



# Film Financing and Television programming

## A Taxation Guide



Now in its eighth edition, KPMG LLP's ("KPMG") Film Financing and Television Programming: A Taxation Guide (the "Guide") is a fundamental resource for film and television producers, attorneys, tax executives, and finance executives involved with the commercial side of film and television production. The guide is recognized as a valued reference tool for motion picture and television industry professionals.

Doing business across borders can pose major challenges and may lead to potentially significant tax implications, and a detailed understanding of the full range of potential tax implications can be as essential as the actual financing of a project. The Guide helps producers and other industry executives assess the many issues surrounding cross-border business conditions, financing structures, and issues associated with them, including film and television development costs and rules around foreign investment. Recognizing the role that tax credits, subsidies, and other government incentives play in the financing of film and television productions, the Guide includes a robust discussion of relevant tax incentive programs in each country.

The primary focus of the Guide is on the tax and business needs of the film and television industry with information drawn from the knowledge of KPMG International's global network of member firm media and entertainment Tax professionals.

Each chapter focuses on a single country and provides a description of commonly used financing structures in film and television, as well as their potential commercial and tax implications for the parties involved. Key sections in each chapter include:

### *Introduction*

A thumbnail description of the country's film and television industry contacts, regulatory bodies, and financing developments and trends.

### *Key Tax Facts*

At-a-glance tables of corporate, personal, and value-added (VAT) tax rates; normal nontreaty withholding tax rates; and tax year-end information for companies and individuals.

### *Financing Structures*

Descriptions of commonly used financing structures in film and television production and distribution in the country and the potential commercial tax implications for the parties involved. The section covers rules surrounding co-productions, partnerships, equity tracking shares, sales and leaseback, subsidiaries, and other tax-efficient structures.

### *Tax and Financial Incentives*

Details regarding the tax and financial incentives available from central and local governments as they apply to investors, producers, distributors, and actors, as well as other types of incentives offered.

### *Corporate Tax*

Explanations of the corporate tax in the country, including definitions, rates, and how they are applied.

### *Personal Tax*

Personal tax rules from the perspective of investors, producers, distributors, artists, and employees.

### *Digital Media*

For the first time, we have included a discussion of digital media tax considerations recognizing its growing role in the distribution of film and television content.

### *KPMG and Member Firm Contacts*

References to KPMG and other KPMG International member firms' contacts at the end of each chapter are provided as a resource for additional detailed information.

Please note: While every effort has been made to provide up-to-date information, tax laws around the world are constantly changing. Accordingly, the material contained in this publication should be viewed as a general guide only and should not be relied upon without consulting your KPMG or KPMG International member firm Tax advisor.

Production opportunities are not limited to the countries contained in this Guide. KPMG and the other KPMG International member firms are in the business identifying early-stage emerging trends to assist clients in navigating new business opportunities. We encourage you to consult a KPMG or KPMG International member firm Tax professional to continue the conversation about potential approaches to critical tax and business issues facing the media and entertainment industry.

Thank you and we look forward to helping you with any questions you may have.

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The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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# Brazil

## Introduction

Since 1994, with the issuance of Plano Real, Brazil has enjoyed a degree of economic stability with a broad basis for the industry's growth. Brazil has produced many critically acclaimed films in recent years. Notable successes include *O Quatrilho*, *Four Days in September*, *Central do Brazil*, and *Elite Squad*, which received an Oscar nomination in the best foreign language film category, won the best film award at the Berlin Film Festival, won a Golden Globe award for best foreign language film, and won the best film award at the International Berlin Film Festival, respectively. Last but not least, *City of God*, received four Oscar nominations (directing, cinematography, film editing, and writing (adapted screenplay)).

There are also successful co-productions between Brazil and other foreign partners, such as *Rio – the Movie* (with the United States, directed by Carlos Saldanha from *Ice Age*) and *Waste Land* (with United Kingdom, which received an Oscar nomination for Best Documentary Feature and won the Audience Award for World Documentary at the Sundance Film Festival).

The Brazilian government considers film production an important industry, and, as a result, a series of incentives to promote the local production of films and their distribution both locally and abroad have been introduced during the last few years. The growth of the film industry in Brazil can be illustrated by the number of national film festivals and events promoted by ANCINE (Brazilian Agency of Cinema) as well as by national hubs for the development of the cinema industry.

Paulínia and Gramado are the main examples of cities involved in foment initiatives focused on the cinema industry. Paulínia (located in the State of São Paulo) is a Cinematographic Hub and has hosted a local Film Festival since 2008. Gramado (located in the State of Rio Grande do Sul) has hosted a renowned film festival annually since 1969, in which foreign productions may participate in a separated category for foreign full length films. Many other cities in Brazil also promote their own film festivals, such as Rio de Janeiro, which hosts Rio's Festival and Anima Mundi (Brazilian International Animated Film Festival).

Brazil has been encouraging filmmaking for many years. In 2010, the Federal government issued "Screen Quota" (Decree 7.414), an initiative to foment national film production that imposes a minimum quota of films produced in Brazil to be regularly displayed in local movie theaters. This initiative may also be extended to international co-productions duly approved by ANCINE.

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## Key Tax Facts

Corporate income tax rate	25% * <sup>1</sup>
Social contribution tax on profits rate	9%
Highest personal income tax rate	27.5%
Service tax rates	2–5%
Sales tax rates	0%–25%
Excise tax rates	0%–330% (in general 10–15%)
<i>Normal nontreaty withholding tax rates:</i>	
Dividends	0%
Interest	15% or 25% * <sup>2</sup>
Royalties	15% or 25% * <sup>2</sup>
Services	15% or 25% * <sup>3</sup>
Tax year-end: Companies	December 31
Tax year-end: Individuals	December 31

\*<sup>1</sup> 15% plus 10% on the amount of profit annually exceeding R\$240,000.

\*<sup>2</sup> 25% tax rate in case the nonresident is located in a low tax jurisdiction.

\*<sup>3</sup> Rate may vary according to the type of service rendered and the location of the nonresident, whether a low tax jurisdiction or not.

## Film Financing

### Financing Structures

Today, very few sectors of the economy are off limits to the foreign investor. For instance, foreign ownership of media services was prohibited until a 2002 amendment of the Federal Constitution removed the prohibition and allowed foreign investment in a media service provider entity limited to a 30% of shareholding interest.

In regard to film or video productions, Brazilian legislation does not impose legal impediments to foreign investors. Nevertheless, ANCINE requires that a Brazilian producer must be hired by foreign producers to develop foreign audiovisual projects in Brazil (except for journalistic productions). In this case, the local producer will act as a representative before ANCINE.

### Co-production

Any kind of co-production effort should be subject to the law applicable to ordinary businesses. Under Brazilian tax laws, entities engaged in film production and distribution can conduct their investments either through a branch, a limited liability company (sociedade limitada), or a corporation (sociedade anônima).

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In general, lines, a co-production is an engagement of residents and nonresidents working together in a project recognized by the authorities of both countries.

Currently, Brazil has co-production agreements with Argentina, Germany, Canada, Chile, Israel, Spain, France, India, Italy, Portugal, Venezuela and United Kingdom. There are also multilateral agreements such as the Latin-American co-production agreement and the Ibero-American cinematographic integration convention. Agreements have also been negotiated with South Africa, New Zealand, China, and Russia

In addition, international co-productions are usually considered as national projects in their origin countries. In Brazil, co-production should be considered national provided that the project is registered before ANCINE and fulfills the requirements set forth in international co-production agreements (if applicable) or Brazilian law.

#### Branch of a Foreign Entity

MNEs generally use Limited liability companies or corporations as opposed to operating under a branch given all the bureaucratic procedures that are associated to a branch's incorporation in Brazil. Currently, the formation of a branch of a foreign corporation requires prior approval from the Federal Government through a specific authorization from the Ministry of Industry and Commerce, which may be a very lengthy process.

#### Sociedade Limitada

A sociedade limitada (Ltda.) tends to be the most common approach for foreign companies intending to incorporate Brazilian subsidiaries. This is generally the case because a limitada is not required to be audited or to publish its financial statements (provided that the legal entity presents a gross revenue lower than R\$300,000,000 or an amount of assets lower than R\$240,000,000). In a limitada, the responsibility of the quotaholders for liabilities of the company is, with few exceptions, limited to the amount of the unsubscribed capital of the company. If the capital is fully subscribed, the quotaholders' responsibility is limited to their participation in the society.

A limitada must have at least two quotaholders, regardless of citizenship or residency. The share capital is divided into quotas, which may have different values, depending on what is determined in the articles of incorporation. In addition, the capital must be evaluated in Brazilian Reais (BRL). In the absence of any contrary agreement, voting rights and profit distributions will be proportional to the interest held by each quotaholder. In general, a manager can be indicated in the limitada's articles of incorporation.

As of January 11, 2003, the new Brazilian Civil Code entered into force and new rules were introduced for limitadas, including rules with respect to the number of quotaholders necessary to approve certain changes in corporate documents, and the inclusion of the limitada's corporate activities in its corporate name. It is necessary to point out that these rules approximated the corporate requirements applicable to an S.A. (see below) to the limitada.

Corporations and individuals may both be quotaholders of a limitada. Nonresident quotaholders must grant power of attorney to a representative in Brazil to receive service of notice and act on the nonresident quotaholder's behalf at meetings of the quotaholders.

In 2011, Law 12,441 created the EIRELI, (Individual Limited Liability Entity), which is a new type of entity that may have only one quotaholder.

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### Sociedade Anônima

The organization and operation of a sociedade anônima (S.A.) in Brazil is subject to Law 6,404/76—also known as Corporations' Law, amended by Laws 9,457/97, 10,303/01 11,638/07, and 11,941/09 (which introduced several modifications into Corporations' Law as an harmonization between BR-GAAP and IFRS). Corporations' Law was designed to stimulate the development of the Brazilian capital market and to provide additional protection for minority shareholders.

The S.A.s may be publicly held (in this case supervised by the Brazilian Securities Exchange Commission—CVM) or privately held, depending on whether their securities are accepted for trading in the securities market.

There are other forms of business organizations; however, they are unlikely to be used by a foreign investor.

## Tax and Financial Incentives

### Incentives for Film Production in Brazil

Film productions in Brazil may take advantage of two main sets of tax incentives, which are set forth in Laws 8,685/1993, also known as *Lei do Audiovisual* (for audiovisual projects only) and 8,313/1991, also known as *Lei Rouanet* (for cultural projects in general).

It is important to mention that companies that calculate their taxable income under the presumed profit system are not allowed to benefit from the incentives provided by *Lei Rouanet* and *Lei do Audiovisual*. For more details regarding the corporate income tax computation, please refer to the "Corporate Taxation" section.

According to Law 8,685/1993, focused on Brazilian audiovisual projects previously approved by ANCINE, there are two types of incentives that may grant income tax reductions until 2019:

- (i) in the case of investments in independent Brazilian film productions through the purchase of quotas of distribution rights negotiated on the stock market, the individual may deduct up to 3% of its income tax due and the legal entity may deduct the investments from its income tax computation as well as from the income tax due (up to 3%); and
- (ii) in the case of sponsoring independent Brazilian film productions, the individuals/legal entities may deduct the expenses related to the sponsorship from the income tax due up to 6%/4%, respectively. However, expenses incurred with the sponsorship should not be deductible for income tax computation purposes. In principle, legal entities taking advantage of the tax incentives mentioned herein should observe a limit of 4% of maximum deduction of the income tax due.

Also, in regard to the withholding tax assessed on amounts remitted abroad in consideration for the acquisition of rights/exploration of licenses related to transmission of films and events in Brazil, the audiovisual tax incentive may grant a tax reduction of 70% of the WHT levied provided that the amount is reinvested in the local development of independent productions in Brazil.

In order to qualify for the tax benefits of the *Lei do Audiovisual*, projects must satisfy the following requirements:

- At least 5% of the project must be self-financed or third-party financed;

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- Maximum financing amount of R\$4 million (for income tax deduction incentive) and R\$3 million (for withholding income tax reduction incentive); and
- ANCINE’s approval for the project subject to investment/sponsorship.

In regard to Lei *Rouanet*, this tax incentive may also grant tax reductions on the income tax due both by individuals and legal entities. In general, lines, donations, or sponsoring amounts invested to cultural projects directly or by way of a specific fund (National Culture Fund – FNC) may be deducted from the income tax due. In order to be eligible for this tax incentive, the cultural project should be preapproved by the Ministry of Culture or, when applicable, ANCINE.

As seen below, the *Rouanet* tax incentive establishes two distinct limitations for tax reduction on the income tax due.

For instance, a legal entity supporting general cultural projects by way of donations and sponsorships may deduct up to 40%/30% of these amounts from the income tax due, respectively, provided that this deduction does not exceed 4% of the income tax due.

Type of cultural project	Generic limitation		Total limitation
General cultural projects	Individuals	80% of amount donated 60% of sponsorship	6%
	Legal entities	40% of amount donated 30% of sponsorship	4% (considering incentives from <i>Audiovisual</i> )
Special cultural projects	Individuals	Amount donated/sponsorship	6%
	Legal entities	Amount donated/sponsorship	4% (considering incentives from <i>Audiovisual</i> )

Please note that the sum of investments in Lei Rouanet and Lei do Audiovisual together may not exceed 6%/4% of individuals/legal entities income tax payable, respectively.

#### Local Tax Benefits for Encouraging Cultural Activities

Besides the initiatives from the Federal Government such as Audiovisual and Rouanet, states and municipalities also have developed incentive programs in order to attract investments and foment cultural activities.

States, such as Rio de Janeiro, São Paulo, Minas Gerais, Santa Catarina, Goiás, Acre, Roraima, Pará, Bahia, Ceará, Maranhão, Piauí, Rio Grande do Norte and Rio Grande do Sul, grant tax incentives focused on the development of culture. In general, investors and sponsor companies may deduct from the ICMS due the amount invested in cultural projects. In the same way, several municipalities also offer incentives to reduce the ISS due by companies that support or sponsor local cultural projects.

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As a general rule, companies should be in compliance with their tax obligations in order to be eligible for the tax incentives.

#### *Bank Financing*

In addition to the tax benefits available, some federal development banks can also support Brazilian independent motion pictures with financial investments.

The National Bank for Economic and Social Development (BNDES) operates a series of funding programs designed to stimulate the growth of Brazilian-owned industry, mainly through subsidized-rate financing. BNDES offers specific loans for companies intending to establish or expand facilities for the production of goods considered important to the social well-being of the population, and finances the acquisition of such goods and promotes the expansion of private capital ownership by underwriting share issues. As a general rule, nonresident companies may qualify for BNDES acquisition financing provided that local content of the equipment meets minimum requirements.

Also, BNDES has a specific financing program called Cinema Perto de Você (Theaters Near You). This program is designed to support the construction and improvement of movie theaters in specific cities indicated by ANCINE.

#### *Other Financing Considerations*

##### *CONDECINE*

Provisional Measure 2,228-1/2001, altered by Law 10,454/2002 and ANCINE Normative Instruction No. 134/2017, introduced several changes in the film industry. The most significant change was the creation of a special contribution titled "Contribution for the Development of the National Cinema Industry" (CONDECINE), which is levied on the marketing and promotion, production, and distribution of commercial motion picture and video works.

CONDECINE shall be duly paid once every 12 (twelve) months, by title of audiovisual work, by audiovisual market segment in which it is publicly communicated, according to the value defined in regulation by the Federal Executive Branch, pursuant to § 5 of art. 33 of Provisional Measure 2.228-1/2001 (amended by article 1 of Normative Instruction No. 134/2017):

I. The audiovisual market segments are as follows:

- a) - Exhibition Rooms;
- b) - Broadcasting of Sounds and Images;
- c) - Mass Electronic Communication by Signature;
- d) - Domestic Video; and
- e) - Other Markets.

II The following segments are understood as Other Markets:

- a) - Video on demand;
- b) - Audiovisual in mobile media; (Repealed by article 43 of Normative Ruling No. 105)

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- c) - Audiovisual in collective transport; and
- d) - Audiovisual in restricted circuit.
- e) - Audiovisual advertising on the Internet. (Included by Article 2 of Normative Instruction No. 134).

Also, CONDECINE is assessed at a rate of 11% on the amounts paid to nonresident producers, distributors, or intermediaries, in consideration for the commercial use of motion picture or video works, or their purchase or import. An exemption of CONDECINE may take place in case the entity invests an amount correspondent to 3% of the income paid, credited, used, remitted, or delivered in Brazilian video and audio productions approved by ANCINE.

CONDECINE will be due in the date of the payment, credit, use, or remittance of the income related to commercial use, acquisition or import of motion picture or video work.

CONDECINE may be reduced to:

- i) 20% in the case of Brazilian non-advertisement motion picture or video work
- ii) 20% in the case of audiovisual works destined to the market share of exhibition movie theaters explored upon six copies and also in the case of motion picture or video works for TV or radio produced twenty years before the registry of the contract with ANCINE; or
- iii) 10% in the case of Brazilian advertisement work performed by microenterprises and small business, with maximum cost of BRL 10,000.

Also, it is important to mention that sport events, journalistic motion pictures, export operations of national motion pictures or video works, and the broadcast of national content are exempt from CONDECINE.

The taxpayers liable for CONDECINE are the following entities:

- iv) Owners of the commercial rights or licenses in Brazil;
- v) Producers, in the case of Brazilian works, or owners of the exhibition license, in the case of foreign works;
- vi) Withholding entity/individual responsible for the payment, credit, use, remittance or delivery of the income from the commercial use, acquisition or import of motion picture or video
- vii) Concession or permission holding companies for telecommunications services (in case of CONDECINE due upon the rendering of services); and
- viii) The legal representative of the foreign programmer in Brazil, in the case of advertising audiovisual work produced with the direct participation of local advertising company and broadcasted on international channels.

Note that tax treaties between Brazil and other countries do not cover CONDECINE (not included in income tax definition). Considering that CONDECINE should be levied on the Brazilian payer, the nonresident may not be entitled to a tax credit.

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### *Special Contribution (CIDE)*

CIDE is a special contribution levied on payments to nonresidents in the form of royalties and technical services at a rate of 10%. This contribution is imposed on the Brazilian payer (and not on the nonresident).

Initially, CIDE was applicable only to certain royalties and services rendered involving the transfer of technology. However, as of January 1, 2002, CIDE applies to all types of technical services and also to royalties related to the use of trademarks and copyrights.

Note that until December 31, 2013 the taxpayer was permitted to take a tax credit of 30% of the CIDE paid to be offset against subsequent CIDE payments related to royalties from the use of trademarks and copyrights.

### *Compliance of Central Bank Regulations*

Brazilian Central Bank (BACEN) imposes foreign exchange controls for both inflow and outflow of funds into/from the country. In general lines, the investor should provide proper documentation to the private bank responsible for the transaction, which should be registered in Central Bank's electronic system (RDE).

With regard to financial transactions involving the remittance of rental income of home video and films may be performed through any Bank authorized by the Central Bank to operate in the foreign exchange market.

## **Corporate Taxation**

Currently, corporate income tax (IRPJ) is assessed at a rate of 15%, plus a surtax of 10% on the amount of taxable income exceeding R\$240,000 per year.

In addition to the corporate income tax, there is also a social contribution (CSLL) charged at a 9% tax rate.

There are two main methods for income tax and social contribution tax computation—the actual profit system and the presumed profit system.

### *Actual Profit System*

Under the actual profit system, taxable income is net accounting profit adjusted for nondeductible expenses and nontaxable revenues. Taxpayers on the actual profit system may choose to calculate tax on a quarterly basis or on an annual basis. The election is made at the beginning of each calendar year and may not be changed for the remainder of the year. Under the quarterly basis, taxable income is computed and paid quarterly.

It is important to mention that some companies are legally obliged to be in the actual profit system, such as financial institutions, factoring companies, or entities that accrue revenue higher than R\$78 million per year.

### *Presumed Profit System*

If certain conditions are met, Brazilian entities may elect the presumed profit system to calculate taxable income. Under the presumed profit system, taxable income is deemed to be equal to a fixed percentage of gross revenues. The applicable profit percentage depends upon the activity of the company and differs for corporate income tax and social contribution on profits.

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For example, for companies engaged in render of services, a 32% of deemed profit margin is applied. To reach the taxable income, the presumed profit (which is obtained by multiplying the gross revenue by the presumed profit margin) is increased by revenues other than sales revenue, such as income from financial transactions and capital gains.

Note that only companies with gross revenues lower than or equal to R\$78 million per year, which are not financial institutions or factoring companies, that do not earn profits or gains from abroad and that do not qualify for an tax exemption or reduction of corporate income tax or social contribution on profits may participate in the Presumed Profit System.

#### Withholding Income Tax Obligations

The remittance of payments abroad is generally assessed by withholding income tax, which rates depend upon the nature of the payment, the residency of the beneficiary, and the existence of tax treaties between Brazil and the country where the beneficiary is located. The most common rates range from 15% to 25%. As a general rule, income paid to beneficiaries located in low tax jurisdictions is subject to 25% withholding tax.

The following are the main withholding tax rates applicable to payments made to nonresidents:

- Interest – 15%
- Interest on equity – 15%
- Royalties – 15%
- Technical service and technical assistance fees – 15%
- Nontechnical service fees – 25%
- Lease and rental fees – 15%

In regard to amounts paid to foreign producers and distributors related to income derived from the exploration of foreign audiovisual productions of its acquisition or importation, withholding income tax should be assessed at a 25% rate.

In regard to amounts remitted abroad for the acquisition or remuneration in consideration of any type of right, including rights of transmission of films and events, WHT should be levied at a 15% tax rate.

The following are currently not subject to withholding tax (some requirements may apply):

- Dividends (if related to post-January 1996 profits) – 0%
- Interest and commission on export financing – 0%
- Interest and commission on export notes – 0%
- Export commissions – 0%
- Interest on certain government bonds – 0%
- Rental fees for aircraft and ship – 0%
- Air and sea charters, demurrage, and container and freight payments to foreign companies – 0%
- International hedging – 0%

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### Transfer Pricing

The Brazilian transfer pricing regime is applicable to import and export operations involving goods, services, and rights carried out with related parties located overseas or with parties located in low tax jurisdictions or under a privileged tax regime.

It is important to note that Brazilian transfer pricing rules do not follow OECD guidelines nor are the Brazilian transfer pricing rules based strictly on the arm's length principle as it applies in other jurisdictions. Most of the transfer pricing methods provided under Brazilian tax law are based on predefined deemed profit margins.

If the taxpayer does not meet the transfer pricing parameters in Brazil, an adjustment in the income tax basis of the Brazilian taxpayer shall apply. The test is performed on an annual basis and the adjustment is limited to the time span where the related-party/low-tax jurisdiction/privileged tax regime status applies.

In regard to payments of royalties abroad, transfer pricing rules may not apply depending on the type of the right involved. In this case, the deductibility of the expenses may be subject to a more stringent deductibility limitation (1% to 5% of the revenue related to the royalty).

## Indirect Taxation

### Customs Duties

#### *Import Tax (II)*

In principle, the applicable rate depends on the fiscal code of the goods, set on Mercosur's (South Cone Market) Common External Tariff (TEC). The Mercosur Agreement provides that all member countries (Argentina, Brazil, Paraguay, Uruguay, and Venezuela) must apply the same import duty on goods from third-party countries, except for certain goods listed in each country's exception list (this list is generally driven by political or economic reason, e.g., the protection of local industry, the essentiality of the product to the importer country). Customs duty rates among Mercosur countries is zero-rated, provided the products have a Mercosur certificate of origin. Mercosur origin rules are generally based on minimum local added value and changes in the classification of the product.

#### *Importation*

Brazilian legislation provides for the mandatory registration of all foreign or domestic motion pictures, home video, and television contracts distributed and transmitted within Brazil with the Ministry of Culture (Audiovisual Development Bureau).

Brazilian entertainment law provides that Brazilian film labs must produce the film prints that will be distributed within Brazil.

The importation of marketing materials is subject to duties, which may vary according to the item. Posters and black-and-white stills must be printed in Brazil, while negative and color stills may be imported.

#### *Excise Tax*

Excise tax (IPI) is a federal tax levied on the import and manufacture of goods. In many aspects, IPI mechanics is similar to a VAT, since it is charged on the value aggregated to the merchandise. As a general rule, the IPI paid on a prior stage can be used to offset the IPI debts generated in subsequent operations. Similar to the import tax, the applicable rate depends on the tax classification of the product.

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IPI also has a regulatory nature, i.e., the Federal government may increase (or decrease) IPI's rates at any time as a way to implement financial and economic policies.

Additionally, IPI rates can be higher for nonessential products such as cigarettes, perfumes, etc. Export transactions are not subject to IPI.

#### *ICMS (State VAT)*

ICMS is a state tax levied on the import and physical movement of products. Rates may vary from 7% to 12% for interstate transactions and from 17% to 20% for intrastate or import transactions, which may vary according to the type of product involved.

ICMS is a noncumulative tax, and therefore, the ICMS paid on a prior stage may be used to offset the ICMS tax levied in subsequent operations. Export transactions are not subject to ICMS.

#### *Service Tax*

Service tax (ISS) is a municipal tax assessed on revenues in connection to render of services. While ISS is a municipal tax, services subject to ISS are defined by a federal law (Complimentary Law 116/03). The applicable rate depends on the legislation of each municipality and on the service rendered. Rates may range from 2% to 5%.

Complimentary Law 116/03 introduced important changes to the ISS legislation. As of January 2004, ISS also applies to the import of services, which should be withheld by the Brazilian entity.

Furthermore, Complimentary Law 116/03 also provides an ISS exemption for revenues generated from the export of services. However, the definition of exported services specifically excludes services rendered in Brazil that showed results within the country (even if the Brazilian entity receives the payment from abroad).

#### *PIS/COFINS*

PIS (Social Integration Program) and COFINS (Social Security Financing Contribution) are charged on gross revenues through two regimes: cumulative and noncumulative. Revenues related to export transactions are immune from these contributions.

Entities that are subject to the PIS/COFINS cumulative regime will be subject, in general, to a 0.65% tax rate for PIS and 3% tax rate for COFINS. On the other hand, PIS/COFINS taxpayers under the noncumulative regime are subject to a 1.65% (PIS) and a 7.6% (COFINS) rates and are allowed to recognize a tax credit for PIS/COFINS paid on certain inputs.

As a general rule, entities may opt between the noncumulative or the cumulative regime of PIS/COFINS. However, some companies are obliged to adopt the cumulative system, such as entities assessing corporate income taxes under the presumed profit system, financial institutions and health insurance companies, among others.

#### *Tax on Financial Transactions (IOF)*

IOF is a financial tax levied on financial transactions such as credit, exchange, insurance, securities, etc. The main IOF rate assessed on most currency exchange transactions is 0.38%. However, we must note that IOF legislation imposes specific rates according to the operation involved. For instance, the currency exchange transaction related to cross border loans with an average term lower than 180 days are subject to IOF at a 6% tax rate. It is

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important to mention that IOF rates may be increased (or reduced) at any time by the Brazilian government, without congressional endorsement.

## Personal Taxation

### Resident

Residents of Brazil, whether from a foreign nationality or not, are subject to tax on their worldwide income. Individuals reporting income received from abroad may take a credit on their annual tax return for taxes paid in the country of origin, provided that a reciprocal tax treatment takes place.

Income subject to tax includes all monetary remuneration and fringe benefits. In the case of expatriates, the main items in this category are the cost of travel for family home leave and allowances for housing, educational, and medical or other expenses. Any reimbursement of taxes paid is included in taxable income. Nonmonetary fringe benefits, such as the use of a company car or country club membership, are also included in taxable income. No distinction is made between personal expenses reimbursed by the company to the employee and personal expenses paid directly by the company. Moving allowances are usually nontaxable, but in certain circumstances, they may be treated differently.

Also, it is important to mention that nonresident individuals' earnings received in Brazil are subject to withholding income tax. They must communicate to the source of the payment the condition of nonresident.

### *Concept of Residency*

#### *Permanent Visa Test*

Individuals transferring to Brazil on a permanent basis are subject to tax as residents upon the date of arrival.

On departure, the individual must report his or her income and pay any taxes due up to that date. The taxpayer will receive a final tax clearance (granting him or her nonresident tax status) that will enable him or her to request Central Bank permission to repatriate all assets held in local currency, provided that these assets have been properly reported on the annual tax returns.

Permanent working visas are generally granted to applicants who will perform management activities as business administrators, general managers, or directors of Brazilian companies (duly appointed as so in the company's articles of association).

The Brazilian company has basically two options to formalize the recruitment of an individual with a permanent visa: (i) with an employment contract, where the company will pay a monthly salary and will incur other labor charges, as well as being included in the Brazilian company's payroll; or (ii) without an employment contract, where the company will pay a pro labore remuneration in Brazil. Specific rules must be observed for the issuance of a permanent visa for a nonresident contracted to manage companies in Brazil.

#### *Temporary Visa Test*

A temporary visa is granted to foreign individuals under specific conditions, such as teachers, researchers or scientists, artists, and individuals under technical assistance agreements or render of services agreements involving transfer of technology, among many others.

## Brazil

Individuals rendering services involving the transfer of technology agreements may be granted with a temporary visa valid for two years (renewable for an equal period) or a work authorization valid for one year (for emergency situations or agreements not comprehended in the first situation) may be granted.

A temporary visa may also be applicable to artists and technicians related to entertainment activities to be performed in Brazil. The visa should be valid for 90 days and is not applicable to foreign artists with labor contracts with Brazilian entities.

Foreign individuals under labor contracts with local entities should hold a temporary visa of two years (subject to extension). The Brazilian employer must file the visa application and provide the required documents in order to hire the foreign employee.

*Business Visa*

With a business visa, the foreigner is allowed to participate in business meetings, conferences, and summits, visit potential clients, study the Brazilian market, etc. However, the employee must not perform any kind of work for a local company during his stay in Brazil and cannot receive any Brazilian-sourced remuneration, in order to avoid penalties such as fines and deportation. Business visa limits the permanence of the individual to 90 days (renewable for an equal period).

In any case, please note that eventual income earned from a Brazilian source should be subject to taxation in Brazil.

*Capital Gains*

Starting from 2017, when the Provisional Measure 692/2015 was converted into Law 13.529/2016, a nonresident’s capital gains derived from the sale of an asset located in Brazil are subject to a progressive capital gains tax system as follows:

Progressive Capital Gain Tax Rates	
Gain Amount	Rate
Less than R\$5 million	15%
Between R\$5 and R\$10 million	17.5%
Between R\$10 and R\$30 million	20%
Over R\$30 million	22.5%

*Allowances and Deductions*

Taxpayers may deduct on income tax computation amounts paid to Social Security (INSS) and any alimony payments. A special deduction of R\$189.59 (applicable as of calendar year 2017) per month and per dependent is granted as well. Unreimbursed medical and dental expenses are allowed as deductions only on the annual tax return, as well as educational expenses, limited to R\$3,561.50 per student (applicable as of calendar year 2017).

*Tax Rates*

Tax is withheld at source on a monthly basis from 7.5% to 27.5% depending on income level (see below). This withholding tax is applicable only to payments made by Brazilian entities. When an expatriate is on a split-payroll basis, the amount paid abroad should not be subject to Brazilian withholding tax, but is subject to monthly tax, which must be paid by the end of the month following the month in which the income was received.

**Brazil**

Tax is paid monthly in accordance with a five-bracket tax table. For the 2017 calendar year, individuals earning under R\$1,903.98 are exempt from taxation. Individuals (i) with a monthly income above R\$1,903.99 and under R\$2,826.65 are subject to a withholding tax of 7.5% of income reduced by a deduction of R\$142.80; (ii) with a monthly income above R\$2,826.66 and under R\$3,751.05 are subject to a withholding tax of 15% of income reduced by a deduction of R\$354.80; (iii) with a monthly income above R\$3,751.06 and under R\$4,664.68 are subject to a withholding tax of 22.5% of income reduced by a deduction of R\$636.13. Taxpayers whose monthly income is over R\$4,664.68 are taxed at a rate of 27.5% reduced by a deduction of R\$869.36.

#### *Annual Tax Return*

Annual returns must be filed by the end of April, reporting income earned in the previous calendar year.

All resident taxpayers are required to file as part of their tax return an annual statement of personal assets and liabilities held at December 31 of the taxable year in Brazil or abroad. Any increase in net assets not attributable to reported taxable or nontaxable income may be subject to tax.

The Brazilian Central Bank also imposes tax return filing for resident individuals or entities on an annual basis reporting all assets located abroad with a value equal to or exceeding US\$100,000.

## **Digital Media**

Currently, there is a major discussion in Brazil regarding taxation of some digital media operations, such as over-the-top content and advertising over the internet. Currently, the taxation of operations is not quite comprehensively regulated in Brazil. Consequently, providers of such services may be subject to a suboptimal tax environment, where a number of different taxes with a high tax burden may apply.

Local industry members are discussing with the Brazilian government that the lack of regulation for the services provided by nonresidents may be particularly unfair for the Brazilian competitors (such as local cable providers), which are subject to regular tax implications in Brazil and to the regulatory requirements imposed by ANCINE and other Governmental Agencies. Within this context, the Brazilian government is studying measures to standardize this market for nonresidents, which may result in a significant change to the business environment for the companies involved in such activities in Brazil.

## **Brazil**

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### **Brazil**

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NDPPS 710923