

Brazil

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São Paulo

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1. Types of tax

From a domestic perspective, taxation on donation and inheritance is regulated at state and municipal levels. Rates might vary depending on the location where the transaction is concluded.

As a general rule, the (law of the place) principle should regulate transactions involving estate rights, but Brazilian courts should keep exclusive jurisdiction to conduct the estate proceedings and to distribute the deceased's assets located in Brazil.

The Brazilian system does not discriminate against national and foreign property owners who are members of different religions or nationalities or any foreigners who do not reside in Brazil.

1.1 Inheritance tax

State tax on *causa mortis* wealth transfer and donation (ITCMD)

Heritage rights should be exempted from income taxation in the country of residence. However, state tax on *causa mortis* wealth transfer (ITCMD) should be enforceable to surviving family members residing in Brazil or to the donee (the state law that regulates the ITCMD taxation may also indicate the donor as jointly responsible to pay the ITCMD in case the donee fails to pay the tax due). The ITCMD is a state tax levied on transfers of goods on death-related inventories or donations (in case of living individuals), which is payable on movable and immovable property (e.g., real estate or cash lump sums). Nevertheless, it is important to note that the maximum applicable rate is capped at 8%.



Tax assessment

The procedures, deadlines and rates vary between the Brazilian states. For a general overview, we have listed below information about São Paulo and Rio de Janeiro.

In São Paulo, ITCMD should levy on:

- ▶ *Causa mortis* transfers: Tax should be paid within 30 days after the decision that ratifies the calculation or after the order that determines its payment, since this term does not exceed 180 days from the start of the succession process.
- ▶ Gift transfers: Tax should be collected before the conclusion of the act or contract. In the case of sharing or division of common property, when due, the tax is paid within 15 days of decision *res judicata* or prior to the issuance of the notary registration.
- ▶ Transfers made according to judicial order due to court decision or outside the state: tax should be paid within 30 days from the term signature date, the decision *res judicata*, the conclusion of the act or the ITCMD rate, which is 4% in São Paulo.

In Rio de Janeiro, ITCMD (also known as ITD) should levy on:

- ▶ *Causa mortis* transfers: Tax should be paid within 90 days after the decision that ratifies the calculation (successions under the conventional rite).
- ▶ Temporary succession: Six months after the sentence has been handed down to determine their openness.
- ▶ Regarding property donations and related rights, if the donation instrument is drawn up in another state, the ITCMD must be paid prior to its presentation to the public registry jurisdiction within the territory of the state of Rio de Janeiro. ITCMD rate in Rio de Janeiro is 4%.

In other cases resulting from legal acts, the ITD must be paid within 30 days after the tax payer is aware of the legal act.

Determination of the tax basis

The tax legislation of the 27 federal states (including the Federal District) contains specific provisions on the valuation of assets transferred as well as on the applicable tax rates. Reference needs to be made to the local cantonal rules in any particular case.

1.2 Gift tax

See Section 1.1.

1.3 Real estate transfer tax

Municipal tax on real estate transfer (ITBI)

While alive, the owner may freely transfer Brazilian property to anyone. The transfer of real estate between people or land is subject to the *Imposto de Transmissão de Bens Imóveis por Ato Oneroso Inter Vivos* (ITBI), which is a municipal tax levied on transfers of real estate and rights to real estate. The rates that should apply on such taxation vary from city to city in Brazil, and the ITBI should be calculated based on the assessed value. However, the rates must respect the principle of non-confiscation, stipulating non-abusive rates (e.g., the rate in Rio de Janeiro is from 0.5% to 2% of the real estate value). In São Paulo, the maximum tax rate has recently been increased to 3%, applicable to transactions effective 30 March 2015.



In this sense, the property may be given freely by the owner to anyone, prior to death, provided that it fulfills the following assumptions:

- ▶ All taxes involved are duly paid.
- ▶ The transfer is made by a notary public if it involves real estate (under Brazilian law, ownership of real estate is only obtained after registration of the deed with the Real Estate Registry).
- ▶ The gift made between ascendants and descendants or spouses is construed as an advance payment of inheritance.
- ▶ The person who made the gift has separated some properties or income sufficient for his or her subsistence.

Tax assessment

The procedures, deadlines and rates vary between the Brazilian cities. For a general overview, we have listed below information about São Paulo and Rio de Janeiro.

In São Paulo, ITBI should levy:

- ▶ Before the conclusion of the act or contract, if it is a public instrument.
- ▶ Within 10 days if the act or contract is affected by a private instrument or in the transmission made by a court decision, as of the res judicata of this decision, or as of the date of the calculation homologation, whichever happens first.
- ▶ Within 15 days in case of auction, adjudication and award redemption, before the signing of the respective letter, even if it is not extracted.

In Rio de Janeiro, ITBI should levy within 30 days from the date specified in the instrument for the actual payment of the total price of the asset, under penalty of fines and other penalties.

Determination of the tax basis

The tax legislation of all the municipalities (including the Federal District) contains specific provisions on the valuation of assets transferred as well as on the applicable tax rates. Reference needs to be made to the local cantonal rules in any particular case.

1.4 Endowment tax

There is no endowment tax in Brazil.

1.5 Transfer duty

There is no transfer duty in Brazil.

1.6 Net wealth tax

There is no net wealth tax in Brazil.

2. Who is liable?

2.1 Residency

For ITCMD and ITBI please refer to the answers above.



2.2 Domicile

For ITCMD and ITBI please refer to the answers above.

3. Rates

The rates vary depending on each of the 27 states.

4. Exemptions and reliefs

State and cantonal legislations should be observed regarding the possibility of tax exemption. In some cases, there may be no tax incidence (ITCMD) depending on the value of the property to be transferred or even the conditions under which the will is transmitted and who is the beneficiary.

5. Filing procedures

The filing procedures vary among each of the 27 states and cities.

6. Assessments and valuations

These vary depending on each of the 27 states and cities.

7. Trusts, foundations and private purpose funds

A trust is an arrangement whereby ownership of private assets and rights (cash, liquid assets, real estate properties and movable rights) is transferred from an original owner (grantor) to a third party (trustee), who assumes full responsibility of managing those assets under the exclusive best interest of persons (beneficiaries or *cestui que trust*) expressly indicated by the grantor or by the trustee in the trust deed.

The wealth given in trust is protected by mandatory fiduciary obligations to be performed by the trustee (management and loyalty). Moreover, it does not include the trustee's personal wealth, and therefore, is not subject to the trustee's private judicial demands in the case of insolvency.

Depending on the trust deed conditions, the wealth given in trust may be returned to the grantor upon revocation (revocable trust) or be subject to distribution to its beneficiaries upon death or in the case that the trustee decides to discontinue its activities (irrevocable trust). In the first case, the grantor may be subject to capital gains tax (CGT) if the total amount is returned in excess of the original amount. If that is the case, tax impacts may arise in the country where the beneficiaries are domiciled.

The concept of trusts does not exist in Brazilian civil and tax legislation. However, the Brazilian regulation does not restrict local individuals from the possibility of constituting or participating in offshore structures, even when constituted under the jurisdiction of tax havens, as long as the capital invested and the corresponding share participation are duly declared with the relevant Brazilian authorities (Brazilian Revenue Services (*Receita Federal do Brasil*) and the Brazilian Central Bank (BACEN)).



Corporate taxation

Corporate taxation impacts associated with offshore structures should be analyzed by a tax professional with experience in the legislation of the country in which the trust was constituted.

9. Life insurance

Life insurance is a contract between a person (the insured) and an insurance company. The insured agrees to pay periodic values (the premium), and in return, the insurer guarantees the payment of compensation to persons appointed by the insured in the insurance proposal. This compensation is paid only in the case of the death of the insured. The person who is nominated for this value is called the beneficiary.

The right to receive payment arising from life insurance is not part of the assets that comprise the heritage of the insured, by express provision of the Brazilian Civil Code (Article 794).

Also, there are no income taxes on the life insurance premium received in Brazil.

10. Civil law on succession

This is not applicable in Brazil.

11. Estate tax treaties

Brazil has not concluded any estate tax treaties in connection with inheritance tax with other countries.