

## Private client law in Brazil: overview

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### TAXATION

#### Tax year and payment dates

#### 1. When does the official tax year start and finish in your jurisdiction and what are the tax payment dates/deadlines?

The fiscal year in Brazil starts on 1 January and ends on 31 December. There are two main taxes concerning private clients:

- **Income tax (IR).** Income tax is withheld by legal entities making payments to individuals, so there is no need to discuss payment dates. Income received from other individuals or from a foreign source are subject to taxation under the *Carnê-leão* system, which is due on the last business day of the month following the earning of the income.
- **Gift and succession tax (ITCMD).** ITCMD has different timing rules for lifetime donations and succession. Lifetime donations tax is due on the date of the donation, whereas the succession transfer must be paid within 180 days from the start of the probate procedure or 30 days after the judge determines its payment.

#### Domicile and residence

#### 2. What concepts determine tax liability in your jurisdiction (for example, domicile and residence)? In what context(s) are they relevant and how do they impact on a taxpayer?

##### Domicile

Tax liability in Brazil is determined by the individual's residence status and not his domicile.

##### Residence

Tax residency in Brazil is determined according to the general test of physical presence in Brazil for 183 days within a 12 month period. If the test is met, the individual automatically becomes liable for his worldwide assets and income.

Tax residence is also imposed on foreign nationals acquiring a permanent visa or temporary work visa. In these cases, liability to Brazilian taxation commences on arrival in Brazil.

#### Taxation on exit

#### 3. Does your jurisdiction impose any tax when a person leaves (for example, an exit tax)? Are there any other consequences of leaving (particularly with regard to individuals domiciled in your jurisdiction)?

Brazil has not implemented an exit tax.

When leaving the country for a long period (for example, when relocating), to cease to be liable to tax, it is important to notify the tax authorities about the change in residency status.

The individual must file a specific communication to the federal tax authorities (*Declaração final de Saída*) and pay the eventual taxes due. In addition, other institutions must be notified, such as the Central Bank, federal pension authority (if applicable) and other paying entities, including banks.

If the individual maintains assets in Brazil, he must also present his relevant yearly income tax forms.

#### Temporary residents

#### 4. Does your jurisdiction have any particular tax rules affecting temporary residents?

There is no specific rule for temporary residents.

#### Taxes on the gains and income of foreign nationals

#### 5. How are gains on real estate or other assets owned by a foreign national taxed? What are the relevant tax rates?

Income derived from real estate is subject to two alternative tax treatments according to its origin:

- Capital gains deriving from the sale of the real estate is taxed at a rate of 15%. The Brazilian Federal Revenue Service has specialised software available to tax payers to calculate the gain to be taxed.
- Rental income receives different tax treatment and follows the general tax rates applicable to individuals. In 2015, these are, for a base income of:
  - up to BRL1,787.77, no tax is applicable;
  - between BRL1,787.78 to BRL2,679.29, the tax rate is 7.5% (deduction BRL134.08);
  - between BRL2,679.30 to 3,572.43, the tax rate is 15% (deduction BRL335.03);
  - between BRL3,572.44 to BRL4,463.81, the tax rate is 22.5% (deduction BRL602.96);
  - above BRL4,463.81, the tax rate is 27.5% (deduction BRL826.15).

Brazilian tax legislation allows deductions on the IRPF (Federal Income Tax) for the following paid expenses:

- Social security contributions paid to the National Institute of Social Security.
- Spousal maintenance payments (alimony).
- Dependents. Deductions are available for dependents (including spouse, children, parents and others).
- Education expenses of both the tax filer and their dependents (limited to BRL3,091,35 each year).

- Some health expenses, including doctor, dentist and laboratory fees, psychologists, hospitals and x-ray examinations.

These expenditures should be recorded and deducted from reported taxable income when the annual adjustment is made.

## 6. How is income received by a foreign national taxed? Is there a withholding tax? What are the income tax rates?

Income deriving from salaries and wages is subject to income tax at the rate of 25% and is withheld at source (financial institutions are required to retain the tax). If a tax treaty is available there may be reductions in this rate.

Brazilian source investment income is also subject to withholding income tax.

However, a special tax treatment applies to income arising from foreign investments in Brazil earned in financial transactions. With the exception of capital gains, income is taxed as follows:

- 10% on foreign investments in variable income funds, swap transactions, and transactions carried out on futures markets.
- 15% for other cases, including fixed-rate income investments and shares.
- 0% for public bonds (*Federal Law No. 11,312/06*). This exemption applies to public bonds acquired after 16 February 2006. This exemption is not applicable if the investor is based in a privileged taxation jurisdiction.

Fixed income investment tax treatment is determined by Federal Law No. 11.033/04 and IN-SRB 1022/2010. Withholding tax applies to the income earned by residents of Brazil and residents of low-tax jurisdictions deriving from financial investments in fixed and variable income instruments, including swap transactions. The tax rates decrease according to the period for which the investment is maintained in the respective fund as follows:

- Up to 180 days: 22.5%.
- Between 181 to 360 days: 20%.
- Between 360 to 720 days: 17.5%.
- More than 720 days: 15%.

### ***Inheritance tax and lifetime gifts***

## 7. What is the basis of the inheritance tax or gift tax regime (or alternative regime if relevant)?

Instead of using the concept of gift or inheritance, Brazilian legislation focuses on the transfer and succession aspects. Therefore, the following taxes are relevant for this purpose.

### ***Real Estate Transfer Tax (Imposto Sobre Transmissão de Bens Imóveis) (ITBI)***

ITBI is a municipal tax that becomes due on the *inter vivos* transfer of real estate. It applies only in transfers between living individuals and/or entities and is only applicable to real estate.

### ***Succession and Donation Tax (Imposto Transmissão Causa Mortis e Doação) (ITCMD)***

The ITCMD has a double purpose, to tax lifetime donations as well as succession. Both purposes are based on the effective transfer of assets or rights. This tax is established by state law and each state has different rules and tax rates. However, there is a federal limit established by the Brazilian Senate of 8%.

The imposition of ITCMD excludes liability to ITBI.

## 8. What are the inheritance tax or gift tax rates (or alternative rates if relevant)?

### **Tax rates**

Tax rates, base and procedures may vary for each municipality in the case of Real Estate Transfer Tax (ITBI). Succession and Donation Tax (ITCMD) may vary for each state. However, the Brazilian Senate determined the maximum ITBI and ITCMD rates to be applied by the municipalities and states respectively. Currently, the maximum ITCMD rate is 8%, and the maximum ITBI rate is 4%.

### **Tax free allowance**

Tax free allowances may be available but vary in accordance with municipal and state legislation. For example, in the case of the state of São Paulo, allowances under BRL53,125 per year are not taxed by the ITCMD.

### **Exemptions**

**ITCMD.** There are tax exemptions for:

- Successions up to the value of BRL159,375.
- Donations up to the value of BRL53,125 (per year).

**ITBI.** The transfer of real estate from an individual or entity to another entity as payment for the subscription of capital is usually tax exempt. The same exemption applies when the transfer takes place as a result of a merger. However, these exemptions do not apply when the company receiving the real estate has as its main activity, for example, the development, construction, sale and rental of real estate properties.

### **Techniques to reduce liability**

The Brazilian legal system offers various planning techniques for succession and asset optimisation. The options include:

- Lifetime donations.
- Retention of usufruct.
- Family holding company.

There are also over-the-counter options offered by banks that consist of two different types of life insurance or pension funds:

- *Vida Gerador de Benefício Livre* (VGBL).
- *Plano Gerador de Benefício Livre* (PGBL).

This product offers the advantage of avoiding ITCMD taxation and the probate procedure. However, depending on the type of product chosen, consideration should be given to the income tax liability associated with investment gains on the policy or on its surrender.

Additionally, there has been some recent cast law in which some states (Minas Gerais is one) have been arguing that such life insurances are mere financial investments and therefore should normally be taxed. To date, this is not the case in São Paulo State.

Setting up a family holding company is quite a common method of planning estate and wealth succession. The heirs may be donated an equity interest in the holding company. Depending on the class of assets some taxes may be reduced and others may be increased. Transfers to the heirs can be easily organised via the distribution of dividends, which are tax exempt.

### **Other**

Lifetime donation is an attractive planning tool that can entail a higher degree of control than a transfer on death.

One of the expected tax changes in Brazil relates to a possible increase in the current rates of inheritance tax. The tax may become progressive at higher rates in the near future. The transfer

of property in life through donation may represent efficient tax planning if implemented before the change in laws.

If lifetime donation is elected, retention of usufruct is highly advisable, so that although the title is transferred to the heirs, any income deriving from the asset (for example, rents) and decisions over the company's business ultimately lie with the individual holding the usufruct.

Other simple yet significant measures to protect heirs in will-drafting to ensure that ownership of the property continues to belong to the designated heir and is not dissipated or transferred to undesired parties, include clauses of:

- Non-conveyance (*inalienabilidade*).
- Non-communicability (*incomunicabilidade*).
- Non-attachment (*impenhorabilidade*).

#### 9. Does the inheritance tax or gift tax regime apply to foreign owners of real estate and other assets?

The regime applies equally to foreign owners of real estate as the Brazilian tax system regarding succession and donation is based on the transfer of assets.

#### 10. Are there any other taxes on death or on lifetime gifts?

There are no other taxes on death or lifetime gifts.

#### *Taxes on buying real estate and other assets*

#### 11. Are there any other taxes that a foreign national must consider when buying real estate and other assets in your jurisdiction?

##### **Purchase and gift taxes**

There are no specific purchase and gift taxes other than mentioned in *Question 7*.

##### **Wealth taxes**

There is no wealth tax in Brazil.

#### 12. What tax-advantageous real estate holding structures are available in your jurisdiction for non-resident individuals?

There is no difference of tax treatment between foreign nationals and Brazilian citizens when it comes to tax advantages of holding structures. If the purpose is to invest in real estate to create income-derived from rent, the best way to structure the investment is via a corporate holding structure that will decrease the income tax from 27.5% on the individual level to approximately 14% on the corporate level. Of course other specific matters must be observed and varies according to the size and type of investment.

#### *Taxes on overseas real estate and other assets*

#### 13. How are residents in your jurisdiction with real estate or other assets overseas taxed?

Real estate located overseas belonging to Brazilian residents are subject to succession and donation tax. That is if the probate is executed in Brazil and if the recipient of the donation is resident in

Brazil. Capital gains on the sale of real estate and income deriving from rent are also subject to Brazilian taxation.

#### *International tax treaties*

#### 14. Is your jurisdiction a party to many double tax treaties with other jurisdictions?

Brazil has signed 31 treaties to avoid double taxation, for example, with Germany, France and Japan. Brazil has also signed the Exchange of Tax Information Treaty with the US, which was introduced into domestic law via Federal Decree No. 8003/2013.

#### **WILLS AND ESTATE ADMINISTRATION**

##### *Governing law and formalities*

#### 15. Is it essential for an owner of assets in your jurisdiction to make a will in your jurisdiction? Does the will have to be governed by the laws of your jurisdiction?

It is not essential to have a will, as the law already provides comprehensive rules within the Civil Code, including forced heirship. Any will prepared and registered in Brazil must comply with Brazilian law.

The will of a foreign individual, prepared and registered outside Brazil, can elect the law of the foreign jurisdiction. Foreign law will be applicable to the will to the extent it does not diminish the legal rights of potential Brazilian heirs. Any diminishment will be deemed void by a Brazilian court.

#### 16. What are the formalities for making a will in your jurisdiction? Do they vary depending on the nationality, residence and/or domicile of the testator?

The formalities of registering a will do not vary according to the nationality of the testator, but foreign residency increases the level of bureaucracy.

The Civil Code prescribes several options to the testator, but, of particular relevance to private client, are the rules regarding public, closed and private wills:

- **Public will.** This is the most common form. A public will is drafted by a civil notary from the Civil Registry Office. The notary must be qualified and nominated according to stringent Government criteria and is under the control of the authorities. The will must be duly recorded in the Registrar's Books. This type of will demands witnesses and the reading of the will's content to the testator and witnesses.
- **Closed will.** A closed will can be drafted and signed by the testator. To be valid, it must also be:
  - filed for registration;
  - delivered to a civil notary in the presence of two witnesses, approved, stamped and signed in the presence of the testator and the witnesses. The will is closed and delivered to the testator. The civil notary registers only the testator's details, the time and date of the will.
- On the death of the testator, the will is submitted to court and the probate judge orders its registration and execution.
- **Private will.** The testator may prepare the will, read out loud and sign it before three witnesses that must also sign the document. On the death of the testator, the will must be submitted to the probate judge for confirmation by the heirs and witnesses.

## Redirecting entitlements

### 17. What rules apply if beneficiaries redirect their entitlements?

It is not possible to redirect entitlements per se, but once the assets are distributed, the heirs are free to dispose of the assets. There is also the option for the heir to renounce the rights to his portion. This is then divided among the same class of heirs.

#### Validity of foreign wills and foreign grants of probate

### 18. To what extent are wills made in another jurisdiction recognised as valid/enforced in your jurisdiction? Does your jurisdiction recognise a foreign grant of probate (or its equivalent) or are further formalities required?

#### Validity of foreign wills

Wills prepared and executed in a foreign jurisdiction must abide by the law of that jurisdiction (*lex loci actus*), and other requirements (*Question 15*).

In terms of formalities, in order to be valid in Brazil, a will produced and registered in a foreign jurisdiction must be:

- Notarised in the jurisdiction of origin.
- Legalised before the Brazilian Consulate or Embassy of the jurisdiction of origin.
- Translated by a sworn and registered translator into Portuguese.
- Registered before the notary or registry of documents and titles.

Once the above formalities are executed, the foreign will may be presented to the local probate judge for consideration.

#### Validity of foreign grants of probate

A grant of probate is a foreign document and is similar to that issued by a Brazilian court to the manager of the estate, granting management powers. The validity of the foreign document is limited in Brazil, but could be regarded by the court when appointing a local executor for the local probate. If no probate is started in Brazil, the grant of probate will be of little use before the authorities.

#### Death of foreign nationals

### 19. Are there any relevant practical estate administration issues if foreign nationals die in your jurisdiction?

The treatment of foreign nationals who die in Brazil is the same as for Brazilian nationals.

#### Administering the estate

### 20. Who is responsible for administering the estate and in whom does it initially vest?

#### Responsibility for administering

When a will is made and an executor is appointed, the administration of the estate is attributed to the executor. If no executor has been appointed, enforcement of the will and administration of the estate is carried out by the deceased's spouse and children or a third party appointed by the judge.

The executor's powers include:

- Sale of the deceased's assets.

- Payment of the outstanding debts of the deceased.
- Use of the existing resources of the estate for the conservation of the estate.

The powers of the executor are limited and controlled by the judge or court in charge of the probate procedure. For example, the sale of assets is subject to the written authorisation of the court. A sale of assets without the court's consent is void and reversible.

#### Vesting

Succession of the estate is immediate for heirs, but formal vesting depends on the court's decision, which involves the appointment of an executor or, in the absence of an executor, the appointment of the closest heir, usually the surviving spouse.

### 21. What is the procedure on death in your jurisdiction for tax and other purposes in relation to:

#### Establishing title and gathering in assets

A first list of assets comprising the estate must be presented by the executor within 20 days from the date of appointment.

If doubt arises over the inclusion or exclusion of a particular asset, the matter must be decided by the judge, after hearing the involved parties. The decision of the court must consider eventual rights of third parties.

#### Procedure for paying taxes

As succession tax (ITCMD) is a state tax, the procedure for paying the tax varies from state to state. In São Paulo State, ITCMD is due within 30 days after the judicial decision about the distribution of assets among heirs and their corresponding values.

#### Distributing the estate

Once the list of assets is considered complete, the judge appoints an expert to present a draft of the distribution of the assets. The draft contains the following:

- Division of the assets in accordance with the provisions of the applicable law.
- Proposal to the heirs, including the evaluation of the assets and their division.

The expert's proposal is considered final and definitive when all heirs agree to the distribution of the assets proposed by the expert. If an agreement cannot be reached, the court must determine the final division of the assets irrespective of the heirs' disagreement.

### 22. Are there any time limits/restrictions/valuation issues that are particularly relevant to an estate with an element in another jurisdiction?

There is no special limit or restrictions relevant to an estate with international elements.

### 23. Is it possible for a beneficiary to challenge a will/the executors/the administrators?

It is possible to challenge the will. However, the statute of limitations restricts the right to challenge after five years from the date of registration of the will. To challenge the will, the challenger must prove any of the following, that the will:

- Benefited someone due to the coercion of the testator.
- Benefited an undefined person.

- Empowers one heir to establish the value of his or her portion of the estate.
- Favours the notary public, witnesses or any party involved in the registration or execution of the formalities of creating the will.

The executor can also be challenged if he:

- Fails to present the assets of the estate.
- Fails to promote the probate proceedings.
- Causes damage to the estate by negligence.
- Fails to represent the estate accordingly.
- Fails to account to the heirs.

## SUCCESSION REGIMES

### 24. What is the succession regime in your jurisdiction (for example, is there a forced heirship regime)?

Brazil imposes forced heirship rules over 50% of the estate of the individual. The other 50% may be freely disposed of.

As in many other jurisdictions, the governing marital regime can influence the size of the estate subject to the forced heirship rules.

The surviving spouse is entitled to either half of the deceased's assets acquired:

- After the marriage, under the partial communion of assets regime and the participation in acquêts regime.
- Before and after the marriage, under the total communion of assets regime.

Therefore, the size of the estate subject to the forced heirship rules includes:

- One-half of the deceased's assets excluding the surviving spouse's portion under the marital regime.
- Assets acquired by the deceased before his marriage or donated to or inherited by him, minus funeral expenses and the deceased's debts.

In most cases, only 25% of the deceased's estate may be administered by will.

The Civil Code of 2002 granted to spouses and civil partners the status of forced heir, along with descendants and ascendants.

The forced heirship participation is subject to the following order:

- The descendants and the surviving spouse, except if the deceased was married under the total communion of assets regime or the total separation of assets regime; or under the partial communion of assets regime if the deceased person did not leave particular assets (assets acquired by the deceased before marriage).
- If there are no descendants: the ascendants and the surviving spouse.
- If there are no descendants and ascendants: the surviving spouse.
- If there are no descendants, ascendants, or a surviving spouse, the collaterals (relatives up to fourth degree).
- If the deceased person does not have any forced heirs, 100% of the deceased's property can be disposed of by will.
- If there is no will, the local (municipal) government where the assets are located (or the federal government, if the assets are located in a federal territory) inherits all of the deceased's assets.

Although Brazil enforces strict heirship rules, there is no specific legislation regarding the use of trusts. The lack of legislation does not authorise breach of the forced heirship rules, and if any Brazilian heir can prove that his or her rights were breached by any means, the courts do grant decisions attacking the trust or any other vehicle, as well as settlors and/or other heirs that benefit from the breach of succession rights.

### Forced heirship regimes

### 25. What are the main characteristics of the forced heirship regime, if any, in your jurisdiction?

#### Avoiding the regime

The forced heirship rules cannot be circumvented. However, the Civil Code does permit lifetime donations to one or more of the heirs. Such donations can be considered as an anticipation of the portion not subject to the forced heirship rules.

#### Assets received by beneficiaries in other jurisdictions

Assets received by beneficiaries in other jurisdictions are subject to equal treatment.

#### Mandatory or variable

The rights are mandatory on the forced heir.

#### Real estate or other assets owned by foreign nationals

### 26. Are real estate or other assets owned by a foreign national subject to your succession laws or the laws of the foreign national's original country?

Succession is governed by the law of the jurisdiction in which the deceased was domiciled (at the time of his death), irrespective of the status and nature of the estate's assets (*Article 10, Conflict of Laws Statute*).

Domicile is defined as the place where the person is physically present, and is regarded by the person as a true, fixed, principal and permanent home (*Article 70, Civil Code*).

When it comes to procedural law, the location of the assets of the deceased determines the Brazilian courts' jurisdiction to hear and adjudicate probate proceedings.

Even if the deceased is deemed to have been domiciled abroad, Brazilian courts will have jurisdiction on the probate procedure regarding assets located in Brazil.

### 27. Do your courts apply the doctrine of *renvoi* in relation to succession to immovable property?

The doctrine of *renvoi* is accepted by Brazilian courts in relation to succession of immovable property.

## INTESTACY

### 28. What different succession rules, if any, apply to the intestate?

Forced heirship rules are applicable (*see Questions 24 and 25*).

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**29. Is it possible for beneficiaries to challenge the adequacy of their provision under the intestacy rules?**

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Beneficiaries cannot challenge the adequacy of their provision under the intestacy rules.

## TRUSTS

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**30. Are trusts (or an alternative structure) recognised in your jurisdiction?**

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### Type of trust and taxation

As a civil law jurisdiction with important roots in the Portuguese and French legal systems, the Brazilian legal system does not adopt the concept of trust. Brazil is not a signatory of the HCCH Convention on the Law Applicable to Trusts and on their Recognition 1985 (Hague Trusts Convention) and no case law has developed on trusts. However, there is a consensus that a trust should be recognised by the court as a binding multilateral contract or agreement.

### Residence of trusts

As trusts do not form part of the Brazilian legal system, they must be resident and domiciled abroad. In determining their validity and existence, the law of the residence of the trustee is deemed applicable.

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**31. Does your jurisdiction recognise trusts that are governed by another jurisdiction's laws and are created for foreign persons?**

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See *Question 30*.

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**32. What are the tax consequences of trustees (for example, of an English trust) becoming resident in/leaving your jurisdiction?**

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Brazilian fiscal residents are taxed on their worldwide income and assets. However, as Brazil does not include the concept of the trust in its legal system, there is no nothing to be gained in a trustee becoming a Brazilian resident.

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**33. If your jurisdiction has its own trust law:**

- **Does the law provide specifically for the creation of non-charitable purpose trusts?**
  - **Does the law restrict the perpetuity period within which gifts in trusts must vest, or the period during which income may be accumulated?**
  - **Can the trust document restrict the beneficiaries' rights to information about the trust?**
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### Purpose trusts

Not applicable.

### Perpetuities and accumulations

Not applicable.

### Beneficiaries' rights to information

Not applicable.

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**34. Does the law in your jurisdiction recognise claims against trust assets by the spouse/civil partner of a settlor or beneficiary on the dissolution of the marriage/partnership?**

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There is no case law on trusts in Brazil. However, courts are very protective of spouses being left at a disadvantage in the dissolution of a marriage or partnership and are likely to recognise claims against third parties if the claiming party can show some sort of fraud or attempt to hinder recognised rights.

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**35. To what extent does the law of your jurisdiction allow trusts to be used to shelter assets from the creditors of a settlor or beneficiary?**

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Brazilian Courts have widely applied the "disregard of legal entity doctrine" against fraud. Cases involving labour law claims, fiscal claims, as well as some cases of civil claims, can result in piercing the corporate veil. Although there is no case law with regard to trusts, the Brazilian courts are likely to scrutinise any attempts to defraud potential creditors.

## CHARITIES

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**36. Are charities recognised in your jurisdiction?**

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Charities are recognised in Brazil. Income, assets or services provided by legally organised charity purpose organisations are not subject to taxation under the Federal Constitution. These organisations must be not-for-profit institutions engaged in education or social services, including medical services.

There is no unified definition of what a charitable institution is. However, there is a general concept that the purpose of the organisation must be a not-for-profit social service or aid. This general idea was promoted by the Tax Legislation, more specifically, Federal Law 9,532 of 1997 (Law 9,532). Not-for-profit entities must apply any financial surplus in its activities to the maintenance of the purposes of the social and charitable activities of the entity (*Article 12, Law 9,532*).

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**37. If charities are recognised in your jurisdiction, how can an individual donor set up a charity?**

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There are two main corporate vehicles used to set up charitable organisations:

- Associations (*Article 44, I, Civil Code*).
- Public foundations (*Article 44, III, Civil Code*).

There is no central charities control or regulator. Charities are not heavily regulated when they are formed under an association. However, if formed under a public foundation, the Public Prosecutor's office is in charge of auditing the accounts and management of the charity (*Article 66, Civil Code*).

Both vehicles used to form charities must be registered with the Public Notary Office for Legal Entities in order to function and to become a legal entity, and to be enforceable before third parties.

It is also very important to register the entity with the Federal Tax Authorities, in order to obtain a company identification number (National Registry of Legal Entities (*Cadastro Nacional da Pessoa Jurídica - CNPJ*)). The Federal Taxation Authorities regulate charities heavily in order to avoid abuse of the immunity offered to such organisations. Therefore, obtaining immunity or exemptions is rather difficult and very bureaucratic.

### 38. What are the benefits for individuals when setting up charitable organisations?

Charitable institutions can enjoy tax immunity or exemptions if they meet the standards and requirements established by law and the Federal Tax Authorities. However, the individuals who set up such charities have no economic benefit.

Donations to charitable entities can be deducted from the taxes owed by individuals up to 6% and by legal entities up to 4%. These benefits are limited to donations given to Brazilian charitable entities. To grant the benefit to its donors, the receiving entity must have special registrations and authorisations with the Federal Tax Authorities, which may vary according to the field of activity of the entity.

## OWNERSHIP AND FAMILIAL RELATIONSHIPS

### Co-ownership

### 39. What are the laws regarding co-ownership and how do they impact on taxes, succession and estate administration?

Co-ownership rules are established by the Civil Code, which defines the rights and obligations of co-owners. Each co-owner may dispose of his part of the property and must pay expenses for conservation in proportion to his part. When it comes to succession, taxes and estate administration, co-ownership has little or no impact.

### Familial relationships

### 40. What matrimonial regimes in trust or succession law exist in your jurisdiction? Are the rights of cohabitants/civil partners in real estate or other assets protected by law?

There are currently four types of marital property regimes:

- **Partial communion of assets.** This is the default marital property regime in Brazil. Only assets acquired after marriage form the marital property.
- **Total communion of assets.** The assets acquired by both spouses before and after the marriage (except for assets inherited or acquired by donation by either spouse) form the marital property.
- **Separation of assets.** Each spouse is entitled to his or her own assets and there is no formation of marital property. This type of marital property regime is mandatory for individuals over 60 years old or who require court authorisation to marry (for example, young persons requiring parental consent).
- **Participation in acquêts.** The participation in *acquêts* (acquired estate) is similar to the partial communion regime, except that the property acquired during the marriage belongs to the spouse who acquired it and is only shared on divorce or succession. The difference with this regime is the autonomy given to each spouse to manage the individual property independently during the marriage.

Co-habitation and civil partners' rights in real estate or other assets are protected by law. Civil partners are subject to the partial communion of assets regime, unless they select another marital property regime. In relation to cohabitants (companions), they are treated as an heir in relation to assets acquired during the relationship with the deceased (*Article 1790, Civil Code*).

### 41. Is there a form of recognised relationship for same-sex couples and how are they treated for tax and succession purposes?

After several court decisions, including from the Supreme Court, same-sex marriage has been accepted, but still faces some resistance in a few states. Same-sex marriages or civil partnerships have equal legal and fiscal treatment.

### 42. How are the following terms defined in law:

#### Married

Marriage is the legal bond between a man and a woman (also applicable to same-sex couples). It requires the consent of both parties. To express consent, the parties must each be at least 18 years old (the age of majority) or 16 years old with parental or tutorial consent.

#### Divorced

Divorce is the legal dissolution of a marriage by a court or a civil notary.

#### Adopted

Adoption is the creation, by means of a court decision, of a parent-child relationship. It is regarded as the substitution of the biological parents and grants to the adopted the same rights as biological children.

#### Legitimate

A legitimate child is born in wedlock. The law does not treat legitimate and illegitimate children differently.

#### Civil partnership

A civil partnership is the bond between two people that have the intent to form a family. The Civil Code recognises the civil partnership between a man and a woman as a family entity (also applicable to same-sex couples).

#### Minority

### 43. What rules apply during the period when an heir is a minor? Can a minor own assets and who can deal with those assets on the minor's behalf?

A minor that has not reached the age of 16 is considered legally incapable and, for that reason, must be represented by a parent or a tutor (guardian of a minor). A minor between 16 and 18 years old is also considered legally incapable but instead of being represented, he must be assisted by a parent or tutor.

A declaration of legal capacity (emancipation) is available to minors over 16 years old to become self-supporting and independent of parental control.

Although legally incapable for the purpose of civil acts, a minor can own assets. However, his parents or tutor execute the management of the assets, unless the minor is emancipated. The state prosecutor, on request, can audit the management of the minor's assets.

## CAPACITY AND POWER OF ATTORNEY

### 44. What procedures apply when a person loses capacity? Does your jurisdiction recognise powers of attorney (or their equivalent) made under the law of other jurisdictions?

A declaration of incapacity and interdiction must be filed against the individual, by his parents, tutor, spouse, any other relatives or the Public Prosecutor. The court decision pronouncing the interdiction appoints a guardian to that person.

A foreign decision appointing a guardian to a person that loses capacity is subject to recognition and enforcement by the Brazilian Superior Court of Justice.

## PROPOSALS FOR REFORM

### 45. Are there any proposals to reform private client law in your jurisdiction?

There are no immediate proposals for reform of private client law in Brazil.

## ONLINE RESOURCES

### Brazil Government (*Legislation Portal*)

W [www.planalto.gov.br](http://www.planalto.gov.br)

**Description.** This is the Brazilian Federal Government's official website. It contains all the Brazilian federal legislation and is subject to regular updates.

### Federal Revenue Service (*Receita Federal do Brasil*)

W [www.receita.fazenda.gov.br](http://www.receita.fazenda.gov.br)

**Description.** This is the Brazilian Federal Revenue Service website. It contains the Brazilian federal legislation regarding federal taxes and contributions, customs procedures and other related subjects. The legislation is updated on a regular basis.

### Federal Supreme Court (*Supremo Tribunal Federal*)

W [www.stf.jus.br](http://www.stf.jus.br)

**Description.** This is the Brazilian Federal Supreme Court's website. It contains the status of judicial proceedings and appeals related to Constitutional claims, as well as decisions rendered by the court in these lawsuits. It is considered a highly functional database for judicial case law research and is subject to regular updates.

### Superior Court of Justice (*Superior Tribunal de Justiça*)

W [www.stj.gov.br](http://www.stj.gov.br)

**Description.** This is the Brazilian Superior Court's website. It contains the status of judicial proceedings, decisions and appeals in claims involving federal legislation. It is considered a highly functional database for judicial case law research and is subject to regular updates.

### Federal Taxpayer's Council (*Conselho Administrativo de Recursos Fiscais*)

W [www.carf.fazenda.gov.br](http://www.carf.fazenda.gov.br)

**Description.** This is the Brazilian Federal Taxpayers Council's website, which is the second level of the administrative court. It contains the status of administrative recourses presented following tax inspections involving federal taxes. It also features decisions rendered in administrative recourses. It is a valuable tool for administrative case law research and is subject to regular updates.

### São Paulo State Revenue Service

W <http://pfe.fazenda.sp.gov.br/itcmd.shtm>

**Description.** This is the São Paulo State Revenue Service website. It contains state legislation regarding succession and donation tax, procedures and other related subjects. The legislation is updated on a regular basis.



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## Practical Law Contributor profile

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**Areas of practice.** Corporate law; contracts; estate and succession planning; real estate law.

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