



FCR Law

Fleury, Coimbra
& Rhomberg Advogados

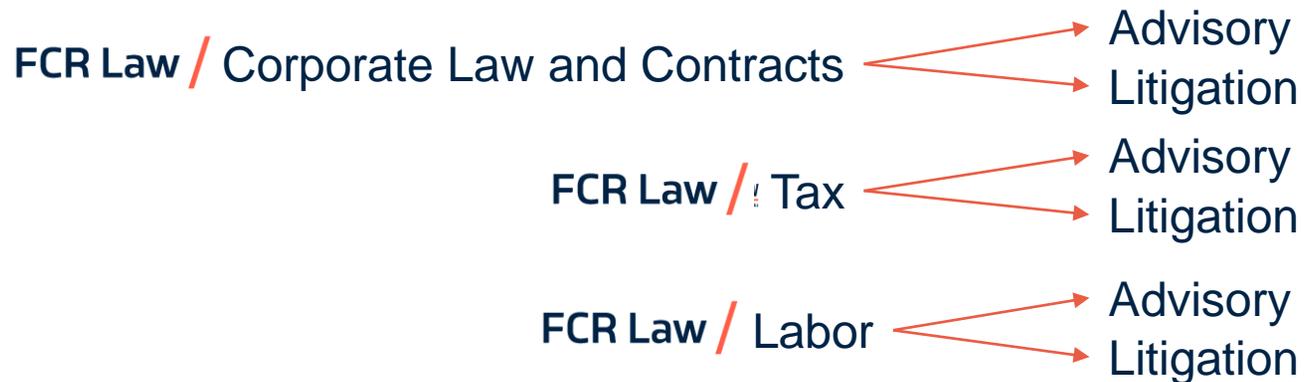
**DEMYSTIFYING TAXATION
AND REGULATION IN BRAZIL**

MAY 2018

Our Firm

✓ **Team:** 40 Lawyers

✓ **Main Practice Areas**



✓ **International Expertise**

FCR Law / Canadian Desk – Philippe Jeffrey

FCR Law / US' Taxation Expertise – Eduardo Fleury

FCR Law / German Desk – Marcelo Coimbra and Lukas Rhomberg

FCR Law / Language Fluency: English, German, French, Spanish and Portuguese

Eduardo Fleury



Eduardo Fleury is the founder of FCR Law – Fleury, Coimbra & Rhomberg. He advises national and international clients on a range of tax and business law issues with a strong focus on complex taxation transactions. Eduardo is the head of the firm's tax practice.

Eduardo has a Master Degree in International Taxation by the University of Florida and he is Specialist in Corporate International Tax Planning by Leiden University (Netherlands).

From 1986 to 1992, Eduardo worked as fiscal agent at the São Paulo State Revenue Service while also lecturing at FAZESP (Treasury School of São Paulo). From 1992 to 2001, he worked at the Brazilian Federal Revenue Service and delivered seminars to tax auditors at ESAF, the Training School of the Ministry of Finance.

Eduardo is a regular speaker at tax seminars and conferences and his articles on tax law are regularly published in Brazilian magazines and newspapers. He lectured tax law at the renowned Getúlio Vargas Foundation (2007).

Qualifications and memberships

- Degree in Economics, Universidade de São Paulo – Brazil
- Bachelor of Law, Instituição Toledo de Ensino em Bauru – Brazil
- Master Degree in International Taxation (LL.M.), University of Florida – USA
- Specialist in Corporate International Tax Planning, Leiden University – Netherlands
- Specialist in Business Law, Harvard Extension School – USA

Languages

- Portuguese
- English

 +55 11 3294 1600

 fleury@fcrlaw.com.br

 Eduardo Fleury

Philippe Jeffrey



Philippe Jeffrey is an international tax advisor originally from Quebec, Canada and former PwC Brazil Tax Partner. He has 20 years of combined tax and management experience in assisting foreign and Brazilian multinational companies with their domestic and cross border transactions in Brazil, Latin America, Europe and set-up of international tax structure (financing, IP, trading, holding).

In addition, Philippe has extensive experience with domestic transactions in Brazil, tax due diligence reviews, as well as tax compliance reviews, transfer pricing and local trade and customs issues.

Qualifications and memberships

- Law degree from the University of Ottawa (Canada)
- Completed the masters program in tax at the University of Sherbrooke (Canada)
- Member of the Quebec Bar Association

Languages

- French
- English
- Portuguese
- Spanish



+55 11 3294 1600



philippe.jeffrey@fcrlaw.com.br



Philippe Jeffrey

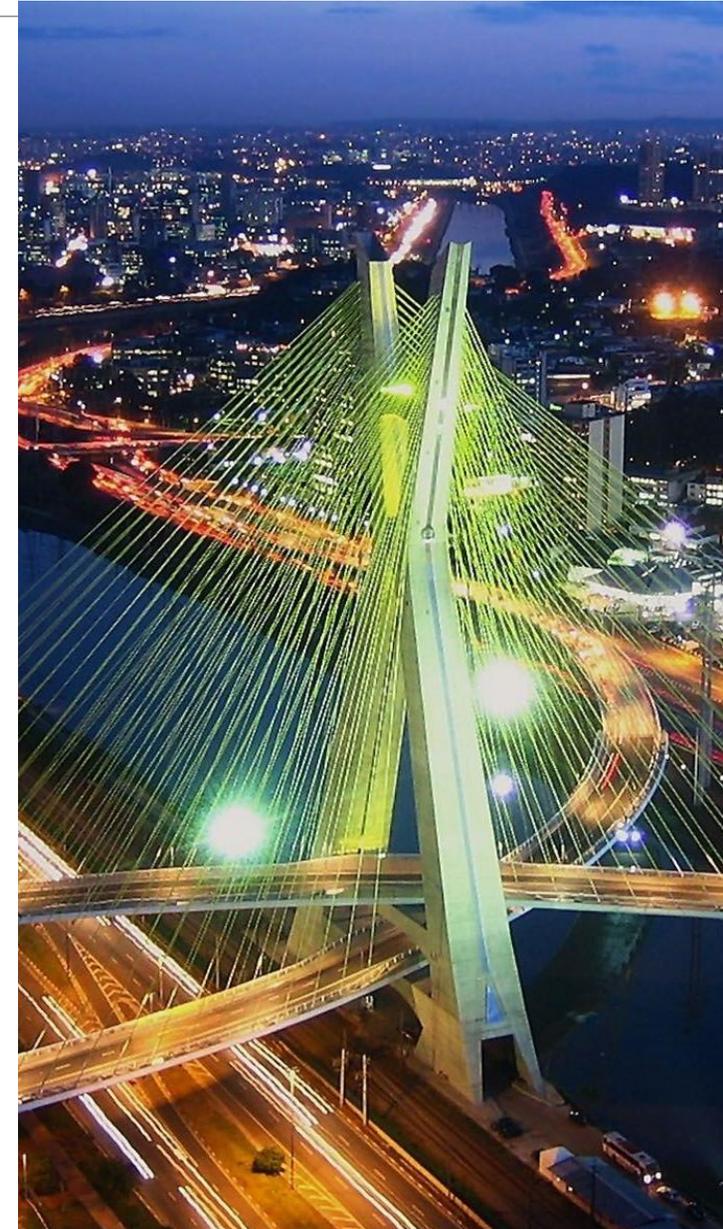
Country Overview



- ✓ 5th most populous country in the world (**208 million**)
- ✓ Tropical zone | Rich biodiversity
- ✓ Federal Democratic Republic – 3 branches (Executive, Legislative and Judicial)
- ✓ Comprised of 26 states and the Federal District of Brasilia, the capital
- ✓ Mercosur, G20, UN, Union of South American Nations
- ✓ Currency: Real (R\$) | Exchange rate: US\$ 1,00 = R\$ 3,40 (April 2018)

Economic Main Features

- ✓ GDP perspective for 2018: US\$ 2.165 trillion – Recovery of economic growth (estimated increase in 2018: 2.5%)
 - ✓ GDP Mexico U\$ 1.149 T
 - ✓ GDP France U\$ 2.583 T
 - ✓ GDP Italy U\$ 1,937 T
 - ✓ GDP Canada U\$ 1.652 T
- ✓ Large consumer Market –
 - ✓ 50 M people Middle Class
 - ✓ 40 M have Private Health Insurance Plan
- ✓ Consolidated democracy, established institutions and enforced financial discipline
- ✓ Policy agenda: fight against corruption; fiscal adjustment; combating unemployment (labor law reform)



Economic Figures

Economic Activity

Figures	2015	2016	2017	2018*
Actual Change of GDP	-3.8%	-3.6%	1%	2.8%
Actual Change of GDP – Agricultural	3.6%	-6.6%	13.0%	4.0%
Actual Change of GDP – Industry	-6.3%	-3.8%	0.1%	3.2%
Actual Change of GDP – Services	-2.7%	-2.7%	0.3%	2.2%
Average Unemployment Rate	8.5%	11.5%	12.7%	12.0%

Inflation

Figures	2015	2016	2017	2018*
IPCA	10.7%	6.3%	2.95%	3.53%

Interest

Figures	2015	2016	2017	2018*
Selic Index (Target)	14.25%	13.75%	7%	6.5%

*Forecast

Economic Figures

External Sector				
Figures	2015	2016	2017	2018*
Trade Balance	17.7	45.0	67.0	59.0
Exportations (US\$ - billions)	190.1	184.5	217.74	225.0
Importations (US\$ - billions)	172.4	139.4	150.74	166.0
Services and Income (US\$ - billions)	-79.8	-71.5	-80.5	-81.4
Current Account Balance (US\$ - billions)	-59.4	-23.5	-17.8	-25.4
Direct Foreign Investment (US\$ - billions)	74.7	78.2	70.3	80.0
International Reserves (US\$ - billions)	356.5	365.0	372.2	382.0

*Forecast

Legal system

- ✓ Brazil is a civil law country and its legal system is based on codes and legislation enacted primarily by the federal legislative power and also by the state and municipal legislative branches
- ✓ The judicial system consists of the Federal Supreme Court; National Council of Justice; Superior Court of Justice; Federal Justice; Labor Justice; Electoral Justice; Military Justice; and State Justice
- ✓ High documentation and bureaucracy are present in daily operations
- ✓ IP protection is available
- ✓ Accounting: local accounting and auditing standards are aligned with the International Financial Reporting Standards (IFRS)

Foreign Investments

- ✓ Open attitude towards foreign investment
 - Restrictions of any type usually apply equally to local and foreign-owned businesses
 - No restrictions for inflows or outflows of investments
 - Registration at the Central Bank (“BACEN”) is necessary for financial inflows / outflows

- ✓ In general, 100% foreign ownership is possible



Establishing a presence in Brazil

- ✓ Doing business in Brazil:
 - ✓ Selling to clients
 - ✓ Agents
 - ✓ Distributors
 - ✓ Establishing local presence:
 - ✓ subsidiaries or
 - ✓ joint ventures



Establishing a presence in Brazil – Agent

One of the many ways to expand a business is to hire **agents** to operate locally

- ✓ The agent can work without employment contract
- ✓ Main functions: client prospection, negotiating proposals and orders to forward them to the Canadian Company
- ✓ The agent agreement must be formalized through a written document to avoid the characterization of an employment relationship or having a branch of the Canadian company in Brazil

Establishing a presence in Brazil – Agent

The **Agency agreement** must contain:

- ✓ Description of the products object of the representation
- ✓ Period or term of the representation
- ✓ Definition of the territory such as a state or region
- ✓ Conditions for the payment of the commissions
- ✓ Exclusivity or not in the given territory



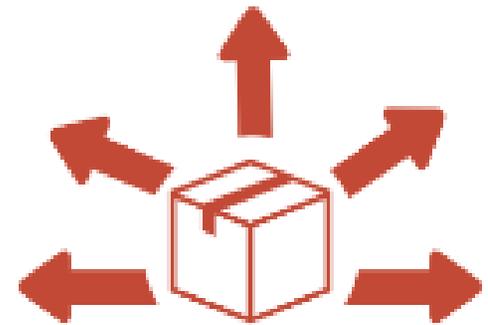
Indemnification payable to the registered agent for the termination of the agreement without just cause cannot be lower than one-twelfth ($1/12=8,3\%$) of the total remuneration earned during the representation period.

Establishing a presence in Brazil – Distributor

Another way to establish a business in Brazil is through a **Distributor**, who will import and resell in Brazil.

✓ The **Distribution agreement** must contain:

- Description of the products
- Term
- Territory
- Exclusive or not in that territory
- Comercial Conditions



✓ In case of termination, no indemnification is generally due – yet subject to a 90-day prior notice

Establishing a presence in Brazil – Subsidiary

- ✓ By incorporating of a legal entity
- ✓ With or without a local shareholder
- ✓ 2 most frequent forms:
 - **Limited Liability Company (LLC) – *Limitada (Ltda)***
 - **Corporation – Sociedade Anônima (SA)**



Establishing a presence in Brazil – Subsidiary

LLC

- ✓ Liability is limited to the capital – Some exceptions may occur in case of labor and tax liabilities
- ✓ Minimum of **2 shareholders** domiciled in Brazil or abroad
- ✓ Foreign shareholders: must nominate a legal representative with **permanent residency in Brazil**
- ✓ Managing director: shareholder or not – with **permanent residency in Brazil**
 - ✓ Foreign Managing Director: conditioned to obtain a **permanent visa**
- ✓ **No minimum amount of capital required, except for permanent visa:**
 - For each foreigner country manager, director or officer
 - Investment of R\$ 600,000, or
 - Investment of R\$ 150,000 plus creation of a minimum of 10 jobs locally; or

Establishing a presence in Brazil – Subsidiary

Corporation

- ✓ **Shareholder's liability** is limited to the amount paid for the subscribed shares
- ✓ The **capital stock** of corporations is divided into common and/or preferred shares:
 - **Common shares:** Entitle holders to voting rights and dividends
 - **Preferred shares:** Entitle holders to economic advantages as set forth in the by-laws
- ✓ The corporation may also issue other types of securities, such as participation certificates, debentures, bonds and subscription warrants

Establishing a presence in Brazil – Subsidiary

Corporation

- ✓ Corporations can be **publicly-held company** (Listed) or **closely held company** (Unlisted)
- ✓ Corporate Structure: General Shareholders' Meeting; Board of Directors, Officers and an Audit Committee
- ✓ Management of publicly-held companies (Listed) is subject to the oversight of the Brazilian Securities and Exchange Commission (CVM)
- ✓ Must publish financial records and statements -> implies in additional cost
 - Unlisted corporation with less than 20 shareholders and net worth of up to R\$ 1 million are dispensed from such publications

Immigration – Visa categories

Category	Comments
Tourist	<ul style="list-style-type: none"> ✓ Recreational purposes ✓ Stay for a maximum of 90 days, renewable for the same period ✓ Engaging in any remunerated activity in Brazil is prohibited
Business	<ul style="list-style-type: none"> ✓ For professionals coming to Brazil for business purposes ✓ Stay for a maximum of 90 days, not renewable
Temporary	<ul style="list-style-type: none"> ✓ Foreign workers with an Employment Agreement with a Brazilian Company (up to 2 years and renewable)
Permanent	<ul style="list-style-type: none"> ✓ Can be granted to a foreigner to be appointed as manager, director or officer of a Brazilian Company

Labor Law – Investors’ considerations

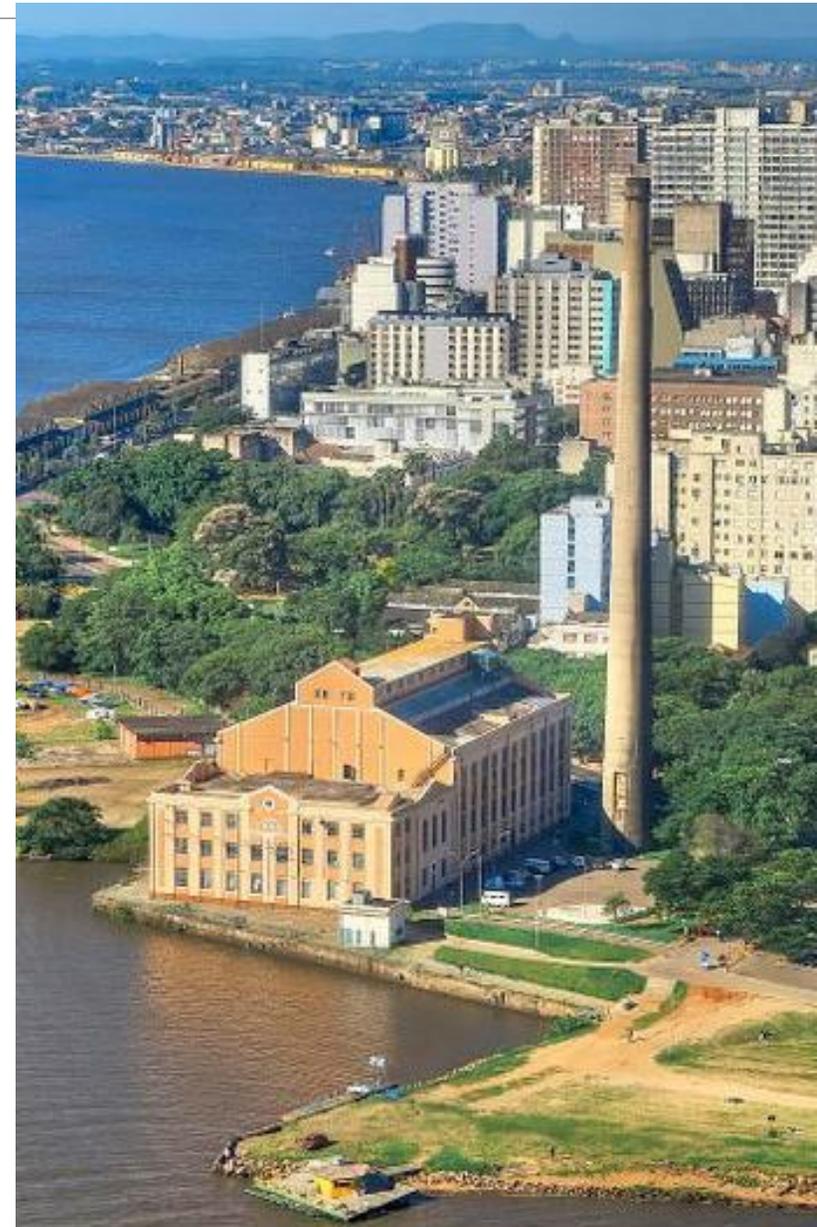
Social Security and Labor Benefits

Maximum hours	✓ 8 hours per day / 44 hours per week
Vacation	✓ After 12 months of work, the employee is entitled to 1 month vacation, which is paid and increased by 1/3 of a monthly salary
Christmas Bonus	✓ Every year-end, employees are entitled to 1 month salary
Severance Payment (FGTS)	✓ Every month, the employer needs to deposit 8% of the employee's monthly salary into an account managed by the Federal Bank on behalf of the employees
Maternity leave	✓ 4 months and receive the salary
Notice for Termination	✓ 30 days or more (up to 90 days) depending on the term of the labor contract (it can be paid)
Dismissal without cause	✓ Indemnification (penalty) of 40% on the balance of FGTS Extra 10%
Payroll tax	<ul style="list-style-type: none"> ✓ Employers – 23% to 27%, depending on the activity ✓ Employee – up to 11% on the monthly salary limited to R\$ 570,89

Brazilian Tax System Overview

Brazilian Tax Burden – approx. 33% of GDP (2016)

- ✓ Brazilian Government is heavily dependent of indirect taxes (tax on goods and services)
- ✓ Corporate income tax is levied at a single tax rate, with a surcharge on income over a certain level on worldwide income.
- ✓ Dividends distributed to shareholders (local or foreigner) are not taxed at source
- ✓ Individual taxpayers, including resident foreigners are taxed on worldwide income at progressive rates
- ✓ Non-residents are taxed only on Brazilian sourced income



Brazilian Tax System Overview

	Taxes	Rates
Corporate Income Taxes	Corporate Income Tax (IRPJ)	25%
	Social Contribution on Net Profits (CSLL)	9% <i>(20% for Financial Institutions)</i>
Transaction Taxes	Tax on Imports (II)	0% up to 35%
	Excise Tax (IPI)	0% to 25%
	Social Contributions on gross revenue (PIS/COFINS)	9.25% <i>(or 3.65%)</i>
	Social Contributions on Imports (PIS/COFINS – imports)	9.25% (service) / 11.75% (goods)
	State Value Added Tax (ICMS)	17% to 19% <i>(average)</i>
	Municipal Service Tax (ISS)	2% to 5%
	Tax on Financial Transactions (IOF)	0% up to 25%
	Contribution for the Intervention of Economic Domain (CIDE)	10%

Corporate Income Tax

Computation

Brazilian companies may calculate and pay corporate income taxes based on:

- ✓ **“Actual profits” method** – calculation of tax payments based on the actual net income.
 - The “actual profit” method is mandatory for certain types of entities (e.g., financial institutions).
- ✓ **“Presumed profits” method** – calculation of tax payments based on a “presumed” income.

Companies with total gross revenues not exceeding of **R\$ 78 million** (approx. US\$ 24 million) can elect for the “presumed profit” method.

Taxable income of the presumed profits → a percentage of gross revenue, regardless of the expenses actually incurred by the company:

Activities	Tax	Rate
Manufacturing / goods companies	IRPJ	8%
	CSLL	12%
Service companies	IRPJ	32%
	CSLL	32%

“Actual Profit” Regime		“Presumed Profit” Regime	
Revenues	\$ 500,000	Revenues	\$ 500,000
Expenses ⁽²⁾	<u>(450,000)</u>	Expenses	(450,000)
Taxable Income	50,000	Presumed Taxable Income ⁽¹⁾	160,000
IRPJ (25%)	12,500	IRPJ [(500x32%) x 25%]	40,000
CSLL (9%)	4,500	CSLL [(500x32%) x 9%]	14,400
Total taxes	<u>17,000</u>	Total taxes	<u>54,400</u>

NOTES

(1) Assuming a service provider, the applicable “presumed profit” percentage for IRPJ and for CSLL is 32%
 $\$ 500.000 \times 32\% = 160.000$.

(2) Estimated expenses

Cash Repatriation Alternatives

Taxation

Currently, the rates below are applicable to the following payments to non residents (unless otherwise reduced by tax treaty :

✓ Dividends	Not Taxable
✓ Capital Reduction	Not Taxable ⁽¹⁾
✓ Capital Gains ⁽²⁾	15% (< R\$ 5 million) 17.5% (from R\$ 5 to R\$ 10 million) 20% (from R\$ 10 to R\$ 30 million) 22.5% (> R\$ 30 million)
✓ Interest ⁽²⁾	15%

NOTES

(1) To the extent of the capital invested and registered at the Brazilian Central Bank. Any excess amount is taxed at progressive rates ranging from 15% to 22.5%.

(2) Payments made to tax havens are subject to withholding at a rate of 25% (except for dividends).

Technical Services, Royalties and Software License

Taxation

- ✓ **WHT** : levied on remittances of royalty, technical services and software license fees at a 15% rate.
- ✓ **CIDE**: remittances of royalty and technical service fees are subject to **10% CIDE** tax - Contribution for the Intervention of the Economical Domain.
- ✓ **PIS and COFINS** contributions apply to the payment of services to non-residents at the combined rate of **9.25%**.
- ✓ **ISS**: remittances of service and software license fees are subject to the ISS - Municipal Service Tax, at rates varying from **2% to 5%**.



Taxation on Intercompany Operations

	WHT	ISS	CIDE	PIS/Cofins	IOF
Tech / Admin Services	15%	2% - 5%	10%	9,25%	0,38%
Royalties	15%	X ⁽¹⁾	10%	X	0,38%
Software License	15%	2% - 5%	X	X	0,38%
Other Services	25%	2% - 5%	X	9,25%	0,38%
Cost Sharing	X	X	X	X	0,38%

NOTES

(1) Except for trademark

Tax Calculation – Example

Import of Technical and Administrative Services

Remittance of service fees (without gross-up)			
Service fee		\$	1.000,00
WHT	15%	\$	150,00
ISS	5%	\$	50,00
Total		\$	200,00
Net amount received abroad		\$	800,00
PIS/COFINS Import (*)	9,25%	\$	107,02
CIDE	10,00%	\$	100,00
IOF	0,38%	\$	3,04
Total		\$	210,06
TOTAL TAXES		\$	410,06
(*) Calculation basis for PIS and COFINS			
(service fee + ISS) / (1-(PIS+COFINS))		\$	1.157,02

Remittance of service fees (with gross-up)			
Service fee		\$	1.000,00
Gross-up Basis (Service fee/(1-(IRRF+ISS)))		\$	1.250,00
WHT	15%	\$	187,50
ISS	5%	\$	62,50
Total		\$	250,00
Net amount received abroad		\$	1.000,00
PIS/COFINS Import (*)	9,25%	\$	133,78
CIDE	10,00%	\$	125,00
IOF	0,38%	\$	3,80
Total		\$	262,58
TOTAL TAXES		\$	512,58
(*) Calculation basis for PIS and COFINS			
(service fee grossed up + ISS) / (1-(PIS+COFINS))		\$	1.446,28

Import of Products

Taxation

- ✓ **II** : the import of products is subject to the Import Tax (“II”) at rates varying according to tariff code the good imported. The rates range from **0% to 35%**.
- ✓ **IPI**: the Federal Excise Tax (“IPI”) is levied on imported goods. The ranges vary according tariff code the good imported, ranging from a **0% to a 25%** rate. IPI is a creditable tax: the paid tax amount may be offset against the amount payable by the importer in future transactions.
- ✓ **PIS/COFINS-Import**: contributions levied on the import of products at the combined rate of **11.75%**. PIS/COFINS-import is, generally, a creditable tax.
- ✓ **ICMS**: the State Value Added Tax (“ICMS”) is also levied on goods imported. The rates vary according to the State tax legislation and the imported product. The rate is 18% in São Paulo State. ICMS is a creditable tax.



Tax Calculation – Example

Imports of Products

Importation - São Paulo

Acquisition Cost		100.000,00
II	18%	18.000,00
IPI	8%	9.440,00
ICMS	18%	30.553,90
PIS-Imports	2,10%	2.100,00
COFINS-Imports	9,65%	9.650,00
Total taxes		69.743,90
Total Importation Cost		169.743,90
Refundable Taxes (IPI, ICMS, Pis, Cofins)		-51.743,90
Cost Net of Refundable Taxes		118.000,00

Sale to Retailer - São Paulo

Cost Net of Refundable Taxes		118.000,00
Operation Costs	15%	17.700,00
Margin	20,0%	33.925,00
Price before taxes		169.625,00
ICMS	18%	41.969,07
PIS	1,65%	3.847,16
COFINS	7,6%	17.720,27
Price with ICMS, PIS e COFINS		233.161,51
IPI	8%	18.652,92
Sale Taxes		82.189,43
Invoice Value		251.814,43
Clients Price		251.814,43
Net Margin		33.925,00
Total Taxes Cost		100.189,43

Brazil – Canada Tax Treaty



Withholding Tax	Dividend	Interest	Royalty
Canada-Brazil tax treaty rate	15% (1)	10%/15% (2)	15%/25% (3)

(1) Equity participation of at least 10%, otherwise the WHT rate is increased to 25%. The rate is also 25% for individual shareholders

(2) The 10% rate is applicable to loans guaranteed or insured by the Export Development Corporation of Canada.

(3) The 25% rate is applicable to trademarks, for all other cases the applicable rate is 15%

Tax Sparing	Dividend	Interest	Royalty
Canada-Brazil tax treaty rate	25%	20%	20% (1)

(1) Except for Trademark

FCR Law /

Fleury, Coimbra
& Rhomberg Advogados

FCR Law /

info@fcrlaw.com.br | fcrlaw.com.br

Rua do Rocio, 350 – 10th floor

V. Olímpia | São Paulo | SP | Brazil



linkedin.com/company/fcrlaw/