



# Thinking beyond borders: Management of extended business travelers - Brazil



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**01**

**Key message**

Any individual that is considered a resident for tax purposes in Brazil is subject to Brazilian taxation over worldwide income (wages, interest, dividends, rental income, capital gains, etc.) under certain circumstances. Different circumstances prevail for extended business travellers to Brazil, depending on the type of visa they hold.

# 1 Key message

Extended temporary visas without a labor contract with a Brazilian employer who stay less than 183 days during any 12-month period may be able to avoid taxation in Brazil, if none of their wages is paid by a Brazilian entity, as they are considered non-residents.

**02**

# **Income tax**

# 2 Income Tax

## 2.1 Liability for income tax

### Tax residency

#### Temporary visas – with or without an employment relationship with a Brazilian entity

The holder of a temporary work visa with an employment relationship with a Brazilian entity is also considered to be a resident for tax purposes from the day of arrival.

If there is no employment relationship with a Brazilian entity, the holder of a temporary work visa will be considered a resident for tax purposes (i) as from the 184<sup>th</sup> day of physical presence in Brazil, consecutive or not, within any 12-month period, beginning on the date of arrival, or (ii) as from the date when obtaining a permanent visa, whichever occurs first.

#### “RN 11” Visa – Board of Directors Representation

A foreign national who enters Brazil with a temporary visa for work purposes, with no employment relationship in Brazil, consists of carrying out the activities of an administrator, manager, director or executive with management powers, to represent civil or commercial society, group or economic conglomerate - legal entity, is considered to be a resident for tax purposes from the day of arrival and, therefore, is subject to tax on worldwide income from the 1st day of physical presence in Brazil. This type of visa is mandatory for individuals who will be responsible for a company in Brazil, that is, the company's administrator. This visa is like the former Permanent Visa, which is not applicable in Brazil since 2017.

### Non-residency

A foreign national who is a non-resident of Brazil for tax purposes is not subject to tax on remuneration paid outside Brazil. Foreigners arriving in Brazil who are holders of temporary visas without an employment contract with a local company, before completing 183 days (consecutive or not) of stay in Brazil, counted within any period of 12 months, are considered non-resident taxpayers.

The general rule is that a person who is a resident of Brazil is assessable on worldwide income. Non-residents and temporary residents are generally assessable on income derived directly or indirectly from sources in Brazil. Income considered to be offshore is tax-exempt.

Extended business travellers are likely to be considered non-residents of Brazil for tax purposes and may be considered tax-exempt if they enter on a visit visa, for business purposes. All their wages must be paid abroad, and no part of their wages can be paid pursuant to a local contract or a technical assistance agreement, exceptions are made in relation to daily allowances, for instance. A business visa is not considered a work permit, so these individuals are not permitted to perform remunerated activities. They can perform ancillary activities such as conducting meetings, participating in seminars, meeting customers and suppliers, prospecting the local market, and so on. It is important to mention, however, that a business visa subjects the individual to the counting of 183 days as mentioned above.

## 2.2 Definition of source

Employment income is generally treated as Brazilian-sourced compensation where the individual performs services pursuant to a local contract or a technical assistance agreement between a Brazilian company and a foreign company.

A Brazilian tax resident's wages paid through Brazilian payroll is taxed at the source, and any portion of these wages paid through a foreign source is taxed in Brazil on a monthly calculation named Carnê-Leão, which is a Brazilian monthly income tax calculation.

## 2.3 Tax trigger points

Technically, there is no threshold/minimum number of days that exempts the employee from the requirements to file and pay tax in Brazil. To the extent that the individual qualifies for relief in terms of the dependent personal services article of the applicable double tax treaty, there will be no tax liability.

## 2.4 Types of taxable income

- Employment wages paid by a Brazilian entity are subject to withholding at the source.
- Income from investments held in Brazil is subject to withholding at the source.
- Income earned abroad (such as salary wages, rental, among others) is calculated in a monthly basis through Carnê-Leão.
- Capital gains from assets held in Brazil and abroad (excluded gains from foreign financial investments) are subject to a progressive tax table as follows (figures in Brazilian Reais ("R\$")):
  - 15% – capital gains up to R\$ 5 million;
  - 17.5% – capital gains between R\$ 5 million and R\$ 10 million;
  - 20% – capital gains between R\$ 10 million and R\$ 30 million;
  - 22.5% – capital gains over R\$ 30 million.

The capital gains tax is applicable on the sale of real estate, vehicles, objects of art and collectibles sold in Brazil or abroad among others. Non-residents are only subject to capital gains tax on assets sold within Brazil. The gain is equal to excess of the sales price over the cost value of the asset sold. There are certain exemptions applicable to these situations.

Gains from the sale of stock on a Brazilian stock exchange, or comparable institutions, are subject to variable income taxation. In this case, losses may be offset from gains incurred within the same month or subsequent months. Gains received from sales of stocks on the Brazilian stock exchange will be treated as variable income and will be taxed at a flat 15% rate for common sales and at a flat 20% rate for day-trade transactions. All net gains realized from the sale of stocks and gold on the Brazilian stock exchange and markets will be tax exempt, if the total sales are equal to or less than BRL 20,000 per month for Brazilian stocks (common sales only, as there is no exemption allowed for day-trade operations), and or BRL35,000 per month for other assets.

According to internal legislation, any income received by a Brazilian resident for tax purposes is taxable in Brazil (such as wages, allowances, rental income, etc.) under a progressive tax table with tax rates from 0 percent up to 27.5 percent. Tax treaties can help avoiding double taxation and should be analyzed individually.

Stock option exercises are not expressly regulated, and they are likely to be taxed, depending on the conditions of the plan.

Employer-provided stock options are not expressly regulated in Brazil. Depending on the circumstances of the plan, in general stock options are taxable at the time of exercise. The gap between the market price and the strike price may be considered employment income and taxed at a maximum of 27.5% tax rate. In addition, any capital gain arisen from the sale of the stocks in Brazil, that are not considered variable

income (stock exchanged traded stocks) are taxed according to the capital gain tax table (from 15% to 22.5%).

Regarding income derived from financial investments held abroad, such as (but not limited to) interest, dividends, and proceeds from foreign stock sales, the Brazilian government has recently enacted Law 14.754/2023, which came into effect on January 1st, 2024. This law significantly changed the methodology and tax rates for the aforementioned types of income. Going forward, individuals who are tax residents in Brazil and receive interest and dividends from foreign-held assets abroad will only have to pay taxes annually, together with their annual tax return, which must be filed between March 15th and May 31st. Some important changes have been made in relation to previous exemption scenarios, such as the exemption for exchange rate variation on the sale of assets acquired originally using foreign currency, which is now taxable. Additionally, the exemption related to assets acquired outside Brazil while non-resident for tax purposes has been eliminated. With the new law in force, any foreign asset held by an individual, regardless of whether it was acquired during their tax residency period or not, is subject to capital gain taxation upon sale. This information is relevant for individuals seeking to understand Brazilian tax laws in relation to foreign investments. It is important to note that the law also imposes different tax treatment for trusts and offshore controlled companies. As an example of the impact of the law, taxpayers may elect in the tax return to be filed in May 2024 whether they want to adopt opacity or transparency to report offshore companies in the tax return. There are no provisions for Wealth Tax in Brazil. There are municipal and state taxes over real estate assets and automotive vehicles, although capital gains can be subject to a minimum of 15% tax rate in Brazil.

For extended business travellers, the types of income that are generally taxed are employment income, Brazilian-sourced income, and gains from taxable Brazilian assets (such as real estate). Typical allowances can be applied to employment income.

## 2.5 Tax rates

Net taxable income is taxed at graduated rates ranging from 0 percent to 27.5 percent for resident taxpayers. The maximum tax rate is currently 27.5 percent on income earned over BRL 4,664.68 monthly. Non-residents are subject to a flat 25 percent tax rate on Brazilian-sourced employment income paid through a Brazilian payroll, regardless the amount received.



**03**

# **Social security**

# 3 Social security

## 3.1 Liability for social security

Any employee on a Brazilian payroll is subject to social security contributions. The rates vary depending on the individual's salary level.

Currently, social security contributions are withheld at progressive rates of 7.5%, 9%, 12% and 14% of total monthly gross salary, up to a prescribed maximum amount ("cap"), which is currently BRL 908.86 (for Calendar Year 2024).

The employer's social security contribution ("INSS") is determined at the rate of 20% (general) or 22.5% (financial institutions), but total social charges can go up to 28.8% percent of the total payroll, with no limitation on the amount of earnings subject to contributions. The employer rates are determined under very specific circumstances.

### Brazilian indemnity severance fund

The employer is also subject to an 8 percent contribution on the total compensation paid to the employees in favour of the Brazilian Indemnity Severance Fund ("FGTS").

In summary:

Paid by			
Type of insurance	Employer (percent)	Employee (percent)	Total (percent)
Social security	20% – 28.8%	7.5%, 9%, 12% or 14%, with 'cap' of BRL 908.86 (for 2024)	Varies
Severance indemnity ("FGTS")	8%	none	8%

Brazil has signed social security agreements ("totalization agreements") with the following countries/territories:

Argentina, Belgium, Bolivia, Canada, Cape Verde Island, Chile, Ecuador, El Salvador, France, Germany, Greece, India, Italy, Japan, South Korea, Luxembourg, Paraguay, Peru, Portugal, Quebec, Spain, Switzerland, United States and Uruguay.

Austria, Bulgaria, Israel, Mozambique, and Czech Republic are in process of ratification by the National Congress and are not in force yet.

The main goals of the social security treaties are to make sure the working time in one country/territory is valid towards the minimum working period for retirement purposes in the other country/territory, to allow the cooperation between Brazil and overseas authorities in enforcing their respective laws, and to guarantee the individual's rights. There are several questions on whether such treaties are effective in avoiding social security taxation.

**04**

# **Compliance obligations**

# 4 Compliance obligations

## 4.1 Employee compliance obligations

The taxpayer is required to file a tax return by the last business day of May, of the year following the end of the taxable year, which is 31 December. Income tax is levied at progressive rates on an individual's taxable income for the year, which is calculated by subtracting allowable deductions from the total assessable income. Non-residents are taxed at a flat rate of 25 percent and the taxation is definitive, not subject to adjustment in the tax return since the non-residents do not need to file a tax return in Brazil.

There is no provision for an individual to obtain an extension of time for filing the return. Late-filed returns are subject to a penalty and interest. Any balance due with the annual tax return must be paid on the last business day of May. The taxpayer, however, is given the option to pay the balance in eight monthly instalments, subject to interest charges, beginning on the first business day after the final filing date.

Resident taxpayers are required to pay income tax on their worldwide income on a monthly cash basis. Resident taxpayers are subject to a withholding tax system on their Brazilian-sourced employment income based on a progressive tax table. They are also subject to the Brazilian monthly income tax on the sum of their offshore income (wages, compensation, rental income, capital gains, etc.) and to file annual Brazilian income tax returns.

Resident taxpayers are required to pay monthly income tax (Carnê-Leão) on income that was not subject to withholding tax by any other local source. Generally, this means offshore income and income received from other individuals, such as rental income.

This tax is also calculated based on a progressive tax table. The payment must be made up to the last business day of the following month.

Non-resident individuals are not required to file a Brazilian annual tax return. Brazilian-sourced income paid through a Brazilian payroll is subject to the flat tax rate at source.

Declaration of Brazilian assets held outside Brazil to the Central Bank of Brazil (DCBE) is applicable to all residents of Brazil who maintained such status on 31 December and who had, on that date, foreign-held assets and rights whose value is equal to or more than 1.000,000 US dollars (USD) or the equivalent in other currencies.

**05**

**Other issues**

# 5 Other issues

## 5.1 Double taxation treaties

In addition to Brazil's domestic arrangements that provide relief from international double taxation, Brazil has entered double taxation treaties with 35 countries/territories to prevent double taxation and allow cooperation between Brazil and overseas tax authorities in enforcing their respective tax laws.

Reciprocity of treatment is also admissible between Brazil and the US (\*), the UK, and Germany. In order to apply for foreign tax credits from other countries, the taxpayer should be able to prove the reciprocal treatment from the other country.

(\*) IMPORTANT: in December 2021, a New Regulation for Crediting Foreign Taxes (TD 9959) was issued in the United States, which may impact the effects of the country's tax reciprocity treatment with Brazil. According to the new rules imposed in the USA, the use of tax credits paid in other countries will only be allowed if they have similar legislation to the United States. As the Brazilian legislation is different from that of the United States, the USA may no longer accept Brazilian income tax as a tax credit in the United States. In this case, reciprocity of treatment would cease to exist, an essential requirement for Brazil to consider federal income tax paid in the United States as a credit that can be offset against income tax determined in Brazil, pursuant to Brazil's SRF Declaratory Act No. 28/2000.

## 5.2 Permanent establishment implications

Permanent establishment (PE) could be created as a result of extended business travel, but this would depend on the type of services performed and the level of authority the employee has.

A PE is created when the individual remains in the country/territory acting on behalf of the employer while making decisions and deals on the employer's behalf.

## 5.3 Exchange control

Brazil has strict foreign exchange controls, and remittances abroad may encounter several Central Bank restrictions. Although remittances that fit into pre-set categories already defined by the Brazilian Central Bank may not find difficulties in processing, remittances that cannot be classified into the pre-set categories will probably need approval from the Brazilian Central Bank prior to processing.

All remittances of funds from Brazil abroad above BRL10,000 must be made through the official banking system and require certain documentation from the bank.

Most common pre-set categories are:

- real estate purchase
- contribution to home country/territory retirement plans by expatriates employed in Brazil
- transfer of personal assets (when leaving the country/territory)
- inheritance
- contributions to associations
- business trips
- payments in support of dependents abroad

- educational pursuits
- medical treatment
- rental payments
- use of data services
- credit cards.

## 5.4 Non-deductible costs for assignees

Non-deductible costs for assignees include contributions by an employer to non-Brazilian pension funds.

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