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TAX LAW

Tax Reform Bulletin.....	3
Administrative Council of Tax Appeals of Brazil decision on taxation of Foreign Profits	5

REGULATION

Objection to Enforcement of Foreign Contracts in Brazil Must Adhere to Brazilian Procedural Rules	6
Changes in Residence Authorization for Investor Immigrants	8

ARTICLE

The Legal Framework for Electronic Games (Federal Law No. 14,852/2024): Recognition, Innovation, and Industry Incentives	10
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Tax Reform Bulletin

Tax reform in Brazil has progressed with the approval of Constitutional Amendment No. 132, which established the basis for significant changes to the national tax system.

The reform aims to simplify the Brazilian tax system by creating the **Goods and Services Tax** (“IBS”), which will replace the state tax “ICMS” and the municipal tax “ISS”, and the **Goods and Services Contribution** (“CBS”), which will unify federal taxes “PIS” and “COFINS”, in addition to a **Selective Tax** for specific products. The expectation is that these changes will provide greater transparency, efficiency, and fairness in tax collection, facilitating taxpayer compliance with tax obligations and improving Brazil's fiscal-economic landscape.

The focus is now under regulation through bills of supplementary laws. This regulation shall detail how the new taxes and rules for collection and management will be implemented.

Currently, two main Bills of Supplementary Laws (PLPs) are under discussion: PLP No. 68 and PLP No. 103. The first, which establishes the General Law of the Goods and Services Tax (“IBS”), the Goods and Services Contribution (“CBS”), and the Selective Tax, has already been approved by the Chamber of Deputies and is now being processed in the Federal Senate, where public hearings have been held to debate the project.

During the proposal's processing in the Chamber of Deputies, changes were made to the original text proposed by the Federal Government. One of the main changes was the provision of a 26.5 percent limit for the sum of the reference rates of the IBS and CBS. If this limit is



exceeded, the Executive Branch will submit a bill of supplementary law with input from the Management Committee of IBS proposing the reduction of the rates applied to specific sectors to prevent an increase in the general tax rates.

Among other changes, the increase of CBS cashback to 100 percent on transactions involving essential services, and the inclusion of items such as cheese and meat in the list of basic basket products subject to zero tax rate.

The text also modifies the Selective Tax by including electric cars and certain games in the list of taxable items, establishing a graduated tax rate based on technology and environmental impact.

Meanwhile, PLP No. 108 aims to establish the Law for the Management and Administration of the IBS. This project is still being processed in the Chamber of Deputies, and defines how the administration, control, and distribution of the new tax revenues among the federative entities will be carried out. The approval of this law is essential to ensure the proper operation of the new tax system and the equitable distribution of resources.

With the processing of PLPs in the National Congress, society closely follows the discussions and adjustments necessary for the implementation of the tax reform. The goal is that with proper regulation, the new system can correct historical distortions, simplify processes, and promote more sustainable economic growth in the country.



Administrative Council of Tax Appeals of Brazil decision on taxation of Foreign Profits

The 1st Chamber of the Superior Board of the Administrative Council of Tax Appeals of Brazil (CARF) has ruled, by a tie-breaking vote, that profits earned by controlled or affiliated companies abroad must be taxed in Brazil. This decision applies even in countries with which Brazil has treaties to avoid double taxation.

Councilor Edeli Pereira Bessa opened the divergence that prevailed, arguing that taxation in Brazil applies to the amounts transferred to the Brazilian company, proportional to its participation.

The rapporteur, Councilor Luís Henrique Marotti Toselli, was defeated. He had supported the company's appeal based on jurisprudence from the Superior Court of Justice of Brazil (STJ), including a recent decision by Justice Regina Helena in REsp 1.633.513, which validated the non-taxation of profits earned abroad.

The specific case involved a company assessed for the Corporate Income Tax (IRPJ) on profits from its controlled and affiliated entities in Portugal and Spain. The lower chamber had previously denied the company's appeal, and this understanding was upheld by the Superior Board of Administrative Council of Tax Appeals of Brazil.

Source: Administrative Council of Tax Appeals (CARF) – Process No. 16561.720158/2013-15



Objection to Enforcement of Foreign Contracts in Brazil Must Adhere to Brazilian Procedural Rules

The Fourth Panel of the Superior Court of Justice (STJ) established, in a significant ruling, that if there is a contractual provision allowing the creditor to choose the forum for enforcement, and the creditor opts for enforcing loan agreements entered into abroad before the Brazilian Judiciary, the debtor's defense shall also be subject to Brazilian jurisdiction and procedural rules, even if it is made through a new lawsuit (a “motion to stay execution,” referred to in Brazilian Law as “embargos à execução”).

The case concerned the jurisdiction of Brazilian courts to process and adjudicate objections to the enforcement brought by Brazilian debtors against an enforcement action initiated by a foreign financial institution. The central controversy revolved around a contractual provision allowing the creditor to select the enforcement forum, as stipulated in the international contract.

According to the Civil Procedure Code of Brazil, Brazilian judicial authority has jurisdiction to process and adjudicate cases which the parties, explicitly or implicitly, submit to national jurisdiction. Thus, the validity of choosing a national jurisdiction different from the location of the contract is recognized, constituting a legally admitted case of concurrent international jurisdiction.

In this context, even though the contracts are governed by foreign law for their validity, the judicial procedure in Brazil is governed by Brazilian procedural rules, as interpreted by Articles 9, 12, and 14 of the Law of Introduction to the Rules of Brazilian Law (LINDB) and Article 22 of the Civil Procedure Code of Brazil. In the case at hand, the foreign financial



institution chose to enforce loans contracted abroad before Brazilian courts, which implies full compliance with the procedural form typical of objections to enforcement in Brazil.

The Superior Court of Justice of Brazil decision reaffirms the understanding that a foreign creditor's choice of enforcement forum results in the obligation to submit the case to Brazilian jurisdiction, including the examination and adjudication of objections to enforcement presented by debtors.

Thus, even in the presence of an ongoing liquidation process of the creditor institution in Panama, the international jurisdiction of the Brazilian judiciary for individual actions proposed in Brazil remains unaffected.

As a result of these conclusions, the debtors' special appeal was granted to overturn the decree dismissing the objections to enforcement and to order the case files to be returned to the originating court for the adjudication of the appeals, thereby rendering the creditor's special appeal moot.

Source: REsp 1.966.276/SP – Superior Court of Justice of Brazil

Changes in Residence Authorization for Investor Immigrants

The Brazilian National Immigration Council, a body linked to the Ministry of Justice and Public Security (MJSP), published a new resolution on August 22, 2024, simplifying the documentation required for residence authorization for immigrants wishing to invest in Brazil. This regulation applies to administrators, managers, directors, or executives of groups that promote foreign investments in companies established in the country, with potential for job or income generation.

The new regulation facilitates the process by allowing foreign investments to be verified through a simple proof of the currency exchange operation issued by an institution authorized by the Central Bank. This measure replaces a previous requirement to prove the payment of company capital with more complex documents, such as the current shareholder structure and the exchange contract issued by the receiving bank.

The responsibility for granting residence authorization has been transferred from the Ministry of Labor to the Ministry of Justice, centralizing the process under a single authority.

For foreign investments starting from R\$ 150,000, the regulation requires proof of the investment's purpose as direct foreign investment and the creation of at least ten new jobs within two years following the establishment of the company or the entry of the executive.

In the case of real estate investments, the previous requirement to present a declaration from a credit institution proving the international transfer of capital has been replaced by a declaration from an



institution authorized or registered with the Central Bank. This broadens the range of institutions that can issue the necessary declaration.

These changes aim to reduce bureaucracy and make the residence authorization process more accessible for investor immigrants.

Source: Resolution CNIG/MJSP No. 49, of June 25, 2024 –Ministry of Justice and Public Security.



The Legal Framework for Electronic Games (Federal Law No. 14,852/2024): Recognition, Innovation, and Industry Incentives

Davi Alecrim Ferreira Lima¹

The Legal Framework for Electronic Games, sanctioned in May 2024 and formalized as Federal Law No. 14,852/2024, marks a significant advancement for the electronic games industry in Brazil. This set of regulations governs the manufacturing, importation, commercialization, development, and commercial use of electronic games, aiming to create a more favorable and competitive business environment, as well as to increase investment capital in the sector.

Brazil is the leading and fastest-growing country in the electronic games industry in Latin America². In 2022³, the electronic games market in Brazil generated BRL 1.2 billion, highlighting its economic impact and potential for job creation, technological innovation, and underscoring the importance of this legal framework within the national regulatory system.

The new legal framework recognizes the economic, cultural, and technological significance of electronic games, establishing fiscal incentives, support for innovative entrepreneurship, and intellectual property protections. Companies in the sector will benefit from provisions under the Rouanet Law (Federal Law No. 8,313/1991) and the

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² [What Caused Brazil to Outpace the U.S. and Japan in Game Industry Growth in 2023? \(forbes.com.br\)](https://forbes.com.br)

³ [Brazil's Game Market Generated BRL 1.2 Billion in Revenue in 2022 - March 6, 2024 - Tec - Folha \(uol.com.br\)](https://uol.com.br)



Audiovisual Law (Federal Law No. 8,685/1993)⁴, which facilitate fundraising with tax incentives, encouraging the production and co-production of independent Brazilian electronic games.

Additionally, the law provides special incentives for individual microentrepreneurs (MEIs), business enterprises, cooperatives, and other organizational forms that employ innovative business models. These incentives include the potential for funding in research, human resource development, and innovation.

One of the pillars of the new legislation is consumer protection, particularly for children and adolescents. The law removes the need for prior state authorization for the development and exploitation of electronic games but mandates age classification indicators, considering the risks associated with microtransactions. In-game purchase mechanisms must ensure restrictions on transactions by minors, requiring parental consent.

The legal framework also emphasizes human resource development by encouraging the creation of educational programs and training focused on the electronic games sector. These initiatives aim to prepare young Brazilians for market demands, promoting diversity and representation in game production. The legislation allows the use of electronic games for educational, recreational, therapeutic, and training purposes, in alignment with the National Common Curricular Base of Brazil.

⁴ [Federal Government of Brazil Approves Legal Framework for Electronic Games — Ministry of Culture of Brazil \(www.gov.br\)](http://www.gov.br)



The new legal framework aligns with other legislation, such as the Consumer Protection Code of Brazil (Federal Law No. 8,078/1990), the Civil Internet Framework (Federal Law No. 12,965/2014), and the General Data Protection Law (Federal Law No. 13,709/2018). It establishes guidelines for the protection of personal data and user privacy while promoting freedom of expression and cultural diversity. The framework aims to ensure that developers adopt transparent and secure data collection and processing practices.

Despite the benefits, the implementation of the legal framework presents challenges, such as the need to balance regulation and innovation to avoid stifling developer creativity. The enforcement of age classification and protection against abusive microtransactions are technical and logistical issues that require robust and effective mechanisms.

In summary, the Legal Framework for Electronic Games represents a historic achievement for Brazil, establishing a clear and comprehensive framework for the development of the electronic games industry. With fiscal incentives, support for human resource development, and consumer protections, the legislation has the potential to transform Brazil into a hub of creativity and technology in the global electronic games landscape.





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