

Tax Agenda Brazil

September 2024



No.	Fact	Action
1	<p>Adoption of the New Transfer Pricing legislation</p> <p>As of 01 January 2024, new Brazilian Transfer Pricing (TP) rules were implemented (the adoption of these new rules was optional for 2023). Under these new rules, Brazilian taxpayers are subject to TP rules that are aligned with the OECD TP Guidelines and departing from the formulaic approach that Brazil has historically adopted.</p>	<p>Brazilian and international groups that perform activities in Brazil should:</p> <ul style="list-style-type: none">- Perform functional analysis of their operations within the country.- Take into consideration specific requirements of the Brazilian legislation in the search and adjustment of comparable (including adjustments for location and local risks) to comply with the new rules.- Evaluate the feasibility of adjusting prices and implementing new payment streams (specially royalty and service fees).- Calculate impact on the local tax rate and on indirect/remittance taxation.- Consider advantages and disadvantages of corporate restructurings.- Evaluate the advisability of entering into Advance Pricing Agreements to manage controversy risks.- Identify and calculate potential customs valuation risks.
2	<p>Amendments to the legislation on the calculation of capital gains for non-residents</p> <p>By the end of December 2023, amendments to the capital gains legislation were approved, under which non-residents will no longer be able to calculate capital gains in foreign currency. As a result, it is expected that non-residents will be taxed on non-existent gains in foreign currency.</p>	<p>Multinational groups should identify transactions implemented at the start of 2024, or planned to take place in the following months, to calculate impact of the new rules and explore potential alternatives or strategies.</p>

Sep

Oct

Nov

Dec

Use text boxes above the timeline to plan your actions for coming months

Compliance

Risk management

Cash-flow and ETR impact

Amendments to the legislation regarding Interest on net equity payments

3 Brazilian Government enacted amendments to the legislation on interest on net equity (INE), resulting in a reduction of the amount of deductible INE paid/accrued by Brazilian companies. Under these amendments, the calculation of the INE amount is modified, more specifically on the calculation basis (net equity amount) to be considered. The measure is applicable from January 2024 onwards.

Taxpayers should analyze in detail and in advance the effects of the inflation in the income tax calculation for Fiscal Year (FY) 23; as well as alternatives for the income tax calculation and filing, including the adjustment of net operating losses (NOLs), with the risk of a potential tax dispute/litigation.

**Indirect Tax Reform**

4 Brazilian Congress has approved an amendment to the Constitution focused on a complete reform of the indirect tax system in Brazil, replacing existing Federal, State and Municipal taxes by Federal VATs (New dual VAT regime, that will include CBS - federal VAT and IBS - state and municipal VAT). Complementary laws will be published to regulate the new dual VAT regime, and the implementation shall start in 2026, with a transition period ending in 2033.

Considering the structural changes proposed, the VAT Reform will not only affect the taxes paid by the Company, but it may change the way companies do business in Brazil. It is expected that the Tax reform will affect procurement, supply chain, pricing, strategy and even the competitiveness landscape in Brazilian market. Therefore, taxpayers should evaluate, with an holistic view, the potential impact of the new rules to their businesses, given that the impact on diverse industries and companies will vary.

**New treatment for tax incentives**

5 Starting 2024, the amounts connected with tax incentives granted by Brazilian Tax Authorities will no longer be excluded from the taxable basis of corporate income tax (CIT). However, if the tax incentive is related to expansion/modernization projects carried out jointly with a public entity/authority, tax credits up to 25% may be granted. They would be subject to prior authorization by the Federal tax Authorities and could be used to offset other Federal tax liabilities or as a refund.

Taxpayers should evaluate the impact of these new measures on their effective tax rate and identify other alternatives to potentially mitigate negative impacts. Taxpayers should also evaluate whether they may claim the up to 25% tax credits that are now available under the new legislation. In case they are entitled to these, they should prepare for the claiming of the new benefits, via the filing of administrative requests.

**Tax Settlement Program**

6 Government has created a tax Settlement Program to encourage taxpayers to voluntarily disclose their tax liabilities before the Brazilian Tax Authority, settling undeclared debts, preventing tax assessments and litigation.

Taxpayers should review the requirements to determine if it may be applicable to their specific case. Taxpayer could apply to this program from 02 January 2024, to 01 April 2024.



The tax Settlement Program allows taxpayers to pay past-due taxes without having to pay late payment fines and late payment interest. It is applicable to taxes not recognized until 30 November 2023, and taxes recognized between 30 November 2023 and 01 April 2024, including those in relation to which an audit procedure has already been initiated. The consolidated debt can be settled with a 100% reduction in fines and interest, payment of 50% of the debt as a down payment, with the remainder in up to 48 monthly installments. It is possible to use NOLs to pay the debt, limited to 50% of the value of the consolidated debt. The use of the program is conditional on the debtor recognizing the debt of the mentioned periods.

No.

Fact

Action

Possibility to exclude ICMS-ST from the PIS and COFINS tax basis

In June, 2024, Brazil Superior Court of Justice (STJ) judged the possibility of excluding the amount corresponding to the ICMS-ST (state VAT) from the calculation base of the PIS and COFINS contributions owed by the substituted taxpayer.

The Court established the thesis is that ICMS-ST does not form part of the calculation base for PIS and COFINS contributions due by the substituted taxpayer under the progressive tax substitution regime.

7

Regarding the modulation of effects, following the guidance of the Supreme Federal Court established in the judgment of General Repercussion Theme 69, and considering the absence of judgments in the proposed direction as described in the jurisprudential panorama of this vote, it is necessary to modulate the effects of this decision. The decision will take effect from the date of publication of the minutes of the judgment in the official press, except for ongoing judicial actions and administrative procedures. (Judgment published in the DJe on 28 February 2024).



Pillar 2

Although Brazil has not yet implemented Pillar 2 norms, Brazilian companies can still be impacted by Pillar 2, both the Brazilian multinationals with investments in jurisdictions that have implemented Pillar 2 and foreign multinationals operating in Brazil that are part of a multinational group with presence in jurisdictions that did implement Pillar 2 measures.

8

Brazilian multinationals may be impacted on its CFC calculations resulting in double taxation, and foreign multinationals may create top-up tax as a consequence of the use of Brazilian tax incentives which in its majority are not qualified for Pillar2.



Right to commercialize or distribute Software (Tax Impacts) – Tax Ruling 177/2024

In a Tax Ruling, Brazil tax authorities ruled that payments abroad for the right to commercialize or distribute software, including SaaS, in Brazil should be treated as royalties for tax purposes. A distinction was drawn between the right to distribute and the right to use the software.

Taxpayers in Brazil with similar facts will want to consider how the analysis described in this ruling might apply to their situations.

9

The RFB ruled that such payments are classified as royalties for Brazilian tax purposes and are therefore subject to a 15% withholding tax (WHT). Further, the RFB understand that payments for the right to distribute or license cloud-based platforms, without transferring source code, are not subject to the 10% Contribution for Intervention in the Economic Domain (CIDE). Finally, the Ruling also confirmed that software royalties are not subject to social security contributions on imports (PIS/COFINS-Import), provided that the amounts are separated from any connected services in the supporting documentation. This ruling is mandatory for tax auditors.

Taxpayers should review the possibility to identify tax credits based on this decision.

Taxpayers should perform an analysis of Pillar 2 impact, including safe harbor adequation and potential review of structure and business model to avoid Pillar 2 negative impacts.

Taxpayers should review the taxation over the remittance of the amounts for foreign companies in distribution agreements and a study a strategy to reduce the tax burden in this remittance.



No.

Fact

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Green Mobility and Innovation Program - Mover Program

Sanctioned by the Brazilian government in June, the Mover Program introduces mandatory requirements for the commercialization of new vehicles produced in the country and for the importation of new vehicles, establishes a regime for non-produced auto parts, and, to foster research, development, and technological innovation (R&D), the Mover Program provides financial incentives totaling R\$ 19.3 billion during its validity, which spans from 2024 to 2028.

The financial credits start at 50% of the expenditures made in R&D and can have their base increased by up to 270%, respecting the toll of 0.6% for cars and light commercial vehicles and 0.3% for trucks, buses, auto parts, and automotive systems.

10

Furthermore, the value of the financial credit will be recognized in the operating result, will be subject to compensation of federal taxes or reimbursement, and will be limited to the value of 5% to 16% of the total gross revenue from the sale of goods and services of the second calendar month prior to the month of credit assessment, depending on the increments used.

The government is developing additional regulations for the mandatory requirements and the establishment of rates for the Tax on Industrialized Products (IPI), in a bonus-malus application system, according to the attributes of structural performance, energy efficiency, recyclability, and vehicle labeling.

Recycling Incentive

In July, the Federal Government regulated the Recycling Incentive Law. This is a tax incentive for the recycling production chain, aimed at fostering the use of raw materials and inputs from recyclable and recycled materials.

11

The legislation allows for the deduction of income tax for companies or individuals who invest in recycling projects previously approved by the Ministry of the Environment, varying up to 6% of the tax due for individuals and up to 1% for companies based on real profit.

The Ministry of the Environment will establish all information related to the proposals and projects eligible for incentives, publishing it on its official website.

Companies in the sector that produce, in the country, automotive products covered by the regulation, as well as those that have a project for the development and technological production, in the country, of new products or new models of existing products, or that develop, in the country, R&D or engineering services aimed at the automotive chain, can apply for qualification to the program and, once qualified, can request the financial credit related to the incentives for research and development and investments in technological production carried out in the country.



Pilar 1 - Amount B

As per the OECD reports on Pillar One Amount B, Brazil is one of the countries that has expressed a willingness to apply Amount B, which could eventually be applicable from FY 2025.

12

The transition from a linear production model to a circular economy encourages the efficient use of natural resources and the adoption of sustainable practices throughout the production chain. Companies that have a business strategy aimed at reducing environmental impact can benefit from this opportunity.

This production model reduces pollution and the generation of waste and rejects, decreases the dependence on the use of natural resources, promotes sustainable production and consumption, and reduces the climatic and environmental impact during the life cycle of products and materials. It aims to keep materials at their highest value during the circulation of goods and favors a fair and inclusive ecological transformation.



Taxpayers having distribution structures in Brazil should perform a diagnostic review to confirm the impact of Amount B on their structures. A potential need to adjust the product prices should be carefully evaluated considering the relevant impact on indirect taxes and customs.



No.

Fact

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"Lei do Bem" - Bill No. 2838/2020

The "Lei do Bem" (Law No. 11.196/2005) is the main mechanism for fostering research, development, and innovation (R&D) by the private sector in Brazil.

The incentives involve:

- An additional exclusion in the calculation of income tax and social contribution, mainly varying from 60% to 80% of R&D expenditures.
- A 50% reduction in the Tax on Industrialized Products (IPI) on the acquisition of new machines, equipment, and instruments intended for R&D
- Full depreciation and accelerated amortization.

13

Since its publication in November 2005, the tax benefits established have not undergone significant changes. Currently, the main limitation in enjoying the incentive is that companies must mandatorily report taxable profit in the year, while they are prevented from using the incentive value in case of a tax loss, not being able to take advantage of it in a subsequent period.

With the objective of bringing the tax incentive closer to the current reality, allowing the expansion of the number of encouraged companies, and adapting Brazilian legislation to the global practice of fostering R&D, Bill No. 2838/2020 is in progress in the National Congress to update the "Lei do Bem." Among the updates, the main change is the possibility of taking advantage of the tax incentive in the case of a tax loss, allowing its enjoyment in a future period when taxable profit is reported.

Modernization of National Industries

To boost the national industry, promote greater competitiveness and productivity, the newly sanctioned legislation encourages the renewal of the industry, with investments in more modern machinery and equipment with better energy efficiency.

14

This is the Accelerated Depreciation Program, which consists of a mechanism as an anticipation of revenue for companies, which can contribute to increasing cash flow and Gross Fixed Capital Formation.

In practice, with accelerated depreciation, the write-off of newly installed machines can be done in just two steps - 50% in the first year, 50% in the second.

The application of accelerated depreciation is only allowed for assets related to production or the commercialization of goods and services.

The update of "Lei do Bem" will allow for an expansion in the tax benefit for companies, with new mechanisms for incentivized investments and the possibility of accumulating the benefit in years following those in which the investments were made and not incentivized, in cases of determination of fiscal losses.

Given the current Brazilian fiscal scenario, this represents an excellent opportunity for the revision of the investment strategy in Research, Development, and Innovation of legal entities in Brazil, to encourage investments in innovation by the private sector and optimize their tax burden.



Companies seeking greater efficiency and productivity, as well as those with industrial modernization plans, can have a positive impact with this new legislation, becoming a great opportunity to leverage their market positioning.



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