A. At a glance

The chart below outlines the type of taxes, fees and incentives that usually apply to companies operating in the mining industry.

<table>
<thead>
<tr>
<th>Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income tax rate</td>
<td>34%</td>
</tr>
<tr>
<td>Capital allowances</td>
<td>Accelerated depreciation, capital uplift</td>
</tr>
<tr>
<td>Investment incentives</td>
<td>Ability to carry tax losses forward indefinitely</td>
</tr>
<tr>
<td></td>
<td>Research and development incentives</td>
</tr>
<tr>
<td>Royalties</td>
<td><strong>Federal: Financial Compensation for Exploration of Mineral Resources (CFEM)</strong></td>
</tr>
<tr>
<td></td>
<td>Royalty-type levy of 0.2% to 3% depending on the type of mineral resource extracted</td>
</tr>
<tr>
<td></td>
<td><strong>State: Control, monitoring and supervision of research activities, mining, exploration and exploitation of mineral resources fee (TFRM). Varies depending on the state where the mine is located. Generally a fixed amount, set by each state, based on the volume of mineral extracted</strong></td>
</tr>
<tr>
<td>Landlord costs</td>
<td>50% of CFEM, due to the owner of the land</td>
</tr>
<tr>
<td>Annual fee per hectare</td>
<td>R$2.02 per hectare or R$3.06 per hectare upon the renewal of prospection license</td>
</tr>
</tbody>
</table>

1 Some bills being analyzed by the Brazilian Congress are aimed at increasing royalty rates and taxable basis. The bills under analysis are 1117/07 (enclosed with 3910/12 and 3759/15), 37/11 (enclosed with 5807/13) and 01/2011.
B. Fiscal regime

Corporate income tax (CIT)

Brazilian-resident legal entities are subject to income tax on their worldwide income at a rate of 15% with a surtax of 10% for profits exceeding R$240,000 a year. In addition, Brazil imposes a social contribution tax on corporate net profits at a rate of 9% Therefore, the combined CIT rate used is 34%. Brazil does not apply ring-fencing in the determination of the CIT liability. Profits from one project can be offset against losses from another project conducted by the same legal entity. Brazil has no tax consolidation rules. Each legal entity is subject to its own CIT. Brazilian-resident legal entities may elect to pay CIT based on taxable profits determined either (a) as a percentage of gross revenues (presumed profit method, or PPM) or (b) a proportion of their actual income under accounting records (actual profit method, or APM).

Such an election is made annually and it is usually driven by the company’s profitability and future investment plans. In general, the PPM taxation regime, due on quarterly basis, is limited to companies with annual gross revenues that do not exceed R$78m (or R$6.5m per month of activity) during the prior year. Accordingly, due to the level of profitability of the mining sector, the mining companies that operate in Brazil generally pay CIT based on the APM.

Under the APM, methodology, the tax is charged on the company’s accounting profit adjusted for nondeductible expenses and nontaxable revenues. CIT may be calculated and paid quarterly or annually (with prepayments during the calendar year). In general, operating expenses are deductible for CIT purposes, provided they are “necessary and usual” to the company’s activity.

Royalties on mineral production (CFEM and TFRM) are fully deductible from the CIT basis. Other types of royalties, in general, may be deducted from taxable income (limited to 1% to 5% of the net sales derived from the activity on which royalties are paid), depending on the business activities of the payer entity.

Capital expenditures are normally deducted in the form of depreciation on fixed assets or amortization of costs incurred and capitalized during the exploration and development stages. Depreciation and amortization criteria, as well as specific rules related to the mining industry, are described in Section C.

Foreign profits taxation (CFC)

In 1996, Brazil changed from a territorial to a worldwide system by launching a rigorous controlled foreign company (CFC) regime. Originally under the CFC regime, any type of corporate investment abroad, be it direct or through a branch or subsidiary, used to be subject to CIT on a current basis (at 31 December of each year), regardless of the foreign tax burden, local substance of the foreign group company and the active or passive nature of the operations carried out abroad. Foreign tax credits are generally available in Brazil. Deferral of this tax is not possible. Effective in 2014 (if the taxpayer elected the early adoption of the Law 12,973/14) effective January 2015, relevant changes to the CFC rules were introduced. Although the new rules do not change the basic principles of the taxation in Brazil of foreign corporate profits, it makes the following primary changes:

- Modifies the technique to tax profits of overseas group companies
- Introduces individual taxation as a general rule but with a temporary option to consolidate the results of certain foreign subsidiaries and branches for Brazilian tax purposes
- Introduces a temporary provision to allow the payment of tax on foreign profits in installments
- Allows tax deferral for profits earned through affiliates
- Allows the Brazilian company to deduct 9% of presumed credit on the foreign profits regarding its controlled companies that have mineral extraction as an activity, up until 2022

Carryforward tax losses

Tax losses may be carried forward indefinitely. No carryback or inflation adjustments are permitted. Tax losses that are carried forward may be used to offset up to 30% of a company’s taxable income in a tax period. In general, non-operating tax losses can be offset only against nonoperating gains. Restrictions on the offsetting of tax losses carried forward may be imposed if there is a change of ownership control and a change of the business activity between the period when the losses were generated and the period when the losses will be effectively used.

3 In general, the social contribution is taxable at a rate of 9% However, private insurance, capitalization and financial companies are taxable at a rate of 15% according to Law 11.727 of 2008, article 17.
4 Decree-Law 2.341 of 1987, Article 12.
Capital gains

Capital gains realized by Brazilian-resident entities are included as ordinary income, and they are taxed at CIT standard rates. In general, capital losses incurred in a calendar year may offset operating profits or capital gains generated in the same year. Excess capital losses may be carried forward indefinitely, but they are limited to 30% of the taxable income.

Capital gains realized by nonresidents from the disposal of assets located in Brazil, whether the buyer is located in Brazil or abroad, are also subject to taxation in Brazil, but at a general rate of 15%. The rate increases to 25% when the beneficiary is domiciled in a low-tax jurisdiction (LTJ) as defined and listed in the relevant regulations (please see the list at the end of this section). Indirect dispositions of Brazilian assets are not taxable, but transactions with lack of substance can be challenged by Brazilian tax authorities.

Transfer pricing

Brazilian transfer pricing regulations deviate from the arm's-length principle adopted under the Organisation for Economic Co-operation and Development (OECD) guidelines and from the majority of the countries with transfer pricing regulations. There are no profit-based methods, and a functional/risk analysis is not necessary. Profit margins are determined by law, which may not provide consistency with an arm's-length result, although the newly introduced methods for commodities transactions are an exception.

The legislation contains a very broad definition of “related parties,” involving concepts of direct and indirect control, utilization of voting power, and business control criteria. The legislation also includes joint ventures, consortia and other forms of joint ownership (as related parties). In addition, there are rules whereby exclusive distributors and interposed parties are also considered related parties for the purposes of Brazilian transfer pricing regulations.

The Brazilian transfer pricing rules also apply to residents located in low-tax jurisdictions, regardless of any equity relationship with the Brazilian company, as defined under Brazilian tax legislation.

Changes were introduced to the Brazilian transfer pricing legislation with effect from 1 January 2013. The main changes included: (i) the gross profit margin for the calculation of the “resale minus profit” method for imports is determined by the taxpayer's sector of economic activity; (ii) mandatory transfer pricing methods for the calculation of export or import products deemed as commodities; and (iii) changes in the calculation of interest associated with loan agreements.

Prices on the importation and exportation of goods, services and rights are generally based on the following transfer pricing methods:

- Use of uncontrolled, similar transactions (PIC and PVex)
- Resale minus (PRL and PVA/PVV)
- Cost plus (CPL and CAP)
- Market price quotation, in the case of commodities (PCI and Pecex)

With the exception of commodity pricing, no “best method/most appropriate” rule applies. Instead, a Brazilian taxpayer may demonstrate compliance with the transfer pricing rules by choosing the method that is most favorable to the taxpayer, provided that the necessary documentation can be established. In the case of products considered commodities, the “market price quotation” must be applied.

Regarding exportation, transfer pricing rules apply to transactions entered into with related parties or parties located in low-tax jurisdictions or privileged tax regimes only if the average price used for the transaction is less than 90% of the average price for identical or similar goods, services or rights traded in Brazil during the same period and under similar payment terms with unrelated parties (the “absolute safe harbor” provision), as long as the transaction does not involve the exportation of items classified as commodities.

Brazilian transfer pricing regulations also provide for two additional safe-harbor provisions on exports, which allow the Brazilian entity to demonstrate the adequacy of the adopted export price by disclosing regular commercial documents that support the export transaction. Under such provisions, no additional transfer price calculation is required. The safe-harbor provisions are not applicable to the export of products deemed as commodities or to export transactions with low-tax jurisdictions and privileged tax regimes. The safe-harbor provisions apply in the following situations:

- The taxpayer’s net export revenues do not exceed 5% of the total net revenues during the calendar year.
- The taxpayer demonstrates a minimum pretax net profit of 10% on the export transaction (for the analyzed calendar year and the two preceding years). This safe harbor applies only if the exports to related parties do not represent more than 20% of the company’s total export revenues.

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5 Decree-Law 1.598 of 1977, Article 31.
In the case of the export/import of commodities, the newly introduced transfer method of PCI/Pecex is mandatory. Consequently, inbound and outbound transactions involving commodities must be tested by calculating the parameter price as the daily average price of goods or rights as traded on international future or commodity exchanges, but modified by certain price adjustments to reflect market conditions on the day of the transaction. Price adjustments include quality and volume adjustments but also adjustments for freight, logistics, payment terms and others. In addition, in certain cases, the price calculation can be based on official recognized publications.

As of October 2014, new items such as steel, lead, nickel, zinc and cobalt are to be considered as commodities for Brazilian transfer pricing purposes.

As of March 2014, new alternatives for pricing adjustments were included (i) based on business conditions, physical nature and content regarding PIC method (applied for importation transactions) and general exportation methods and (ii) for commodity methods. Moreover, new Normative Instructions provisions clarified the wording related to the commodity premium or discount.

Leasing of equipment and charter of vessels are transactions that are not clearly covered by the legislative framework and thus should be deeply and carefully analyzed.

Interest paid or received to related parties abroad associated with loan agreements are also subject to Brazilian transfer pricing rules. The calculation of the maximum amount of deductible expenses or minimal revenue arising from interest subject to transfer pricing regulations should observe the following:

- In a case of transactions in US dollars (US$) at a fixed rate, the parameter rate is the market rate of the sovereign bonds issued by the Brazilian Government on the external market, indexed in US$.
- In a case of transactions in Brazilian reals (R$) at a fixed rate, the parameter rate is the market rate of the sovereign bonds issued by the Brazilian Government on the external market, indexed in R$.
- In all other cases, the parameter rate is the London Interbank Offered Rate (LIBOR).

The subsequently obtained parameter rate can still be increased by an annual spread to be established by Brazil's Ministry of Finance. From 2013 onward, the annual spread was fixed by the Brazilian Ministry of Finance with 3.5% for interest expenses and 2.5% for interest income.

The Brazilian transfer pricing rules do not apply to royalty payments associated with agreements duly registered with the National Institute of Industrial Property (INPI), to the extent that the deductibility of these payments for CIT in Brazil is subject to limitations based on domestic legislation.

Dividends and interest on net equity

No currency exchange restrictions are imposed on dividends distributed to shareholders domiciled abroad, provided the foreign investment into Brazil is properly registered with the Central Bank of Brazil (BACEN).

A Brazilian entity may calculate notional interest on the net equity value (adjusted by the deduction of certain accounts) payable to both resident and nonresident shareholders. Notional interest on equity is a hybrid mechanism to remunerate the capital of shareholders and create a deductible expense for purposes of Brazilian CIT.

Interest on equity is calculated by applying the official long-term interest rate (TJ LP) on net equity, but it is limited to 50% of the greater of the current earnings or accumulated profits. Interest on equity paid to a foreign beneficiary is subject to withholding tax (WHT) in Brazil, charged at a general rate of 15% (25% if payment is made to a low-tax jurisdiction).

Interest on equity payments tends to be advantageous to profitable Brazilian subsidiaries because the interest generates tax-deductible expenses at 34% with the cost of the 15% WHT, although the overall tax benefit should be evaluated in light of the country of residence of the foreign shareholder. Interest on net equity received by a Brazilian company are also subject to PIS and COFINS social contribution taxation at a combined rate of 9.25%.

Transactions with companies in a low-tax jurisdiction (LTJ) or under a privileged tax regime (PTR)

Since 2010, Brazil has had a low-tax jurisdiction (LTJ) and a privileged tax regime (PTR) lists, producing the following tax consequences when relations with companies from these countries occur:

Transfer pricing

Transactions with individuals residing in LTJ or subject to PTR are considered as transactions between related parties and subject to control of transfer prices, even if they are not effectively related (see further details on transfer pricing section).
Thin capitalization rules

Interest due to companies resident in a LTJ or subject to PTR are subject to a maximum ratio of debt to equity ratio of 0.3:1 instead of the general ratio of 2:1 (see section F).

Deductions of payments to an individual or company resident in a low-tax jurisdiction or under a privileged tax regime (PTR)

Any payment made, directly or indirectly, to an individual or company resident in a low-tax jurisdiction or under a PTR is not deductible for income tax purposes unless the following requirements are satisfied:

- Identification of the effective beneficiary of the income
- Evidence of the operating capacity of the recipient
- Supporting documentation regarding the price paid for rights, goods and services

Furthermore, it is also established that the effective beneficiaries will be deemed those entities to which the income can be attributable, not any created with the sole purpose of avoiding taxes.

Increased WHT rate

Remittances to a resident of a LTJ are generally subject to a 25% withholding income tax rate for Brazilian tax purposes, instead of the general rate of 15% (an increase that, to date, has not applied to remittances made to beneficiaries subject to PTR) (see section E).

Taxation on universal bases

The presence of a legal entity resident in LTJ or subject to PTR may affect the taxation in Brazil of the profits earned through subsidiaries, affiliates and affiliates abroad (for the so-called “contamination” effect).

Apart from the special treatment described above, for the purpose of Holding Companies located in Denmark, Netherlands and Austria, Brazilian tax authorities have adopted a concept of substantial economic activity. That is, such holding companies must comply with several substance aspects, like qualified employee presence and physical facilities suitable for management and effective decision-making in order to be qualified as a PTR under Brazilian Law (see further details on taxation of foreign profit section).

### Black list (LTJ)

<table>
<thead>
<tr>
<th>Country</th>
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<th>Country</th>
</tr>
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<tbody>
<tr>
<td>American Samoa</td>
<td>Costa Rica</td>
<td>Lebanon</td>
<td>Qeshm</td>
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<tr>
<td>American Virgin Islands</td>
<td>Curaçao</td>
<td>Liberia</td>
<td>Republic of Kiribati</td>
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<tr>
<td>Andorra</td>
<td>Cyprus</td>
<td>Liechtenstein</td>
<td>Republic of Seychelles</td>
</tr>
<tr>
<td>Anguilla</td>
<td>Djibouti</td>
<td>Macau</td>
<td>Saint Helena</td>
</tr>
<tr>
<td>Antigua and Barbuda</td>
<td>Dominica</td>
<td>Madeira Island</td>
<td>Saint Lucia</td>
</tr>
<tr>
<td>Aruba</td>
<td>Fed. St. Christ. and Nevis</td>
<td>Maldives</td>
<td>Saint Martin</td>
</tr>
<tr>
<td>Ascension Islands</td>
<td>French Polynesia</td>
<td>Marshall Islands</td>
<td>Saint Pierre and Miquelon</td>
</tr>
<tr>
<td>Bahamas Community</td>
<td>Gibraltar</td>
<td>Mauritius Island</td>
<td>St. Vinc. and the Grenadines</td>
</tr>
<tr>
<td>Barbados</td>
<td>Grenada</td>
<td>Monaco</td>
<td>Samoa</td>
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<tr>
<td>Belize</td>
<td>Hong Kong</td>
<td>Nation of Brunei</td>
<td>San Marino</td>
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<tr>
<td>Bermuda Islands</td>
<td>Ireland</td>
<td>Nauru</td>
<td>Singapore</td>
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<tr>
<td>British Virgin Islands</td>
<td>Island of Man</td>
<td>Niue</td>
<td>Solomon Islands</td>
</tr>
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<td>Campione D’Italia</td>
<td>Kingdom of Bahrain</td>
<td>Norfolk Island</td>
<td>Tristan da Cunha</td>
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<td>Cayman Islands</td>
<td>Kingdom of Swaziland</td>
<td>Oman</td>
<td>Turks and Caicos Islands</td>
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<td>Channel Islands</td>
<td>Kingdom of Tonga</td>
<td>Panama</td>
<td>United Arab Emirates</td>
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<tr>
<td>Cook Islands</td>
<td>Lebanon</td>
<td>Pitcairn Island</td>
<td>Vanuatu</td>
</tr>
</tbody>
</table>

8 Normative Instruction 1.658 of 2016.
9 Declaratory Act No. 3 of 2015.
Gray list (PTR)

<table>
<thead>
<tr>
<th>Country</th>
<th>Privileged tax regime</th>
</tr>
</thead>
<tbody>
<tr>
<td>Uruguay</td>
<td>Sociedad Financera de Inversion (Safis) until December 31, 2010</td>
</tr>
<tr>
<td>Denmark</td>
<td>Holding companies without economic substance</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>Holding companies without economic substance</td>
</tr>
<tr>
<td>Iceland</td>
<td>International trading company (ITC)</td>
</tr>
<tr>
<td>USA</td>
<td>State limited liability company (LLC), with nonresidents participants</td>
</tr>
<tr>
<td>Spain</td>
<td>Entidad de Tenencia de Valores Extranjeros (E.T.V.Es.)</td>
</tr>
<tr>
<td>Malta</td>
<td>International trading company and International holding company</td>
</tr>
<tr>
<td>Switzerland</td>
<td>Holding companies taxed with a CIT rate lower than 20%</td>
</tr>
<tr>
<td>Austria</td>
<td>Holding companies</td>
</tr>
</tbody>
</table>

Government and third-party taxes

**CFEM**

CFEM is a federal tax levied on production from mining operations. The revenue associated with the collection of CFEM is divided among the federal (12%), state (23%) and municipal jurisdictions (65%) related to the economical use of the mineral resource located in their respective territory.

CFEM taxable basis is the net revenue, calculated based on the mining revenue less (a) insurance and transportation costs and (b) indirect tax costs (ICMS, PIS and COFINS), associated with the sale of mineral resources.

Currently, CFEM tax rates are:

- Aluminum, manganese, salt-rock and potassium ore: 3%
- Iron, fertilizers, coal and other mineral substances: 2%
- Precious stones, colored stones suitable for cutting, carbonates and noble metals: 0.2%
- Gold: 1% when extracted by mining companies, with garimpo extraction exempt

It is relevant to mention that discussions are underway regarding modifications both in applicable CFEM rates and on its tax basis in order to increase taxation. The discussions were dormant for a while but, currently, they are back under Congress agenda.

**Landlord cost (third party)**

Landlord cost is due to the landowner (surface-right holder) on a monthly basis, under concession and licensing systems, when the surface rights do not belong to the mining titleholder. Landlord cost is 50% of CFEM due.

**Annual tax per hectare (third party)**

The annual tax on mining rights shall be paid to the National Department of Mineral Research (Brazilian Mining Agency, usually called DNPM) by the holder of the prospecting authorization by the delivery of the final report of works performed, corresponding to R$2.02 per hectare of the area considered in the prospecting authorization. Upon renewal, the tax to be levied shall correspond to R$3.06.

**TFRM**

Individuals and corporations extracting mineral resources in four Brazilian states —Amapá, Minas Gerais, Mato Grosso do Sul and Pará —are also subject to a royalty-type levy on mining activities named TFRM (Taxa de Controle, Monitoramento e Fiscalização das Atividades de Lavra, Exploração e Aproveitamento de Recursos Minerários). Please note that TFRM is also levied in case the miners are extracting mineral resources in these states and processing them in other states.

The TFRM is levied on the sale of the mineral or the internal transfer of the mineral resource for processing. The TFRM is calculated based on the volume of mineral extracted multiplied by one of three fiscal reference units determined by each of the states. Currently, these units are worth approximately R$2.30. As a general rule, small- and medium-sized businesses are exempt from the TFRM.
C. Capital allowances

As a general rule, fixed assets may be depreciated based on their “useful life.” Documentation is required to support the useful life when it differs from the useful life provided by the Brazilian Internal Revenue Service (RFB). In case RFB understanding differs from taxpayers study, it should be subject to final opinion to be issued by the Brazilian National Institute of Technology or a similar institute.

Examples of rates ordinarily used by the RFB\(^\text{10}\) include:

- Buildings — 25 years
- Machinery and equipment — 10 years
- Vehicles, computer hardware and software — 5 years

Companies that operate two work shifts per day may depreciate machinery and equipment at 1.5 times the normal rate. If it operates three shifts, it may double the normal rate.

Amortization and depletion

Amortization is a ratable periodic reduction in total assets of a company, including investments or intangible assets, and charged to expenses.

In other words, as provided for in Article 58 of Law 4.506/64, it is the economic recovery of capital invested in:

- Rights whose existence or exercise is limited or assets whose use has a legal or contractual limited period, and provided that these are not subject to indemnity, as follows:
  - Intangible assets or rights of use such as patents, manufacturing formulae and processes
  - Investment in assets that, under the terms of law or agreement that regulates public utility concession, must revert to the granting authority by the end of the concession period, without compensation
  - Copyrights, licenses, authorizations to exploit a certain economic activity, concessions for operating public utility services, and costs related to acquiring, extending or amending agreements of any sort, including goodwill development
  - Cost of construction and improvements in properties leased, rented or assigned by third parties
  - The value of contractual rights for the exploitation of forests

Annual amortization rates shall be established based on the remaining years of the existence of the right or the number of fiscal years over which benefits from expenses recorded under deferred charges shall be enjoyed.

Therefore, capital invested in acquiring concession rights for the exploitation of deposits or mines, the existence or exercise of which has a limited life as a result of a law or contract, shall be amortizable in annual instalments, as of the granting of the concession rights. Such instalments are computed by applying an established rate, determined by considering the remaining number of years of the existence of such rights on the original amount of capital invested. These concession rights are considered operating costs or expenses and are tax-deductible in the determination of CIT and social contribution on net profit tax bases for each determination period.

In general, amortization of deferred charges takes place over the following periods:

- A minimum of 5 years for tax purposes
- A maximum of 10 years, which is applicable to all legal entities that have updated bookkeeping

Depletion

Depletion corresponds to a decrease in the value of exploitable assets that deplete over time, such as mineral and forest reserves (e.g., woods and deposits).\(^\text{11}\)

The depletion installment shall be determined based on the cost of acquisition or prospecting of mineral resources exploited, according to depreciation principles, considering production volume for the period and its relation to the known reserves of the mine or the concession period determined. Depletion installments are considered tax-deductible on the determination of CIT and social contribution on net profit tax bases.

If mineral rights are acquired from third parties and the acquisition cost includes not only prospecting costs but also expected mineral value, the depletion installments of the mineral value will be treated as a royalty due to the owner of the mineral assets and allocated as resources are extracted.

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\(^{10}\) Normative Ruling 162 of 1998.

\(^{11}\) Law 4.506 of 1964, Article 59.
The capital expenditures for acquiring rights that are expected to exist or be exercised within a limited period of time may be amortized. This amortization can be calculated based on the remaining life of the right or on the number of accrual periods for which the legal entity expects to enjoy the benefits, originating from the expenses registered as deferred charges.

For the depletion of mineral resources, a Brazilian legal entity can opt to calculate the exhaustion of the mineral resource based on the concession term or on the produced volume in relation to the total mine reserve.

Rehabilitation or decommissioning

Brazilian rules on rehabilitation or decommissioning for tax purposes\(^{12}\) determines that the expenditures rehabilitation or decommissioning shall only be tax deductible when actually incurred. Thus, before the rehabilitation or decommissioning is actually performed, the costs accrued under financial statements shall be added back for CIT purposes and controlled under the CIT computation book as a temporary difference.

It is also relevant to mention that there are no loss carry back rules in Brazil.

D. Incentives

Tax holiday

Brazil does not have a tax holiday regime.

Regional incentives

Brazil offers, in general, a variety of tax incentives intended to attract businesses of particular importance and foster the development of certain underdeveloped regions in the country.

No industry-specific federal tax incentive is granted to the mining companies, except for the incentive granted to the coal sold to thermoelectric plants that is subject to PIS and COFINS at a 0% rate. Some states grant certain incentives to reduce the value-added tax (VAT) burden on (a) the acquisition of machinery, equipment and inputs related to the mining business and/or (b) the sale of some specific minerals by means of a tax-deferral benefit.

Several incentives are offered to entities located in the area of the Superintendence for the Development of the Northeastern States (Supertintendência de Desenvolvimento do Nordeste, or SUDENE) and the Superintendence for the Development of the Amazon (Supertintendência de Desenvolvimento da Amazônia, or SUDAM), as below:

- Corporate income tax reduction: A reduction of 75% of the 25% CIT (not applied to the 9% of the social contribution), calculated on profits from activities covered by the incentive tax treatment (lucro da exploração) for priority projects for the development of the SUDAM and SUDENE regions. This incentive is currently granted for requests performed until 31 December 2018, and companies may benefit from this incentive for a period of 10 years. Note that there are possibilities to extend the benefit if certain investments are performed in the plant in following years and are considered modernization, expansion or diversification of existing priority projects.
- Corporate income tax reinvestment: Companies acting in sectors considered priority to SUDENE and SUDAM can reinvest up to 30% of the income tax due in the acquisition of new fixed assets (with a proper methodology to calculate it, basically by separating the operational profit to find the income tax due in this portion). Also, the incentive is applied to the 15% income tax rate, not for the 10% additional rate.
- AFRMM exemption: Exemption from the Additional Freight for Renewal of the Brazilian Merchant Navy (AFRMM), levied on all maritime imports, capital goods or inputs entering national territory through the North/Northeast regions and destined for investments located in the SUDAM/SUDENE areas. Total freight value is reduced by 20% to 40%. The incentive also exempts the payment of the IOF tax (levied on financial transactions) for imports.
- Incentivized depreciation: Applied on the acquisition of machinery and equipment. Available to all companies already receiving the 75% corporate income tax reduction and located within the SUDAM/SUDENE area. Allows the company to fully deduct the depreciation on the year of the acquisition.

Research and development (R&D) (Law 11.196/05)

Companies that invest in technological innovation are entitled to this R&D federal tax incentive under Law 11.196/2005. The definition of technological innovation is “the design of a new product or manufacturing process, as well as new functionalities or characteristics added to products or to processes, which results in incremental improvements and an actual gain in quality or productivity, thus leading to increased market competitiveness.”

Based on the qualifying conditions, this tax incentive applies to the design of new manufacturing processes or products or new functionalities or characteristics being added to existing processes or products.

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\(^{12}\) Article 45 of Law #12,973/15 and article 69 of Brazilian IRS Normative Instruction #1,515/14.
In summary, the tax incentives offered include:

- Deduction of total expenditures made during the computation period in connection with R&D of technological innovation, which are classifiable as operating expenses pursuant to Brazilian tax legislation
- Deduction for the purposes of CIT of 60% to 100% of total expenditures made during the computation period in connection with R&D of technological innovation, which are classifiable as operating expenses by Brazilian tax legislation
- Reduction by 50% of IPI (Imposto Sobre Produtos Industrializados, or Brazilian Federal Excise Tax) levied on equipment, machinery, devices and instruments, as well as on their related spare accessories and accompanying tools that were intended for use in technological R&D
- Accelerated depreciation by deduction, in the acquisition year, of the total cost of new machinery, equipment, devices and instruments intended for use in activities regarding R&D of technological innovation
- Accelerated amortization by deduction (only for CIT purposes) of the expenditures classifiable as deferred assets relating to acquired intangible assets associated exclusively with R&D of technological innovation activities in the computation year in which the expenditures are incurred
- Reduction to 0% of the WHT rate applicable to foreign remittances for purposes of registration and retention of trademarks, patents and cultivars (variety of cultivated plants)

No prior approval is necessary to take advantage of these tax incentives. However, the taxpayer must have a regular status, in both semesters of the year, regarding its federal tax liabilities. Furthermore, it is required to provide information via online form to the Science and Technology Ministry (Ministério da Ciência e Tecnologia) on its technological research programs by 31 July of each subsequent year.

After the report submission, the Ministry will assess if the R&D initiatives are in accordance with the definitions established by the Brazilian Laws. If the report is not approved, the taxpayer may appeal providing further information in order to prove the eligibility of R&D initiatives to the tax incentives.

Under Brazilian tax legislation, all documentation over five years related to the use of these tax incentives must be available in case the tax authorities perform an inspection.

Export incentives

A relevant incentive for exporters that can be used by the mining industry in Brazil is the Regime Especial de Aquisição de Bens de Capital para Empresas Exportadoras (RECAP), which is a special tax regime for export companies to acquire capital goods. To benefit from the RECAP, a company must have recognized gross revenues derived from exports in the prior year of at least 70% of its total annual gross income, and it must maintain a minimum of 70% of export revenues for the following two calendar years (or the following three years, if the company does not comply with the first requirement).

RECAP applies to certain equipment, instruments and machinery imported directly by the RECAP beneficiary to be used as fixed assets. Under RECAP, the social contribution taxes on gross revenues triggered upon importation, namely PIS and COFINS, are suspended and converted into a zero tax rate after the incentive conditions are fulfilled. The regime also provides for the suspension of PIS and COFINS on local acquisitions made by the RECAP beneficiary.

In addition to the conditions outlined above, to benefit from RECAP, a Brazilian legal entity must not have any overdue federal tax liabilities. Benefits are also canceled if the legal entity does not comply with the minimum export revenues requirement of 70% if the beneficiary does not comply with the other RECAP requirements or at the beneficiary’s own request. A legal entity excluded from RECAP must pay interest and penalties on the taxes suspended, calculated from when the imported assets and services were acquired or when the import transaction was registered with the electronic customs system (Siscomex).

The RECAP tax incentive is not available to Brazilian companies subject to the PIS and COFINS under the cumulative tax regime.

Apart from the RECAP tax incentive, Brazilian legal entities may also qualify for the IPI, PIS and COFINS suspension upon a local purchase or importation of raw materials, intermediary products and package materials if they meet the 70% threshold outlined above, among other conditions. Some Brazilian states provide a similar tax incentive for state VAT (ICMS) tax purposes.

E. Withholding taxes

Dividends

Dividends paid from profits accrued from 1 January 1996 are not subject to WHT in Brazil, whether the beneficiary is a resident or a nonresident shareholder.\(^{13}\)

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Interest, royalties and fees

Royalties, technical assistance fees, and administrative and similar service fees remitted abroad are generally subject to WHT at a rate of 15% (unless a tax treaty provides otherwise) when the special contribution (CIDE) tax is due on this remittance (see below). Interest, royalties, technical assistance fees and administrative fees paid to residents of low-tax jurisdictions are subject to WHT at a rate of 25%. Please see Section F for the rules applicable to certain financing activities.

Other services

For the remittance of fees for other services, the WHT rate is 25% even if the payment is not made to a low-tax jurisdiction. This rate applies in the cases that CIDE is not due on these remittances. If CIDE is due and the remittance is not made to a LTJ, a 15% rate applies.

Rental

Rental payments made to a nonresident are generally subject to WHT at a rate of 15% Rental payments made to residents of low-tax jurisdictions are subject to WHT at a rate of 25%

F. Financing considerations

Thin capitalization

Under thin capitalization rules, interest expense arising from a financial arrangement with a related party is deductible only if the related Brazilian borrower does not exceed a debt-to-net equity ratio of 2:1. In addition, interest expense arising from a financing arrangement executed with a party established in a LTJ or benefiting from a PTR is deductible only if the Brazilian borrower does not have a debt-to-net equity ratio of greater than 0.3:1.¹⁴

Debt vs. equity

Brazilian operations can be financed by debt, equity or a combination of both. By capitalizing the Brazilian entity with equity, a parent company bears the risk of the currency exchange fluctuation. Alternatively, if the Brazilian entity is financed through debt, the exchange risk is shifted to the Brazilian subsidiary, which may accrue a currency exchange loss or gain for book and tax purposes, even if unrealized. At the election of the Brazilian payer, currency exchange gains or losses may be recognized on a cash or on an accrual basis for Brazilian tax purposes. Since debt is interest-bearing, it triggers a deductible interest expense for Brazilian tax purposes. Brazilian corporate borrowers cannot lend funds to others on conditions that are more favorable when compared with their own debt liabilities. With the introduction of thin capitalization rules and transfer pricing for financing, restrictions are applicable to interest deduction on loans (see above).

Financial transaction tax on loans

Under certain circumstances, the federal Government imposes financial transaction tax (IOF) at rates from 0% to 25%

Domestic loans between legal entities, including related parties, are subject to IOF of up to 1.88% per year on the credit transaction.

Foreign loans are subject to IOF on the foreign currency exchange transaction, but not on the lending (foreign credit) transaction itself. As a general rule, a 0% rate applies, but foreign loans with average maturity terms of up to 180 days are subject to IOF at a rate of 6%

G. Transactions

Asset disposals

Concession costs, including exploration and development costs, are generally classified as tangible or intangible assets. Disposals of these assets trigger capital gains or losses. Capital gains are taxed at the same CIT rates as ordinary income (see Section B).

Selling shares in a Brazilian company

Investments not for sale in subsidiaries either in Brazil or abroad are classified as permanent assets. Disposals of permanent assets by Brazilian legal entities are treated as nonoperating transactions, which trigger capital gains or losses. Capital gains are taxed at the same CIT rates as ordinary income (see Section B).

¹⁴ Normative Ruling 1.154 of 2011, Article 2.
The gain on a sale of a Brazilian asset by a nonresident shareholder is taxable in Brazil at the rate of 15%. If the beneficiary of the capital gain is resident in a low-tax jurisdiction, the WHT rate increases to 25%. Indirect dispositions of Brazilian assets are not taxable, but transactions with lack of substance (e.g., business purpose) can be challenged by Brazilian tax authorities (see Section B).

**H. Indirect taxes**

**Importation of equipment and other**

In Brazil, companies that intend to engage in foreign trade transactions must be registered within the Siscomex electronic system, an integrated computerized system through which all international trade transactions are electronically processed. Through this system, an import declaration (Declaração de Importação, or DI) is issued and registered for each import operation.

In a few cases, the importation of goods, including machines and equipment, also requires an import license (Licença de Importação, or LI), which is a type of prior authorization for the import procedure. The need for a prior import license is determined based on the tariff classification of the goods to be imported and some other specific conditions.

The licensing procedure may be automatic or non-automatic, depending on the product. In most cases, the import license is obtained automatically during the filing of the DI in the Siscomex system. Certain products, however, are subject to the non-automatic licensing process, which means it is important to check if the import license must be obtained before shipping the goods to Brazil. In some other listed circumstances, the import license may be obtained after the shipment of goods but before the registration of the DI (at the beginning of the customs clearance process).

Import duty (Imposto de Importação, or II) is due on the customs value of imported goods, comprising the cost of the product, the international insurance and freight (CIF value). The customs value may vary depending on specified price elements, as defined by the customs valuation rules.

II is a non-recoverable tax, which means that the legislation does not foresee the possibility of offsetting credits previously calculated with the amount due, thus the amount paid upon importation of goods is a cost to the importer in any situation.

The II rate varies depending on the tariff classification of the imported goods, as per the Southern Common Market (Mercosur) tariff code system, which is based on the harmonized system. The average rate for machines and equipment is 14%.

Capital goods and data processing and telecommunications goods may be subject to an II of 2% (Ex-Tarifário Special Program) if the importer is able to attest and demonstrate that no similar goods are manufactured in Brazil.

In addition to II, import transactions are also subject to the following taxes: federal and state VAT (IPI and ICMS, respectively) and social contributions (PIS and COFINS).

For import transactions, IPI is calculated on the customs value of the imported item, plus II. The rate also depends on the respective tariff classification. The average IPI rate is 10% to 20%. However, for machines and equipment, it generally ranges from 0% to 5%.

**Freight surcharge for renovation of the merchant marine fleet**

Maritime transportation is subject to a freight surcharge for renovation of the merchant marine fleet (Adicional ao Frete para Renovação da Marinha Mercante, or AFRMM), which is an extra freight charge levied through Brazilian and foreign shipping companies unloading cargo in Brazilian ports. AFRMM is charged at a rate of 25% on ocean navigation freight, at 10% on coastal navigation freight, and at 40% on inland navigation of liquid bulk cargo carried within the north and northeast regions (based on the bill of lading and the cargo manifest).

The AFRMM does not apply to the transportation of goods in connection with exploration activities for hydrocarbons and other underwater minerals in the Brazilian exclusive economic zone, such as those carried out by Petrobras. In addition, goods imported by autarchies and other entities directly connected to federal, state and municipal governments are not subject to the AFRMM.

Similarly, AFRMM is suspended for assets imported under a special customs regime granted by the RFB, such as under the drawback or the temporary admission regime with suspension of taxes, up to the date of registration of the DI in the event of nationalization.

The main fees applicable to the customs clearance of imported equipment or goods are storage fees, demurrage, terminal handling charges (capatazias), unstuffing and cargo handling fees, and deconsolidation of bill of lading fees. Rates and amounts vary.

**Federal VAT (IPI)**

IPI is charged by Brazil’s federal Government over imports and other operations related to the manufacture and sale of goods.

Any person or entity that performs activities subject to IPI must register in the roll of IPI taxpayers before beginning activities. Rates, which are inversely proportional to product essentiality, vary from 0% to 365% according to the IPI tariff table (TEC or BTEC), which contains 10,226 different classification codes.
Similar to the import duty, IPI’s applicable rates also vary depending on the tariff classification of the product. Average rates are between 10% and 20%. IPI taxation was structured in order to provide lower rates to more essential items (basic needs).

With regards to import transactions, IPI is calculated on the customs value plus the import duty amount, and the taxable event is the clearance of customs and the first movement out of the importer’s facilities, which is generally a sale. In other words, with regards to IPI levied over imports, the tax applies over direct imports and subsequent domestic transactions with the imported product.

IPI is a noncumulative federal VAT, where the amount charged in each successive taxable transaction may be reduced by IPI paid in the previous transactions. The taxpayer is entitled to register IPI credits only for the tax paid in the purchase or import of raw materials, intermediary products and packaging materials. It can deduct this amount from the IPI that becomes due when the goods leave its establishment, usually by means of a sale.

In view of the above, when it comes to fixed-assets-related import transactions, no IPI credit may be taken upon the amount collected by occasion of the import, even though IPI is generally recoverable.

Industrial products to be exported are IPI-exempt. Additionally, the processing of mineral ores or ore concentrate is not subject to IPI.

**ICMS**

ICMS is due on the local sale of minerals and metals, based on the sale price, including the ICMS itself (grossed-up calculation). For intrastate operations (carried out by a seller and buyer located in the same Brazilian state), the ICMS rate, which generally ranges from 17% to 20%, is determined by the legislation of the state where the sale is made. In some cases, the state may grant tax benefits.

In Minas Gerais, for example, the taxpayer, in relation to the operations promoted through the mining establishment, can adopt a special system of calculation and payment of the tax. The taxpayer may have an extended period for the payment of ICMS tax on purchases of permanent assets and other goods to be used by the miners. Companies may also obtain presumed credit, in taxed sales, up to 30% of the amount of tax included in the invoice, being prohibited the appropriation of any other credit.

Exportation of minerals and semi-finished products is exempt from ICMS under Complementary Law 87, dated 13 September 1996.

ICMS is charged on the customs value of the imported goods, plus II, IPI, ICMS itself (grossed-up calculation), PIS and COFINS, and other smaller customs charges.

ICMS rates vary depending on the state where the importer is located, which means that, unlike II and IPI, the ICMS applicable rate does not relate to the product itself, but to the state where the importation takes place. The ICMS rates range from 17% to 20% and may be lower in some cases, depending on:

- The nature of the goods being imported
- Eventual application of state tax benefits

From January 2013 onward, most interstate transactions with imported products are subject to an ICMS rate of 4%. Some requirements apply, including the non-submission of the product to a manufacturing process. If further manufacturing is conducted, the resulting product should have a minimum imported content of 40%.

As with IPI, if the imported item is either used in a manufacturing process in Brazil or resold, the Brazilian importer may recover the ICMS paid upon the import transaction.

**Social contribution taxes on gross revenue (PIS and COFINS)**

PIS and COFINS are charged on gross revenues earned by a Brazilian legal entity under one of two different regimes of calculation: noncumulative and cumulative.

Under the noncumulative regime, PIS and COFINS are generally charged at a combined nominal rate of 9.25% (1.65% PIS and 7.60% COFINS) on revenues earned by a legal entity. Certain business costs result in tax credits to offset PIS and COFINS liabilities (e.g., depreciation of machinery, equipment and other fixed assets acquired to be directly used in the manufacturing of a product or rendering of a service). PIS and COFINS paid upon importation of certain assets and services are also creditable. Mining companies are generally subject to this regime.

Brazilian taxpayers subject to the cumulative regime must calculate PIS and COFINS at a combined rate of 3.65% (0.65% PIS and 3.00% COFINS). No tax credits are provided under this regime. It applies to some industries and to companies that compute taxable profits as a percentage of gross sales. For further information, please see Section B.

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15 Decree 46.110/2012.  
PIS and COFINS contributions are also levied on the import of goods and services at a nominal combined rate of 11.55% (or 12.75% in certain cases). On import transactions, the taxable amount is the customs value of the goods.

According to the legislation, the rates of PIS and COFINS are reduced to zero in the case of the sale of mineral coal destined for the generation of electric energy.

Finally, financial revenues other than interest on net equity are taxed at a 4.65% combined rate (0.65% PIS and 4.00% COFINS).

Exportation of minerals

Exportation of minerals is exempt from ICMS, IPI, PIS and COFINS.

I. Other

International Financial Reporting Standards (IFRS) and Law 11638/07

In the process of aligning Brazilian accounting standards with IFRS, Law 11638 was enacted on 28 December 2007. It amended the Brazilian Corporation Law (Law 6404, dated 15 December 1976) to allow international accounting convergence and to increase the transparency level of the overall financial statements, including those of large companies not organized as corporations (sociedades anônimas).

Effective 1 January 2008, the law prescribed, among other accounting changes, that accounting standards issued by the Brazilian Securities Commission (CVM) must be aligned with international accounting standards adopted in the main security markets (i.e., standards issued by the International Accounting Standards Board, which is currently considered the international reference for accounting standards).

Privately held companies may now elect to adopt the standards issued by the CVM for publicly held corporations, which allows them to participate in the accounting convergence process.

Large companies, construed to be those that individually or under common control have total assets in excess of R$240m or gross revenues of more than R$300m, must be audited by independent auditors registered with the CVM.

New tax regime (NRT)

In other to align Brazilian tax rules with IFRS standards, Law 12973/14 introduced a new tax regime mandatory as from 1 January 2015 (taxpayers were allowed to opt for the early adoption of the new tax regime for calendar year of 2014).

Indeed, to terminate with the transitional tax regime and the existence of two accounts (one for tax purposes based on old accounting standards and one for statutory purposes), the NRT provided proper tax treatment for each of the new accounting standards in force.

The rule also granted the maintenance of tax neutrality for the transactions that occurred during the period RTT was in force provided that the difference between tax and statutory account was duly evidenced under a proper subaccount.

Indeed, in case current accounting standards are modified or new ones are introduced, tax neutrality shall prevail until new regulation providing proper tax treatment for them are enacted.

Finally, for companies that adopt, for statutory purposes a functional currency other than Brazilian reais (BRL), need to maintain a parallel accounting system totally in historical BRL (not the one translated in BRL for publication purposes) for all tax calculation purposes. As a consequence, for companies that adopt a different functional currency the existence of two balances will remain.

Repatriation of capital

Repatriation of share capital is generally not restricted if the foreign investor has registered its foreign direct original investment and subsequent capital increases or capitalization of earnings with BACEN.

Repatriation of capital may be accomplished by the sale of the Brazilian shares to a local resident by a capital reduction, redemption of shares or liquidation of the Brazilian entity. Commercial law contains specific rules on redemption of shares and on companies repurchasing their own shares.

BEPS breakthroughs

The BEPS Project addresses OECD and country concerns about the potential for multinational companies (MNCs) to reduce their tax liabilities by arbitrarily shifting income to no- or low-tax jurisdictions. Some of those actions are implemented in Brazil, as the following

**Country-by-country report**

After a public consultation, the country-by-country report was enacted by the Normative Instruction 1681 on 29 December 2016. The action aims to identify the jurisdictions in which MNCs operate, as well as all members of the group located in those jurisdictions entities, including permanent establishments and economic activities performed. Through an annual report, multinational group companies are required to provide the tax administration of the jurisdiction of their final controller with various information and indicators, such as the location of their activities, the overall allocation of income, and taxes paid and due and number of employees of the group. In addition, it has also been established that this document should be shared, through an Agreement of Competent Authorities, between the countries where the group have presence.

**Making dispute resolution mechanisms more effective**

This action develops solutions to address the obstacles that prevent countries from resolving disputes related to agreements under the Mutual Agreement Procedure through a minimum standard, as well as to indicate good practices. Enacted by Normative Instruction 1669 in 09 November 2016.

**Develop of a multilateral instrument for amending bilateral tax treaties**

The OECD has published the final text of the Multilateral Instrument (MLI) for the implementation of measures related to double taxation agreements in 24 November 2016. Brazil undertakes to apply such a convention, which will still be the subject of an internal ratification procedure. The signing ceremony is expected for June 2017.
How EY’s Global Mining & Metals Network can help your business

With increasingly positive sentiment in the sector, miners are focused on restoring balance sheet strength and liquidity in preparation for growth. The sector’s key opportunity is still productivity. Although many have made productivity improvements, the critical next wave of gains needs a strong focus on loss elimination, with digital being a key enabler.

EY has significant experience in assisting companies to evaluate and implement strategic initiatives, with deep sector knowledge to support you on finance initiatives, such as portfolio optimization and capital planning, and through to operational improvement programs, such as productivity and digital enablement.

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