

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 and cities. 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 in accordance 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* or the conclusion of the act or contract.

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.
- ▶ In the case of donation of property or 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.

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 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.



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

- ▶ 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.

Determination of the tax basis

1.4 Endowment tax

1.5 Transfer duty

1.6 Net wealth tax

2. Who is liable?

2.1 Residency

2.2 Domicile

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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.

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

This is not applicable in Brazil.

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