



Brazil
Tax Guide
2016/17

FOREWORD

A country's tax regime is always a key factor for any business considering moving into new markets. What is the corporate tax rate? Are there any incentives for overseas businesses? Are there double tax treaties in place? How will foreign source income be taxed?

Since 1994, the PKF network of independent member firms, administered by PKF International Limited, has produced the PKF Worldwide Tax Guide (WWTG) to provide international businesses with the answers to these key tax questions.

As you will appreciate, the production of the WWTG is a huge team effort and we would like to thank all tax experts within PKF member firms who gave up their time to contribute the vital information on their country's taxes that forms the heart of this publication.

The PKF Worldwide Tax Guide 2016/17 (WWTG) is an annual publication that provides an overview of the taxation and business regulation regimes of the world's most significant trading countries. In compiling this publication, member firms of the PKF network have based their summaries on information current on 30 April 2016, while also noting imminent changes where necessary.

On a country-by-country basis, each summary such as this one, addresses the major taxes applicable to business; how taxable income is determined; sundry other related taxation and business issues; and the country's personal tax regime. The final section of each country summary sets out the Double Tax Treaty and Non-Treaty rates of tax withholding relating to the payment of dividends, interest, royalties and other related payments.

While the WWTG should not to be regarded as offering a complete explanation of the taxation issues in each country, we hope readers will use the publication as their first point of reference and then use the services of their local PKF member firm to provide specific information and advice.

Services provided by member firms include:

- Assurance & Advisory;
- Financial Planning / Wealth Management;
- Corporate Finance;
- Management Consultancy;
- IT Consultancy;
- Insolvency - Corporate and Personal;
- Taxation;
- Forensic Accounting; and,
- Hotel Consultancy.

In addition to the printed version of the WWTG, individual country taxation guides such as this are available in PDF format which can be downloaded from the PKF website at www.pkf.com

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STRUCTURE OF COUNTRY DESCRIPTIONS

A. CORPORATE INCOME TAX - CIT

CORPORATE TAX
ACTUAL PROFIT METHOD
PRESUMED PROFIT METHOD
ARBITRATED PROFIT METHOD
TRANSFER PRICING
THIN CAPITALISATION
FRINGE BENEFITS TAXATION
PROGRAM FOR SOCIAL INTEGRATION CONTRIBUTION (PIS)
CONTRIBUTION FOR THE FINANCING OF SOCIAL SECURITY (COFINS)
PAYROLL TAX
LOCAL TAXES
STATE VALUE - ADDED TAX (ICMS)
REAL ESTATE TRANSFER TAX (ITBI)
SERVICES TAX (ISS OR ISSQN)
OTHER TAXES
TAX ON MANUFACTURED PRODUCTS (IPI)
IMPORT TAX
FINANCIAL OPERATIONS TAX (IOF)
CONTRIBUTION FOR INTERVENTION IN THE ECONOMIC DOMAIN (CIDE)
TAX ON FUEL
RURAL REAL ESTATE TAX (ITR)

B. DETERMINATION OF TAXABLE INCOME

IFRS - INTERNATIONAL FINANCIAL REPORTING STANDARDS
DEPRECIATION
STOCK / INVENTORY
DIVIDENDS
INTEREST DEDUCTIONS
TAX LOSSES CARRIED FORWARD
INCENTIVES
RIO'S 2016 SUMMER OLYMPIC GAMES
ROYALTIES AND TECHNICAL ASSISTANCE EXPENDITURE

C. FOREIGN TAX RELIEF

D. CORPORATE GROUPS

E. WITHHOLDING TAX

F. EXCHANGE CONTROLS

G. PERSONAL TAX

H. TREATY AND NON-TREATY WITHHOLDING TAX RATES

MEMBER FIRM

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BASIC FACTS

Full name:	Federative Republic of Brazil
Capital:	Brasilia
Main languages:	Portuguese
Population:	203.6 million (PRB 2016)
Major religion:	Christianity
Monetary unit:	Brasilian Real (BRL)
Internet domain:	.br
Int. dialling code:	+55

KEY TAX POINTS

- Corporate income tax (CIT) is charged at a set rate of 15% plus a surcharge of 10% on profits over a set level, and there is also a social contribution tax on profits charged at a rate of 9%.
- Most companies with prior year revenues below a proscribed amount can, under certain circumstances, choose to pay income tax and social contributions calculated under the 'presumed profit method'.
- Other federal taxes include fringe benefits tax; social security contributions (COFINS); social integration program contribution (PIS); payroll tax including employer social security contributions (INSS); value added tax on sales and transfers of products manufactured in or imported into Brazil (IPI); financial operations tax (IOF); and rural real estate tax (ITR).
- Municipal taxes include Services Tax (ISS or ISSQN), and estate transfer tax (ITBI) payable at a rate of up to 4% on inheritances and donations of properties and rights, and a services tax is imposed by many cities, with rates varying substantially between municipalities.
- Profits and gains from foreign sources are taxable in Brazil. Tax credits are available to relieve double taxation subject to a maximum of the Brazilian tax payable on the income.
- Almost all remittances (except dividends) to companies or persons domiciled abroad are subject to income tax at source.
- Taxes payable by individuals include personal income tax, social security tax and gift and inheritance tax.
- Brazilian resident individuals are taxable on their worldwide earnings, as well as gains on the disposal of worldwide assets and rights.
- Personal income tax is withheld at source (at progressive rates from 7.5% to 27.5%).
- Capital gains arising other than out of financial instruments are subject to income tax at 15%. Since 2016 tax rate applicable to capital gains is as follow:
 - 15% Until BRL 1 million
 - 20% From BRL 1 million To BRL 5 million
 - 25% From BRL 5 million To BRL 20 millions
 - 30% Up to BRL 20 million

A. TAXES PAYABLE

CORPORATE TAX

There are three different methods to calculate corporate income tax: the actual profit method (Lucro Real), the presumed method (Lucro Presumido) and the arbitrated method (Lucro Arbitrado).

ACTUAL PROFIT METHOD

Actual Profit Method called "Lucro Real" is the method where the taxpayer pays CIT called "IRPJ" based on its actual taxable income, after computing all income, gains and tax deductible costs and expenses, including net operating losses of prior years. The taxpayer is required to maintain current and accurate accounting and tax books and records, and also corresponding supporting documentation. Failure to maintain accurate accounting and supporting documentation may lead to disallowance of an expense requiring it to be added back to taxable income.

In general, taxable income must be recognised monthly following the accrual basis criteria and subject to IRPJ. The tax return must be filed annually. Corporate taxable income is taxed under a unitary system whereby a single tax rate is applied. This rate is 25%, being 15% plus 10% on profits pre-tax over R\$ 240,000 annually. Corporate income tax is generally computed on a calendar year basis. However, payments are made monthly on estimated advance taxes. Social Contribution on Net Profit called "CSL" is another federal tax and is calculated on profits pre-tax. The rate is 9% computed on an annual or quarterly basis. Calculations and payments are made monthly as estimated advance taxes. Both taxes on profits add up to 34% (25% plus 9%).

PRESUMED PROFIT METHOD

Presumed Profit Method called "Lucro Presumido" is a simpler IRPJ calculation method that allows the taxpayer to pay income tax and CSL based only its quarterly gross revenues. That means that costs and expenses are irrelevant to determine IRPJ and CSL liability at the end of quarter. Due to its simplicity Lucro Presumido is more suitable for small and middle-sized businesses not to mention the method's limitations and restrictions of use by large companies. Companies with prior year revenues of up to R\$ 78 million can choose, under certain circumstances, to pay income tax and social contributions by the Presumed Profit Method, which is calculated through a percentage of the quarterly gross revenue on the cash basis.

Under Lucro Presumido IRPJ is calculated quarterly and, for most activities the presumed profit margin is 8% of monthly gross income corresponding to sales operational activities and 32% to services revenues and depending on the specific industry other rates apply. Based on the presumed net income resulting from the application of the profit margins over gross income, 15% IRPJ, rate applies; net income in excess of BRL 60,000 per quarter is subject to an IRPJ surtax of 10%, similar to that "estimated" calculation for Lucro Real.

ARBITRATED PROFIT METHOD

Lucro Arbitrado applies to very few circumstances, most of them related to inaccuracy or unreliability of the taxpayer's accounting records (under Lucro Real). It is an extreme tool used by the tax administration to determine unilaterally and ex officio the taxpayer's taxable income and IRPJ due. Lucro Arbitrado has also consequences to other federal taxes, namely CSL, PIS and COFINS because they are determined based on taxpayer's accurate gross income.

TRANSFER PRICING

Since 1997 Brazil has transfer-pricing rules in place to prevent undue allocation of income in international transactions between related parties. The system adopted is one of determining the maximum amounts of deductible expenses, and the minimum amount of taxable income, for Brazilian companies engaged in transactions with related parties outside of Brazil or foreign parties domiciled in a listed low-tax jurisdiction or under a listed favourable tax regime. No domestic transaction is subject to transfer pricing rules.

Different from other countries, where the arms'-length principle and comparable prices are the rule, the Brazilian rules go another direction by basically establishing fixed formulas to determine the accepted transfer price. But Brazil does not ignore completely comparable prices or the arms'-length principle; notwithstanding it limits its application by setting accepted standards for their application.

Brazil established a transfer pricing system for imports with affiliated companies of goods, services and rights acquired abroad. The prices are based on three methods: Comparative Independent Price (PIC), Resale Price Less Profit (PRL), or Production Cost Plus Profit (CPL) and Commodities Price Method (PCI). The same system applies for exports to foreign related parties, with the following methods: Export Revenues Method - PVEx, Country Destiny Price of exports revenue Method - PVA and PW, Cost Acquisition or Manufacture plus Tax and Profit - CAP also Method of Price Under Quotation on Export (PECEX"), which is briefly defined as the average amounts of the quotation of assets or rights subject to public prices in internationally recognised commodities and future exchanges.

Since the end of 2012, Brazil has been changing some of the methods applicable to Transfer Pricing on imports and also creating additional methods. Basically, PRL presumed profit margin was changed from 60% to 40%, 30% and 20% depending on the business sector in which companies operate. According to the Federal Law 12.715/2012, two new methods were established, one applicable to imports and other applicable to exports. In accordance with the method called, price is defined as the average daily amount of assets or rights subject to public prices in internationally recognised commodities and future exchanges.

The taxpayer must disclose transfer pricing method in its annual tax return and eventually prove that the corresponding costs, expenses and charges that exceed the elected transfer pricing method must be added back as taxable income and subject to the IRPJ and CSL.

THIN CAPITALISATION

Brazil has thin capitalisation rules force by Law 12.249 since 2010 that limits the ability for corporate taxpayers under "Lucro Real" to fully deduct interest expenses associated with loans contracted with foreign related parties or parties domiciled in low tax jurisdictions and/or under a favourable tax regime in a foreign location. Such law states a limitation for corporate income tax purposes related to deductible interest, accrued or paid, in favour of a foreigner not resident in a tax haven. Under the rules, interest paid to related parties that are not located in a tax haven jurisdiction or that do not benefit from a preferential tax regime may be deducted on an accrual basis for corporate income tax purpose only:

- If the expenses are necessary for the company's activities; and,
- Both of the following thresholds are met:
 - a) The related party debt-to-equity ratio does not exceed 2:1 (calculated on the proportion of related party debt to direct equity investment made by related parties; and,
 - b) The overall debt-to-equity ratio does not exceed 2:1 based on the proportion of total debt to total direct in investment made by related parties.

Interest paid to an entity or individual located in a tax haven or that benefits from a preferential tax regime (regardless of whether the parties are related) may be deducted only if the expenses:

- Are necessary for the company's activities; and,
- Do not exceed 30% of the net equity of the Brazilian company.

The same thin capitalisation rules, limits and restrictions also apply to debt with a foreign company where the guarantor legal representative, or any intervening party in the relevant transaction is resident in a low-tax jurisdiction or is under favourable tax regime. The thin capitalisation rules and limits also apply in transactions in which a financial institution is merely an intermediary between the Brazilian borrower and a foreign related party. Any excess interest will be treated as a non-deductible expense for IRPJ and CSL.

FRINGE BENEFITS TAXATION

Companies participate mandatorily in different forms of social security obligations to federal agencies. These either directly or indirectly benefit pension programs, working time compensation, social work assistance and health programs, among others. All contributions are deductible for corporate income tax purposes.

PROGRAM FOR SOCIAL INTEGRATION CONTRIBUTION (PIS)

PIS is a federal social contribution levied on taxpayers' monthly gross income. PIS has been subject to several changes, many of them creating separate PIS regimes depending on the taxpayer's business or income tax calculation method. There are two basic PIS regimes dependent on the corporate income tax method elected by the taxpayer (Lucro Presumido or Lucro Real): the cumulative regime and the non-cumulative regime.

These contributions are payable each month as a fund to employees. This is calculated based on 1.65% of monthly gross revenue. The PIS rate is generally 1.65% of the monthly sale, in a non-cumulative way. It means, deductions are allowed in respect of services and material costs applied in companies' operating activities. For the companies that choose to be taxed by the Presumed Profit Method, PIS will be 0.65% of the monthly sale in a cumulative way, without such allowed deductions above mentioned.

CONTRIBUTION FOR THE FINANCING OF SOCIAL SECURITY (COFINS)

COFINS is also a federal social contribution levied on the corporate taxpayer's monthly gross income. COFINS also has three basic tax regimes: the cumulative, the non-cumulative regime (created in 2004), and the single-phase regime. The COFINS tax rate under the cumulative regime is 3%, while the rate is 7,6% under the non-cumulative regime. Rates under the single-phase regime vary from business to business.

Although regulated by different laws, PIS and COFINS regimes, whether cumulative or non-cumulative, are basically identical. For cumulative COFINS the difference is basically the rate (3% for cumulative COFINS and 0.65% for cumulative PIS) Companies under the Lucro Presumido pays COFINS according to the cumulative regime, i.e., at the rate of 3% with no COFINS tax credit available.

PAYROLL TAX

This is a monthly obligation for social security and other funds levied on payroll.

Tax	Rate
Social Security (INSS)	20%
Accident Insurance (SAT)	1% to 3%
Employee Indemnity	
Guarantee Fund (FGTS)	8%
Education Fund (SE)	2.5%
Other	3.3%

Employees contribute monthly to the social security system at rates from 8% to 11% on a progressive-scale base salary considering a maximum base salary of BRL 5.189,82. Federal law obliges companies to distribute part of their annual net income to employees. Participation is negotiated by each company and disputes are settled by arbitration. Amounts distributed are deductible for corporate income tax purposes and not subject to social security.

Brazilian Government changed the criteria for companies in some business sectors to calculate the collection of INSS. Basically, law changed the basis for calculation of INSS from 20% under payroll salary to apply 4.5% or 2% under the revenues generated monthly by the companies which are subject to the new rules. According to Law 12.546/2011 and 13.161/2015, companies that render IT services, technologies, and hotels will be subject to pay 4,5% of their monthly gross revenues except for call centre that increase to 3%. Companies that manufacture fluids for hydraulic brakes, plastic, clothing and accessories, fur, leather, silk, wool, rugs and other coatings to floors, hats and artefacts of similar use, machinery and appliances, pressure reducing valves, among others will be subject to pay 2,5% of their monthly gross revenue.

LOCAL TAXES

STATE VALUE - ADDED TAX (ICMS)

ICMS is an almost-true value-added tax on sales of most goods and certain services. It is payable to state governments upon imports of goods into Brazil and sales or transfers of goods within Brazil; it is also payable upon supply of electricity and certain communication intra-and interstate transportation services. ICMS is levied on the sale or physical movement of goods, freight, transportation, communications services and electric energy. Intrastate transactions are taxed at 18%, interstate transactions are taxed at 7% or 12%, and most imports are taxed at a rate between 18% and 25%. The lower rates normally are charged on transfers to less developed states. Some states offer rate reductions or later payment dates as a fiscal incentive for the installation of factories. Communication services are taxed at a rate between 13% and 25%.

As of January 1, 2013, the ICMS rate for interstate transactions involving imported goods 4% (instead of the standard 7% or 12%) under conditions. The new tax rate, established by Senate Resolution no 13/2012, aims to eliminate unfair competition among Brazilian states to encourage customs clearance (and, thus, ICMS revenues) of imported goods even when the goods are destined for another state.

REAL ESTATE TRANSFER TAX (ITBI)

ITBI is the municipal real estate transfer tax that applies on most onerous transfers of real estate. The tax is payable upon each and every taxable transfer of real estate property. Rates vary according to the actual value of the relevant transaction, or the recipient party value of property (as determined by the municipal tax administration) whichever is higher. The Constitution allows ITBI rates to be progressive according to the value of the property. It also allows application of different rates according to the location and destination of the relevant property average, the ITBI rate is 2% in most municipalities.

SERVICES TAX (ISS OR ISSQN)

ISS is the municipal tax levied on provision of services of any kind by taxpayers located within the jurisdiction of a given municipality. ISS can also reach services rendered within the boundaries of a given municipality even though the services provider is located in another municipality.

The ISS rates vary from municipality to municipality, but rates cannot be lower than 2% and exceed 5%. The minimum 2% tax rate for ISS was established businesses to their jurisdictions. But some municipalities bypass this minimum 2% rate by granting other incentives that reduce the ISS overall tax burden, such as tax base reductions. The tax applies on the taxpayer's monthly services gross income and the tax is also payable on a monthly basis. The ISS also applies on imported services.

OTHER TAXES

TAX ON MANUFACTURED PRODUCTS (IPI)

IPI is a federal excise tax levied on manufactures products as they leave the plant where they have been manufactured. It also applies on imported products at the time of importation and the first resale of the imported product by the importer. IPI is not levied on exports. IPI tax rates vary depending on the products the more essential the lower the rates. The rates are listed per tariff code in the IPI Table called "TIPI", which uses the Mercosur Common Tariff, NCM, as basis.

The exports (export of manufactured products) are exempt from IPI. Imports of goods (raw material and products) are normally taxed at the same rate as Brazilian-made products. Rates change frequently. For imported goods or products, the IPI (and other taxes due) must be collected upon the customs clearance of the goods or products.

IMPORT TAX

FINANCIAL OPERATIONS TAX (IOF)

IOF is a federal tax that generally applies to different types of transactions such as loans and credit operations, insurance policies, and foreign exchange operations for certain services rendered. IOF regulations are extensive and change constantly. The tax is mainly used as an instrument of economic policy to regulate the credit, currency exchange, insurance, and securities markets rather than to generate tax revenues.

CONTRIBUTION FOR INTERVENTION IN THE ECONOMIC DOMAIN (CIDE)

The government introduced a special contribution in 2000. Brazilian legal entities that license, purchase or otherwise acquire technological knowledge must pay a special contribution of 10% on activities such as: trademark, technical services assistance, administrative services and any royalty payments. Based on the law in force, CIDE must even be paid on activities that do not involve the transfer of technology.

TAX ON FUEL

The CIDE will be paid monthly on the import and export of petroleum, derived and natural gas, and fuel alcohol. The rate will be based on the value in Reals of the cubic meters or tons of fuel.

RURAL REAL ESTATE TAX (ITR)

Property taxation of rural and urban land receives different tax treatment. Urban land is subject to the municipal real estate ownership tax called IPTU and rural land is taxable by ITR. The definition of land as rural or urban is then relevant because it determines the competent power to impose taxation on property ownership. Classification comes for exclusion when such land is recognized as urban and then subject to pay IPTU others that is not recognized as urban will be treat as rural for tax purpose, consequently subject to ITR.

The basic rate is annually calculated based on certain premises on assessed property values and depending on the stage of use and exploration of the property. Very small properties are exempt and the maximum rate applied corresponds to 20% of the land value without any improvements.

B. DETERMINATION OF TAXABLE INCOME

IFRS - INTERNATIONAL FINANCIAL REPORTING STANDARDS

Brazil adopted the IASB's International Accounting Standards in 2008 on a gradual basis and the full IFRS since 2010. As a consequence, there are several important changes to the Brazilian accounting practices, the most important of which is that these new accounting practices are required not only in consolidated financial statements but also in the individual financial statements (Law 11638/07). These include the recognition of leasing transactions, depreciation treatment, the recognition of intangible assets, impairment concept etc.

Income Tax Code is align with main IFRS procedures with certain exceptions state by law 12.973 also Income Tax rules on separate laws that should be addback to the basis in order to determine corporate income tax.

DEPRECIATION

Fixed assets shall be depreciated over their estimated useful lives for accounting purposes (IFRS). For fiscal purposes, the straight-line method is usually adopted, using the following annual rates:

buildings 4%; machinery and equipment 10%; vehicles 20%; IT equipment 25% etc. Assets subject to depletion (mines, quarries, etc.) may be amortised proportionately to the units extracted in each period.

STOCK / INVENTORY

The cost of goods sold for production is generally valued using the weighted average cost method, although the FIFO (first in, first out) basis may be elected. The method adopted determines the basis for the valuation of closing inventory.

DIVIDENDS

Brazil follows a dividend exemption system. Amounts distributed to shareholders resident in Brazil or abroad (since the investment is registered at the Brazilian Central Bank (BCB)) are not subject to withholding tax.

INTEREST DEDUCTIONS

There is a limitation of interest expenses to be deductible:

- a) Loan from foreigner companies (thin capitalisation); and,
- b) Loan from abroad must be registered at Central Bank of Brazil (transfer pricing).

Interest due must be at fair market value and necessary to business activities and will be subject to withholding tax (WHT) following the accrual basis. The calculation of interest on a partner's or shareholder's capital (JCP) is allowed, however, for remittances if it is considered as dividends (it means the Brazilian Co needs to be profitable). The interest is deductible for income tax and social contribution up to the limit of the official long-term interest rate (TJLP). Profits for the current period or previous periods must be at least double the value of the interest to be distributed. Interest is subject to a 15% withholding tax at source. Interest should be paid or maybe capitalised.

TAX LOSSES CARRIED FORWARD

Tax losses can be carried forward to offset against future profits up to 30% of the real profits arising in each period (year). Losses that are offset may be carried forward indefinitely. There are restrictions on losses transferred as a result of a company merger or where there is a change in the control and activity of the loss generating company.

INCENTIVES

Brazil offers incentives through the reduction of domestic taxes or exemption from withholding tax in the forwarding of royalties or commissions on international financing. In addition to incentives for exports, there are incentives for the implementation of industrial units in specific regional areas.

RIO'S 2016 SUMMER OLYMPIC GAMES

Brazil has created series of tax incentives connected with The Summer Olympic and Paralympics Games (Games) to be hosted in Rio de Janeiro. The incentives include tax breaks for local purchases and imports of goods and services associated with the organization of the Games and other related activities. The law allows to form tax-exempt subsidiaries in Brazil in connection with the organization and the Rio Organizer Committee (RIO 2016), licensed media companies and broadcasters, the Game's sponsors, and service providers.

ROYALTIES AND TECHNICAL ASSISTANCE EXPENDITURE

Royalties are deductible expenses but are restricted to between 1 % and 5% of sales revenues for

companies that make cross-border trademark and patent royalty payments. Expenditure incurred in the creation of patents and manufacturing formulas and processes are considered capital intangible assets and are amortised over the life of the asset. This is also true for trademarks, whereas copyright, software, and franchising are generally deductible from operational results if they are related to the activities of the company.

Technical, scientific and administrative expenditures and royalties paid to foreign companies which have direct or indirect control of the Brazilian company are deductible if the contracts are duly registered with the Brazilian Institute of Industrial Property (INPI) and with the Brazilian Central Bank (BCB). There are no restrictions for the remittance of these monies abroad. However, some remittances of funds to abroad are subject to 15% WHT and 10% of CIDE or only 25% WHT, depending on the case.

C. FOREIGN TAX RELIEF

Profits and gains from foreign sources are taxable in Brazil. Tax credits are available to relieve double taxation subject to a maximum of the Brazilian tax payable on the income.

D. CORPORATE GROUPS

For tax purposes, consolidation of affiliated companies is not allowed. Losses can only be offset against profits of the same company. Some changes on this matter was process by law 12.973/2014. Such provision state possibility now since 2015 to offset such losses recognized outside Brazil with profits from Brazilian companies.

E. WITHHOLDING TAX

Almost all remittances (except dividends) to companies or persons domiciled abroad are subject to income tax at source. All personal income in general is subject to withholding tax at progressive rates from 15% to 27.5%. Payments are made monthly and a personal income tax return is filed annually. Capital gains that do not arise from financial investments are subject to income tax at 15%.

F. EXCHANGE CONTROLS

The Central Bank allows the official exchange rate to float freely within periodically established bands but participation is restricted to authorised dealers. The bank intervenes when there are signs of speculative operations. There is an official tourist rate that ranges normally close to the commercial rate.

G. PERSONAL TAX

Brazilian resident individuals are taxable on their worldwide earnings, as well as gains on the disposal of worldwide assets and rights. An individual is resident in Brazil:

- Has a habitual residence in Brazil;
- Works for a Brazilian government department or agency outside Brazil;
- Enters Brazil under a permanent visa;
- Enters Brazil under a temporary visa to work and remains in Brazil for more than 184 days within a 12-month period.

H. TREATY AND NON-TREATY WITHHOLDING RATES

The overall rate of withholding tax at source used in the remittance of interest and royalties is 15%, except for Japan with a rate of 12.5%. There is no tax on the remittance of dividends. Any remittances to tax haven countries (blacklist) are subject to withholding tax at the rate of 25%.

Brazil has signed treaties to avoid double taxation with several countries including: Argentina, Austria,

Brazil

Belgium, Canada, Chile, People's Republic of China, Czech Republic, Denmark, Ecuador, Finland, France, Hungary, India, Italy, Israel, Japan, Luxembourg, Mexico, Netherlands, Norway, Peru, Philippines, Portugal, Slovakia, Spain, Sweden, South Africa, Venezuela, Trinidad and Tobago, Turkey, and Ukraine.



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