DOING BUSINESS IN Brazil

HLB Brazil

doing business in Brazil

foreword

This booklet has been prepared for the use of Clients, Partners and Staff of HLB INTERNATIONAL member firms. It is designed to give some general information to those contemplating doing business in Brazil and is not intended to be a comprehensive document. Furthermore, it does not cover exhaustively the subjects it treats but is intended to answer some of the important, broad questions that may arise. When specific problems occur in practice it will often be necessary to refer to the laws, regulations and decisions of the country and to obtain appropriate accounting and legal advice.

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about HLB International

HLB International is a worldwide organisation of professional accounting firms and business advisers, each providing clients with a comprehensive and personal service relating to auditing, taxation, accounting and general and financial management advice.

Formed in 1969, HLB can assist clients to do Business in over 100 countries, with more than 1,800 partners and 11,600 staff in over 450 offices. Up-to-date information and general assistance on international, matters can be obtained from any of the partners of HLB AUDILINK & Cia Auditores listed in this booklet or from the Executive office in London:

HLB International
Executive Office
21 Ebury Street
London SW1W 0LD
UK
Telephone +44 (0)20 7881 1100
Fax +44 (0)20 7881 1109
Email: mailbox@hlbi.com
Website: www.hlbi.com

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general information

Geography and climate

Brazil is the fifth largest country in the world and has an area of 3,286,00 square miles (8,512,00 square kilometres), which is equivalent to almost one-half of the entire South American continent. It borders all South American countries except Chile and Ecuador. The coastline runs for more than 5,700 miles (9,170 kilometres), almost all of it along the South Atlantic Ocean. Brazil comprises 26 states and the Federal District of Brasilia, the capital city. The states are divided into municipalities, which are further divided into districts.

The climate varies from Equatorial in the North, tropical in the Northeast, West centre and Southeast to subtropical in the South. In the North and Northeast the sun shines all year and it sometimes can be extremely hot..

Population

The population is estimated at 185 million and to be growing at just under 2 percent per year. About 42 percent of the population are under 20 years of age, and less than 8 percent is over 65. The average life expectancy is 69 years.

A major population problem of recent years has been the continuous influx of people to the urban centres.

Approximately 20 percent of the population are rural dwellers and 80 percent urban. About 30 percent live in the ten principal metropolitan areas.

The metropolitan areas of São Paulo and Rio de Janeiro have populations of around 15 million and 10 million, respectively. São Paulo is one of the fastest-growing cities in the world, and its population is expected to approach 25 million by the end of the century, second only to Mexico City and ahead of Tokyo, New York and Shanghai. Some 20 other metropolitan areas have population of more than 1 million, the principal ones being Belo Horizonte, Brasilia, Curitiba, Fortaleza, Porto Alegre, Recife and Salvador. The population growth is fairly evenly spread over all regions, but the North and Central-West are projected to grow at faster rates.

The majority of Brazilian are of European or African descent. Apart from the original Portuguese settlers, others who have settled in Brazil and significantly influenced its culture include Germans (mainly in the Southern states), Italians and Japanese (in the state of São Paulo). In the larger cities there are many smaller ethnic communities representing most nationalities. There are also some indigenous tribes in the jungle regions.

Language

The language of Brazil is Portuguese. There are no significant local dialects or other deviation from the official language, but a number of words and phrases are at variance with those used in Portugal. English is the foreign language most used by the business community.

Religion

The predominant religion is Roman Catholicism. Many other religions are also practised, since immigrants of different creeds have settled in Brazil. There is religious freedom, and religion is not a source of unrest.

Education

Government-subsidized (free) and private educational facilities from primary school through university, offer full or part-time curricula. The government also subsidizes national apprenticeship training programs in order to develop manpower for various industrial and commercial sectors, and an educational program to reduce illiteracy. Recent studies indicate that the illiteracy rate of the population older than 15 years in Brazil is of approximately 14% of the population. The general level of education requires much improvement, with approximately only 5% of enrolled students going on to higher education.

Living Standards

The standard of living of a large proportion of the population is very low, while that of the top stratum is extremely high. This income gap between the rich and poor has been a constant preoccupation of successive governments. Basic social indicators underscore the differences in regional development. The gross domestic product (GDP) per capita is around the equivalent of US$4,325 at current rates.

Cultural and social life

With its mixed background of Portuguese, Italian, German, Japanese, East European, and African immigrants, Brazil offers a wide diversity of cultural and social activities, depending on the region of the country. Most major cities support cultural institutions. Leisure and recreation activities are mainly outdoors. Taking advantages of the favourable climate. Many clubs in Brazil offer extensive sports and social facilities.

Investor considerations

- Brazil is the fifth largest country in the world and has the tenth largest economy.
- Population is about 185 million; plentiful human resources.
- Vast agricultural, mineral and energy potential.
- Enormous internal grow potential.
- Broad industrial base and infrastructure.
- Industrial policy clearly defined
- Emerging democracy; volatile political environment.
- Fast-changing business conditions.
- Social extremes.
- Heavy bureaucracy.
- Constant technological development.
- Aggressiveness and audacity in doing business.
- Cheap labour cost.
- Appropriate systems for micro and small companies
- Foreign investments are generally welcome.
- Debt-for-equity swaps can be a valid investment option.

- Under the National Privatisation Program, Brazilian foreign debt securities can be used for take-over purposes.
- Brazil is a favourable site for South American expansion programs.
- There is a large potential consumer market.
- Export orientation is generally favoured.
- Foreign investors are eligible for most available incentives.
- Restriction on foreign ownership exist in certain strategic sectors.
- Exchange controls are extensive.

economic structure and business environment

General description

The economy is basically one of free enterprise, but there is still considerable state and semi state participation in various strategic sectors, such as transport and utilities. The petroleum industry is a government monopoly, except for distribution. Special legislation was enacted a few years ago to privatise many companies where the presence of the state is not considered essential. However the National Privatisation Programme is currently moving ahead at a slower pace than projected. It is important to mention that HLB-Audilink has carried out several assignments in this field (Cia Vale do Rio Doce, Coelba, CEE, Eletrosul, Furnas, etc).

Natural resources and agriculture have been the traditional mainstay of the economy, backed up by abundant human resources. Since the 1960s, however, emphasis has been placed on industrial development financed largely by international loans. As a result, exports today reflect a much more balanced mix of commodities and manufactured items. Also, the profile of imports became more restricted during the 1970s and 1980s because of import substitution and the scarcity of foreign exchange. With the lowering of trade barriers, this profile is changing.

Following the oil crisis of the 1970s and 1980s, Brazil developed a sugar cane-alcohol industry, which today represents a large part of the economic structure.

GDP in 2005 estimated at US$800 billion and GDP per capita of US$ 4,325 in 2005.

Business Hours

The working day is normally eight hours for commercial offices, typically from 8:30 or 9:00 a.m. to 5:30 or 6:00 p.m., Monday to Friday, with a lunch break of one to one-half hours. A few factories still work on Saturday morning. Most retail outlets open on Saturday and some on Sunday. Generally, banks are open to the public from 10:00 a.m. to 4:30 p.m., while government offices are open from 9:00 a.m. to 5:00 p.m. both are closed on Saturdays and Sundays.

Statutory Holidays

Official holidays are as follows:
New Year's Day ....January 1
Shrove Tuesday (Carnival) ....Variable
Good Friday .... .Variable
Tiradentes Day ....April 21
Labour Day ....May 1
Corpus Christi ....Variable

Independence Day...................................September 7
Brazil's Patron Saint Day
(N.S.Aparecida) ....October 12
All Souls Day ....November 2
Proclamation of the Republic ....November 15
Christmas Day ....December 25

Holidays that fall on a Saturday or Sunday are not moved to a weekday.
In addition, municipal authorities may decree three additional holidays, normally on dates of local significance. The most celebrated of these is Carnival (Mardi Gras) in February/ March each year, when business virtually comes to a standstill from Monday to Wednesday.

Weights and Measures

Brazil uses the metric system, but some traditional or unusual measures still appear in real estate transactions.

Hints for the business visitor

Visitors' visas

Most foreigners seeking entry to Brazil as non-immigrants must first obtain an appropriate visa. Application should typically be made to a consular office in the applicant's country of origin or current residence. A tourist visa is normally granted for three months and can be renewed for a further three months.

Visas are not required for citizens of those countries with which Brazil has reciprocal arrangements.

Currency

The monetary unit is the real (R$; plural, reais), which is divided into 100 units called centavos.
The Central Bank no longer fixes the official exchange rate, which floats freely in the market, although participation is restricted to authorised importers and exporters. However, the Central Bank intervenes when there are signs of speculative operations.

Aims of Government Policy

General policy is to promote overall economic growth. However, this policy has been affected in recent years by the political situation, problems of servicing and reducing the foreign debt, and measures taken to reduce high inflation.

Economic Development Plans

There is a clear political need to improve overall living conditions of the lower-wage earners by assuring adequate housing, health care and food supplies at reasonable prices. As a consequence, the specific objectives of recent governments have been as follows, in no particular order:

- Achieving a more even distribution of income and wealth, on both an individual and a regional basis.

· Reducing inflation to manageable levels through containment of government expenditure and control of monetary expansion.
· Negotiating the foreign debt (servicing and repayment).
· Continuing foreign trade surpluses.
· Establishing an energy expansion programme.
· Developing the agricultural sector.
· Upgrading the labour force by intensifying educational, training, health, and social welfare programs.
· Strengthening the local capital market by attracting personal savings and foreign capital.
· Privatising certain public sector companies.

There is general recognition that the uncertain political and economic climate in recent years has deprived Brazilian business of the necessary investment to modernise and become internationally competitive.

Overseas trade relations

Membership of trade blocks

Brazil is a member of the Latin American Integration Association (LAIA) and a signatory to the General Agreements and Tariffs and Trade (GATT). Until now, membership in LAIA has not affected the size of the market available to local industry and, thus, the foreign investor.

Brazil, Argentina, Paraguay, Uruguay and Chile are part of the Southern Cone Common Market, known as Mercosul (Mercado Comum do Cone Sul). Under the treaty agreement, tariffs are being lowered gradually to reach zero. Also, the movement of labour, goods and service will be unrestricted; capital investment encouraged; microeconomics policies co-ordinated; and external trade policies and tariffs for countries harmonised.

Exports

Brazil encourages exports by offering a number of export-linked incentives, including duty exemptions or reductions for imported materials that are incorporated into exported products, value-added tax benefits, special financing arrangements, and some others.

Special export authorisation is normally required for goods that are in short supply on the domestic market. The Ministry of Agriculture regulates the export of certain agricultural foodstuffs.

Trade barriers

All imports and exports are controlled by DECEX, the foreign trade department of the Bank of Brazil. For many years, local industry was protected from imports, and the overall tariff burden was high. In general, trade barriers were set up because of the need to industrialise and to develop local industries, but also because of the foreign-debt situation. In the last few years, however, import and duties and trade barriers have been gradually reduced, and imports of various products are encouraged where local prices are higher that international prices or there is a shortage of local products.

foreign investment and trade opportunities

Government attitude toward foreign investment

The Constitution establishes that foreign investments should be in the national interest, and foreign investment is welcome to the extent that it represents a long-term commitment to contribute to economic development, particularly in those areas that are high on the government's priority list. These include the development of agriculture and technology and of labour-intensive industries and the manufacture of products that are currently imported and those that will increase exports.

There has been a tendency to favour minority foreign participation in local companies and joint ventures in which local shareholders retain voting control. However, this in no way precludes investments through wholly owned subsidiaries of foreign companies.

The restrictions on foreign ownership are imposed mainly for national security reasons in the areas of defence, communications, air transport, and petroleum prospecting and refining. There are also some restrictions on participation in the financial and informatics sectors and the ownership of rural land. (The term "informatics" covers computer hardware and software, industrial automation, and electronics in general.).

Trade Policy

Brazil is generally supportive of free trade, but high tariffs still exist on many imports, and some sectors are protected from foreign competition.

Taxation Policy

The federal tax system is not biased against foreign investment, and there are no tax incentives that favour foreign investors. In general, with few exceptions, foreign investors are entitled to the same tax treatment and tax incentives as their local counterparts. Various states and municipalities actively seek foreign investment.

Local competitor attitude toward foreign investment

In general, the attitude of local businessmen toward foreign investment is cool. Certain sectors have exerted strong pressure through lobbying to protect their activities by various means, including the imposition of trade barriers and the establishment of restrictions on foreign investments. In the past, such political pressure was quite successful, but the government is gradually changing this situation as it seeks more efficiency and competitiveness.

Labour attitude toward foreign investment

If foreign investment and management can be seen to bring jobs and compete on an equal basis with Brazilian business, labour's attitude tends to be welcoming.

Special investment opportunities

In general, Brazil can be an attractive investment opportunity for companies interested in the following:

- Tapping the considerable local market potential. There are still many unsatisfied consumers.
- Taking advantage of the abundant raw materials and natural resources.
- Using the sizeable and growing labour force.
- Producing locally items that are currently imported.
- Using Brazil as a manufacturing base for exports.

An attractive method of investing in recent years has been to acquire rights to Brazilian foreign debts, which trade outside the country at a substantial discount but can give local registration rights up to the full face value in certain circumstances. However, the regulations governing these transactions are subject to constant change and interested users should acquaint themselves with the latest situation.
Imports of vital components/inputs are generally possible where there is not inadequate local production, although there are restrictions in specific areas, such as informatics (see "Government attitude toward foreign investment", above), and bureaucratic delays and high import duties can nullify the advantages.

National Privatisation Programme

The National Bank of Economics and Social Development (BNDES) is responsible for administering this government programme, which started in 1991. Foreign investors may participate in such privatisation by converting Brazilian foreign debt securities that arose from obligation contracted by federal public sector entities. Conversions are regulated by the Central Bank, and the converted resources must remain in Brazil for a minimum period of six years. Profits and dividends generated by investments arising from such conversions may be remitted overseas under the terms of current fiscal and foreign-capital legislation.

Foreign investors may also participate by subscribing to privatisation funds integrated with Brazilian foreign debt securities represented by a depository facilities agreement (DFA) and other securities related to the foreign debt. Participation of foreign capital in these funds is regulated by the Central Bank. Resources used for acquiring a fund's quotas as well as the reapplication of accumulated results must be registered with the Central Bank for foreign-capital control purposes and to enable future remittance of income, capital gains and the return of capital invested. Resources used for each investment must remain in Brazil for at least six years.

planning guide for the foreign investor

National and local government policy considerations

- The federal government and the states generally support free enterprise and free trade.
- Foreign investment is generally welcome but should provide benefits to Brazil and its citizens, i.e., job and wealth creation.
- Local and foreign investors are treated equally in general.
- Current policy favours the lessening of bureaucratic interference and the deregulation of business.
- Exchange controls will probably continue.

Investment possibilities/restriction

- Federal and state governments generally have an open attitude toward foreign investments.
- In general terms, 100 percent foreign ownership is possible.
- There are some restrictions on foreign ownership of banks, public utility services, communications, informatics, other strategic sectors, and rural land.
- Joint ventures with local partners are favoured but not essential

Prior approval or registration

- Prior approval is not required except in rare circumstances.
- Registration of foreign investments with the Central Bank is a condition for repatriation of capital and remittance of dividends.
- A permit is required to operate a financial institution.
- Registration requirements vary at state level.

Possible business structure

- For foreign investors, the most common form of doing business is through an incorporated subsidiary, as distinct from a branch.
- Branches are difficult to form, whereas corporations (sociedades por ações) and private limited liability companies (limitadas) are easy.
- In general, there are nominal minimum capital requirements; they are more substantial for financial institutions.
- While joint venture operations do not require participation by a local venture, it is generally helpful to have one.

Setting up or acquiring

- Investments can be made either via setting up new companies or via acquisition of existing companies.
- Setting up a new company is relatively simple and inexpensive.
- Acquisitions of existing companies are monitored by the Central Bank.
- A Brazilian holding company may be set up to acquire a business.
- Asset or share acquisitions should be planned with care.

Investment incentives

- Foreign investors are generally eligible for available incentives.
- The federal government offers tax holidays in certain less-developed areas.
- Many states and local governments offer incentives to attract investment.

Location/Industries

- Location is generally determined by major business factors.
- Regulations concerning various aspects of business (e.g., incorporation procedures, and registration requirements) vary state by state.
- Special federal programmes reward investments in the poorer North and Northeast regions.

Discussions with state development agencies are recommended.

Finance

- Foreigners are expected to import funds for major fixed capital requirements.
- Debt-equity swaps have been a favoured method of importing funds.
- Foreign-controlled companies can list on the stock exchanges and raise capital through public subscription or debenture issues.
- A wide range of credit and financial services is available from domestic and foreign banks operating in Brazil.
- Long-term financing is available from investment companies and state investment banks.

Repatriation of capital and profits

- Capital and earnings may be repatriated. Capital gains are taxed on remittance.
- Repatriations may have to wait in line for foreign currency to become available.

Tax planning considerations

- Foreign-controlled companies and foreign residents receive substantially the same treatment as local companies and residents.
- Tax rates are high for a developing country.
- Overall, the tariffs on imports are high but are being reduced in stages.

Labour and labour costs

- A plentiful labour supply exists, but many of the workers are semi-skilled or unskilled.
- As a general rule, in spite of the high percentage of social security and welfare contributions, labour costs do not represent a major element of total production costs.

Market studies

- Market studies are advisable. HLB AUDILINK can assist in such studies and in other phases of setting up Brazilian operation.

International financial center

- Brazil is not a centre for international financial services and offshore operations.

Information and assistance

- Any further information and assistance may be obtained from HLB AUDILINK office throughout the country. For address of offices, see the inside front cover.

Trends

- An overall modernisation of the economy is under way.
- Public sector involvement in business is being reduced.
- Price and exchange controls are being relaxed and restrictive and protectionism practices are gradually being eliminated.
- Trade barriers against foreign competition are gradually being reduced.
- Exports are being encouraged.

Investor considerations

- Foreign capital is generally treated the same as the local capital.
- Foreign ownership of local companies is normally permitted except in sectors considered to be of strategic importance.
- Registration of all foreign investments is required at the federal level.
- Tight exchange controls are in force.
- Repatriation of capital and earnings is controlled.
- Foreign ownership of rural land is restricted.
- Work permits for foreigners are difficult to obtain.

Regulatory Climate

Regulatory Authorities

The National Monetary Council (Conselho Monetário Nacional) is the exchange control and foreign investment authority.

Regulatory Legislation

The Constitution provides for non-discrimination against foreigners residing in the country with regard to the basic rights of personal liberty, security and property ownership, although there are some restrictions on their ownership of rural land and certain business entities. Additionally, the government on a permanent basis may not employ foreigners.

Foreign investment legislation is found in Law 4131 of 1962. The exchange control regulations are contained in rule, directives and circulars issued by the Central Bank and by the Federal Revenue Service. The controls have remained basically unchanged for many years.

Exchange control and foreign investment policies are established by the National Monetary Council, whose president is the Minister of Finance.

The legislative, executive and administrative aspects of these policies are the responsibility of the Central Bank, which includes a number of departments specifically concerned with foreign investments and exchange.

They operate normally by means of internal directives that are not published. The Foreign Trade Department (DECEX) of the Bank of Brazil is responsible for foreign trade policies.
For many years the main policy has been to generate an exchange surplus sufficient to service foreign debt and to build up adequate foreign exchange reserves.

In general, the authorities exercise strict control of foreign-currency transactions. The normal fine for infringement of exchange control regulations is 100 percent of the amount of the related transaction. Operations in foreign currency may be effected only through authorised financial institutions. Foreign currency is exchanged at different rates, depending on the nature of a transaction. The official commercial (import and export) rate is used for most trade financial transactions. There is strong Central Bank intervention to control this rate.

Exchange control

Inward investment

General policy is to admit foreign capital and treat it in the same way as local capital. However there are some restrictions on foreign investments in certain sectors. All inward investment must be registered with the Central Bank to ensure ultimate repatriation rights. There are no special exchange rates for specific transactions. It should be noted that acquisitions of local companies might be investigated to confirm their substance and real underlying value.

Registration of foreign capital and technology

- Foreign Capital

To qualify for the remittance of profits and to ensure ultimate repatriation rights, foreign capital entering Brazil must be registered with the Central Bank. Capital increases must be registered within 30 days. Foreign capital may take the form of cash or equipment sent to Brazil at fair market value, reinvested earnings, and conversion of foreign currency loans or current account balances. Reinvested earnings in this context are defined as profits earned in Brazil on registered foreign capital that have been formally utilised to increase capital. Registration of capital increases from this source is granted in the currency of the country to which the profits could have been remitted. Prior approval of the Central Bank is required for all foreign currency loans received. Such loans must be documented by a formal contract in which the interest rate is stipulated. The bank may refuse to accept contracts where the interest rates are in excess of those prevailing in the country of origin.

- Technology

Technology transfer agreements, including those involving patents and trademarks, must be approved and registered by the National Institute of Industrial Property (INPI). This approval depends on the necessity of the services to be rendered and/or availability of the technology within Brazil. In the case of royalties, registration of the agreement also depends on proof that the related patent or trademark is duly registered in Brazil and is still valid. In the case of technical assistance, the authorities reserve the right to verify that services have been effectively rendered. A computerised service facilitates obtaining information on registered patents and trademarks and the process of monitoring request for registration.

regulatory environment

Regulation of business

The principal regulatory agencies concerned with business activities and the stock markets are as following.

1. Central Bank (BACEN):

Responsible for the execution of monetary policy, exchange controls, registration and control of foreign capital and profit remittances, and the regulation of banks and financial institutions.

2. Securities Commission (CVM):

Responsible for the securities markets and listed companies.

3. Administrative Council for Economic Defence (CADE):

Responsible for suppressing abuse of economic power in general and monopoly, oligopoly, cartel, and antitrust monitoring.

4. National Institute of Industrial Property (INPI):

Responsible for technological development. INPI has power over agreements for the transfer of technology.

5. Industrial Development Council (CDI)

Responsible for industrial development and empowered to grant tax incentives for certain industrial projects.

6. Foreign Trade Department (DECEX) of the Bank of Brazil:

Responsible for administration of foreign trade and control of export and import licenses.

banking and finance

Banking System National Finance System

The national finance system is headed by the following government institutions:

1. National Monetary Council (Conselho Monetário Nacional):

Responsible for monetary, credit and exchange policies directed toward economic and social development. Members of the Council are from both the government and the private sector. The president is the Minister of Finance.

2. Central Bank (BACEN):

Responsible for the execution of the monetary, credit and exchange policies and controls, regulation of banks and financial institutions and control of foreign investments.

Investment institutions

Investment institutions other than investment banks include insurance companies, pension funds and investment and mutual funds. The insurance industry continues to be regulated and there are strict controls over investment policies. However, insurance premiums charged and type of risk covered is now influenced by market conditions. Private and public pension plans are growing. Pension funds generally invest in common and preferred stocks, corporate and government debt securities, real estate, and mortgages. There are a wide variety of other funds entitled to invest in Brazilian equities and government paper, including foreign investment funds.

Financial market

Security markets

The development of the stock market is one of the government´s objectives. The stock market is a source of financing for all listed companies in Brazil, regardless of the ownership. All public issues require the approval of the Securities Commission (CVM). There are nine regional stock exchange, although 90 per cent of transactions are carried out in São Paulo and Rio de Janeiro. Share issues are not yet a primary source of corporate finance. The secondary or over-the-counter market is not very significant.

Specialised financial market

There is a growing commodities market on which commodity futures and options are traded. Investments in gold is permitted. Certain financial institutions offer hedge instruments in gold or in hard currency.

International financial market

Brazil is not an international financial centre. Offshore banking, trust and financial services are not permitted.

labor relations

Employer/employee relations

Extensive social security laws and labour regulations govern employer/employee relations. However, foreign investors have not experienced much difficulty in the way of labour problems, principally because they follow local standards and practices.

Employer/employee relations are dealt with principally in the consolidation of labour laws (CLT) enacted in 1943 and subsequent legislation. The labour laws are applicable to all employees except for public employees and domestic servants, for whom there are separate regulations. The labour laws make no distinction between skilled and unskilled workers or between those engaged in manual, office or professional work. Therefore, all types of workers are generally referred to in this chapter as employees. A change in the legal structure or ownership of an employer does not affect the rights acquired by employees under the labour laws.

All registered employees, including foreigners, are required to hold a work card (carteira de trabalho) on which the terms of employment must be recorded. Employers must keep official registers or cards containing detailed information about each employee, and each year they must file with the local office of the Ministry of Labour returns listing all employees, reporting also the number of foreigners and minors.

Wages and salaries

Most wages are based on a national minimum wage system. All work of equal value must be remunerated at the same rate, irrespective of the nationality, age, sex, or marital status of the employee, but service in excess of two years may be taken into account. However, in practice, the policy of equal remuneration is not followed.

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- National Salary Policy

The National Salary Policy changes frequently. Currently it is based on free collective negotiations. However it includes measures to protect lower-paid workers from the effects of inflation. There is an minimum wage established for the payment of such workers.

- Minimum Wage

The minimum wage in Brazil is R$ 350.00 per month.

- Deductions and reductions

Employers are not permitted to make any deductions from employees' remuneration other than those resulting from advances, legal and collective bargaining agreements, and withholding payroll income taxes and social contributions. Remuneration may not be reduced except in extraordinary circumstances, in which case a reduction of up to 25 percent is allowable, provided the minimum wage is maintained. If remuneration depends on productivity or services performed, the amount of work available may not be reduced by the employer to a degree such as to significantly affect the employee's earnings.

- Overtime

When paid under a collective bargaining or private agreement, the overtime rate must be stipulated. The increase for overtime work cannot be less than 50 percent of the regular wage rate. There are limits on the number of overtime hours that can be worked each day. If overtime is incurred as an emergency, payment may not be less that the regular wage provided such emergency constituted a contingency beyond the employee's control. Managers are not entitled to overtime pay.

- Night work

For work between 10:00 p.m. and 5:00 a.m., remuneration must be at a rate at least 20 percent higher than that for equivalent day work. Each hour of night work comprises 52.5 minutes.

- Payment

Payment must be made in local currency within five working days of each month-end. Gaps exceeding one month between successive payment dates are not permissible. The remuneration of foreign technicians contracted from abroad on a temporary basis to render specialised services may be stipulated in foreign currency, but payment must be made in local currency.

- Obligatory annual bonus

Employers must pay an annual bonus, known as the 13th-month salary, in two parts: the first when the employee takes a vacation or before November 30 and the second in early December. Employers` contributions to the Employee Severance Indemnity Fund are also payable on this bonus.

- Family allowance

The INSS (National Institute of Social Security) pays a small supplementary monthly allowance for each of a worker's children under 15 years of age.

- Fringe benefits

Additional fringe benefits do not normally constitute a significant additional cost of employment. Some employers provide medical care, meals and transportation. Other fringe benefits are also granted, depending on the nature of the enterprise and the category of the employee. Income tax incentives exist for meals provided under approved schemes. There is a growing movement toward the introduction of private pension schemes, for which special legislation has been enacted. Group life insurance schemes may also be available.

Employers must supply transport vouchers to employees, which entitle them to free transportation to and from work. Employees contribute to the cost at up to 6 percent of their monthly pay.

- Hours worked

Generally, a five-day workweek is the norm. Legally, the working week may not exceed 8 hours daily or 44 hours weekly. In the case of employers with continuous working shifts the workday may not exceed 6 hours. In both cases this requirement can be done by means of a collective bargaining agreement. Unions are working toward reducing the workweek to 40 hours with some success, and many companies already work a five-day, 8 hours-per-day week.

Work periods that exceed six hours must be broken by a lunch period of one or two hours, but where an enterprise provides adequate canteen facilities this period may be reduced to less than one hour. If the work period is six hours or less, a break of 15 minutes must be given after the first four hours. Office employees on continuous work, such as typing, calculating and bookkeeping, must be permitted 10 minutes rest after every 90 minutes of work. Other rest periods must be allowed for special kinds of work.

The above provisions do not apply to managers and other employees in position of trust and responsibility.

- Paid holidays and vacations

Upon completion of every 12 months of service, employees are entitled to a paid vacation of 30 consecutive days to be taken during the next 12-month period. This annual vacation must be paid with an increase of one-third of the related pay. If a vacation is not granted within this period, the employee must be compensated at double the remuneration. Up to one-third of a vacation period may instead be paid in cash, at the employee's option. In addition, employees are entitled to receive 50 percent of their 13th-month salary at the beginning of their holiday period.

- Termination of employment

All employers must contribute to the Employees' Severance Indemnity Funds (FGTS) an amount equivalent to 8 percent of the gross monthly remuneration of each employee. Contributions are credited to bank accounts in the name of each employee and are adjusted monthly to compensate for official inflation, plus interest of 3 percent per annum. These contributions are deductible expenses for corporate income tax purposes. Employees upon termination of employment under the following circumstances may withdraw the balances in these bank accounts.

1. Dismissal without just cause or where the employer and employee are considered to be mutually at fault. In the case of dismissal without just cause the employer is obliged to pay to the employee an additional amount equivalent to 40 percent of the accumulated balance in the employee's FGTS bank account. If employer and employee are mutually at fault, the additional amount payable is 20 percent of the FGTS balance.

2. Liquidation of the enterprise or termination of operations resulting in cancellation of the employment contract.

3. Retirement in accordance with the social security regulations. An employer may insist on retirement when a male employee reaches 70 or a female employee 65.
4. Death of the employee, in which event the balance in the FGTS accounts, is included in the estate of the decease.

An employee is allowed to use the FGTS balance at any time to purchase a personal residence under a government-approved housing financing scheme.
Accrued vacation pay is also payable upon termination of employment even if the employee has not completed 12 months service.

Expatriate personnel in Brazil

Work permits

There are three types of visas for foreign personnel.

1. Businessman's visa:

Granted for 90 days and renewable for another consecutive 90-day period to those who intended to work in Brazil on specified projects. They cannot be registered employees of a Brazilian entity.

2. Temporary residence visa:

Similar to businessman's visa except that the holder is entitled to work in Brazil for two years, renewable for another consecutive two-year period.

3. Permanent visa:

May be granted to those contracted to work in Brazil for an indefinite period. It is generally issued to top executives of foreign companies being transferred to Brazil, those with specialised skills not really available in Brazil and those who marry Brazilians or have Brazilian-born children. In other circumstances it is difficult to obtain a permanent visa.

Foreigners who do not hold one of the above visas may not work in Brazil. It is advisable to apply well in advance for any type of visa.

In addition, a foreigner must hold a permanent visa and be domiciled in Brazil to be able to serve as director of a Brazilian subsidiary of a foreign company.
Special arrangements or concessions

Social Security benefits are the same for all employees, regardless of their nationality. Contributions to the social security fund are not refunded if an employee leaves the country. Those working under a temporary residence visa are also entitled to annual vacations, standard working hours, accident insurance, and social security benefits.

Holders of temporary visas are subject to income tax, but in the first year after arrival, or up to the time a permanent visa is obtained if earlier, tax is limited to 25 percent at source on Brazilian-source income only.

Foreigners arriving with a permanent visa may bring in duty free otherwise dutiable household goods. Duties may be imposed if these goods are sold inside Brazil before the expiration of certain time limits. The same is true for holders of temporary residence visas, except that they are required to repatriate all otherwise dutiable household goods when they leave.

Restrictions on employment

All employers, with few exceptions, are required to employ Brazilians in the proportion of at least two-thirds of their total personnel as regards both number and total remuneration. Exceptions may be made for skilled workers and technicians. Foreigners resident in Brazil for ten years or more or those with a Brazilian spouse or child born in the country qualify as Brazilians for this purpose. In the event that employees have to be laid off as a result of reduction of activities Brazilians whose duties are identical to those of foreigners must be given preference as regards retention.

Living conditions

In general, living conditions in the major urban areas are similar to those in the United States or Europe, although personal security is a more serious hazard. Accommodation of a high standard is available, whether in houses or in apartment buildings. There is still considerable reliance on domestic help, although the use of household appliances is growing rapidly. There are no restrictions on family accompanying foreign personnel into Brazil, although this is not necessarily so for domestic servants. Most major urban areas have adequate facilities for education of children of foreign personnel to high-school level.

Domestic help and food are high level compared with international standards. Housing costs vary from city to city but depending on the location and quality, are lower than those in most developed countries.

In most areas of the country an automobile is necessary for transportation around the neighbourhood, shopping and going to and from work. Supermarkets, delicatessens and drugstores stay open most evenings.

types of business organisations

Choice of entity

The most common forms used by local and foreign investors are the corporation (sociedade por ações) and the private limited liability company (sociedade por quota de responsabilidade limitada) usually called a limitada.

Capital requirements

In general, corporations and limitadas may be wholly foreign-owned, but the authorities favour an investment with local participation.

· All foreign investments must be registered at the federal level.
· There are no legal requirements as to minimum capital except for financial institutions and certain other specific enterprises. There is no upper limit.

Founders' requirements

· The number of shareholders may not be less than two. Founders must be resident, but a nominee may be appointed.
· It is usually a more complex procedure to form a corporation than a limitada.

Foreign ownership and participation in management

· There are no nationality requirements for management, but a director must hold a permanent visa and be domiciled in Brazil.
· Union and employee participation in management is rare in practice.

Repatriation of funds

· Dividends remitted to non-resident shareholders or members are subject to withholding tax at a rate of 15 percent .
· On interest and other remittances the withholding rate is 25 percent or such lower rate is prescribed by the relevant tax treaties.
· The initial investment may be repatriated upon disposal of the investment.
· Capital gains on sale of shares or quotas may also be remitted abroad, subject to payment of income and/or capital gains taxes, normally at the rate of 25 percent.
· All outgoing funds require prior Exchange Control permission.

Liquidation of investment

· A foreign shareholder may dispose of the investment at any time by selling the shares or upon liquidation.

Tax considerations

- All legal entities are treated equally for tax purposes.
- Basic income tax rates are the same for local and foreign-owned corporations and limitadas.
- Tax losses may be carried forward for four years. There is no carryback.

Professional advice

- It is advisable to obtain professional advice at an early stage to ensure a smooth set-up and regulatory compliance.
- Statutory audits are required only for public corporations and for entities operating in the banking and financial sector.

tax system

Principal taxes

The principal federal, state and municipal taxes are as follows.

1. Federal
a. Income tax (IR);
b. Excise tax (IPI);
c. Import tax (II);
d. Financial transactions tax (IOF);
e. Export tax (IE);
f. Provisional Contribution on Financial Activities (CPMF);
g. Corporate social contribution on profits (contribuição social);
h. Corporate social contribution on billings (COFINS);
i. Corporate contribution to the Social Integration Program (PIS/PASEP);
j. Rural real estate tax (ITR).

2. State
a. Sales and service tax (ICMS);
b. Additional income tax (AIRE);
c. Property transfer tax (ITBI);
d. Automobile tax (IPVA).

3 Municipal

a. Service tax (ISS);
b. Real estate taxes (IPTU and ITBI).

Tax guarantees
Under the Brazilian system, tax guarantees do not exist.
Legislative framework
Statute law

The Brazilian tax system is primarily governed by the Federal Constitution and by the National Tax Code (Cadge Tributary Nacional - CTN.), which was issued in 1966. This basic legislation contains all general provisions, definitions, competence, procedures, and limitations concerning the tax system. The CTN. is of general application and must be observed by all the taxing authorities within the country: federal, state, and municipal. Legislation is frequently introduced and changed by laws and provisional measures, but retroactive legislation is not permitted, except when it benefits the taxpayer and when the taxable event has not terminated. Within the executive branch the Ministry of Finance has the responsibility of implementing the tax statutes. This function is specifically carried out by the Secretary ad Receipt Federal (SR.), whose duty is to interpret the statutes in accordance with the intent of the CNN and enforce them.

The interpretative duties of the Ministry of Finance and SR. range from general to the specific. Regulations are written in broad general terms to explain and illustrate the provisions of the CTN.

Case law

Judicial interpretation provide varying degrees of precedent, depending on the nature of the issue and the jurisdictional authority of the court that gave the opinion. In situations where the statutory authority alone does not provide a definite solution for a particular tax issue, the taxpayer must consult legal counsel as well as administrative authorities in order to resolve the matter. In general, case law, in spite of the absence of the binding precedent concept as understood in countries with a common law tradition, strongly influences further comparable cases as well as the decisions of the Tax authorities.

Records of discussions in the legislature, as well as leading professional and academic opinions, are important sources of interpretation. Opinions issued by persons of high professional repute give useful help toward developing arguments in support of specific cases, mainly in contentious areas.

Anti-avoidance

Current anti-avoidance legislation is to be found in Decree 982/93. Several provisions in the National Tax Code prevent taxpayers from availing themselves of beneficial provisions of the law in situations where the principal reason, or one of the primary reasons, for their actions is to avoid tax. Consequently, it is often desirable to seek advance clearance of a contemplated transaction from the SR. through the submission of a ruling request. HLB – AUDILINK can provide valuable assistance in such an undertaking.

It should be borne in mind that the anti-avoidance provisions generally relate to specific transactions. In general, it is the government's attitude that taxpayers have the right to arrange their affairs in such a manner as to keep their taxes as low as possible, as long as the methods employed are legal

Form versus substance

The general focus of the law and the attitude of the government are that substance takes precedence over form. This is evident, for example, in the area of related- party transactions. However, it is possible to obtain alternative tax results from a given transaction through proper tax planning. This opportunity exists only because the law contains specific provisions authorising the use of alternative accounting methods and tax treatments for what in substance are arguably the same transactions.

Clearance procedures

It is not necessary to obtain advance approval from the Tax authorities before entering into significant transactions.

Income tax
Concepts of income taxation

In general, income is aggregated and subject to a single tax. Interest income and capital gains are subject to tax separately.
Corporate taxable income is taxed under a unitary system whereby a single tax rate is applied. This rate is currently 25 percent with a surcharge on taxable income over a certain level. Tax computations are prepared on a monthly basis.
As to the relationship between companies and shareholders, Brazil follows a system in which corporate income is taxed in the company, and distributions of net income to shareholders are subject to withholding tax.
This state income tax is calculated at rates up to 5 percent of the federal income tax. It is payable to the state in which the company is resident. However, Brazilian source income of non-residents is not subject to state income tax.

Classes of taxpayer

The main groups of taxpayers are as follows.
- Resident legal entities, such as corporations, private limited liability companies (limitadas), branches of foreign entities, partnerships, and sole proprietorships.
- Resident individuals.
- Non-resident legal entities and individuals.

Taxable income

Taxable income is gross income less deductions. In general, gross income is defined as all income of a taxpayer less certain classes of income specifically excluded by tax legislation. The term "gross income" includes business income (net of cost of goods sold), dividends, interest, gains from the sale of property, and other accretions of wealth realised by the taxpayer. However, a gain is not generally taxable until it is realised. Mere appreciation in the value of an asset is not income until it is realised by sale, exchange or other conversion. Similarly, a loss from a decline in the value of an asset is not generally tax deductible until realised.

Deductions are allowed only if specified in the laws and regulations. Business expenses are ordinarily deductible. Certain nonbusiness expenses are also deductible within certain limits, e.g., charitable contributions.

Legal entities are subject to tax only on Brazilian-source income. Capital gains are taxed separately. Corporate dividend income is taxable only at source.

Resident individuals' taxable income is computed on a world-wide basis. Tax is normally deducted at source on earnings and gains, including capital gains, as they arise, but at the end of April of each year a annual tax return must be filed for income of the previous calendar year, and any difference between the annual amount payable and amounts deducted or paid at source is calculated and paid.
Income obtained in Brazil from non-resident legal entities individuals is subject to withholding tax of 25 percent, or lower treaty rate.

Tax year

The tax year (base year) is the calendar year. However, because of high inflation, tax is due and payable on a monthly basis (monthly tax periods). For tax purposes a company's year-end (corporate balance sheet date) is relevant, but in most cases the year end for the annual accounts is as at December 31.

Foreign airlines and shipping companies are exempt from \Brazilian income tax on their operations within Brazil, provided equivalent exemption is available to similar Brazilian companies in the countries concerned.

Brazil has signed various treaties for the avoidance of double taxation

Except for some special cases, no tax rate increases or new taxes can be levied in the course of the tax year. However, there have been exceptions in the past.

Tax-free zone

There is a major, long-established tax-free zone offered by the federal government in Manaus and the Western Amazon Area. Several small free trade areas have been created over the last few years in the frontier regions.
Several states and most municipalities grant local tax concessions in order to attract new business.

Tax holidays

Tax holidays are offered by the federal government to attract new business projects in certain areas. Some states and municipalities that seek foreign investment compete for it by offering such investments as property tax holidays and favourable financing. For further information, a HLB AUDILINK office in or near the location of interest should be contacted for details.

Capital taxation

Property transfer taxes are payable at state and municipal levels by companies and individuals.

Companies

No tax is payable at the federal level on the value of a company at incorporation, on the issue of shares or on the annual value of assets

A wealth tax is contemplated in the 1988 Constitution, but legislation has not yet been drafted.

International aspects

Foreign operations

Income received by local entities in Brazil from activities exercised abroad is not subject to Brazilian corporate income tax.
Resident individuals are subject to tax on all income from abroad but are allowed to take credit for the foreign tax paid thereon, provided reciprocal treatments is accorded to Brazilian-source income in the country from which the income was received.

Geographical source of income

Brazilian income tax law has no specific provision or rule for defining the source of income, which is generally understood to be the country of residence of the payer. However, certain rules apply to resident legal entities whose income originates from activities exercised partly in Brazil and partly abroad. The income derived from the latter source is not subject to taxation in Brazil. In the event of difficulty in segregating local income from that obtained abroad, taxable income will be taken to be the equivalent of 20 percent of the gross receipts in Brazil from the operations concerned.

Fees and other related expenses paid in Brazil for services rendered are subject to withholding tax of 25 percent, or lower treaty rate.

International financial centre operations

There are no tax breaks to encourage the location of multinational companies' headquarters and administrative offices in Brazil and/or the use of Brazil as a base for offshore financial operations

Investor considerations

- Corporate income tax is calculated and paid monthly on the basis of taxable income.
- There is a surcharge on taxable income above a certain level.
- There is no distinction in terms of tax burden between local and foreign-owned companies.
- Income derived from activities exercised abroad is not taxable in Brazil.
- Distributions of net income to shareholders are subject to withholding tax.
- Dividends received are excluded from taxable income.
- Interest income and capital gains are subject to separate taxation.
- Interest paid on loans from foreign shareholders is fully deductible for tax purposes on the accrual basis.
- Exchange loses on foreign loans are deductible on the accrual basis.
- The Tax authorities generally accepted intercompany transactions if negotiated at arm's length.
- There is no specified debt: equity ratios except for financial institutions.
- Consolidated tax returns are not permitted.
- Books must be kept on the accrual basis.

Corporate tax system

Corporations and shareholders

Corporate net income is taxed at the corporate level. The company at the rate of 15 percent, or lower treaty rate withholds tax on distributions of net income to shareholders.

Taxable entities

Corporations, limitadas, partnerships (except for regulated professional partnerships), and branches organised in accordance with Brazilian laws are subject to corporate income tax. Non-profit entities that comply with certain registration and filling requirements are generally exempt.
The criteria determining whether income and gains have a foreign or domestic source or nexus and are subject to corporate taxation are described under "Geographical source of income".

Territoriality

A corporation is considered resident in Brazil if it has been incorporated in Brazil and if its tax domicile is where its head office is located.

Dividends/Intercompany dividends

Dividends, net of 15 percent withholding tax, received from other local companies, including subsidiaries and affiliates, are not subject to further corporate income tax.

Stock dividends

Stock dividends received are not subject to corporate income tax.

Dividends-in-kind

The payment of dividends-in-kind is not permitted by corporate law.

Royalties and service fees

Royalties and service fees are taxable on an accrual basis. For tax-deductibility purposes, royalties, licence fees, technical assistance, and similar charges, together with amortisation of patent costs, may not in total exceed certain percentages of net sales of the related products. The highest total charge is 5 percent, allowed to heavy industries. The maximum royalty for the use of trademarks and trade names is 1 percent of the corresponding net sales. Formal agreements must be registered with the Instituto Nacional de Propriedade Industrial (INPI) in support of all such charges. Registration with the Central Bank is also necessary for remittance purposes.

Exchange gains and loses

Exchange gains and losses are included in the determination of taxable income, whether or not they have been realised.

Non-taxable income

The following types of income are non-taxable, but those from the last four sources must be taken to a capital reserve.

1. Credits arising from the equity method of accounting for investments in subsidiary and associated companies.
2. Income from foreign operations.
3. Premiums from the issues of shares and debentures.
4. Proceeds of sale of participation and subscription rights.
5. Profit on the sale of treasury stock.
6. Subventions received for capital investments.

Tax computation

Net income

Taxable income is computed by adjusting net book income for non-taxable income and non-deductible expenses.

Tax rates

The single corporate federal tax rate is 25 percent, but there is a surcharge on taxable income in excess of a certain limit. No deduction from taxable income for investment incentives is allowed for the purposes of calculating this surcharge.

Corporate income tax rates

Rates applicable monthly taxable income

Standard rate.. 15 %
Surcharge on monthly taxable income in excess of R$ 20,000 :
Financial Institutions.. 10 %

Others... 10 %

Notes:

1. Tax computations must be prepared and tax paid on a monthly basis. In April of the following year an annual adjusting tax return for the previous calendar year is prepared and filed with the authorities, and any further tax due or refundable is settled.
2. All tax brackets and tax calculations are made in Reais.
3. Tax rates can be changed by the government at any time up to the end of the calendar year.

"Presumed" profits

Only corporate taxpayers with gross annual revenues not exceeding R$ 75,000 in the preceding calendar year may opt for this income tax computation method. The normal tax rate of 25 percent is imposed on a percentage of monthly gross revenues (from the sale of goods/ products/ services) after certain deductions.
The annual adjusting tax return for presumed profits must be filed by the end of March.

Tax credits

Since income arising abroad is not taxable, foreign tax credits are not available. There are no other specific tax credits.

Consolidation - Group relief

Consolidated income tax returns are not permitted, nor can losses be surrendered to other group companies.

Other taxes

Monthly net income before income tax after deductions is subject to a 10 percent tax (23 percent for financial institutions) called the corporate social contribution on profits. In addition, companies must make monthly payments at the rate of 2 percent of adjusted gross revenue as the corporate contribution to finance social security (COFINS) and the rate of 0,65 percent of adjusted gross income to the Social Integration Program (PIS/PASEP). All these contributions are deductible for tax purposes.
States are not allowed to levy income tax on companies within their jurisdiction. However, additional state income tax, calculated at rates of up to 5 percent of the federal income tax due, is payable to the state in which the company is resident. Brazilian - source income of non-residents is not subject to the state income tax.
Specimen of Corporate tax calculation
Net profit before tax, before social contribution (10%)
and after the net result of the accounting ....
Less:
State income tax...
Social contribution..
Add:
Excess directors' remuneration (note 3)...................
Withholding tax on financial income.........................
Less:
Dividends received (note 4)....................................
Income from the financial market............................
Non taxable income..
Tax thereon:
Surcharge..
Total income tax due (note 5)................................

Notes:

1. State income tax is levied at the rate of 5% of total federal income tax and is deductible for

federal income tax purposes on the cash or the accrual basis, depending on the state in which the company is resident.

2. The social contribution calculation is as follows:

Net profit before tax, before social
contribution (10%) and after the net result of the accounting system and state income tax.............................
Less - dividends received.................................
Adjusting the basis: divide by 1.10 to
determine the adjusted basis.............................
Social contribution at 10%...............................

3. Excess directors' remuneration is that part of each director's monthly remuneration (maximum of eight directors) that exceeds 15 times the amount of the monthly limit for payroll withholding tax exemption.

4. Dividends received from other Brazilian companies, including affiliated companies, are taxed only at source at the rate of 15%.

5. Income tax due is payable up to the last working day of the subsequent month.

6. Upon filing the annual adjusting tax return in April of the following year, any further income tax due is payable. Any refund would also be in Reais.

7. Capital gains are included in net income and taxed at the normal corporate rate.

8. Royalties and technical service fees are subject to 25% withholding tax, or lower treaty rate, if paid or credited to non-residents. Subject to registered contracts, as of January 1992 royalties and technical service fees are deductible for tax purposes even when paid or credited to foreign parent companies or to foreign companies with direct or indirect control of the Brazilian company.

9. Depending on the circumstances, the income tax due monthly may be computed in three different ways as follows:

a. On a "presumed taxable income" basis:

Only corporate taxpayers with sales that are not over R$ 75,000 in the preceding calendar year may opt for this income tax method. The normal tax rate 25% is imposed on a percentage of monthly gross revenues (from the sale of goods/products/services), with some minor adjustments for unconditional discounts, cancelled sales and some taxes.
Capital gains (sale of permanent assets) and other net income not included in gross revenues are subject to income tax separately at the rate of 25%. Net gains from money market transactions are subject to tax only at source at the rate of 30%. Gains from transactions in the stock/commodities exchange and/or futures markets are subject to tax separately at the rate of 25%. In computing the gains, all costs are restated for inflation.
The social contribution liability, at the rate of 10%, assumes a taxable basis equal to 10% of the gross monthly revenues.

b. On an arbitrary basis:

This is established solely by and the discretion of the Tax authorities, should the taxpayer fail to comply with the rules and regulations for keeping records and/or computing taxable income.

c. On a "real taxable income" basis (the corporate tax calculation as shown above):

The real taxable income basis is adjusted for tax purposes in line with the applicable procedures and regulations. Legal entities with the following characteristics or activities must utilise this method of monthly tax computation:

- Those entities with annual gross revenues in the preceding calendar year over R$ 75,000;
- Those companies with shares traded on the stock exchange;
- Financial institutions in general, leasing companies insurance companies, and non private pension funds;
- Real estate buying/selling/construction, land development and civil construction legal entities;
- Legal entities with non-Brazilian resident share/quota holder(s) or partner(s);
- Legal entities in control of or under the control of another legal entity or with at least 10% of its capital held by another legal entity;
- Legal entities in which a government authority has a capital holding;
- Branches, Representatives offices, or agencies of non-Brazilian resident legal entities;
- Legal entities that participate in any sort of corporate reorganisation - mergers, amalgamations, split-off, or split-ups - during the year;
- Legal entities enjoying incentives based on a special operating profit.

The above-listed corporate taxpayers must draw up monthly balance sheets, calculate the appropriate taxable income and pay the income tax and the social contribution thereon up to the last working day of the subsequent month. Income tax on gains arising from stock or commodities exchange and future market transactions (25%) as well as gains realised on the money market (30% withheld at source) is paid separately.
Alternatively, these corporate taxpayers may elect to estimate their monthly tax liabilities (income tax and social contribution), using the same computation rules applicable for the "presumed taxable income" basis, (in which case financial institutions, insurance and leasing companies, etc., will have a taxable basis of 6% of gross revenues) and draw up a final balance sheet only at the year-end. Any difference between the amounts estimated and paid under the optional presumed basis and calculated at the year-end will then be paid or claimed as a tax credit restated for inflation.

Corporate tax planning strategies

Type of entity

Corporate taxation is basically the same for all types of legal entities.

Subsidiary versus branch

Foreign investors are advised to incorporate operations in Brazil instead of setting up branches because annual branch earnings are subject to a withholding tax at 15% only.

Joint venture
There are no tax advantages or disadvantages.
Holding company

There is no legislation that favours foreign shareholders or holding companies.
Special industry companies/Special-use companies
Companies participating in certain sectors, such as banking, insurance, leasing, etc., are subject to special tax rules.

Locality/Industry

Tax holidays are offered by the federal government for certain industries installed in specific areas.

Reorganisations, mergers and acquisitions

Companies can be reorganised tax free under certain conditions.
The tax basis of assets can be increased through acquisitions under certain conditions.
Tax advantages, such as carried forward losses, are usually lost following an acquisition.
The allocation of cost in asset purchases or deemed asset purchases must be made by both the buyer and seller.

Liquidations

In general, liquidations may result in taxation at both corporate and shareholder levels.

Tax treaties

Relief from double taxation is not applicable, as income earned overseas is not taxable.

Taxation of individuals
Resident/non-resident status

Work permits and special visas are required for any foreigner intending to live work and/or work in Brazil, whether for short or long periods.
Foreigners with permanent visas are considered residents as from the date arrived in Brazil and subjected to income tax on their world-wide income.
Foreigners with temporally residence visas, which are valid for two years but may be renewed for another consecutive two-year period, are considered non-residents during their first 21 months in Brazil, or up to the time they obtain, a permanent visa. As non-residents they are taxed only at source on their Brazilian source income. As from the 13th month onward, or upon the issue of a permanent visa if earlier, they become residents for tax purposes.
There are no special tax concessions for foreigners working permanently or temporarily in Brazil.

Pre and post assignment periods

Any amounts payable by a non-Brazilian source to one who has not yet acquired the status of a Brazilian resident or who has relinquished this status are not subject to Brazilian income tax.

Job-related activities partially outside Brazil

Residence status must be considered. World-wide income would generally be subject to Brazilian income tax for a Brazilian resident..

Bonuses and fringe benefits

Bonuses and most employer-provided fringe benefits are taxable. Tax-exempt fringe benefits include employers’ contributions to private social security plans and labour indemnities.

Special foreign assignment allowances

Any special foreign assignment allowances paid in Brazil are subject to income tax. Those paid in the employee’s base country would have to be included in world-wide income.

Social security contributions

There are no special tax concessions for foreigners working in Brazil.
Timing of arrival/departure
Since tax is due monthly, it generally makes no difference whether a foreigner arrives or departs early or late in the year. Tax clearance certificates are needed before final departure from Brazil.

HLB Brazil