



DEMAREST

TAX REFORM

TAX ON CONSUMPTION

SUBSTITUTE TEXT FOR PLP NO. 108/23 - PARTIAL VERSION (PENDING VOTE)

INTRODUCTION

On June 05, 2024, the Brazilian Executive Branch submitted Supplementary Bill No. 108/2024 to the National Congress in order to regulate Constitutional Amendment No. 132/2023 (“EC”), which approved the tax reform on consumption.

This is the second bill submitted by the Executive Branch linked to the EC. As informed by the Federal Government, this bill aims to regulate the establishment and structure of the IBS Management Committee, IBS administrative litigation, the distribution of IBS collection proceeds, and provisions relating to the transition from ICMS to IBS.

In addition, the supplementary bill provides for changes to the National Tax Code, detailing the levying of ITCMD, ITBI and COSIP.

A detailed analysis of these aspects is provided in this e-book, which provides an in-depth analysis of the proposed changes and their implications.



PROGRESS

Tax Reform Approval - EC 132/2023

HOUSE OF REPRESENTATIVES



Bill approved on July 07, 2023, in two rounds.

FEDERAL SENATE



Bill approved on November 08, 2023, in two rounds.

DECEMBER 20, 2023



Constitutional Amendment 132/2023 enacted



Regulation of matters that depend on a Supplementary Law

JULY 10, 2024



The House of Representatives has approved the Supplementary Regulatory Bill (PLP 68/24).

JUNE 05, 2024



Supplementary Bill for administrative regulation of the Reform - PLP 108/24 was presented

APRIL 25, 2024



Supplementary Bill to regulate the IBS and CBS - PLP 68/24 was presented

CURRENT STATUS

PLP 68/24 is currently expected to be voted on by the Federal Senate, which may approve it in its entirety or amend it (in which case it will be referred to the House of Representatives), and PLP 108/24 by the House of Representatives.

BOOK I - STEERING COMMITTEE OF THE TAX ON GOODS AND SERVICES 5**1.I. GENERAL PROVISIONS 5**

1.II. POWERS OF THE IBS STEERING COMMITTEE AND GUIDELINES FOR COORDINATING INSPECTION AND COLLECTION	5
A. POWERS OF THE STEERING COMMITTEE	5
B. GUIDELINES FOR SHARED AND COORDINATED INSPECTION AND COLLECTION.....	7
1.III. ORGANIZATIONAL STRUCTURE OF THE CG-IBS	8
A. BODIES INTEGRATING THE CG-IBS	8
B. SUPERIOR COUNCIL.....	9
C. PRESIDENT, VICE-PRESIDENT, GENERAL SECRETARIAT, ADVICE ON INSTITUTIONAL AND INTERFEDERATIVE RELATIONS, INTERNAL AFFAIRS, AND INTERNAL AUDIT	9
1.IV. EXTERNAL CONTROL OF THE CG-IBS	10
1.V. BUDGET OF THE CG-IBS.....	11
1.VI. CONTRACTING AND ADVERTISING THE NORMATIVE ACTS OF THE CG-IBS	13
1.VII. INFRINGEMENTS, SANCTIONS, AND DEFAULT CHARGES RELATING TO THE IBS.....	13

2. IBS TAX ADMINISTRATIVE PROCEDURE21

2. I. PROCEDURAL RULES	21
A. PRELIMINARY PROVISIONS.....	21
B. PROCEDURAL ACTS AND TERMS.....	22
FORM	22
SUBPOENAS.....	22
VICES AND UNENFORCEABILITY	22
DEADLINES	22
2. II. OFFICIAL ASSESSMENT.....	23
2. III. TAX ADMINISTRATIVE LITIGATION.....	23
A. GENERAL PROVISIONS	23
B. DILIGENCES	23
C. WITHDRAWAL AND DEFAULT JUDGEMENT	23
D. BINDING PROVISIONS	24
E. TYPES OF APPEALS	24
MANDATORY REVIEW	24
VOLUNTARY APPEAL.....	25
UNIFICATION APPEAL.....	25
F. REQUEST FOR UNIFICATION.....	25
2. IV. JUDGING BODIES.....	26
A. GENERAL PROVISIONS	26
B. TRIAL COURT.....	26
C. APPELLATE COURT.....	27
D. CASE LAW UNIFICATION COURT	27
E. REPRESENTATION OF THE PUBLIC TREASURY	28
2. V. FINAL PROVISIONS.....	28

3. DISTRIBUTION OF THE IBS COLLECTION PROCEEDS 28

3.I. PRELIMINARY PROVISIONS.....	28
3.II. BASIC REVENUE OF FAVORABLE ENTITIES	29

GOVERNMENT ACQUISITIONS	29
SIMPLES NACIONAL	29
CASHBACK	29
AMOUNT ALLOCATED PER ENTITY	29
TRANSITION	29
ADJUSTMENTS AND CALCULATION	30
SPECIFIC TAXATION REGIMES	30
3.III. DISTRIBUTION OF WITHHOLDING REVENUE FOR TRANSITION PURPOSES	31
3.IV. SUPPLEMENTARY DISTRIBUTION TO FEDERAL ENTITIES WITH GREATER LOSS OF RELATIVE REVENUE SHARE	31
3.V. ENTITIES' BASE REVENUE ALLOCATION	31
A. ENTITIES' BASE REVENUE ALLOCATION	31
B. ALLOCATION OF DISTRIBUTED REVENUE TO ENTITIES UNDER CHAPTERS III AND IV	31
C. ALLOCATION OF DISTRIBUTED REVENUE TO MUNICIPALITIES UNDER ART. 158, MAIN SECTION, ITEM IV, LINE B, OF THE FEDERAL CONSTITUTION	32
REVENUE CATEGORIES OF FEDERAL ENTITIES:	32
ADJUSTMENTS	32
FUNDS TO COMBAT POVERTY	32
D. FINAL PROVISIONS	33
4. PROVISIONS ON THE ICMS TRANSITION (ART. 144 TO 158)	33
4.I. CHARACTERIZATION, APPROVAL AND USE OF THE ICMS CREDIT BALANCE	33
A. CREDIT BALANCES	33
B. REQUEST FOR APPROVAL	34
C. COMPENSATION OF THE ICMS CREDIT BALANCE	35
D. CREDIT BALANCE TRANSFERS	35
E. CREDIT BALANCE REFUND	36
F. FINAL PROVISIONS	36
4.II. USE OF THE ICMS LEVIED BY TAX SUBSTITUTION RELATING TO GOODS IN STOCK ON DECEMBER 31, 2032	37

BOOK I - TAX ON CAUSA MORTIS TRANSFERS AND DONATION OF GOODS OR RIGHTS – ITCMD







1. GENERAL PROVISIONS	40
1.I. PRELIMINARY PROVISIONS	40
1.II. TRIGGERING EVENT	40
1.III. TAX IMMUNITY AND NON-LEVY	40
1.IV. TRIGGERING EVENT	41
1.V. CALCULATION BASE	42
1.VI. RATE	43
1.VII. TAXPAYERS	43
1.VIII. TAX CREDITORS	44
2. INSPECTION	44
3. FINAL PROVISIONS	45

DEMAREST

BOOK I
STEERING COMMITTEE OF THE
TAX ON GOODS AND SERVICES



1. I. GENERAL PROVISIONS

-  Public entity under a special regime;
-  Registered office and jurisdiction in the Federal District (“DF”);
-  Technical, administrative, budgetary, and financial autonomy;
-  Shared competence to manage the Tax on Goods and Services (“IBS”);
-  Integrated action by tax administrations as well as the State, the DF, and Municipal prosecutors’ offices; and
-  Absence of binding, guardianship or hierarchical subordination to any body integrating the public administration.

1. II. POWERS OF THE IBS STEERING COMMITTEE AND GUIDELINES FOR COORDINATING INSPECTION AND COLLECTION

1. II. A. POWERS OF THE STEERING COMMITTEE

- | | |
|--|---|
|  Edit the sole regulation and standardize the interpretation and enforcement of tax legislation; |  Share tax and billing data relating to the IBS and CBS with the Federal Revenue Office of Brazil (“RFB”) and the Office of the General Counsel for the Federal Treasury (“PGFN”); |
|  Collect the IBS; |  Regulate the standardized application of special inspection regimes; |
|  Perform compensations; |  Carry out a five-year evaluation of the efficiency, efficacy and effectiveness of special customs regimes, export processing zones, REPORTO, REIDI, cashback, basic basket, special and specific regimes, all of which involving the IBS; |
|  Withhold tax as provided for in the corresponding legislation; | |
|  Distribute the proceeds from the collection to the States, the DF, and Municipalities; | |
|  Decide on administrative litigation; |  Coordinate (agreements, covenants, protocols, consortia or other similar legal or sharing instruments can be established, in compliance with paragraph 8): |
|  Align regulations, interpretations, ancillary obligations, and procedures relating to the common rules applicable to the IBS and the Contribution on Goods and Services (“CBS”); | |



Inspection, registration and collection, and administrative representation of the IBS;



Judicial and extrajudicial collection of the IBS; and



Registration as overdue tax liability (upholding the ownership of federal entities, in case of assignment).



Draft and approve its internal rules;



Coordinate, in administrative and judicial spheres, the adoption of methods for adequate conflict resolution;



Draft the proposed budget;



Withhold transfers and allocate revenue to Federal entities;



Draft the methodology and reference rate calculation and forward them to the Brazilian Federal Audit Court ("TCU");



Propose the calculation methodology, calculate, establish, and publish, as appropriate, the IBS and CBS rates for specific regimes;



Calculate the deductible rate to be applied on the IBS and CBS rates in the transactions contracted by the direct public administration;



Comment on the estimated impact of changes in the Federal legislation that can reduce or raise the IBS collected;



Manage cashback;



Deduct from the proceeds of the IBS collected – payable to the States – the amount cleared involving the accumulated ICMS credit balance;



Perform budgetary, financial, accounting and treasury activities involving their operations;



Report to external control entities;



Structure the job and salary plan and contract public servants;



Liaise with society and Federal entities to provide the population with accurate information about the IBS and the IBS Steering Committee ("CG-IBS");



Verify credit in transactions where the taxpayer is acquiring fuels and financial services taxed in compliance with specific regimes, in cases where the IBS proof of payment is waived on the acquisition for the purposes of accounting credits;



Edit exclusive or joint acts with the Federal Executive Branch;



Implement programs and measures to encourage civic engagement and tax education;



Exercise other powers provided for in a supplementary law;



Exercise the centralized control of overdue tax liabilities registrations, through a single system, under the legislation of each Federal entity holding a portion of the tax liability that has been definitively established;



The unified IBS regulation will define the maximum period for performing administrative collections, provided that they do not exceed 12 months from the conclusive tax liability establishment;



After 12 months, the tax administration will submit the file to the corresponding prosecutor's office for the appropriate judicial or extrajudicial collection treatments;



The CG-IBS, the RFB Special Secretariat and the PGFN can implement integrated solutions for the management and collection of the IBS and the CBS; and



The agreements, covenants or other legal instruments entered into between the Federal entities must be submitted to the CG-IBS.

1. II . B. GUIDELINES FOR SHARED AND COORDINATED INSPECTION AND COLLECTION



The CG-IBS will coordinate the inspection as regards compliance with key and ancillary duties relating to the IBS.



Segregating inspection activities between Federal spheres on the basis of economic activity, taxpayer size or any other criterion is prohibited.



Two or more entities interested in inspecting the same taxpayer, the same time frame under inspection and the same triggering events. The procedure will be carried out in a joint and integrated manner, and the CG-IBS will regulate the work organization and management, cost allocation, and distribution of the proceeds from the collection of punitive fines among the entities in charge of registration.



The IBS regulation will define the criteria for ownership and co-ownership of inspection.



Procedural acts will be exercised before the taxpayer by tax administrations authorities that are holders or co-holders in inspection activities.



Any disagreements over the interpretation, calculation of the tax base or classification of triggering events, during the course of the inspection, will be addressed as provided for by the CG-IBS.



The CG-IBS is responsible for coordinating – with a view to integrating the Federal entities – the activities involving the collection and administrative representation carried out by tax administrations, extrajudicial and judicial collection, as well as administrative and judicial representations carried out by the State, Federal and Municipal prosecutors' offices.

1. III. ORGANIZATIONAL STRUCTURE OF THE CG-IBS

1. III. A. BODIES INTEGRATING THE CG-IBS

- **Superior Council:**
Highest decision-making body integrating the CG-IBS.
- **Executive Board and other boards:**
Technical and executive body of the CG-IBS.
- **General Secretariat:**
Responsible for the technical and administrative activities supporting the CG-IBS's Superior Council and for integrating the bodies that form the CG-IBS.
- **Institutional and Interfederative Relations Advisory Body:**
Responsible for the institutional communication activities of the CG-IBS with the States, the DF and Municipalities, and with taxpayers.
- **Internal Affairs:**
Responsible for directing, investigating, and regulating the work of loaned public staff and public servants of the CG-IBS, by implementing preventive measures as well as filing trade union investigations and disciplinary administrative proceedings.
- **Internal Audit:**
Responsible for the internal control of the CG-IBS.

Superior Council



27 members – representing the States and the DF – are appointed by the heads of the Executive Branches; and



27 members – representing the Municipalities and the DF – are appointed by the heads of the Executive Branches, 14 of which are appointed by the heads of the Executive Branches and 13 are appointed according to the votes of each Municipality, weighted by their corresponding populations.

Quorum for approval of the resolutions of the Superior Council

States and the DF:



Absolute majority of its representatives; and



Representatives of more than 50% of Brazil's population.

Municipalities and the DF:



Absolute majority of its representatives.

1. III. B. SUPERIOR COUNCIL

Responsible for: Electing, empowering, removing holders of the other bodies and approving:



The IBS regulation;



The internal rules of the CG-IBS;



The regulatory act aimed at standardizing the interpretation and application of the IBS legislation;



The proposals of joint regulatory acts with the Federal Executive Branch, in matters of common interest involving the IBS and the CBS;



The annual budget of the CG-IBS;



The positions and wage plans of public servants;



The remuneration or compensation benefits to members of the Superior Council;



The accounts relating to the accounting, financial, budgetary and equity execution of the GC-IBS's resources; and



The methodology and calculation of the reference rate, specific regimes, among others.

1. III. C. PRESIDENT, VICE-PRESIDENT, GENERAL SECRETARIAT, ADVICE ON INSTITUTIONAL AND INTERFEDERATIVE RELATIONS, INTERNAL AFFAIRS, AND INTERNAL AUDIT

Presidency and Vice-Presidency:



Two-year tenure;



Alternating positions; and



Representation of numerous Federal entities.

Boards:



Inspection Board;



Information and Communication Technology Board;



Prosecutor's Board; and



Revenue and Collection Board;



Treasury Board.



Taxation Board;



Tax Liability Review Board;



Economic and Tax Information Board;



Administrative Board;

1. IV. EXTERNAL CONTROL OF THE CG-IBS



The CG-IBS is subject to accounting, operational and equity inspection by the State Audit Court (“TCE”) or the Municipal Audit Court (“TCM”) entitled to assess the accounts of the Federal entity of origin of the CG-IBS president (art. 40).



The power for supervising remains with the respective auditing court in relation to all the facts and accounting records involving the corresponding financial year (art. 40, paragraph 1).



The CG-IBS is subject to inspection by the TCU exclusively in relation to the resources applied by the Federal Government to cover the costs of establishing the CG-IBS, until it is fully reimbursed, under the terms of article 62 of PL 108/24 (article 40, paragraph 2).

The CG-IBS will draft:



Budgetary Execution Summary Report within 30 days after each two-month period (art. 41) (Fiscal Responsibility Law).



Fiscal Management Report, at the end of each four-month period (Art. 42) (Fiscal Responsibility Law), which will be:



executed by the president of the CG-IBS Superior Council as well as its technical officer; and



published within 30 days of the end of the period to which it corresponds, with full access to the population, including by electronic means paragraph 5).



Monthly Reports for States, the DF and Municipalities, under the terms of the internal regulations, containing at least the information on the amounts collected/withheld by the CG-IBS and the Federal entities, including, for example (art. 43):



Compensated or reimbursed amounts, sorted by Federal entity;



Balances of the credits from the Tax on the Circulation of Goods and Services (“ICMS”) approved (Art. 134, paragraph 3 of the Transitional Constitutional Provisions Act – “ADCT”) and compensated, sorted by Federal entity; and



The amount corresponding to the collection allocated to each Federal entity, segregating the amounts corresponding to the portion not withheld and the portion intended for distribution.



The CG-IBS will annually draft the following statements of Law No. 4,320/1964 (Budget Law):



Balance Sheet, Budget and Financial Balances; and



Statement of Changes in Assets and Cash Flows (art. 44).



The budget revenues and expenses of the CG-IBS will be included in the department's own statements, subject to approval by the Superior Council and to internal and external control, under the terms of PL 108/24 (art. 45).



The budget revenue of the CG-CBS does not refer to the portion of revenue withheld by the CG-IBS belonging to taxpayers, States, Municipalities and the DF (art. 45, paragraph 1).



The budget expenses of the CG-IBS will not be included in the statements and reports of States, Municipalities and the DF, provided for in the Fiscal Responsibility Law and in the Budget Law (art. 45, paragraph 2).



The CG-IBS revenues (Art. 46) comprise:



The percentage relating to the proceeds from the IBS collection allocated for each Federal entity (provided for in article 48);



Income from financial investments; and



Other resources allocated to it and any other income earned.



1. V. BUDGET OF THE CG-IBS



The Superior Council of the CG-IBS will propose, annually, until July 31 (art. 47):



The percentage relating to the proceeds from the IBS collection of each Federal entity that will be allocated for the financing of the CG-IBS in the subsequent financial year, which must not exceed 0.2%;






The CG-IBS budget for the subsequent financial year, of which amount must not exceed 0.2% of the IBS revenue estimated for the respective financial year; and



The estimated IBS collection must be included in the proposed budget, along with the respective calculation methodology (Art. 47, paragraph 1).

Within 30 days of the publication of the proposed budget in the Federal Official Gazette of Brazil ("DOU"), the Legislative Branches of the Federal entities of origin of the members of the CG-IBS Superior Council must express their opinion on the approval or rejection of the proposals (art. 47, paragraph 2):

-  Proposals will be considered rejected if an absolute majority of the Legislative Branches express opposition (art. 47, paragraph 3);
-  Failure by the Legislative Branch to express its opinion will be considered as tacit approval of the proposals (art. 47, paragraph 4);
-  In the event of rejection, the CG-IBS must, in the respective financial year (art. 47, paragraph 5):



Allocate to the financing of the CG-IBS a percentage of the proceeds from the IBS collected equivalent to that contained in the last proposal that was not rejected; and



Implement the CG-IBS budget within the limits defined in the last proposal that was not rejected.

The CG-IBS will be financed (Art. 48) through:



The withholding of an amount equivalent to the percentage established in the proposal approved by the CG-IBS Superior Council, on the proceeds from the current IBS collected and allocated monthly to each Federal entity; and



Other revenues – income from financial investments, other resources allocated for the CG-IBS and any other revenues earned:



According to the criteria of PL 108/24 regarding the withheld proceeds from the IBS collected, regardless of legislative authorization in the budget plan of States, the DF and Municipalities (art. 48, paragraph 1); and



If such withholding results in an amount higher than that provided for in the CG-IBS budget plan, the CG-IBS Superior Council will decide on the allocation of the corresponding surplus, and a portion could be reserved for financing the budget of subsequent financial years (art. 48, paragraph 3).

The CG-IBS budget can provide for the allocation of an amount equivalent to up to 0.05% of the current IBS collected through tax citizenship programs aimed at encouraging consumers to demand the issuance of tax documents, in compliance with the IBS regulation (art. 48, paragraph 2).

1. VI. CONTRACTING AND ADVERTISING THE NORMATIVE ACTS OF THE CG-IBS

Bids and hirings executed by the CG-IBS will be governed by the general bidding and contracting regulations applicable to direct, autonomous, and foundational public administrations of the Federal Government, States, the DF, and Municipalities (art. 49).

The CG-IBS will observe the principle of advertising, by publishing its normative acts, preferably by electronic means, made available on the Internet (art. 50).

1. VII. INFRINGEMENTS, SANCTIONS, AND DEFAULT CHARGES RELATING TO THE IBS



INFRINGEMENTS

Any action or omission, even if unintentional, by taxpayers, that is not in compliance with a key or ancillary obligation – whether positive or negative –, established by the IBS regulation (Article 51):



a) The responsibility for infringements is not dependent upon the intention of the agent or person responsible and on effectiveness, nature, and extent of the effects of the conduct (art. 51, paragraph 1); and



b) All of those who have contributed in any way to its perpetration or who have benefited from it are liable for the offense, jointly or severally (art. 51, paragraph 2).

The tax liability will be accrued with default interest equivalent to the rate of the Special Settlement and Custody System (“SELIC”), accumulated monthly, calculated from the day following the IBS due date until the last day of the month preceding the actual payment, and 1% in the payment month (art. 52).

Failure to pay the tax liability after the due date gives rise to a default fine of 0.33% per day, limited to 20%, on the amount of the IBS (art. 53).





The amount of the tax liability corresponding to the sanctions belongs to the Federal entities that carry out the inspection, observing the ratio provided for in the IBS legislation (art. 54):



a) It does not apply to the CBS-related sanctions, in the event of an agreement towards mutual assignment of the IBS and the CBS inspection in tax cases involving small amounts, under the terms of the supplementary law governing the IBS and the CBS.



Implementing the Goods and Services Tax Standardized Unit (“UPF/IBS”), in the amount of BRL 200.00, to be updated monthly according to the variance of the Broad National Consumer Price Index (“IPCA”), or any other index that replaces it (art. 55).



Sanctions will be cumulative when they result concurrently from non-compliance with ancillary and key tax obligations (art. 56).

The application of the sanctions **does not exclude** (Art. 57):



a) The demand for payment of the unpaid tax, with the appropriate legal accruals, if applicable; and



b) Administrative measures relating to the removal of licenses, concessions or authorizations, imposition of special inspection and collection regimes or tax representations for criminal purposes, among others, under the terms of specific legislation.

Failure to comply with the key tax obligation identified in a tax inspection provided for in the IBS legislation is subject to a 75% sanction (art. 58):



a) Of the amount from undeclared and uncollected IBS, in whole or in part, in compliance with the form and deadlines established by the IBS regulation; and



b) Of the credit amount, if undue, non-existent, or not covered by the procedures provided for in the IBS legislation, without prejudice to the payment of such amount.



Numerous sanctions can be imposed due to non-compliance with ancillary tax obligations, for example (art. 59):



a) Failure to register in the IBS taxpayers' registry – ten UPF/IBS (item I);



b) Failure to deliver informational documents on economic or tax transactions to the tax authorities, as well as periodic statements or any other piece of information necessary for calculating or bookkeeping the IBS, within the form and deadline established in the IBS legislation:

- (i) Ten UPF/IBS, per document or information; and
- (ii) 50% of the overdue IBS, except for the events in which the IBS was collected (item II).



c) Issue a document without any requirement or indication provided for in the IBS legislation or issue such document with insufficient or incorrect details – five UPF/IBS per infringement, limited to 40% of the overdue IBS amount on the transaction (item IV); and



d) Using tax liabilities inappropriately:

- (i) For untaxed transactions, in whole or in part, or subject to a zero % rate – 10% of the amount of the transaction; or
- (ii) Whose subsequent transaction, involving the same asset or another one resulting from it, whether exempt or immune – 10% of the amount of the installment or transaction (item XXX).



As for transactions with no overdue IBS, the fines will be 10% of the transaction amount (art. 59, paragraph 2).



Ex-officio assessment fines can be offset subject to the following reductions (art. 59, paragraph 3):



a) 50% of the sanction applied, if full payment of the tax liability is made within the deadline established for submitting an administrative challenge, in compliance with the regulations; and



b) 25% of the sanction applied, if the tax liability is paid in full, after the deadline provided for in the previous item and before it is registered as an overdue tax liability, in compliance with the IBS regulation.

COMPLETE TABLE

FINES FOR NON-COMPLIANCE WITH ANCILLARY OBLIGATIONS

ITEM ART. 59	INFRINGEMENT	SANCTION
I.	Failure to register in the IBS taxpayers' registry.	Ten UPF/IBS.
II.	Failure to deliver informational document on economic or tax transactions to the tax authorities, as well as periodic statements or any other piece of information necessary for calculating or bookkeeping the IBS, within the form and deadline established in the IBS legislation.	a) Ten UPF/IBS, per document or per information; and b) 50% of the overdue IBS, except in the event that the IBS was collected.
III.	Failure to report contractual and statutory changes, change of tax domicile, change of civil domicile of the partners, sale or transfer of establishment and closure or temporary suspension of activities to the tax authorities, within the terms and deadlines established in the IBS legislation.	Ten UPF/IBS per infringement.
IV.	Issue a document without any requirement or indication established in IBS legislation or issue such document with insufficient or incorrect data.	Five UPF/IBS per infringement, limited to 40% of the amount of the overdue IBS in the transaction.

V.	Failure to maintain, deliver or submit to the tax administration, in non-compliance with the IBS legislation – within the deadlines established therein or when summoned –, documents, electronic files, demonstration copies of programs, applications, passwords or any electronic means enabling access to equipment, databases, screens, functions and commands of tax applications, as well as system documentation and other elements required by the IBS legislation.	Fifty UPF/IBS per infraction.
VI.	Use software or any technological solution enabling issuance of tax documents with reduced or suppressed IBS or transaction amounts.	Fifty UPF/IBS per observation.
VII.	Develop, provide or install a program, software, tax application or technological solution that does not meet the requirements established in the IBS legislation.	Fifty UPF/IBS, per establishment.
VIII.	Failure to submit, submit in non-compliance with the IBS legislation or the tax notification, or failure to keep, or keep in non-compliance with the IBS legislation, electronic files relating to the issuance or bookkeeping of tax documents.	<p>a) Twenty UPF/IBS per calculation period, regardless of a tax subpoena; and</p> <p>b) Thirty UPF/IBS per calculation period and for each tax subpoena, after the application of the sanction provided for in line “a”, provided that non-compliance with the obligation – within the deadline established in the tax subpoena – is verified.</p>

IX.	Failure to use, or use in non-compliance with the IBS legislation, volume measurement mechanisms required and controlled by the tax administration, within the deadlines established in the IBS legislation or when a subpoena is served.	Fifty UPF/IBS per equipment.
X.	Failure to communicate or communicate after the deadline provided for in the IBS legislation, the misuse of an electronic tax document number.	One UPF/IBS per number.
XI.	Failure, by the recipient, in relation to an electronic tax document issued by a third party – even if in contingency – to confirm the transaction, inform the recipient of their unawareness or of the return of the assets, within the form and under the conditions established in the IBS legislation.	One UPF/IBS per document.
XII.	Use, in order to monitor the transportation of assets or the provision of transportation services, an ancillary document for an electronic tax document that does not comply with the IBS legislation.	One UPF/IBS per document.
XIII.	Hinder or resist a tax enforcement action by any means.	Fifty UPF/IBS per event.
XIV.	Submit delayed or non-compliant accounting records, or with missing elements, as required for accounting records.	Thirty UPF/IBS per infringement.
XV.	Failure to register a tax document in the tax records intended for reporting the IBS calculation, as established in the tax legislation.	10% of the amount of the transaction, reduced to 5% when involves: a) Entry of assets or use of services registered in the accounting; or b) A transaction whose IBS has been collected.

XVI.	Supply, deliver, transport, receive, and stock goods or store them in a warehouse without a tax document.	30% of the transaction amount.
XVII.	Provide services without a tax document.	30% of the transaction amount.
XVIII.	Issue a tax document that does not effectively correspond to the supply of goods or services, or to a purchase of goods or services.	20% of the transaction amount indicated in the tax document.
XIX.	Use the IBS credit arising from registration of the tax document that does not correspond to the purchase of goods or services.	20% of the transaction amount indicated in the tax document.
XX.	Issue or use a tax document whose recipient is a person or establishment other than that for which the goods or services are actually intended.	20% of the transaction amount indicated in the tax document.
XXI.	Issue or use a tax document that includes, as purchaser, a person or establishment other than the one that actually purchased the goods or services.	20% of the transaction amount indicated in the tax document.
XXII.	Cover the transit of goods more than once by using the same tax document.	20% of the transaction amount.
XXIII.	Provide transportation services more than once using the same tax document.	20% of the amount for the transportation services rendered.
XXIV.	Include, in a tax document supporting the transaction, an amount that differs from the actual transaction amount.	20% of the calculated difference.

XXV.	Receive goods supported by a tax document that indicates an amount that differs from the actual transaction amount or a quantity inferior to that actually received.	20% of the calculated difference.
XXVI.	Consume a service supported by a tax document that indicates an amount that differs from the actual transaction amount.	20% of the calculated difference.
XXVII.	Use untrustworthy document.	20% of the transaction amount, cumulatively with credit reversing in the event of its use.
XXVIII.	Falsify, tamper with, misplace or invalidate a tax document.	20% of the transaction amount, calculated or handed down by the tax administration.
XXIX.	Issue an invalid tax document, in cases not provided for in item XXVIII.	20% of the transaction amount, calculated or arbitrated by the tax authorities.
XXX.	Use tax liabilities improperly.	a) For untaxed transactions, in whole or in part, or subject to a zero % rate – 10% of the transaction amount; or b) Whose subsequent transaction, involving the same good or another one resulting from it – whether exempt or immune – 10% of the amount of the service or transaction.
XXXI.	Failure to issue a tax document relating to the acquisition of goods or services, within the period and in the cases provided for in the IBS legislation.	30% of the transaction amount.
XXXII.	Cancel a tax document or a piece of electronic information from the transaction's records after the triggering event has occurred.	20% of the transaction amount.

XXXIII.	Cancel, after the deadline established in the IBS legislation, an electronic tax document relating to a transaction that was not carried out.	10% of the transaction amount.
XXXIV.	Use, to support the transportation of goods, an ancillary document of an electronic tax document including amounts or recipient data that do not correspond to that indicated in the respective tax document.	20% of the transaction amount.
XXXV.	Use, for the provision of passenger or cargo transportation services, an ancillary document of an electronic tax document including amounts or passenger/ cargo recipient data that do not correspond to those indicated in the respective tax document.	20% of the amount of the transport services rendered.
XXXVI.	Submit a Contingency Issuance Declaration whose amount differs from that in the corresponding electronic tax document.	20% of the calculated difference.

2. IBS TAX ADMINISTRATIVE PROCEDURE

2. I. PROCEDURAL RULES

2. I. A. PRELIMINARY PROVISIONS

COMPLIANCE WITH THE FOLLOWING PRINCIPLES OF:



Simplicity;



Clarity;



Efficiency;



Material truth;



Loyalty and good faith;



Moderate formalism;



Full defense;



Motivation;



Reasonable length of procedure; and



Due process of law;



Legality;



Fast-track processing.






Publicity;




Cooperation;

2. I. B. PROCEDURAL ACTS AND TERMS





FORM

-  The tax administrative procedures will be formed, processed, and judged through an electronic system;
-  The parties have the right to the due process of law; and
-  The incorrect designation given to the defense or appeal will not harm the interested party.





SUBPOENAS

-  The subpoenas involving procedural acts will be carried out by means of an Electronic Tax Domicile (“DTE”), including in the case of proxy notices (art. 320 of PLP 68/2024).

DEADLINES

-  Counting of procedural deadlines in terms of working days;
-  Suspension of deadlines between December 20 and January 20; and
-  If there is no express deadline, a 10-day period of time will be considered.
-  art. 74 paragraph 5
The federative entities will inform the CG-IBS of the dates that are not considered as business days and the CG-IBS will publish the calendar of business days on its website.

VICES AND UNENFORCEABILITY

-  The following are considered unenforceable:
 - a) Acts carried out by an unqualified or barred authority, body or server;
 - b) Acts carried out and decisions handed down to the detriment of the right of defense;
 - c) Unsubstantiated decisions; and
 - d) Acts executed based on taxpayer misidentification.
-  Unenforceable acts will only hinder subsequent acts.
-  Establishes events involving justices’ recusal. Justices must submit to Chamber’s or Trial Chamber’s president, at the beginning of each new mandate, a list of companies with which it has had or maintains any type of relationship that could fall within the events mentioned.
-  Errors, inaccuracies, and omissions will not be considered unenforceable and will be remedied when they cause harm to the taxpayer.

2. II. OFFICIAL ASSESSMENT



Executing an official assessment action does not prevent the adoption of consensual tax dispute resolution procedures.

2. III. TAX ADMINISTRATIVE LITIGATION

2. III. A. GENERAL PROVISIONS



Deadline for objection of 20 days, counting from the assessment notice.



The taxing authority can change the assessment made, in whole or in part, in response to a challenge filed, in the event of a remediable defect in the official assessment action or in the event of need for reformulation.



Challenges and appeals will be rejected by the competent authority if they are untimely, assumed or executed by a person without legal standing or inept.



In the event of an objection, if the taxpayer partially recognizes the tax credit assessed, the undisputed amount will be referred for administrative collection.

2. III. B. DILIGENCES



The judging authority will not be bound by the factual or legal grounds invoked, but can either request that any steps be taken or require a response from those interested in resolving the dispute.



When not expressly established by the judging authority, the deadline for complying with the diligence will be 20 days.



The party will be served with a subpoena in relation to all the documents inserted in the case as a result of the diligence, and will have 20 days to make a statement, if deemed appropriate.

2. III. C. WITHDRAWAL AND DEFAULT JUDGEMENT



The withdrawal of the dispute in the administrative sphere will be carried out:

a) Expressly, at the request of the taxpayer; or

b) Explicitly through:

(i) payment, installment or compensation of the tax liability under dispute;

(ii) filing a lawsuit involving the same matter that is the subject of the administrative proceeding; or

(iii) failure to file a challenge or appeal timely.

2. III. D. BINDING PROVISIONS



Within the scope of the tax administrative proceedings, the following must be observed:

- a) The binding precedents of the Brazilian Supreme Court (“STF”);
- b) Final and unappealable decisions handed down by the STF in cases of concentrated control of constitutionality;
- c) Final and unappealable decisions handed down by the STF in judicial review that have rendered a legal provision unconstitutional, the execution of which has been suspended by a resolution of the Federal Senate; and
- d) Final and unappealable decisions handed down by the STF or the Superior Court of Justice (“STJ”), issued under the system of general repercussion or repetitive appeals.



Binding administrative acts arising from the powers of the CG-IBS aiming to standardize the interpretation and application of the IBS legislation must also be observed. If the decision fails to demand so, the Appeal for Unification will be applicable.

2. III. E. TYPES OF APPEALS



The following are considered suitable:

- a) Mandatory Review;
- b) Voluntary Appeal;
- c) Unification Appeal; and
- d) Request for Rectification.



A fast-track procedure can be adopted for the judgment of tax liabilities lower than the threshold amount, which will be established on a uniform basis nationwide or seeking to reduce complexity, as determined by an act of the CG-IBS – in which case the first instance decision will be final.

MANDATORY REVIEW



The Mandatory Review will be automatically filed by the first instance court whenever the decision is, in whole or in part, unfavorable to the interests of the tax authorities, provided that the amount exceeds the specific limit – to be determined by the CG-IBS.

VOLUNTARY APPEAL

The Voluntary Appeal can be filed against a first instance decision to the detriment of the taxpayer, and is addressed to the collegiate board of the second instance court, providing knowledge regarding the entire matter.

UNIFICATION APPEAL

The Unification Appeal can be filed against a second instance court decision that interprets the tax legislation in a way that differs from the interpretation attributed to it by another second instance court decision, and must be addressed to the IBS Superior Council.



Only a decision published within the last five years will be accepted as a leading case, and a judgment which, on the date the Unification Appeal is filed, has already been reformed by the Higher Chamber of the IBS, will not be accepted as a leading case..

REQUEST FOR RECTIFICATION

A Request for Rectification can be filed against the decision of any instance, within five days, in order to correct factual errors, resolve contradictions, vagueness or omissions, therefore interrupting the deadline for filing appeals.

2.1.F. REQUEST FOR UNIFICATION

A Request for Unification under repetitive matters is also valid before the IBS Superior Council in the event of effectively repeated trials involving the same matter.

The harmonization of IBS and CBS will be guaranteed by the Harmonization Committee of Tax Authorities, whose decisions will be binding on the administrative judging bodies.

When carrying out this harmonization activity, the Harmonization Committee of Tax Authorities must listen to the Forum for Legal Harmonization of Public Prosecutors' Offices, which must participate in the meetings of the Harmonization Committee of Tax Authorities.

2. IV. JUDGING BODIES

2. IV. A. GENERAL PROVISIONS



It is the responsibility of States, the DF and Municipalities, in an integrated manner and exclusively through the CG-IBS, to decide on administrative disputes relating to the IBS.



The trial sessions will be held virtually and oral arguments will be held during the session.



Administrative litigation will be structured as follows:

- a) Trial Court;
- b) Appellate Court; and
- c) Case Law Unification Court.



The first and second instances will be arranged by state and district federal units, observing the scope of jurisdiction of the state, district and municipal tax administrations considered.



Par conditio representation is ensured for all the States, the DF and Municipalities in all the instances that form the judgment structure responsible for resolving administrative disputes relating to the IBS with at least 30% of seats guaranteed to women.

2. IV. B. TRIAL COURT



The first instance will be formed by 27 virtual Trial Courts, integrated – in a collegiate and equal manner – exclusively by career civil servants employed by the State and its respective Municipalities, or by the DF, with powers to carry out tax assessments or judgments.



The Courts referred to in the main section can be formed by Trial Panels.



The Trial Courts of the first instance and, if applicable, their respective Trial Panels will be integrated as established by an act of the CG-IBS.

Trial Panels will be integrated:



- a) By two servers appointed by the State Tax Administration for which the assessment was carried out;



- b) By two servers appointed by the State Tax Administrations of member Municipalities; and



- c) By the president, who will vote only in the event of a tie.

2. IV. C. APPELLATE COURT



The second instance of IBS litigation will judge mandatory reviews and voluntary appeals.



The second instance will be formed by 27 virtual Trial Courts, integrated, on a collegiate and equal basis, by career civil servants employed by the State and their respective Municipalities, or by the DF, with powers to carry out the tax assessment or tax judgment, and by taxpayers' representatives.



The Trial Courts of the second instance and, if applicable, their corresponding Trial Panels, will be integrated:



a) By two servants appointed by the State Tax Administration for which the assessment was carried out;



b) By two servants appointed by the Municipal Tax Administrations of Member Municipalities;



c) By four taxpayers' representatives; and



d) By the president, who will only vote in the event of a tie.



The taxpayers' representatives will be appointed, as established in an act issued by the CG-IBS, from the people nominated by entities representing economic categories and approved in a public selection process assessing their knowledge and experience in tax matters.



The presidency of the Trial Court and, if applicable, of its corresponding Trial Panels, will be exercised alternately on an annual basis, and exclusively by the civil servants appointed by the State Tax Administrations and their corresponding Municipalities.

2. IV. D. CASE LAW UNIFICATION COURT



The IBS Case Law Unification Court is responsible for deciding on Unification Appeals, Unifications Requests and Requests for Rectification, as well as on the drafting, revision and cancellation of binding provisions within its powers.



The Case Law Unification Court will be composed, virtually, by the IBS Superior Council, integrated, on a collegiate and equal basis, exclusively by career civil servants employed by the State and its respective Municipalities, or by the DF, with powers to carry out tax assessments or judgments.



The IBS Superior Council will be integrated by:



a) Four servants appointed by the State Tax Administrations and the DF;



b) Four servants appointed by the Municipal Tax Administrations and the DF; and



c) 8 taxpayers' representatives;



d) A president, who will only vote in the event in case of a tie.

The harmonization of IBS and CBS administrative case law will be carried out by the Harmonization Committee of Tax Authorities relating to IBS and CBS.

The decisions by the Harmonization Committee of Tax Authorities will be binding as of their publication in the Federal Official Gazette.

2. IV. E. REPRESENTATION OF THE PUBLIC TREASURY



The representation and legal defense of the Public Treasury before the Trial Courts will be carried out by civil servants employed by the State, Federal and Municipal Prosecutor's Offices or by civil servants employed by the respective Tax Administrations.

2. V. FINAL PROVISIONS

The CG-IBS must regulate the minimum requirements for judging administrative tax proceedings. Except in cases of willful misconduct or excessive language, judges cannot be punished or undermined for the opinions they express or the content of the decisions rendered.

Decisions and appellate decisions must clearly state the factual and legal

assumptions supporting them, and the CG-IBS is responsible for ensuring that those are duly published as established in its own specific act.

The CG-IBS can establish other administrative procedures of a litigious nature, to which the provisions established in a supplementary law will apply.

3. DISTRIBUTION OF THE IBS COLLECTION PROCEEDS

3. I. PRELIMINARY PROVISIONS



The distribution of IBS revenue will be carried out per distribution period, to be determined by the CG-IBS; and



The base revenue is the amount corresponding to the portion of IBS revenue belonging to each Federal entity, calculated on the basis of tax documents and on IBS distribution criteria, within the scope of the specific tax regimes, including adjustments, under the terms of the calculation below:

AMOUNT COLLECTED TO THE CG-IBS

- Amount withheld to reimburse credit balances
- Amount of assumed credits earned in the period
- Amount of ICMS credit balance used to offset debts
- Cashback returned to families

AMOUNT AVAILABLE TO ENTITIES



3. II. BASIC REVENUE OF FAVORABLE ENTITIES

GOVERNMENT ACQUISITIONS



In government acquisitions, the total IBS amount (including the CBS portion incorporated in the IBS rate) will belong to the acquiring Federal entity.

SIMPLES NACIONAL



The IBS paid on acquisitions by companies taxed in compliance with Simples Nacional, which do not generate credit rights, will be allocated to the initial revenue of the Federal entities where the transactions take place.

CASHBACK



The amount allocated for the general return of the IBS to individuals will be deducted from the initial revenue of each entity, and the general IBS cashback will be financed by all Federal entities, in proportion to their share in the initial IBS revenue.

AMOUNT ALLOCATED PER ENTITY



The amount of revenue allocated per Federal entity, including adjustments, corresponds to the “proceeds from the tax collection of each State, the DF and each Municipality, which is calculated based on the reference rates”.

TRANSITION



From 2029 to 2077 – the revenue percentage per entity will be withheld for the purposes of the transition in the distribution of IBS revenue, as provided for in the ADCT.



From 2077 to 2096 – the revenue percentage per entity will be withheld for the purposes of its allocation to the Federal entities with most significant loss of relative share in revenue, as provided for in the ADCT. From 2029 to 2077 – the percentage will correspond to 5%, and will be reduced gradually from 2077 to 2097, when it will reach 0%.

ADJUSTMENTS AND CALCULATION



The criteria and procedures to be adopted by the CG-IBS for calculating and distributing the proceeds from the IBS collection per Federal entity are provided for, as follows:

Residual Rule – any item from revenue or revenue reduction that cannot be allocated to Federal entities will be distributed to all in proportion to their share in revenue.

Cashback Percentage / Presumed Credit – if the amounts allocated are higher than necessary, they will be:



(a) reserved for the subsequent time period;



(b) their percentages will be reduced; or



(c) they will be returned to the Federal entities.

Transition Period – in 2027 and 2028, when the IBS will be charged at the rate of 0.1%, the CG-IBS will be entitled to distribute revenue based on aggregate values and not per transaction.

SPECIFIC TAXATION REGIMES



Specific Regimes are those involving:



a) Fuels;



d) Financial Services;



b) Services rendered by Health Plans;



e) Services rendered by Travel and Tourism Agencies;



c) Cooperatives opting for the Optional Regime provided for in PLP 68/2024;



f) Brazilian Football Associations (“SAFs”).

In these specific regimes, there is no binding of the IBS credit earned by the acquirors of taxed goods and services and the IBS amount paid by the suppliers of such goods or services. In these cases, the criterion adopted was to deduct from the amount paid, under the specific regime, the credits earned by the acquirors and distribute the residual amounts based on the criteria established in the IBS legislation.

3. III. DISTRIBUTION OF WITHHOLDING REVENUE FOR TRANSITION PURPOSES

3. IV. SUPPLEMENTARY DISTRIBUTION TO FEDERAL ENTITIES WITH GREATER LOSS OF RELATIVE REVENUE SHARE



DISTRIBUTION CRITERIA

Between 2029 and 2077, in relation to the transition period in the distribution of IBS revenue, the share to be distributed per entity will be proportional to the ratio between the entity's average reference income and the sum of the average reference income of all States, the DF and Municipalities, based on the "average income of each Federal entity".

When calculating the "average income of each Federal entity", the following will be observed:



a) For States, the annual ICMS amounts collected from 2019 to 2026 will be considered;



b) For Municipalities, the annual amounts of the ISS collected from 2019 to 2026 will be considered; and



c) For the DF, the annual amounts of both the ICMS and the ISS collected from 2019 to 2026 will be considered.

The average revenue calculation will be published by the CG-IBS by August 31, 2027, based on numerous criteria (Simples Nacional revenue, municipal quotas and other reports provided for in the Fiscal Responsibility Law).

There will be additional distributions to entities with greater loss of relative share in revenue from 2029 to 2096.

3. V. ENTITIES' BASE REVENUE ALLOCATION

3. V. A ENTITIES' BASE REVENUE ALLOCATION

3. V. B ALLOCATION OF DISTRIBUTED REVENUE TO ENTITIES UNDER CHAPTERS III AND IV

3. V. C. ALLOCATION OF DISTRIBUTED REVENUE TO MUNICIPALITIES UNDER ART. 158, MAIN SECTION, ITEM IV, LINE B, OF THE FEDERAL CONSTITUTION

ALLOCATION OF SEVERAL CATEGORIES OF REVENUES ATTRIBUTED TO THEM

REVENUE CATEGORIES OF FEDERAL ENTITIES:



Base Revenue of the federal entity;



Revenue withheld for transition purposes; and



Revenue withheld for allocation to Federal entities with greater loss of relative share in revenue.

ADJUSTMENTS



Revenue deduction for the purposes of compensating or reimbursing ICMS credit balances, including in the case of the ICMS charged by tax substitution in relation to the stock of goods existing on December 31, 2032;



Revenue deduction for the purposes of specific IBS return to families (specific cashback), in compliance with the legislation of each Federal entity;



Segregation of revenue allocated for the Fund to Combat Poverty ("FECOP") of the Federal entity;



In the case of States, deduction of the revenue portion allocated to the IBS quota to be transferred to Municipalities;



Deduction of the percentage of revenue allocated to the Basic Education Maintenance and Development Fund ("FUNDEB"); and



Deduction of the percentage of revenue allocated for financing the CG-IBS.

FUNDS TO COMBAT POVERTY



A revenue percentage of the IBS from States, the DF and Municipalities will be allocated to FECOP, according to the specific law of each Federal entity, which cannot exceed 1%.

3. V. D. FINAL PROVISIONS



Information provided by the States – States must inform the CG-IBS, observing the deadline to be further established in a regulation, the share coefficients of each Municipality integrating the States for distributing the funds.



Information provided by the CG-IBS – The CG-IBS must submit to States, the DF and Municipalities the necessary information for classifying transferred credits, as well as the necessary data for calculating the constitutional and legal amounts to be distributed to each Federal entity.



The CG-IBS will provide information on the calculation of the IBS revenue per State, DF and Municipality on a public portal, including details of such distribution.

4. PROVISIONS ON THE ICMS TRANSITION (ART. 144 A 158)

4.1. CHARACTERIZATION, APPROVAL AND USE OF THE ICMS CREDIT BALANCE

4.1. A CREDIT BALANCES



It regulates the recognition and use by taxpayers of the ICMS credit balances (art. 148).

A credit balance is considered to be the amount of ICMS earned as credit and not offset or used by taxpayers by December 31, 2032, provided that (art. 149):



a) It is regularly recorded in the company's tax records; and



b) It is allowed by the state or district legislation in force on December 31, 2032, and arises from transactions that have taken place up to that date.



It also applies to credits recognized after December 31, 2032, including those resulting from final and unappealable court decisions favorable to the taxpayer (art. 149, sole paragraph).



As of February 01, 2033, the ICMS credit balances will be updated according to the monthly IPCA variance for the second previous month or in compliance with another index that replaces it (art. 150).

4. I. B. REQUEST FOR APPROVAL

General credits: For the purposes of approving the ICMS credit balances, with the exception of credits arising from the entry of goods allocated as permanent assets, the following must be observed (art. 151):



a) Interested parties must file such request within a maximum period of five years, counting from January 01, 2033;



b) The State or the DF must make a statement within a maximum period of 12 months from the date of the respective protocol; and



c) The deadline can be extended for an equal period in cases where there is an ongoing inspection at the time the request for approval is submitted (art. 151, paragraph 2).

Permanent assets: Regarding credits arising from the entry of goods allocated as permanent assets (Art. 151 paragraph 1):



a) Such request must be filed within the same calculation period in which the credit begins to be used, in the event of goods introduced into the establishment after January 01, 2029; and



b) The State or the DF must make a statement within a maximum period of 60 days from the date of the respective filing.

Tacit approval: Failure to respond to the request for approval within the established deadlines will result in the credit balances being considered tacitly approved (art. 151, paragraph 3).



a) Tacit approvals do not prevent the calculation and assessment of amounts relating to the respective credit balance, under the terms of the state or district tax legislation, provided that the Treasury's right to establish the tax credit has not expired (art. 151, paragraph 4).



b) Once the tax liability has been assessed, after tacit approval, the State or the DF will notify the CG-IBS so that it can suspend – up to the limit of the amounts assessed – the deduction of the monthly installments pending compensation or reimbursement, until the final decision is made in the administrative sphere (art. 151, paragraph 5).

Applicable legislation: The request for approval of the ICMS credit balance will be processed in compliance with the legislation of the State or of the DF (art. 151, paragraph 6).

4. I. C. COMPENSATION OF THE ICMS CREDIT BALANCE



Within the scope of the ICMS: If there is agreement between the State or the DF and the taxpayer, the approved credit balance can be used to offset tax liabilities, whether definitively established or not, relating to the ICMS, under the terms provided for in the respective legislations (art. 152).



Within the scope of the IBS: The States and the DF must inform the CG-IBS, within 30 days, counting from the approval, the amount of the approved credit balance, the identification of its holder and the date of completion of the IBS compensation, in compliance with the following categories (art. 153):

- a) Credits for incoming goods allocated as permanent assets; and
- b) Further credits.



The credit balance informed to the CG-IBS will be used for IBS compensation (art. 152):

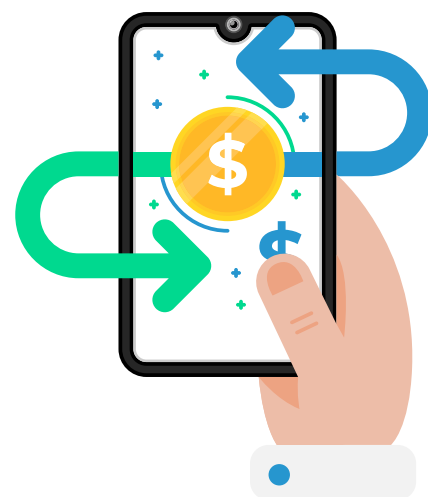
- a) With regard to credits arising from the entry of goods as permanent assets, for the remaining period in connection with the 1/48ths, under the terms of Supplementary Law 87/96;
- b) For other credits, in 240 equal and successive monthly installments; and
- c) Compensation under the IBS will begin in the month following that in which the CG-IBS (art. 154, sole paragraph) receives the information.

4. I. D. CREDIT BALANCE TRANSFERS



The holder of the approved credit balance can transfer it to third parties, who will be entitled to use such balance exclusively for compensation:

- a) Within the scope of the respective State or the DF, with tax liabilities, whether definitively established or not, relating to the ICMS, in compliance with the respective legislation; and
- b) Within the scope of the CG-IBS, with the overdue IBS, under the regulation. In this case, the general compensation rules regarding the IBS will be observed and, in relation to ongoing compensations, they will be offset observing the same amount of the remaining installments applicable to the original credit holder (art. 154).





Credit balance transfers must also observe the following (art. 155, paragraph 2):

- a) In the event of a tacitly approved credit balance, the transfer can only be carried out from January 01, 2038; and
- b) must be communicated to CG-IBS exclusively through an electronic tax document of credit transfer

4. I. E. CREDIT BALANCE REFUND



In the event that compensation is not possible, as an alternative to the events involving transfers, the holder of the right to the approved credit balance can be reimbursed, in kind, by the CG-IBS, in 240 monthly, equal and successive installments, or, in relation to ongoing compensations, for the remaining period (art. 156).



Reimbursements will be carried out within 90 days of the end of the month in which the respective compensation would have taken place, with no accruals of any kind (art. 156, paragraph 1).



In the event that the reimbursement is carried out after the 90-day deadline, the respective amount will be updated as of the 91st day, on the basis of the SELIC rate (art. 156, paragraph 2).

4. I. F. FINAL PROVISIONS



The transfer and payment of the reimbursement installments are conditional on the holder of the credit balance being in good standing in relation to the IBS and the other taxes due to the respective State or DF (art. 157). As of 2034, if the amount of IBS collected increases by more than the amount recorded in previous years, updated by the Broad Consumer Price Index (IPCA), the states and the Federal District will be allowed to pay the balance reimbursement installments in advance.



The CG-IBS will deduct the amount compensated or reimbursed from the proceeds of the IBS tax due to the respective State or DF, which will not be part of the calculation base for the purposes of:

- a) Distributing to the Municipalities the 25% share of the proceeds from the ICMS tax and the proceeds from the IBS tax distributed to the States.
- b) Allocating minimum resources for public health measures and services, arising from the application of percentages calculated on the proceeds from both the ICMS and IBS collections.
- c) Net tax revenue percentages corresponding to the States and the DF allocated for social inclusion and development programs.

d) Allocating a minimum revenue percentage resulting from taxes, by the Federal Government, States, the DF and Municipalities, for the maintenance and development of teaching, primary education, and the remuneration of the sector's professionals.

e) The amount of the net tax revenue of the States and the DF, if allocated for a state fund for cultural incentive, for the financing of cultural programs and projects.

4.II. USE OF THE ICMS LEVIED BY TAX SUBSTITUTION RELATING TO GOODS IN STOCK ON DECEMBER 31, 2032



Use of the ICMS levied by tax substitution relating to goods in stock on December 31, 2032.



Regulates the crediting of the ICMS-ST amount withheld in the event that the taxpayer holds goods – subject to the tax substitution regime – in stock, at the end of December 31, 2032, (art. 159).

The amount that can be credited will correspond to the ICMS amount (art. 160):

- a) Withheld by tax substitution, if the taxpayer has purchased the goods directly from the agent that withheld them;
- b) Collected by tax substitution, in the event that the taxpayer has calculated the tax due at the time of receipt of the goods; or
- c) Levied on the transactions with such goods, informed in the appropriate fields of the tax document, in the event that the taxpayer has acquired the goods from a substituted taxpayer or a taxpayer who has calculated the tax due by tax substitution at the time of the receipt of the goods.



If it is not possible to correlate the goods in stock with their respective receipt, the amount of the ICMS-ST that can be credited will be calculated on the basis of the amount of the ICMS withheld corresponding to the average of the receipts over the three previous months, up to the limit of the amount reported in the inventory carried out on December 31, 2032 (art. 160, paragraph 1).



For the purposes of the right to credit, those goods shipped from a remitting facility until December 31, 2032, and received by a recipient facility after this date – provided that the ICMS has been withheld or collected by tax substitution (art. 160, paragraph 2) – are also considered.

Subject to the manner and deadlines established in the IBS regulations (art. 161), taxpayers must (art. 161, I):



a) Create an inventory of the goods subject to the ICMS tax substitution regime, existing in stock at the end of December 31, 2032, in each of its facilities;



b) Calculate, as established by the Project (item “3” above), the amount of ICMS levied, by tax substitution, on the inventory stock; and



c) Forward the inventory and the calculation statement (item “b” above) to the State or the DF where the respective facility is located and to the CG-IBS.



The State and the DF will inform the CG-IBS, within up to 60 days after receiving the statement, of the amount that will be used for compensation, in 12 equal and successive monthly installments, with the overdue IBS amount, by the taxpayer, in subsequent months (art. 161, II). If such information is not provided to the CG-IBS within 60 days, the CG-IBS will use the amount in the statement for compensation purposes (Art. 161, III).



Compensations neither imply recognition of legitimacy nor approval of the amounts reported by taxpayers (art. 161, sole paragraph).



This system does not apply to taxpayers who have opted for the Simples Nacional system of calculation and payment, which, in turn, must (art. 162):



a) Create an inventory of goods subject to the ICMS tax substitution regime, existing in stock at the end of December 31, 2032; and



b) Forward the inventory to the State or the DF and request the repetition of indebtedness under the terms of the legislation of each Federal entity.



BOOK II
TAX ON CAUSA MORTIS TRANSFERS AND
DONATION OF GOODS OR RIGHTS – ITCMD



1. GENERAL PROVISIONS

1. I. PRELIMINARY PROVISIONS

1. II. TRIGGERING EVENT



The ITCMD is levied on the transfer of any assets or rights:



a) As a result of the death of its holder; or



b) By means of donation.



ITCMD will be levied on financial contributions capitalized in the form of private pension plans or any other form or denomination of financial application or investment, regardless of the type of guarantee, except on financial contributions capitalized in the form of private pension plans that have a term of more than five years from the date of the contribution until the occurrence of the taxable event.



The ITCMD is levied on the transfer of any goods and rights for which any economic value can be attributed.



Successors are considered to be heirs, legatees, beneficiaries, fiduciaries and trustees, or any other natural or legal person who receives the assets and rights.



For the purposes of the ITCMD, a donation is considered to be the act by which a person, out of goodwill, transfers goods or rights to another, who accepts them, expressly, tacitly or presumably, with or without a charge.



This includes pension plans under a capitalization system in which the deceased person's assets are transferred to their heirs (such as the Free Benefit Generator Plan – “PGBL” – and Life Free Benefit Generator – “VGBL”).



Paragraph 5 of art. 155 introduces specific anti-abuse rules, with a clear and predictable approach for both the taxpayer and the taxing authority. These rules are limited to transfers between related persons and address situations that, in economic reality, are considered donations.

1. III. TAX IMMUNITY AND NON-LEVY

The ITCMD immunity applies to donations and inheritances intended for public entities, political parties, religious entities and temples of any kind, including their welfare and charitable organizations, taking into account the provisions of Constitutional Amendment No. 132, and workers' unions.

The project regulates the ITCMD immunity on free transfers to civil society organizations (“OSCs”) constituted as non-profit legal entities.





It has a public and social purpose, introduced by Constitutional Amendment No. 132. Paragraphs 1 to 8 regulate the matter and solve a major bureaucratic problem that concerns the OSCs, not requiring prior immunity recognition by tax authorities.



Immunity also applies to donations within the scope of the Executive Branch integrating the Federal Government, in compliance with the provisions of the Federal Constitution.



The ITCMD is not levied on the extinction of usufruct or any other right *in rem* that results in the consolidation of full ownership held by the donor of the right.



A benefit payable under a risk contract is not considered to be the result of a *causa mortis* transfer.

1. IV. TRIGGERING EVENT



The ITCMD triggering event in *causa mortis* transfers occurs on the date of:



a) The death of the holder of the assets and rights; or



b) Fideicomissary substitution.



The ITCMD triggering event in donations occurs on the date of:



a) Execution of a donation contract, even if as an advance on the legitimate donation;



b) Institution of a conventional usufruct or any other right *in rem*;



c) Waiver of inheritance or devise in favor of a specific person;



d) Approval of a partition or award resulting from an inventory, a divorce or dissolution of a steady union, in relation to the surplus arising from partition benefiting one of the parties;



e) Execution of the public deed of partition or extrajudicial award, arising from an inventory, a divorce or dissolution of a steady union, in relation to the surplus arising from partition benefiting one of the parties;



f) Registration, with the Board of Trade, of the deed of transfer of shares in companies or of assets of individual entrepreneurs;



g) Registration, with the Corporate Registry Office, of the transfer of shares in non-commercial companies;



h) Registration, with the appropriate registration body, of the transfer of shares in companies not covered by items VI and VII;



i) Registration, with a public body, in the case of other transfers subject to registration;



j) Formalization of the legal act or business, in cases not provided for in items I to IX; and



k) Of the legal act or business, in cases where there has been no formalization.

The taxable event in a causa mortis transfer does not depend on whether a judicial or extrajudicial inventory or list has been drawn up



The limitation period will be counted from the date of:



a) The triggering event, in the cases of items IV to IX above;



b) Knowledge of the legal act or business by the state or district tax administration, in the case provided for in item XI above; and



c) Submission of the declaration, in other cases subject to assessment by approval.



For the ITCMD purposes, the assets and rights held in trust abroad will:



a) Remain under the ownership of the donor after instituting the trust; and



b) Be transferred to the beneficiary upon trust distribution or the death of the donor, whichever occurs first as a triggering event.

1. CALCULATION BASE



The ITCMD calculation basis is the market value of the asset or right transferred.



State or district tax legislations can:



a) Consider the market value of the asset or right transferred on the date of the taxpayer's declaration submission or the assessment by the competent tax authorities;



b) Demand that the market value of a given good or right be expressed in the tax unit of the respective taxing entity; and



c) Demand that the market value of real estate or real estate-related right be fixed by means of a property value map, prepared on the basis of technically appropriate statistical methodology.



In the case of financial investments of any kind, private pension plans or any other form of investment involving the capitalization of financial contributions, the basis for calculating the ITCMD will correspond to the market value of the investment or provision, formed by these contributions and respective income, on the date of the taxable event.



In the case of shares issued by corporations, the basis for calculating the ITCMD will be determined in compliance with the following rules:



a) When quotas or shares are traded on organized securities markets, including stock exchanges and organized over-the-counter markets, with an active market in the 90 days prior to the date of the triggering event, the calculation basis will correspond to the closing price on the day prior to such triggering event.



b) In other cases, the calculation basis will be calculated by using a technically appropriate and methodology that is suitable for quotas or shares, and must correspond at least to the net equity adjusted by the valuation of assets and liabilities at market value, plus the market value of goodwill, as established in the legislation of the taxing entity.



The deceased person's debts can be deducted from the ITCMD tax base whose origin, genuineness and pre-existence to death can be proven.

1. VI. RATE

Large estates, as specifically defined by state or district law, will be taxed at the maximum rate set by the Federal Senate.



The ITCMD rate will:



a) Be established in the legislation of each State and the DF;



b) Be progressive in compliance with the value of the share, devise or donation



c) Observe the maximum rate established by the Federal Senate.

1. VII. TAXPAYERS

An ITCMD taxpayer is considered:



a) In the event of a *causa mortis* transfer – the successor; and



b) In the event of a donation – the donee.



c) complementary private pension entities, open and closed, as well as insurance companies as responsible for withholding and paying the ITCMD in the event of the transmission *causa mortis* or donation of an asset or right under their administration or custody.



1. VIII. TAX CREDITORS



The ITCMD is levied on real estate and respective rights if:



a) Located in Brazil, in a State or in the DF where the asset is located, even if the deceased person or donor is domiciled abroad; and



b) Located abroad, in a State or in the DF of:

(i) The domicile of the deceased person or donor, if domiciled in Brazil; or

(ii) The domicile of the successor or donee, if the deceased person or donor is domiciled abroad.

The ITCMD will be due in proportion to the state where each property is located.

2. INSPECTION



The ITCMD assessment can be *ex officio*, by means of declaration or approval.



The States and DF tax administrations are solely responsible for approving the calculation of the ITCMD, through the officers who carry out the *ex officio* assessment.



The Courts of Justice must forward to the tax administrations of their respective entities information on the initiation and conclusion of probate proceedings, inventories, legal separations, divorces, dissolutions of steady unions and any other proceedings, including in the case of procedural substitution involving *causa mortis* or donations.



The National Council of Justice (“CNJ”) can enter into agreements with the courts and tax administrations to share such information.



The Special Secretariat of the RFB must provide – by means of an agreement – controlled and traceable access to the tax administration on the economic and fiscal information of individuals or legal entities in possession of transfers involving *causa mortis* and donations.



The tax administrations of the States and of the DF can establish ancillary obligations for taxpayers, liable parties or third parties, without the need for a state or district law.



State and district legislation will establish the form and due date for the ITCMD as well as the rules applicable to its administrative litigation.



International treaties can be executed to avoid double taxation on *causa mortis* transfers or donations within Brazil and abroad.

3. DISPOSIÇÕES FINAIS



Includes article 35-A in the National Tax Code ("CTN"), which now considers the taxable event of the Real Estate Transfer Tax (ITBI) to have occurred whenever the real estate is duly transferred.



Includes article 38-A into the CTN, which now considers the market value to be the value at which the asset or right would be traded in cash, under normal market conditions, based on the established requirements



In addition, the new article 38-A, paragraph 1, will consider as market value, based on a specific methodology, the analysis of market prices, notary and registry information, financial agents, location, typology, allocation and date, standard and construction area, among other characteristics of the property and other technical standards usually adopted by tax authorities.



Paragraph 3 states that if there is a disagreement as to the determination of the calculation basis, the taxpayer must prove the correct market value by means of a specific procedure, under the terms of state legislation.



Paragraph 3, in turn, establishes that notary and registry offices must share information on transactions involving real estate with tax administrations.



Introduces article 82-A into the CTN to regulate the Public Lighting Contribution ("COSIP"). COSIP will be instituted by municipal or district law and will be used to fund, expand and improve the public lighting service and monitoring systems for security and preservation of public places.



The law may allow the respective parties involved in tax obligations to enter into a agreement which, by means of mutual concessions, results in the avoidance and termination of litigation, thereby extinguishing the tax debt.



Amends article 171 of the CTN, which states that the law may allow the respective parties involved in tax obligations to enter into an agreement which, by means of mutual concessions, results in the avoidance and termination of litigation, thereby extinguishing the tax debt, to add four paragraphs.

Paragraph 1 provides that the tax transaction will be analyzed and concluded by the body that represents the federal entity in court, before or after being registered as overdue federal tax liability.

Paragraph 2 regulates the period before and after registration as overdue tax liability, the event in which the transaction takes place, fees and charges.

Paragraph 3 provides that the request for a settlement may be submitted at the request of the taxpayer or by a proposal of the tax authorities, with the taxpayer's consent, either during litigation or during the administrative collection period.



In this regard, paragraph 4 provides that the request for a settlement will be admitted only once, and that the settlement attempt must be concluded within two months. In addition, the request will not suspend the time limit for objections or appeals in administrative litigation.

Amends Supplementary Law No. 63/90, which provides for the criteria and deadlines for crediting installments relating to the proceeds from tax collection, to change article 3, which currently provides for requirements for crediting 25% of the proceeds from the ICMS collection by States and Municipalities. The new wording establishes that the criteria will be:

a) 65% in proportion to the added value in transactions involving the circulation of goods and the provision of services, carried out within their territories; and

b) up to 35%, in compliance with the provisions of state legislation, with the mandatory distribution of at least 10%, based on indicators of improved learning outcomes and increased equity, taking into account socioeconomic status.



Introduces article 3-A to Supplementary Law No. 63/90, which establishes that 25% of the IBS collection distributed to the States will be credited by the Steering Committee to the Municipalities, according to the following criteria:

a) 80% in proportion to the population;

b) 10% based on indicators of improved learning outcomes and increased equity, taking into account the socio-economic level of students, in compliance with the state law;

c) 5% based on indicators of environmental preservation, in compliance with the state law; and

d) 5% in equal amounts for all Municipalities integrating the State.

Amends Article 5 of Supplementary Law No. 63/90 3 to introduce the new criteria referred to above in Articles 3 and 3-A.



Amends Article 13, paragraph 1, item III, of Supplementary Law No. 87/96, to establish that from January 01, 2027, the amount corresponding to the Selective Tax will integrate the ICMS calculation base.



Amends Article 18 of Supplementary Law No. 123/06, which establishes that the amount due monthly by a very small business or company under Simples Nacional, will be determined by applying the effective rates calculated from the nominal rates of the tables in the annexes of the law, to establish that the taxpayer considers, for payment purposes, the revenues arising, among others, from transactions involving intangible goods and services, including rights, as well as transactions relating to other material goods.





Amends Article 22 of Supplementary Law No. 123/06, which establishes that the Steering Committee will determine the transfer system of the total amount collected, including legal charges, and further introduces that:

- a) The amount corresponding to the IBS will be allocated to the CG-IBS;
- b) To the Municipalities or the DF where the company is located, the amount corresponding to 50% of the IBS collected by Individual Microentrepreneurs (“MEIs”);
- c) To the State or the DF where the company is located, the amount corresponding to 50% of the IBS collected by MEIs.



Amends Article 33 of Supplementary Law No. 123/06, introducing that the responsibility to supervise compliance with key and ancillary obligations under Simples Nacional will be the Special Secretariat of the RFB’s in relation to the Selective Tax and the CBS.



Amends Article 39 of Supplementary Law No. 123/06, providing that the administrative litigation of Simple Nacional will be:

- a) The responsibility of the judging body of the Federal entity that rejects the option or the exclusion sua sponte; or, of the judging bodies that integrate the tax administrative structure of the Federal Government, when it refers to a challenge or appeal brought against an assessment by the Special Secretariat of the RFB;
- b) The responsibility of the judging bodies that integrate the administrative structure of the State, the DF or the Municipality, when it refers to a challenge or appeal brought against an entry by them and relating to triggering events that occurred until December 31, 2032; or
- c) The responsibility of the CG-IBS, when referring to challenge or appeal brought against an assessment by the State, the DF or the Municipality regarding triggering events that occur from January 01, 2033.



Amends Article 6 of Supplementary Law No. 141/12, introducing that the Selective Tax also, as object of collection, will distribute the resources to the States, therefore deducting the installments that are allocated to the Municipality.



Amends Article 3 of Law No. 14,113/2020 to allocate part of the IBS to FUNDEB.



Repeals, in the CTN, the sole paragraph of Article 35, which currently states that the transfer of real estate and related rights has as triggering event, in causa mortis transfers, as many distinct triggering events as heirs or legatees.



Repeals Article 41, also in the CTN, which currently regulates that the tax is levied on the State where the real estate is transferred, or in compliance with the rights granted, even if the change of assets results from rights in succession abroad.



Repeals Article 39, paragraph 3, of Supplementary Law No. 123/06, which currently addresses administrative litigation under Simples Nacional, and further provides for the trial by the State or the DF, when the taxpayer exercises activities taxed by the ICMS and the ISS and revenue is omitted.



Amends art. 5 of Decree 70,235/72, which regulates tax administrative proceedings, providing that deadlines will

(i) only be counted as business days, unless otherwise specified and

(ii) the day on which the deadline begins will be excluded from the count and the day on which it expires will be included;



Regarding the tax procedure provided for in art. 7 of Decree 70,235/72, PLP 108/24 changes the deadline provided for in paragraph 2 from 60 days to 90 days.



Amends art. 15 of Decree 70,235/72 to change the deadline for filing an objection from 30 to 20 days.



Item II of paragraph 2 of article 23 is amended to provide that if a notice is sent to the taxpayer by post, telegraph or any other means, with proof of receipt at the tax address chosen by the taxpayer, it will be deemed to have been duly served on the date of receipt, or if omitted, on the date made available on the internet by the company responsible for the posting. In addition, item III is amended to provide that if the notice is sent by electronic means, it will be deemed to have been served within ten consecutive days of the date of delivery to the electronic tax domicile and ten days after publication of the notice, if this was the submission method used.



Finally, art. 33 of Decree 70,235/72 is amended to provide that voluntary appeals may be filed within 20 days of the decision, and no longer within 30 days.

Includes art. 5-A in Decree 70,235/72 to provide that deadlines will be suspended between December 20 and January 20, and that no trial sessions will be held during this period. In addition, includes art. 5-B, which provides that if there is no deadline established in the Decree, such deadline will expire within ten days.

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