



Brazil

Introduction

Any individual that is considered to be a resident for tax purposes in Brazil is subject to Brazilian taxation over worldwide income (wages, interest, dividends, rental income, capital gains, etc.) under certain circumstances and depending on the type of visa held on arrival in Brazil.

Different circumstances prevail for extended business travelers to Brazil, depending on the type of visa they hold. Any individual who is considered to be a resident for tax purposes in Brazil is subject to Brazilian taxation on worldwide income, including wages, interest, dividends, rental income, capital gains, etc.

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Key messages

Extended business travelers who stay less than 183 days during any 12-month period may be able to avoid taxation in Brazil if they can be considered nonresident and no part of their wages is paid locally.

Income tax

Liability for income tax

Tax residency

Permanent visa

A foreign national who enters Brazil with a permanent visa is considered to be a resident for tax purposes from the day of arrival and, therefore, is subject to tax on worldwide income from the first day of physical presence in Brazil. This type of visa is mandatory for employees who will be responsible for the company in Brazil, that is, senior employees.

Temporary type V visas – With or without an employment relationship with a Brazilian entity

The holder of a temporary work visa is also considered to be a resident for tax purposes from the day of arrival if individual is employed by a Brazilian entity. If there is no employment relationship with a Brazilian entity, the holder of a temporary work visa will be considered a resident for tax purposes after the 183rd day of physical presence in Brazil, consecutive or not, within a 12-month period, beginning on the date of arrival or on obtaining a permanent visa, if this date occurs after 183 days of physical presence.

Nonresidency

A foreign national who is a nonresident of Brazil for tax purposes is not subject to tax on remuneration paid outside Brazil. Foreigners arriving in Brazil who are holders of temporary visas without an employment contract with a local company, before completing 183 days (consecutive or not) of stay in Brazil, counted within any period of 12 months, are considered nonresident taxpayers.

The general rule is that a person who is a resident of Brazil is assessable on worldwide income. Nonresidents and temporary residents are generally assessable on income derived directly or indirectly from sources in Brazil. Income considered to be offshore is tax-exempt.

Extended business travelers are likely to be considered nonresidents of Brazil for tax purposes and may be considered tax-exempt if they enter on a business visa, all their wages are paid offshore, and no part of their wages is paid pursuant to a local contract or a technical assistance agreement. A business visa is not considered a work permit, so these individuals are not permitted to perform remunerated activities. They are able to perform ancillary activities such as conducting meetings, participating in seminars, meeting customers and suppliers, prospecting the local market, etc. It is important to mention, however, that a business visa subjects the individual to the counting of 183 days as mentioned above.

Definition of source

Employment income is generally treated as Brazilian-sourced compensation where the individual performs services pursuant to a local contract or a technical assistance agreement between a Brazilian company and a foreign company.

A Brazilian tax resident's wages paid through Brazilian payroll is taxed at the source, and any portion of these wages paid through a foreign source is taxed in Brazil on a monthly calculation named *Carnê Leão*, which is a Brazilian monthly income tax calculation.

Tax trigger points

Technically, there is no threshold/minimum number of days that exempts the employee from the requirements to file and pay tax in Brazil. To the extent that the individual qualifies for relief in terms of the dependent personal services article of the applicable double tax treaty, there will be no tax liability. The treaty exemption will not apply if the Brazilian entity is the individual's economic employer.

Types of taxable income

- Wages paid by a Brazilian entity are subject to withholding at the source
- Income from investments held in Brazil is subject to withholding at the source
- Income earned abroad (such as wages, dividends, interest, rental, etc.) is calculated through *Carnê Leão*
- Capital gains from assets held in Brazil and abroad
- Gains from the sale of stock on a Brazilian stock exchange or comparable Institutions

According to internal legislation, any income received by a Brazilian resident for tax purposes is taxable in Brazil (wages, allowances, interest, dividends, rental income, etc.) under a progressive tax table with tax rates from 0 percent up to 27.5 percent. Tax treaties can avoid double taxation.

Stock option exercises are not expressly regulated, and they are likely to be taxed, but may be taxed at a flat rate, depending on the conditions of the plan.

There are no federal income taxes applied to holding assets. There are state and municipal taxes over property and automotive vehicles, although capital gains can be subject to a 15 percent tax rate in Brazil.

For extended business travelers, the types of income that are generally taxed are employment income, Brazilian-sourced income, and gains from taxable Brazilian assets (such as real estate). Typical allowances can be applied to employment income.

Tax rates

Net taxable income is taxed at graduated rates ranging from 0 percent to 27.5 percent for resident taxpayers. The maximum tax rate is currently 27.5 percent on income earned over 3743.19 Brazilian Real (BRL). Nonresidents are subject to a flat 25 percent tax rate on Brazilian-sourced income paid through Brazilian payroll.

Social security

Liability for social security

Any employee on a Brazilian payroll is subject to social security contributions. The rates vary depending on the individual's salary level.

Currently, social security contributions are withheld at rates of 8, 9, or 11 percent of total monthly gross salary up to a prescribed maximum amount (which is currently BRL405.86).

The employer's contribution is determined at the rate of approximately 26.8 percent up to 29 percent of the total payroll, with no limitation on the amount of earnings subject to contributions. These rates can be higher under very specific circumstances.

FGTS – Brazilian indemnity severance fund

The employer is also subject to an 8.0 percent contribution on the total compensation paid to the employees in favor of the Brazilian Indemnity Severance Fund (FGTS).

In summary:

Type of insurance	Paid by		Total percent
	Employer percent	Employee percent	
Social security	26.8–28.8	11.0 with cap	8.0, 9.0, or 11.0
Severance indemnity	8.0	none	8

Source: KPMG in Brazil, June 2010

Brazil has fixed social security agreements with the following countries: Argentina, Greece, Spain, Chile, Italy, Luxembourg, Paraguay, Uruguay, Portugal, and Cape Verde Island.

The main goals of the social security treaties are to make sure the working time in one country is valid towards the minimum working period for retirement purposes in the other country, to allow the cooperation between Brazil and overseas authorities in enforcing their respective laws, and to guarantee the individual's rights. There are several questions on whether such treaties are effective in avoiding social security taxation.

Compliance obligations

Employee compliance obligations

The taxpayer is required to file a tax return by the last business day of April of the year following the end of the taxable year, which is December 31. Income tax is levied at progressive rates on an individual's taxable income for the year, which is calculated by subtracting allowable deductions from the total assessable income. Nonresidents are taxed at a flat rate of 25 percent.

There is no provision for an individual to obtain an extension of time for filing the return. Late-filed returns are subject to penalty and interest. Any balance due with the annual tax return must be paid on April 30. The taxpayer, however, is given the option to pay the balance in six monthly installments, subject to interest charges, beginning on the final filing date.

Resident taxpayers are subject to pay income tax on their worldwide income on a monthly cash basis. Resident taxpayers are subject to a withholding tax system on their Brazilian-sourced income based on a progressive tax table. They are also subject to the Brazilian monthly income tax on the sum of their offshore income (wages, compensation, interests, dividends, rental income, capital gains, etc.) and to file annual Brazilian income tax returns.

Resident taxpayers are required to pay monthly income tax (*Carné Leão*) on their income that was not subject to withholding tax by any other local source. Generally, this means offshore income and rental income received from other individuals. This tax is also calculated based on a progressive tax table. The payment has to be made up to the last business day of the following month.

Nonresident individuals may not be required to file a Brazilian annual tax return if they receive only non-Brazilian-sourced income or if there is only Brazilian-sourced income paid through a Brazilian payroll that is subject to the flat tax rate of 25 percent, which is withheld at the source.

Other

Work permit/visa requirements

A visa must be applied for before the individual enters Brazil. The type of visa required will depend on the purpose of the individual's entry into Brazil. A permanent visa is typically required for individuals who intend to live "permanently" in the country, for example, someone sent to be the general manager of the local entity. Temporary visas are typically valid for two years but may be extended. Business visas are valid for 90 days and are renewable once. Special visas exist for individuals who may be present for more than 180 days but do not intend to reside in Brazil. Tourist visas are not applicable for business travelers but allow multiple entries into the country and presence for up to 90 days.

Double taxation treaties

In addition to Brazil's domestic arrangements that provide relief from international double taxation, Brazil has entered into double taxation treaties with approximately 29 countries to prevent double taxation and allow cooperation between Brazil and overseas tax authorities in enforcing their respective tax laws.

Reciprocity of treatment is also admissible between Brazil and the United States, United Kingdom, and Germany.

Permanent establishment implications

There is the potential that a permanent establishment could be created as a result of extended business travel, but this would depend on the type of services performed and the level of authority the employee has.

A permanent establishment is created when the individual remains in the country acting on behalf of the employer while making decisions and deals on the employer's behalf.

Indirect taxes

There are two value-added taxes in Brazil. One is a state sales tax (*Imposto sobre Circulação de Mercadorias e Serviços* (ICMS)), and the other is a federal excise tax (*Imposto sobre Produtos Industrializados* (IPI)).

ICMS is due on the physical movement of merchandise and is levied on interstate and intermunicipal transport services, communications, and electricity.

IPI excise tax is due, with a few exceptions, on all goods imported or manufactured in Brazil. The tax is paid upon import or on the manufacture of a product. Credit is given with respect to the IPI tax paid on the raw materials or component parts used in the finished product or consumed in production. The difference in IPI must also be paid if the goods or products are:

- Imported and sold at a higher price by the importer to a domestic purchaser
- Repackaged for sale at a higher price
- Sold at a higher price by the producer or manufacturer through a branch
- Sold through exclusive distributors, a joint venture, or through an affiliated concern.

Furthermore, there are other taxes that are due on supply of goods or services: services tax (*Imposto Sobre Serviços* (ISS)), social contribution on billing (*Contribuição para o Financiamento da Seguridade Social* (COFINS)), and contribution to the Social Integration Program (*Programa de Integração Social* (PIS)).

ISS is a municipal tax on gross billings for services. Services subject to the ISS are defined by federal law. Each municipality (city) must have its own list of taxed services. The COFINS is described as a social contribution and is targeted at the funding of social welfare programs. The COFINS can be charged on a VAT-type base (similar to the ICMS described above) or based on gross receipts from the supply of goods and services. The taxation will depend on the tax system chosen by the taxpayer for paying the corporate income tax.

The PIS was created to fund the unemployment insurance program. The PIS operates on the same basis as the COFINS described above. The standard rates of VAT are:

ICMS

The standard rate of ICMS is 17 percent. In São Paulo, Minas Gerais, and Paraná, however, the standard rate is 18 percent, and in Rio de Janeiro it is 19 percent. On interstate movements of goods, the rate applied may vary based on the state of destination. Some specific products may have different rates (such as electricity, which is taxed at 25 percent).

IPI

The tax is normally charged on an ad valorem rate according to the classification of the product based upon the international Harmonized Commodity Description and Coding System (HS), administered by the World Customs Organization in Brussels. Rates range from 0 to a maximum of 330 percent and average about 10 percent. Luxury goods are at the high end of the tax scale.

ISS

The standard rate of ISS is 5 percent, although there are lower rates for specific services. Rates may vary, however, from one municipality to another.

PIS and COFINS

The standard rates of PIS and COFINS also will vary accordingly to the tax system to which the company is subjected. Rates may vary from 0.65 percent to 1.65 percent for PIS and from 3 percent to 7.6 percent for COFINS.

Transfer pricing

Brazil has a transfer pricing regime. A transfer pricing implication could arise to the extent that the employee is being paid by an entity in one jurisdiction but performing services for the benefit of the entity in another jurisdiction, in other words, a cross-border benefit is being provided. This would also be dependent on the nature and complexity of the services performed.

The arm's-length concept described in the OECD transfer pricing guidelines is not generally followed in Brazil. As a rule, Brazil requires the use of transactional methods that provide for statutory gross margins. Management fees are deductible provided that the services are considered necessary, useful, and common to the business.

Remittance of funds abroad (e.g., management fees and reimbursement of expatriated costs) will be subject to several taxes and contributions that represent an extremely high tax burden that can reach more than the 45 percent of the amount to be remitted.

Local data privacy requirements

Local counsel should be sought to address any data privacy concerns and requirements.

Exchange control

Brazil has strict foreign exchange controls, and remittances abroad may encounter several Central Bank restrictions. Although remittances that fit into preset categories already defined by the Brazilian Central Bank may not find difficulties in processing, remittances that cannot be classified into the preset categories will probably need approval from the Brazilian Central Bank prior to processing.

All remittances of funds from Brazil abroad above BRL10,000 must be made through the official banking system and require certain documentation from the bank.

Most common preset categories are:

- Real estate purchase
- Contribution to home country retirement plans by expatriates employed in Brazil
- Transfer of personal assets (when leaving the country)

- Inheritance
- Contributions to associations
- Business trips
- Payments in support of dependents abroad
- Educational pursuits
- Medical treatment
- Rental payments
- Use of data services
- Credit cards

Nondeductible costs for assignees

Nondeductible costs for assignees include contributions by an employer to non-Brazilian pension funds.

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