



MERGERS AND ACQUISITIONS

Brazil

Taxation of Cross-Border
Mergers and Acquisitions

2010 Edition

TAX

Brazil

Introduction

Brazil remains an attractive market for foreign investors for a variety of economic factors, including relative economic and political stability, control over inflation, and a large and growing consumer market. Brazil, like other Latin American countries, has made significant strides in introducing changes in the tax legislation to attract direct foreign investments. Legislative changes have reduced taxes on dividends and finalized double taxation treaties with countries that are major exporters of technology.

The Brazilian mergers and acquisitions (M&A) environment is dynamic, in the sense that tax laws are subject to frequent changes, creating not only pitfalls that can frustrate merger and acquisition tax advisers, but also tax planning opportunities. Furthermore, although Brazilian tax law often seems inflexible, it offers significant flexibility for Brazilian tax planning.

Good acquisition due diligence is important everywhere, but particularly so in Brazil. The complexity of the tax system, the large amount of tax litigation necessary to resolve tax issues and the protective labor regulations, among other issues, complicate the evaluation of Brazilian targets, and sometimes the negotiations, significantly.

There are a number of potentially significant tax issues not yet identified or assessed by the tax authorities or tested in the courts, including:

- informal practices: income not recorded/false invoices in the accounts;
- outsourced or unregistered employees;
- doubtful/aggressive tax planning;
- low quality of financial information/controls;
- inclusion of private/shareholders' interests with the company's interests;
- frequent changes/increases in the tax burden;
- high number of tax lawsuits; and
- succession risk.

Overall, there is a relatively high tax burden in Brazil, with complex and inter-related tax provisions. Good tax planning is, therefore, essential for the parties involved in any M&A project in Brazil.

Recent Developments

Through the introduction of Law 11,638/07, in 2008, Brazil took its first steps towards the adoption of international accounting standards. This has created a complex situation, because of the differences between existing and forthcoming rules (based on these international standards) and the old Brazilian GAAP. To mitigate the effects of this gap and provide taxpayers with general guidelines, the Brazilian government issued a special regulation at the end of 2008.

The situation is still unclear, but it appears that the goodwill calculation remains the same and its amortization is still deductible for tax purposes. In future, however, calculation of goodwill may change significantly, depending on the new accounting regulations to be issued. Please note that, if the new Brazilian accounting regulations were to follow IFRS strictly, there might be a question about the possibility of amortizing goodwill for tax purposes, since this type of goodwill (derived from expectations of future profitability) is calculated on the difference between the acquisition cost and the fair market value of the target's assets and liabilities, not the book value of the net equity. Furthermore, there will be no goodwill amortization for accounting purposes. Instead, periodic impairment tests will have to be carried to assess/estimate the recovery value (fair value) of such assets. Should such value be lower than the book value, then a write-off of part of the goodwill will be required to equate the recovery value with the book value.

Specialists are currently discussing and trying to predict what will be the next steps in the legislation. One possible way future legislation can develop to disregard, for tax purposes, any accounting and calculating changes introduced by Law 11,638/07. Should this transpire, most specialists believe that the tax authorities' oversight of the business purposes and economic fundamentals provided by the companies for the goodwill paid in acquisitions will increase, as it has already increased in the past two years.

Asset Purchase or Share Purchase

Purchase of Assets

- Brazil's successor liability rules are broad and also apply to asset deals. Brazilian legislation stipulates that private corporations that acquire goodwill or commercial, industrial, or professional establishments from an unrelated entity, and continue to operate the target business are liable for historical taxes related to the intangibles or establishments acquired. However, if a seller ceases to operate its business, the acquirer becomes liable for all the business' historical tax liabilities.
- The seller of assets would be subject to income tax and social contribution tax (totaling approximately 34 percent) on the increase in value of the assets, if any. For Brazilian tax purposes, there are no preferential rates that apply to capital gains; both operational and non-operational gains are taxed at the same rate, although there is a difference in the tax treatment of capital and ordinary losses.

Purchase Price

For tax purposes, it will be necessary to apportion the total consideration among the assets acquired. It is generally advisable for the purchase agreement to specify the allocation, which will normally be acceptable for tax purposes provided it is commercially justifiable.

Goodwill

This goodwill should be recorded as a permanent asset and cannot be amortized for tax purposes, even though it may be amortized for accounting purposes.

Depreciation

The acquisition cost of fixed assets will be subject to future depreciation, as a deductible expense according to their economic useful life.

Tax Attributes

VAT credits may be transferred if an establishment is acquired as a going concern. Tax losses and other tax attributes will remain with the seller.

Value-Added Tax (VAT)

- Programa de Integração Social (PIS) and Contribuição para Financiamento da Seguridade Social (COFINS) may apply, depending on the type of asset sold. They are applied on the sale of most assets other than property, plant, and equipment (such as fixed assets).

- Imposto sobre Circulação de Mercadorias e Prestação de Serviços de Transporte Interestadual e Intermunicipal e de Comunicação (ICMS) would apply to the transfer of inventory, but the tax paid may become a credit to the purchaser insofar as these same products are subsequently sold or used as raw materials in the manufacture of products sold by the purchaser. The ICMS credits generated on the purchase of the assets can generally be used to offset the ICMS debts arising from subsequent taxable transactions, such as sales. There are restrictions on a taxpayer's ability to use credits on the purchase of fixed assets. The sale of fixed assets is in general not subject to ICMS, but ICMS credits generated on the purchase of fixed assets may have to be written-off.
- Imposto sobre Produtos Industrializados (IPI) also applies to the transfer of the inventory, if the inventory was directly imported or manufactured by the seller. IPI tax paid may also be creditable by the purchaser if the product is to be used in the manufacture of other products. IPI may also apply on the sale of fixed assets, if the asset was directly imported or manufactured by the seller and the subsequent sale occurred within five years of the date the asset was recorded as a permanent asset by the seller.

Transfer Taxes

- Municipal real estate transfer tax (ITBI) may also apply to the transfer of real estate, as well as Contribuição Provisória sobre Movimentação Financeira (CPMF) on asset sales proceeds.
- Stamp duties do not apply.

Purchase of Shares

- The sale or purchase of shares in a Brazilian entity is more common than an asset deal, because of lower documentation requirements and indirect taxation.
- The taxation of a share sale depends, to some extent, on the residence of the seller and purchaser.
- A Brazilian corporate seller (pessoa jurídica) is subject to income tax and social contribution tax on the net gain from the sale of shares. In most cases, where a seller owns a significant interest (usually more than 10 percent), the gain is calculated as the difference between the gross proceeds and the proportional book value of the target entity's equity.

- Irrespective of whether the seller is a Brazilian individual or a non-resident, the gain is subject to a final 15-percent withholding tax, but the amount of the gain is calculated differently. For a Brazilian individual, the gain is calculated based on the difference between the gross proceeds and the capital contributed or paid in a previous acquisition. For a non-resident, because of the lack of clarity of the relevant tax provisions, there is some debate about how the capital gain is determined. A possible interpretation is that the gain is normally calculated as the difference between the amount of foreign capital registered with the Brazilian Central Bank and the gross sales proceeds in foreign currency. Another possible interpretation is that the gain should be calculated as the difference in Brazilian currency between the sales proceeds and the capital invested, thereby including exchange fluctuations in the tax base. The different positions arise because of differences between the wording of the law and the regulations. It is important to state in the sales contract whether the sale price is gross or net of withholding tax.
- If both the buyer and the seller are non-residents, it is likely that the tax authorities will tax an eventual capital gain. The common view among Brazilian tax practitioners was that no Brazilian taxation was imposed on the sale of shares or quotas in Brazilian entities if the transaction was performed between two non-residents (this was because Brazilian tax law would, in principle, require a Brazilian source of payment), but as from 2004, Law 10.833/03 introduced a change to the Brazilian tax law that is being interpreted as an introduction of the taxation of non-residents' capital gains with respect to the assets located in Brazil even when neither of the parties to the agreement are Brazilian residents. The capital gain on the sale of publicly traded shares is subject to a rate of 20 percent for resident individuals and is exempt for non-residents, provided that some formalities are met and the seller is not a resident of a tax haven.
- According to the Brazilian legislation, equity investment funds (FIPs) are not legal entities, but condominia with shares held by their investors. In general, FIPs are exempt from corporate taxes (income and social contribution taxes on profits) and gross revenue taxes (PIS, COFINS), since some requirements are met. Non-resident investors are not subject to Brazilian taxation upon the redemption of FIPs' quotas, even if the redemption follows liquidation. The exemption only applies if

certain requirements are met, such as the non-resident holds less than 40 percent of the FIP's quotas, it is not entitled to more than 40 percent of the income paid by the FIP, it's not resident in a low-tax jurisdiction, and it does not hold the investment in the FIP through an account incorporated in accordance with Brazilian Central Bank rules.

- One significant advantage of a share sale over an asset sale would be that, if a share sale is structured properly, the amount paid in excess of the net equity of the target may result in the generation of an amortizable premium or a step-up in the tax bases of otherwise depreciable or amortizable assets. This opportunity is not available if shares in a Brazilian company are purchased directly by a non-resident and is not available to the same extent if assets are purchased.
- To take advantage of this opportunity, the acquisition of shares would need to be made through a Brazilian acquisition vehicle.
- According to legislation in force since 1997, the liquidation or merger of the acquisition vehicle and the target would allow the premium paid on the shares to become recoverable in certain situations. To the extent that the premium relates to the value of recoverable fixed assets or relates to the value associated with the future profitability of the company, the premium could be amortized or otherwise recovered through depreciation.
- As mentioned earlier in the chapter, specialists are still discussing and trying to predict next steps in the legislation following the adoption of the new accounting rules.

Tax Indemnities and Warranties

In general terms, tax legislation and prevailing jurisprudence stress that corporate entities resulting from transformations, upstream or downstream mergers and spin-offs shall be liable for taxes payable by the original corporate entity up to the date of the act. This liability is also applicable in the case of the winding up of companies whose business continues to be exploited by any remaining partner, under the same or another corporate name, or a proprietorship.

Successor liability depends upon one of two factors:

- The acquisition of the business (also referred to in the case law as the acquisition of goodwill, meaning business intangibles)

- The acquisition of the commercial, industrial, or professional establishment (meaning the elements which are essential, inherent in and essential for the business)

This rule treats an acquisition of assets, which constitutes a business unit, similarly to the acquisition of shares of a company, when the seller goes out of business. If the seller stays in business with another activity, then the buyer's responsibility is secondary, meaning that the tax authorities must first target the existing seller's assets to satisfy the existing tax contingency.

Therefore, irrespective of whether the transaction is structured as an asset or share acquisition, due diligence is extremely important in Brazil. Proper indemnities and warranties should be sought by the buyer.

Tax Losses

In general, tax losses will be kept by the acquired company, but the income tax code provides for some exceptions, such as the following:

- Upon a merger (incorporação), the tax losses of the absorbed company cannot be used by the surviving entity and thus are essentially lost. In a spin-off (cisão), the tax losses of the target entity are lost in the proportion to the net equity transferred.
- Between the tax period in which the losses were generated and the tax period in which they will be used, there is a change of ownership and a change on the company's main activity.

Income tax regulations provide that tax losses generated in one year can be carried forward indefinitely. However, the use of tax loss carry-forwards is limited to 30 percent of taxable income generated in a carry-forward year.

Furthermore, capital loss carry-forwards may only be used against capital gains. The 30-percent limitation applies here as well.

A gain or loss from the sale of inventory is generally treated as ordinary or operational loss, while a gain or loss from the sale of the machinery and equipment, buildings, land, and general intangibles should be treated as non-operational (capital) gain or loss.

Pre-Sale Dividend

In certain circumstances, the seller may prefer to realize part of the value of his/her investment as income by

means of a pre-sale dividend. The rationale here is that the dividend is currently exempted of taxes in Brazil, but reduces the proceeds of sale and thus the gain on sale, which may be subject to tax. However, each case must be examined on its merits.

Tax Clearances

In Brazil, the concept of tax clearance does not exist. Consequently, tax and labor liabilities are only extinguished on expiration of the statute of limitations. As a general rule, the statute of limitations period is five years, beginning with the first day of the year following the taxable event.

Choice of Acquisition Vehicle

Several potential acquisition vehicles are available to a foreign purchaser and tax factors will often influence the choice.

Local Holding Company

A Brazilian holding company is typically used where the purchaser wishes to ensure the tax deductibility of the goodwill paid or a tax relief for interest is available to offset the target's taxable profits

Foreign Parent Company

The foreign purchaser may choose to make the acquisition itself. This will not necessarily cause any tax problems in Brazil, as dividends are currently exempt from withholding tax. However, Brazil does charge withholding tax on interest.

Non-Resident Intermediate Holding Company

As mentioned earlier, a direct sale of a Brazilian company shares by a non-resident will be subject to withholding tax in Brazil in case a capital gain is recorded. An intermediate holding company resident abroad could be used to defer this tax, but both buyer and purchaser should be aware that the Brazilian tax authorities may try to establish whether this intermediate company has a real economic purpose and substance, and may try to look through the intermediate company and charge the appropriate tax.

Local Branch

A Brazilian branch of a multinational company is treated as a regular legal entity in Brazil for tax purposes. A branch is also subject to Brazilian law and courts with regard to business and transactions it carries out in Brazil.

In general, a business unit (branch) of a foreign company located in Brazil requires prior approval from the federal government by presidential decree, which is

a lengthy process. The federal government must also authorize any amendments to the branch's articles of incorporation. The power to grant the authorizations may be delegated. Currently, the authorizations must be issued by the Ministry of Development, Industry, and Commerce.

Joint Ventures

Joint ventures are corporate companies (with the joint venture partners holding shares in a Brazilian company). There are no special rules for the taxation of such entities.

Choice of Acquisition Funding

From a Brazilian tax perspective, the capitalization of an entity with debt or equity is influenced by the expected profitability of the company. At least for a non-resident shareholder, financing through debt is generally more tax advantageous insofar as the interest paid on the debt is fully deductible for Brazilian corporate tax purposes. The potential benefits of an interest deduction may outweigh the withholding tax burden associated with the interest paid.

Important note: foreign capital must be registered with the Brazilian Central Bank (Law 4131/62). Obtaining the foreign capital registration is of paramount importance, because this is the foundation for the payment of dividends and repatriation of capital in foreign currency, and, in some cases, it is required to record a tax base in a target company's shares or assets.

Deductibility of Interest

There are some recent changes on Brazilian legislation, as published on 16 December 2009, among them, KPMG in Brazil highlights the first legal provision in Brazil on thin-capitalization rules. The new legislation establishes new requirements in order to allow the deductibility of interest expenses arising from debt operations. In general terms, for tax purposes, the debt cannot be higher than:

- two times the amount of the participation of the lender located anywhere outside Brazil (except for lenders located on low tax jurisdictions or under a privileged tax regime), in the net equity of the borrower; and
- 30 percent of the net equity of the borrower when the lender is located in a low-tax jurisdiction or under a privileged tax regime (being a related party or not).

This rule also applies for any kind of debt operation when a foreign related party acts as guarantor, cosigner, or intervening party of the debt contract.

This new legislation also defines specific requirements that must be met by taxpayers in order to allow the deductibility of payments to beneficiaries located in a low tax jurisdiction or under a privileged tax regime, such as the identification of the beneficiary owner and the operational capability of the foreign party to carry out the operation agreed with the Brazilian party.

Withholding Tax on Debt and Methods to Reduce or Eliminate

There is a withholding tax burden of 15 percent (or 25 percent if paid to a resident of a tax haven) associated with the interest paid.

Equity

Unlike interest, dividends associated with post-1995 profits are not subject to withholding tax when paid to a non-resident.

Additionally, Brazilian tax law (Law 9.249/95) allows a company to elect to pay interest to shareholders as return on equity capital at the official long-term interest rate. Interest on equity paid or accrued to resident or non-resident shareholders is generally deductible for income tax and social contribution tax. The payment is subject to withholding tax of 15 percent. However, opinions are divided on whether an increased rate should apply when the recipient is the resident of a tax haven. Brazilian tax authorities believe that a withholding tax of 25 percent should apply in such cases.

Interest on equity is calculated by applying the daily pro rata variation of the long-term interest rate (TJLP) to the value of the company's net equity accounts at the beginning of the year. Increases and decreases in the equity accounts must also be considered in the computation, and the deduction is subject to limitations.

Because of its unique nature, interest on equity payments may be considered as dividend payments in several recipients' home countries, carrying underlying foreign tax credits or being exempt, while being deductible for Brazilian income tax and social contribution tax purposes.

Generally, corporate reorganizations (such as incorporações, fusões, and cisões as described earlier in the chapter) as well as liquidations and capital contributions – including capital contributions of shares – can be accomplished tax free in Brazil, as long as

assets are transferred at tax book value and other formalities are met.

However, there may be reasons to structure a reorganization transaction as a taxable transaction (such as a transfer of assets at fair market value). For example, transferring assets as part of a reorganization may allow use of current-year losses that would otherwise become subject to loss limitations, may allow for international tax planning, or may allow for a step-up in the tax bases of assets.

Hybrids

Hybrid instruments (that is, instruments that may have either debt and equity characteristics, or that may be treated differently in different jurisdictions) are a relatively new phenomenon in Brazil. They are being used with limited success. Brazil has very flexible tax rules with respect to debt, which makes the creation of hybrid financing instruments possible, but strict exchange control regulations generally limit the taxpayer's options.

Other Considerations

Company Law and Accounting

Accounting practices adopted in Brazil (Brazilian GAAP) are mainly governed by Corporate Law (Law 6.404/76) and the basic conceptual framework is provided by the Conselho Federal de Contabilidade (CFC – Accounting Federal Council). On 28 December 2007, Law 6.404/76 was amended and modified in certain aspects by Law 11.638/07, which was effective from 1 January 2008. One of the main objectives of Law 11.638/07 is to align Brazilian GAAP with IFRS.

The rules and regulations issued by the CVM (Brazilian SEC) are consistent with international accounting standards adopted in the major financial and capital markets. The implication is that a systematization of new financial reporting standards, applicable to the preparation of financial statements and financial reports in general, will gradually converge to full adoption of IFRS. This convergence is already occurring and being coordinated by the Accounting Standards Committee (CPC).

In general, Brazilian GAAP is based on the accrual method of accounting, unless specific legislation or a rule states otherwise. Inflationary adjustments have not been required in financial statements since December 1997.

Despite the move towards convergence with IFRS and the accounting standards that are being prepared by the

CPC, some differences between BRGAAP and IFRS remain to be progressively removed by CPC pronouncements.

Group Relief/Consolidation

Brazil does not have group relief or tax consolidation rules.

Transfer Pricing

In structuring acquisitions and reorganizations, it is important to keep in mind the potential application of Brazil's tax rules related to transfer pricing and disguised distributions of profits (DDL). Generally, these provisions require that Brazilian-resident companies that buy or sell assets, including shares, from or to a related party do so at market value determined according to specific rules. Variations from market value may result in additional tax, or in a reduction of the tax base.

Foreign Investments of a Local Target Company

Brazilian controlled foreign companies rules (CFC) determine that any profits recorded by foreign subsidiaries will be taxed in Brazil by the end of the year. A foreign tax credit is granted up to the limit of the Brazilian tax due on the same profits. Losses generated by the foreign subsidiary can be offset against future profits generated abroad, but cannot be used to offset Brazilian profits.

Comparison of Asset and Share Purchases

Advantages of Asset Purchases

- The purchase of assets usually enables the buyer to obtain a step-up in the bases of the assets.
- If the assets acquired constitute a going concern (acervo de negócios), the purchaser may obtain benefits of tax credits and certain other tax attributes, especially those associated with indirect taxes, such as IPI and ICMS.
- An asset deal, in many cases, helps to minimize the inheritance of tax, legal, and labor liabilities.
- An asset deal may take less time to implement.

Disadvantages of Asset Purchases

- Tends to result in a more tax burdensome transaction when compared to a share deal (especially for IPI, ICMS, PIS, COFINS, and ITBI purposes).

- An asset deal may prevent the buyer from acquiring the target's tax losses and other tax attributes.
- From a seller's perspective, an asset sale may also provide much more limited opportunities than a share sale for tax planning to minimize gains on the assets sold.
- If the assets transferred constitute a going concern (acervo de negócios), some inheritance of liabilities cannot be avoided. The purchaser of a going concern will generally remain with either joint, several, or secondary liability for pre-acquisition tax liabilities related to the business acquired, depending on whether the seller continues to operate in the same line of business.
- While this would depend on the assets or business acquired, acquiring assets may require new registrations for tax, labor, and other regulatory purposes, termination costs, and re-hiring costs for employees and other administrative burdens. Note: Brazilian labor and tax law provide for significant termination costs for employers. In an asset sale, employment technically must be terminated, triggering certain severance costs that can be significant.
- The post-acquisition administrative burden associated with the transfer of the assets or a going concern can be much more significant in an asset sale.

Advantages of Share Purchases

- Minimization of tax impacts, especially for IPI, ICMS, PIS, COFINS, and ITBI purposes.
- If the transaction is structured properly, the purchaser may be able to obtain a better tax result by structuring the acquisition as an acquisition of shares, than if assets were acquired directly. The significant potential benefit from doing this would be recovery of the purchase premium (sales proceeds exceeding book value of the target company) through amortization. The nature of the premium is significant for Brazilian tax purposes, but in most cases, a premium can be recovered over a five-year period—significantly faster than the recovery period for most fixed assets, which are generally depreciable over 10 years.
- Tax losses and other tax attributes of the target company may be carried over (see discussions on loss limitations earlier in the chapter).

- If employees are to be transferred with the target business, it may be possible to transfer them with the acquired business without terminating their employment.

Disadvantages of Share Purchases

- The pre-acquisition tax liabilities of the target will remain with the purchased legal entity.
- If the buyer wants to purchase only part of the target's business, pre-acquisition structuring steps may take some time to implement.

Withholding Tax Rate Chart

The rate information and footnotes contained in this table are from the 2009 IBFD/KPMG Global Corporate Tax Handbook.

Country	Dividends		Interest ¹ (%)	Royalties (%)
	Individuals, Companies (%)	Qualifying Companies (%)		
Argentina	²	²	²	²
Austria	15	15	-15 ³	10/15/25 ⁴
Belgium	15	10 ⁵	10/15 ⁶	10/15/20 ⁷
Canada	²	15 ⁸	10/15 ⁹	15/25 ¹⁰
Chile	15	10 ¹¹	15	15
China (People's Rep.)	15	15	0/15	15/25 ¹⁰
Czech Rep. ¹²	15	15	-10/15 ^{13,3}	15/25 ¹⁰
Denmark	25	25	-15 ³	15/25 ¹⁰
Ecuador	15	15	-15 ³	15/25 ¹⁰
Finland ¹⁴	10	10	15	10/15/25 ⁷
France	15	15	10/15 ⁶	10/15/25 ⁷
Hungary	15	15	15 ¹⁵	15/25 ¹⁰
India	15	15	-15 ³	15/25 ¹⁰
Israel	15	10 ¹¹	-15 ³	10/15 ^{10 16}
Italy	15	15	15	15/25 ¹⁰
Japan	12.5	12.5	12.5	12.5/15/25 ¹⁷
Korea (Rep.) ¹⁸	15	10/15 ¹⁸	-10/15 ^{3,6}	10/15/25 ¹⁹
Luxembourg	25	15 ⁸	-10/15 ^{3,6}	15/25 ²⁰
Mexico ²²	15	10 ²¹	-15 ³	10/15 ²²
Netherlands	15	15	10/15 ⁶	15/25 ¹⁰
Norway	²	²	²	-25 ^{2,23}
Philippines	15/25 ²⁴	15	-15 ³	15/25 ²⁵
Portugal	15	10 ²⁶	15	15
South Africa	15	10 ¹¹	-15 ³	10/15 ¹⁰
Slovak Rep. ¹²	15	15	-10/15 ^{3,6}	15/25 ¹⁰
Spain ²⁷	15	10/15 ²⁷	-10/15 ^{3,6}	10/12.5/15 ²⁸
Sweden	25	25	-25 ^{2,29}	-25 ^{2,23}
Ukraine	15	10 ¹¹	-15 ³	15

Notes

- Many treaties provide for an exemption or reduced rate for certain types of interest, such as interest paid to the government, to publicly owned financial institutions or agencies thereof, or to a recognized pension or retirement fund. Such exemptions and reduced rates are not considered in this column.
- The domestic rate applies; there is no reduction under the treaty.
- In respect of, inter alia, interest paid by public bodies there is no reduction under the treaty. The domestic rate applies (taxable only in the source state).
- The 10-percent rate applies to copyrights royalties (excluding films, etc.). The general rate under the treaty is 15 percent. The 25-percent rate applies to trademark royalties.
- The rate was reduced from 15 percent to 10 percent by a protocol that came into force on 1 January 2008.
- The lower rate applies to interest paid on loans and credits granted by a bank for at least seven years to finance the purchase of industrial equipment, industrial, or scientific units or public works.
- The 10-percent rate applies to copyrights royalties (including films, etc.). The general rate under the treaty is 15 percent. The 20-percent rate applies to trademark royalties (the rate was reduced from 25 percent to 20 percent by a protocol that came into force on 1 January 2008).
- The rate generally applies with respect to participations of at least 10 percent of capital.
- The lower rate applies to interest paid to a Canadian-resident company in respect of loans guaranteed or insured by the Canadian Export Development Corporation for a minimum period of seven years.
- The higher rate applies to trademark royalties.
- The rate generally applies with respect to participations of at least 25 percent of capital or voting power, as the case may be.
- The treaty concluded between Brazil and the former Czechoslovak Socialist Republic.
- The lower rate applies to interest paid on loans and credits granted by a bank for at least 10 years to finance the purchase of industrial equipment, industrial or scientific units, or public works.
- The rates under the treaty are 25 percent for trademark royalties and 15 percent for other royalties; however, by virtue of the most-favored nation clause (protocol, para. 3), the rates are reduced to 15 percent for trademark royalties and 10 percent for other royalties (under the treaty between Brazil and Israel, the rates are 15 percent and 10 percent, respectively).
- The lower rate applies to interest paid on loans and credits granted by a bank for at least eight years to finance the purchase of industrial equipment, industrial or scientific units or public works.
- The treaty (protocol, para. 2) includes a most-favored nation clause as regards royalties.
- The general rate under the treaty is 12.5 percent. The 15-percent rate applies to copyright royalties of cinematograph films, etc., and the 25-percent rate applies to trademark royalties.
- The protocol establishes a most-favored-nation clause as regards dividends and royalties. In respect of dividends, the rate under the treaty is 15 percent; however, by virtue of the most-favored nation clause (protocol, para. 3) the rate is reduced to 10 percent with respect to participations of at least 25 percent of capital (under the treaty between Brazil and Israel, the rate is 10 percent).
- The rates under the treaty are 25 percent for trademark royalties and 15 percent for other royalties; however, by virtue of the most-favored nation clause (protocol, para. 3), the rates are reduced to 15 percent for trademark royalties and 10 percent for other royalties (under the treaty between Brazil and Israel, the rates are 15 percent and 10 percent, respectively).
- The 25-percent rate applies to trademark royalties and royalties for the use or right to use films, tapes, etc. The lower rate applies to general royalties.
- The 10-percent rate applies with respect to participations of at least 20 percent of the voting power of the company paying the dividends.
- The protocol establishes a most-favored-nation clause as regards dividends, interest and royalties. In respect of royalties, the rate under the treaty is 15 percent; however, by virtue of the most-favored nation clause (protocol, para. 5) the rate is reduced to 10 percent for any royalties other than those from trademarks (under the treaty between Brazil and South-Africa the general rate is 10 percent, except for trademark royalties).
- The 25-percent rate applies to trademark royalties (including films, etc.).
- The reduced rate of 15 percent applies to companies (including partnerships).
- The 25-percent rate applies to trademark royalties and royalties for the use or right to use films, tapes, etc.
- The lower rate applies with respect to participations of at least 25 percent of capital held for an uninterrupted period of two years prior to the payment of the dividends.
- The protocol establishes a most-favored-nation clause as regards dividends, interest, and royalties. In respect of dividends, the rate under the treaty is 15 percent; however, by virtue of the most-favored nation clause (protocol, para. 3) the rate is reduced to 10 percent for dividends paid with respect to participations of at least 25 percent of voting power (under the treaty between Brazil and Israel, the rate is 10 percent).
- Under the treaty the rates are 10 percent for copyrights royalties (including films, etc.) and 15 percent for other royalties. However, by virtue of a most-favored nation clause (Protocol, Para. 4) and according to the Declaratory Act 27/2004 issued by the Brazilian Federal Revenue Service, the rates are as follows: 10 percent for copyright royalties (including films, etc.), 15 percent for trademark royalties, and 12.5 percent for other royalties.
- The 25 percent rate applies to interest paid to individuals or partnerships.

KPMG in Brazil

Cecilio Schiguematu
KPMG Tax Advisors-Assessores Tributários S/C Ltda.
Caixa Postal 2467
Sao Paulo
01060970
Brazil

Tel. +55 (11) 2183 3106
Fax +55 (11) 2183 3001
e-Mail: cschiguematu@kpmg.com.br

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2010 KPMG Tax Advisors-Assessores Tributários S/C Ltda., a Brazilian limited liability partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (KPMG International), a Swiss entity. All rights reserved.

KPMG and the KPMG logo are registered trademarks of KPMG International Cooperative (“KPMG International”), a Swiss entity.