



Human Capital Brazil

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Dear Reader,

We are pleased to present this booklet as quick reference related to the main Brazilian immigration, tax, labor, and social security matters. Although it does not have the intention to exhaust any of the topics related to the transfer of workforce to Brazil, we hope this brochure helps you to clarify many of your initial doubts.

Should you need further information from our office in Brazil or from any of our other offices throughout the world, please do not hesitate to contact us. We are at your disposal to provide the necessary assistance you may require.

Best regards,

Tatiana Ponte
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Immigration

■ *Applicable Types of Visa:*

- a) Transit
- b) Tourist
- c) Temporary:
 - I. Cultural visit or study mission;
 - II. Business trip;
 - III. Artist or Sportsman;
 - IV. Student;
 - V. Scientist, professor, technician or another kind of professional, to perform a labor contract, or to provide services to the Brazilian Government;
 - VI. Correspondent of a foreign newspaper, magazine, radio, television or news agency;
 - VII. Minister of a religious denomination, or as member of a religious institution or congregation;
- d) Permanent
- e) Courtesy
- f) Official
- g) Diplomatic

■ *Most commonly used work-related permit categories:*

Temporary item II, Temporary item V and Permanent.

■ *Temporary item II (business visa):*

Granted to short-term visitors who visit Brazil exclusively for business purposes, e.g. attend meetings, sign business contracts, research the local market, etc. In general, business visas are valid for up to five years, allow multiple re-entries, but the length of stay is always limited to individual stays of up to 90 days, with one possible 90-day extension.

■ *Temporary item V without labor contract (technicians):*

Granted in connection with technical assistance agreements. The bearer may perform professional activities in Brazil without any contractual link at local level. Activities of strict administrative, financial and managerial nature are forbidden.



Currently, this visa may be valid for up to 1 year and may be extended for another year.

■ *Temporary item V with labor contract (regular employees):*

Granted upon execution of an employment agreement by and between the Brazilian entity and the applicant. This visa does not allow the foreign individual to legally represent a Brazilian entity or to execute documents on its behalf. Allows length of stay of up to 2 years, which may be extended for another period of 2 years. The visa

may be upgraded to permanent under formal request, to be made at least 30 days prior to the expiry date thereof.

■ *Permanent (statutory directors):*

Granted to foreign executives to work in Brazil and legally represent a Brazilian company for all legal purposes. The main requirement is an investment of at least USD 200,000.00 per foreign executive. This initial investment may be reduced under certain circumstances. Allows length of stay in Brazil up to 5 years, which may be extended indefinitely.

Tax

■ *Determination of Residence for Tax Purposes:*

Depends on which visa an individual uses to enter the country.

Accordingly, the individual is considered a Brazilian resident when:

- a) residing in Brazil on a permanent basis;
- b) leaving Brazil to work as an employee for Brazilian government agencies or bodies located abroad;
- c) entering the country with a permanent visa, as from the date of arrival;
- d) entering the country with a temporary visa:
 - to work under an employment agreement, as from the date of arrival;
 - upon completion of a stay in Brazil of 184 days, whether consecutive or not, within a period of up to 12 months;



- upon obtaining a permanent or work visa before completing a stay in Brazil of 184 days, whether consecutive or not, within a period of up to 12 months;

e) after acquiring a nonresident status, the Brazilian individual returns to the country on a definitive basis, as from the date of arrival;

f) leaving Brazil on a temporary basis, or on a permanent basis but failing to submit a tax clearance certificate or exit visa, for the first consecutive twelve months after departure.

■ *Taxation as from the date of entrance in Brazil:*

Foreign nationals holding either temporary item V with local labor contract or permanent visas.

■ *Taxation as from the 184th day of entrance in Brazil during any 12-month period:*

Foreign nationals who hold other types of temporary visas.

■ *Mandatory Documentation:*

After entering Brazil with the proper visa, the foreigner is required to

obtain the Foreigner Identification Card – RNE, Individual Taxpayer Identification Number – CPF, Labor Registration Booklets (when included in the local payroll), and Brazilian driver’s license within the next 30-day period.

■ *Taxation and Ancillary Obligations:*

Once the professionals are considered Brazilian tax residents in Brazil, they are subject to taxation and ancillary obligations in Brazil.

■ *Ordinary Taxation:*

Resident taxpayers are subject to tax on their worldwide income at the progressive rates of 0%, 15% or 27.5%, according to the progressive table below. Income paid by entities located in Brazil is subject to withholding taxes and income paid by entities located offshore is subject to the monthly income tax (referred to as “carnê-leão”) of which the payment represents an individual’s responsibility.

■ *Concept of Source in Brazil:*

It is important to state that differently from most tax systems, for Brazilian tax purposes, any income paid in Brazil is considered

as Brazilian source income, regardless of the fact that it is (or not) connected with a service/employment performed in Brazil.

■ *Taxable Income Components:*

Amounts considered as remuneration, including fringe benefits and allowances.

■ *Payment of “carnê-leão”:*

Represents a personal liability to be fulfilled through a tax voucher called “DARF”, due by the last working day of the month following that to which it refers. It can be paid in any commercial bank.

■ *Late payments:*

Subject to penalties at a daily rate of 0.33%, limited to 20%, and to interest at a monthly rate of approximately 1.5%.

■ *Monthly Income Tax Table:*

Federal income tax is levied on ordinary income (salaries, allowances, rental income, etc.). The following tax rates apply to monthly taxable income.

Monthly Taxable Income (R\$)		Deductible	
Exceeding	Not Exceeding	Amount (R\$)	Rate (%)
0	1,257	0	0
1,257	2,517	189	15
2,512	-	503	27.5

Valid in 2006

■ *Annual Income Tax Table:*

Federal income tax is levied on ordinary income (salaries, allowances, rental income, etc.). The following tax rates apply to monthly taxable income.

Annual Taxable Income (R\$)		Deductible	
Exceeding	Not Exceeding	Amount (R\$)	Rate (%)
0	15,085	0	0
15,085	30,145	2,263	15
30,145	-	6,031	27.5

Valid in 2006

■ *Permitted Deductions on a Monthly Basis:*

- Social security taxes paid to Brazilian federal, state or municipal entities;
- Alimony and pensions in accordance with a Brazilian court decree;
- R\$126 for each dependant, with no limit on the number of dependants; and

- Brazilian Pension Fund contributions, up to 12% of gross income.

■ *Permitted Deductions on the Annual Federal Income Tax Return:*

- Brazilian Pension Fund contributions, up to 12% of gross income;
- Alimony and pensions in accordance with a court decree registered in Brazil;
- R\$1,516 for each dependant, with no limit on the number of dependants;
- Social security taxes paid to Brazilian federal, state or municipal entities;
- Educational expenses, up to an annual limit of R\$2,374 for each individual;
- Medical expenses, including doctors, dentists, hospitals, etc., with no limit;
- Medical insurance/assistance plans managed by Brazilian entities; and
- Contributions to cultural and audiovisual activities and to Children's Care Fund, up to 6% of income tax due.

■ *Selectable Standard Deductions:*

Taxpayer may elect the standard deduction, which is 20% of taxable income, up to a maximum deduction of R\$11,167.

■ *Taxation of Local Financial Income and Gains from Fixed or Variable Interest Investments:*

Taxed exclusively at source based on a table of rates varying from 15% to 22.5%, depending on the investment term. As a rule, financial institutions already withhold the tax due and earnings are credited net.

■ *Taxation of Employer-Provided Stock Options, Restricted Stocks etc.:*

In fact, the taxation of such long term incentive plans constitutes a gray area in Brazil. Generally, stock options are taxable at the time of exercise, as fringe benefit, according to the income tax progressive table. A subsequent taxation may occur if shares are sold with gain.

■ *Taxation of Capital Gains:*

Derived from the sale of assets and rights (located in Brazil or abroad) of resident taxpayers are subject to

income tax at 15% on the difference between the sale price and the acquisition price.

■ *Capital Gain Exemptions:*

- Gain on sale of residential property(ies) if the sale proceeds are entirely used to acquire another residential property in Brazil within 180 days after the first sale;
- Sale of low value assets (i.e. sale proceeds of up to R\$ 35,000) within the same month are exempt from taxation;
- Sale of assets traded on over-the-counter markets if the sale price is less than R\$ 20,000 within the same month;
- Sale of the only residential property if the sale price is less than R\$ 440,000.

■ *Profits or dividends paid or credited by Brazilian corporate entities:*

As general rule, not subject to income tax at source nor components of the tax calculation base of the beneficiary.

■ *Annual Income Tax Return:*

This return must report all income and position of assets (in Brazil

and/or abroad) at the beginning and at the end of the year. Income tax withheld and prepayments are offset against the final tax liability. This return must be filed up to the last working day of April.

■ *Brazilian Central Bank Declaration:*

Resident taxpayers who hold assets outside Brazil in amount above USD 100,000 must declare these properties to the Brazilian Central Bank annually. Penalty for not being in compliance with the Central Bank may reach BRL 250,000. This return must be filed up to the last working day of May.

■ *Obligation Prior to the Definitive Departure from Brazil:*

Resident taxpayers will be considered nonresident again only when they leave the country permanently and apply for a federal tax and assessment clearance certificate.

■ *Nonresidents Taxation:*

Subject to tax at a flat rate of 25% on income received from Brazilian sources.



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■ *Nonresident taxpayers who wish to maintain their CPF effective:*

Required to file a Tax-Exempt Return with Brazilian IRS between August and December of each year. The process does not result in any payable/refundable tax and may be completed online at www.receita.fazenda.gov.br.

■ *International Tax Treaties in force with the Brazilian Federal Government:*

- Argentina – Austria – Belgium – Canada – Chile
- China – Czech Rep. – Denmark – Ecuador – Finland
- France – Hungary – India – Israel – Italy
- Japan – Korea – Luxembourg – Netherlands – Norway
- Philippines – Portugal – Slovakia – Spain – Sweden

■ *Reciprocal Treatment:*

There are countries that despite not having a formalized international treaty or agreement with the Brazilian Government, waive reciprocal tax treatment to individuals who are possibly subject to income tax in another country and also in Brazil. England, Germany and the United States fit into this case.

Labor

■ *Concept of Regular Employment Relationship:*

According to the Brazilian Consolidated Labor Laws – CLT – and supplemental regulation, local employment relationship is characterized by the (i) regularity in the rendering of services, (ii) hierarchical subordination, and (iii) remuneration received.

■ *Brazilian Ordinary Labor Rights:*

- isonomic remuneration among the other employees in the same position
- eight working hours per day
- extra payment for night work
- proportional vacation
- remunerated weekly day off
- severance payment
- insurance for labor injuries
- social security protection

■ *Mandatory Employer Payments and Contributions:*

- National Institute for Social Security – INSS (up to 28.8%)
- Government Severance Indemnity Fund for Employees – FGTS (8.5%)
- Vacation Pay (12.12%)
- 13th, monthly salary (9.09%)
- INSS and FGTS on vacation pay and 13th, salary (7.79%)

■ *Statutory Directors:*

- National Institute for Social Security – INSS (20%)
- Optional FGTS, vacation pay and 13th, monthly salary

■ *Dismissal Without Cause:*

The employer is liable to pay a penalty of 50% over the FGTS funds.



Social Security

■ *Employer Contribution:*

Up to 28.8% on payroll, with no ceiling.

■ *Employee Contribution:*

Up to 11%, depending on the level of remuneration, but limited to a ceiling, which is currently of R\$ 308.17.

International Totalization Agreement in force with the Brazilian Federal Government:

- Argentina
- Cape Verde
- Chile
- Greece
- Italy
- Luxembourg
- Uruguay
- Portugal
- Spain

■ *Certificate of Coverage:*

The employee transferred to Brazil who remains bound to the home company may benefit from a Social Security Coverage in Brazil, without being liable to contribute under the Brazilian scheme. In order to obtain this benefit, the home country Social Security Office shall issue a Certificate of Coverage and, as soon as the local entity gets this document, it shall be sent to the Brazilian Social Security Office in order to get its ratification on the procedures initially adopted.

■ *Grace Period for Retirement in Brazil:*

Under Brazilian social security legislation, retirement for age or for length of service involves a grace period of not less than 180 monthly installments, i.e. 15 years of contributions to the Brazilian social security system.

■ *Retirement Age in Brazil:*

Pension for age shall be paid, after fulfilling the grace period in law, to





a worker who is older than 65, if male, or 60, if female. Pension for length of service, in turn, shall be paid to a worker with length of service of 35 years, if male, or 30 years, if female.

■ *Pension Benefit after Retirement:*

The amount of pension is the arithmetic calculation of the last contributions of the months immediately before that of the date of application for retirement. This amount shall not be lower than the minimum official wage, nor higher than the maximum limit in force on the date of start up of the benefit (current cap is R\$ 2,801.55).

Recharge

Reimbursement of expenses to a company of the same group

■ *Resolution No. 3.265/05 Enacted by the Brazilian Central Bank:*

Reintroduced the possibility of adopting recharge arrangements as a tool for cost planning and allocation.

■ *Previous Position Adopted by the Brazilian Central Bank:*

In the past, recharge procedures were subject to the approval of Brazilian Central Bank and were frequently restricted, due to lack of an express provision in relevant foreign exchange regulation.

■ *Recharge Feasibility:*

It is currently feasible to recharge costs related to long term incentive plans (stock options, restricted stocks, etc.), and payments made via split salary arrangements, among others.

Tax Evasion

Methodologies adopted by authorities in Brazil

■ *Concern Demonstrated by Many Multinational Entities:*

Potential exposure the expatriates would be subject to for not declaring their income from foreign sources or their properties abroad to the Brazilian tax authorities.

■ *Some Examples of Methodologies Used over the Past Years to Enhance Assessment:*

- **DECLARED:** mandatory return that credit card companies must file twice a year to identify individuals who spend over R\$ 5,000 on their credit cards in a month. The information provided through this return enables the tax authorities to attest whether or not the income declared by the individual is compatible with the expenses he/she has to afford;
- **DIMOB:** also a mandatory return filed annually by real estate developers and dealers to provide tax authorities with all purchase, sale and rental transactions involving real estate properties within the Brazilian territory;
- **CPMF:** contribution that is levied on financial transactions, such as remittances, transfers, withdraws, deposits, etc. The balance of tax eventually due must be withheld at source by the financial institution in which the transaction is performed and reported to the tax authorities later on. The procedure enables the federal agents to track the amount of money that is deposited in and withdrawn from a specific bank account and eventually detect irregularities related to the corresponding titleholder;
- **SISBACEN:** system used by the Brazilian Central Bank to track international foreign currency flow. For instance, a registration with this system is required for all foreign fund remittances from Brazil equal to or higher than R\$ 10,000 per month.

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