

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 the state level. Rates might vary depending on the location where the donor is domiciled and/or the transaction is concluded.

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

1.1 Inheritance tax

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

Inheritance 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 currently capped at 8% (However, an increase in the rate is expected up to 20%).

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 be levied 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. The deadline for payment of the tax shall 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, the tax must be paid within 15 days of decision *res judicata* or prior to the issuance of the notary registration.
- ▶ The ITCMD rate is currently 4% in São Paulo.

In Rio de Janeiro, changes were made in December 2015 to the ITCMD (also known as ITD), with the changes entering into force in two stages: 27 March 2016 and 1 July 2016. Currently, the ITCMD in Rio de Janeiro should be levied on:

- ▶ *Causa mortis* transfers: Tax should be paid within 90 days after the decision that ratifies the calculation (successions under the conventional rule); this rule will be valid until 30 June 2016. As from 1 July 2016, tax should be paid within 60 days after the taxpayer was made aware of the tax posting, or in four equal and successive monthly installments, without extra charge (the latter option expires the first 30 days after the taxpayer was made aware of the posting).
- ▶ Tax computed by a tax notice: 30 days from the notification.
- ▶ Regarding property donations and related rights, even if the donation instrument is drawn up in another state, the ITCMD must be paid prior to the taxable event within the legal term.

The ITCMD rate in Rio de Janeiro is currently 4%. However, in accordance with the new law, as of March 2016 the rate increases to 4.5% (for amounts up to BRL1,200,920) or 5% (for amounts above BRL1,200,920).

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 state 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, through a donation or pecuniary interest. When the transfer occurs through a donation, this transfer is subject to ITCMD (please refer to Section 1.1). When the transfer occurs through a pecuniary interest (purchase or sale), 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 2% of the real estate value). In São Paulo, the maximum tax rate is 3% of the real estate value.



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 be levied:

- ▶ Before the conclusion of the act or contract, if it is a public instrument
- ▶ Within 10 days if the act or contract is effected 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 that the calculation is ratified, 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, the ITBI should be levied:

- ▶ Before the conclusion of the act or contract, if it is a public or private instrument
- ▶ Within 60 days in case of incorporation of real estate in a legal entity
- ▶ Within 30 days in case of judicial acts, counted from the date the taxpayer was made aware

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 municipal 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 see Sections 1.1 and 1.3.

2.2 Domicile

For ITCMD and ITBI, please see Sections 1.1 and 1.3.

3. Rates

The rates of ITCMD and ITBI vary depending on each of the 27 states.

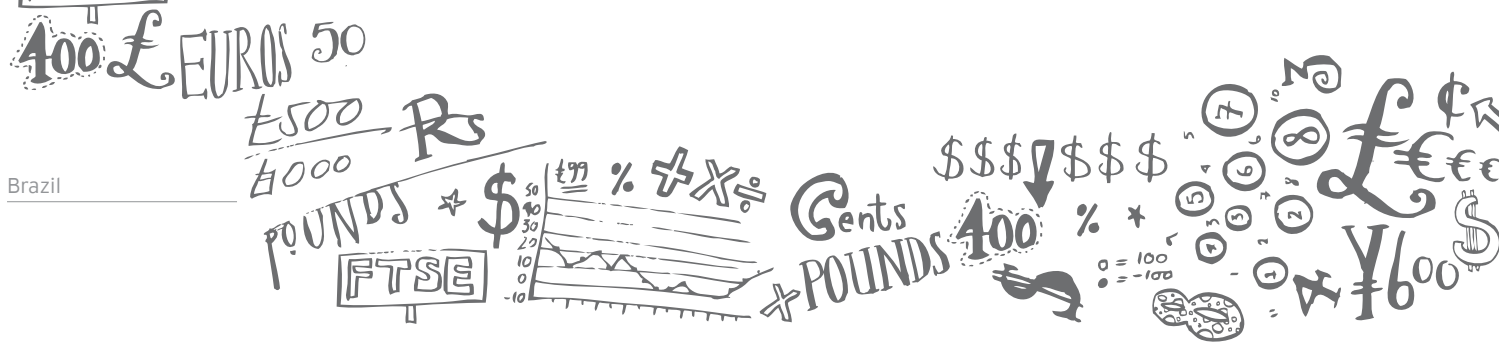
4. Exemptions and reliefs

State and municipal legislations should be observed regarding the possibility of tax exemption from ITCMD and ITBI. 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

6. Assessments and valuations





(ii) The parties do not agree with the division of assets

(iii) There is a will

A lawyer is also required for a judicial inventory.

10.2 Will

A will is a legal document that establishes that after the death of the individual, the division of assets to heirs shall be according to his last wishes. Brazilian law provides three types of wills: (i) public; (ii) closed; and (iii) private. A public will is the most commonly used will. If, at the time of death, there is no valid will, the inventory process will follow the general rules for the distribution of assets (see Section 10.3). Through a will, the individual is free to dispose of 50% of his estate. The other 50% should follow the general rules of succession (see Section 10.3).

10.3 Forced heirship rules

Brazilian law respects the rights of the deceased's descendants. At the time the inventory is opened, the rights of the children and surviving spouse must be respected. If the individual does not leave descendants, the individual's parents and his spouse will be entitled to inheritance. If there are no descendants and no ascendants, the surviving spouse will become the sole heir. If there are no descendants, no ascendants and no surviving spouse, then collateral relatives (brothers/sisters, uncles/aunts, cousins, nephews/nieces) will inherit.

It is important to note that the governing marital regime can influence the size of the estate subject to the forced heirship rules (see Section 10.4).

10.4 Matrimonial regimes and civil partnership

The matrimonial regime chosen by the couple has a direct impact on the division of assets following an individual's death.

In Brazil, there are three main matrimonial regimes:

- ▶ Community property: The property of both partners, whether acquired before or after the marriage, is treated as joint property (except for gifts received with an incommunicability clause, i.e., a clause stating that the gift belongs solely to its receiver).
- ▶ Partial community property: This is the default regime. Only the property acquired during the marriage is treated as joint property. This does not apply to any property purchased during the marriage using funds or rights that date to before the marriage (such as an inheritance).
- ▶ Separate property regime: All property acquired either before or after marriage remains the property of the individual.

Brazil also has a "stable union" that is defined as a living relationship between two individuals that is enduring and has the purpose of constituting a family. Under this type of relationship, the partial community property regime will prevail (unless there is an agreement that stipulates other rules).

As always, we recommend a case-by-case analysis.

11. Estate tax treaties

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