

# Unlock Brazil

Helping you set up and grow your business

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# Expanding your business in Brazil

Expanding into new international markets can be challenging due to the many issues to consider and resolve. Our Unlock Brazil service can provide expert advice and insight to support you every step of the way. From helping you find the best location, to setting up a branch or subsidiary, we are committed to providing pragmatic and timely advice that allows you to focus on achieving your business goals.

International expansion is an important step, but with a dedicated at every stage of your company's growth cycle - from starting-up, international business adviser, who takes time to understand your raising venture funding, listing on a global exchange, acquiring business and customize the specific

services you require, you'll or merging with another company, or using Brazil as a base know you have the support to manage the risks and maximize the to expand into other markets - which means that whatever the potential a new market offers your business. Our advisers can help challenge, we're at your side.

## We can help you with the following services:



### 1. Back office services

- Business Process Outsourcing
- Tax Compliance
- Payroll and HR Services
- Accounting Services & Financial Statements
- IT Services & Technology
- Company Set-up & Domiciliation Services



### 2. Financing your business

- Debt or equity funding advice
- Mergers and acquisitions, purchase price allocations
- Due diligences, valuation services



### 3. Employment issues

- Reward packages
- Employment tax issues
- Benefits
- Global mobility



### 4. Business growth support

- Expert, tailored support to help you grow your business in Brazil and globally
- Market assessment and competitor analysis



### 5. Taxation services

- Corporate and international taxes
- Indirect taxes



### 6. Direct taxes

- Transfer pricing
- Personal taxation advice
- Stock options and repatriation of funds

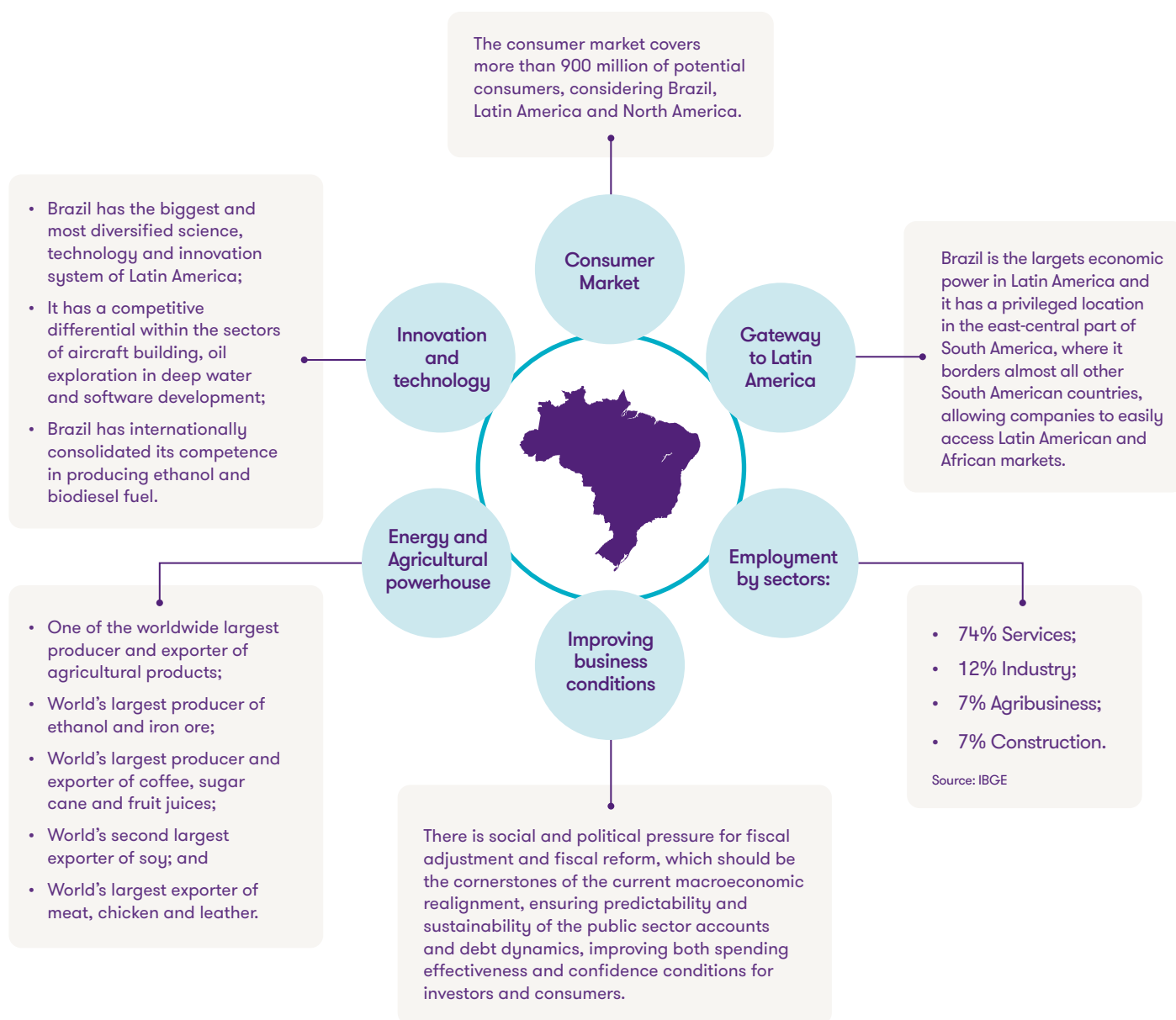


### 7. Audit and assurance

- Statutory and non-statutory audits
- Financial reporting advisory
- International financial reporting standards advisory

# Why choose Brazil?

Brazil is the fifth world's largest country in terms of territorial extension and population. According to IBGE (Brazilian Institute of Geography and Statistics), the Brazilian population is about to reach 212,6 million individuals in 2024, and the workforce is formed by 108 million people.



## Macroeconomic view

Brazil naturally takes the leadership in the Latin American region, being the largest economic power. Gross Domestic Product (GDP) registered growth of 1.8% in 2018. The year of 2019 was followed by 1.2% growth rate, resulting in a GDP of 1.5 trillion<sup>1</sup>. In 2020, due to the impacts of the coronavirus crisis, the GDP decreased by 3.3%. The advance of vaccination allowed some normalization of the economy, especially in the sectors that were previously deeply hit by the pandemic, such as services provided to families, leading to a growth rate of 4.8%.

In 2022, GDP registered a growth rate of 3.0%, representing a decrease in the growth rate that was on abnormal rates due to the pandemic recovery. Finally, in 2023, Brazilian GDP grew at a 2.9% growth rate. For 2024, expectations are of an 2.0% GDP growth.

## Inflation and interest rates

The Brazilian Central Bank started to reduce interest rates in October 2016. The movement was possible due to the inflation fall in 2017, decreasing from 6.3% in 2016 to 3.0% in 2017. The years of 2018 and 2019 presented a inflation rate of 3.8% and 4.3% respectively. In 2020, inflation was 4.5%, followed to a 10.1% in 2021, due to the influence of coronavirus crisis, impacting food and transportation prices. The interest rate was then raised to 9.2% and it was raised again until 13.7% p.a. at the end of 2022 to deal with inflation created due to the pandemic combat emergency measures. Thenceforward, the interest rate traces a downward trajectory, reaching 11.7% in 2023 and 10.7% in March 2024. The expectations for interest rates are to get gradually lower, attaining 9.0% in 2025.

## Employment and salaries

The unemployment rate in Brazil was 12.9% in 2017 and 12.4% in 2018. As of 2019 the unemployment rate started to decrease, ending the year at 12.0%. The stabilization of unemployment was seen as another sign of the economy recovery, as well as due to the recent labor reform in the country. In 2020 and 2021, the unemployment rate increased to 13.8% and 13.2%, successively, due to the impacts of the pandemic. In 2022 and 2023, the rate decreased to 9.3% and 8.0%, respectively. It is expected to remain in this baseline.

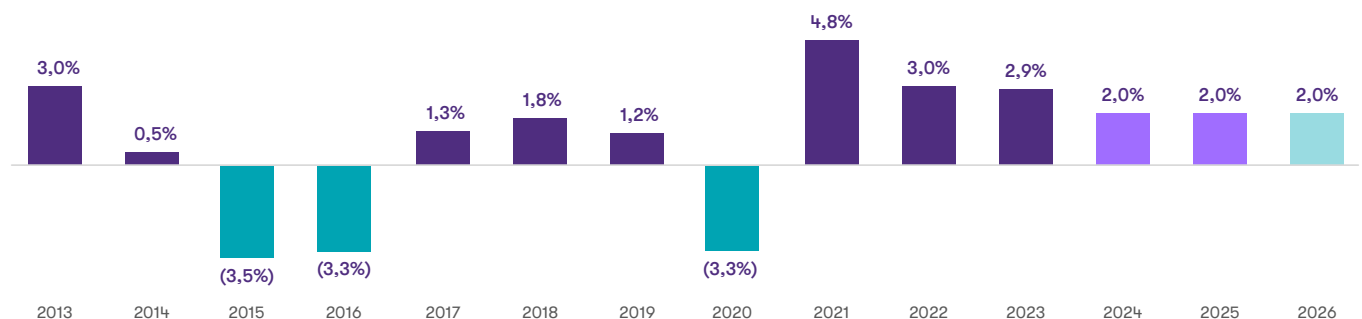
The minimum wage was US\$ 209.00 at the end of 2020, representing an increase of 9.5% over the previous year. In 2021, the minimum wage was US\$ 220.00. For 2022 and 2023, it was raised to US\$ 242.40 and US\$ 264.00. Finally, in 2024, the minimum wage is US\$ 282.40, representing an increase of 7.0% over the previous year.

## International investments in Brazil

According to the United Nations Conference on Trade and Development (UNCTAD), Brazil ranks number 4 in relation to receipts of direct investments. In 2022 the United Nations body pointed a 12% decrease in foreign investments globally, but in Brazil has risen to 67%, reaching \$86 billion, the second highest value ever recorded. The National Bank of Development (BNDES), which is controlled by the federal government, had a dominant role in the market of long period loans but lost its space due to the fiscal mismatch in the public accounts, and gave space to private capital.

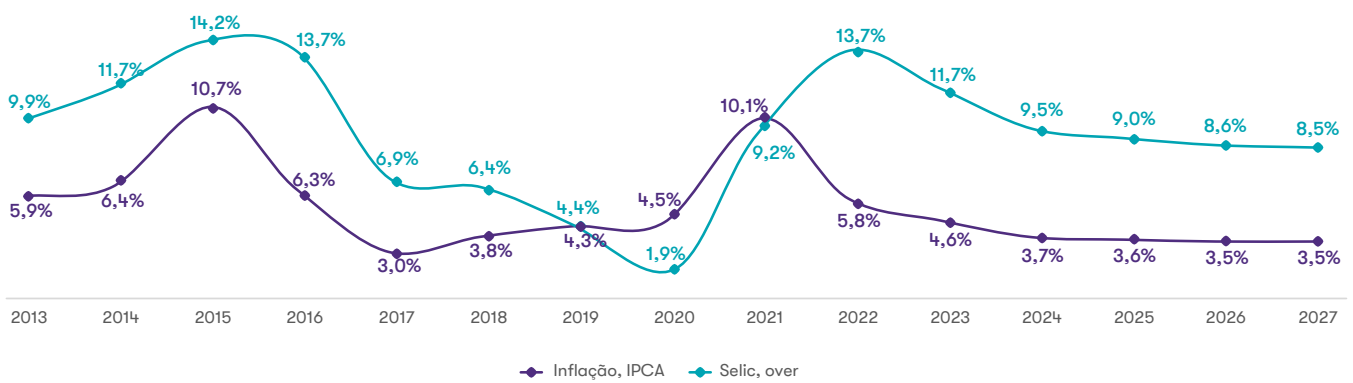
Brazil has an advanced and well-regulated capital market, with a latent need for investments, creating an auspicious scenario with all the means and opportunities for long term investments, and generation of consistent profits for investors.

## Historical and projected Brazilian GDP



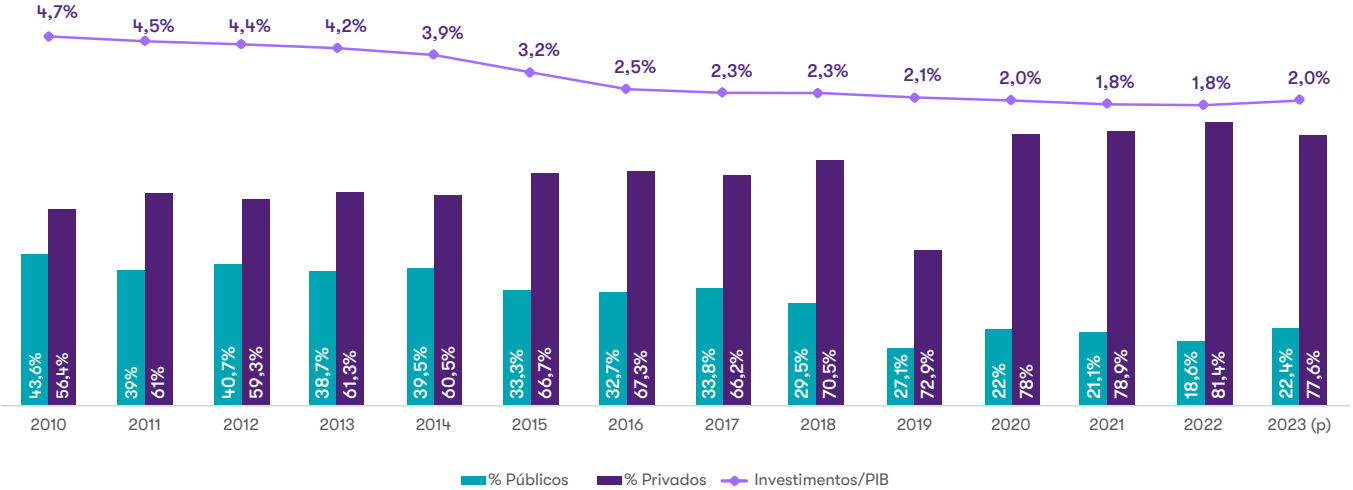
Historical database: IBGE. Projection: Capital IQ. Formulation: Grant Thornton

Evolution of interest rate and inflation



Historical database: IBGE. Projection: Brazilian Central Bank. Formulation: Grant Thornton

Public and private investment in infrastructure %



Historical database: ABDIB. Formulation: Grant Thornton

### Import and Export

Even though Brazil is bordered by nine countries in Latin America (Argentina, Bolivia, Colombia, Guiana, Peru, Paraguay, Suriname, Uruguay, and Venezuela), most of the main commercial partners are from other continents.

Historically, Brazil is a great producer of agricultural products and extraction. The top seller goods are soybean, iron ore and crude oil. On the other hand, Brazil imports refined petroleum, vehicle parts and packaged medicine, as well as semiconductors and chips.

Besides that, the Brazilian trade balance ended the last seven years (from 2015 to 2022) with a positive result of US\$ 19.7 billion, US\$ 47.7 billion, US\$ 67.0 billion, US\$ 58.7 billion, US\$ 48.0 billion, US\$ 42.0 billion, US\$ 61.2 billion and US\$ 61.8 billion, respectively. In 2023, the traded balance ended with a surplus of US\$ 98.9 billion.

#### Export - Accumulated Dec 2022

Country	Amount
China	US\$ 104.3 billion
United States of America	US\$ 36.9 billion
Argentina	US\$ 16.7 billion
Netherlands	US\$ 12.1 billion

#### Import - Accumulated Dec 2022

Country	Amount
China	US\$ 53.2 billion
United States of America	US\$ 38.0 billion
Argentina	US\$ 12.0 billion
Netherlands	US\$ 2.8 billion

Source: Ministry of Industry, foreign commerce and services. The values amounts are in FOB.



# 10 steps to get started:

We work with many businesses at their startup phase and continue to provide ongoing advice and services as they expand. To help you, we have set out the pathway to getting established in Brazil and provide some information relating to each step of your journey.



1

## Choose your entity type

Understand and determine an appropriate corporate structure and location for your business

2

## Incorporation

Company establishment requirements such as by-laws and registrations

3

## Licenses and regulations

Obtain necessary licenses to operate in Brazil

4

Tax registrations Register payroll, Federal, State and Municipal Taxes as needed, as well as authorization to bill clients

7

## Employee issues

Deal with employment issues including employment contracts, relocation of employees and employee taxes

6

## Company bank account

Choose bank and open Brazilian bank account

5

## Tax advise

Obtain advice around direct and indirect taxes and transfer pricing

8

## Financing your business

Ensure working capital requirements and on-going finance

9

## Growing your business

Achieve growth in line with business plans

10

## Ongoing compliance

Set up finance function and systems for compliance

<sup>1</sup>The value in dollars at an exchange rate of approximately BRL 5,14/1 USD, source Central Bank

# Which type of entity to choose

## Branch or subsidiary?

The first step in moving to Brazil is deciding what type of structure best suits the business. Incorporating a foreign company's branch in Brazil is usually a very time-consuming bureaucratic process: the establishment of a branch requires prior approval from the federal government by Presidential decree. The federal government must also authorize any amendments to the branch's Articles of Incorporation. Unlike subsidiaries, branches are considered part of the foreign entity in Brazil. In this regard, a branch of a foreign controlling company may have unlimited responsibility for its debts if the branch is unable to fulfill such obligations. It is important to keep in mind that branches are subject to Brazilian laws and courts with respect to acts and transactions that take place in Brazil.

Therefore, most investors in Brazil adopt the subsidiary model, since their shareholders are not responsible for the subsidiary's debts, except for specific provisions set forth by specific rules.

Once that is established, the investor will need to decide which format is more appropriate for the business. The investor may decide to acquire an existing company or assets, which would require a due diligence process. One could also form a Joint Venture, which could take the form of a Limited Liability company or a consortium agreement, which is commonly adopted for relevant infrastructure projects in Brazil. Therefore, the main decisions will be around incorporating or acquiring a company.



## Starting from scratch: incorporate a Ltda. or S.A.?

If the plan involves the incorporation of a new entity, there are some types of legal structures that are not available to companies with Foreign Capital. Therefore, most legal entities incorporated in the country are either "Limitada" or "S.A.": the Limitada type of business (Sociedade Limitada or Ltda.) is a limited liability company, and a S.A. (Sociedade Anônima) is similar to a corporation. The Ltda. is usually the preferred vehicle for a wholly owned subsidiary, as legally the liability of the shareholders is limited to their capital contribution.

# Main differences

## Ltda.

- A Ltda. is ruled by Article no. 1,052 to 1,087 of the Civil Code, and it is organized through the Articles of Incorporation (bylaws), with limited liability partners.
- The management of a Ltda. is conducted by one or more individuals, shareholders or not, as indicated in the bylaws (contrato social).
- The Ltda. is a legal entity under private law and is defined as Limitada, because the responsibility of each partner is limited to the number of shares he/she owns. The power of each partner is limited and bound by approvals defined in the Civil Code. Thereby, the autonomy of each partner is also limited. It is the best option for the small business owner or a startup.

In a Limited company, the costs for establishment and maintenance are generally lower; however, minority quota holders are equally financially responsible.

1 - Quotas are the partner's share of contribution in relation to the share capital of the company.

The capital is divided into equity units, named quotas, which are registered. There are formally no minimum capital requirements.

## S.A.

A S.A. is established by the Brazilian Civil Code in Article 1,088, and its latest regulation is Law No. 1,1941 of May 27, 2009. It is a business corporation with shares.

Dividends may be distributed to the shareholders in the form of interest over capital (Juros sobre Capital Próprio).

A S.A. may be managed by a Board of Directors and Executive Board, or solely by a Board of Directors. The Executive Board must have at least three members. If they do not reside in Brazil, they must appoint attorneys-in-fact to represent them.

The S.A. is a legal entity under a private law, regardless of its purpose, governed by statute whose capital is divided into shares. These shareholders have limited liability to the value of shares acquired by them. They are governed by special legislation: Law 6,404 of May 05, 1976, as amended, mainly by Law 9,457 of May 05, 1997, and 10,303 of October 31, 2001.

In a S.A., corporate governance is stronger, and it ensures more rights for minority shareholders, with mandatory distribution of annual profits. In this type of partnership, the real function of the partners is to contribute with capital to the company. In a S.A., there are strict rules related to accounting/auditing as there is a mandatory publication of certain corporate acts and minutes of general meetings which must be signed.

A S.A. can be classified as: publicly held, where shares are traded on the Stock Exchange, or Privately Held (Capital Fechado), meaning shares are not traded.

## Registration

Ltdas. (Sociedades Limitadas) and S.As. (Sociedades Anônimas) need to be registered with the Board of Trade (Junta Comercial) and with the tax authorities. Nowadays when the registration with the Board of Trade is executed, the Federal Tax Authorities automatically execute the registration.

S.As. need to be registered with the Securities and Exchange Commission (Comissão de Valores Mobiliários - CVM), if the S.A. is publicly held.

S. As entities must hold annual general shareholder's meetings by April 30th of each year (considering fiscal year from January 1st to December 31st) to approve financial reports. Local legal counsel generally drafts minutes. These must be signed by the accountant, Legal Acting Director, and in the case of a S.A., by the auditors. All documents and deliverables must be in Portuguese and all the amounts must be expressed in Brazilian Reais.

The company needs to be constituted by at least two partners. A partner can be either an individual or a legal organization, and need legal representation in Brazil, if the professionals are not Brazilian resident.

The Board of Directors represents the S.A. and ensures that everything is in place for its day-to-day activities. It is composed of at least two Directors, who may be shareholders and individuals, and who must be Brazilian residents. They may be elected for a maximum of 3 years.

If the Board understands that it is necessary, establish an Audit Committee could be one action to ensure that the company follows best practices in corporate governance. The company needs to be audited yearly and must consistently publish financial reports in national printed newspapers or online, as they are normally required by banks, tender processes and suppliers.

# Requirements for incorporating

## Bylaws

After a company decides on the most appropriate legal entity to establish in Brazil, the next step is to draw up the company's bylaws. The company will only be able to operate after it has registered with the Board of Trade and tax authorities, and has been granted a Federal Tax ID number (Cadastro Nacional de Pessoa Jurídica - CNPJ).

Below are some of the most important topics to be decided before setting up the bylaws, and it is highly recommended involving an attorney in this stage of the process:

- **Name of the Brazilian entity:** the name should be in Portuguese, describing the purpose of the legal entity, and one must verify with the Board of Trade whether the name is not currently being used by other parties; and
- **Shareholders:** two shareholders are needed for a Ltda. These might be a corporation or an individual, foreign or Brazilian. If the shareholders are foreigners, a legal representative must be appointed so that these entities (or individuals) are granted a CNPJ number. This number does not mean there are obligations related to this entity. The legal representative is a contact person between the entity and tax authorities (for summons, inspections, dividend distribution, and others). The shareholders draw up a power of attorney, which needs to be translated into Portuguese, and registered in Brazil.

The shareholders must therefore appoint an attorney in fact. Articles 1,074, Paragraph 1 of the Brazilian Civil Code, 119 and Article 126, Paragraph 1 of Law 6,404, dated December 15, 1976 of the Brazilian legislation, rules the obligation of a foreign company (quota or shareholder of a company in Brazil) to have an attorney-in-fact in the country in order to represent it within the national territory, with powers to receive summons referring to legal actions filed against it.

The legal representative, according to the instructions and authorizations from the foreign shareholder(s), also:

- Participates in meetings, assemblies and other deliberation sessions;
- Acquires, disposes, cedes or transfers shares or quotas; and
- Carries out all other rights concerning the conditions of a partner, quota or a shareholder of the Brazilian company in question.

All of these parties, foreign shareholders, and legal representatives need to be registered within the Brazilian Central Bank's database (Cadastro de Empresas - CADEMP). This will allow the company to register the Electronic Registration of Foreign Currency (Registro Declaratório Eletrônico - RDE), Registration of Financial Transactions (Registro de Operações Financeiras - ROF), Foreign Direct Investment - FDI (Investimento Externo Direto - IED) and other investments.

- **Purpose of the legal entity (objeto):** choosing the purpose of the legal entity determines to which tax and labor laws the company is subject to. It also determines, for example, whether the company needs to be registered with the municipality or state, if it will be subject to the Tax on Services (Imposto sobre Serviços - ISS) or State Value-Added Tax, or simply State VAT (Imposto Sobre Mercadorias e Serviços - ICMS) taxes, what type of licenses it will need, and which classification on the National Registration of Economic Activity (Cadastro Nacional de Atividade Econômica - CNAE) will be necessary.
- **Legal Acting Director:** one or more individuals carry out the management of the Ltda. and this governance is formalized by means of a contract or a separate appointment. The shareholders may determine the duration of this appointment in the bylaws, and a change is formalized with the amendment and registration of the same bylaws, to which the professional, who will no longer fulfill this position, must agree upon.

Article 1,011 and its respective paragraphs of the Brazilian Civil Code, Article 35, paragraph II of the Law 8,934/94, deliberations from the National Department of Business Registration, and among others, stress the condition that the manager must be domiciled in Brazil; foreigners must have a permanent visa.

## Final Beneficiary information updating

### Brazilian Federal Revenue suspends CNPJ (Federal Tax ID Number) due to lack of information on Final Beneficiary (Original Investor – Individual).

In 2022, the Brazilian Federal Revenue (IRS) has initially applied the suspension of the CNPJ (Tax ID Number) of foreign shareholders who failed to inform the Final Beneficiary.

Since 2016, through Normative Instruction 1.634/2016, the Brazilian Federal Revenue has introduced the mandatory information of the Final Beneficiary (Original Investor – Individual) in order to provide greater transparency to the resources invested in Brazil, as a measure to combat corruption and money laundering. We clarify that all those registered in the National Registry of Legal Entities (CNPJ), both Brazilians and foreigners, need to inform the IRS of their final beneficiaries, that is, their entire chain of partners, until reaching the individuals who have more than 25% capital share or influence its management.

According to article. 9 of Normative Instruction 1863/2018, entities that do not fill in the information regarding the final

beneficiary within the requested period/deadline or that do not present the documents in this process, will have their registration suspended with the CNPJ number and will be prevented from transacting with banking establishments, including regarding the movement of checking accounts, making financial investments, payments, cash collection and obtaining loans.

We have already seen that in recent months the Brazilian Federal Revenue Service has been suspending the CNPJ number of foreign partners who have not complied with the aforementioned information and may suspend the CNPJ of companies operating in Brazil that are not yet up to date with this requirement.

We alert companies to this urgent need to verify and regularize this information with the Federal Revenue Service to avoid suspension of your transactions and irregularity with the CVM - Security and Exchange Commission of Brazil.



## Corporate taxes on profits

There are two corporate taxes on profits in Brazil, and their combined rate is approximately 34%. Generally, the Corporate Income Tax (Imposto de Renda sobre a Pessoa Jurídica - IRPJ) has a basic rate of 15%, plus 10% surtax on annual taxable income that exceeds BRL 240,000. The Social Contribution on Net Profit (Contribuição Social sobre Lucro Líquido - CSLL) is applied at a base rate of 9%. This rate may be different for financial institutions.

There are three major options for Brazilian legal entities to calculate and pay corporate taxes on profits: the Actual Profit System, the Presumed Profit System and the Simplified Profit System.

- 1** **The Actual Profit System** corresponds in applying the IRPJ and CSLL rates (34%) to the company's net book profits under Brazilian GAAP (Generally Accepted Accounting Principles), adjusted by certain specific add-backs and deductions.
- 2** **The Presumed Profit System** is based on a presumed net profit, which is calculated by applying a predetermined presumed profit rate on the gross revenues of the company. The profit rates are determined by the Federal Government and vary according to each company's activity. However, this system is not always possible because of several restrictions, including a maximum annual turnover of BRL 78 million in the previous year.
- 3** **The Simplified Profit System** (Integrated Payment of Taxes and Contributions from Micro and Small Companies) is a simplified tax regime applicable to micro and small companies that meet specific gross revenue thresholds and other legal requirements. The Simples regime allows these companies to calculate taxes applying reduced rates and calculation bases, and it also provides them with the possibility of paying several taxes together, including federal (IRPJ, CSLL, PIS, COFINS, IPI, INSS), state (ICMS) and municipal (ISS) taxes using one single payment slip. The current cap to be able to elect for this regime is an annual turnover limited to BRL 4.8 million.



### TAXES ON REVENUE - PIS AND COFINS

The Contribution to the Employees' Profit Participation Program (Programa Integração Social - PIS) and the Contribution to the Financing of the Social Security (Contribuição para o Financiamento da Seguridade Social - COFINS) are federal taxes charged on gross revenues, on a monthly basis and under two regimes, cumulative and non-cumulative.

Under the cumulative regime, the combined rate is 3.65% and no credit mechanism is applicable. In other words, under this regime, the PIS and the COFINS are a cumulative tax, not VAT. Companies who adopt the presumed profit system for taxes on profits must calculate their PIS/COFINS under the cumulative regime.

Generally, companies under the actual profit system will apply the non-cumulative regime, which subject taxpayers to a combined PIS and COFINS rate of 9.25%. However, under this regime, tax credits for PIS and COFINS levied on certain inputs are available. Both PIS and COFINS are also due on the import of goods and services, generally at a combined rate of 9.25%.

### TAX ON MANUFACTURED PRODUCTS - IPI

The Tax on Manufactured Products (Imposto sobre Produtos Industrializados - IPI) is a federal tax levied on the Import and manufacture of goods. In many aspects, it operates as a VAT tax which is charged on the aggregated value of the final product. As a general rule, IPI paid on a previous transaction can be used to offset the IPI liability arising from subsequent taxed operations as a tax credit.

The applicable rate changes according to the product and its classification under the Table of Excise Tax Levy (Tabela de Incidência do Imposto sobre Produtos Industrializados - TIPI) which generally follows the Brussels Harmonized Tax Codes. These rates may vary considerably, from 0% to more than 300%, according to the products. As an excise tax, IPI rates can be higher for "non-essential" products such as cigarettes, perfumes and others.

Since the IPI tax has a regulatory nature, the federal government may increase or decrease its rates at any time by decree in order to implement financial and economic policies.

On import transactions, as a general rule, an IPI tax credit for the amount of the tax paid on the import is granted in cases in which the subsequent transaction involving the same product, or another product in the manufacturing process of which the imported product was used, is subject to the IPI.

### VALUE ADDED TAX ON GOODS AND SERVICES - ICMS

The ICMS is a type of state VAT tax generally levied on imports (customs clearance), sales, transfers and other transactions involving goods (including electricity), inter-municipal and interstate transportation services and communication services.

For import of goods and transactions within the same state, the regular ICMS rates range from 17% to 20%. However, for some specific goods, the applicable rate on import operations and sales within the state may differ from the regular ones.

When transactions involve two different states the rates are 7% or 12%, depending on the states within Brazil are involved. The applicable rate is 4% on interstate transactions with imported goods, regardless of the states involved, with some minor exceptions.

The ICMS tax is also due either when a product is resold in the domestic market or when it is physically moved from a manufacturing facility and/or between branches.

Given the fact that it is a VAT, ICMS taxpayers are generally entitled to a tax credit for the tax paid in the previous transaction with the same goods (inputs), provided that the purchaser is an ICMS taxpayer regarding that product. The tax credit may be offset against future ICMS payables.

Importers are generally entitled to recognize a tax credit at the amount of the tax paid to be used to offset future ICMS liabilities.

### TAX ON SERVICES - ISS

The Services Tax (ISS) is a municipal tax levied on revenues derived from the provision of services and on the import of services. Although it is a municipal tax, the specific services subject to the ISS are listed in a federal law and each city regulates its rates.

The tax base for the ISS is the price or value of the service. The rates vary from 2% to 5%, generally depending on the municipality where the service provider or importer is located, where the service is provided and the type of service.

## Import Tax

The Import Tax (Imposto de Importação - II) applies to the customs value of imported products at variable rates. As it is considered an effective import cost, it is not recoverable, thus it does not generate credit.

### WITHHOLDING TAXES

The Brazilian tax legislation determines that end clients (corporate clients) shall withhold taxes (PIS, COFINS, IRPJ and CSLL) when paying the service provider. The withholding tax rates are predetermined by the Federal Government and are generally 1,5% (IRPJ/IRRF) and 4,65% (CSLL, PIS and COFINS, all combined).

This is a cash flow issue, since any taxes withheld by the end client could be offset against the taxes (PIS, COFINS, IRPJ and CSLL) owed by the service provider on its regular activities.

Please note that these withholding taxes are not related to the corporate income tax regime (actual vs profit) nor with the gross revenue taxes regimes (cumulative vs non-cumulative). Instead of waiting until the end of each month, the Tax authorities utilized the withholding taxes as a method anticipating. For this activity the payment of taxes they charge part of these taxes (the amounts to be withheld) on each payment of service fees.

### INTERVENTION IN THE ECONOMIC DOMAIN TAX - CIDE

In addition to the IRRF, a Contribution for Intervention in the Economic Domain (Contribuições de Intervenção no Domínio Econômico - CIDE) of 10% is levied on payments to non-residents and includes certain royalties, technical and administrative services and technical assistance, among others. The CIDE is imposed on the payment of the fees and cannot be reduced by double tax treaties.

### WITHHOLDING INCOME TAX - OVER REMITTANCES

The Withholding Income Tax (Imposto de Renda Retido na Fonte - IRRF) applies to certain domestic transactions such as fee payments to service providers and financial income from investments.

The IRRF tax is also due on general payments by a Brazilian source to most non-residents (e.g.: the payment of service fees, license fees, interest, interest on net equity, royalties, cost sharing, management fees, among others). The rate depends on the nature of the payment, the beneficiary's residence and the existence of double tax treaties. Normally the rates range from 15% to 25%, and the payment is considered the tax event.

### FINANCIAL TRANSACTION TAX - IOF

Tax on Financial Transactions (Imposto sobre Operações Financeiras - IOF) is a federal tax levied on credit operations, foreign exchange transactions, insurance, and securities transactions executed through financial institutions and includes intercompany loans and some operations with gold.

The rates vary according to the nature of the transaction and the maturity term. Since IOF rates have been constantly changing over the past several years, it is recommended careful and updated analysis regarding this topic prior to entering any such transactions.

# Hiring people in Brazil

Brazilian employment law and conditions have unique features. There are regulations to reward employees efficiently with the payment of premiums, commissions, profit sharing plans and other benefits such as meals, transportation and medical assistance. As of November 2017, the labor legislation underwent changes in order to make some items more flexible for the Companies.



## A. Employment Taxes

There are three main payroll taxes in Brazil: FGTS, INSS and IRRF.

Each month the employer must contribute 8% of the total salaries to the Federal Government Severance Indemnity Fund for Employees (FGTS). These contributions do not apply to payments made to independent professionals and are not mandatory for directors who are not also employees.

The Brazilian Social Security Institute (INSS) contribution must be paid at a rate of 20% on gross salaries, increased by 1% to 3% referring to the Work Place Accident Risk (RAT) rate and 5.8% intended for other entities in accordance with the Target Company's activity. Beginning January 2010, the RAT rates have been decreased or increased according to the application of the Workplace Accident and Prevention Factor ("FAP"), the calculation of which is based on several labor and social security issues. The objective of the FAP is to motivate an improvement in workplace conditions and in workers' health by stimulating companies to implement more effective occupational health and safety policies to reduce accidents.

Employee contributions to Social Security usually range from 8% to 14% and must be withheld by the employer.

The Withholding Income Tax (IRRF) on Brazilian source payments made to employees for services must be withheld on a monthly basis and ranges from 7.5% to 27.5%.



## B. Social Security Contributions on Gross Revenue

In August 2011 the Brazilian Federal Government launched the Plano Brasil Maior, a set of measures intended to reduce the tax burden of certain industry sectors. One of these measures introduced a different calculation method for the social security employer contributions for companies in certain industries, aiming at reducing labor costs and creating new jobs.

Essentially, for these industry sectors, the standard employer contribution of 20% on the payroll of employees can be replaced by a fixed percentage that is levied on the gross revenue of the company.

The legislation was amended so that the possibility of replacing contributions occurs until December 31, 2023.

# Accessory Obligations in Brazil

To be complying in Brazil, it is necessary, besides fulfilling the main obligation, paying the taxes, it is also necessary to fulfill the accessory obligations. Every legal entity and individual must send to the tax authorities the declarations that demonstrate the income and the correct calculation and collection of taxes in Brazil.

We have accessory obligations that must be presented in all spheres: Union, complying with the declarations imposed by the Federal Revenue Service, at the state level, and at the city level.

For another decade the country has been seeking a simplification, which is still far from happening. The SPED project, instituted by Decree no 6.022, of January 22, 2007, has as its objective: to integrate the tax authorities of all spheres (Union, states and municipalities); to reduce and unify the accessory obligations, and among others, the improvement in the control and analysis of information, helping the inspection in the crossing of data, and even so we are still faced with duplicity of information, in distinct accessory obligations, complexity in the filling out of these declarations.

If we think that each state, even with the delivery of the SPED project's EFD's, still institute specific accessory obligations and that each municipality establishes its own declarations, and that besides all this, we still have to be accountable to the Union, we are still far from actually reaching a simplification.

For all this, tax management is very important, since a company that has its accessory obligations prepared with accuracy and punctuality, avoids penalties, inspections and unnecessary infractions and still has a good rating in the ranking of the Program of Incentive to Tax Compliance.

## Other important accessory obligation

The Brazilian Federal Government developed a system (eSocial) that simplifies and unifies the fulfillment of some accessory obligations, because of the complexity of

employers delivering several concurrent obligations, as well as to optimize comparing such obligations and analyzing the validation of the information rendered by taxpayers.

The objectives of the eSocial are to unify information capture, as well as rationalize and unify the accessory obligations for employers, by means of one single transmission to the various Government agencies.

We emphasize that the major objective of creating the e-Social is to reduce the differences when comparing the information between payroll and certain accessory

obligations, as well as facilitate the supervision from the agencies referred to above as regards the fulfillment of the obligations provided for by law. It is believed that, probably, the supervisions will be increasingly agile, and it is possible that employers receive tax-deficiency notices even without in person supervision from the pertinent authorities.

# Changes on US-Brazil Foreign Tax Credit regulations

The Foreign Tax Credit (“FTC”) is related to the right of taking credit of taxes regarding income received and paid in one country and are also due in the other country.

The reciprocity that allows the FTC is provided for in the Brazilian legislation on the Declaratory Act SRF n.28/2000. Brazil and United States of America (USA, h.i. US) have not yet celebrated a Treaty to Avoid Double Taxation (or Double Tax Treaty “DDT”), however, the reciprocity of treatment between the two countries before the current US law changes allowed taxpayers to be entitled of FTC.

In January 2022, the Internal Revenue Services office (IRS) has published the TD 9959 which brings significant changes, to the use of FTC in the US. The new ID promises to bring impactful changes, specially to the Brazilian market, since, beyond the Reciprocity Agreement, there is no DDT between Brazil and the US.

The new changes have potential to increase double taxation between both countries and, might raise a necessity of including new clauses on tax treaties for electing benefits of the relief from double taxation.

## Impact of changes

TD 9959 provides that the FTC must attend to a jurisdictional nexus, that is, the taking of tax credits will only be allowed with countries whose tax and regulatory treatment is similar to the tax treatment adopted by the US.

However, as Brazil is not currently an OECD member and in general does not follow global tax treatment standards, the Brazilian tax legislation as unique as it is complex. The implications of this uniqueness of Brazilian tax treatments reflect on the possible impossibility of taking credit in most taxes when dealing with the US, since many of the treatments will not be similar.

Some of the highest impacts for Brazilian taxpayers with presence in the US are on the Foreign Tax Credit in cases of taxation of technical services, Digital Services Taxes (DST) and Royalties taxation.



# Changes on Brazilian Transfer Pricing regulations

Through Provisional Measure (MP) N° 1,152/2022, Brazil changes its regulations towards Transfer Pricing and adheres to the OECD rules on this matter.

Initially, it is relevant to point out that Brazil is not yet in the roll of OECD members and, as such, did not have its Transfer Pricing (TP) regulations aligned with the Organization. In this sense, TP rules in Brazil were considerably different from conventional market practices, especially regarding Brazil's trade relations with other OECD members, given that these rules in Brazil were previously established in accordance with Brazilian domestic law through Normative Instruction RFB 1.312/12.

Nevertheless, through MP N° 1,152/2022, amendments were made to the Corporate Income Tax (IRPJ and CSLL) legislation with regard to the rules of Transfer Pricing (TP) in Brazil. Among the main changes, it is important to mention the Arm's Length (PAL) principle as the basis for everything, implementation of five new methods along with those already known in local legislation but without fixed margin, adoption

of "comparability analysis", and the addition of intangibles, royalties, and cost-sharing within the control of TP laws.

## Impact of changes

The new Measure is considered to be an approximation of Brazil to the OECD, being part of the changes foreseen for the country's entry into the Organization.

At the moment, the bill is in the process of being discussion and might be approved by the National Congress in order to become law.

Additionally, it is important to mention that article 46 of the MP provides that the taxpayer may opt for the adoption of the new transfer pricing rules for calendar year 2023, however, if adopted, the adherence will be irreversible.

As of January 1, 2024, application of the rules will be mandatory.



# Further points of attention for 2024 and beyond

## Brazilian Tax Reform: Main features and Impacts

In 2023, a constitutional amendment was approved to implement Brazilian Tax Reform, aiming to unify consumption taxes through a dual VAT system (VAT-DUAL).

The next step in the Tax Reform will be to regulate all the infra-constitutional rules through infra-constitutional legislation (complementary and ordinary laws). Currently, bills are under discussion in the National Congress to regulate

essential parts of the new tax system's implementation, including general aspects of the new taxes, methods of focalization, and transition rules.

Next, we highlight the main points of the tax reform.

### What changed?

#### DUAL VAT

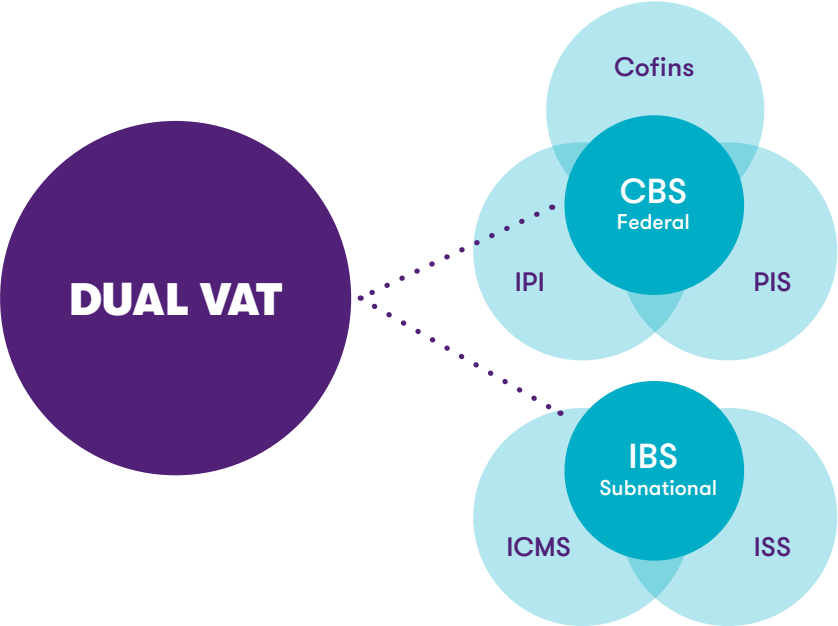
A dual VAT model will be adopted, composed of:

- CBS – Contribution on Goods and Services; and
- IBS – Tax on Goods and Services;

In addition to the Federal Excise Tax – IS.

The details of the CBS and IBS System will be regulated through a future Complementary Law (LC).

- Same definition of taxable events and base, under unified legislation;
- Broad incidence on goods and services, including tangibles and intangibles;



#### IS Federal

Goods and Services deemed harmful to human health or the environment

#### IPI ZFM

Reduction of the tax rate to 0% (except for products from the ZFM)

## BR Tax Reform: System Overview

1

### Choose Fully non-cumulative

Fully non-cumulative, with input credits corresponding to amounts charged by suppliers; **input credits may be conditioned to the confirmation of the tax collection in the previous stage.**

2

### Without Gross-Up

The CBS and IBS will be calculated with **no Gross-Up**. In other words, **the price without taxes is determined first, and then the tax rate is applied to that price.** Currently, the tax amount is included in the price.

3

### Collection at destination

Taxes will be due to the destination states and municipalities for goods and services. Currently, they are due in the state or municipality where the company is located.

4

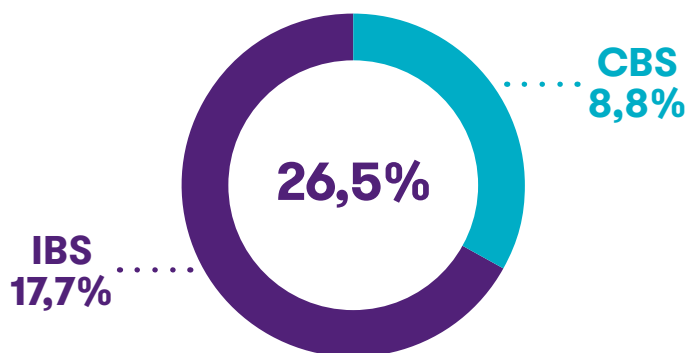
### Extensive Taxation

The CBS and IBS will be levied on transactions involving **tangible or intangible goods, including rights or services.**

## IBS/CBS: Tax rates (to be defined)

The Ministry of Finance updated the estimated rates of IBS and CBS, considering the definitions up to this moment in the General Law of IBS, CBS, and IS.

- **Standard rate (to be defined) for all goods and services**, with exceptions set out in the PEC permitting reductions from 30% up to 100%;
- **Reference ceilings** based on the average collection revenue in relation to GDP over a 10-year period (2012 to 2021), for the respective taxes;
- **Each State sets its IBS rate**, based on the reference rate set forth in a Federal Senate resolution, unless otherwise established in a specific law;



Exceptions - Rate Reduction for:

100%

For products of basic staple food;  
Vegetables, fruit and eggs;  
Services provided by a non-profit Scientific, Technological and Innovation Institution (ICT);  
Among others.

60%

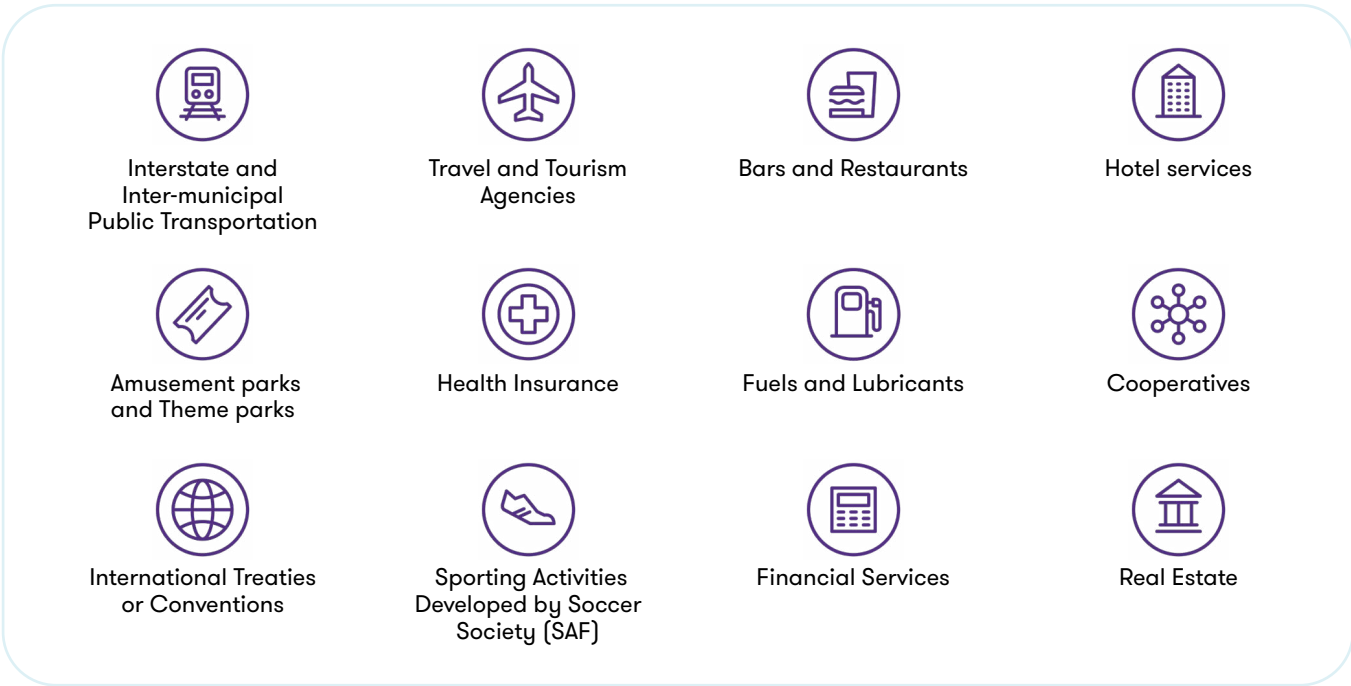
Education services; Healthcare services; and Medical devices (which can be reduced by 100%);  
Medication (which can be reduced by 100%);  
Food intended for human consumption;  
Agricultural, aquaculture, fishing, forestry, and 'in natura' plant extraction products;  
Agricultural and aquaculture supplies;  
Among others.

30%

30% reduction in IBS/CBS rates for the provision of intellectual services, as long as they are subject to supervision by a professional council. (e.g., Lawyers and Engineers).

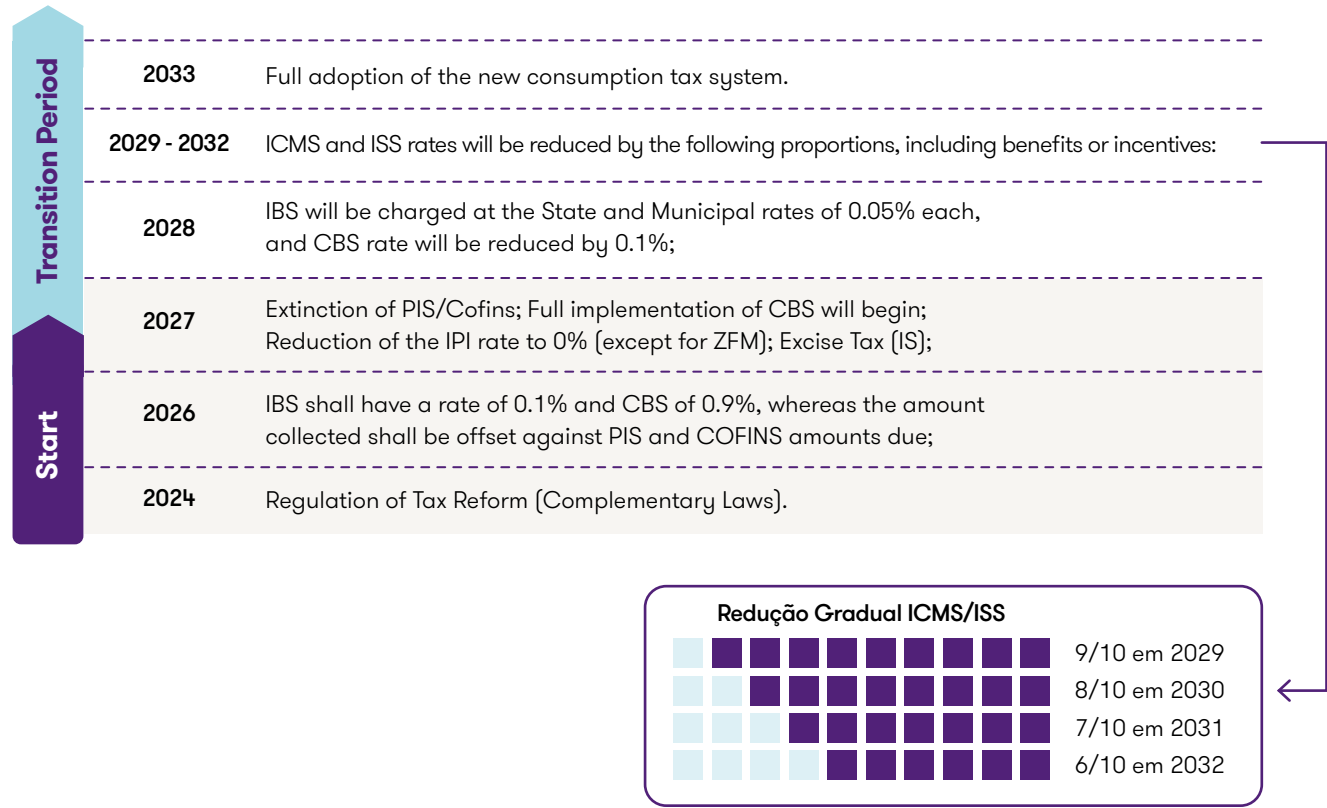


## Specific Tax Regimes



## DUAL VAT: Transition Period

Coexistence of two tax systems with old and new taxes collected in parallel for 7 years.



# New taxation for investment funds and offshores is sanctioned

On December 12th, the President of the Republic, Luiz Inácio Lula da Silva, sanctioned Law 14,754, of 2023, which, among other changes, promotes changes to the Income Tax (IR) levied on investment funds and taxation of income from abroad through offshore companies and establishes a taxation regime for trust assets abroad via fiscal transparency. The text, published in the Official Gazette of the Union (DOU) on December 13th, establishes that the law will come into force from January 1st, 2024, with exceptions for certain rules, especially those related to the regime transition.

Currently, a 15% income tax rate is levied on capital gains from resources invested in offshore companies. However, taxation only occurs on resources that return to Brazil. In other words, once outside the country, this income could never actually be taxed, as long as it never returned to the country.

The new law establishes a 15% annual rate on income from 2024, even if the assets remain abroad. Collection will occur in advance, with the same rules as for exclusive funds.

In relation to exclusive funds, generally adopted by individuals considered “super rich”, participants in exclusive funds will be subject to taxation of 15% on income in long-term funds or 20% in the case of short-term funds (lasting up to one year) for Income Tax purposes. Longer investment periods will be associated with lower tax rates, as provided for in the Income Tax regressive table.

Starting next year, the amounts will be collected every six months through the “come-cotas” system. In this modality, the Federal Revenue Service withholds the income tax due, taxing a portion of quotas every six months. It is important to note that the quota allowance exclusively impacts profits, not affecting the capital invested.

Investors who choose to start paying the allowance this year will be able to pay 8% on all income obtained until 2023 in installments, with the first installment starting in December; or 15% in 24 months, with the first installment in May 2024.

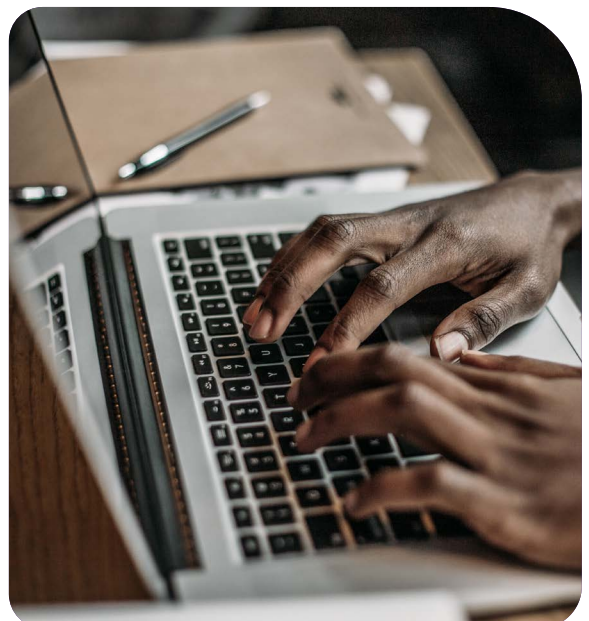
## Taxation of assets abroad

### Published Normative Instruction No. 2,180/24, which regulates Law No. 14,754/23 (taxation of assets abroad).

Law #14,754/2023 introduced a new taxation system for foreign assets held by tax residents in the country, more specifically financial investments, controlled entities and trusts abroad.

As a result, on 03/13/24, Normative Instruction #2,180 was published providing for the regulation and clarifications to Law #14,754/23, among which we can highlight:

- ABEX – an on-line system for updating the value of assets and rights abroad, with the base date of 12/31/2023, aiming to anticipate taxation by applying a taxation at a rate of 8%. Access to ABEX will be carried out via authentication, through the single gov.br portal, with a deadline of 05/31/2024;
- Greater focus on virtual assets and their framing as financial investments abroad, when held or traded by institutions located outside Brazil;
- Detail of the applicable procedures regarding the information to be presented in the annual Individual Income Tax Return, in relation to the results of controlled entities and trusts abroad.



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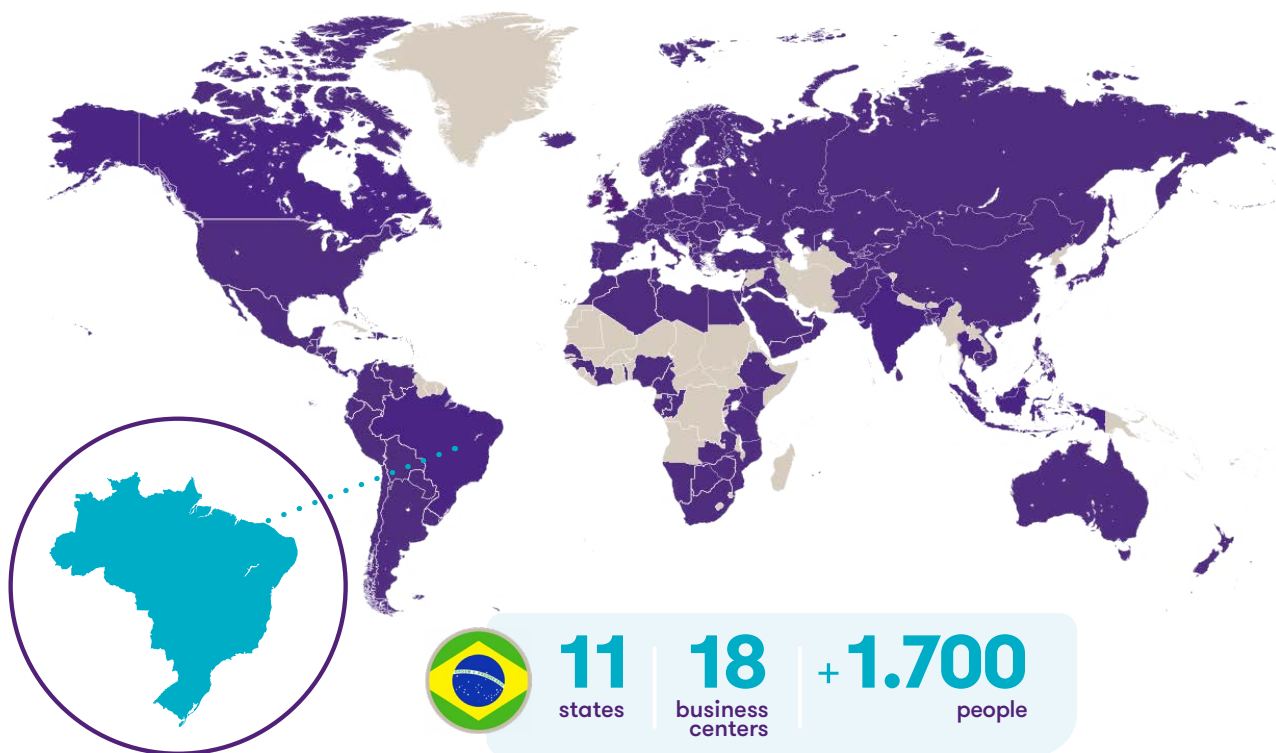
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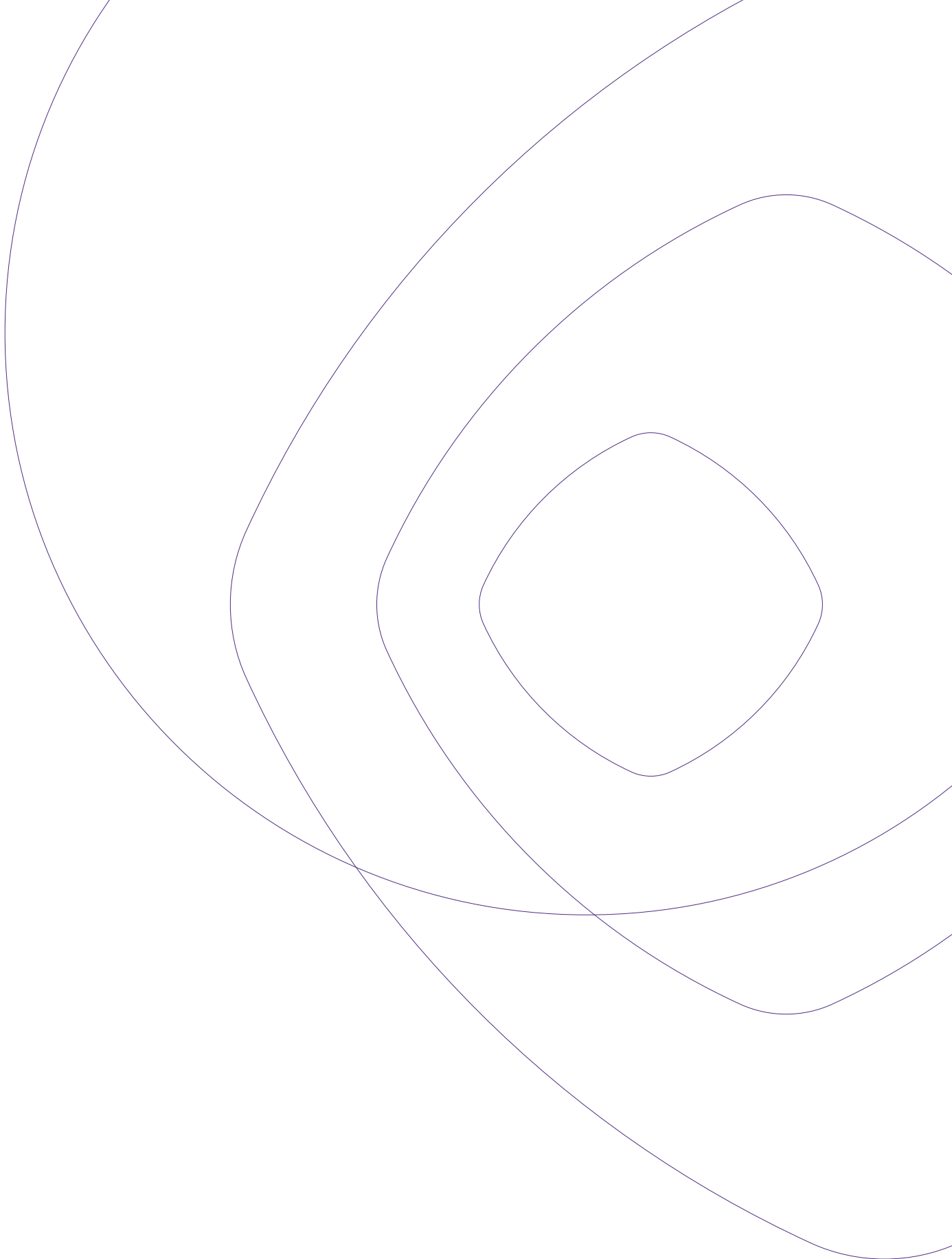
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