# A GUIDE TO WEALTH PLANNING IN BRAZIL

KEY LEGAL AND TAX
STRATEGIES FOR
PRIVATE CLIENTS



#### INTRODUCTION

Welcome to the Wealth Planning Guide in Brazil.

Whether you are an individual, a family, or a business owner who is a tax resident in Brazil or holds investments in the country, this guide is designed to provide valuable insights to help you effectively plan, protect, and grow your wealth.

Within this guide, you will find information on key aspects of wealth planning in Brazil, including:

- Brazil's legal landscape and regulatory framework
- An overview of the Brazilian tax system
- Essential tax considerations relevant to wealth planning for both
   Brazilian residents and non-residents with investments in Brazil
- Insights into family and succession laws under the Brazilian legal framework
- Information on ongoing tax reform bills and legislative developments in the Brazilian Congress

Please note that wealth planning is a dynamic process that evolves alongside your changing circumstances and goals. This guide serves as a starting point to navigate the subject, but it is important to understand that the content provided is for informational purposes only and should not be considered as legal, financial, or tax advice.

We hope the information you are about to read will contribute to your wealth planning decisions linked to Brazil.



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#### **GENERAL OVERVIEW**



GENERAL FEATURES

Brazil is the largest country in South America and currently has 207 million inhabitants. It is the world's fifth largest country, both by land mass and by population. Brazil is also a member of the G20, an international forum for economic cooperation, and is counted among the influential BRICS nations.



#### **CURRENCY**

The currency in Brazil is the Real (R\$)



#### CAPITAL

Brasilia



### OFFICIAL LANGUAGE

Portuguese



# THE BRAZILIAN POLITICAL STRUCTURE

Brazil is organized as a Federative Republic, where extensive authority is vested in the federal government. The Federal Constitution established a presidential system, and the governance of the nation is structured into three distinct and autonomous branches: Executive, Legislative and Judiciary. This division of power is also mirrored at the state and municipal levels.

The Federative Republic of Brazil comprises 26 states, 5,570 municipalities, and the Federal District. Each of these entities possesses the competence to legislate on particular subjects as delineated by the Federal Constitution.



The Brazilian legal system follows the civil-law tradition, wherein statutes serve as the primary source of law, while judicial precedents hold a secondary position. However, in recent years, there has been a noticeable shift towards a more prominent role for the Judiciary. This trend has resulted in the establishment of binding precedents with broader and farreaching effects.



#### **GENERAL OVERVIEW**



#### BRAZILIAN ECONOMIC FRAMEWORK

- The Brazilian Gross Domestic Product (GDP)
  is a key indicator of the country's economic
  performance. As the largest economy in
  South America, Brazil has a diverse range
  of sectors contributing to its GDP, including
  agriculture, industry, and services.
- Historically, Brazil has experienced periods
  of robust economic growth, driven by its
  abundant natural resources, a growing
  middle class, and a large domestic market.
  However, the country has also faced
  challenges such as income inequality, fiscal
  deficits, and structural issues that have
  impacted its economic trajectory.
- Brazil's GDP is of approximately US\$ 1.9 trillion and the GDP per capita is circa of US\$ 8,900.
- Regional economic development in Brazil
  exhibits significant disparities, with a lack of
  uniform distribution across the country. The
  southeastern region, comprising states such
  as São Paulo and Rio de Janeiro, plays a
  dominant role in contributing to the national
  production, accounting for approximately
  55% of Brazil's total GDP. This concentration
  of economic activity highlights the
  country's regional imbalances.



#### **BRAZILIANS ABROAD**

The Ministry of Foreign Affairs reports that the Brazilian community abroad surpassed 4.4 million individuals in 2022. Additionally, Brazil has been attracting investments from its expatriate community, amounting to a substantial sum of US\$ 3.8 billion.



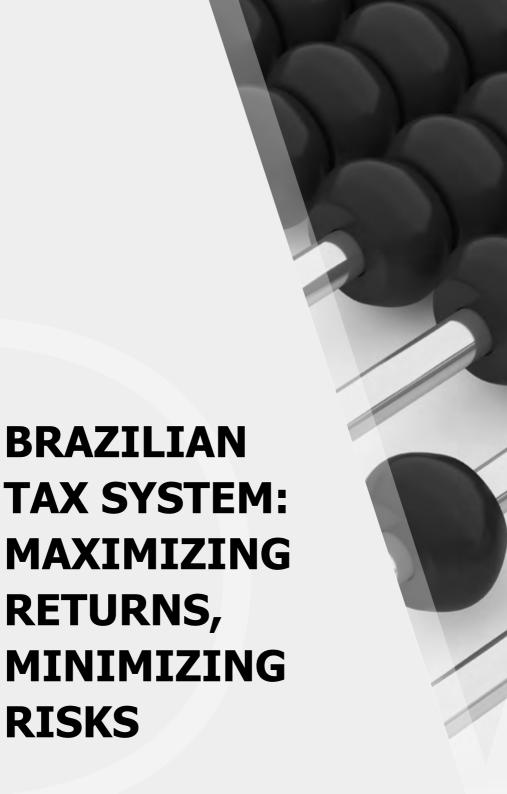
## BRAZILIANS ESTATE ABROAD

The assets of Brazilian companies and individuals abroad have reached recently over US\$ 558 billion according to the Brazilian Central Bank (BC). These assets encompass investments in stocks, bonds, real estate, trusts, currencies and deposits.

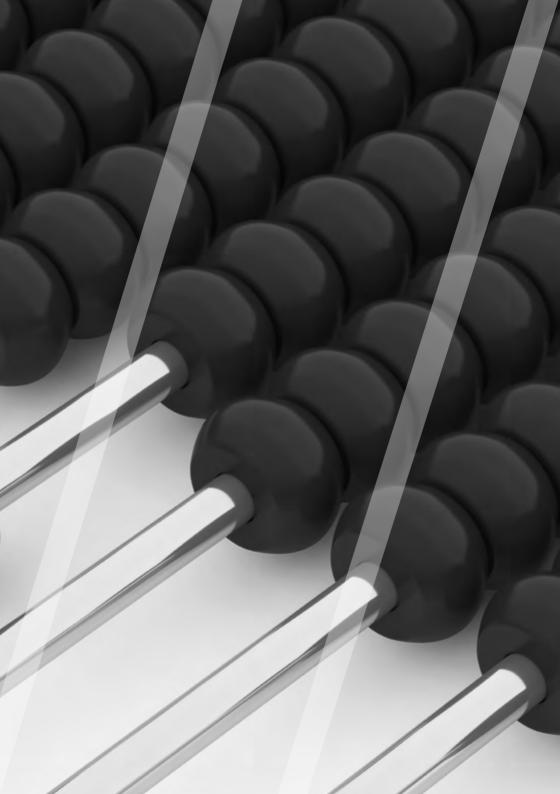


## DEPARTURE FROM THE COUNTRY

There has been an increase in the number of Brazilian families relocating to other jurisdictions, motivated by several reasons, such as jobs and academic opportunities, and even the economic and political instability in Brazil. A survey conducted by Fundação Getúlio Vargas (FGV) pointed out that 47% of young Brazilians between 15 and 29 years old want to leave Brazil.



**RISKS** 



#### **BRAZILIAN TAX SYSTEM**

**TAX LEVELS** 

Brazil imposes taxes at the Federal, State and Municipal levels for individuals and companies. At the federal level, the main taxes include the Income Tax, which is levied on individuals and corporations based on their income. At the state level, the main tax is the Value Added Tax, which is a consumption tax applied to the sale of goods. Additionally, municipalities levy the Services Tax, which is imposed on the provision of services.

TAX LAW SOURCES

The Brazilian tax system operates within a framework established by the Federal Constitution, which outlines the fundamental principles and guidelines for taxation. It serves as the highest authority for both constitutional and infra-constitutional tax legislation. The National Tax Code, along with federal, state, and municipal tax laws, as well as international tax treaties and government decrees, further regulate and provide specific provisions for taxation in Brazil. These legal instruments collectively shape the rules and procedures governing taxation.

## TAX ADMINISTRATION

The Federal tax system is administrated by the Federal Tax Revenue, which operates as an integral part of the Ministry of Economy. It is tasked with overseeing and enforcing federal tax regulations, ensuring compliance, and collecting taxes on behalf of the federal government. Similarly, at the State and Municipal levels, equivalent administrative departments are responsible for managing and enforcing tax regulations within their respective levels.

#### TAX ASSESSMENT

When Brazilian tax authorities identify any irregularities in a taxpayer's obligations, they issue a Notice of Assessment to notify the individual or entity. This notice serves as an official communication from the tax authorities, informing the taxpayer regarding the identified discrepancies or non-compliance with tax regulations.

# PENALTIES

In Brazil, if taxes are paid after their due date, they may be subject to official interest rate ("SELIC") charged at a monthly rate published by the government. Generally, when tax assessments at federal level are issued due to non-payment or non-compliance, penalties ranging from 75% to 150% of the unpaid tax amount is imposed. At state and municipal levels, penalties percentage may vary significantly.

	Brazilian Tax System
Tax	Main Features
Personal Income Tax (IRPF)	It is imposed on all taxable income derived in Brazil by individuals. Brazilian residents are subject to taxation on their worldwide income. Non-residents are taxed only on income derived from Brazil.
Corporate Income Tax (IRPJ) and Social Contribution on Net Profits (CSLL)	Brazilian companies are subject to IRPJ and CSLL which are levied over the adjusted net profits at the rates of 15% and 9%, respectively. The calculation basis for IRPJ and CSLL may be assessed according to two different regimes. While the "actual pofit method" is based on adjusted net profits, the "presumed profit method" is assessed according to a percentage of the gross revenues obtained by the legal entity. The percentage applied to gross revenues may vary according to the industry of each taxpayer. Presumed profit method is available for companies which annual gross revenues is under BRL 78 million.
Federal Excise Tax (IPI)	It is a federal value-added tax levied on industrialized products as they leave the plant where they are manufactured. The IPI is also due on imported industrialized products, upon importation and resale by the importer. IPI rates may vary depending on whether the type of product is regarded as essential or not.

Brazilian Tax System		
Tax	Main Features	
Tax on Financial Transactions (IOF)	The Tax on Financial Operations (IOF) is imposed on credit operations, foreign currency exchange, insurance operations, and transactions involving transferable securities. This tax is applicable to both individuals and legal entities. In general, rates may vary from 0% to 25% over the transaction amounts.	
Social Contributions on Gross Revenues (PIS and COFINS)	Contributions for the Financing of Social Security (COFINS) and for the Social Integration Program (PIS) are levied over companies' gross revenues. The calculation basis for PIS and COFINS may be assessed according to two different regimes. The "cumulative method" is based on the companies' gross revenues, without credits offsetting. The aggregate nominal rates amount to 3.65%. On the other hand, the "non-cumulative method" is based on the value added by each company in the economic chain, with the possibility of offsetting credits over acquisition of assets and services necessary for the taxpayer's activities. In this case, aggregate rates amount to 9.25%.  PIS and COFINS are also imposed on the import of goods and services originated abroad. Aggregate rates vary from 9.25% to 11.75%.	
Import Duty (II)	It is due upon the clearance by customs of the imported products, according to an ad valorem tax rate. The tax rate varies according to the tariff classification of the imported product.	

Brazilian Tax System	
Tax	Main Features
Export Tax (IE)	It is is due at the time of export. The tax applies on an ad valorem basis to a limited list of products. The tax rate varies, depending on the type of product exported.
Tax on Distribution of Goods And on the Provision of Services of Communications and Interstate Transportation (ICMS)	The ICMS tax is a State tax that is due over the importation and circulation of goods and, also, the supply of interstate and intermunicipal transport and communication services. The ICMS tax rates and tax benefits vary from State to State and depend on the type of transaction (e.g. intrastate or interstate sale of goods, etc.).
Inheritance and Gift Tax (ITCMD)	It is a state tax that is levied on the transmission of movable or immovable assets as a result of donation or in the event of the death of the owner. The ITCMD tax rates vary from State to State, up to a maximum rate of 8%.
Vehicle Property Tax (IPVA)	It is an annual tax levied on registered vehicles. IPVA is paid each year to the state government where a vehicle is registered. Rates vary from 1% to 6%.
Municipal Services Tax (ISS)	It is a municipal tax levied on the rendering of any type of services. The rate of ISS varies between 2% and 5%.

Brazilian Tax System	
Tax	Main Features
Urban Land Property Tax (IPTU)	IPTU is a municipal tax levied on an annual basis, which tax rates are normally progressive, based on the market value of real estate property located in urban areas.
Rural Land Property Tax (ITR)	ITR is a federal tax levied on an annual basis, which tax rates are normally progressive, based on the market value of real estate property located in rural areas. Rates may vary from 0% to 20%.
Real Estate Transfer Tax (ITBI)	ITBI is a municipal tax levied on the sale, purchase, assignment of real estate or rights related to it. In general terms, this tax is calculated based on the market value of the property at rates determined by the municipality in which the property is located, usually varying from 0% to 4%.

**TAX TREATIES:** In order to avoid double taxation, Brazil has entered into treaties with certain jurisdictions. Currently, Brazil has tax treaties executed with the following countries shown in the table below:

Brazilian Tax Treaties (Double Taxation)		
	Countries	
Argentina	Austria	Belgium
Canada	Chile	China
Czech Republic	Denmark	Ecuador
Finland	France	Netherlands
Hungary	India	Italy
Israel	Japan	Luxembourg
Mexico	Norway	Peru
Philippines	Portugal	Slovak Republic
South Africa	South Korea	Spain
Sweden	Trinidad and Tobago	Turkey
Ukraine	Venezuela	Germany
Russia	United Arab Emirates	Switzerland
Singapore	-	-



Brazil has also entered into treaties with Colombia, Paraguay, United Kingdom and Uruguay, which are pending ratification (not yet in force). Brazil has also implemented reciprocity tax treatment to allow the offset of foreign tax credits with Germany, United States of America and United Kingdom. As mentioned above, UK has already entered into a treaty with Brazil.

Brazil is a member of the Base Erosion and Profit Shifting (BEPS) coordinated by OECD, and has been actively engaged in establishing multiple exchange of information agreements to foster global cooperation on tax matters.







#### **BRAZILIAN TAX SYSTEM**

**MAIN TAXES:** The main taxes involved in wealth planning for private clients are Real Estate Property Transfer Tax (ITBI), Inheritance and Donation Tax (ITCMD) and Personal Income Tax (IRPF):

Main Wealth Planning Taxes - Individual		
Level	Tax	
Federal Tax	Personal Income Tax (IRPF)	
State Tax	Inheritance and Gift Tax (ITCMD)	
Municipal Tax	Real Property Transfer Tax (ITBI)	

# PERSONAL INCOME TAX

# IRPF | INCOME FROM BRAZILIAN SOURCES



### Personal Income Tax

- IRPF is a Federal tax levied on the income derived by an individual tax resident in Brazil.
   Rates vary from 0% to 27.5% on regular income (such as wages and rental fees).
- Capital gains are subject to rates ranging from 15% to 22.5%. Capital gains are calculated as the difference between the alienation price and the acquisition cost of an asset.
- Residents are taxed on their worldwide income, either wired or not to Brazil. Nonresidents are taxed on their income derived in connection with Brazilian sources only.
- Dividends paid by Brazilian companies are currently exempt of IRPF in Brazil, regardless of the beneficiary being resident or nonresident.
- Gifts, donations and inheritances may also exempt from Brazilian personal income tax.



 There are specific tax rules applicable to income derived in connection with financial investments, which are summarized in the following table:

Financial Investments	
Туре	Taxation
Fixed Income	<ul> <li>Regressive income tax rates ranging from 22.5% to 15%, depending on the investment term. Longer the term, lower the rate.</li> <li>It is levied on each investment and there is no allowance for offsetting losses.</li> </ul>
Variable Income	<ul> <li>Monthly income tax of 15% for operations that are not day-trade.</li> <li>20% for day-trade operations.</li> <li>It is levied on net gains for the month.</li> <li>It is possible to offset losses on trades.</li> </ul>
Investment Funds	<ul> <li>Short-term funds - Regressive income tax rate (22.5% to 20%), depending on the investment period.</li> <li>Long-term funds - regressive income tax rate (22.5% to 15%), depending on the investment period.</li> <li>Open-end funds - incidence of "come-cotas" (periodic taxation regardless of redemption of quotas).</li> <li>Funds subject to specific taxation: Stock Investment Fund (15% income tax).</li> <li>Real Estate Funds (20% income tax over capital gains and distributions exempt of taxation).</li> </ul>

# IRPF | INCOME FROM FOREIGN SOURCES

- Regarding income generated abroad, the tax rates applicable to
  Brazilian individuals are generally the same as those for income
  generated within Brazil. Regular income is subject to progressive
  rates ranging from 0% to 27.5%, while capital gains are subject to
  rates ranging from 15% to 22.5%.
- It is important to note that dividends distributed by foreign companies to Brazilian individuals are not exempt and are subject to the same rates as regular income.
- Many Brazilians choose to invest abroad through offshore companies domiciled in tax favorable jurisdictions. Currently, Brazil does not have Controlled Foreign Corporation (CFC) rules for individuals, which means that individuals can defer the taxation of income generated by these offshore companies until the dividends are distributed.
- However, there is a Provisional Measure No. 1,171/2023 in progress in the Brazilian Congress that aims to establish antideferral rules for individuals with offshore investments. The details of the Provisional Measure No. 1,171/2023 and its implications for individuals with offshore investments are subject to further explanation and clarification.

## COMPLIANCE | MAIN ANCILLARY OBLIGATIONS FOR BRAZILIAN RESIDENTS AND NON-RESIDENTS

#### **BRAZILIAN RESIDENTS**

- **Tax Return:** Unless specific exceptions apply, as a general rule individuals domiciled in Brazil who derived income during a given year must submit an income tax return in the following year.
- Declaration of Capital Abroad ("DCBE"): Individuals domiciled in Brazil who hold assets abroad which value exceeds U\$ 1,000,000 must submit an annual DCBE to the Central Bank (BC).

#### **BRAZILIAN NON-RESIDENT TAXATION:**

- Foreign Payments (Services, Royalties, Interests): The income, capital gains and other compensation paid, credited, delivered or remitted by paying sources in Brazil to foreign-based individuals or legal entities are subject to withholding income tax (IRPF) at a general rate of 15%. This rate is increased to 25% when such remittances refer to services or employment, or when the beneficiary is resident or domiciled in a country where income is not taxed or levied a maximum income tax below 20%.
- With regard to financial investments, there are some special regimes available for nonresidents, in which case material reductions in the income tax rates applicable may be obtained.

#### TAX EXIT

- When a Brazilian resident leaves permanently Brazil, some steps must be taken to regularize the tax position.
- Brazilians are considered non-residents as soon as they deliver the Definitive Country Exiting Communication (CSDP), or after 12 months counted as of departure.
- The Brazilian resident who changes his/her domicile to another country must, in summary, adopt the steps depicted in the following chart.

Departure from Brazil		
Document	Description	Term
Definitive Country Exit Communica- tion (CSDP)	The document must be filed with the Brazilian Revenue Service, including a list of the sources of income in Brazil.	Until the last day of February of the subsequent calendar year to the final departure.
Exiting Individual Tax Return (DSDP)	This is the individual last tax return which must be submitted to the Brazilian Revenue Service, including a proxy who will be liable for any further tax implications.	Until the last day of May of the subsequent calendar year to the final departure.
Notification of the Non-Resi- dent Status to the source of income	Present a standard letter provided by the Brazilian Revenue Service to all Brazilian sources of income.	There is no deadline set, but immediate communication is recommended.
Certificate of Tax Compliance of the Federal Government	A document must be issued attesting the regularity of the taxpayer's tax position.	There is no deadline set, but immediate communication is recommended.

## COMPLIANCE | MAIN ANCILLARY OBLIGATIONS FOR BRAZILIAN RESIDENTS AND NON-RESIDENTS

- FOREIGN INVESTMENT IN BRAZIL: In general, investments made
  by nonresidents in Brazil do not face a broad range of legal restrictions
  and are permitted in the vast majority of economic sectors. However,
  foreign exchange is subject to strict control by the Brazilian Central
  Bank. Therefore, any transaction between a nonresident and a resident
  in Brazil is subject to foreign exchange regulations.
- REGISTRATION OF FOREIGN CAPITAL: In accordance with applicable law, all foreign capital remitted to Brazil as investments or loans, in foreign currency or in assets, must be registered with the Brazilian Central Bank.
- SISBACEN RDE-IED/ROF: Registration of direct foreign investments is made through a self-declaring electronic system created by the Brazilian Central Bank called SISBACEN RDE-IED/ROF system ("SISBACEN"). For that purpose, as a general rule the company receiving the investment (either through a subscription of shares/quotas or the granting of loans) must obtain an access code through SISBACEN. In certain cases, and given certain limits, the RDE-IED/ROF is not necessary.

# INHERITANCE AND GIFT TAX ("ITCMD")

- The ITCMD is a state tax levied on the transmission of assets of any type by way of donation or inheritance.
- Each State determines the tax rate applied, up to the maximum percentage established by the Federal Senate, which is currently of 8%. In São Paulo, for example, the tax rate is currently of 4%, to be applied upon the market value of the transferred asset.
- According to the Federal Constitution (which entrusted the Brazilian states with authority to assess ITCMD), as a rule this tax is payable to the state of the donor's domicile in case of donation.
- If these assets originate from inheritance, ITCMD is payable to the state where the probate proceedings are processed.
- Specifically in case of real estate assets, the tax must be collected to the state where these assets are located, both in case of donations and inheritance.

#### **ITCMD**

State	Rate	
Acre	2% to 4%	
Alagoas	2% to 4%	
Amazonas	2%	
Amapá	3% to 4%	
Bahia	3,5% to 8%	
Ceará	2% to 8%	
Distrito Federal	4% to 6%	
Espírito Santo	4%	
Goiás	2% to 8%	
Maranhão	1% to 7%	
Minas Gerais	5%	
Mato Grosso	2% to 8%	
Mato Grosso do Sul	3% to 6%	
Pará	2% to 6%	
Paraíba	2% to 8%	
Pernambuco	2% to 8%	
Piauí	4% to 6%	
Paraná	4%	
Rio de Janeiro	4% to 8%	
Rio Grande do Norte	3% to 6%	
Rondônia	2% to 4%	
Roraima	4%	
Rio Grande do Sul	3% to 6%	
Santa Catarina	1% to 8%	
Sergipe	2% to 8%	
São Paulo	4%	
Tocantins	2% to 8%	

# REAL ESTATE TRANSFER TAX ("ITBI")

- The ITBI is a municipal tax levied over the onerous transfer of real estate property. In case of donation or inheritance of real estate assets, ITCMD is levied instead of ITBI.
- ITBI basis is usually the value of the transaction or the appraised value of the asset, whichever is higher.
- The taxpayer is the acquirer of the real estate asset or correlated rights.
- The rates range from 0% to 8%, according to municipal law. In the municipality of São Paulo, for example, the current applicable rate is of 3%.
- Generally, ITBI is also imposed when real estate assets are contributed as capital into companies. However, if the company's primary purpose is not the exploitation of real estate, the ITBI is waived.
- In the case of corporate reorganizations, such as mergers and spin-offs, transfers of real estate may also be exempt from ITBI if the surviving entity's primary activity does not involve the exploitation of real estate.
- However, as a general rule ordinary purchase and sale of shares or quotas in companies that own real estate properties is not subject to ITBL.

PRIVATE
CLIENTS:
ESSENTIAL
FAMILY AND
SUCCESSION
LAW INSIGHTS



## MAIN ASPECTS REGARDING BRAZILIAN FAMILY AND SUCCESSION LAW

#### **MARITAL PROPERTY REGIME:**

- In Brazil, there are several marriage regimes that have a direct impact on estate planning. The most commonly used regimes are (i) Separate Property Agreement, (ii) Partial Community Property, and (iii) Universal Community Property.
- The Separate Property Agreement regime does not entail the sharing of assets between spouses. Both the assets acquired before the marriage and those obtained during the marriage remain individually owned by each spouse.
- Under the Partial Community Property regime, with the exception of assets received through gifts or inheritance, all assets acquired during the marriage are considered shared property between the spouses.
- In the case of the Universal Community Property regime, all assets and debts, except for those inherited with specific clauses of incommunicability, are shared between the spouses, regardless of when they were acquired.
- It's worth noting that the choice of marriage regime can have implications for the division of assets in the event of death or divorce. Each regime has specific rules regarding the distribution of assets. In some cases, a pre-nuptial agreement may be required to establish the chosen regime.

#### **SUCCESSION LAW:**

- In Brazil, the succession of assets can occur through legal succession or testamentary succession.
- Legal succession occurs when an individual passes away without leaving a valid will. In such cases, the distribution of assets follows the order of preference established by law:
  - Descendants: The first in line to inherit are the descendants (children, grandchildren, etc.). They may have a claim over the assets, competing with the surviving spouse in cases where the spouse is not a joint owner of the assets.
  - Surviving spouse: If there are no descendants or if the assets are not fully allocated to them, the surviving spouse has the right to inherit a portion of the assets that are not subject to the descendants' rights. The specific rules regarding the share of the surviving spouse may vary depending on the marital property regime.
  - Collateral relatives: In the absence of descendants and a surviving spouse, collateral relatives such as siblings, uncles, cousins, etc., may inherit the assets according to the order of preference established by law.
- The procedure to settle the distribution of assets in Brazil is called "inventário." The inventário is a legal process conducted by the family members or heirs to determine the assets, debts, and rightful inheritors of the deceased person. The inventário can be conducted both judicially (through the court) or extrajudicially (without the need for judicial probate), depending on the specific circumstances.

- For an extrajudicial inventário, certain conditions must be met, such as the absence of disputes among the heirs, the consent of all parties involved, and the presence of a notary public.
- Testamentary succession, on the other hand, is regulated by a valid will created by the deceased during their lifetime. A will allows the individual to express their wishes regarding the distribution of assets and can help avoid potential distortions that may arise from legal succession. The testator can specify the allocation of assets, appoint executors, and include other provisions in the will. It is important to note that a will can be revoked, amended, or replaced at any time by the testator.







## **OTHER RELEVANT ISSUES**



 As a form of wealth planning in Brazil, it is very common for private clients to incorporate holding companies to control real estate assets and equity interests.

The holding company can facilitate estate planning by allowing for a smoother transfer of assets to heirs or beneficiaries. Through proper corporate structuring and the use of mechanisms such as shareholder agreements, families can ensure a more efficient and orderly transfer of real estate assets and equity interests to the next generation.

Holding companies in Brazil may also benefit from certain tax advantages. They can provide opportunities for tax planning and optimization, mainly for the exploitation of real estate assets. Under certain circumstances, capital gains and rental fees derived in connection with real estate assets may be subject to a lower tax burden in the hands of the holding company compared to the scenario where they are held directly by individuals.



## PRIVATE INVESTMENT FUNDS

• This structure enables the family to have a shared portfolio and take advantage of joint investment opportunities. It is also possible to implement quotaholders agreements to achieve the most adequate governance structure for families to take investment decisions within the fund. Gains derived by investment funds are usually exempt of taxes. Personal income tax applies upon the redemption of quotas or distribution of profits, which rates may vary from 15% to 22.5%. In other words, taxpayers who hold quotas in private funds are entitled to the deferral of personal income tax until the effective distribution of results or redemption of quotas.



## LIFE INSURANCE

 Death benefits and premium reimbursements are exempt from personal income tax and inheritance and gift tax (ITCMD) if paid directly by the insurance company to the beneficiary.



# FREE BENEFIT GENERATING LIFE INSURANCE PLAN (VGBL)

• It is a personal insurance with survival coverage plan, where personal income tax levies on the income of the amount redeemed; value of the single payment; or amount received periodically. The applicable rates may be chosen by the taxpayer, either under a regressive rates range according to the term of the investment (35% to 10%), or under progressive rates (up to 27.5%) in accordance with the amount of income generated.



## FREE BENEFIT GENERATING PLAN (PGBL)

It is a private pension plan (not an insurance).
 Personal income tax will levy on the amount redeemed either under a regressive rates range according to the term of the investment (35% to 10%), or under progressive rates (up to 27.5%) in accordance with the amount of income generated. Premium payments are deductible for income tax purposes up to 12% on the individual's annual gross income.

In few states, in case of VGBL or PGBL payments, the ITCMD is waived. However, this is an issue not free of discussion, and the Supreme Court will decide on the incidence of ITCMD on VGBL and PGBL, considering the nature of each plan.



 Up to now, the trusts are not regulated under Brazilian law. The trust's characteristics shall be considered to define the legal nature of the amounts transferred by it to Brazilian residents and, therefore, the tax treatment applicable (i.e., whether the transaction is deemed as a donation/inheritance, capital gains, or ordinary income). For instance, when a Brazilian resident transfers assets to an irrevocable trust, there is a risk of such transaction being qualified as a donation, triggering the ITCMD.

Regarding the amounts earned by beneficiaries arising from the trust, Brazilian legislation has not yet defined the tax impact. However, the State of São Paulo, for instance, understands ITCMD is levied upon any income derived in connection with the assets held by the trust, while the Federal Revenue Service stand for the personal income tax levy.

Recently, Provisional Measure No. 1171/2023 was published, which brings significant changes to the taxation of trust in Brazil, as detailed ahead.



TAX
REFORM
UNVEILED



## **INDIRECT TAXES**

#### **CONSTITUTIONAL AMENDMENT PROPOSAL (PEC):**

- Currently, a Constitutional Amendment Proposal (PEC) aiming at reforming the Brazilian tax system is in progress in the Brazilian Congress.
- House of Representatives has already approved the bill, but the text will still be subject to the Senate analysis.
- The PEC is focused in simplifying the Brazilian indirect taxes system, which is known for its complexity. In a nutshell, the PEC provides that three new taxes will replace the five currently in force (which are IPI, PIS, COFINS, ICMS and ISS).
- The PEC is expected to be voted by the National Senate by the end of 2023. In case of approval, the PEC will start its effects as from the year 2026, with a transition period of 08 years.
- After approval of the PEC, a complementary law must be voted to regulate the details of the reform.

## **DIRECT TAXES**

### **BILL OF LAW N° 2.337/2021:**

- In 2021, the Federal Government proposed fundamental changes to income legislation through the Bill of Law No. 2,337/2021, which are now under discussion within Brazilian Senate. The main changes are:
  - **a.** 15% income tax on dividend distributions (currently exempt);
  - **b.** Periodic taxation of private investment funds, which currently allows for tax deferral;
  - c. limitation on the ability to restructure foreign assets; and
  - **d.** tax on the sale of Brazilian assets held indirectly by foreign companies.

**Progress:** The income tax reform is expected to be voted in Federal Senate by the end of 2023, with an emphasis on repealing the tax exemption on dividends paid by legal entities.

#### • PROVISIONAL MEASURE N°. 1.171/2023:

Provisional Measure n° 1.171/2023 was published on April 30, 2023, setting forth relevant changes in the taxation of income earned by Brazilian resident individuals in connection with overseas financial investments, holding companies and trusts. The main changes are the following:

Offshore companies. Revocation of the deferral of income tax for companies domiciled abroad and controlled by individuals residing in Brazil. Under the new rule, profits calculated from January 1, 2024 will be taxed on December 31 of each year, following the progressive rates of zero, 15% and 22.5%.

Financial investments abroad. Income will be taxed annually, upon submission of the Annual Adjustment Declaration, following the progressive rates of zero, 15% and 22.5%.

Overseas trusts. Until today, there was no clear definition on the taxation of assets and rights attributed to trusts. The MP provides for that, as of January 1, 2024, the settlor of the trust must pay income tax on income and capital gains related to assets held by the trust. Upon a further moment, when the assets and rights of the trust are transferred to the beneficiaries, such transfer will be treated as a donation or transmission causa mortis.

The MP is not yet in force, as it should be discussed by National Congress until September 2023 for its conversion into law, otherwise will become invalid.

#### DISCLAIMER

The content herein provided is for informational purposes only and should not be considered as legal, financial, or tax advice. This Guide is designed to provide general information and guidance on Brazilian wealth planning topics.

While we strive to ensure the accuracy and reliability of the information presented, it is important to note that laws, regulations, and financial circumstances can vary significantly among jurisdictions and individuals. Therefore, the information provided may not be applicable or suitable for your specific situation.

We strongly recommend consulting with qualified professionals to ensure that any wealth planning strategies and decisions align with your specific needs, goals, and legal requirements.

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