

Legal 500

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Brazil

Tax Disputes

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This country-specific Q&A provides an overview of tax disputes laws and regulations applicable in Brazil.

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Brazil: Tax Disputes

1. Is it necessary for a taxpayer to register with the tax authority? Are separate registrations required for corporate income tax and value added tax/sales tax?

For consumption taxes, it is necessary to obtain (i) state registration for taxpayers of the Tax on Operations relating to the Circulation of Goods and on Interstate and Intermunicipal Transportation and Communication Services (ICMS); and (ii) Municipal Tax Registration for taxpayers of the Tax on Services (ISS).

With regard to income taxation, it is necessary to choose the regime appropriate to the activity and level of income.

2. In general terms, when a taxpayer files a tax return, does the tax authority check it and issue a tax assessment – or is there a system of self-assessment where the taxpayer makes their own assessment which stands unless checked?

In the Brazilian tax system, the general rule is self-assessment (assessment by approval), but there are exceptions in which the authority makes the assessment ex officio. Self-assessment is subject to approval by the tax authority for a period of 5 years. If there are no questions during this period, tacit approval occurs.

3. Can a taxpayer amend the taxpayer's return after it has been filed? Are there any time limits to do this?

Yes, taxpayers are allowed to amend their returns for the last 5 years. However, the amendment of the return on the taxpayer's own initiative, when aimed at reducing or excluding tax, is only admissible upon proof of the error on which it is based, and before the assessment is notified. In practical terms, amendments are allowed before notification of the official assessment or the start of tax proceedings.

4. Please summarise the main methods for a tax authority to challenge the amount of tax a taxpayer has paid by way of an initial

assessment/self-assessment.

Once the taxpayer has made a self-assessment, the tax authorities have five years to approve or question it. If there are discrepancies between the tax authorities' understanding and what was declared by the taxpayer, an audit procedure is usually initiated to obtain further information and any clarifications. If, in the end, the tax authorities consider that the information provided by the taxpayer is not adequate, they may supplement the assessment by issuing a tax assessment notice. For example, the tax authorities may issue a tax assessment notice if they identify: omission of income or undeclared transactions; calculation errors in the calculation basis, rates, or deductions; improper offsets or credits (e.g., PIS/COFINS credits without backing).

5. What are the time limits that apply to such challenges (disregarding any override of these limits to comply with obligations to relief from double taxation under a tax treaty)?

In Brazil, the deadlines for the tax authority to question the amount of tax paid by the taxpayer—whether in self-assessment or ex officio assessment—are defined mainly in Articles 150, §4, and 173 of the CTN, with complementary rules in the specific legislation for each tax. The deadline is five years. For taxes subject to assessment by ratification, this period begins on the date of the triggering event. In the case of ex officio assessment, the period is counted from the first day of the fiscal year following the one in which the assessment could have been made.

The tax authorities usually argue that, in the absence of proper assessment by the taxpayer, the supplement is made ex officio, which would defer the counting of the period to the first day of the year following the occurrence of the triggering event.

In the opinion of the STJ, this understanding only prevails when the taxpayer fails to make any entry in the period assessed. If there is only a supplementary entry, the five-year rule from the occurrence of the triggering event would continue to apply.

6. How is tax fraud defined in your law?

Fraud is any intentional act or omission intended to prevent or delay, in whole or in part, the occurrence of the triggering event for the main tax obligation, or to exclude or modify its essential characteristics, in order to reduce the amount of tax due, avoid or defer its payment.

7. How is tax fraud treated? Does the tax authority conduct a criminal investigation with a view to seeking a prosecution and custodial sentence?

In Brazil, **tax fraud** can lead to **two** different **courses of action**, which often occur in sequence: **administrative tax proceedings** and **criminal proceedings**. The former is conducted by the tax authority; the latter by the Public Prosecutor's Office based on a police investigation. If there is evidence of fraud involving a crime against the tax system, the authority must refer the case to the Public Prosecutor's Office for criminal prosecution.

8. In practice, how often is a taxpayer audited after a return is filed? Does a tax authority need to have any justification to commence an audit?

There is no rule or time standard. The frequency of audits is more closely linked to the size of the taxpayer, the sophistication and complexity of their sector, and the existence of any discrepancies automatically identified by the tax authorities.

9. Does the tax authority have to abide by any standards or a code of conduct when carrying out audits? Does the tax authority publish any details of how it in practice conducts audits?

Yes, the tax authority is subject to various principles, such as legality, impartiality, morality, publicity, and efficiency. Audit procedures and their respective assessments are not public acts. Despite this, there has been significant progress in the disclosure of administrative decisions, individual tax benefits, and tax authority understandings expressed in response to consultations, which are complementary rules for the purposes of applying tax legislation.

10. Does the tax authority have the power to compulsorily request information? Does this

extend to emails? Is there a right of appeal against the use of such a power?

Yes, the tax authority has the power to compulsorily request information related to tax obligations under supervision. The content of emails is protected by the confidentiality of communications, and access to them is only possible with judicial authorization.

11. Can the tax authority have the power to compulsorily request information from third parties? Is there a right of appeal against the use of such a power?

Yes, the law establishes that notaries, public servants, financial institutions, asset managers, brokers, auctioneers, dispatchers, inventory takers, trustees, commissioners, liquidators, and any other entities or persons designated by law have the duty to provide the administrative authority with all information they have regarding the assets, businesses, or activities of third parties.

12. Is it possible to settle an audit by way of a binding agreement, i.e. without litigation?

The formal closure of an audit through a binding agreement is not yet common practice in Brazilian tax culture. Despite this, there are recent instruments developed especially within the scope of the Brazilian Federal Revenue Service that are moving towards allowing negotiated solutions for potential disagreements regarding the application of tax rules before the definitive establishment of tax credits.

In this regard, the Federal Revenue Service's Cooperative Compliance Program (Confia), still in the implementation phase, provides for the strengthening of the collaborative relationship between large taxpayers and the Federal Revenue Service, with a focus on preventing litigation, including the possibility of agreeing on prior understandings on relevant tax matters, which is close to a binding agreement.

In addition, there are programs to settle disputes before both the Revenue Service and the Attorney General's Office through Tax Transactions.

13. If a taxpayer is concerned about how they are being treated, or the speed at which an audit is

being conducted, do they have any remedies?

Yes, taxpayers who are dissatisfied with the conduct of an audit or its duration may file an administrative complaint with the ombudsman of the tax authority to which they are linked. If the expected result is not achieved and the illegality persists, taxpayers may resort to the Judiciary.

14. If a taxpayer disagrees with a tax assessment, does the taxpayer have a right of appeal?

Yes, taxpayers are guaranteed the right to defense, which can be exercised both administratively and judicially, with the guarantee of adversarial proceedings, full defense, and due process of law.

15. Is the right of appeal to an administrative body (independent or otherwise) or judicial in nature (i.e. to a tribunal or court)?

The analysis of challenges and administrative appeals depends on the structure of the tax administration body responsible for the assessment. As a rule, the challenge is reviewed, in the first instance, by a tax auditor appointed to act in the Judgment Office. The judgment of appeals is assigned to a collegiate body, usually joint, composed of representatives of the Public Treasury and taxpayers (at the federal level, the CARF), which tends to confer greater impartiality and legitimacy on decisions.

16. Is the hearing in public? Is the decision published? What other information about the appeal can be accessed by a third party/the public?

First instance decisions, as a rule, are not made public, since the proceedings take place predominantly in writing and electronically, without face-to-face sessions with the participation of the parties.

The opposite is true for appeals heard by collegiate bodies, whose sessions are usually public.

Administrative decisions are published in official gazettes or in the electronic systems of the respective federal entity, which ensures the transparency of the judgments.

17. Is the procedure mainly written or a**combination of written and oral?**

Defenses and appeals are submitted in writing, via petition. Decisions are also written. However, it is possible to submit briefs, orders, and oral arguments before the courts.

18. Is there a document discovery process?

As a rule, taxpayers must support their defense with documents that they believe prove their rights. The tax authorities may convert the trial into an investigation if they deem technical clarifications to be necessary.

In addition, as a result of the principle of material truth, the presentation of evidence after the presentation of the defense is often allowed.

19. Are witnesses called to give evidence?

The participation of witnesses in tax cases is not common in Brazil.

20. Is the burden on the taxpayer to disprove the assessment the subject of the appeal?

This issue still raises numerous discussions. With the reinstatement of the casting vote within the Administrative Council of Tax Appeals, collegiate decisions that end in a tie are decided by the vote of the President of the Judging Panel, who is always a representative of the tax authorities. In practice, the doubt ends up prevailing in favor of the treasury.

21. How long does an appeal usually take to conclude?

It depends on the Federated Unit. Within the scope of the Administrative Council of Tax Appeals, cases usually take an average of three years to be judged in the Ordinary Chamber and 255 days in the Superior Chamber.

With the implementation of IARA (Artificial Intelligence in Administrative Appeals), the total processing time for an administrative case at the federal level is expected to be reduced to two years.

22. Does the taxpayer have to pay the assessment pending the outcome of the appeal?

No, the enforceability of the tax credit remains suspended

while pending a final judgment in the administrative sphere, according to Article 151, III of the CTN.

23. Are there any restrictions on who can conduct or appear in the appeal on behalf of the taxpayer?

In the administrative sphere, taxpayers may be represented by their lawyer, accountant, or other legal representative of the company, provided they have powers granted by the articles of association or power of attorney. However, it is recommended that representation be provided by a lawyer, especially in appeals.

Current public servants should not represent taxpayers. Similarly, it is not recommended that current members of the administrative court do so.

24. Is there a system where the “loser pays” the winner’s legal/professional costs of an appeal?

In administrative proceedings, there is no imposition of costs on the losing party, which is restricted to certain legal actions.

25. Is it possible to use alternative forms of dispute resolution – such as voluntary mediation or binding arbitration? Are there any restrictions on when this alternative form of dispute resolution can be pursued?

Currently, the tool that most closely resembles a consensus-building technique in Brazil is the tax settlement. There are other programs, such as Confia, still in the testing phase, which seek consensus-building techniques before litigation arises.

26. Is there a right of onward appeal? If so, what are all the levels of onward appeal before the case reaches the highest appellate court.

Generally, the administrative process includes a first-instance defense and two appeal courts (ordinary and special). In the Judiciary, there are the First and Second Instances, in addition to the exceptional instances (special and extraordinary), the Superior Court of Justice, and the Federal Supreme Court.

27. What are the main penalties that can be

applied when additional tax is charged? What are the minimum and maximum penalties?

The amounts vary according to the nature of the infraction, whether there is fraud, tax evasion, omission of declarations, among other aspects. Fines also vary according to each feder tity. Normally, the amount applied is a 75% fine, but this amount may be higher in cases of fraud. The Supreme Federal Court has been dismissing fines exceeding 100% of the tax amount, as they are considered confiscatory.

28. If penalties can be mitigated, what factors are taken into account?

The mitigation of the penalty will also vary depending on the federated entity. Generally, elements such as the taxpayer’s history and the existence or not of tax payable as a result of the penalized infraction are taken into account. There is also usually mitigation of the penalty in cases of spontaneous payment within a certain period, accompanied by confession of the debt and waiver of the right to challenge it in court.

29. Within your jurisdiction, are you finding that tax authorities are more inclined to bring challenges in particular areas? If so, what are these?

In Brazil, both the Federal Revenue Service and the state and municipal finance departments have focused their enforcement efforts on areas and operations that present a higher risk of evasion or legal controversy. This is reflected in the annual enforcement plans published by the Federal Revenue Service and in recurring sectoral operations.

Within the Union, the Federal Revenue Service publishes the Annual Inspection Report, which presents a summary of the results for 2024 and the planning topics for 2025, providing data, actions, and priorities.

Among the main points for 2024 are: combating the misuse of tax losses and PIS/Cofins credits, adapting to new legislation (transfer pricing, JCP, closed-end funds, and the Lei do Bem), initiating actions involving crypto assets, marketplaces, and CRS application.

With regard to planning for 2025, some issues are priorities, such as: adapting to the Consumption Tax Reform (CBS, IBS, IS), operationalizing taxation on digital platforms, inspecting investment subsidies, controlling the misuse of tax losses and PIS/Cofins credits, taxing

the "Thesis of the Century," monitoring JCP, funds, crypto assets, fixed-odds betting, improper adherence to Perse, Lei do Bem, digital operations, and foreign accounts.

30. In your opinion, are there any areas which taxpayers are currently finding particularly difficult to deal with when faced with a challenge by the tax authorities?

Several areas and issues, such as: Transfer pricing and

international transactions; Tax planning and goodwill; ICMS – Tax substitution and tax benefits.

31. Which areas do you think will be most likely to be the subject of challenges and disputes in the next twelve months?

Taxation of digital transactions and e-commerce; transfer pricing and international transactions; corporate reorganizations and goodwill; tax incentives and state benefits; taxation on distributed profits and dividends.

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