

DOING BUSINESS IN BRAZIL

INTRODUCTION

Contacting any one of the Member Firms of AGN International gives you access to a worldwide Association of about 200 auditing and consulting firms with approximately 480 offices and some 9.000 partners and staff operating in more than 90 countries around the globe. AGN International boasts a solid base in Brazil's leading business centers (Rio de Janeiro, São Paulo, Porto Alegre and Salvador), backed up by experience, top-level professionalism and remarkable in-depth knowledge of the businesses world.

The purpose of this publication is two-fold: (i) to provide foreign investors with basic information about the various ways of investing in Brazil and (ii) to answer the most frequent questions related to local legislation on such issues as taxes, exchange policies and business in general.

Making decisions about operations in other countries is a complex matter. Local culture, legislation and business practices differ significantly from country to country. Access to experienced local professionals becomes crucial to dealing with specific circumstances and assuring compliance with local requirements.

The information contained in this material is general in nature and, of course, may be modified after issuance of this publication. Accordingly, we recommend you consult one of our specialists prior to making your business decisions. At the end of this publication you will find a list of the services we are qualified to provide to foreign investors and our addresses for contacting our directors in Brazil.

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1. BRAZIL

The Federal Republic of Brazil occupies the principal eastern and central portions of South America, with the Amazon River running through the portion of it that straddles the Equator. Most of its territory is located at low altitudes, so it is essentially a tropical country, indeed the only nation in the world that has created the bases for a tropical civilization. Of its 23,086 km of borders, 15,719 km touch on all other South American countries, except Chile and Ecuador. The remaining 7,367 km jut out into the calmest ocean waters in the world, the South Atlantic. Brazil is by far the largest country in Latin America and the fifth largest in the entire world.

Brazil consists of 26 States and the Federal District of Brasília. Locally, it is divided into municipalities. Of its estimated population of 193 million, almost 86% live in urban regions.

Key figures for the past four years can be broken down as follows:

	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Brazilian population (millions)	186.8	187.6	189.6	193.7
GDP (US\$ billions)	956.0	1.314	1.554	1.570
Real variation over previous year (%)	2.9	3.7	5.1	5.4
GDP per capita (US\$)	5.117	6.852	8.196	8.105
GDP at market prices	3.8	6.1	5.1	-0.2
• Farming and ranching	4.2	4.8	5.7	-5.2
• Manufacturing	2.9	5.3	4.4	-5.5
• Services	3.8	6.1	4.8	2.6

Source: IBGE- Brazilian Geographical and Statistical Bureau

In terms of international trade, Brazil is a member of the ALADI (Latin American Integration Association) and of the GATT (General Agreement on Tariffs and Trade), having been one of the original signatory states of the Bretton Woods Agreement, which instituted the International Monetary Fund (IMF) and the World Bank – International Bank for Reconstruction and Development (IBRD). Brazil is a founding member of the Inter-American Development Bank (IADB) and has observer status with respect to the European Economic Community (EEC), with permanent representation in Brussels.

In the Western Hemisphere, Brazil is a founding member of the Southern Cone Market (Mercosur), a treaty with Argentina, Paraguay and Uruguay, and has actively participated in negotiations for formation of the Americas Free Trade Agreement (AFCA).

2. STRUCTURING YOUR OPERATION

The most common legal structures used by companies in Brazil are the corporation (*sociedade anônima* or S/A) and the limited liability company (*sociedade por quotas de responsabilidade limitada* or Ltda.). Under both forms, the liability of shareholders is limited to the total sum

of the capital stock. Other types of legal structures are rarely used, though at times they can serve specific interests.

2.1 – Stock Corporation

The joint stock corporation in Brazil is essentially a commercial/industrial company format, with the capital stock being represented by shares, and it is essentially aimed at generating profits to be distributed to stockholders.

Under the joint stock format, corporations are assigned names followed by the letters S.A. and/or preceded by the word “Companhia” (equivalent to Inc. in the U.S.) and the liability of their stockholders is limited to the issue price of the shares they have subscribed or acquired.

In Brazil there are two forms of joint stock corporations, the publicly traded type that raises funds for its operations on the stock market, and the privately held type where funds are provided by the stockholders or subscribers to shares, without stock exchange listing.

The shares into which the capital stock of a corporation are divided represent a part or a fraction of the total. The shares are represented by certificates and, according to the nature of the rights and advantages granted, they may be classified as common, preferred or fruition.

The financial statements of publicly traded corporations have to be audited, on a mandatory basis, by independent public accountants registered with the Brazilian Securities Commission (CVM). Audits of privately held stock corporations are required only in the case that the equity is higher than R\$ 240,000,000.

2.2 - Limited liability company

The Brazilian limited liability format (*sociedade por quotas de responsabilidade limitada* or Ltda.) can be organized as either a professional firm or commercial company, depending on the definition of its stated objectives in the the company's social contract.

Its principal characteristics can be summarized as follows:

- Simplicity of formation, based on generally standard articles of association (social contract) and just one category of partner (quotaholder);
- Liability of quotaholders or partners are limited to total share capital, which is divided into quotas or non-certificate (i.e. register) shares, up to the time when it was paid up in full, after which no further liability can be assigned.
- Audit of the financial statements is only required in the case that the equity is higher than R\$ 240.000.000,00.
- Choice between use of the firm name or corporate denomination, which means an alternative that makes a limited liability company veer towards a partnership or a stock corporation.

2.3 - Rules common to both corporations and limited liability

Corporate operations entailing transformation, take over, merger or spin-off may be carried by any company structured in any other format allowed under Brazilian legislation.

Transformation is an operation whereby a company changes from one type of company into another, irrespective of dissolution.

Taking over is an operation whereby one or more companies are absorbed by another, which succeeds it/them in its/their rights and obligations.

Mergers, on the other hand, are operations whereby two or more companies unite to form a new company that succeeds the previous ones in all their rights and obligations.

Finally, a spin-off (or split-up) is an operation whereby a company transfers parts or all of its assets to one or more companies either set up for this specific purpose or already in existence. Under this alternative, the spun-off company is extinguished if all its assets are spun off or its capital is split-up.

2.4 - Other types of legal structures

While other types of legal structures are rarely used in Brazil, they may be interesting alternatives from certain standpoints. Accordingly, we will mention those that are occasionally adopted and the reasons for doing so.

2.4.1 - General partnership

This type of structure has some attraction, mainly for U.S. companies wishing to set up Brazilian subsidiaries, given certain specific aspects of American tax legislation.

It is characterized by the joint and several liability of all shareholders/partners.

Accordingly, there is only one category of shareholders, those with joint and several liability. Even so, the shareholders are not accountable for corporate obligations on an absolute basis, only in a subsidiary manner. That is to say, their personal assets can only be affected after the company's assets have all been used up.

Management functions in a general partnership can be the responsibility of all partners, provided there is no specific provision to the contrary in the bylaws. If one partner, for instance, is designated as the managing partner, he or she will be exclusively entitled to sign and act in the company's name.

The name of a general partnership may be the names of all the partners spelled out, or their initials, along with the expression "and company (& Co.)".

2.4.2 - Joint venture

Under Brazilian legislation, a joint venture (*sociedade em conta de participação*) is made up of one or more companies, one of them a commercial outfit that carries out business in the joint venture's name. Although technically called a company (*sociedade*), the law does not grant separate legal status (artificial personality) to the joint venture.

Joint ventures are frequently put together temporarily, in order to carry out certain commercial operations, such as sale of seasonal merchandise, or construction of a specific project for subsequent resale.

Their most note-worthy characteristic is that most of the partners remain secret, in that only the ostensible partner appears and runs the business in its name.

The latter is the party of record insofar as liability is concerned, though by the same token the secret partners are obligated with respect thereto.

Formation of a joint venture is not subject to a great deal of formality under Brazilian law. It is therefore a kind of secret society that exists only between the partners and not with respect to third parties, who deal exclusively with the ostensible partner.

Management and administration of a joint venture are the exclusive responsibility of the ostensible partner, who is liable for all business carried out, in that there is no commercial company as such with respect to third parties.

Brazilian joint ventures do not have legal names, given that the ostensible partner relates to third parties using its own legal or corporate name.

2.5 - Registration procedures

There are two types of public registration for companies in Brazil: the Commercial Registration, which is done at the State Boards of Trade, and the Civil Registration, which is carried out at the Corporate Register of Deeds.

3. FOREIGN INVESTMENTS

In Brazil, foreign capital is defined by Article 1 of Law No. 4131/62, transcribed below:

"For the purposes of this law, foreign capital is defined as assets, machinery and equipment that enter Brazil without initial disbursement of foreign exchange, intended for the production of goods and services, as well as the financial or monetary assets brought into Brazil for investment in economic activities, provided that they belong to individuals or companies resident, domiciled or with registered offices overseas."

The Law assures foreign capital legal treatment that is equal to Brazilian capital, on the same terms, and prohibits all forms of discrimination not contained in Laws. It further determines that such investments are to be registered with the Central Bank of Brazil (BACEN).

3.1 – Registration of foreign capital

All foreign direct investments must be registered with the Central Bank online electronic system named RDE-IED. The registration is essential in order to enable the future remittance of dividends and interest on shareholders equity and to assure the eventual repatriation of the original capital.

The registration of foreign capital must be made within 30 days from the date it enters Brazil except in the case of capital contributions with goods, which must be registered within 90 days as of customs clearance. Periodically, certain information such as the Brazilian entity financial statements and changes in shareholding must be recorded online and registered with the RDE-IED.

The foreign investment to be performed and registered is not subject to preliminary review or verification by the Central Bank, being thus declaratory and performed through a statement.

This means that the Brazilian investee and/or the representative of the foreign investor are responsible themselves for the registration of foreign investments.

To be registered as a foreign capital investment, the amount contributed must originate from persons resident, domiciled or with a head office outside Brazil. The capital contribution must be effectively brought into the country and invested in the acquisition of shares or quotas.

3.2 - Payments of dividends and interest on equity

Provided that the foreign capital is properly registered, the foreign investor has no difficulties in receiving dividends or interest on equity from its Brazilian subsidiary.

3.3 - Reinvestment of profits

According to the Foreign Capital Law of 1962, reinvested profits are those accrued by companies established in Brazil and attributable to individuals or companies resident or domiciled abroad, in proportion to their registered share, and which are reinvested in the company that has generated the profits or in another sector of the nation's economy.

If the foreign investors choose to reinvest their profits in Brazil instead of remitting them back overseas, they may be registered as foreign capital too (just like the initial investment).

3.4 - Repatriation of capital

Foreign capital registered with BACEN may be repatriated to its country of origin at any time, without any type of prior authorization being required. Returns of capital, in amounts higher than those registered will be considered as capital gains, benefiting the foreign investor and thus subject to withholding income tax (IRF).

3.5 - Restrictions on remittances back overseas

Remittances in foreign currency from Brazil may be restricted whenever there is no corresponding BACEN registration, inasmuch as remittance of profits, repatriation of capital and registration of reinvestments are all based on the amount registered at the Central Bank of Brazil in the foreign investor's name.

3.6 - Restrictions on foreign investments

Only a few economic activities such as public health, mail and telegraph, nuclear energy, airlines with domestic flight concessions, sanitation and the aerospace industry continue to be restricted to foreign investors.

Foreign investors can currently hold only a minority participation in media, financial institutions and insurance companies, but with prior authorization from the government or under a reciprocal agreement, they may acquire control of a bank.

Additionally, there are restrictions on foreign participation in activities subject to national security concerns and on foreign ownership of rural areas and businesses in border zones.

A potential investor should consult the government agencies that would most likely hold an interest in a proposed project. This process can sometimes yield significant benefits to the foreign investor, since the government generally prefers to grant incentives rather than restrictions to encourage investors. In general terms, incentives granted are associated to tax or funding costs.

3.7 – Thin capitalization rules

Law 12,249/10 introduced thin capitalization rules, which are in force as from December 16,2009.

There are requirements to deduct the interest expenses for the Social Contribution Tax (CSL) and the Corporate Income Tax (IRPJ) purposes. In general line, the debt cannot be higher than:

- Two times the amount of the participation of the lender in the net equity of the borrower;
- Two times the amount of the net equity of the borrower, if the lender is a foreign party without participation on the borrower.

4 . TAX SYSTEM

The Brazilian legal system is based on civil law. In this sense, only formal legislation determines the rules. Court decisions as well as analogy function as tools for the interpretation and correct application of current legislation. Accordingly, court precedents do not serve as a source of legislation, binding only the litigating parties.

The Brazilian tax system is based on the principle of strict legality and its main principles are defined by the Federal Tax Code of 1966 and by the Federal Constitution of 1988. Three jurisdictions and tax collection levels are defined by tax legislation. Thus, taxes may be charged by the federal, state and municipal governments.

On the other hand, there is a separation of jurisdictions and powers between the judiciary and the administrative boards for the judgment of controversies. In this sense, a tax matter is usually analyzed at the administrative level before the judiciary.

The federal tax system is managed by the *Receita Federal do Brasil - RFB*, which is part of the Ministry of the Economy (*Ministério da Fazenda*). States and municipalities have similar agencies.

4.1 – Federal Taxes

The Federal Government may charge the following taxes:

- I - Taxes on income (IR);
- II - Export Tax (IE);
- III - Import Tax (II);
- IV - Excise Tax (IPI);
- V - Tax on credit, exchange, insurance and securities (IOF);
- VI - Rural Property Tax (ITR); and
- VII - Tax on Large Fortunes (IGF).

The Federal Government may further institute extraordinary taxes to cover temporary expenditures on war efforts as well as taxes not covered by the Constitution.

4.1.1 – Corporate Income Taxes

There are two corporate income taxes in Brazil: (a) the Corporate Income Tax (IRPJ) and the Social Contribution Tax (CSL). They are charged on similar bases. Profits, income and capital gains earned worldwide are subject to Brazilian corporate income taxes.

No distinction is made as to the origin of the capital (whether the investors are foreign or domestic).

Branches of foreign companies, although rare, are generally taxed in the same manner as standalone subsidiaries. A company is, in principle, considered resident in Brazil if it has been incorporated under Brazilian corporate law and is domiciled in Brazilian territory.

Basically, there are three systems to calculate the IRPJ Tax and the CSL Tax: actual profit, presumed profit and arbitrated profit.

The IRPJ Tax is levied on the taxable income at a basic rate of 15%, plus a surtax of 10% on annual income that exceeds R\$ 240,000.00 or R\$ 20,000.00 per month.

The CSLL is levied on the taxable income at a rate of 9%.

The CSLL rate for financial institutions, private insurance and capitalization companies is 15%.

Actual profit system

Under the actual profit system, the taxable income is the book profit adjusted by some non-deductible expenses (ex: bonus paid to directors) and non-taxable revenues (ex: dividends).

Under the actual profit system, companies may choose to calculate taxes either on a quarterly or an annual basis. The choice must be made at the beginning of each calendar year and is valid for the entire fiscal year. Under the annual actual profit system, taxable income is computed on an annual basis, but monthly payments are required to be made on an (a) estimated basis or (b) actual basis.

The tax losses may be carried forward indefinitely. There is no statute of limitations. The offset is limited to a maximum 30% of annual taxable income.

No carry back of losses is allowed.

Non-operational losses may be carried forward, but they may only be utilized to offset non-operational profits (ex: capital gains arising from the sale of fixed assets).

Tax losses are lost if between their generation and their utilization, cumulatively, there is a change in control and change in the type of activity performed by the taxpayer.

Presumed profit system

Companies may elect to calculate the CSL Tax and the IRPJ Tax based on a presumed profit, provided they (a) do not have total revenues in the preceding year higher than R\$ 48 million, (b) are not financial institutions, similar entities or factoring companies, (c) do not earn foreign profits, income or gains (i.e. directly or through foreign subsidiaries) and (d) do not qualify for an exemption or reduction of the corporate income tax.

The election is made annually, at the beginning of the year and the choice may be renewed every year. The election is valid for CSL Tax and IRPJ Tax. Under the presumed profit system, the taxes must be calculated and paid on a quarterly basis.

Presumed profit system

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annually, at the beginning of the year and the choice may be renewed every year. The election is valid for CSL Tax and IRPJ Tax. Under the presumed profit system, the taxes must be calculated and paid on a quarterly basis.

The presumed profit is calculated by applying percentages on the gross sales – for example, 8% (IRPJ Tax) and 12% (CSL Tax) for sale of goods and 32% (CSL Tax and IRPJ Tax) for services. The total amount of capital gains, financial revenue and other revenue must be added to this presumed profit base to compute the corporate taxes. The corresponding tax rates are then applied over the presumed profit.

Under the presumed profit system tax losses may not be utilized to reduce the presumed profit.

Arbitrated system

Under certain circumstances, such as inadequate or unreliable record keeping, the tax authorities may arbitrate the taxable income.

4.1.2 – Individual Income Tax (IRPF)

Residents of Brazil, whether Brazilian or foreigners, are subject to income tax on worldwide basis. Foreigners receiving income paid by foreign sources may recognize a foreign tax credit for the respective taxes paid, provided there is a tax treaty or a reciprocity agreement in place between Brazil and the particular foreign country. The credit taken must be net of any refund and supported by original documents evidencing payment to the foreign taxing jurisdiction.

Income subject to tax comprises all compensation, including fringe benefits, such as the use of a company's car.

Tax rates

Monthly, Brazilian companies must withhold the personal income tax from the compensation paid to the employees, in accordance with the progressive tax rate table below:

Monthly Income	Tax rate	Deduction from the
Up to R\$ 1.499,15	Exempt	R\$ 0,00
From R\$ 1.499,16 to R\$ 2.246,75	7.5%	R\$ 112,43
From R\$ 2.246,76 to R\$ 2.995,70	15%	R\$ 280,94
From R\$ 2.995,71 to R\$ 3.743,19	22.5%	R\$ 505,62
Above R\$ 3.743,19	27.5%	R\$ 692,78

The following deductions from the taxable income, among others, are allowed:

- Dependents: up to R\$ 150,69/month per dependent;
- Social security contributions (*INSS*);
- Alimony payments made in accordance with a divorce ruling issued by a Brazilian court;
- Education expenses: up to R\$ 2.708,94/per year (per dependent);
- Non-reimbursed medical and dental expenses;
- Contributions to Brazilian private pension plans (limited to 12% of annual taxable income).

Education and medical expenses as well as private pension plan contributions may only be deducted from the taxable income in the annual income tax return. They are not considered in the monthly withholding tax calculations. When preparing the annual personal income tax return, most taxpayers may elect to recognize the tax deductions as either (a) according to actual expenses while observing the limitations set out in the regulations or (b) based on a presumed deduction method (deduction equivalent to 20% of the taxable income limited to R\$ 12.743,63).

Foreign Income (carnê-leão)

The withholding tax mechanism only applies to payments made by Brazilian companies to individuals. The tax due on foreign income is calculated in accordance with the same progressive table, but the individual himself must compute and pay the tax through the regime known as *Carnê-leão*. The deadline for both the reporting of the foreign income and the payment of the corresponding tax is the last working day of the month following the month when the income was received. Foreign tax credits can generally be used to offset the Brazilian tax liability.

Annual Income Tax Return

An annual income tax return must be filed by the last working day of April reporting the income earned in the previous calendar year (January 1 to December 31).

4.1.3 – Other Federal Taxes

Withholding Income Tax (IRF)

Withholding income tax applies on certain domestic transactions, such as payment of fees to some service providers, payment of salary and financial income resulting from banking investments. In most cases, the withholding tax is a prepayment and may be offset against the final income tax due. However, in some cases it is considered as a final taxation.

Additionally, withholding income tax is due on most non-residents income paid by a Brazilian source (e.g., royalties, service fees, capital gains, interest, etc.). Withholding tax is due upon the payment, credit, delivery, utilization or remittance of the funds, whichever occurs first. The rates depend upon the nature of the payment, the residence of the beneficiary and the existence of tax treaties between Brazil and the country where the beneficiary is located. Most common rates range from 15 to 25%. As a general rule, income paid to beneficiaries located in low tax jurisdictions is subject to 25% withholding tax.

CIDE Tax

CIDE (Contribuição de Intervenção no Domínio Econômico) is levied on payments made to nonresidents of royalties, technical assistance and administrative services, among others, at a rate of 10%. The CIDE Tax onus is supported by the Brazilian payer.

CIDE Combustíveis is another contribution levied on the import and sale of oil and gas-related products including ethanol. The manufacturer, the formulator and the importer are the taxpayers of *CIDE Combustíveis*.

IPI Tax

The Excise Tax (IPI) is a non-cumulative tax that is levied on the importation and on the sale of imported and industrialized products.

The rates vary according to how essential the product is (average rate is around 10%).

IOF Tax

Triggering events for the Tax on Financial Operations (IOF) are credit, exchange and insurance transactions, as well as operations involving securities. Currently, the IOF Tax rate on loans in Brazilian currency is 0.0041% per day. The IOF Tax rates on most of the foreign transactions are reduced to zero.

IE Tax

The Export Tax (IE) is levied on the export of only a handful of products and its rate can likewise be altered by decree of the Executive Branch of the Federal Government for immediate application.

IGF Tax

The Tax on Large Fortunes (IGF) has not been regulated.

ITR Tax

The Tax on Rural Properties (ITR) is an annual tax that is levied on the value of the real state located outside the urban areas.

4.2 - State and Federal District Taxes

The States and the Federal District (DF) are empowered by the Constitution to institute and collect the following taxes:

- I - Tax on the Transfer of Assets or Rights due to Death or Donation (ITD);
- II - Value-Added Tax (ICMS) on the interstate and inter-municipal circulation of goods and services, including communication, even if such operations and services are originated abroad; and
- III - Automotive Vehicle Property Tax (IPVA).

Like the Federal IPI, the ICMS Tax is a non-cumulative tax and is levied on intra- and inter-state operations involving the circulation of goods (encompassing the entire phase of processing, manufacturing and sale, including importation) and the performance of inter-state and inter-municipal transportation and communication services. In-state rates range from 18% to 25% and 12% or 7% rates apply to inter-state operations.

4.3 - Municipal Taxes

Brazilian Municipalities are allowed to change the following taxes:

- I - Urban Real State Property Tax (IPTU);
- II - Real Estate Transfer Tax (ITBI); and
- III - Service Tax (ISS).

The ISS is charged on the rendering of the services listed in a Federal Law. The ISS Tax is levied on the price of the services and the rates vary from 2% to 5%.

The ISS Tax is also levied on importation of services. The exportation of services is exempt from the ISS Tax.

4.4 - Social Contributions

The following social contributions have been created by the Federal Government to finance social security:

- I - Social Contribution Tax (CSL – see item 2.1.1 above);
- II - Contribution to the Social Integration Program (PIS);
- III - Social Security Finance Contribution (COFINS);
- IV - Contribution to the National Social Security Institute (INSS).

4.4.1 - PIS Tax and COFINS Tax

PIS Tax and COFINS Tax are levied on gross revenues on a monthly basis, under two regimes: cumulative and non-cumulative.

There are special PIS and COFINS regimes for companies engaged in some types of industries, such as automotive, auto parts, cosmetics, pharmaceutical, oil, beverage, packaging materials, energy, and real state, among others.

Under the cumulative regime, PIS Tax and COFINS Tax are charged at 0.65% and 3%, respectively.

Under the non-cumulative regime, the PIS Tax rate is 1.65% and the COFINS Tax rate is 7.6%. Taxpayers may generally take PIS Tax and COFINS Tax credits corresponding to 1.65% and 7.6% over certain costs and expenses. Tax credits may be used to offset future PIS Tax and COFINS Tax due or other federal taxes, provided that certain requirements are observed.

The PIS and COFINS non-cumulative regime is mandatory for companies subject to the actual profit system for the purpose of calculating the IRPJ Tax.

The PIS Tax and COFINS Tax cumulative system is applicable for certain entities, such as financial institutions and companies under the presumed profit system, among others entities, and for some revenues deriving from telecommunications, transport and software development services, which are generally subject to a 0.65% tax rate for PIS and 3% tax rate for COFINS with no credits available. Financial institutions are subject to a 4% COFINS rate.

Companies with revenues subject to both systems are required to calculate PIS Tax and COFINS Tax separately in both systems.

Revenues related to export and financial transactions and to sale of permanent assets are exempt from these taxes.

The import of goods and services are also subject to the 1.65% PIS Tax and to the 7.6% COFINS Tax. This taxation are applied to taxpayers under both cumulative and non-cumulative regimes. In some cases, taxpayers under the non-cumulative system may take PIS Tax and COFINS Tax credits on the imports.

4.4.2 - Contribution to the National Social Security Institute (INSS)

Social Security (INSS)

Social security contributions must be paid monthly by companies. The employer's contribution is calculated on the gross remuneration (salary and fringe benefits) at a rate of 20%, increased by minor charges (the Worker's Compensation Insurance, the Education contribution and the contributions to other governmental institutions such as Funrural, Senac, Sesc and Sebrae) which gross up the total rate to between 26% and 29%.

Payments to individuals working without an employment relationship and service payments (management fees) to directors or managing directors who do not have an employment relationship with the company are subject to INSS at a rate of 20%.

Employee`s Contribution

The employee`s contribution (between 8% and 11%) is subject to a low tax limit and must be withheld monthly by the employer based on a specific progressive table.

Retirement Fund (FGTS)

Companies must pay the FGTS Tax at a rate of 8% on the gross remuneration.

The amount is deposited under the employee`s name in a bank account. The employee may only use this fund under special conditions, such as if he retires or is dismissed without just cause.

The FGTS Tax is not applicable to payments to independent professionals and is not mandatory for directors that are not employees.

Moreover, when an employee is dismissed without just cause, the employer must pay the employee 40% of the actual balance of the FGTS account and an additional 10% to the Government.

4.5 - Summary chart of taxes

The following are the main taxes and contributions due in Brazil and their respective rates:

Tax/Contribution	Rate
<u>Taxes on net income:</u> <ul style="list-style-type: none"> • IRPJ – corporate income tax • IRPF – individual income tax • CSL – social contribution 	15% + 10% surcharge 7.5% to 27.5% 9%
<u>Taxes and contributions on billing:</u> <ul style="list-style-type: none"> • PIS – social integration program • COFINS – social security finance contribution • ISS – municipal service tax • ICMS – state value-added tax on goods and services • IPI – federal excise tax 	0.65% / 1.65% 3.0% / 7.6% 5% (most common rate) 18% to 25% 10% (average rate)
<u>Payroll taxes:</u> <ul style="list-style-type: none"> • INSS – social security • Additional social surcharge • Accident insurance • FGTS – accrued severance pay 	20% 5.8% 1% to 3% 8%
<u>Financial transactions taxes:</u> <ul style="list-style-type: none"> • IOF – financial operations tax 	Variable

4.6 – Transfer Pricing

Importation and exportation of goods, services and rights carried-out between related parties must be submitted to the transfer pricing rules. The concept of related party is very broad, comprising, for example, transactions between a Brazilian company and an exclusive distributor located in a foreign country.

The transfer pricing rules are also applied to transactions between a Brazilian company and an individual or a company domiciled in a tax heaven or in a tax privileged jurisdiction.

4.6.1 - Import – calculation methods

Companies must prepare the transfer pricing calculations in relation to the importations carried-out with related parties. In the case that the cost of the importation is higher than the result of the transfer pricing calculation, the difference must be added to the CSL Tax and the IRPJ Tax taxable income. Companies may choose the most convenient method among the following ones:

- (a) Comparable uncontrolled price method (PIC): a reference price is arrived at by calculating the average of similar or identical purchase and sale operations between unrelated parties, on the Brazilian market or the market of other countries, under similar payment conditions.
- (b) Resale price method (PRL): a reference price is arrived at by calculating the average resale price for transactions with unrelated buyers less unconditional discounts granted, taxes and contributions on sales, commissions, brokerage fees paid and a profit margin of 20% (on the resale price).
- (c) Resale price method II (PRL II): a reference price is arrived at by calculating the average resale price for transactions with unrelated buyers less unconditional discounts, taxes and contributions on the sales, commissions and fees paid, plus a profit margin of 60% on the resale value after deducting the production costs incurred in Brazil.
- (d) Cost plus method (CPL): a reference price is arrived at by calculating the average cost of production in the country where the products were originally produced, plus taxes and charges imposed by that country on exports and a profit margin of 20%.

4.6.2 - Export - calculation methods

Firstly, it is important to point out the situations where companies may not prepare transfer pricing calculations in relation to export transactions carried-out with related parties:

- (a) When the average sales price of the exported goods, services or rights is higher than 90% of the average sales price of the same goods, services or rights negotiated in the Brazilian market during the same period of time and under similar payment conditions.

(b) When the net export revenues subject to the transfer pricing rules do not exceed 5% of the total net revenues.

(c) When the pretax book profit arising from the export transactions carried-out between related parties is equivalent to a minimum of 5% of the export revenues related to such transactions.

Safe harbors (b) and (c) above are not applicable when the individual or corporate is resident or domiciled in a listed favorable tax jurisdiction. Moreover, safe harbors do not imply a definitive acceptance of the price adopted by companies. Tax Authorities may contest the export revenue in the case of a tax audit.

When none of the safe harbors are applicable, the taxpayer must prepare the transfer pricing calculations. In the case that the result of the calculations is higher than the price adopted, the difference must be added to the CSL Tax and the IRPJ Tax taxable income. The calculation methods are the following:

- (a) Comparable uncontrolled price method (PVE_x): comparison of the sales price with the average sales price on exports to non-related parties for equivalent or similar goods, services or rights during the same tax year and under similar payment conditions.
- (b) Wholesale price method (PVA): comparison of the sales price with the wholesale market price of similar or equivalent goods sold on the wholesale market of the country to which the product is exported under similar payment conditions, less sale taxes in that country and a profit margin of 15% on the wholesale price.
- (c) Retail price method (PVV): Comparison of the sales price with the average price of similar or equivalent goods sold between unrelated parties on the retail market of the country to which the goods are exported under similar payment conditions, less sales taxes in the that country and a profit margin of 30% on the retail price.
- (d) Cost plus method (CAP): comparison of the average sales price with the average cost of the exported goods, services or rights, plus Brazilian taxes and a profit margin of 15%.

4.6.3 - Tax Havens and privileged tax regimes

The lists of tax havens and privileged tax regimes for transfer pricing purposes are the following:

Tax Havens

Andorra;	Maldives;
Anguilla;	Isle of Man;
Antigua and Barbuda;	Marshall Islands;
Netherlands Antilles;	Mauritius;
Aruba;	Monaco;
Ascension Island;	Islands, Montserrat;
Commonwealth of the Bahamas;	Nauru;
Bahrain;	Niue Island;
Barbados;	Norfolk Island;
Belize;	Panama;
Bermuda;	Pitcairn Island;
Brunei;	Polynesia;
Campione D'Italia;	Queshm Island;
Channel Islands (Alderney, Guernsey, Jersey and Sark);	American Samoa;
Cayman Islands;	Western Samoa;
Cyprus;	San Marino;
Singapore;	Islands of St. Helena;
Cook Islands;	St. Lucia;
Republic of Costa Rica;	Federation of Saint Kitts and Nevis;
Djibouti;	Island of St. Peter and Miguelão;
Dominica;	Saint Vincent and the Grenadines;
United Arab Emirates;	Seychelles;
Gibraltar;	Solomon Islands;
Granada;	St. Kitts and Nevis;
Hong Kong;	Swaziland;
Kiribati;	Sultanate of Oman;
Lebuan;	Tonga;
Lebanon;	Tristan da Cunha;
Liberia;	Turks and Caicos;
Liechtenstein;	Vanuatu;
Macau;	U.S. Virgin Islands;
Madeira Island;	British Virgin Islands

Privileged tax regimes

- Holding Companies in Luxembourg;

- Holding Companies in Denmark and in The Netherlands if they do not carry-out “substantial economic activities” (the concept of substantial economic activities has not yet been clarified);
- “Sociedad Anonima Financiera de Inversion (Safis)”, in Uruguay, until December 31 of 2010;
- International Trading Companies (ITCs) in Iceland;
- Offshore KFTs in Hungary;
- State Limited Liability Companies (LLCs) in the United States of America, that are owned by non- residents and are not subject to federal income tax in the U.S.;
- “Entidad de Tenancia de Valores Extranjeros” (E.T.V.Es.) in Spain;
- International Trading Company (ITC) and International Holding Company (IHC) in Malta.

5. CONCEPT OF RESIDENCE

5.1 – Permanent Visa

Individuals transferring to Brazil on a permanent basis are subject to tax as residents from the date of arrival. Permanent working visas are generally granted only to applicants who will perform management activities as business administrators, general managers or directors of Brazilian professional or business companies duly appointed as stated in the their articles of incorporation. The Brazilian company has basically two options to formalize the recruitment of an individual with a permanent visa (i) with an employment contract, where the company will pay a monthly salary and will incur in other labor charges, as well as being included in the Brazilian company’s payroll; or (ii) without an employment contract, where the company will pay a pro labor remuneration in Brazil.

5.2 – Temporary visa

Individuals transferring to Brazil with a temporary visa to work as an employee of a Brazilian entity are considered residents for tax purposes as of the date of arrival and, as such, are taxable on their worldwide income.

If an individual enters for any other purpose on a temporary visa and does not have an employment contract with a Brazilian entity, he will be working under a technical agreement for the rendering of technical assistance in Brazil, but remains an employee of the parent company. In this case, the individual’s tax status for the first 183 days of physical presence in Brazil will be that of a nonresident.

5.3 – Business visa

A business visa holder is allowed to remain in the country for 90 days (renewable) and would only be able to conduct business as allowed under the rules applicable to the holder of this type of visa. For these purposes, the short-stay business visa is applicable to persons who wish to travel to Brazil.

6. WHAT CAN WE DO FOR YOU ?

A G N International Ltd. – Accountants Global Network is a worldwide association of independent auditing and consulting firms. It maintains its headoffices in London and is represented in Brazil by member firms in Rio de Janeiro, São Paulo, Porto Alegre and Salvador. We can provide you with, among others, the following services in Brazil:

AUDIT

- Independent audit qualified before the Brazilian Securities Commission – CVM;
- Examination of financial statements according to generally accepted auditing standards;
- Review of internal control and accounting procedures;
- Special due diligence assignments for merger and acquisition purposes;
- Consolidation of financial statements;
- Translation of Brazilian financial statements into foreign currency;
- Review of financial statements or specific areas, for managerial purposes; and
- Operating and systems audits

TAX CONSULTING

- Tax planning and audits;
- Review of direct and indirect taxes;
- Ongoing tax consulting of a pre-emptive nature;
- Review of social contributions and payroll taxes; and
- Preparation and review of income tax returns.

INTERNAL AUDIT

- Review of internal audit work;
- Restructuring or implementation of internal audit functions;
- Development of specific internal audit programs; and
- Full or partial outsourcing of internal audit services, including systems.

BUSINESS CONSULTING

Control and finance

- Analysis, structuring and implementation of costing and budgeting systems;
- Optimization of financial management;
- Assistance in integrating accounting, costing and budgeting systems; and
- Analysis and implementation of management information systems.

Business planning

- Corporate reorganization;
- Strategic planning;
- Credit and risk analysis; and
- Establishment and appraisal of companies.

Organization and productivity

- Appraisal and reorganization of companies;
- Business process diagnosis and reengineering;
- Diagnosis, review and implementation of organizational structure;
- Study and review of administrative productivity;
- Preparation of product and service manuals; and
- Restructuring of areas, departments and sectors.

Technology

- Information processing review, preparation and strategic planning;
- Development of contingency plans;
- Systems development;
- Selection and implementation of software programs;
- Body shopping (recruitment, selection and placement of technical personnel);
- Operating and systems audits; and
- Physical security and data logic appraisals.

Human resources

- Structuring of jobs and salaries plans;
- Personnel recruitment and selection;
- Study and development of fixed and variable remuneration studies;
- Personnel training and development;
- Surveys on salaries and human resources practices;
- Study and implementation of performance evaluation systems; and
- Implementation of human resources management information systems.

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If you require further information or wish to make specific inquiries as to how we can help you and your business, please get in touch with us in Brazil, as follows:

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