brazilian Central Bank, not subject to regulations or in process of filing their financial statement with the CVM and the Superintendence of Private Insurance (SUSEP).

The text above does not provide comprehensive information to allow you to assess and understand audit requirements and practices in Brazil. We strongly advise that you seek help from your accounting consultants when assessing these matters.

Investor considerations

- Law 11,638, enacted in 2007, has modified Brazilian Corporate Law and legislation regarding the Brazilian securities market and the CVM. These modifications to Brazilian Corporate Law were necessary, in order to provide the flexibility and agility to move forward towards convergence with IFRS.
- Full convergence with IFRS was achieved at the end of 2010 for consolidated financial statements (F/S).
- Listed companies prepared their 2010 consolidated F/S in full compliance with IFRS as issued by the IASB. Their standalone unconsolidated F/S, however, are still prepared in accordance with accounting practices adopted in Brazil. Other companies are not required to adopt IFRS and may prepare their consolidated F/S in accordance with accounting practices adopted in Brazil, although, in theory, there should be no differences between these practices and the IFRS.
- Separate (or individual) F/S do not adhere to IFRS when investments in subsidiaries, joint ventures and associates are accounted for as the equity method is applied in these F/S (IFRS applies a cost or fair value method). Some residual balances of deferred charges are allowed to remain until final amortization.
- In order to facilitate an analysis by potential foreign investors, we summaries below the requirements of the Brazilian accounting practices and compare them with international requirements, i.e. IFRS.

Summary of the accounting practices adopted in Brazil

The Accounting Practices adopted in Brazil (BR GAAP) are founded upon Brazilian corporate law. At the end of 2007, a new law (Law 11,638) modified Brazilian corporate law, effective from 2008.

This law was an important step towards making BR GAAP equivalent to IFRS. The local standard setter, the Accounting Pronouncements Committee (CPC), was established in 2007 and is responsible for issuing new Brazilian accounting standards, which must then be endorsed by the applicable regulators, such as the CVM, the Central Bank or the Private Insurance Regulator (SUSEP). Representatives of the regulators usually attend CPC meetings as observers, so they are familiar with the new standards and can approve them soon after they have been finalized by the CPC.

The CVM, the Central Bank and SUSEP have each issued regulations requiring that the entities regulated by them prepare consolidated financial statements in accordance with IFRS for the 2010 or 2011 calendar year, depending on the case. These regulated entities will still prepare their standalone financial statements in accordance with BR GAAP. Please refer to the section *Mandatory Adoption of the CPCs* below.

Except for the consolidated financial statements mentioned in the previous paragraph, all legal entities in Brazil must prepare their individual or standalone financial statements in accordance with BR GAAP. Individual financial statements differ conceptually from separate financial statements in IFRS. In the individual financial statements, investments in subsidiaries, associates and joint ventures are accounted for using the equity method, while IFRS require that such investments be accounted for at cost or fair value, in separate financial statements. Also, when the transition to the new CPCs took place, companies had the option of keeping the residual balance of any deferred charges (mostly related to start-up costs) accounted for under previous GAAP, until this was fully amortized.

Standards issued by the Accounting Pronouncements Committee (CPC) are referred to as CPCs. These are essentially translations of the respective IFRS standards. Only the following IFRS standards had not yet been converted into CPCs as at December 31, 2011:

IFRS Standard	Comments
IFRS 6 – Exploration for and Evaluation of Mineral Resources	Not relevant since the current industry practice in Brazil is in accordance with IFRS 6.
IAS 26 – Accounting and Reporting by Retirement Benefit Plans	Specific to a particular class of entities. Adoption in Brazil will require coordination with the pensions regulator.
IAS 29 – Financial Reporting in Hyperinflationary Economies	Not relevant, since Brazil has not been considered a hyperinflationary economy since 1998. The CPC is also discussing with the IASB Brazil's approach to hyperinflationary accounting before issuing the equivalent standard. We have not seen a difference in practice.

Although not all IFRS interpretations by the IFRIC/SIC have been converted to CPC Interpretations (ICPCs), the CPC believes this is not an issue due to the nature of those interpretations not yet converted. If an issue arises for which there is no ICPC, but an IFRIC interpretation is available, it is likely management will follow the available IFRIC guidance, in accordance with CPC 23 (equivalent to IAS 8).

The CPCs are more restrictive, as enforced at law, than IFRS. For example, they do not permit certain alternatives that are allowed by IFRS, such as:

- Revaluation of fixed assets and intangibles.
- Presentation of the Statement of Income and the Statement of Comprehensive Income in a single statement.

In accordance with the Statement of Best Practice that deals with the relationship between the IASB and the other Accounting Standard Setters, the addition of disclosure requirements or the removal of optional procedures is not viewed as incompliant with IFRS.

Mandatory adoption of the CPCs

The CPCs are issued by the Brazilian Accounting Pronouncements Committee (CPC), and their adoption is required for all companies once the applicable regulators have approved them. Please see below a summary of the enforcement of the new CPCs and IFRS by the relevant regulators:

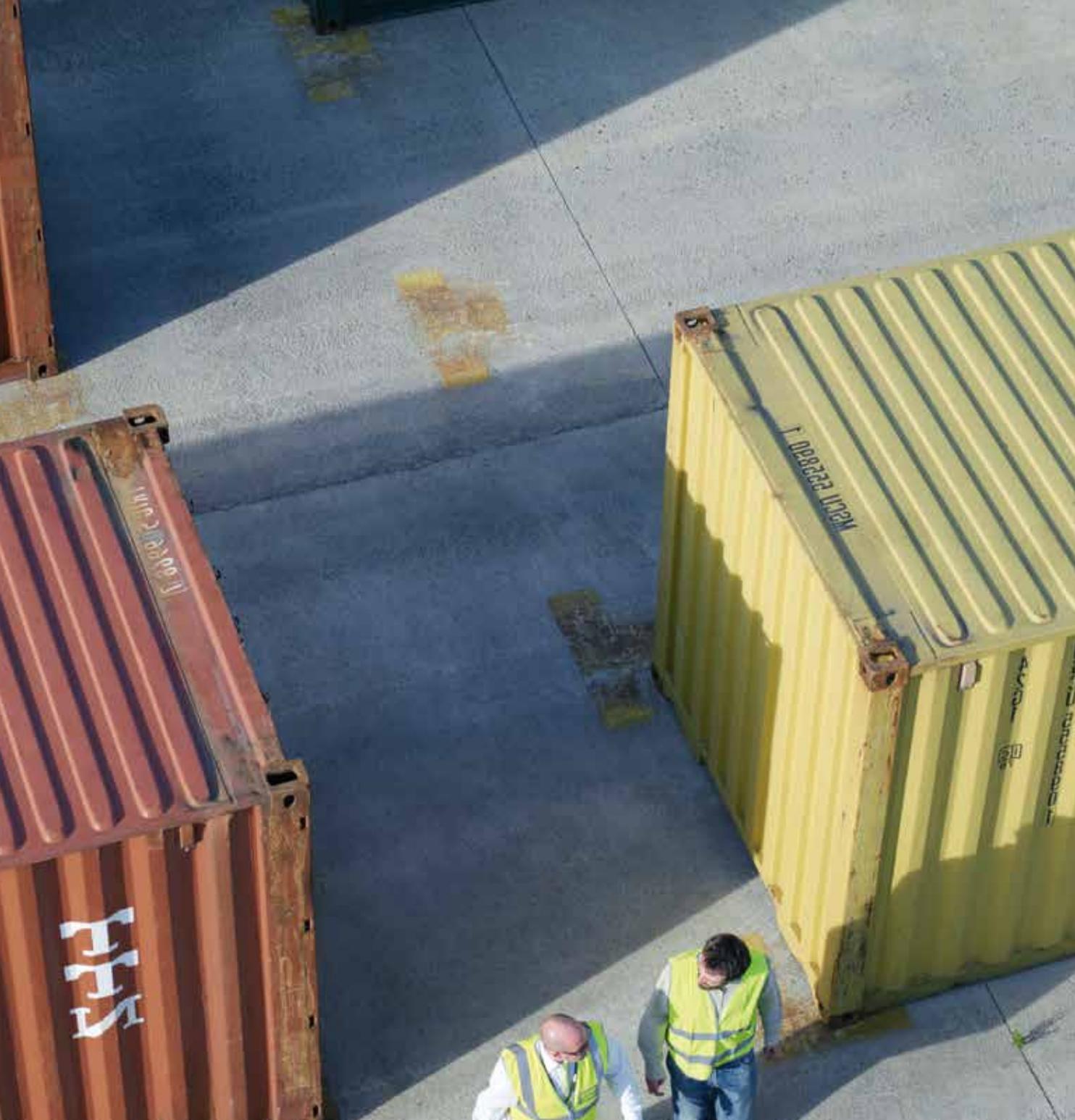


Company types	Regulator	Status
Listed companies	CVM	<ul style="list-style-type: none"> • Consolidated F/S in accordance with IFRS as from 2010, with early adoption allowed • Individual F/S in accordance with BR GAAP. <p>All CPCs have been approved by the CVM. The CPC exposure draft process of new standards occurs simultaneously with the CVM's process.</p>
Financial institutions	Central Bank	<ul style="list-style-type: none"> • When these financial institutions are listed companies or are obliged to have an audit committee, they must also prepare consolidated F/S in accordance with IFRS (from 2011), with early adoption allowed. For other financial institutions, these may apply IFRS or prepare them in accordance with BR GAAP applicable to financial institutions regulated by the Brazilian Central Bank. • Individual F/S that are in accordance with BR GAAP are applicable to financial institutions regulated by the Brazilian Central Bank. <p>Although the Central Bank participates in CPC meetings and the convergence process in general, in practice only few CPCs have been approved by this regulator. Consequently, there might be material differences between the Individual financial statements prepared under BR GAAP (as above) and the Consolidated F/S prepared under IFRS.</p>
Insurance companies	SUSEP	<ul style="list-style-type: none"> • Consolidated F/S in accordance with IFRS as from 2011 • Individual F/S in accordance with BR GAAP, applicable to insurance companies regulated by SUSEP. <p>All CPCs have been approved by SUSEP. Therefore, for the individual F/S the situation is similar to that for listed companies, except for the fact that SUSEP has issued some specific guidance that might mean that there are fewer additional differences in practice.</p>
All other companies	CFC	<ul style="list-style-type: none"> • Consolidated and individual F/S prepared in accordance with BR GAAP, which reflect the new CPCs • The CPC has adopted a standard equivalent to IFRS for Small and Medium Entities (SMEs), which is already effective in Brazil for all companies except for those that have to apply full CPC or IFRS: <ul style="list-style-type: none"> - Listed companies - Large companies (total assets of over R\$ 240 million or total gross revenue greater than R\$ 300 million) - Financial institutions - Other entities with relevant public accountability

CVM and CFC have provided additional guidance on how to apply particular standards in specific industries in Brazil, such as real estate (construction) and concession arrangements. This additional guidance address Brazilian civil and commercial codes within the IFRS framework. In addition, you should note that it is sometimes necessary to prepare an additional set of financial statements specifically for certain regulated activities, to meet specific requirements from the relevant regulator (e.g. in the energy and gas sector etc).

The information given above should not be taken as your only source when assessing and obtaining an understanding of the differences between BR GAAP and IFRS. We strongly advise that you seek the assistance of your accounting consultants when assessing these differences.





Taxation

Chapter 13 | ***Tax system******Investor considerations***

- Corporate income tax is computed on the basis of taxable income at a single tax rate, with a surcharge on income over a certain level.
- Dividends distributed to shareholders are not taxed at source.
- Foreign profits/income/gains of any kind are subject to Brazilian income tax.
- Individual taxpayers, including resident foreigners, are taxed on worldwide income at progressive rates.
- Non-residents are taxed only on Brazilian-sourced income.

Principal taxes

The principal federal, state and municipal taxes are as follows.

Federal:

- Income tax (IR).
- Social contributions on net income (CSLL).
- Excise tax (IPI).
- Import tax (II).
- Export tax (IE).
- Tax on financial transactions (IOF).
- Social contribution on billing (COFINS).
- Contribution to the Social Integration Program (PIS/PASEP).
- Contribution for Intervention in the Economic Domain (CIDE).
- Rural property tax (ITR).

State:

- Value-added tax on sales and services (ICMS).
- Inheritance and gift transfer tax (ITCMD).
- Road tax (IPVA).

Municipal:

- Service tax (ISS).
- Property taxes (IPTU and ITBI).

For details of Brazil's principal indirect taxes see Chapter 21.

Tax guarantees

Tax guarantees do not exist under the Brazilian tax system.

Legislative framework

Statute law

The Brazilian tax system is primarily governed by the Federal Constitution and by the National Tax Code (*Código Tributário Nacional* - CTN), which was consolidated in 1966. This basic legislation contains all general provisions, definitions, competences, procedures, and limitations concerning the tax system. The CTN is universal and must be observed by all tax authorities in the country: federal, state and municipal. Legislation is frequently introduced and changed by laws and provisional measures, but retroactive legislation is not permitted, except when it benefits the taxpayer and when the taxable event affected has not yet been completed. Within the executive branch, the Ministry of Finance has the responsibility for implementing tax statutes. This function is specifically carried out by the Brazilian Revenue Service (*Receita Federal do Brasil* - RFB), whose duties are to interpret the statutes in accordance with the intent of the CTN, and to enforce them.

The interpretative duties of the Ministry of Finance and RFB range from the general to the specific. Regulations are written in broad, general terms to explain and illustrate the provisions of the CTN. However, revenue rulings interpret the CTN by making reference to specific facts. Revenue regulations are issued to announce administrative practices that the RFB follows.

Case law

Judicial interpretations provide varying degrees of precedent, depending on the nature of the matter and the jurisdictional authority of the court that delivered the opinion. In situations where the statutory authority alone does not provide a definite solution for a particular tax issue, the taxpayer must consult legal counsel as well as the administrative authorities, in order to resolve the matter. In spite of the absence of the binding precedent concept as understood in countries with a common law tradition, case law usually exerts a tangible influence over other comparable cases as well as the decisions of the tax authorities.

Records of disputes in the legislature, as well as leading professional and academic opinions, are important sources of interpretation. Opinions issued by persons of excellent professional reputation help develop arguments in support of specific cases, particularly in contentious areas.

Anti-avoidance

Business purpose and economic substance are factors that must support any transaction.

The Complementary Law 104/2001 (still pending regulation) allows administrative authorities to “disregard legal acts or transactions effected with the objective of dissimulating the occurrence of a taxable event or the nature of the elements that constitute the tax obligation, with due observation of the procedures to be established by ordinary law”.

Limitation in deductibility of amounts paid to tax haven jurisdictions

More recently, Provisional Measure 472/2009, published on December 16, 2009, and converted into Law 12,249/2010 on June 14, 2010, has limited the deductibility for local CIT purposes of amounts remitted to tax haven jurisdictions (as stated in Brazilian legislation), to cases where operational substance can be allocated abroad (e.g. where there is identification of an effective beneficiary of the amounts remitted, proof of operational capacity of the individual/legal entity, and gathering of documentation related to the payment of the respective price and receipt of goods, services and rights). Please note that this limitation is not applicable to interest on net equity remittances.

The proof of operational capacity of the legal entity abroad will not be required: (i) in cases of transactions which have not taken place with the sole objective of tax avoidance, and (ii) provided that the beneficiary of the amounts remitted is a wholly-owned subsidiary or branch of the Brazilian entity and the profits of this wholly-owned subsidiary or branch have been taxed in Brazil in accordance with the legislation in force (i.e. at the time the profits of the foreign entity are considered available to the Brazilian controlling company, which occurs in the closing of the financial statements by the foreign entity, at the end of its financial year). For more details, please refer to Chapter 18.

In accordance with Normative Instruction 1,154, in force since May 13, 2011, this limitation in terms of deductibility is not applicable to operations carried out by foreign investors (legal entities or individuals) which perform financial operations in Brazil according to the rules and conditions established by the National Monetary Council (*Conselho Monetário Nacional*).

Clearance procedures

It is not necessary to obtain advance approval from the tax authorities before entering into significant transactions. However, in most business which involves interaction with the public sector a tax clearance certificate (*Certidão Negativa de Débito – CND*) is required.

Public Digital Bookkeeping System – SPED

As has been said, Brazil is currently implementing a new public digital bookkeeping system known as SPED, which aims at gradually replacing hard copies of invoices and tax records with soft copies.

As it comprises three separate modules (electronic invoices, digital fiscal bookkeeping and digital accounting bookkeeping), the implementation of SPED requires important changes in the way in which tax payers interact with tax authorities, clients, suppliers. It also requires changes in internal operational processes, as SPED demands a more integrated approach in a company's different areas (tax, accounting, IT, supplies, production, commercial, and others).

Furthermore, occasional inconsistencies databases, as well as operational errors related to tax and accounting generated information, usually unknown to the companies' administration, will be subject to increased visibility and monitoring by Brazilian tax authorities.

SPED will be compulsory for all taxpayers in the (near) future. For the moment, it is being implemented gradually and taxpayers are obliged to issue documents using different criteria for each different SPED module.

The files related to the different SPED modules must generally have their digital certification approved/validated by a specific software program generated by the Brazilian Revenue Service.

Income tax

Concepts of income taxation

Corporate taxable income is taxable under a unitary system whereby a single tax rate is applied. This rate is currently 15%, with a surcharge of 10% on taxable income over a certain level (see Appendix IV). Tax must be calculated and paid on a monthly or quarterly basis.

In respect of the relationship between companies and shareholders, Brazil follows a system in which corporate taxable income is taxed to the company and distributions of net income to shareholders are not subject to WHT.

For individual taxpayers the progressive rates of income tax are 0, 7.5, 15, 22.5 and 27.5% (see Appendix V for details).

Social Contribution on Net Income

The Social Contribution on Net Income (CSL) was created with the purpose of financing the social security system. This contribution is levied at the rate of 9% on net income for the financial year, after certain legal adjustments (additions and exclusions), except in the case of insurance and financial institutions, which are subject to a 15% rate.

Transitional Tax Regime - RTT

As has been stated in Chapter 11, Law 11,638/2007 introduced new rules to adapt Brazilian accounting practices to international accounting standards. In response to such changes, Law 11,941/2009 guaranteed fiscal neutrality, i.e. no adverse tax consequences should arise from the adoption of the new accounting criteria regarding the recognition of revenue, costs and expenses used to determine net income. To achieve this result, Brazilian taxpayers had the option to elect to apply a transitional tax regime (*Regime Tributário de Transição* – RTT), under which, for tax purposes only, taxpayers were allowed to calculate CIT and follow the applicable accounting criteria before the enactment of Law 11,638/2007.

The transitional tax regime was optional for the 2008 and 2009 calendar years and became mandatory from 2010. It shall remain in force until a new law is enacted setting forth the tax effects (if any) stemming from the new accounting methods and criteria.

It should be noted that electing to apply the RTT for CIT (IRPJ) results in the tax regime also being adopted for social contribution purposes (CSLL, PIS and COFINS).

Taxpayer classes

The main groups of taxpayers are:

- Resident corporate entities, such as corporations, private limited-liability companies (*limitadas*), branches of foreign companies, and partnerships.
- Resident individuals.
- Non-resident corporate entities and individuals.

Taxable income

Resident individuals

Resident individuals' taxable income is computed on a worldwide basis. Tax is normally deducted at source on remuneration, earnings and gains, on a monthly basis. However, at the end of April each year, an annual tax return must be filed stating the income of the previous calendar year. At this time, any difference between the annual amount payable and amounts deducted or paid at source is calculated and must be paid or is refunded.

An individual's taxable income is their gross income minus deductions. In general, gross income is defined as a taxpayer's entire income minus certain classes of income specifically excluded by tax legislation. The term gross income includes net business income, dividends, interest, gains on the sale of property, and other accruals of wealth realized by the taxpayer. However, a gain is not generally taxable until it is realized. Mere appreciation in the value of an asset is not income until it is realized by way of sale, exchange or other conversion. Similarly, a loss from a decline in the value of an asset is not generally tax deductible until realized.

Resident corporate entities

Corporate entities are subject to tax on all Brazilian and foreign-source income. Corporate dividend income, received from local entities, is excluded from gross income in the computation of taxable income.

Deductions are allowed only if specified by law, and depending on the regime under which the legal entity calculates its corporate income taxes (IRPJ and CSLL). For more details regarding tax computation and possible deductions, please refer to Chapter 15.

Non-resident corporate entities and individuals

As a general rule, income obtained from Brazil by non-resident legal entities or individuals is subject to withholding tax of 15% or 25%, depending on its nature.

Tax year

The tax year (base year) is the calendar year, but tax is due and payable on a monthly basis (for monthly tax periods). For tax purposes the corporate year end (the corporate balance sheet date) is irrelevant, but in practice most companies close their annual accounts on December 31. Companies may elect to have their corporate tax determined and paid on a quarterly basis.

Except for some special cases, no tax rate increases and no new taxes can be levied in the course of a tax year. However, there have been exceptions to this rule in the past.

Tax-free zones

There is a major, long-established federal tax-free zone in Manaus and the Western Amazon area.

States and municipalities grant local tax concessions in order to attract new businesses, as described in Chapter 4.

Tax holidays

A few tax holidays are offered by the federal government to attract new business projects in certain areas (see Chapter 4 for further details). Some states and municipalities that seek foreign investment compete for it by offering incentives such as property tax holidays and favorable financing. For further, more detailed, information, a PwC Brazil office in or near the location of interest should be contacted.

Capital taxation

Property transfer taxes are payable at state and municipal levels by companies and individuals (see Chapter 21 for further details).

Companies

No tax is payable at the federal level on the value of a company at incorporation, on the issuance of shares or on annual net assets.

Individuals

A wealth tax is provided for in the 1988 Constitution, but legislation has not yet been drafted in this regard.

International matters

Foreign operations

Brazilian resident companies are taxed on worldwide income. Both foreign branch and subsidiaries' profits are taxed as earned. Double taxation is avoided by means of foreign tax credits.

Resident individuals are subject to tax on all income from abroad but are allowed to receive a credit for the foreign tax paid thereon, provided reciprocal treatment is accorded to Brazilian-sourced income in the country from which the income is received.

Brazil has signed various treaties for the avoidance of double taxation. For further details, see Chapter 22.

Fees and other related expenses paid in Brazil for services rendered abroad are usually subject to withholding tax of 25% (if the service is not considered to be technical), 15% (if the service is considered to be technical) or a lower treaty rate. Other tax impacts arise from import of services by Brazilian residents (i.e. CIDE, PIS/COFINS – import, ISS and IOF).

International financial center operations

There are no tax breaks to encourage the locating of multinational companies' headquarters and administrative offices in Brazil and/or the use of Brazil as a base for offshore financial operations.



Chapter 14 | Tax administration***Investor considerations***

- Tax administration is generally based on self-assessment.
- Taxes are withheld at source on most income payments.
- Corporate income tax is calculated and paid monthly or quarterly. An annual tax return is usually filed in June of the subsequent calendar year-end.
- Consolidated tax returns and/or group relief are not allowed.
- Individual income tax is calculated and paid monthly, and annual returns are due within four months of the calendar year-end.
- Joint returns for married taxpayers are allowed.
- Penalties are imposed for failure or delinquency in filing returns or paying tax.
- Certain legal entities are more closely monitored by the Brazilian tax authorities than others.

Administration of the tax system

The income tax laws were consolidated by Decree 3,000/99 (*Regulamento do Imposto de Renda*). The federal government department responsible for income tax administration is the Receita Federal do Brasil (*Federal Revenue Service - RFB*) under the Ministry of Finance, with branches in all states and major cities. The RFB is also responsible for enforcing the law, including the collection of taxes, performance of audits and advocacy in tax disputes leading to litigation. Supplementary regulations are frequently issued by the tax authorities through ordinances, instructions and normative rulings.

State and local governments are responsible for the administration and collection of taxes under their jurisdiction.

Corporate taxpayers***Tax returns***

With a few exceptions, all corporate entities, including those that are foreign-controlled, calculate and pay tax on a monthly basis and file an annual adjusting tax return consolidating the monthly results of the previous calendar year. This annual return must typically be filed by the end of June. The forms to be used are prescribed annually and generally include all financial information required by the authorities.

In the case of late submission, penalties may be charged.

A company's tax returns must be signed by a chartered accountant, who need not be independent. Many companies submit their tax returns for the review of professional consultants before filing them with the authorities. It is not required to attach financial statements or other data, either audited or unaudited.

Supporting documentation for a tax return must be retained for at least five years.

Assessments

CIT tax is self-assessed and returns must be filed in the taxpayer's place of domicile. At the time of filing, all tax returns are subject to a summary check of the tax calculation and of the deductions made. They may subsequently undergo an audit. Tax is deemed to have been assessed at the moment the return is filed. Provisional assessments are not made.

The authorities may assess taxes when the following events occur:

- No return is filed.
- The taxpayer files an incorrect return.
- The taxpayer fails to furnish information requested by tax inspectors or does not present it satisfactorily.
- Proper accounting records have not been kept by the taxpayer. In this event, the authorities may disregard the accounting records (in extreme situations) and conduct an arbitrary assessment based on gross revenue, asset values or other available data.

Appeals

Upon receiving any additional assessment notification, a taxpayer has 30 days in which to file an appeal to the local RFB branch. This initial appeal is submitted to the authority that issued the additional assessment. In the event of an unfavorable decision, a second appeal may be made to the Taxpayers' Council (*Conselho Administrativo de Recursos Fiscais - CARF*), a federal administrative tax court, a decision of which normally terminates the administrative process. Thereafter, a taxpayer may enter into judicial proceedings to contest the assessment.

Payment and collection

Self-assessment, monthly payments, estimated payments and withholding taxes are the principal methods by which the federal government collects corporate taxes.

Self-assessments are generally based on the monthly tax returns as filed.

In order to control tax evasion, to streamline tax control processes, and to allow tax collection in advance, the legislation may appoint for some indirect taxes purposes, one of the many taxpayers involved in the supply chain as the sole liable party who will collect the tax payable by all parties on subsequent transactions.

Withholding taxes

Withholding tax rates are set out in Appendix VI. Withholding taxes, including those on employees' wages and salaries, are subject to monthly payments. Such withholding tax is the responsibility of the employer or the payer.

Tax audits

Although all income tax returns are checked for mathematical accuracy, only a relatively small number are selected for further examination. Returns are selected for audit either manually or by computer, according to various criteria, including the type of business, unusually large or small amounts of income or deductions and random sampling.

No corporate entity, whether a taxpayer or not, is excused from furnishing information or explanations required by the tax authorities.

When audits are conducted on the premises of taxpayers, tax inspectors have broad powers to inspect books and documents and to request information and any data deemed necessary. This is generally disrupting and in practice every effort is made to expedite the conclusion of these audits.

Whenever a violation is determined during a tax audit, the inspectors must draw up an infringement notification, which starts the administrative procedure for additional tax assessments.

Penalties

A fine ranging from 75% to 225% of the tax due is imposed for any irregularities detected by a tax authority audit.

Some irregularities are considered to be of a criminal nature and can lead to imprisonment.

Interest on the amount of tax in arrears is payable based on the monthly SELIC rate, which is presently around 1%, together with a fine of 0.33% per day, up to a limit of 20%.

When overdue taxes have been negotiated with the tax authorities to be paid in installments and an installment is not paid before the next one is due, the balance of the tax payable, including outstanding installments, is considered as payable immediately.

Statute of limitations

The tax authorities may generally audit taxpayers up to five years after the close of the tax year.

Community property/Spouse

As a general rule, each spouse files his/her own tax return, including his/her income and 50% of the income produced by common rights.

However, a joint tax return is also permitted, in which one individual includes all income. The income is therefore taxed jointly, on the basis of a single person. The head of the household may, accordingly, treat the other spouse as a dependent.

Exit permits

A foreigner or a Brazilian who leaves the country permanently is required to obtain tax clearance. This permits official repatriation of funds and the sending back of other assets. A Brazilian leaving the country on a permanent basis must also obtain a tax clearance.

Trusts, partnerships and joint ventures

The common law concept of a trust does not exist in Brazil.

The procedures for the taxation of partnerships and joint ventures are similar to those for corporate taxpayers.

Chapter 15 | *Corporate taxation*

Investor considerations

- Corporate income tax is calculated and paid monthly or quarterly on the basis of worldwide taxable income.
- There is a surcharge on taxable income over a certain level.
- There is no distinction, in terms of the tax burden, between local and foreign-owned companies.
- Dividends generated as from January 1, 1996, that are distributed to resident or non-resident beneficiaries (individuals and/or corporate entities) are not subject to WHT.
- Dividend payments are not tax deductible by the distributor.
- Dividends received from local entities are excluded from taxable income.
- Interest may be paid to shareholders based on a company's net equity and is deductible for income tax purposes.
- Thin capitalization rules were introduced in Brazil in December 16, 2009, limiting the deductibility of interest paid or credited by a Brazilian entity to a related party (individual or legal entity) or to an individual or legal entity (whether related or not) that is resident or domiciled in a tax haven jurisdiction (For further details, see Chapter 16).

- Exchange losses on foreign loans may be deducted on a cash basis. Nonetheless, the taxpayer may elect to recognize the exchange gain/loss on an accrual basis.
- Inter-company transactions are subject to transfer pricing rules
- Consolidated tax returns are not permitted.
- Accounting records, as a general rule, shall apply the accrual method.

Corporate tax system

Corporate net income is taxed at the corporate level.

Taxable entities

Corporations, *limitadas* (private limited-liability companies), other partnerships, and branches organized in accordance with Brazilian law, are subject to CIT. Non-profit entities that comply with certain registration and filing requirements are generally exempt from CIT.

Territoriality

A legal entity is considered resident in Brazil and subject to local taxation if it has been incorporated in Brazil.

The territorial concept for Brazilian corporate income tax payers was abolished in January 1996. Corporate taxpayers are now taxed on the basis of their worldwide income. For further details, see Chapter 18.

Accounting period

CIT is generally computed on the basis of annual taxable income. Although companies may elect to compute tax on a quarterly basis, for tax purposes a company's year-end is December 31. Having a different year-end for corporate purposes is irrelevant for tax purposes.

Accounting methods

All companies are required to determine net income in accordance with the accounting principles established in Law 6,404/76 (see Chapter 12). In general, the accrual method is required for both accounting and taxation purposes. Special tax-accounting methods also apply in other areas.

Please refer to Chapters 11 and 12 for further details on the new accounting practices effective in Brazil from 2008 and the corresponding transitional tax regime currently applicable.

Business profits

For tax purposes, business profits are computed on the basis of net income, as reported in the statement of income (profit and loss account), adjusted for non-taxable income and non-deductible expenses.

Inter-company transactions

Transfer pricing rules

Brazil's transfer pricing rules, which became effective on January 1, 1997, do not adopt the internationally accepted arm's length principle. Instead, Brazil's transfer pricing rules define maximum price ceilings for deductible expenses on inter-company import transactions and minimum gross-income floors for inter-company export transactions.

The rules address imports and exports of products, services and rights charged between related parties, inter-company financing transactions, as well as all import and export transactions between Brazilian residents (individual or legal entity) and residents in jurisdictions either considered by Brazil to be tax havens (as defined in Brazilian legislation) or which have internal legislation that calls for secrecy relating to corporate ownership, regardless of the parties being related or not.

The rules require that a Brazilian company substantiate its inter-company import and export prices on an annual basis by comparing the actual transfer price with a benchmark price determined under any one of the Brazilian equivalents of the OECD's comparable uncontrolled price method (CUP method), resale price method (RPM) or cost plus method (CP method). Recently enacted legislation introduced two new methods, applicable as of 2013 to transactions involving commodities – the PCI (imports) and PECEX (exports). Taxpayers are required to apply the same method, which they select, for each product or type of transaction consistently throughout the respective fiscal year. However, taxpayers are not required to apply the same method to different products and services.

Rules regarding imports of goods, services and rights

Deductible import prices relating to the acquisition of goods, services and rights from foreign related parties should be determined under one of the following Brazilian methods:

Comparable independent price method (PIC)

This Brazilian equivalent of the CUP method is defined as the weighted average price for the year of identical or similar goods, services or rights obtained either in Brazil or abroad in buy-sell transactions on similar payment terms. For this purpose, only buy-sell transactions conducted by unrelated parties may be used.

Resale price less profit method (PRL)

This Brazilian equivalent of the RPM was originally defined as the weighted average price for the year of the resale of goods, services or rights minus unconditional discounts, taxes and contributions on sales, commission and a gross profit margin of 20%, calculated based on the resale price (minus unconditional discounts). If value is added before sale, the margin profit is increased to 60%, calculated based on the percentage of the value imported over the final sale price. In applying the PRL, a Brazilian taxpayer may use their own prices (wholesale or retail), as charged to or by unrelated parties.

As of January 1st 2013 changes were enacted with respect to the PRL method. Under such changes the PRL method must be calculated considering a specific mark-up determined for some sectors, and a mark-up of 20% for the industries/sectors which are not specified in the Law. The methodology for calculating the former PRL-60 (previously applicable to inputs), which gave rise to disputes with the tax authorities in the administrative and judicial courts, should be adopted under the new PRL method.

The specific margins per sector determined by the Law are as follows:

40% mark-up:

- a) pharma chemicals and pharmaceutical products;
- b) smoke products;
- c) optical, photographic and cinematographic equipment and instruments;
- d) machines, apparatus and equipment for dental, medical and hospital use;
- e) extraction of oil and natural gas; and
- f) oil derivative products.

30% mark-up:

- a) chemical products;
- b) glass and glass products;
- c) pulp, paper and paper products; and
- d) metallurgy.

Production cost plus profit method (CPL)

This Brazilian equivalent of the CP method is defined as the weighted average cost incurred for the year to produce identical or similar goods, services or rights in the country where they were originally produced, grossed up for taxes and duties imposed by that country on exports plus a gross profit margin of 20%, calculated based on the obtained cost. Production costs for the purpose of the CPL are limited to the costs of goods, services or rights sold. Operating expenses, such as research and development (R&D), selling and administrative expenses, may not be included in the production costs of goods sold to Brazil.

Quotation Price on Imports method (PCI)

This Brazilian method must be applied to test imports of commodities that have a quote in a commodities exchange, as of 2013. Based on this method taxpayers shall compare the transaction value with the average quote of the respective commodity involved, adjusted by an average market premium, in the date of the transaction. In the case of transactions involving commodities that do not have a quote in a commodities exchange, taxpayers may choose to test the prices in import transactions based on information obtained from independent sources, provided by internationally recognised institutes involved in researches of specific sectors.

In the event that more than one method is used, except when the use of the PCI method is mandatory, the method that provides the highest value for imported products is considered by the Brazilian tax authorities as the appropriate import price. This is intended to provide taxpayers with the flexibility to choose the method most suitable to them. The Brazilian rules require that each import transaction be tested by the benchmark price determined using one of the three methods, as applicable to the type of transaction (this also applies to export transactions).

If the import sales price of a specific inter-company transaction is equal to or less than the benchmark price determined by one of the methods, no adjustment is required. On the other hand, if the import sales price exceeds the determined benchmark price, the taxpayer is required to make an adjustment to the calculation basis of income tax and social contributions.

Rules regarding exports of goods, services and rights

In the case of export sales, the regulations provide a safe harbor whereby a taxpayer is deemed to have an appropriate transfer price with respect to export sales when the average export sales price is at least 90% of the average domestic sales price of the same goods, services or rights in the Brazilian market during the same period under similar payment terms. When a company does not perform sales transactions in the Brazilian market, the determination of the average price is based on data obtained from other companies that sell identical or similar goods, services and rights in the Brazilian market. If the export sales price is less than 90% of the average sales price in the Brazilian market, the Brazilian company is required to substantiate its export transfer prices, based on the benchmark price obtained by using one of the following Brazilian methods:

Export sales price method (PVEx)

This Brazilian equivalent of the CUP method is defined as the weighted average of the export sales price charged by the company to other customers or by other national exporters of identical or similar goods, services or rights during the same fiscal year on similar payment terms.

Resale price methods (PVV or PVA)

The Brazilian versions of the RPM for export transactions are defined as the weighted average price of identical or similar goods, services or rights in the country of destination on similar payment terms, reduced by the sales taxes imposed by that country and by a profit margin of either:

- 15%, calculated according to the wholesale price in the country of destination (wholesale price in the country of destination less profit method or PVA).
- 30%, calculated according to the retail price in the country of destination (retail price in the country of destination less profit method or PVV).

Purchase or production cost plus taxes and profit method (CAP)

This Brazilian equivalent of the CP method is defined as the weighted average cost of acquisition or production of exported goods, services or rights increased for taxes and duties imposed by Brazil on exports plus a profit margin of 15%, calculated based on the sum of the costs, taxes and duties.

Quotation Price on Exports method (PCEX)

This Brazilian method must be applied to test exports of commodities that have a quote in a commodities exchange, as of 2013. Based on this method taxpayers shall compare the transaction value with the average quote of the respective commodity involved, adjusted by an average market premium, in the date of the transaction. In the case of transactions involving commodities that do not have a quote in a commodities exchange, taxpayers may choose to test the prices in export transactions based on information obtained from independent sources, provided by internationally recognised institutes involved in researches of specific sectors as well as by Brazilian regulatory agencies. Taxpayers must apply this method to test commodities, even if their average export sales price are at least 90% of the average domestic sales price of the same goods, and no relief of proof is available.

In the event that the export sales price of a specific inter-company transaction is equal to or more than the transfer price determined by one of these methods, no adjustment is required. On the other hand, if the export sales price of a specific inter-company export transaction is less than the determined transfer price, the taxpayer is required to make an adjustment to the income tax and social contribution calculation basis.

Rules regarding interest on loans to a foreign related party**Rules applicable until December 31, 2012**

The statutory rules provide that interest on related-party loans that are duly registered with the Brazilian Central Bank will not be subject to transfer pricing adjustments. However, interest paid on loans issued to a related party that is not registered with the Brazilian Central Bank is deductible only to the extent that the interest rate equals the LIBOR dollar rate for six-month loans plus 3% per year (adjusted to the term of the loan agreement). The actual amount of the interest paid on the loan in excess of this ceiling will not be deductible for corporate income tax and social contributions on net income purposes.

Similarly, loans granted by a Brazilian company to a foreign related party which are not registered with the Brazilian Central Bank must charge interest at least equal to the LIBOR dollar rate for six-month loans plus 3% per year.

Rules applicable as of January 1st, 2013

As of January 1st, 2013 interest on related party loans, even if resulting from agreements duly registered with the Brazilian Central Bank, will be deductible only up to the amount that does not exceed the rate determined based on the following rules, plus a spread to be determined by the Ministry of Finance based on an average market spread:

- I. in case of transaction in US dollars subject to fixed interest rate: rate of Brazilian sovereign bonds issued in US dollars in foreign markets;
- II. in case of transaction in Brazilian Reais subject to fixed interest rate: rate of Brazilian sovereign bonds issued in Brazilian Reais in foreign markets, and
- III. in all other cases: London Interbank Offered Rate - LIBOR for the period of 6 (six) months.

In the case of transactions in Brazilian Reais, subject to floating interest rate, the Ministry of Finance can determine a different base rate.

For transactions covered in item III above in currencies for which there is no specific Libor rate disclosed the LIBOR for US Dollar deposits must be considered..

The deductibility limit must be verified on the contract date, and it will apply during the full contract term. For this purpose, the renewal and the renegotiation of contracts will be treated as the signing of a new contract.

In the case of loans provided by Brazilian entities to a foreign related party the criteria mentioned above must be considered to determine the minimum interest income to be subject to taxation in Brazil.

Rules regarding royalties and technical assistance

The statutory rules expressly exclude royalties and technical, scientific, administrative or similar assistance remittances from the scope of the transfer pricing legislation. Accordingly, provisions of the Brazilian corporate income tax law established before the Brazilian transfer pricing rules were issued and these continue to regulate the remittances and the deductibility of inter-company payments for royalties and technical assistance fees.

Definition of related parties

Brazil's transfer pricing rules provide a much broader definition of related parties than do internationally accepted transfer pricing principles. As described in the following section, the regulations apply the TP rules to transactions with foreign parties and those parties are considered to be related when such parties are located in jurisdictions considered by Brazil to be tax havens, regardless of whether or not there is an equity relationship between them.

Under the statutory rules, a foreign company and a Brazilian one shall be considered to be related if the latter has equity representing at least of 10% of the Brazilian company, or when at least 10% of the capital stock of each of them belongs to the same legal entity or individual.

Additionally, regardless of any equity relationship, the Brazilian definition of related parties considers a foreign party to be related to a Brazilian company if, in the case of export transactions, the foreign party operates as an exclusive agent of the Brazilian company or, in the case of import transactions, the Brazilian company operates as an exclusive agent of the foreign party. For these purposes, exclusivity is evidenced by a formal written contract or, in the absence of one, by the practice of commercial operations relating to a specific product, service or right that are carried out exclusively between the two companies or exclusively via the intermediation of one of them.

Companies located in low-tax jurisdictions or beneficiaries of privileged tax regimes

Under the regulations, the transfer pricing rules apply to transactions carried out by a Brazilian entity with a foreign entity, related or otherwise, whenever the latter is resident or domiciled in a country which does not tax income or which taxes income at a rate of less than 20%, or in a jurisdiction with internal legislation which allows secrecy in regards to corporate ownership.

The transfer pricing provisions also apply to transactions performed in a privileged tax regime, among individuals or legal entities resident or domiciled in Brazil and any individuals or legal entities, related or otherwise, resident or domiciled abroad. These rules create some practical compliance issues because they require Brazilian companies to inform the tax authorities of transactions carried out with companies in tax havens even though the parties are completely unrelated and the transactions are contracted at arm's length.



In an effort to facilitate compliance with the TP rules by taxpayers, the Brazilian tax authorities have issued a list of jurisdictions that they consider to be tax havens or where there is insufficient disclosure of corporate ownership. This list currently includes the following jurisdictions: American Samoa, Andorra, Anguilla, Antigua and Barbuda, Dutch Antilles, Aruba, Ascension Islands, Bahamas, Bahrain, Barbados, Belize, Bermuda, Brunei, Campione D'Italia, Singapore, Cyprus, Costa Rica, Djibouti, Dominica, French Polynesia, Gibraltar, Granada, Cayman Islands, Cook Islands, Island of Madeira (Portugal), Isle of Man, Pitcairn Islands, Qeshm Island, Channel Islands (Jersey, Guernsey, Alderney, Sark), Hong Kong, Kiribati, Marshall Islands, West Samoa, Solomon Islands, St Helena Island, Turks and Caicos Islands, British Virgin Islands, US Virgin Islands, Labuan, Lebanon, Liberia, Liechtenstein, Macau, Maldives, Mauritius, Monaco, Montserrat, Nauru, Nieuu, Norfolk Island, Oman, Panama, Saint Kitts and Nevis, Saint Lucia, Saint Pierre and Miquelon, Saint Vincent and Grenadines, San Marino, Seychelles, Swaziland, Switzerland, Tonga, Tristan da Cunha, Vanuatu and United Arab Emirates. The list of privileged tax regimes includes: *Sociedade Anonima Financiera de Inversion* (SAFI) incorporated under Uruguayan law until December 2010, holding companies incorporated under Danish law and under Dutch law that do not have substantial economic activity, international trading companies (ITCs) incorporated under Icelandic law, offshore (KFT) companies incorporated under Hungarian law, LLCs incorporated under US state law (in which the equity interest is held by non-residents and which are not subject to US federal income tax), *Entidad de Tenencia de Valores Extranjeros* (ETVEs) incorporated under Spanish law, and ITCs and international holding companies (IHCs) incorporated under Maltese law.

Switzerland, Dutch holding companies, and Spanish companies incorporated as *Entidades de Valores Extranjeros* or ETVEs have currently been removed from this list, a result of a request made to the Brazilian Government by those countries. Their inclusion is being further evaluated by the Brazilian authorities.

Contemporaneous documentation requirements

A summary of the transfer pricing information must be provided to the tax authorities on an annual basis, as part of the information contained in the CIT return (*Declaração de Informações Econômico-Fiscais da Pessoa Jurídica - DIPJ*). As a result, taxpayers have to make a summarized disclosure of their inter-company import and export transactions, the method applied to test the inter-company price up to 80% of the amount of the import and export transactions, and the amount of any adjustments to CIT resulting from the application of the method to specific transactions during the fiscal year under analysis.

Divergence margin

For inter-company import and export transactions, even if the actual price is above the determined transfer price (for import transactions) or below the determined transfer price (for export transactions), no adjustment is required as long as the actual import price does not exceed the determined transfer price by more than 5% (i.e. as long as the actual export price is not 5% lower than the calculated transfer price).

The divergence margin accepted between the parameter price obtained through the use of PCI and PCEX methods and the tested price is 3%.

Relief of proof rule for inter-company export transactions

In addition to the statutory 90% safe harbor rule for inter-company export transactions, there is a secondary compliance rule (referred to as the *relief of proof rule*) whereby a taxpayer may be relieved from the obligation to substantiate its export sales price to foreign related parties using one of the statutory methods if it can demonstrate either of the following:

1. the net income derived from inter-company export sales, taking into account the annual average for the calculation period and the two preceding years (excluding companies in low-tax jurisdictions and transactions for which the taxpayer is permitted to use different fixed margins) is at least 10% of the revenue from such sales, provided the net exports to related parties do not exceed 20% of the total of net exports, or
2. net export revenue does not exceed 5% of the taxpayer's total net revenue in the corresponding fiscal year.

If a taxpayer can comply with the relief of proof rule, the taxpayer is able to prove that the export sales prices charged to related foreign parties are adequate for Brazilian tax purposes by using only the export documents related to those transactions.

The relief of proof rules do not apply to export transactions carried out with companies located in low-tax jurisdictions or beneficiaries of privileged tax regimes.

Exchange adjustment

In an attempt to minimize the effect of the appreciation of local currency vis-à-vis the US dollar and the euro, the Brazilian authorities issued ordinances and normative instructions at the end of the years from 2005 to 2011 (except for 2009), which amended the Brazilian transfer pricing legislation for export transactions only. Under these amendments, Brazilian exporting companies were allowed to increase their export revenues for calendar years 2005, 2006, 2007, 2008, 2010, 2011 and 2012 (for transfer pricing calculation purposes only), using an adjustment factor of 1.35, 1.29, 1.28, 1.20, 1.09, 1.11 and 1,00 respectively. This exceptional measure applied only for those years to the statutory 90% safe harbor, to the 5% net income relief of proof and to the CAP method. For 2009, no exchange adjustment was allowed.

Other transfer pricing aspects

As of January 1st 2013 taxpayers must annually formalize the selection of the method used to test the intercompany prices of products/services for transfer pricing purposes. Changes to the method adopted will be accepted only before the start of an audit, unless the tax authorities disqualify the existing documentation;

Back-to-back transactions are subject to TP rules; for this purpose, it should be considered as back-to-back transactions those in which the product is purchased from a foreign party and sold to another foreign party, and at least one of them is treated as a related party for Brazilian transfer pricing purposes, without the transit of goods in Brazil.

Capital gains/losses

Capital gains are taxed as ordinary income. Profits on certain long-term sales of permanent assets can be computed on a cash basis.

Capital losses may be offset with current taxable income, but non-operational losses carried forward can be offset only by capital gains, and are treated similarly to income tax losses with regard to limits on use and the carry forward period (see the two sections on Deductions and Losses further on in this Chapter).



Financial income

Financial income is taxed at the following rates for Brazilian corporations:

	Prepayment of income tax	Year-end calculation (income tax and social contribution tax)
Net capital gains on equities traded on the stock exchange	15%	Income: 34% Losses: carried forward to be compensated by future gains of the same nature.
Net capital gains on futures, options or forwards, traded in the Futures Stock and Commodities Exchange, similar markets; or capital gains on flexible options, out of the exchanges	22.5% = investment period < 180 days 20% = 181 < investment period < 360 days 17.5% = 361 < investment period < 720 days 15% = investment period > 721 days	Income: 34% Losses: carried forward to be compensated by future gains of the same nature.
Investment in variable investment funds	15%	Income: 34% Losses: tax deductible
Swap transactions	22.5% = investment period < 180 days 20% = 181 < investment period < 360 days 17.5% = 361 < investment period < 720 days 15% = investment period > 721 days (for contracts signed before 31/12/2004 = 20%)	Income: 34% Losses: tax deductible under certain conditions
Capital gains and interest on fixed-income investments, including fixed-income investment funds, whose average portfolio term is shorter than 360 days	20% semi-annual + positive difference between effective income tax rate depending on the holding period, if any: 22.5% = investment period < 180 days 20% = 181 < application period < 360 days	Income: 34% Losses: tax deductible
Day trade	20%	Income: 34% Losses: tax deductible
Capital gains and interest on fixed-income investments, including fixed-income investment funds, with an average term in excess of 360 days	15% semi-annual + positive difference between effective income tax rate depending on the holding period, if any: 22.5% = investment period < 180 days 20% = 181 < investment period < 360 days 17.5% = 361 < investment period < 720 days 15% = investment period > 721 days	Income: 34% Losses: tax deductible

At the year-end, gains compose the operational income basket and prepayments or withholdings are offset against the final tax due. Losses on variable income transactions (equity, options, futures and forwards) are not tax deductible, temporarily, but may be carried forward to be offset against gains of the same kind (shares and derivatives). Day trade transactions involve a special tax treatment.

Gains from the sale of depreciable property are treated as ordinary non-operating income and not as capital gains.

Financial income is not subject to the PIS/PASEP and COFINS taxes. Nevertheless, income from hedge operations and from interest on net equity is subject to the PIS/PASEP and COFINS taxes at the rates of 1.65% and 7.6%, respectively.

Please note that the rates above are valid for general Brazilian corporations; however, financial institutions are generally not subject to withholding income taxes on capital gains and income yielded by investments in the financial and capital markets. Nevertheless, these earnings are counted for the purpose of determining CIT. Moreover, financial income is also subject to the PIS/PASEP and COFINS taxes, at the rates of 0.65% and 4%, respectively.

Interest

Interest income is taxable on an accrual basis.

Dividends/Inter-company dividends

Dividends received from other local companies, including subsidiaries and affiliates, are not subject to CIT.

Stock dividends

Dividends are not subject to WHT and the recipient is not subject to corporate income tax.

Dividends in kind

The payment of dividends in kind is not prohibited by corporate law, provided that specific rules and terms are clearly defined in the articles of association or the payment is approved at the Annual Shareholders' Meeting.

Royalties and service fees

Royalties and service fees received by Brazilian residents are taxable on an accrual basis.

Exchange gains and losses

Corporate taxpayers may elect to include exchange gains and losses in their taxable income on an accrual basis, or when realized.

Non-taxable income

The following types of income are non-taxable for corporations (*Sociedades Anônimas – SA*):

- Gains arising from the equity pick-up method of accounting for investments in subsidiary and associated companies (same tax treatment must apply to all companies).
- Premiums on the issue of shares and debentures.
- Proceeds from the sale of participation and subscription rights.
- Profit on the sale of treasury stock.
- Subventions received for capital investments.

Deductions

Business expenses

In general, all ordinary and necessary expenses paid or incurred in the course of business are deductible. Minor expenditure on capital assets, or any expenditure on capital assets with a useful life of less than one year, is also deductible. Territorial limits are not in themselves a factor in determining the deductibility of expenses. There are no prohibitions against payments to affiliates if they involve an arm's length charge. Such payments may be subject to transfer pricing rules (see *Non-deductible items* below).

The following costs/expenses are generally deductible for tax purposes: lease and rental expenses; depreciation and amortization; maintenance and repair; taxes and related fees/contributions; insurance premiums. Any other costs or expenses not effectively and directly connected with the production or sale of goods, products or services, may not be considered deductible for tax purposes.

Depreciation and amortization

Except for land, which is not depreciable, the depreciation incurred on property, plant and equipment is an allowable deduction.

Amortization of goodwill that arises as a result of accounting for investments in subsidiary and associated entities by the equity pick-up method is deferred for taxation purposes until the related investment has been realized (e.g. sold, disposed etc). However, in certain cases, goodwill paid upon the acquisition of the shares or quotas of a permanent investment may be amortized before this realization occurs (e.g. after a merger or a spin-off). It is important to note that, although still applicable for tax purposes (under the Transitional Tax Regime – RTT, and until further regulation is issued), the amortization of goodwill is no longer accepted under Brazil's new accounting practices.

Amortization of patents, trademarks and copyright, based on their legal limited life, is a deductible expense within certain approved limits.

Formation, start-up, pre-operating and expansion expenses

As a general rule, and under the RTT, for tax purposes these expenses may be deferred and amortized on a straight-line basis over a period of not less than five years, beginning the month in which the business starts operating.

Leasing agreements

A leasing company is considered to be a financial institution and is authorized to operate by the Central Bank. Lease payments are treated as an operating expense by the lessee and are generally deductible for tax purposes if the leased assets are used in the ordinary course of business.

Depletion

Depletion allowances may be made for natural resources on a useful-life basis. Special incentive depletion allowances based on gross revenue are granted for mining operations, except for operations that have commenced after December 1987.

Interest and financial charges

All interest and financial charges paid or accrued in the taxable year are generally deductible, including those paid to or accrued by a local or foreign affiliated company. Interest credited to a beneficiary on foreign loans is generally subject to 15% withholding tax at source (rising to 25% if the non-resident beneficiary is a resident/ is domiciled in a low-tax jurisdiction) and the deductibility thereof is subject to the new thin capitalization rules introduced in December 16, 2009 (for more information on this subject, please refer to Chapter 16).

Interest on net equity

Since January 1996 companies have been able to pay interest to shareholders/quotaholders, calculated on the company's net equity. This interest, which may not exceed 50% of the annual profits or retained earnings, is deductible for income tax and corporate social contribution purposes, and is generally subject to 15% WHT (both for beneficiaries resident in Brazil or abroad), rising to 25% if the non-resident beneficiary is resident/domiciled in a low-tax jurisdiction, according to Brazilian legislation. It is calculated on the pro rata tempore basis and up to a given rate known as the long-term interest rate (TJLP). If the beneficiary is a corporate entity subject to normal income tax in Brazil, the tax withheld at source may be taken as a tax credit against the normal CIT due. Alternatively, this tax credit can be offset against income tax due at source on interest payments. This interest is not subject to further tax if the beneficiary is a Brazilian resident individual.

Royalties and service fees

For tax deduction purposes, royalties, license fees, technical assistance and similar charges, together with the amortization of patent costs, may not in total exceed certain percentages of net sales revenue in respect of the related products. Except in cases covered by specific tax incentives, the highest total deductible charge permitted for certain industries is 5%. The maximum payment for the use of trademarks and trade names is 1% of the corresponding net sales. Formal agreements must be registered with the National Institute of Industrial Property (Instituto Nacional de Propriedade Industrial - INPI) in support of all such charges.

Registration with the Central Bank of Brazil is also necessary for the remittance of foreign currency.

Royalty fees for license agreements without INPI approval are not deductible.

Royalties payable to a foreign company with a direct or indirect controlling interest in a Brazilian company are deductible for tax purposes, provided the contract has been duly registered with the INPI.

There is no withholding tax on royalties and service fees etc, paid to resident parties. However, payments of royalties and technical assistance service fees to foreign recipients are subject to 15% WHT, rising to 25% if the non-resident beneficiary is resident/domiciled in a low-tax jurisdiction, as defined by Brazilian legislation. In addition, remittances of royalties and service fees are subject to the Contribution for Intervention in the Economic Domain (CIDE), at the rate of 10% on the amounts credited/paid. CIDE is levied on the local entity's cost and is not therefore creditable to non-residents.

Depending on the nature of the remittance to the foreign beneficiary, the respective payment/credit may fall under one of the services subject to the Municipal Services Tax - ISS. Under the prevailing legislation, ISS is not levied on the licensing of patents and copyright. Nevertheless, as stated in Complementary Law 116/2003, licenses to use/exploit trademarks and software have been subject to ISS since August 2003. The Brazilian entity is responsible (on behalf of the non-resident) for withholding and paying the tax to the municipal authorities, at rates ranging from 2% to 5%.

In general, remittances of royalties are not subject to the PIS and COFINS taxes, as these social contributions apply to the import of goods and services (since May 2004). Nevertheless, once characterized as a service for ISS purposes, the federal tax authorities may also demand payment of the PIS and COFINS taxes, at the rates of 1.65% and 7.6% respectively.

Lastly, remittances of royalties/technical assistance service fees abroad (i.e. foreign exchange transactions) are currently subject to the Tax on Financial Transactions – IOF, at the rate of 0.38%.

It should be noted that operations involving royalty agreements are not subject to transfer pricing rules if the related contract has been registered with the Central Bank and the INPI. For information about service fees paid to associated foreign companies, please refer to our comments on transfer pricing regulations above.

Employee remuneration

Employees' wages and salaries and related social security contributions are fully deductible and no restrictions or limitations specifically apply to foreign personnel. Monthly contributions to the FGTS are deductible, as are expenses related to group medical care and health insurance programs for employees, contributions to private supplementary pension schemes and meals supplied to all employees. Schooling expenses in respect of employees' children are deductible if this benefit is given to all employees or is considered as a benefit.

Directors' and officers' remuneration is also deductible, although payments made at the discretion of the employer are not considered as remuneration, and are not therefore deductible.

Insurance premiums

There are no limits for income tax purposes. However, insurance cannot be placed with overseas companies unless specifically authorized by the government agency which deals with the insurance industry. Self-insurance reserves are not deductible.

Inter-company charges

In general, inter-company charges are deductible when they correspond to actual services rendered and to the extent they are deemed necessary to the Brazilian company's activities. Such charges must be established on an arm's length basis. Amounts paid to foreign associates are subject to exchange control regulations and transfer pricing rules.

It should be noted that charges by foreign associates for management, general and administrative expenses are subject to close scrutiny by the tax and exchange control authorities, and remittance permission may be challenged by the relevant authorities.

Travel

Travel expenses in general are deductible, provided they are duly documented and substantiated. However, in principle, shareholder/quota holder and/or senior management's meals are generally not deductible (see non-deductible items further on).

Doubtful accounts receivable

Deductions relating to doubtful accounts receivable must follow specific procedures connected to the value of the credit, outstanding periods, whether there is a guarantee or not, the debtor's solvency situation and the existence of judicial procedures. In general terms there should be no problem in terms of deductibility, provided that complete supporting documentation is available.

Taxes and contributions

All taxes (except CIT and the social contribution on net income), compulsory contributions and related costs (such as interest on arrears), are deductible for tax purposes, on an accrual basis. This rule does not apply to taxes/contributions being or to be contested by the taxpayer, in any level of litigation, which are deductible for tax purposes only on a cash basis.

Withholding tax on income paid to non-residents, which is assumed by the payer, is deductible if the underlying payment itself is deductible. Punitive tax/contribution penalties are not deductible.

Charitable donations

Donations are deductible up to certain limits if the recipients are registered as charitable institutions.

Deferred compensation

Contributions to qualified deferred employee compensation plans may be deductible, within limits, in the year of contribution.

Repairs

Expenditure on repairs that result in an increase of more than one year in the estimated useful life of related assets is not deductible and should normally be capitalized in order to support future depreciation.

Professional fees

Professional fees are deductible, subject to proof that the services have actually been rendered, as well as compliance with the general deductibility rules.

Advertising

Advertising is deductible on an accrual basis. The cost of free samples is deductible, up to certain limits.

Research and development

In 2005, Brazilian legislation introduced tax incentives for projects geared towards technological innovation. For further information on this topic, please refer to Chapter 4.

Non-deductible items

As a general rule, and with the exception of the specific items listed immediately below, amounts paid or credited for the furtherance of business activities are considered deductible.

- In general, meals (food) expenses incurred or paid on behalf of partners, shareholders/quotaholders and senior management.
- Non-compulsory contributions and donations (with very few exceptions).
- Gifts in general.

Where the beneficiary or nature of a transaction is unidentified, the related payments are also subject to 35% withholding tax at source, which is in effect a penalty tax.

Disguised profit distributions are non-deductible expenses and recipients are required to pay tax thereon. In general, disguised profit distributions arise as a result of failing to conduct transactions with shareholders (whether corporate entities or individuals), directors, officers and their relatives, on an arm's length basis.

Provisions are not deductible in general, except those for holiday pay and 13th month salaries. Insurance and capitalization companies' technical reserves are, however, deductible under certain special conditions.

Equity investments

Provisions for probable losses on the realization of equity investments are not considered deductible.

Losses

Tax losses may be carried forward indefinitely. However, offsetting of tax loss is restricted to 30% of taxable income in each subsequent year. For this purpose, a loss is defined as an accounting loss adjusted for tax purposes. Tax losses may not be carried back. Certain forms of tax losses may be cancelled, in case of mergers and spin-offs, and may not be used by the survivor and/or successor.

Additionally, tax losses may be cancelled when a company simultaneously undergoes a change in control and business activity.

Non-operating losses may be offset only against gains of the same kind, up to the limit of 30% of annual profits.

Tax computation

Net income

Taxable income is computed by adjusting net book income for non-taxable income and non-deductible expenses. A sample corporate tax computation is given in Appendix VII.

Tax rates

The single federal income tax rate for corporate taxable income is 15%, but there is a surcharge of 10% on annual taxable income above R\$ 240,000 (approximately US\$ 117,000) (see Appendix IV).

Presumed profits

Corporate taxpayers with gross annual revenue not exceeding R\$ 48 million (approximately US\$ 23 million) may elect to pay tax on a presumed-profit basis. Under this method, income is calculated on a quarterly basis and shall correspond to certain percentages applied over gross revenue, adjusted as determined by the prevailing legislation. Such percentages vary depending on the entity's activities.

The CIT rate of 15%, plus a surcharge of 10% on quarterly taxable income above R\$ 60,000 (approximately US\$ 29,000), is levied on the product resulting from applying the percentages and related adjustments. For further details see Appendix VII.

The annual adjusted corporate tax return for presumed profits must be filed by that same date on which the regular income tax return is due - normally by the end of June of the subsequent year.

Arbitrary profits

The tax authorities may assess tax based on arbitrary profits (profits discretionally assumed to exist) if a taxpayer fails to comply with the rules and regulations for keeping records and/or computing taxable income. The taxable income basis would be arbitrated by the authorities based on the presumed percentage of profits attributable to each type of activity, ranging from 1.92% to 38.4% of gross monthly revenue. The amount of tax determined would then be grossed up by 20% (45% for financial institutions). When the gross revenue is unknown, the federal tax authority uses several other methods to determine the taxable income (e.g. based on the latest adjusted financial statements, adjusted capital and others).

Tax credits

Foreign tax credits are available, subject to certain limits. There are no other specific tax credits.

Consolidation - group relief

Consolidated income tax returns are not permitted in Brazil.

Other taxes

Social Contribution on Net Income

Monthly corporate net income, before income tax and after certain deductions, is subject to the social contribution on net income at the rate of 9%, except in the case of insurance and financial institutions which are subject to a 15% rate (for further details see Appendix VII).

Social Integration Program - PIS/PASEP

This contribution is levied at the rate of 1.65% on gross income, considered to be the sum of the company's total revenue, minus taxes not grossed up in the sales invoice (such as Excise Tax – IPI), unconditional discounts, cancelled sales, goods and service exports revenue and other legal deductions. On a non-cumulative basis, companies may appropriate credit by applying the same rate to certain costs and expenses deriving from the acquisition of certain consumables. Companies under the presumed-profit method and those engaged in certain sectors such as telecommunications and finance, are subject to the PIS/PASEP taxes at the rate of 0.65%, but cannot offset credit (the so-called cumulative basis). Special rates apply to specific products such as automobiles, pharmaceuticals, beverages and petroleum derivatives. The contribution is also levied on import transactions.

Social Contribution on Billing - COFINS

This contribution is currently levied at the rate of 7.6% and has the same taxable basis and credit regime as the PIS tax discussed above. Companies applying the cumulative basis are subject to COFINS at the rate of 3.0%. Special rates apply to specific products such as automobiles, pharmaceuticals, beverages and petroleum derivatives. The contribution is also levied on import transactions.

For further details see Chapter 21.

For a detailed description of all significant indirect taxes see Chapter 21.

Branches versus subsidiaries

The advantages and disadvantages of operating in Brazil as a subsidiary or a branch are discussed in Chapter 16. Very few branches of foreign entities operate in Brazil.

Special industries

There are a number of corporate categories for which the income tax regulations provide special treatment, the most important of which are as follows.

Insurance

Insurance companies are allowed to make a special deduction for the technical reserves required by law.

Real estate

In the case of installment sales, taxable income may be determined on a cash basis.

Leasing

Leasing companies are regulated by the Central Bank, and optional accounting and tax methods are applicable.

Agricultural enterprises

These enterprises may make a deduction to their taxable income for certain specified investments in land improvements, plant and equipment.

Mutual and investment funds

Generally, investors may pool their funds in order to obtain investment diversity and proportional investment advice from the funds' administrators. Tax is payable at source at varying rates

Holding companies

There are no special rules for holding companies and they are taxed in the same manner as other corporate taxpayers. They are required to account for their material investments by the equity pick-up method. Dividend income received from other local corporate entities is non-taxable. Income received from foreign affiliates is generally taxable.

Corporate tax planning strategies

Subsidiaries versus branches

Foreign investors are advised to incorporate operations in Brazil instead of setting up branches because, in the latter case, non-residents must file an application to the Ministry of Commerce, Industry and Development to obtain authorization to operate in Brazil.

Holding companies

There is no legislation that favors foreign shareholders or holding companies.

Special industry companies/Special-use companies

Companies participating in certain sectors, such as banking, insurance, leasing, etc., are subject to special tax rules.

Location/industry

Tax holidays are offered by governments for certain industries located in specific areas (see Chapter 4).

Reorganizations, mergers and acquisitions

Companies can be reorganized tax free under certain conditions. Further tax regulation on this subject is expected in view of the new Brazilian accounting standards laid down by new corporate law and other related provisions (see Chapter 12 for details).

The tax basis of assets can be stepped up through acquisitions under certain conditions.

Both buyer and seller must allocate costs in asset purchases or deemed asset purchases.

Tax treaties

Relief from double taxation may be applicable for income taxes purposes if there is a double taxation agreement between Brazil and the country of residence of the other party. See Appendix I for details.



Investor considerations

- Subsidiaries of foreign corporations receive the same tax treatment as local companies.
- Dividends payable by subsidiaries of foreign corporations to foreign shareholders are not subject to withholding income tax.
- Foreign corporations are not normally subject to tax on income arising from their export sales to Brazil.
- Local salesmen/agents with authority to enter into binding contracts may increase the tax exposure of exporters in Brazil.
- Administrative and similar service charges from overseas head offices or affiliates to Brazilian subsidiaries must be considered necessary, must actually be incurred and need to be properly documented for tax purposes and remittance procedures must be carried out in accordance with Central Bank regulations.

Tax concepts

The basic taxation principle for foreign corporations is that only income from Brazilian sources is taxable in Brazil. A foreign corporation is only therefore subject to Brazilian tax when it directly derives income from Brazilian sources. A foreign corporation exporting goods to Brazil would not be liable for income tax on the export income, although the resale of the merchandise inside Brazil would be a taxable transaction under the conditions described further on under Imports.

There is no difference between income tax payable on net income earned by Brazilian companies whether this is held locally or by foreigners. There is no WHT on distributions of profits to either local or foreign shareholders.

No foreign corporation may carry out permanent activities in Brazil other than through a registered subsidiary, branch or permanent establishment.

Imports

No income tax liability will normally arise on the sale of goods shipped to Brazil by a foreign corporation and billed directly to the customer, provided that ownership passes directly to the customer and provided that any local agent involved in the sale (corporate or individual, related or unrelated) does not have the power to bind the overseas principal contractually. If the local agent has such power, income tax is calculated on a deemed-profit basis, based on gross income plus an additional surcharge of 20% (see *Sales agents or subsidiaries* in Chapter 8). Any tax assessed would be charged to and collected from the local agent.

Imports without agents

There are no tax implications.

Unrelated agents

Agents are normally entitled to commission and as such are subject to Brazilian income tax and service tax. However, there are no tax implications for foreign exporters.

Sole or exclusive agents

The implications are the same as for unrelated agents. However, sole or exclusive agents may not possess binding powers.

Employees/sales staff

There are no tax implications, provided that binding powers are not given.

Sales subsidiaries

Sales subsidiaries are subject to the same Brazilian taxes as any other local company

Branch operations

The profits of a foreign corporation's branch are taxable in the same way as those of a local company, regardless of the branch's business objectives. They are not subject to an annual branch withholding tax.

Income from subsidiaries

Dividends

Since January 1, 1996, dividends paid out of the subsidiaries' profits to local or foreign shareholders have not been subject to WHT.

Interest

WHT at the rate of 15% (25%, if the beneficiary is located in a low-tax jurisdiction, as defined under Brazilian legislation) or a lower treaty rate (see Appendix I), is payable on interest that a foreign corporation may receive from its Brazilian subsidiary. Exemption from withholding tax may be obtained in the case of certain types of export financing.

Thin capitalization rules were introduced in Brazil on December 16, 2009, by Provisional Measure (PM) 472, which was converted into Law 12,249/2010 on June 14, 2010,

The Law establishes that interest paid or credited by a Brazilian entity to a related party (an individual or legal entity), resident or domiciled abroad, not constituted in a tax haven or in a jurisdiction with a privileged tax regime, may be deducted only for income tax purposes if the interest expense is viewed as necessary for the activities of the local entity and the following requirements are met:

- III. The amount of debt granted by the foreign related party (which has participation in the Brazilian entity) does not exceed twice the amount of its participation in the net equity of the Brazilian entity;
- IV. The amount of debt granted by a foreign related party (which does not have participation in the Brazilian entity) does not exceed twice the amount of the net equity of the Brazilian entity;
- V. The total amount of debt granted by foreign related parties in (i) and (ii) does not exceed twice the sum of participation of all related parties in the net equity of the Brazilian entity;
- VI. If debt is granted only by related parties that do not have a participation in the Brazilian entity, the total amount of debt granted by all of these related parties does not exceed twice the amount of the Brazilian entity's net equity.

If one of these 2:1 ratios is exceeded, the portion of interest related to the excess debt amount will not be deductible for Brazilian income tax purposes.

Similar provisions are also applicable to interest paid or credited by a Brazilian entity to an individual or legal entity (whether a related party or otherwise) resident or domiciled in a tax haven or in a jurisdiction with a privileged tax regime. In these cases, the interest expense would be deductible for Brazilian income tax purposes only if it was viewed as necessary to the company's activities, as described above, and the total amount of the Brazilian entity's debt with any foreign party resident or domiciled in a tax haven or in a jurisdiction with privileged tax regime, does not exceed 30% of the Brazilian entity's net equity.

Building on the above, the Brazilian Revenue Service issued Normative Instruction (NI) 1,154, which introduced more detailed guidelines with respect to the deductibility of interest and general expenses in the situations above, and which provided more details regarding the calculation of the limits for deductibility of interest expenses based on statutory debt/equity ratios. The main provisions set forth by the new NI can be summarized as follows:

- VII. The concept of a related party (which was reproduced from the Brazilian transfer pricing legislation);
- VIII. Applicability of the rules when a financial institution is merely an intermediary between a foreign lender and a Brazilian borrower, when such companies are related;
- IX. Applicability of the rules for companies beginning their operations in the course of the calendar year and participating in merger, spin-off or consolidation events;
- X. Debt limits generally not applied to loan operations with Brazilian lenders, even if the guarantor, representative or intervening entity is a foreign related party. However, in the case of a default, the limits above will apply; and
- XI. Restrictions on the deductibility of general amounts paid to entities in a tax haven or with a privileged tax regime not applied to financial operations carried out by foreign investors according to the rules/requirements stated by the National Monetary Council.

Royalties, capital gains, service/management fees, rent, etc.

WHT at the rate of 15% (25%, if the beneficiary is located in a low-tax jurisdiction, as defined by Brazilian legislation), or a lower treaty rate, is also payable on royalties and service fees received by a foreign corporation from its Brazilian subsidiary.

It should also be noted that transfer pricing rules apply to the export and import of services to or from related companies, except for operations involving royalty agreements.

Furthermore, Brazilian entities may be subject to the Contribution for Intervention in the Economic Domain, at the rate of 10% (see *Royalties and service fees* in chapter 15).

Payments made to tax haven jurisdictions

Law 12.249/2010 also provides that amounts paid, credited, delivered or remitted, under any title, directly or indirectly, to related or unrelated individuals or legal entities which are resident or domiciled in a tax haven or in a jurisdiction with a privileged tax regime will be viewed as deductible for Brazilian income tax purposes only if all of the following conditions are met: (i) the effective beneficiary of the payment is identified; (ii) there is evidence that the payment beneficiary has operational capacity (i.e., substance); and (iii) there is adequate documentation to support the relevant payments and the corresponding supply of goods, rights or utilization of services.

Foreign portfolio investments

The direct investment or foreign capital in the Brazilian capital market must be made through a special foreign investment account under Central Bank rules. The main features of these funds are as follows:

- IOF – Tax on Financial Transactions – Outflow and inflow of resources are currently tax exempt.
- The investment fund's income is not subject to Brazilian CIT at the fund level. WHT may apply, depending on the type of fund, up to 15%.
- Capital gains arising from transactions in the Brazilian exchanges and similar markets are tax exempt (equity and derivative funds).
- Capital gains on variable-income transactions in the exchanges or in variable-income funds are subject to WHT at rates varying from 10% to 15%.
- Capital gains and interest on fixed transactions or investment funds are subject to WHT at a rate of 15%.
- Foreign investors resident in tax haven jurisdictions are subject to higher taxation, as applicable to Brazilian residents.
- The rules for the formation and administration of foreign-investment accounts are contained in National Monetary Council Resolutions and must be previously approved by the Securities Commission and administered by authorized Brazilian financial institutions. The incoming foreign capital must be registered with the Central Bank.
- The investment accounts are taxed in the portfolio provided that there is no further taxation on outbound capital.

IOF levied on other foreign transactions

IOF is a federal tax levied primarily on transactions involving foreign exchange insurance, loans or financing, and on securities transactions. The applicable rate varies depending on the transaction (generally 0.38% - e.g. for exchange operations relating to the payment of imported services and inflow of funds as capital contributions).

IOF rates have been changed several times in recent years, in view of the world financial crisis and the appreciation of the Brazilian Real.

Specially in relation to IOF due on foreign exchange transactions, please note that an increased 6% rate applies to certain transactions, such as those involving loans with a maturity term shorter than a given number of day, as well as to some transactions in stock exchange market.

Since 2008, the IOF rate on certain financial transactions involving foreign exchange, loans and insurance was increased from 0% to 0.38%.

Chapter 17 | *Reorganizations*

Reorganizations

Incorporations

No tax consequences arise from converting a non-incorporated business into an incorporated entity or from changing the corporate form, such as changing a *limitada* (a private limited-liability company) into a corporation.

Mergers or amalgamations

In the case of a merger, the new or surviving company assumes the taxation and labor rights and obligations of the merged company, although it is not entitled to use the merged company's tax-loss carry forwards. For tax purposes, mergers may be accounted for on the basis of book or market values. If accounted for at market value, the taxable gain or tax-deductible loss is computed as follows.

Taxable gain - A taxable gain is the excess of the value at which the net assets received are accounted for, over the book value of the investment that they have replaced. Gains earned by local investor companies as a result of the merger or amalgamation of their local investee companies are subject to Brazilian income taxes (IRPJ and CSLL) at a combined rate of 34%. Capital gains earned by non-resident shareholders due to merger and amalgamation transactions involving Brazilian companies are subject to WHT generally at the rate of 15% or a lower treaty rate. The tax rate increases to 25% if the non-resident beneficiary is resident/domiciled in a low-tax jurisdiction.

Provided the merger is conducted at market value, the negative difference between the net assets received and the book value of the investment is treated as a deductible capital loss.

Spin-offs, split-offs or split-ups

The legislation permits spin-offs, split-offs or split-ups whereby a company transfers all or part of its net assets to one or more existing companies or companies specifically set up for that purpose. The tax considerations described above for mergers or amalgamations also apply to reorganizations.

Liquidations

There are no special tax rules relating to companies in liquidation. Any net income accruing to corporate shareholders is taxed normally as part of the taxable income. With regard to individual shareholders, any gain arising from the redemption of shares or quotas is taxed as a normal capital gain. If the owner is resident overseas, any gain is taxed at source, generally at the rate of 15%, or a lower treaty rate. The tax rate increases to 25% if the beneficiary is domiciled or resident in a low-tax jurisdiction.

Acquisitions

Asset acquisitions

A foreign investor may, for a variety of business reasons, structure the acquisition of a Brazilian target company as an asset purchase of the business unit (operating assets), and assume part or all of the related liabilities.

Acquisitions of assets by a foreign company should preferably be carried out via a locally incorporated company. The assets must be recorded at cost and may be depreciated normally.

Share or quota acquisitions

For Brazilian tax purposes, goodwill would consist of the positive difference between the purchase price and the net equity value of the acquired interest in the Brazilian company.

Provided that certain conditions are met, foreign investors can use an acquisition structure in which the goodwill paid for the acquisition of an interest in a Brazilian company is tax deductible over a five-year minimum period.



Investor considerations

- Foreign-sourced profits and earnings are subject to tax in Brazil (there is worldwide income taxation).
- Foreign tax credits are available, subject to certain limits.
- Foreign-sourced losses cannot be offset against Brazilian-sourced profits.

Taxation of foreign income

The territorial concept for CIT purposes was abolished in January 1996 and corporate taxpayers are currently taxed on a worldwide income basis. Foreign-sourced income/gains of any nature, net of foreign-sourced losses, are subject to Brazilian income tax, when distributed or made available. Foreign tax credits are available subject to certain limits.

Profits of overseas associated companies, when distributed or made available, are included in the determination of taxable income of a Brazilian company proportionately to its interest in that company, based on the financial statements prepared in the country where the associated company is domiciled. Under the legislation in force, the profits of overseas associated companies are considered available to the Brazilian controlling company on December 31 of each year.

Double tax relief

A Brazilian corporate entity may offset income tax incurred abroad on profits, revenues and capital gains which were included in its taxable income, up to the limit of the income tax incurred in Brazil on such profits, revenues or capital gains. The income tax to be offset is converted into Reais based on the bank selling rate on the date the tax was paid.

Brazil has double taxation agreements with various countries. See Appendix I for a complete listing.

Tax planning for expatriates

Resident/non-resident status

Special visas and work permits are required for any foreigner intending to live and/or work in Brazil, whether for short or long periods. Certain types of visa may be granted in connection with work permits, and each one has a different tax consequence.

Permanent visas are issued to foreign individuals who occupy decision-making positions as stipulated in the bylaws/articles of association of a Brazilian company. These foreigners are considered as tax residents from their arrival in Brazil and are subject to income tax on their worldwide income.

Temporary visas for employment contracts with a Brazilian company may be issued to qualified individuals, including business executives who have an employment relationship with a Brazilian company and who meet certain conditions established by the Brazilian authorities (experience in the field, post graduate status, justification for requiring such staff etc). These temporary visas are valid for up to two years and are renewable for the same period. These individuals also become tax residents of Brazil upon their arrival in the country.

Furthermore, foreigners on renewable temporary visas, without an employment contract with a Brazilian company, but under a technical service agreement, which are valid for one year, 90 days or 30 days are considered resident, if their stay in Brazil exceeds 183 days (consecutive or not) within any given 12-month period. Such foreigners are not allowed to enter into any local employment agreements. During the first 183 days of their stay in Brazil as non-residents, foreign holders of temporary visas without an employment contract will be taxed at source only on their Brazilian-sourced income. They become residents for tax purposes from the 184th day of their stay.

There are no special tax concessions for foreigners working permanently or temporarily in Brazil.

Pre and post-assignment periods

Any amounts payable by a non-Brazilian source to a foreigner who has not yet acquired the status of a Brazilian resident or who has relinquished this status are not subject to Brazilian income tax.

Job-related activities partially outside Brazil

Resident status must be considered. A resident's worldwide income is generally subject to Brazilian income tax.

Bonuses and fringe benefits

Bonuses and most fringe benefits provided by employers are taxable. Tax-exempt fringe benefits include employers' contributions to private social security plans and labor claim payments, as well as specific benefits provided for in the applicable Collective Labor Agreement.

Special foreign-assignment allowances

Any special foreign-assignment allowance paid in Brazil is subject to income tax. Allowances paid in the employee's country of origin have to be included in their worldwide income if that employee has resident status.

Social security contributions

Social security contributions are payable by all persons working under a relationship with a Brazilian company, whether as employees or holders of decision-making positions, in accordance with the Brazilian company's bylaws/articles of association. Amounts paid to the Brazilian Social Security System are deductible from individual taxable income.

Special tax concessions

There are no special tax concessions for foreigners working in Brazil.

Timing of arrival/departure

Since tax is due monthly, it generally makes no difference whether a foreigner arrives or departs early or late in the year. For tax residents, income received from Brazilian sources is withheld at source and income from foreign sources is payable by the individual. Individuals are obliged to file an annual Income Tax Return to adjust the tax amount paid monthly.

Specific exit procedures have to be complied with and tax clearance certificates are needed before tax residents can permanently leave Brazil.

Territoriality and residence

The underlying principle of individual taxation is that residents are taxed on their worldwide income and non-residents are taxed at source only on their Brazilian-source income. The source of income is determined by the place where the income payer is located, irrespective of where the work is performed.

Foreigners holding temporary visas with no local employment agreement are treated as non-residents during the first 183 days (consecutive or not) of their stay and are liable to Brazilian income tax of 25% withheld at source on their Brazilian source income only. They do not have to file a tax return. From the 184th day of residence onward, or earlier if a temporary visa is converted into a permanent visa, they are resident for tax purposes.

Foreigners arriving in Brazil on permanent visas or temporary visas with a local employment agreement are considered as residents and are taxed on worldwide income from the date of their arrival.

On departure, foreigners (both holders of temporary visas with an employment contract or permanent visas) should notify the tax authorities of their departure and prepare an Individual Income Tax Return relating to the period from January 1 up to the date of departure. The income tax return for the previous tax year will also need to be filed if this has not yet been done. At the same time, a Federal Tax Clearance Certificate should also be requested.

After complying with the pertinent procedures and requesting the Certificate, the foreigner is no longer considered resident and as of that moment all income earned in Brazil is taxed at source at the rate of 25%, except for income or gains on financial investments, which are taxed at the same rates applicable to residents.

Companies are advised to require that individuals surrender their visas when departing.

There are no special rules for Brazilians working abroad.

Special provisions

There are no special favorable provisions applicable to foreigners working in Brazil.

Gross income

Gross income is the sum of earnings from capital, labor or a combination of both, including allowances, alimony and pensions received in cash, gains of any other nature and any increase in personal wealth not supported by declared income. Income from overseas sources is also included in gross income. Capital gains arising from the disposal of assets or rights of any nature and investment income are generally considered as part of gross income. However, in certain circumstances certain transactions are exempt or are taxed exclusively at source at lower rates.

The annual income tax return is divided into various sections, which serve to classify income by source, as follows:

Taxable income received from companies.

Taxable income received from individuals and overseas sources.

Exempt and non-taxable income.

Income subject to exclusive taxation.

In addition to these income-related sections, all taxpayers with income and/or assets above certain levels must prepare a list of personal assets and rights, and of liabilities, at the beginning and end of each calendar year, including those overseas.

Types of income exempt from individual income tax include the following:

Board, transport and special work uniforms or clothing provided free of charge by the employer, or the difference between the amount charged for these items and the market value.

Per diem allowances to cover room and board when working outside the county in which the company or office is based or in which the work is normally performed.

Labor indemnities, limited to the legal amounts, including indemnities for work-related accidents.

Contributions made by the employer to private social security programs on behalf of employees.

Reimbursement of relocation costs when moving to a different area, at the request of the employer.

Employee services

The definition of taxable income arising from employee services is very broad and includes everything that is directly or indirectly connected with the work and/or assignment remuneration package, including salaries, premiums, directors' fees, bonuses, tips and other gratuities, allowances of any kind, 13th month salaries, tax reimbursements, club dues and company cars.

Amounts paid under net pay schemes, where an employee receives net income and taxes are paid by the employer, are grossed up.

Stock option schemes are not covered by individual tax legislation, but do trigger tax implications in Brazil.

Foreign-sourced income is taxable, but relief is normally given for foreign taxes paid to foreign jurisdictions if a tax treaty exists or reciprocal treatment is available.

Employee profit sharing

Workers have the right to share in a company's profits, irrespective of any remuneration received, according to a specific labor law. Any amounts received are not considered as remuneration for employee services and are taxed exclusively at source.

Capital gains

In general, capital gains of resident individuals are taxed at the rate of 15%. However, gains on sales of assets or rights where the sale price is less than certain thresholds (depending on the asset or right being sold) may be exempt. The exemptions are considered on a monthly basis. In addition, a capital gain on the sale of an individual's principal residence is exempt up to a certain amount.

Other income

Royalties, professional fees, pensions, annuities and alimony are taxable upon receipt and should be included in gross income. Credit is given for tax deducted at source.

Rent on overseas property, including a private home, and dividends and interest from overseas investments, should also be included in gross income.

Amounts paid by employers for group life insurance, medical care, meals, uniforms, transport and per diem expense allowances are not generally taxable for the individual. Employers' contributions to private pension plans and savings and investment plans are also exempt from individual income tax.

Income from short-term investments is taxed only at source, at varying rates.

Closely held companies

There are no special tax rules for shareholders/quotaholders of closely held corporations/*limitadas* (private limited-liability companies). Care must be taken to ensure that shareholders'/quotaholders' transactions are perceived to be on an arm's length basis and therefore not deemed to be disguised profit distributions, which would be subject to income tax (see *Non-deductible items* in Chapter 15).

Non-residents

Brazilian-source income and capital gains of non-resident individuals are subject to withholding tax of 25%, except for financial income held in bank accounts in Brazil, which may be subject to lower rates. Furthermore, earnings received by non-residents arising from the rental of real estate located in Brazil, are subject to income tax withheld at source at a flat rate of 15%.

The source of income is determined by the place where the income payer is located, irrespective of where the work is performed.

Deductions

Deductions from the income tax calculation base (taxable amount) should be listed in the corresponding sections of the annual income tax return. As a general rule, deductions are allowed only when disbursements have been made. Deductions may be summarized as follows.

- Contributions to the Brazilian Social Security System.
- Medical, dental and hospital expenses.
- Amounts paid to private medical schemes.
- Private pension fund contributions.
- Alimony payments.
- Schooling expenses in respect of dependents.
- Expenses of lawsuits related to income earned.

For limitations on amounts deductible and/or deductions from the tax due see Appendix VIII.

Business expenses are not deductible.

Personal allowances

Personal allowances are deductible for each dependant. A special allowance applies to elderly taxpayers. For deductible amounts see Appendix VIII.

Non-residents

Non-residents do not need to prepare income tax returns. As mentioned previously, their Brazilian-sourced income is taxed at source only.

Double-tax relief

Relief from double taxation is available if a tax treaty exists between Brazil and the country from which foreign-sourced income is generated or if reciprocal treatment is applicable. See Chapter 23 and Appendix I for details of Brazil's tax treaties.

Tax computation

Taxable income

A sample calculation of individual taxable income is given in Appendix V.

Specific filing categories exist for married people filing jointly or separately and for single taxpayers.

Tax rates

The progressive tax rates are shown in Appendix V. The current maximum individual tax rate is 27.5%.

Tax credits

Tax credits are available (within certain limits) for income tax paid to countries with which Brazil has a ratified tax treaty, or to countries that render reciprocal treatment in relation to income taxes paid to the Brazilian government.

Other taxes

Local taxes on income

No state or municipal income taxes are levied on individuals.

Minor amounts are payable annually to the various unions.

Wealth and inheritance taxes

There are presently no wealth or inheritance taxes.

Inheritance and gift transfer tax

The ITCMD (*Imposto de Transmissão Causa Mortis e Doação*) transfer tax is imposed at state level at different rates.



Trusts

The common law concept of a trust does not exist in Brazil.

Estates

There is at present no inheritance tax in Brazil. The 1988 Constitution introduced the concept of a wealth tax, although to date no legislation and/or regulations have been issued in this respect.

In regard to the estate of a deceased person, the executors are required to file income tax returns covering the net income of the estate up to the date of distribution of the available resources. The net income of the estate is taxable in exactly the same way as an individual's net income (see Chapter 20).

The only other tax relating to the dissolution of a deceased's estate is the property transfer tax (imposto de transmissão causa mortis), which is payable by the estate (see Chapter 22).



Chapter 21 | *Indirect taxes*

Investor considerations

- A federal value-added excise tax is payable at varying rates on nearly all sales and transfers of industrialized products. It is also payable on most imported merchandise.
- Import tax is levied at varying rates on most imports.
- Many payroll taxes are levied in addition to social security contributions.
- Financial transactions are subject to a tax on financial transactions, at varying rates.
- Companies must contribute to various federal social and welfare funds.
- A state value-added sales and services tax is levied on most sales and imports.
- Service tax is levied by municipalities at varying rates.

General

All taxes that are complementary to income tax (taxes on occasional gains, dividends and remittances) have been discussed in previous chapters. This chapter refers to the more important indirect taxes that affect businesses and individuals in Brazil.

Federal indirect taxes

Value-added excise tax

The federal excise tax or tax on manufactured products, IPI (*Imposto sobre Produtos Industrializados*), is a federal value added tax levied on nearly all sales or transfers of manufactured products and on imports. Thus, IPI taxpayers are generally importers and/or manufacturers (or defined as such by law). IPI rates vary in accordance with the product's tariff codes and usually range from 10%-15%. It is important to notice that IPI is calculated ad valorem on selling prices at rates that vary according to the degree of essentiality of the product in question. For example, food products in general are exempt, while cigarettes and other tobacco products are taxed at over 300%. Imported goods are subject to the same rates as Brazilian-made products.

The IPI taxable base for imports consists of the CIF value of the good, plus the import duty. With respect to imports, the IPI is creditable by importers when importing for resale or manufacturing purposes (i.e., the importer carries out a subsequent taxable transaction). If the goods are imported as a fixed asset or a consumable, IPI is a cost. IPI is also levied on subsequent outflow transactions and in other situations when the remittent qualifies as having been manufactured, by law. If no subsequent manufacturing transaction take place, or if the entity does not qualify as a manufacturer, no additional IPI is due, this tax being a cost to this entity.

When items are transformed or processed, additional excise tax is payable on the finished product. However, all IPI paid on the purchase of raw materials or component parts used for production can be deducted as credit. Tax must also be paid on the price differential of items imported and sold on at a higher price by the importer, and on those repackaged or reoffered for sale at a higher price.

Excise tax is passed on to the purchaser as an addition to the sales price of each item shown in the invoice (nota fiscal) and related receipt (fatura).

Invoices must accompany all items in transit, whether they have been sold or are merely being transferred to another location, since, as in the case of the state value-added tax on sales and services, - ICMS, (see below), each plant or location of an entity is considered as a separate taxpaying unit. Invoices must always indicate the amount of excise tax and the basis for the calculation. For companies subject to SPED (see chapter 11), hardcopy invoices are replaced by soft copies.

It is important to mention that the IPI rates may be changed at any time by a Federal Decree. Product specifications are to be found in the Table of Excise Tax Levy (TIPI).

Customs duties

Import duty - II (*Imposto de Importação*) is generally levied on an ad valorem basis. For details see Chapter 8.

Export taxes

Export Tax - IE (*Imposto de Exportação*) is levied on a very limited number of products (e.g. animal fur and cigarettes). This tax is applied more as a foreign trade regulator than as a revenue instrument.

Rural property tax

Rural property tax - ITR (*Imposto sobre a Propriedade Territorial Rural*) is an annual federal property tax levied on the ownership or possession of real estate located outside urban perimeters. It is normally based on the value of land and buildings assessed for this purpose and the land area and utilization rates. The tax basis varies according to the value, size and location of the real estate, and tax rates vary in accordance with land-use. The tax rate normally ranges from 0.03% to 20% per annum, depending on the stage of use. Small rural properties are exempt, if the owner or the owner's family cultivates the land.

Social integration program (PIS) and Social contribution on billing (COFINS)

PIS and COFINS are social contributions levied on a company's gross revenues.

Depending on the actual circumstances of the company, PIS and COFINS will be calculated at the following rates:

- Cumulative regime (applicable to certain entities, including those under the Presumed Profit regime for IRPJ and CSLL purposes): 0.65% and 3%, respectively (with no credits available);
- Non-cumulative regime (standard regime applicable to the majority of entities): 1.65% and 7.60%, respectively (credits may be computed on certain items, as set forth in the legislation – e.g. direct inputs, rental, depreciation of certain assets etc.).

The PIS and COFINS are usually charged on imports at the respective rates of 1.65% and 7.6% (some exceptions apply - the actual tax burden depends on the product's tariff code). The taxable base, in respect of imports for the social contributions, consists of the CIF value, the ICMS (calculated without the PIS/COFINS) and the PIS-Import and COFINS-Import themselves (using a grossed-up calculation).

With respect to resale, the PIS and COFINS taxable base is the sale's price plus ICMS and its own contributions. As from August 2004, financial income is not subject to this contribution.

PIS and COFINS credits may be recorded only by companies that are subject to the non-cumulative regime of calculation. In order to determine whether the company applies the non-cumulative regime, the CIT legislation needs to be analyzed. Companies which apply the Presumed Income Tax method are excluded from the non-cumulative regime.

In addition, there are some specific regulations which require certain activities to be taxed under the cumulative regime. Under the cumulative regime, applicable for certain situations as determined by federal legislation, PIS and COFINS paid are not recoverable and, thus, represent a cost for the taxpayer.

Additionally, different tax rates apply for certain products in respect of which a levy occurs only once in the supply chain. Special schemes are provided for certain business, such as the pharmaceutical, automobile and tire, petroleum and its derivatives, and beverages, industries, which are subject to different rates.

State indirect taxes

Valued-added tax on sales and services

The Value Added Tax on Sales and Services, ICMS (*Imposto Sobre Operações Relativas à Circulação de Mercadorias e Sobre Prestações de Serviços de Transporte Interestadual e Intermunicipal e de Comunicação*), is levied on sales or any other ordinary physical or economic circulation of goods, but also on inter-municipal freights and transportation, on communication services and on electric power supply.

The taxable base for ICMS is the price of the sale or service. Because it is a state tax, each state determines the rates of ICMS for transactions performed within its territory, varying from 7% to 25%, according to the product sold or service provided. For interstate sales to ICMS taxpayers, the rate is 7% or 12%, depending on the location of the acquirer. For interstate sales to non-ICMS taxpayers, the ICMS rate of the state of the seller must be applied. For interstate transactions with imported goods, the ICMS rate is set at 4%, provided that such products, after customs clearance, are not industrialized, or, if some industrialization occurs, that the import content (*Conteúdo de Importação*) exceeds 40% of the value of the final merchandise/goods.

One of the principles of ICMS is that taxpayers have a granted right to receive the amount of tax paid by suppliers as credit, in respect of the acquisition of products, provided that such products are subject to ICMS taxation when sold. This credit is to be used to offset the tax due on outflow transactions. Therefore, in each step in the supply chain of a product there will be a credit, from the previous inflow transaction, and a debit, from the subsequent outflow transaction, so that each taxpayer will be burdened only by the taxation levied on the value added in its own transaction.

It is important to note that the respective legislation includes several exceptions to the general rules. In the case of the ICMS, for instance, a thorough individual analysis of each state's legislation must be carried out in order to completely understand the applicability of the tax, and rates and exemptions. In addition, it is important to state that the ancillary obligations of these taxes are particularly complex.

Property tax (ITCMD)

The ITCMD (*Imposto sobre Transmissão Causa Mortis e Doação de Quaisquer Bens ou Direitos*) is a state tax that is applied on the transfer of the ownership of goods and rights upon causa mortis (succession) and donations. Tax rates vary according to the state legislation. It is normally payable at a rate of up to 4% on inheritance and donations of real estate properties and rights.

Tax on Vehicles (IPVA)

IPVA (*Imposto sobre a Propriedade de Veículos Automotores*) is a state tax levied on the ownership of motorized vehicles in general (cars, trucks, boats, airplanes etc.). The taxable base is the value of the vehicle and rates vary according to state legislation. The amount is payable on a yearly basis and is based on the market value of the vehicle at the beginning of each year, where applicable.

Municipal indirect taxes

Service tax (ISS)

Municipal service tax, ISS (*Imposto sobre Serviços de Qualquer Natureza*), is a non-cumulative tax levied on the rendering of certain services included in a federal list of taxable services (under Complementary Law 116/2003). Rates vary from 2% to 5%. For certain professional firms or individuals, these rates are substituted by an annual contribution which is based on the number of practicing professionals.

Imported services are also subject to ISS taxation regardless of whether the service is performed abroad. Exported services are tax exempt, provided certain conditions are met.

ISS is payable on a monthly basis. The tax is paid according to the legislation of each municipality, and some benefits may be granted for new entities.

Property taxes (IPTU and ITBI)

Municipal Real Property Tax, IPTU (*Imposto sobre a Propriedade Territorial Urbana*), is levied on the ownership of real property. The amount to be paid will be calculated based on the value of the property. IPTU is levied annually based on the fair market value of property in urban areas, at rates generally ranging from 0.2% to 5%, according to location and use of the property. Payments can be made in up to ten monthly installments. In a few cases it is possible to obtain exemption from this tax.

Another property tax, ITBI (*Imposto de Transmissão de Bens Imóveis Inter Vivos*) is levied at rates of up to 6% on sales or transfers of properties and is payable by the acquirer. A reduced rate of 0.5% applies to transactions relating to housing programs financed by federal government schemes. Transfers of properties to a corporate entity as a capital subscription are exempt except where the business activity is real estate.

Chapter 22 | *Tax treaties*

Tax treaty policy

Brazil has ratified a number of tax treaties to accomplish the following objectives:

- Income derived from Brazil should be subject to Brazilian income tax only and thus an exemption or foreign tax credit should be granted by the other country.
- The effects of reducing Brazilian taxes should not be compensated by increasing taxes in the other country.
- The establishment of maximum levels of taxation for income deriving from Brazilian sources.
- The reduction of foreign taxes on profits earned abroad by Brazilian enterprises.

In general, Brazil's double-tax treaties cover only corporate and individual income tax and remittance taxes and do not affect the payment of capital gains tax (i.e. the treaties generally do not provide relief as they generally state that capital gains may be taxable in both countries).

Fiscal residence is usually determined in accordance with the tax law prevailing in the country in which an establishment is located. Double-tax treaties usually contain special provisions for determining the residence of individuals who would otherwise have dual residence. This determination is generally based on the personal and economic interests of the individual.

Brazil is not actively pursuing a broad network of double-tax treaties. Treaties currently in force and those under negotiation are listed in Appendix I. Most treaties follow the OECD model.

Withholding taxes under treaties

The withholding tax on dividends was reduced from 15% to zero for profits generated from January 1996. The rate for remittances of interest and royalties was also reduced from 25% to 15% in January 1996. Treaty rates in excess of 15% are therefore automatically reduced.

Permanent establishments under tax treaties

A branch is considered to be a permanent establishment, as is an agent who has powers to bind an overseas principal contractually (see Chapter 8).

Each individual double-tax treaty should be consulted for any further definitions of a permanent establishment that it may contain.

Other articles

There are no special tax treaty benefits for industrial and commercial income.

Earnings from properties are generally subject to the tax regulations of the country where they are located.

Shipping and aircraft transport companies are normally taxed only in the country where their head offices are located.

Elimination of double taxation

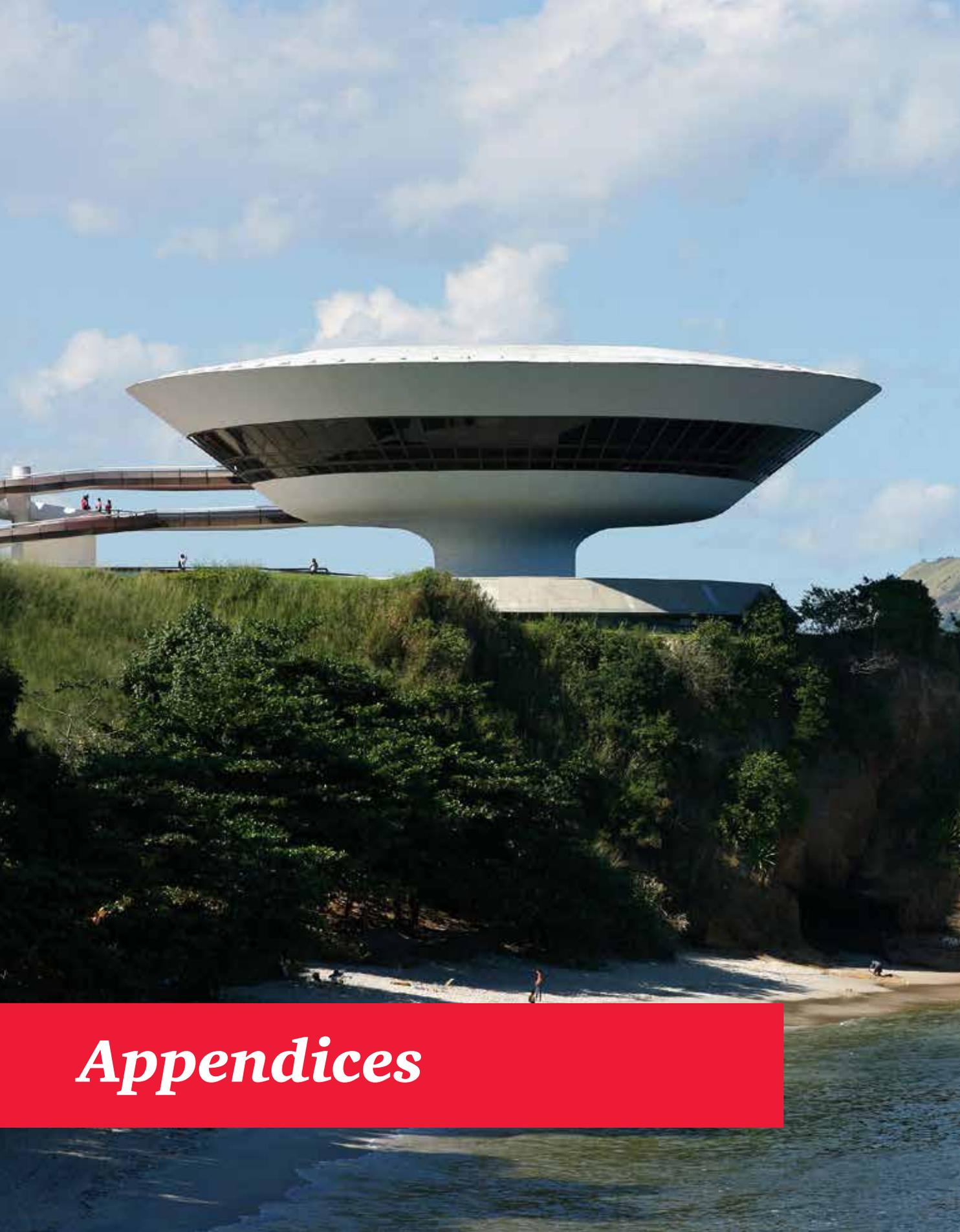
Each individual double-tax treaty should be consulted to determine the method of eliminating double taxation, tax credit or exemption.

Exchange of information

Although double-tax treaties provide for an exchange of information on a confidential basis, this does not include disclosure of any trade, business, commercial, industrial or professional secrets.

Competent authority/ mutual agreement

Any case arising in relation to a double-tax treaty may be submitted to the competent authorities of the country in which the taxpayer is resident. If no satisfactory solution is reached, the competent authorities of both countries will try to settle the case by agreement, in line with the spirit of the treaty.



Appendices

Treaties in effect

Country	Date of treaty		In force since	
Argentina	May	1980	December	1982
Austria	May	1975	July	1976
Belgium	June	1972	July	1973
Canada	June	1984	December	1985
Chile	April	2001	July	2003
China P.R.	August	1991	January	1993
Czech Republic	August	1986	November	1990
Denmark	August	1974	December	1974
Ecuador	May	1983	December	1987
Finland	April	1996	December	1997
France	September	1971	May	1972
Hungary	June	1986	July	1990
India	April	1988	March	1992
Israel	December	2002	September	2005
Italy	October	1978	April	1981
Japan	January	1967	December	1967
Korea, Republic of	March	1989	November	1991
Luxembourg	November	1978	July	1980
Mexico	September	2003	November	2006
Netherlands	March	1990	November	1991
Norway	August	1980	November	1981
Peru	February	2006	August	2009
Philippines	September	1983	October	1991
Portugal	May	2000	October	2001
Slovakia	August	1986	November	1990
South Africa	November	2003	July	2006
Spain	November	1974	December	1975
Sweden	April	1975	December	1975
Ukraine	January	2002	April	2006

The tax treaties with Venezuela, Trinidad and Tobago and Russia, although already signed, are not yet in force.

The provisions included in the tax treaties are normally effective in each signatory country from the first day of January of the following year.

Treaties limited to airlines

Brazil is a signatory to the 1944 Convention on International Civil Aviation.

Treaties relating to airlines are under negotiation with the following countries:

- United Kingdom
- Romania
- Switzerland
- United States

Social security tantalization agreements

Agreements have been signed with the following countries.

- Argentina
- Cape Verde
- Chile
- Greece
- Italy
- Luxembourg
- Paraguay
- Portugal
- Spain
- Uruguay

Appendix II | *Setting up in Brazil - a checklist*

This checklist illustrates points that investors and their advisers should consider when contemplating setting up a business enterprise in Brazil.

I. Investor considerations

Market - Existing and potential

Existing and potential market for goods or services.

Competition.

Market surveys.

Patent, trademark and design protection.

License to trade (some sectors only).

Franchising.

Industrial standards.

Preparation of a business plan

Determination of overall strategy.

Financial projections, including cash flow.

Assistance from professional advisers.

Form of entity for incorporating a subsidiary

Corporation (sociedade por ações).

Private limited-liability company (limitada).

Individual limited liability company (EIRELI)

Partnership.

Branch.

Joint venture (incorporating a company with one of the corporate forms mentioned above).

Capital structure

Nature of business and minimum capitalization requirements.
Import of capital.
Foreign-equity limitations.
Possibility of raising capital from local sources.
Availability of financing -from local/foreign sources.
Repatriation of interest and principal of foreign-sourced loans.
Bank financing.
Equity issues.
Injection of cash from parent or holding company.
Government assistance.
Other forms of financing (debentures/share issues).
Lease or purchase of assets.
Debt/equity ratio.
Tax implications.
Obtain advice from bankers, attorneys and accountants.

Location

Logistics.
Market and labor factors.
Transport facilities.
Availability of tax/non tax incentives in development areas/enterprise zones.
Tax implications - federal, state and municipal.

Premises

Type needed.
Owned or leased.
Expansion possible.
Storage/warehousing.
Insurance.
Health and safety regulations (licenses).
Planning restrictions.
Restrictions on ownership of buildings, land.
Approvals required.
Tax implications.

Management - availability and compensation

Legal requirements.

Skills required.

Compensation levels.

Availability locally; recruitment.

Possibility of bringing in own overseas staff.

Limitations on expatriate staff - number and compensation.

Executive recruitment services.

Pension and other retirement arrangements.

Visa requirements.

Existence of international schools for children of expatriate staff.

Tax aspects.

Labor - availability and compensation

Types of employee engagement.

Numbers and types of employee needed.

Compensation levels.

Terms of employment.

Work permits.

Recruitment.

Employee benefits/pensions.

Payroll taxes and social security costs.

Training programs.

Unions.

Government assistance, grants.

Production capabilities

Capacity - current and projected.

Capital commitments - initial and projected.

Raw materials - sources, availability, customs duties on.

Technology available.

Import restrictions.

Projected costs - overall and unit.

Selling the product

- Projected costs.
- Promotion methods.
- Selection of advertising and/or public relations firms.
- Market campaigns.
- Sales force.
- Sponsorship.
- Exhibitions and trade shows.
- Pricing policies.
- Exporting process.
- Sales tax, excise tax and indirect tax requirements.
- Existence of sales price controls.
- Tax implications.

Incorporation procedures

- Appointment of professional advisers - attorneys, accountants, tax advisers and bankers.
- Registration.
- Ordering stationery/design of logo.
- Corporate secretarial and administrative services.

II. Legal considerations

Approval of foreign investment by government authorities.
Documentation and registration requirements for type of entity selected.
Permits and licenses required.
Company name.
Statutory operating and audit requirements.
Conduct of the entity.
Business contracts and agreements.
Employment contracts.
Property evaluation and documentation.
Business, banking and industrial regulations.

III. Accountancy considerations

Evaluation of industry/feasibility study.
Tax planning.
Requirements for tax purposes.
Profit planning for initial years.
Accelerated depreciation.
Management control systems (i.e. financial management systems, employee records, inventory control).
Financing requirements.
Bookkeeping requirements.
Use of computers.
Financial statement preparation.
Management consulting.
Help from auditors.
Projections.

Appendix III | **FGTS, social security contributions and benefits**

FGTS deposits

The employer is obliged to make monthly deposits in its employees' name in government accounts, equivalent to 8% of the remuneration paid. This contribution is a labor right, called the Employee Severance Indemnity Fund, FGTS.

Social Security contributions

- Employer's contributions: Normal employer contributions amount to 20% of gross payroll. Financial institutions contribute an additional 2.5%.

From December 2011 to December 2014, payroll costs are to be reduced in certain industries including IT, clothing, leather, footwear, furniture manufacture among others. Rather than the current employer contributions to social security (20% on payroll), a fixed rate of 1% and 2% will apply on the company's gross revenue, depending on the type of business activity.

Employers are also subject to the following contributions:

Percentage of employee's remuneration

Education fund	2.5
Work-related accident insurance - maximum (1)	6.0
SESI/SESC Social programs	1.5
SENAI/SENAC Training programs (2)	1.0
SEBRAE Program for small companies	0.6
INCRA Supplementary rural pension	0.2
Total	11.8

The contributions listed above vary according to the activity performed by each company, except for FGTS, which is a mandatory payment made on behalf of all employees, irrespective of their activity.

Notes:

1. The contribution related to Occupational Environmental Risks (RAT) varies from 0.5% to 5.25% of gross payroll, depending on the intensity of risk that exists in the workplace. From January 2010, companies were given a factor according to the number of work-related accidents registered (prior to 2010, companies with the same activity paid the same rate as work-related accident insurance). The factor calculated by the Social Security Authorities for each company varies from 0.5 to 2.00 and must be multiplied by the work accident rate (determined according to the economic activity of the company, which varies from 1% to 3%). The maximum amount to be paid as work accident insurance may therefore be as high as 6%.
2. Applicable to industrial and commercial companies only.
3. All contributions are deductible for corporate income tax purposes.

Employees' contribution

Contribution		
From - BRL	To - BRL	%
0	1.174,86	8
1.174,86	1.958,10	9
1.958,11	3.916,20	11

Contribution ceiling: BRL 430.77

Notes:

1. Contributions are deducted from employees' monthly remuneration.
2. Contributions are deductible for individual income tax purposes.
3. The salary base for contributions is adjusted annually according to minimum wage restatements.

Social security benefits

Pension type	Requirements
Old age	
Male	180 months of contribution and 65 years of age
Female	180 months of contribution and 60 years of age
Period of service	
Male	35 years of contribution
Female	30 years of contribution
Disabled	12 months of contribution

The monthly pension varies according to the size of the contributions made. The maximum amount is R\$ 3,916.20. There is a minimum contribution period for pensions for individuals disabled due to accidents, which is 12 months.

Sickness benefit and accident insurance benefit

The maximum amounts payable for each of these benefits is also R\$ 3,916.20 per month.

Unemployment benefit

The unemployment benefit is paid by the government and can reach a maximum of R\$ 1,163.76 per month. To receive this benefit, the unemployed individual must fulfill certain conditions determined by legislation. It can be received only for a period of three to five months.

Notes:

1. All benefits are adjusted periodically.
2. The unemployment benefit is strictly connected to the minimum wage variation. Therefore, any change in its value is reflected in the benefit value.

Corporate income tax and social contribution rates

Rates applicable to taxable income

	%
Income tax rate	15
Surcharge on taxable income in excess of R\$ 240,000	10
Social contribution (see note 2)	9

Notes:

- Income tax and social contribution payments can be made on a monthly or quarterly basis. As a general rule, the annual income tax return (DIPJ) for the previous calendar year must be filed by the last business day of June of the following year and submitted to the authorities, whereupon any further payable or refundable tax is settled. However, monthly payments may also be final.
- In addition to CIT, all legal entities are subject to a social contribution to the federal government at the rate of 9% (except for insurance and financial institutions which are subject to a 15% rate), which is not deductible for CIT purposes. The tax base is the profit before income tax, after certain adjustments.

Accordingly, the current maximum consolidated effective tax rate on taxable income is 34%.

Appendix V | *Individual tax rates*

The following tax table is applicable to income tax payable in 2012.

Net taxable income (annual) (1)

Income over (BRL)	Up to (BRL)	Tax rate (%)	Amount to be deducted (BRL)
0	19.645,32	-	-
19.645,33	29.442,00	7.5	1,473.40
29.442,01	39.256,56	15.0	3,681.55
39.256,57	49.051,80	22.5	6,625.79
49.051,80	Above	27.5	9,078.38

Notes:

1. These rates apply to all types of tax returns, i.e. married individuals filing jointly or separately and single taxpayers.
2. An individual who receives personal income in any month from a source other than an employer must prepare a compulsory monthly tax computation (carnê leão) and pay any tax due by the last working day of the following month.

Appendix VI | ***Withholding taxes***

Payments of dividends, interest and royalties are subject to WHT at the following rates.

Net taxable income (annual) (1)

Recipient	Dividends %	Interest %	Royalties %
Resident:			
Companies*	Nil	15-22.5	Nil
Individuals*	Nil	Progressive Rate	Progressive Rate
Non-resident companies and individuals:			
In non-treaty (non-tax haven) country	Nil	15	15
In tax haven country	Nil	25	25
Treaty (Note 1):			
Argentina	Nil	15	15
Austria	15	15	25, 15, 10
Belgium	15, 10	15, 10	20, 15, 10
Canada	15	15, 10	25, 15
Chile	15, 10	15	15
China, P.R.	15	15	25, 15
Czech Republic	15	15, 10	25, 15
Denmark	25	15	25, 15
Ecuador	15	15	25, 15
Finland	10	15	25, 15, 10
France	15	15, 10	25, 15, 10
Hungary	15	15, 10	25, 15
India	15	15	25, 15
Israel	15, 10	15	15, 10
Italy	15	15	25, 15
Japan	12.5	12.5	25, 15, 12.5
Korea, Republic	15, 10	15, 10	25, 15, 10
Luxembourg	25, 15	15, 10	25, 15
Mexico	15, 10	15	15, 10
Netherlands	15	15, 10	25, 15
Norway	15	15	25, 15
Peru	15, 10	15	15
Philippines	25, 15	15, 10	25, 15
Portugal	15, 10	15	
15			
Russia (Note 2)	15, 10	15	15
Slovakia	15	15, 10	25, 15
South Africa	15, 10	15	15, 10
Spain	15, 10	15, 10	15, 10
Sweden	25	25	25
Ukraine	15, 10	15	15

In addition, tax is withheld from other payments, as follows:	%
Repatriated capital in excess of registered amount (Note 3)	15
Gains on sale or transfer of shareholdings by foreign shareholders or assets located in Brazil (Note 3)	15

Notes:

1. Treaty rates that are in excess of those for non-treaty countries are automatically reduced. As can be seen, dividends paid are not subject to any withholding tax.
2. The double-tax treaty between Russia and Brazil is still pending ratification.
3. In the case of residents of tax havens the capital-gains tax rate is increased to 25%.

Appendix VII | *Corporate tax calculation*

Sample corporate tax calculation for year ending December 31, 2012

	BRL
Net income before income tax and social contributions	11,800,000
Less: Dividends received (Note 2)	1,000,000
Net taxable income	10,800,000
Tax thereon	
Basic income tax at 15%	1,620,000
Surcharge: 10% from 240,000 to 10,800,000	1,056,000
Total federal income tax	2,676,000
The social contribution calculation is as follows	
Net taxable income	10,800,000
Social contribution at 9% (Note 3)	972,000

Notes:

1. Dividends received from other Brazilian companies, including affiliated companies, are not subject to WHT and are excluded from the income tax calculation.
2. The income tax/social contribution may be computed in three different ways, as follows:

On a presumed taxable income basis:

Only corporate taxpayers with gross annual revenue of under R\$ 48 million in the preceding year may opt for this income tax computation method. The income tax rate of 25% is imposed on a percentage of gross monthly revenue (from the sale of goods/products/services) plus capital gains and money-market income, less some minor adjustments, such as unconditional discounts and cancelled sales. The taxable base for other diversified activities is determined according to the proportionate amount of gross revenue.

Taxable base as a percentage of gross monthly revenue

Type of activity	%
General	8.0
Oil, gas, lubricants etc. (retail)	1.6
Transport (except cargo)	16.0
Services in general	32.0

The social contribution liability, at the rate of 9%, presumes a taxable base corresponding to the sum of: (i) an amount equal to 12% of gross monthly revenue (32% for services) and (ii) capital gains and money-market income.

On an arbitrary basis

Established solely at the discretion of the tax authorities, should the taxpayer fail to comply with the regulations for keeping records and/or computing taxable income.

On an actual taxable income basis

This basis is computed in accordance with the corporate records and adjusted for tax purposes, in line with the applicable regulations. Legal entities with the following characteristics/activities must use this method:

- Entities with annual gross revenue in the preceding calendar year of more than R\$48 million.
- Financial institutions in general, leasing companies, insurance companies and non-private pension funds.
- Legal entities that have profits, income or capital gains from abroad.
- Legal entities benefiting from income tax incentives (reduction or exemption).
- Legal entities that have made the monthly payments on an estimated basis during the tax year.
- Legal entities that render services related to credit and market assistance, credit management, risk and selection, management of receivables, and payables assistance or factoring.

These corporate taxpayers estimate their monthly tax payments (income tax and social contribution) by using the computation rules applicable when applying the presumed taxable income basis. Payments are due on the last working day of the following month. A final balance sheet and statement of income must be drawn up at year-end and the annual tax liability (including the income tax surcharge) computed. At this time, nominal money-market gains, as well as gains on transactions in the stock/commodities exchanges and/or futures markets must be considered; taxes withheld at source are treated as tax credits. Any difference between the final tax liability computed at year-end and the amounts estimated and paid in advance or withheld at source will either be paid up to the last working day of the month of March (subject to interest) or claimed as a tax credit. The taxpayer may at any time suspend or reduce the monthly advance payments, upon proof that amounts already paid or withheld at source exceed the amount due on actual taxable income for the same period.

Alternatively, the above corporate taxpayers may draw up quarterly financial statements, calculate the appropriate taxable income and pay the income tax (including surcharges) and the social contribution thereon by the last working day of the following month. Taxes paid under this alternative are considered final, and annual financial statements are not required for tax purposes.

Except for insurance and financial institutions, subject to a 15% rate.

As mentioned in Chapter 13, taxpayers which selected to apply the Transitional Tax Scheme (*Regime Tributário de Transição – RTT*) for 2008 and 2009 (the scheme is mandatory from FY 2010) must adjust their income tax and social contribution taxable base as to avoid any adverse tax consequences deriving from the new Brazilian accounting standards implemented from FY 2008.

Personal allowances and deductions

Allowances

A taxpayer may deduct a flat allowance of R\$ 1,974.72 per annum per dependent, in the 2012 calendar year.

A further allowance of up to R\$ 19,645.32 may also be received, in relation to annual income from retirement or military pensions, from the year in which the taxpayer reaches 65 years of age.

Deductions

The following may be deducted from taxable income:

- Contributions to the Brazilian Social Security System.
- Medical, dental and hospital expenses that are not covered by an insurance policy or subject to refund by any entity (with no limits).
- Amounts paid to recognized Brazilian health insurance/medical cost coverage plans (with no limits).
- Contributions to recognized Brazilian private pension funds (limited to 12% of the individual's annual income).
- Alimony payments under a court order or other legal agreement.
- Schooling expenses, up to an annual limit of R\$ 3,091.35 per student.

Business expenses are not deductible.

All individuals can elect to file a simplified tax return and take the benefit of the standard deduction, equal to 20% of the gross income (but limited to a maximum of R\$ 14,542.60), which substitutes all other deductions.

The taxpayers may also deduct from the tax due (but not from the taxable income), the following:

- Donations made to official government, state and/or municipal childcare entities.
- Certain qualifying contributions to cultural and sports projects.
- Investments in audiovisual activities.

Note, however, that those deductions are limited to 6% of the tax due.

- Contributions made by taxpayers to the official social security system on behalf of registered housekeepers within certain limits.

Individual tax calculation***A sample individual tax calculation for 2012*****Assumptions**

Tax filing status	BRL Married
Number of children	3
Itemized deductions (1)	Yes
Employee social security (R\$ 430,78 monthly/R\$ 5,169.36 for the year of 2012)	5,169.36
Medical expenses	1,500
Alimony payments	10,000
Schooling expenses (3,091.35 per dependent and annually)	9,274.05
Earnings **	
Brazilian-sourced salary income	110,000.00
Foreign-sourced income (2)	80,000.00
Income tax withheld at source (Brazil)	
Brazilian payroll withholding	25,250.00
Income tax paid abroad	
Income tax paid to a foreign tax jurisdiction on foreign-sourced income (3)	16,415.00

Tax computation on return

Earnings	BRL
Brazilian-sourced salary income	110,000.00
Foreign-sourced income	80,000.00
Gross income	190,000.00
Deductions	
Social security contributions	5,169.36
Dependents (three)	5,924.16
Medical expenses	1,500.00
Alimony payments	10,000.00
Schooling expenses (for three)	9,274.05
Net taxable income (Calculation basis)	158,132.43
Income Tax Calculation	
Income tax at 27.5%	43,486.42
Less - Amount deductible relating to lower tax brackets	9,078.36
Tax Due on the Brazilian Annual Income Tax Return (A)	34,408.06
Less - Taxes paid during the year:	
On Brazilian-source salary income	25,250.00
On foreign-source income	16,415.00
Total taxes paid (B)	41,665.00
Final Tax Result on the Brazilian Annual Income Tax Return (A-B) (4)	(7,256.94)

Notes:

- Itemized deductions: The expenses aforementioned can be claimed as deductions for the calculation basis of the tax due on the Annual Brazilian Income Tax Return. In case the individual elects to file a simplified tax return and take the benefit of the standard deduction (20% of the gross income limited to R\$ 14,542.60), the itemized deductions cannot be claimed.
 - Foreign income is subject to monthly calculations (“carnê-leão”) in Brazil, in separate of the income received from Brazilian sources.
 - Brazil will allow a foreign tax credit up to the limit established by the Brazilian Tax Authorities (tax rate of 27,5%), in relation to tax treaty countries. Regarding non-tax treaty countries, a foreign tax credit will only be allowed under reciprocal tax treatment.
 - A tax refund is discharged by the Brazilian Tax Authorities to the taxpayer’s bank account in Brazil. In case of a tax due, the amount must be paid in full at the time of filing or, at the taxpayer’s discretion, in up to six installments from April 30 onwards. Interest rates will be due from the 2nd installment and each installment may not be less than R\$ 50. If the amount due is less than R\$ 100 it should be paid in a single installment.
- ** Income received from stock transactions, sale of assets/rights occurred abroad or in Brazil, are subject to taxation exclusive at source and are not taken into account for the calculation of the Brazilian Income Tax Return. The same is applicable for investments income in Brazil.

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