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Coronavirus Crisis

Labor, tax and legal aspects in Brazil

April/2020

PORTAL CORONAVIRUS

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Coronavirus Crisis Overview

Eduardo Fleury

Bio



Eduardo Fleury is a founding partner of FCR Law and head of the firm's tax department. He has broad experience in both public and private sectors, being considered a tax expert not only by his clients, but also by Brazilian tax policy makers, the press and other organizations, which he constantly advises about tax matters.

Fleury has a solid practical experience in the Brazilian tax system. He is a former officer of the São Paulo State Revenue Service and of the Brazilian Federal Revenue Service. These positions allowed him to obtain a pragmatic and detailed approach on State and Federal tax matters. His expertise is not restricted to the Brazilian tax legislation, also comprising tax aspects related to cross-border transactions, as well as international tax and the U.S. tax system.

Recently, Fleury was nominated as Tax Consultant for The World Bank, in order to support the assessment of the impacts of a potential tax reform on the Brazilian economy.

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

- ✓ English
- ✓ Portuguese

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 **Eduardo Fleury**

Coronavirus Crisis

Overview – Economic Measures



Coronavirus Crisis

Overview – Economic Measures



Public Calamity

- ✓ **Relief of fiscal primary balance target in 2020:** Brazilian Congress approved a decree that recognizes the state of public calamity in Brazil, due to the coronavirus pandemic. During the state of public calamity, the government does not need to meet the fiscal primary balance target this year. However, the spending ceiling and the golden rule must yet be complied with. **The Public Calamity Decree is applicable up to December 31, 2020.** Source: [Decree n. 6/2020](#) (March 20).
- ✓ **Federal Government:** BRL 750 billion (10% GDP 2019 / CAD 214 bi) in measures to mitigate Covid-19 effects. Source: [Ministry of Economic Affairs](#) (March 31).



Support to individuals

- ✓ **Monthly financial aid:** low-income individuals and families will receive BRL 600 (CAD\$ 160) per month from the Federal Government. The aid is applicable to informal workers, unemployed individuals and microbusinesses (MEI). Source: [PL 1,066/20](#) (pending presidential approval).
- ✓ **13th salaries to retirees:** anticipation of payment dates to April and May. Source: [Provisional Measure 927/20](#) (March 22).

Coronavirus Crisis

Overview – Economic Measures



Brazilian Central Bank

- ✓ **BRL 40B for payroll loan:** emergency line of financing to finance 2 months of payroll, which will be eligible for companies with annual sales ranging from R\$ 360,000 to R\$ 10,000,000. The amount will be financed at the Interbank Deposit Certificate rate (CDI), which is currently set at 3.75% per year and for a term of 30 months plus a grace period of 6 months (36 months overall). The company applying for the financing will be obliged to maintain jobs for the 2 months program period. *Source: [Brazilian Central Bank](#) (March 27).*
- ✓ **Selic rate:** the Brazilian basic interest rate was lowered to a record-low of 3.75%. *Source: [Brazilian Central Bank](#) (March 18).*



States and Municipalities

- ✓ **Financial support:** up to BRL 88 billion to be granted to States and Municipalities. Almost 10% of the resources are aimed at health-related emergency measures. *Source: [Ministry of Economic Affairs](#) (March 23).*
- ✓ **Debt renegotiation:** the Federal Government allowed a suspension on the payment of debts owed against the States. In addition, the renegotiation of debts of the States with public banks and the provision of lines of credits are also under discussion. *Source: [Ministry of Economic Affairs](#) (March 23).*

Coronavirus Crisis

Overview – Economic Measures

Support to companies

- ✓ **Credit lines to SME:** small and medium-sized companies are eligible to receive working capital loans provided by public banks (Caixa Econômica and Banco do Brasil). Until now, BRL 45 billion are aimed for financing small and medium companies in Brazil. Source: [Ministry of Economic Affairs](#) (March 16, 22 and 27).
- ✓ **Salaries reductions:** the Federal Government intends to allow companies to reduce employees' salaries and work hours. The Government would provide financial aid to the employee during that period. Source: [Ministry of Economic Affairs](#) (April 1st).
- ✓ **Tax measures:** deferral of PIS/COFINS and social security contributions. Source: [Ministry of Economic Affairs](#) (April 2nd).

Coronavirus Crisis **Labor impacts in Brazil**



Renata Armonia is a partner at FCR Law and has broad experience in matters involving contracts, corporate and labor law. She has participated as an advisor in many M&A transactions supporting clients in corporate restructuring, cross-border mergers and acquisitions, inbound and outbound investments and other ventures involving national and international companies.

Renata provides legal assistance to multinational and local companies with a particular emphasis on drafting and negotiating contracts, including infrastructure projects. She is specialized in advanced corporate matters, involving shareholders agreements negotiation and disputes.

Qualifications and memberships

- ✓ Law degree from Pontifícia Universidade Católica- SP
- ✓ Master program in Corporate law – Fundação Getúlio Vargas

Languages

- ✓ Portuguese
- ✓ English

ANALYSIS OF THE GENERAL IMPACTS OF COVID-19

Provisional Measure 936 ("MP 936/20")

Renata Armonia

Labor Negotiations



INDIVIDUAL AGREEMENT



COLLECTIVE AGREEMENT

Employment agreement



Hyposufficient:

- ✓ Monthly salary equal to or lower than BRL 12,202.12 (today's values);
- ✓ Companies do not have bargaining power (autonomy of will) to negotiate with employers;
- ✓ Negotiations between the union and the company.

Hypersufficient:

- ✓ Monthly salary equal to or greater than BRL 12,202.12 (today's values);
- ✓ Companies have the same weight as those negotiations between the union and the company;
- ✓ Free negotiation between the hypersufficient workers.

Reduction of working hours and reduction of wages

Percentage reduction	Amount of Emergency Employment Benefit - government aid to complement the reduction	Individual agreement	Collective agreement	Period
25%	Government aid of 25%	All employees	All employees	Up to 90 days
50%	Government aid of 50%	Hypersufficient and employees who receive up to BRL 3,117	All employees	Up to 90 days
70%	Government aid of 70%	Hypersufficient and employees who receive up to BRL 3,117	All employees	Up to 90 days

Governmental Aid Calculation Basis
(average wage over the latest 3 months)

< BRL 1.599,61 =
Average wage * 80%

Between BRL 1,599.62
and BRL 2,666.29 =
50% + BRL 1,279.69

> BRL 2.666,29 =
BRL 1.813,03 (quota cap)

Suspension of employment contract (Lay-off)

Annual gross revenues	Employer allowance	Government aid	Individual agreement	Collective agreement	Period
Up to 4,8M	Not mandatory	Unemployment insurance of 100%	Hypersufficient and employees who receive up to BLR 3,117	All employees	Up to 60 days;
> 4,8M	30% of the employee's salary	Unemployment insurance of 70%	Hypersufficient and employees who receive up to BLR 3,117	All employees	Up to 60 days;

ANALYSIS OF THE GENERAL IMPACTS OF COVID-19

Provisional Measure No. 927 ("MP 927/20")

Deborah Monte



Deborah Monte is an associate at FCR Law, focusing her practice on Employment and Labor Law and Civil Litigation. She practices in the areas of employment and business litigation, advising clients on employment law and employment policies, contract drafting and negotiations, preventing employers of wrongful termination, discrimination, harassment, and improper payment of wages. Deborah also represents employers in business litigation handling a variety of matters, including employment litigation, commercial litigation, contractual disputes and class actions.

Qualifications and memberships

- ✓ Law degree from the Pontifical Catholic University (Brasil)
- ✓ Master program in International Law (Brasil)

Languages

- ✓ Portuguese
- ✓ English

Annual leave in advance

	CLT	MP 927/20
Grant period	Granted 12 months after the date of the first working day (article 134) - vesting period.	Granted even to employees whose full accrual period has not yet elapsed. (article 6,§1º,II)
Minimum term to communicate employees	The employer must notify the employee of the granting of vacation 30 days in advance. (article 135)	The employer must notify the employee of the granting of vacation 48 hours in advance. (article 6)
Payment of vacation	Whithin two days before granting the vacation. (article 145)	Payment of vacation may be made by the 5th business day of the month following enjoyment. (article 9)
One-third vacation bonus	Whithin two days before granting the vacation. (article 145)	Employers may choose to pay one-third of the vacation by the date of payment of the 13th salary. (article 8)

Teleworking (Home office)

	CLT	MP 927/20
Change in the employment contract	The employee must agree and sign an amendment to the employment contract to convert in-person work to teleworking. (article 75-C, §1º)	It can be applied by the employer regardless of an amendment to the employment contract to convert in-person work to teleworking. (article 4)
Minimum term to communicate employees	The employer must notify the employee 15 days in advance. (article 75-C, §1º)	The employer must notify the employee, in written, 48 hours in advance. (article 4, §2º)
Extension of teleworking	Not applicable.	Possible extension of teleworking to interns and apprentices. (article 5)
Guidance on health and safety regulations	Must be provided in the employment contract. (article 75-E)	It is not mandatory, although it is advisable to provide guidance on health and safety regulations.

Deferral of payment of Employee's Severance Guarantee Fund (FGTS)



- ✓ The payment of the amounts for March, April, and May of 2020 may be paid in installments;
- ✓ To be paid up to six monthly installments, due on the seventh day of each month, starting on July of 2020;
- ✓ To enter the installment program, the employer must declare the information required by June 20, 2020.
- ✓ The information provided will constitute a declaration and recognition of the debts arising therefrom;
- ✓ The amounts not declared will be in arrears and will result in legal penalties for the company and charges due.

Coronavirus Crisis **Tax aspects in Brazil**

Philippe Jeffrey

Bio



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

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 **Philippe Jeffrey**

Coronavirus Crisis

Tax impacts in Brazil - Overview



Coronavirus Crisis

Tax impacts in Brazil



Tax Reduction

- ✓ **IPI:** reduction to 0% of the Federal Excise Tax - IPI levied on the products necessary to counter covid-19 such as alcohol-based sanitizers and medical equipment. The measure is valid until September 30th, 2020. *Source: [Decree n. 10.285/2020](#) (March 23).*
- ✓ **System S:** reduction of 50% of the employer contributions to the "Sistema S" (payroll contributions). *Source: [Provisional Measure 932/2020](#) (March 31).*
- ✓ **IOF-Credit:** reduction to 0% of the Tax on Credit Transactions (IOF-Credit). *Source: [Ministry of Economic Affairs](#) (April 2nd).*



Tax Payment

- ✓ **Simples Nacional:** extension for six months of the due dates for payment of the Federal taxes of the tax regime Simples Nacional for the months of March, April and May 2020. *Source: [Resolution CGSN n. 152/2020](#) (March 18).*
- ✓ **FGTS:** deferral of the payments to the Severance Indemnity Fund – FGTS for the months of March, April and May 2020. As from July, payments can be made in 6 monthly installments without additional charges. The employer is obliged to declare the information until June 20, 2020 and the installment program will be cancelled in case of dismissal. *Source: [Provisional Measure n. 927/2020](#) (March 22).*
- ✓ **PIS/COFINS and Social Security Contributions:** deferral of the payment from April and May to August and October. *Source: [Ministry of Economic Affairs](#) (April 2nd).*

Coronavirus Crisis

Tax impacts in Brazil



Customs

- ✓ **Import Duties:** reduction to 0% of the Import Duty due on imports of products necessary to counter covid-19. The measure is valid until September 30th, 2020. *Source: CAMEX Resolutions [17/20](#) (March 18) and [22/20](#) (March 26).*
- ✓ **Simplified Customs Procedures:** the measures allow the delivery of items needed to counter covid-19 (both fixed assets and raw materials) to the importer before the conclusion of customs clearance. In addition, the need of previous approval of Brazilian health authority (ANVISA) is dismissed to certain imported items provided that such items were previously approved by a foreign health authority. *Source: [Normative Instruction RFB 1,927/2020](#) (March 18) and [Law 13,979/20](#) (February 07).*



Tax Authorities

- ✓ **Installment Tax Programs:** possibility to pay tax debts in up to 97 monthly installments. First payment due on July 30, 2020. Possibility to include tax debts already submitted to other tax installment programs (forfeit of the previous programs). *Source: [PGFN Ordinance 7,820/20](#) (March 18).*
- ✓ **Tax Clearance Certificates:** 90 days extension of the expiration date of tax clearance certificates issued by Federal, State and Municipal Authorities. *Source: [Federal – Ordinance 555/20](#) (March 24). States and municipal legislation – vary according to the region.*



Tax Litigation

- ✓ **Current Tax Proceedings:** suspension of tax proceedings up to April 30, 2020. The suspension applies to proceedings before both administrative and judicial courts. *Source: [CARF Ordinance 8,112/20](#) (March 20) and [CNJ Resolution 313/20](#) (March 19).*
- ✓ **Future Tax Proceedings:** 90 days suspension of administrative and judicial collection actions. *Source: [PGFN Ordinance 7,821/20](#) (March 18).*



Tax Compliance

- ✓ **Ancillary tax obligations:** state and municipal tax authorities are postponing the due date of submission of several ancillary tax obligations. The states of Alagoas, Ceará, Espírito Santo, Goiás, Mato Grosso do Sul and Rio de Janeiro, as well as the city of Belo Horizonte already announced the deferral of ancillary obligations due dates related to different taxes. *Source: states and municipal legislation.*

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