

**International Bar Association Annual Conference 2024**  
**Recent Developments in International Taxation**  
**Brazil**

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## Overview

At the end of 2023, Brazil: (1) passed the indirect taxation reform; (2) passed the controlled foreign company (CFC) regime for individuals that hold interest in companies and trusts offshore; (3) implemented direct taxation on book revenue derived from tax subventions/holidays; and (4) implemented amendments to the taxation of funds, especially regarding closely held private funds. On top of that, the new transfer pricing (TP) regulations were implemented as of 1 January 2024 and are fully in force.

Regarding international tax policy, the Double Tax Treaty with Uruguay was ratified by the Brazilian President and became applicable in October 2023.

Government policy for 2024 intended to focus on direct taxation tax reform to simplify the tax rules on capital markets; adjust our CFC rules for companies to international standards; perhaps introduce group taxation; address tax dividends; and begin discussions on Pillar Two. Currently, however, only the latter is being put into action. There has been movement from the Brazilian tax authorities to engage in debates regarding Pillar Two, particularly on the design of a qualified domestic minimum top-up tax (QDMTT).

## Domestic tax aspects

### *Indirect tax reform*

At the end of 2023, the National Congress passed a law that provides for the unification of the following into a VAT system and excise tax (*imposto seletivo* or IS):

- local service tax (*imposto sobre serviços* or ISS);
- state goods tax (*imposto sobre circulação de mercadorias e serviços* or ICMS);
- federal industrialised product tax (*imposto sobre produtos industrializados* or IPI);
- taxes on financial operations regarding insurance activities (*imposto sobre operações financeiras* (IOF) insurance); and
- social contributions on gross revenue (Programa de Integração Social (PIS)/*contribuição para o financiamento da seguridade social* ('COFINS')).

VAT shall comprise a dual tax system (Contribuição sobre Bens e Serviços (CBS) and Imposto sobre Bens e Serviços (IBS)) collected by a federal entity and state/local entities. Its combined tax rate has not been determined yet, but a 26.5 per cent rate has been proposed. Excise tax is to be mainly imposed on goods or services that harm the environment or public health.

Another main difference is that the proposed VAT shall not provide for as many special regimes, exemptions and favoured or zero tax rates as the current tax regime. The reform that has passed requires further regulations and currently there is a bill of law being voted on in Congress that provides for all the structure, different systems and rates of the CBS, IBS and IS.

#### *Direct tax reform*

The reform of the direct taxation system is posed as a 2024 plan on the political tax agenda. At the end of 2023, Congress approved a law that implemented the CFC regime for individuals and made amendments to taxation on funds.

The new CFC regime for individuals provides for changes to the taxation of interests abroad held by tax residents in Brazil by means of financial assets, property, entities and trusts. See below for the major changes:

- positive differences on investments abroad held directly by the individual shall be taxed yearly at 15 per cent income tax, regardless of the disposition of those assets. Profits and losses throughout the year shall be offsetable;
- profits from an offshore entity held by a Brazilian resident that holds 60 per cent or more passive income shall be deemed distributed yearly to the Brazilian resident. Those profits shall be taxed at 15 per cent and, once taxed, shall not be taxed when they are actually distributed;
- the Brazilian resident could elect for the offshore entity to be deemed transparent for Brazilian tax purposes, in which case the provisions of the investments abroad held directly by the individual shall be applicable;
- as a transitional rule from 2023 to 2024, the law provides for a step up on the cost of the investments and entities held abroad. Eight per cent income tax shall be due on the step up, which is lower than the 15 per cent that would be due as from 2024 on the disposition of those assets; and
- the changes include proper regulation on trusts, which shall be deemed transparent for Brazilian Tax purposes, concentrating the taxes due on the trust's assets and rights on the trustee.

Regarding changes to the fund's taxation, the new law provides that closely held private funds shall be subject to periodical withholding tax (*come cotas*) like other regular funds. *Come cotas* is due twice a year based on a regressive rate ranging from 15–20 per cent, depending on whether the fund is long or short term.

*Come cotas* does not apply to private equity funds, exchange traded funds and equity investment funds that are deemed to be investment entities as provided by Central Bank regulations. Receivables funds are also exempt from *come cotas*, provided that at least 67 per cent of the portfolio is composed of credit rights.

In the midst of tax reform, Congress also passed a law that taxes book revenue derived from tax subsidies and tax credits granted to the company. With the implementation of the IAS 20 – Accounting for Government Grants and Disclosure of Government Assistance into Brazilian accounting practices in 2010, any tax incentive shall be booked as revenue in the profit and loss (P&L) of the entity. From that point on, a lot has been discussed regarding the tax treatment of that revenue, with the decision for a while being that subsidised cashflow by means of tax exemptions and credits should be taxed, whereas subsidised investments into setting up businesses and enlarging existing businesses by the same means should be exempt from corporate income tax (CIT) (*imposto de renda de pessoa jurídica (IRPJ)/contribuição social sobre o lucro líquido (CSLL)*) and (PIS/COFINS), as long as they are accounted for as a legal reserve and not distributed to shareholders via dividends or capital reduction. This definition became very loose and difficult to prove after a while, causing intense litigation with the tax authorities.

Hence, as from 2024, the enacted new law provides for taxation by CIT (IRPJ/CSLL) and (PIS/COFINS) – jointly 34 per cent – of any book revenue derived from tax incentives. We have seen a lot of litigation questioning the constitutional aspects of this law.

## **International tax aspects**

### *TP rules*

Since 1 January 2024, the new TP rules – following the Organisation for Economic Co-operation and Development model – in Brazil have been in force. We still have little visibility on the issues that may arise from their implementation. However, as the presentation of TP documentation is mandatory according to this law, we are expecting at least a significant increase in compliance costs to comply with the new rules.

### *Pillar Two*

Brazil has still not implemented any rules regarding Pillar Two. However, we have seen the tax authorities moving towards presenting a project, which would first focus on the qualified

domestic minimum top-up tax (QDMTT) and, perhaps, in a second stage, design the undertaxed profits rule (UTPR) and income inclusion rule (IIR). There is no defined timeline to implement these rules, but the plan is to present a bill of law this year.