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Paulo Peressin

Partner

T (+55) 11 3024 6383

paulo.peressin@lefosse.com



Larissa Dias

Associate

T (+55) 11 3025-1531

larissa.dias@lefosse.com

Lefosse Advogados

Rua Tabapuã, 1227 - 14th floor

04533-014 - Itaim Bibi

São Paulo – SP | Brasil

T (+55) 11 3024 6100

www.lefosse.com

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Hiring Through an Employer of Record (EOR): Possibilities and Pitfalls

The Employer of Record ("EOR") hiring model has become increasingly popular among foreign companies seeking to expand their operations into Brazil or those that, while based abroad, wish to hire Brazilian professionals without establishing a local entity. It is a solution that promises agility and simplicity. However, like any legal arrangement, the EOR model carries both possibilities and pitfalls that deserve careful attention, making it critically important for those who wish to use it safely to develop a well-informed strategy.

Under the EOR model, an intermediary company assumes the formal role of employer for certain professionals, registering them on its payroll, collecting labor and social security charges, and administering benefits. In essence, the EOR functions as an "employer on paper". In practice, the hired professionals perform their activities for the benefit of another company. Global human resources management platforms have popularized this model by offering hiring solutions across multiple countries without the need to open local subsidiaries.

In the Brazilian context, the EOR is typically analyzed under the framework of outsourcing rules, although it does not constitute genuine outsourcing in the traditional sense. This is because the EOR does not itself provide any service to the client company. It merely formalizes the hiring of professionals who, in reality, work under the direction and for the benefit of the end client.

There are several reasons why companies, particularly foreign ones, adopt the EOR model in Brazil. The first and most apparent is the ability to hire Brazilian professionals without having to incorporate a legal entity in the country, which involves costs, time, and a range of ongoing regulatory obligations.

For companies looking to test the Brazilian market, hire a small number of professionals, or simply get operations off the ground quickly, the EOR may seem an attractive alternative. It offers speed in hiring, payroll management, and initial labor compliance through the intermediary company, without requiring the end client to deal directly with the complexities of local legislation.

In situations of operational urgency, the EOR can also serve as a valuable tool. When there is an immediate need to onboard critical professionals (for exam-

ple, to ensure the continuity of a strategic project), hiring through an EOR enables a rapid response while the company sets up a more permanent structure.

Despite its practical advantages, the EOR does not constitute a safe harbor against employment risks in Brazil – nor, it should be noted, against other tax and regulatory issues that may also arise. Brazilian labor legislation is widely recognized as strongly protective of workers, and courts prioritize the substance of the facts related to the employment relationship over the contractual form.

The first and most significant risk is the recognition of a direct employment relationship with the end client (i.e., the EOR's client). If the professionals hired through the EOR work under the subordination, regularity, personal nature, and compensation characteristic of an employment relationship with the end client, the Labor Courts may disregard the EOR structure and determine that the true employer is the client company. In such a scenario, the professional may claim salary differences, retroactive benefits, FGTS deposits, vacation pay with the constitutional one-third bonus, the 13th salary, and even moral damages arising from the employment structure used, particularly if there are signs that workers' rights were diminished.

There is also the risk of subsidiary liability. By law, the end client is subsidiarily liable for the EOR's labor obligations if the EOR fails to properly fulfill its duties toward the workers. In certain cases, depending on the factual circumstances, this liability may be deemed joint and several, meaning the end client and the EOR are held liable together, with no order of preference. This is especially if, in the context of the specific case, fraudulent collusion in the use of the model is found to have occurred.

A further concern relates to trade union classification. In EOR arrangements, employees are typically classified under the union corresponding to the EOR's economic activity, usually linked to personnel management, consulting, or service provision. However, when the end client operates in a different sector, the professional may seek reclassification, claiming the application of the collective bargaining agreement of the end client's sector and, consequently, retroactive salary and benefit differences, which can reach significant amounts and create substantial financial exposure.

Given this landscape, a natural question arises: are there ways to use the EOR model more safely? The answer is yes. There are contractual, operational, and governance strategies that can significantly reduce a company's exposure to

Lefosse Advogados

Rua Tabapuã, 1227 - 14th floor

04533-014 - Itaim Bibi

São Paulo – SP | Brasil

T (+55) 11 3024 6100

www.lefosse.com

Lefosse

Lefosse Advogados
Rua Tabapuã, 1227 - 14th floor
04533-014 - Itaim Bibi
São Paulo – SP | Brasil
T (+55) 11 3024 6100
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labor, tax, and social security risks. These measures range from the careful structuring of contracts to planning the transition toward more permanent hiring models, as well as management practices that preserve the factual relationship between the end client and the professionals.

However, the effectiveness of these measures depends on a case-by-case analysis that considers the particularities of the business, the profile of the professionals involved, the company's industry, and the applicable legislation. There is no one-size-fits-all formula; each situation requires a tailored strategy. The difference between taking advantage of the EOR's possibilities and falling into its pitfalls lies, to a great extent, in the quality of the legal guidance that accompanies the decision.

Brazil's Recent Tariff Increases and the EU–Mercosur Base Rate Mechanism

1. Tariff treatment after 1 May 2026: the new position for European exporters

On 17 January 2026, the European Union and Mercosur formally signed the EU–Mercosur Agreement in Asunción. It consists of two legally distinct instruments: (i) the comprehensive Partnership Agreement (EMPA), and (ii) the Interim Trade Agreement (ITA), which contains the core trade and tariff liberalisation provisions.

The signing did not by itself trigger preferential tariff treatment. Until provisional application of the ITA, Brazil and the other Mercosur members remained free to adjust their ordinary import-tariff regimes, subject to domestic law, Mercosur rules and WTO commitments.

Brazil made use of this flexibility shortly after signature. On 4 February 2026, it adopted Resolution GECEX No. 852/2026, increasing import duties on certain capital goods and information and telecommunications goods.

Since 1 May 2026, however, the position for European exporters is materially different. Brazil may continue to adjust its ordinary Most-Favoured-Nation (MFN) tariffs, but such increases do not alter the negotiated tariff basis applicable to qualifying EU-origin goods under the ITA.

2. From political signature to legal effect

The EMPA is the comprehensive framework and combines political dialogue, cooperation and a trade and investment pillar. As a mixed agreement, its full entry into force on the EU side requires ratification by all EU Member States. The ITA reflects the trade and investment liberalisation pillar of the EMPA and operates as a stand-alone agreement until the EMPA enters into force. Since it falls within the European Union's exclusive competence, it could be applied provisionally without waiting for national ratification of the EMPA.

The European Parliament's consent to formal conclusion remains pending following its request of 21 January 2026 for an opinion from the Court of Justice of the European Union on the agreement's compatibility with the EU Treaties.



Lukas Rhomberg

Partner

lukas.rhomberg@crpartners.com.br



Maiara Patrício Coral

Associate

maiara.coral@crpartners.com.br

CR & Partners

Avenida das Nações Unidas,
17.007 - 2nd floor - Torre Alpha
04794-000 - Santo Amaro
São Paulo – SP | Brasil

CR&Partners
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CR & Partners

Avenida das Nações Unidas,
17.007 - 2nd floor - Torre Alpha
04794-000 - Santo Amaro
São Paulo – SP | Brasil



3. Brazil's MFN tariff policy and the ITA limit

Brazilian import tariffs are set within Mercosur's Common External Tariff (CET/TEC). At domestic level, tariff changes are generally implemented through GECEX resolutions by reference to the Mercosur Common Nomenclature (NCM), the eight-digit tariff classification used for customs purposes in Mercosur.

Brazil may continue to change its ordinary MFN duties. For EU exporters, however, the relevant issue is how those changes affect the preferences granted under the ITA.

The preferential reductions are calculated from the Base Rates listed in the ITA tariff schedules. Importantly, a subsequent increase of the applied MFN rate above the Base Rate does not replace that negotiated starting point: the preferential reduction for qualifying EU-origin goods continues to be calculated from the ITA Base Rate.

The ITA also contains a lower-MFN rule. If a Party reduces its applied MFN duty below the Base Rate for a tariff line, the lower rate replaces the Base Rate for calculating the preferential duty for as long as it remains lower. The mechanism is therefore asymmetric: an MFN rate above the Base Rate does not raise the ITA calculation basis, whereas an MFN rate below the Base Rate may improve it.

Brazil's applied rate is not determined by the CET/TEC alone. Under Mercosur's mechanism for trade imbalances arising from the international economic situation, known in Brazil as DCC, import duties may be raised temporarily above the CET. Measures may apply for up to 12 months and may be renewed.

For qualifying EU-origin goods, these measures must be considered together with the ITA's Base Rate mechanism. To qualify, goods must satisfy the product-specific origin rules in Chapter 3 of the ITA, and the importer must claim preferential treatment at the point of customs clearance on the basis of a statement on origin issued by the EU exporter.

4. The Base Rate mechanism in practice

The mechanism is easiest to understand by looking at a single tariff line. For this purpose, we consider NCM 2905.32.00. This NCM covers propylene glycol, or propane-1,2-diol. In the ITA schedule, it has a Brazilian Base Rate of 12% and staging category 10. Resolution GECEX No. 845/2026 increased the applied MFN duty for this product to 20% for the period from 19 January 2026 to 18 January 2027.

However, for EU-origin goods that qualify under the ITA, the 20% MFN rate does not become the new starting point. The preferential reduction is still calculated from the 12% Base Rate in the ITA schedule.

Under the ITA, staging category 10 provides for import duty elimination in 11 equal annual stages. “Year 0” runs from 1 May 2026 to 31 December 2026, with later reductions taking effect each 1 January. The first ITA reduction therefore lowers the applicable preferential duty from the 12% Base Rate to approximately 10.9%. The rate will reach 0% on 1 January 2036.

From 1 May 2026, qualifying EU-origin goods under NCM 2905.32.00 are thus subject to a preferential tariff of approximately 10.9%, compared with the ordinary MFN rate of 20%. The initial preference margin compared with non-EU-origin goods is therefore around 9.1 percentage points and increases as the preferential tariff is reduced, provided that the higher MFN rate remains in force.

5. Conclusion for market participants

Brazil may continue to adjust its ordinary MFN tariffs. Since 1 May 2026, however, qualifying EU-origin goods must also be assessed under the ITA tariff schedule.

For European companies exporting to Brazil, this means that recent Brazilian tariff increases should not automatically be incorporated into landed-cost calculations for EU-origin goods. Each product should instead be checked against its NCM classification, ITA Base Rate, staging category, current Brazilian tariff and origin status. The difference can already be commercially significant.

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Avenida das Nações Unidas,
17.007 - 2nd floor - Torre Alpha
04794-000 - Santo Amaro
São Paulo – SP | Brasil

CR&Partners
Coimbra e Rhomberg Advogados



Cecilia Vidigal

Expert Advisor / Berater – Off
Counsel

T (+55) 11 3897 4420

cvidigal@pnst.com.br

**Pacheco Neto Sanden Teisseire
Advogados***

Al. Franca, 1050

10th and 11th floor

01422-002 - São Paulo - SP/Brasil

T (+55) 11 3897 4420

www.pnst.com.br

**PN
ST** Pacheco Neto
Sanden Teisseire
Advogados

Geschäftschancen für deutsche Unternehmen im Wasserstoffbereich in Brasilien

1. Grüner Wasserstoff - Warum Brasilien?

Brasilien gehört zu den attraktivsten Standorten weltweit für die Produktion von grünem Wasserstoff. Grüner Wasserstoff liegt im Fokus der deutschland- und EU-weiten Förderung – der Hoffnungsträger für die Klimawende in der Industrie und für Wasserstoff Autos. Seine Herstellung geschieht im Elektrolyseverfahren oder durch die Vergärung/Reformierung von Biomasse/Biogas.

Wasserstoff enthält etwa 2,4-mal so viel Energie wie Erdgas. Wird der Wasserstoff für die Industrie aus fossilen Brennstoffen wie Steinkohle, Braunkohle und Erdgas hergestellt, dann wird er schwarzer, brauner oder grauer Wasserstoff genannt.¹ Wasserstoffenergie, die mit Hilfe von Dampf aus Erdgas entsteht, wird weiter verteilt als grauer, blauer oder türkisfarbener Wasserstoff. Unter hohen Temperaturen teilt sich das Erdgas in Kohlenstoffdioxid (CO₂) und Wasserstoff. Dabei entweicht das CO₂ in die Atmosphäre. Die blaue Variante unterscheidet sich vom grauen Wasserstoff durch die Speicherung oder die Wiederverwendung des CO₂. Die sogenannte türkisfarbene Variante wird durch Methanpyrolyse hergestellt. Im diesen Verfahren spaltet sich Erdgas in Hydrogen und festen Kohlenstoff auf. Das Verfahren bindet den Kohlenstoff langfristig und führt ihn der industriellen Weiterverwendung zu.²

Wird er dagegen mit erneuerbaren Energien hergestellt, durch Elektrolyseverfahren, wird er grüner Wasserstoff. Im Elektrolyseverfahren stellt Wasser das Ausgangsprodukt dar- also keine fossile Energie. Aber Elektrolyse benötigt Strom und eine nachhaltige Wasserversorgung.³

Für die Produktion von grünem Wasserstoff ist Brasilien prädestiniert, einerseits wegen der guten Bedingungen für Wind- und Solarkraft, andererseits wegen des gewaltigen Potenzials für Bioenergie.⁴ Der Energiemix Brasiliens besteht zu mehr als 90% aus erneuerbaren Quellen – vor allem Wasserkraft,

¹ www.ingenieur.de, Wasserstoff, Was ist Wasserstoff?

² www.ingenieur.de, Wasserstoff, Wie wird Wasserstoff hergestellt?, 24.01.2025

³ www.ingenieur.de, Wasserstoff, Was ist Wasserstoff?

⁴ <https://www.gtai.de/de/trade/lateinamerika/branchen/wasserstoff> -1829390

zunehmend aber auch Wind und Solar. Im Nordosten ergänzen sich Wind- und Solarressourcen besonders gut.⁵

Mit dem Ausbau der Wasserstoffwirtschaft kann Brasilien künftig zu einem der wichtigsten Exporteure grüner Energie und nachhaltigerer Industrieprodukte aufsteigen. Denn ähnlich wie Australien kann Brasilien Skaleneffekte nutzen und Wasserstoff und seine Derivate sowohl zur Deckung des eigenen Energiebedarfs als auch für den Export produzieren. Neben der gigantischen Agrarressourcen und der Nutzung von Biokraftstoffen spielt die Bioenergie bereits heute eine bedeutende Rolle im Energiemix des Landes. Auch hier bietet sich ein immenses Potenzial für Wasserstoff. Denn zur Gewinnung hochwertiger Derivate wie E-Methanol und anderer E-Fuels bedarf es großer Mengen an biogenem Kohlenstoff.

Ausgehend von derzeit 1,6 Millionen Kubikmetern Biomethan pro Tag sollen die Kapazitäten bis 2032 auf etwa 8 Millionen Kubikmeter steigen. Laut einer aktuellen Erhebung des Branchenverbands ABiogás sind bis 2027 rund 120 neue Anlagen geplant. Wachstumstreiber ist die Land- und Viehwirtschaft, die Reststoffe verwerten und Emissionen mindern will. Die neuen Wertschöpfungsketten lohnen sich zunehmend, zumal Brasilien die lokale Produktion von Dünger fördert, welche ein typisches Nebenprodukt der Prozessketten ist.⁶

Über 100 Milliarden Reais (17 Milliarden Euro) an Investitionen in grünen Wasserstoff (H₂) wurden in Brasilien bereits angekündigt, mit einer geplanten Inbetriebnahme der ersten Anlagen bis 2030. Damit entwickelt sich der Nordosten zu einer sehr stark konzentrierten Region für emissionsarme H₂-Exporthubs mit einer Projektdichte, die weltweit ihresgleichen sucht.⁷

2. Warum wurden trotz hervorragenden Voraussetzungen bis 2026 relativ wenige Wasserstoff Projekte in Brasilien umgesetzt?

Die Realisierbarkeit von grünem Wasserstoff ist in erster Linie eine Frage der Skalierung und der Kostenstruktur. Höhere Kosten, fehlende Infrastruktur und zu wenig erneuerbare Energien sind die Hindernisse auf dem Weg zum grünen Wasserstoff. Darum ist grüner Wasserstoff teurer als Wasserstoff, der aus Erdgas hergestellt wird.

⁵ Schwarz, Magnus, ingenieur.de, 22.04.2026, 11:00 Uhr; Rose, Gloria, GTAI- German, Trade & Invest, 05.02.2025

⁶ Rose, Gloria, GTAI- German, Trade & Invest, 05.02.2025

⁷ Loonen, Janne, Grüner Wasserstoff aus Brasilien: Wo der deutsche Mittelstand jetzt ansetzen muss, 10.08.2026

Pacheco Neto Sanden Teisseire Advogados*

Al. Franca, 1050
10th and 11th floor
01422-002 - São Paulo - SP/Brasil
T (+55) 11 3897 4420
www.pnst.com.br

**PN
ST** Pacheco Neto
Sanden Teisseire
Advogados

**Pacheco Neto Sanden Teisseire
Advogados***

Al. Franca, 1050
10th and 11th floor
01422-002 - São Paulo - SP/Brasil
T (+55) 11 3897 4420
www.pnst.com.br



Dank der kostengünstigen Versorgung mit grüner Energie aus Wasser, Wind- und Solarkraft sowie der verfügbaren Biomasse produziert die Industrie in Brasilien schon heute wesentlich sauberer als in anderen Ländern. So liegen die CO₂-Emissionen der Chemieindustrie laut einer aktuellen Studie des Branchenverbands Abiquim 10 Prozent niedriger als in Europa und bei einigen Produkten nur halb so hoch wie im weltweiten Durchschnitt.⁸

Brasilien verfügt über einen doppelten Wettbewerbsvorteil: Der Preis für erneuerbare Energie ist nicht nur niedrig, sondern insbesondere im Nordosten Brasiliens gehören die Kapazitätsfaktoren der Windparks zu den höchsten weltweit. Das erlaubt eine längere Betriebszeit der teuren Elektrolyseure und somit eine effizientere Kostenverteilung pro Kilogramm produziertem Wasserstoff. Dennoch bleibt der CAPEX für Elektrolyseure das grösste Hindernis.⁹

Viele multinationale Konzerne haben bis vor kurzem lieber in den USA oder Mexiko investiert. Hauptgrund dafür war der Inflation Reduction Act (IRA), das milliardenschwere Subventionspaket der US-Regierung. Um die energieintensive Industrie zu halten, bieten auch Deutschland und die EU umfangreiche Fördermaßnahmen zum Ausgleich der gestiegenen Energiekosten.¹⁰

Brasilien fehlt es leider an Finanzkraft für umfassende Subventionen. Und günstige grüne Energie allein reicht nicht aus, um Industrieinvestitionen anzulocken. Das gesamte Wirtschaftsumfeld von der Regulierung über die Finanzierung bis zur Ausbildung von Fachkräften und dem Ausbau der Infrastruktur muss darauf ausgelegt sein. Daher gilt es, landesspezifische Kosten zu senken. Zu dem altbekannten 'Custo Brasil' zählen hohe Steuern, eine komplexe Bürokratie, mangelhafte Logistik und die geringe Rechtssicherheit.

3. Wasserstoff aus Brasilien – Überwundene Hindernisse

Geopolitischer Kontext. Überhaupt spielt geopolitischer Kontext eine Rolle: Angesichts der hohen Unsicherheit im Welthandel gewinnt die Diversifizierung der Handelspartner für Brasilien stark an Bedeutung. Süd- und Mittelamerika sind ein Lichtblick in der kriselnden Weltwirtschaft.¹¹

Deutschlands Ziel. Das Ziel, bis 2030 zwischen 50% und 70% des Wasserstoffbedarfs durch Importe zu decken, setzt den grundsätzlichen Rahmen für die Nachfrage.

⁸ Rose, Gloria, GTAI- German, Trade & Invest, 05.02.2025

⁹ Prof. Cannepele, Fernando, Grüner Wasserstoff in Brasilien: Vom Versprechen zur wirtschaftlichen und industriellen Realität, Energy Channel, 24.07.2026

¹⁰ Rose, Gloria, GTAI- German, Trade & Invest, 28.11.2023

¹¹ Schwarz, Magnus, ingenieur.de, 22.04.2026, 11:00 Uhr

Neue brasilianische Gesetze. Der gesetzliche Rahmen für kohlenstoffarmen Wasserstoff ist seit September 2024 in Kraft, und das Durchführungsdekret zur Regulierung wurde im August 2026 im Detail gesetzlich verankert. Zwischen 2028 und 2032 stellt die brasilianische Regierung über das PHBC-Programm Steuervergünstigungen in Höhe von mehr als 3 Milliarden US-Dollar bereit. Neben dem reinen Export treibt Brasilien zudem die Produktion von synthetischem Flugkraftstoff (SAF) und grünem Dünger voran, um die eigene Industrie zu dekarbonisieren.¹²

Zwischen 2024 und 2026 schafften die Bundesstaaten im Nordosten mit eigenen Landesgesetzen bereits vollendete Tatsachen. Da die finalen Investitionsentscheidungen für viele Projekte noch 2026 erwartet werden, wird dieses Jahr zum entscheidenden Nadelöhr für die Platzierung der Zulieferer.¹³

Laut dem Dreijahresplan des „Programa Nacional do Hidrogênio“ (PNH2) will Brasilien bis 2035 Hubs für CO₂-armen Wasserstoff etablieren. In Kooperation mit Climate Investment Funds - Industry Decarbonization (CIF-ID) vergibt die Regierung derzeit Finanzmittel in Höhe von 1,09 Milliarden US\$, um ein erstes Großprojekt zur Dekarbonisierung der Industrie zu fördern.

In der ersten Etappe wählte das Energieministerium Ende 2024 insgesamt zwölf aus den über 70 von Unternehmen eingereichten Vorschlägen aus. Davon sind drei Projekte im Bundesstaat São Paulo angesiedelt. Weitere Standorte sind die Bundesstaaten Bahia und Minas Gerais sowie Häfen mit Freihandelszonen (Pecém, Suape und Açú). In der zweiten Phase legen die ausgewählten Unternehmen nun detaillierte Geschäftspläne vor. Die engere Projektauswahl wird dann für die Finanzierung durch den Klimafonds in Betracht gezogen.

In Kraft traten auch das Steuerregime "Regime Especial de Incentivos para a Produção de Hidrogênio de Baixa Emissão de Carbono" (Rehidro) und das Förderprogramm "Programa de Desenvolvimento do Hidrogênio de Baixa Emissão de Carbono" (PHBC). Im Rahmen des PHBC stellt Brasilien 2028 bis 2032 mehr als 3 Milliarden US-Dollar (US\$) an Steuervergünstigungen für die Produktion von kohlenstoffarmem Wasserstoff bereit.¹⁴

Im Oktober 2024 feierte die Wirtschaft das Gesetz "Kraftstoffe der Zukunft", das Förderquoten zur Beimischung emissionsarmer Treibstoffe festlegt. So

**Pacheco Neto Sanden Teisseire
Advogados***

Al. Franca, 1050
10th and 11th floor
01422-002 - São Paulo - SP/Brasil
T (+55) 11 3897 4420
www.pnst.com.br

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Sanden Teisseire
Advogados**

¹² Schwarz, Magnus, ingenieur.de, 22.04.2026, 11:00 Uhr

¹³ Loonen, Janne, Grüner Wasserstoff aus Brasilien: Wo der deutsche Mittelstand jetzt ansetzen muss, 10.08.2026

¹⁴ Rose, Gloria, GTAI- German, Trade & Invest, 05.02.2025

**Pacheco Neto Sanden Teisseire
Advogados***

Al. Franca, 1050
10th and 11th floor
01422-002 - São Paulo - SP/Brasil
T (+55) 11 3897 4420
www.pnst.com.br



müssen Fluggesellschaften ab 2027 ihre Emissionen bei Inlandsflügen schrittweise reduzieren beziehungsweise ausgleichen. Damit setzt Brasilien unter anderem die Vorgaben des Klimakompensationssystems CORSIA um.¹⁵

Um den Jahreswechsel 2024/25 verabschiedete Lula den Rechtsrahmen für den verpflichtenden Emissionshandel und für Offshore-Windenergie. Außerdem verstärkte die Regierung die Förderung von Biokraftstoffen (RenovaBio) und erleichterte mit dem Programm zur Beschleunigung der Energiewende (Paten) die Finanzierung.¹⁶

Neues deutsches Förderprogramm. Das Programm H2Uppp ist ein Förderprogramm, das vom Bundeswirtschaftsministerium finanziert wird und unterstützt Public-Private-Partnerships für grünen Wasserstoff in Entwicklungs- und Schwellenländern. Der Schwerpunkt liegt dabei aktuell auf Brasilien.¹⁷

Eine Studie des Fraunhofer-Instituts für Solare Energiesysteme ISE sieht Brasilien neben Kolumbien und Australien ganz vorne bei der Lieferung von grünem Ammoniak, Methanol und Kerosin nach Deutschland.¹⁸

EU-Mercosur Abkommen. Das liegt auch an dem EU-Mercosur-Abkommen, das seit dem 1. Mai vorläufig in Kraft eingetreten ist.¹⁹

Sinkende Preise. Die Preise für grünen Strom und für die Herstellung von Wasserstoff mittels Elektrolyse sinken schon. Die Internationale Energieagentur (IEA) geht in ihrem Wasserstoffbericht davon aus, dass der Ausbau erneuerbarer Energien in Regionen mit reichlich Sonne und Wind wie Indien, Nahen Osten und Afrika – sowie Brasilien – den Anteil von grünem Wasserstoff deutlich erhöhen wird. Damit sinken auch die Kosten.²⁰

Laut einer [Studie](#) von Bloomberg New Energy Finance dürften im Jahr 2030 die Elektrolysekosten für grünen Wasserstoff in Brasilien die Erzeugungskosten von herkömmlichem – also grauem – Wasserstoff unterschreiten. Auch in China, Schweden, Spanien und Indien soll dies der Fall sein. In allen anderen Ländern wird dieser Punkt voraussichtlich erst später erreicht.²¹

Starker Inlandsmarkt. Brasilien verfügt über einen starken Inlandsmarkt. Die grösste Chance liegt darin, mit H2V die brasilianische Industrie zu

¹⁵ Rose, Gloria, GTAI- German, Trade & Invest, 05.02.2025

¹⁶ Rose, Gloria, GTAI- German, Trade & Invest, 05.02.2025

¹⁷ Schwarz, Magnus, ingenieur.de, 22.04.2026, 11:00 Uhr

¹⁸ Rose, Gloria, GTAI- German, Trade & Invest, 05.02.2025

¹⁹ Rose, Gloria, GTAI- German, Trade & Invest, 18.06.2026

²⁰ Global Hydrogen Review, 2023, 2026

²¹ Rose, Gloria, GTAI- German, Trade & Invest, 05.02.2025

dekarbonisieren. Für die Agrarwirtschaft, die Milliarden in Form von importierten Stickstoffdüngern ausgibt, bedeutet die lokale Produktion von grünem Ammoniak ein Element der Ernährungssicherheit, besonders in dem aktuellen geopolitischen Kontext. Die Produktion auf eine kalkulierbare lokale Nachfrage zu stützen, ist strategisch klug und verringert die Anfälligkeit für Wechselkurs- und geopolitische Schwankungen. Für die Stahlindustrie bietet H2V im Direktreduktionsverfahren (DRI) die Möglichkeit zur Herstellung von „grünem Stahl“ – einem Produkt mit hohem Mehrwert und wachsender internationaler Nachfrage. Das neue PHBC Programm mit seinen Steueranreizen ist ein geeignetes Instrument, um diesen Wandel zu fördern – einschliesslich künftiger Anwendungen in der Luft- und Schifffahrt über synthetische Kraftstoffe.²²

Transport. Möglich ist es, Wasserstoff in Ammoniak (NH₃) zu verschiffen, das viel einfacher zu transportieren ist. Deutschland und andere Länder wollen im nächsten Jahrzehnt massiv in Wasserstoff und die erforderliche Infrastruktur investieren und die Produktion ausweiten, um einer tragfähigen Alternative zu fossilen Brennstoffen zu machen. Deutsche Unternehmen, und KMUs, sind gut positioniert, um Lösungen in den Bereichen Speicherung, Wasseraufbereitung, Transport und Konversionsinfrastruktur anzubieten.²³

Wasserstoff-Hubs bilden sich heraus. Die Aussicht auf Absatzchancen in Europa animierte in den vergangenen Jahren Projektentwickler und Energieunternehmen zu Investitionen in Wasserstoffprojekte. Mit Unterstützung der bundesstaatlichen Regierungen entstanden erste Vorhaben an Häfen mit Freihandelszonen wie Pecém im Bundesstaat Ceará, Suape (Pernambuco), Parnaíba (Piauí) und Açu (Rio de Janeiro). Ceará unterzeichnete besonders viele Absichtserklärungen. In Partnerschaft mit dem Hafen Rotterdam investiert der Staat in die Pecém Port Complex Integration Company (CIPP), die einen Hub für grünen Wasserstoff und Infrastruktur für Exporte nach Europa errichtet. Im Dezember 2024 schloss auch der weltgrößte Binnenhafen Duisport eine Absichtserklärung mit CIPP. Damit erstreckt sich der Green Hydrogen Corridor nun direkt von Pecém bis ins Ruhrgebiet.²⁴

Der Industriehafenkomplex Camaçari (Bahia) verfügt über keine ZPE („Zonas de Processamento de Exportação“) und fokussiert eher auf die lokale Verwertung. Auch im Wirtschaftszentrum São Paulo geht es um die grüne Industrialis-

**Pacheco Neto Sanden Teisseire
Advogados***

Al. Franca, 1050
10th and 11th floor
01422-002 - São Paulo - SP/Brasil
T (+55) 11 3897 4420
www.pnst.com.br

**PN
ST** Pacheco Neto
Sanden Teisseire
Advogados

²² Prof. Cannepele, Fernando, Grüner Wasserstoff in Brasilien: Vom Versprechen zur wirtschaftlichen und industriellen Realität, Energy Channel, 24.07.2026

²³ Loonen, Janne, Grüner Wasserstoff aus Brasilien: Wo der deutsche Mittelstand jetzt ansetzen muss, 10.08.2026

²⁴ Rose, Gloria, GTAI- German, Trade & Invest, 05.02.2025

**Pacheco Neto Sanden Teisseire
Advogados***

Al. Franca, 1050
10th and 11th floor
01422-002 - São Paulo - SP/Brasil
T (+55) 11 3897 4420
www.pnst.com.br



ierung, vorzugsweise am Petrochemiestandort Cubatão.

4. Schlussfolgerung

Die wesentlichen Grundlagen für die Verwirklichung des Potenzials von grünem Wasserstoff als industrielle und wirtschaftliche Realität sind für Brasilien vorhanden: Ein regulatorischer Rahmen, finanzierte Grossprojekte und eine marktorientierte Strategie, die auch den brasilianischen starken Inlandsmarkt einbezieht.²⁵

Die Häfen im Nordosten Brasiliens haben ein klares Ziel: Investitionen in die Produktion und den Export von kohlenstoffarmem Wasserstoff. Der Technologietransfer läuft bereits, deutsche Unternehmen bauen Präsenz und Partnerschaften in der Region auf. Grösstenteils sind die Projekte im Nordosten bislang nur durch Absichtserklärungen und nicht durch verbindliche Verträge abgesichert, während die Finanzierung noch aktiv vorangetrieben wird.²⁶

Grosse Unternehmen wie Siemens, Thyssenkrupp Uhde und Andritz haben sich die EPC-Grossprojekte im Nordosten bereits gesichert, um so aktiv nach vertrauenswürdigen mittelständischen Zulieferern zu suchen, um diese in ihre Lieferketten zu integrieren.²⁷

Wer auf die vollständige regulatorische Umsetzung 2026/2027 wartet, verpasst das Zeitfenster für die Lieferantenauswahl. Deutsche KMUs mit Expertise in Wassermanagement, Sensorik, Speicherung und Derivatverarbeitung haben einen klaren First-Mover-Vorteil, solange die EPC-Konsortien noch Partner suchen.²⁸

*Author of the publication **So Geht's Limitada in Brasilien**

²⁵ Prof. Cannepele, Fernando, Grüner Wasserstoff in Brasilien: Vom Versprechen zur wirtschaftlichen und industriellen Realität, Energy Channel, 24.07.2026

²⁶ Loonen, Janne, Grüner Wasserstoff aus Brasilien: Wo der deutsche Mittelstand jetzt ansetzen muss, 10.08.2026

²⁷ Loonen, Janne, Grüner Wasserstoff aus Brasilien: Wo der deutsche Mittelstand jetzt ansetzen muss, 10.08.2026

²⁸ Loonen, Janne, Grüner Wasserstoff aus Brasilien: Wo der deutsche Mittelstand jetzt ansetzen muss, 10.08.2026

Engaging Individuals through Legal Entities in Brazil: Current Case Law and the Boundaries of Lawfulness

1. General Overview

The engagement of individuals through legal entities, commonly known in Brazil as “*pejotização*”, has moved from the margins of employment law to the centre of a broader constitutional debate concerning freedom of enterprise, contractual autonomy and the protection afforded to labour. The question is no longer whether every such arrangement is inherently unlawful. Rather, it is where legitimate business organisation ends and the concealment of an employment bound begins.

Brazilian labour law traditionally approaches this distinction through substance rather than form. An employment relationship is characterised by personal service, recurrence, remuneration and legal subordination. Conversely, a genuine independent contractor should retain meaningful autonomy over how services are performed, with the contracting company concerned mainly with the agreed result rather than exercising managerial and disciplinary authority over the individual.

The Supreme Federal Court (“STF”) has progressively enlarged the space for alternative forms of organising labour. In precedents “ADPF” 324 and “Theme” 725, it upheld outsourcing irrespective of whether services relate to a company's core business. Subsequent decisions have extended that reasoning to other contractual structures. In “RCL” 59.836, involving a highly qualified professional, the Court emphasised that employment is not the sole lawful means of organising work and attached significance to the professional's capacity to make an informed contractual choice. Similar reasoning has appeared in cases involving investment professionals and other specialised service providers. The Court has nevertheless preserved an important qualification: a civil agreement must be genuine rather than an instrument disguising an employment relationship.

The controversy has now converged upon Theme 1.389 (“ARE” 1.532.603), whose merits remain pending before the STF. The judgment is expected to address three questions of considerable practical importance: (i) whether



André Blotta Laza

Partner

T (+55) 11 3093 4676

ABL@machadoassociados.com.br

Machado Associados

Av. Brigadeiro Faria Lima, 1656 –
11th floor - 01451-918

São Paulo - SP/Brasil

T (+55) 11 3819 4855

www.machadoassociados.com.br



Machado Associados

Av. Brigadeiro Faria Lima, 1656 –

11th floor - 01451-918

São Paulo - SP/Brasil

T (+55) 11 3819 4855

www.machadoassociados.com.br



individuals may lawfully provide services as independent workers or through legal entities; (ii) which branch of the Judiciary has jurisdiction to determine allegations of fraud in civil or commercial service agreements; and (iii) who bears the burden of proving such fraud. In June 2026, the reporting Justice authorised proceedings to resume before first-instance labour courts and Regional Labour Courts, whilst requiring cases to be stayed after the regional judgment pending the STF's definitive ruling.

2. Different job roles, different risks

For **C-suite executives**, officers and directors, “*pejotização*” is increasingly defensible from an employment-law perspective where genuine managerial autonomy exists. This is particularly so for senior professionals with substantial bargaining power who determine strategy rather than merely execute instructions. Corporate governance matters: a formally appointed non-employee director who exercises genuine corporate powers and answers to decentralised governance bodies presents a markedly different case from an executive who, notwithstanding the title, remains subject to day-to-day hierarchical control.

This does not, however, eliminate social security exposure. Brazilian tax authorities may examine the substance of the arrangement independently of a labour court and seek social security contributions where the individual's activities are essentially personal and integrated into the corporate structure. Consequently, a structure that is reasonably defensible for employment-law purposes may remain materially exposed from a social security standpoint. For directors, appointment and remuneration as an individual statutory director or genuinely independent individual may therefore be more conservative than interposing a personal service company.

The position is considerably less comfortable for **operational personnel**. Where individuals perform recurring functions within the ordinary hierarchy, follow fixed working hours, receive instructions and disciplinary sanctions, use company resources and enjoy benefits equivalent to those of employees, incorporation of a service company changes little of substance. For this category, direct employment will ordinarily remain the legally safer structure.

Consultants occupy the intermediate ground. A legal-entity model can be robust where the engagement is genuinely project or deliverable-based and the consultant controls methods and schedules, assumes entrepreneurial risk and, where commercially feasible, remains free to serve other clients. The greater the contractor's integration into the organisation, however, the weaker that distinction becomes.

3. Contracts follow reality — not the reverse

Careful drafting remains indispensable, but contractual language cannot cure an inconsistent operating model. Agreements should clearly define scope, deliverables, remuneration, confidentiality, intellectual property, data protection, compliance obligations, liability and termination rights. Equally important is organisational discipline after signature. Fixed working hours, employment-style warnings or suspensions, employee benefits, corporate identification and detailed supervision of working methods may all undermine the independence described on paper.

Companies should therefore regard “*pejotização*” not primarily as a pay-roll-cost exercise but as a governance decision. The relevant question is whether the business is genuinely prepared to relinquish the degree of direction and control inherent in employment.

For German companies doing business in Brazil, this distinction deserves particular attention. Governance structures imported from a German parent, often characterised by detailed reporting lines, approval matrices, compliance procedures and strong functional integration, may inadvertently create evidence of subordination if applied indiscriminately to Brazilian contractors. Local HR, tax, legal and business teams should therefore classify roles before selecting the contractual vehicle, distinguishing statutory management, employees, operational personnel and genuinely independent consultants, and periodically testing whether contractual autonomy survives in everyday practice.

The direction of Brazilian constitutional case law is unmistakably towards greater acknowledgment of freedom of economic organisation. “RCL” 64.608, concerning remuneration channelled through a legal entity for activities associated with corporate management, further illustrates this trajectory. Yet greater contractual freedom should not be mistaken for immunity from scrutiny. Theme 1.389 may provide much-needed clarity, but even a broadly permissive ruling is unlikely to legitimise sham arrangements.

The emerging principle is therefore more nuanced: “*pejotização*” can be lawful, commercially rational and legally sustainable, but only when the autonomy expressed in the contract is also visible in the reality of the relationship.

Machado Associados

Av. Brigadeiro Faria Lima, 1656 –
11th floor - 01451-918
São Paulo - SP/Brasil
T (+55) 11 3819 4855
www.machadoassociados.com.br





Patrícia Giacomini Pádua

Partner

patricia.padua@snasp.com.br

Stüssi-Neves Advogados*

Rua Henrique Monteiro, 90 -

10th floor - 05423-020

São Paulo - SP/Brasil

T (+55) 11 3093 6600

www.snasp.com.br



**Stüssi
Neves**

Advogados

Änderungen am Konzept der dauerhaften Betriebsstätte

Die zunehmende wirtschaftliche Globalisierung, die fortschreitende Digitalisierung und die wachsende Mobilität der Arbeitskräfte haben die Art und Weise, wie Unternehmen ihre internationalen Geschäftstätigkeiten organisieren, grundlegend verändert. Dadurch können Unternehmen heute in verschiedenen Staaten wirtschaftlich tätig sein, ohne dort zwingend eine klassische Niederlassung zu unterhalten.

In diesem Zusammenhang spielt der Begriff der Betriebsstätte („Permanent Establishment“ – PE) eine zentrale Rolle. Nach Artikel 7 des OECD-Musterabkommens, das den meisten Doppelbesteuerungsabkommen zugrunde liegt, sind die Gewinne eines Unternehmens grundsätzlich nur in dem Staat steuerpflichtig, in dem es ansässig ist. Übt ein Unternehmen seine Tätigkeit jedoch über eine Betriebsstätte in einem anderen Staat aus, können die dieser Betriebsstätte zurechenbaren Gewinne auch dort besteuert werden.

In Brasilien gibt es keine gesetzliche Definition der dauerhaften Betriebsstätte nach dem Vorbild des OECD-Musterabkommens. Das deutsch-brasilianische Doppelbesteuerungsabkommen ist am 01. Januar 2006 außer Kraft getreten. Bezüglich eines neuen Abkommens gibt es jedoch bereits erste Gespräche zwischen beiden Ländern.

Die Betriebsstätte ist in Artikel 5 des OECD-Musterabkommens definiert: Danach handelt es sich grundsätzlich um eine feste Geschäftseinrichtung, über die ein Unternehmen seine Tätigkeit ganz oder teilweise ausübt. Das traditionelle Konzept setzt eine wirtschaftliche Präsenz voraus, die ein gewisses Maß an Dauerhaftigkeit und Stabilität aufweist. Durch die Feststellung einer Betriebsstätte wird die Besteuerung durch den Staat gerechtfertigt, in dessen Gebiet die Tätigkeit ausgeübt wird.

Die klassische Form der Betriebsstätte ist die feste Geschäftseinrichtung. Dazu zählen beispielsweise Zweigniederlassungen, Büros, Fabriken, Werkstätten, Bergwerke, Gas- oder Ölquellen sowie jeder andere Ort, über den das Unternehmen seine Tätigkeit ausübt.

Eine Betriebsstätte kann auch durch Bau- oder Installationsprojekte entstehen, wenn diese die im jeweiligen Doppelbesteuerungsabkommen festgelegte Minstdauer überschreiten. Dies verdeutlicht, dass auch die Dauer und

Kontinuität einer Tätigkeit die Besteuerung im anderen Staat rechtfertigen können. Im Verhältnis zu Brasilien sehen die meisten bestehenden Abkommen eine Mindestdauer von sechs Monaten vor, einige Abkommen legen neun Monate und das von der OECD vorgeschlagene zwölf Monate zugrunde.

Das Musterabkommen ermöglicht ferner die Begründung einer Betriebsstätte durch einen abhängigen Vertreter. Dies ist der Fall, wenn ein Unternehmen über einen oder mehrere Vertreter tätig wird, die gewohnheitsmäßig befugt sind, im Namen des Unternehmens Verträge abzuschließen und diese Befugnis auch tatsächlich ausüben. Voraussetzung ist jedoch, dass es sich nicht um unabhängige Vertreter handelt.

Einige von Brasilien abgeschlossene Doppelbesteuerungsabkommen enthalten zudem den Begriff der Dienstleistungsbetriebsstätte. Diese liegt vor, wenn Dienstleistungen in einem bestimmten Staat fortlaufend über einen Zeitraum von mehr als 183 Tagen innerhalb von zwölf Monaten erbracht werden. Auch wenn einzelne Abkommen keine Dienstleistungsbetriebsstätte vorsehen, können Protokolle über technische Dienstleistungen die Lizenzgebühren gleichstellen und damit eine Besteuerung ermöglichen.

Zudem enthält Artikel 5 des Musterabkommens Ausnahmen, bei denen keine Betriebsstätte begründet wird. Dies gilt insbesondere für Tätigkeiten, die ausschließlich vorbereitender oder unterstützender Art sind, etwa die Lagerung oder Ausstellung von Waren, die Informationsbeschaffung oder andere Tätigkeiten, die nicht zum Kerngeschäft des Unternehmens gehören. Allen Formen der Betriebsstätte liegt derselbe Gedanke zugrunde: Es muss eine wirtschaftlich ausreichende relevante Präsenz vorliegen, die die Besteuerung der Gewinne durch den anderen Staat rechtfertigt.

Traditionell spielte die physische Präsenz eine zentrale Rolle, um zu beurteilen, ob eine Betriebsstätte vorliegt. Maßgebliche Anhaltspunkte waren insbesondere der Unterhalt der materiellen Einrichtungen, die Ausübung von Tätigkeiten in einem bestimmten Gebiet oder der Einsatz von Vertretern, die das Unternehmen rechtlich binden konnten. Dieses Verständnis geriet durch die Entwicklung der digitalen Wirtschaft und die zunehmende Telearbeit zunehmend unter Druck.

Vor diesem Hintergrund entwickelte die OECD im Jahr 2017 das Projekt „Base Erosion and Profit Shifting“ (BEPS). Ziel ist es, die Regeln der internationalen Besteuerung an neue Formen der Organisation wirtschaftlicher Tätigkeiten anzupassen und Gestaltungen entgegenzuwirken, die die steuerpflichtigen Gewinne eines Staates verringern können. Zu den wichtigsten Initiativen

Stüssi-Neves Advogados*

Rua Henrique Monteiro, 90 -
10th floor - 05423-020

São Paulo - SP/Brasil

T (+55) 11 3093 6600

www.snasp.com.br



Stüssi-Neves Advogados*
Rua Henrique Monteiro, 90 -
10th floor - 05423-020
São Paulo - SP/Brasil
T (+55) 11 3093 6600
www.snasp.com.br



gehören BEPS-Maßnahme 1, die sich mit den steuerlichen Herausforderungen der digitalen Wirtschaft befasst, sowie BEPS-Maßnahme 7, die Gestaltungen zur Vermeidung einer Betriebsstätte entgegenwirken soll. Maßnahme 1 umfasst unter anderem das Konzept einer wesentlichen wirtschaftlichen Präsenz, eine Quellensteuer auf bestimmte digitale Transaktionen und eine digitale Ausgleichsabgabe. Maßnahme 7 richtet sich gegen Strukturen, die zwar formal keine Betriebsstätte begründen, aber dennoch eine wesentliche wirtschaftliche Präsenz aufrechterhalten.

Das BEPS-Projekt hat die internationale Besteuerung maßgeblich modernisiert, ließ jedoch einige Fragen offen. Um bei neuen Formen der Unternehmensorganisation mehr Rechtssicherheit zu schaffen, wurden die Kommentare zum OECD-Musterabkommen 2025 überarbeitet.

Die Aktualisierung der Kommentare zu Artikel 5 des OECD-Musterabkommens im Jahr 2025 stellt einen wichtigen Schritt bei der Auslegung des Begriffs der Betriebsstätte dar. Sie trägt den Entwicklungen der digitalen Wirtschaft und der Telearbeit Rechnung. Obwohl der Wortlaut von Artikel 5 im Wesentlichen unverändert geblieben ist, definieren die überarbeiteten Kommentare die Voraussetzungen für das Vorliegen einer Betriebsstätte und deren Anwendung neu.

Zu den wichtigsten Änderungen gehört die Behandlung des Homeoffice. Traditionell galt der Wohnsitz eines Arbeitnehmers nicht als ausreichender Anknüpfungspunkt für eine feste Geschäftseinrichtung des Unternehmens, insbesondere wenn die Nutzung allein auf persönlichen Gründen des Arbeitnehmers beruhte. Nach der Aktualisierung von 2025 kommt es jedoch auf die konkreten Umstände des Einzelfalls an. Entscheidend ist insbesondere, ob die Räumlichkeiten dem Unternehmen tatsächlich zur Verfügung stehen und ob die dort ausgeübten Tätigkeiten einen wesentlichen Teil der Geschäftstätigkeit des Unternehmens darstellen.

Bislang stand bei der Prüfung vor allem im Vordergrund, ob eine physische Einrichtung dem Unternehmen gehört oder von ihm kontrolliert wird. Die neuen Kommentare richten den Blick nun stärker auf die tatsächliche wirtschaftliche Tätigkeit des Unternehmens im jeweiligen Staat. Entscheidend ist u. a., ob der Ort dem Unternehmen tatsächlich zur Verfügung steht, welche Tätigkeiten dort ausgeübt werden, wie regelmäßig dies geschieht und aus welchen wirtschaftlichen Gründen die Tätigkeit gerade in diesem Staat erfolgt. Eine physische Präsenz bleibt zwar relevant, ist aber nicht mehr das allein ausschlaggebende Kriterium.

Die Aktualisierung der Erläuterungen zu Artikel 5 des OECD-Musterabkommens ist für Brasilien von besonderer Bedeutung. Zwar enthält das brasilianische Recht keinen allgemeinen Begriff der Betriebsstätte, der dem OECD-Musterabkommen entspricht, aufgrund der von Brasilien abgeschlossenen Doppelbesteuerungsabkommen, die sich überwiegend am OECD-Musterabkommen orientieren, ist der Begriff jedoch für die internationale Besteuerung von erheblicher Bedeutung.

Unternehmen, die in mehreren Rechtsordnungen tätig sind, ohne dort eine formelle Niederlassung zu errichten, sollten daher stets im Einzelfall prüfen, ob ihre Tätigkeit die Voraussetzungen einer Betriebsstätte nach der aktuellen Definition erfüllt. Dabei sind neben den tatsächlichen Umständen auch die jeweils anwendbaren Doppelbesteuerungsabkommen zu berücksichtigen. Eine frühzeitige Einordnung kann helfen, mögliche steuerliche Folgen zu erkennen und bei der weiteren Ausgestaltung der Geschäftstätigkeit mit einzubeziehen.

*Author of the publications ***So Gehr's Einstieg in Brasilien***
and ***So Gehr's Arbeitsrecht in Brasilien***

Stüssi-Neves Advogados*
Rua Henrique Monteiro, 90 -
10th floor - 05423-020
São Paulo - SP/Brasil
T (+55) 11 3093 6600
www.snasp.com.br





Debora Yanasse

Partner

T (+55) 21 2127 4276

dyanasse@mayerbrown.com

Tauil & Chequer Advogados

Associado a Mayer Brown

Av. Pres. Juscelino Kubitschek,
1455 - 6th floor

04543-011 - São Paulo - SP/Brasil

T (+55) 11 2504 4210

T (+55) 21 2127 4231

www.tauilchequer.com.br

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Regulation of Energy Storage Systems Provides Legal Certainty and Paves the Way for New Products and Services in Brazil's Power Sector

Brazil's power sector is undergoing a period of profound structural transformation, driven by the global energy transition, climate change and the need to ensure energy security while maintaining a competitive business environment. Against this backdrop, public and private sector players have been working to create regulatory conditions capable of fostering innovation and attracting investment. At the center of these developments is Law No. 15,269, enacted in November 2025, a landmark of Brazil's Power Sector Reform, which provides for the full opening of the free electricity market, allowing all low-voltage consumers to freely choose their electricity supplier.

Law No. 15,269/2025 establishes a legal and regulatory framework that, among other definitions and advances, formally recognizes electricity storage as an activity within the power sector. At the same time, it grants ANEEL, Brazil's National Electric Energy Agency, authority to regulate and oversee the operation of storage systems connected to the National Interconnected System (SIN) or to isolated systems for the provision of multiple services to the power system, including capacity supply, flexibility, ancillary services and electricity trading.

In the first phase of its regulatory agenda, ANEEL created a specific authorization framework for standalone storage systems, eliminating the need to create a subcategory of Independent Power Producer (IPP). This phase established the concept of Energy Storage Systems (ESS), including closed-loop pumped-storage hydropower plants and Battery Energy Storage Systems (BESS), and culminated in the issuance of Normative Resolutions Nos. 1,161/2026 and 1,162/2026 on June 24, 2026, thereby paving the way for the development of the first large-scale projects.

Together, the two Normative Resolutions established the technical, legal and economic requirements, as well as the procedures for obtaining authorization for Energy Storage Systems (ESS), and are formally distinguished among Standalone ESS, Generation-Co-located ESS, Associated ESS and Load-Co-located ESS. Standalone ESS operate by absorbing electricity from and injecting

electricity into the SIN and may be directly operated by the National System Operator (ONS); Generation-Co-located ESS and Load-Co-located ESS are physically located at generation facilities or consumer units, respectively, without requiring separate authorization; while Associated ESS are physically located at generation facilities and share grid connection infrastructure, also without requiring separate authorization.

With respect to project development and grid access, rules were established for physical connection, guidelines for grid-use agreements and the corresponding tariff treatment. The Normative Resolutions also defined tariff parameters for the two main ESS operating models: systems subject to ONS dispatch and systems freely operated by their owners. In the first case, Stand-alone ESS will not be subject to consumption tariffs; in the second, tariffs will apply in both directions, whether during charging or when electricity is injected into the SIN.

In practice, Normative Resolutions Nos. 1,161/2026 and 1,162/2026 create opportunities for companies to increase generation flexibility and reduce generation-curtailment, develop new business lines, differentiated products and services focused on end-consumers. Private investors capable of structuring creative and innovative legal and commercial solutions will find a favorable environment for expanding their portfolios and consolidating leadership positions in this new phase of Brazil's power sector.

It is important to note that companies were already offering battery solutions to consumers even before ANEEL issued its regulations. However, the new ANEEL Resolutions provide project developers with greater legal certainty by clearly defining who may operate such systems, the applicable tariffs and the relevant authorization regime.

Nevertheless, important regulations remain pending to enable ESS projects to effectively stack multiple revenue streams, including through the provision of ancillary services and energy price arbitrage. ANEEL must also address the regulation of semiopen-loop and open-loop pumped-storage hydropower plants, an issue of particular importance given the significant potential to increase the capacity and energy output of Brazil's hydropower fleet.

Reform of the Difference Settlement Price (PLD) and stronger price signals in electricity tariffs are also expected to create further value and market opportunities for ESS, allowing consumers to reduce costs by shifting consumption to periods when electricity is cheaper.

Tauil & Chequer Advogados

Associado a Mayer Brown

Av. Pres. Juscelino Kubitschek,
1455 - 6th floor

04543-011 - São Paulo - SP/Brasil

T (+55) 11 2504 4210

T (+55) 21 2127 4231

www.tauilchequer.com.br

TAUIL | CHEQUER
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Tauil & Chequer Advogados**Associado a Mayer Brown**

Av. Pres. Juscelino Kubitschek,
1455 - 6th floor

04543-011 - São Paulo - SP/Brasil

T (+55) 11 2504 4210

T (+55) 21 2127 4231

www.tauilchequer.com.br

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Another emerging market segment involves distributed microgeneration and minigeneration (MMGD) projects combining solar power plants with battery storage in order to help manage electricity injections during peak generation periods and mitigate curtailment of centralized generation. In this regard, Brazil's Power Sector Reform Law requires MMGD projects to include an associated ESS in order to qualify for tax benefits under REIDI, the Special Incentive Regime for Infrastructure Development.

Normative Resolutions Nos. 1,161/2026 and 1,162/2026 were issued in parallel with the definition of Brazil's first auctions for contracting BESS capacity, which are scheduled to take place in early December this year. Standalone ESS projects that succeed in the auctions will enter into regulated contracts providing fixed revenues for 15 years beginning in mid-2028.

Although investors will not have the autonomy to operate the assets or generate additional revenue streams as operations will be fully controlled by ONS, the market views participation in these auctions as a new business opportunity offering long-term regulated revenue. The large number of registered projects reflects the market's confidence in this emerging segment, and these auctions are expected to represent an important milestone in the development of Brazil's energy storage industry.

CFC Technical Guidance No. 01/2026: Key Tax Reform Impacts for Businesses

Brazil's Tax Reform entered a new and important stage in 2026. With the introduction of the Contribution on Goods and Services (CBS) and the Tax on Goods and Services (IBS), companies are facing changes that go far beyond the calculation and payment of taxes. The new system will have significant accounting, financial, operational and technological implications.

Against this background, the publication of **CFC Technical Guidance No. 01/2026** by the Brazilian Federal Accounting Council (Conselho Federal de Contabilidade – CFC) provides important guidance on the accounting implications arising from the implementation of IBS and CBS.

Although primarily addressed to accounting professionals, the Guidance is highly relevant to businesses in general. Companies will need to review processes, strengthen internal controls and ensure closer integration among accounting, tax, finance, IT, billing, procurement, compliance and governance teams.

For multinational groups operating in Brazil, these developments require particular attention, as the effects of the Brazilian Tax Reform will also need to be properly understood by foreign headquarters and reflected in financial reporting, consolidation procedures and internal management information.

IBS and CBS are not part of a company's revenue

One of the key conclusions of the CFC Guidance relates to revenue recognition.

According to the Guidance, IBS and CBS charged on transactions should be treated as amounts collected on behalf of the government rather than as part of the company's own revenue.

This accounting treatment is consistent with CPC 47 and IFRS 15 – Revenue from Contracts with Customers, under which amounts collected on behalf of third parties are excluded from an entity's revenue.

In practice, only the consideration that effectively belongs to the company should be recognized as accounting revenue, while IBS and CBS amounts should be recorded in specific balance sheet accounts.



Luiz Flavio Cordeiro

Partner

T (+55) 11 3179 1480

f.cordeiro@mouraocampos.com.br

Mourão Campos Group

Alameda Santos, 2300 – 3rd floor

Cerqueira César

01418-200 - São Paulo - SP/Brasil

T (+55) 11 3179 1480

www.mouraocampos.com.br

**Mourão
Campos
Group**

Mourão Campos Group

Alameda Santos, 2300 – 3rd floor
Cerqueira César

01418-200 - São Paulo - SP/Brasil

T (+55) 11 3179 1480

www.mouraocampos.com.br

**Mourão
Campos**
Group

This change may affect not only the presentation of financial statements but also financial and operational indicators based on gross or net revenue.

Companies should therefore assess whether the new accounting treatment could affect contractual provisions or internal policies that use revenue as a reference, including management targets, variable compensation arrangements, financial covenants, intercompany agreements and reporting packages submitted to foreign headquarters.

The issue may be particularly relevant to service companies, for which taxes currently included in the invoiced amount may have a more visible impact on reported revenue.

Tax credits will require stronger controls

Another important matter addressed by the Guidance is the accounting recognition of IBS and CBS tax credits.

Under the new Brazilian consumption tax system, tax credits will play a central role in determining a company's effective tax burden. Provided the applicable requirements are met, IBS and CBS credits may be recognized as recoverable assets.

This approach significantly increases the importance of reliable tax and accounting information.

Companies will need systems and internal controls capable of correctly identifying eligible credits, linking them to the respective transactions and monitoring their recognition, utilization and, where applicable, reimbursement.

Proper supporting documentation will also be essential, particularly in the event of future tax audits.

As a result, the management of IBS and CBS credits should not be viewed exclusively as a tax compliance matter. Depending on the company's business model and the timing of credit utilization, it may have direct implications **for working capital, cash flow and financial planning**.

Split payment will affect financial processes

The Guidance also highlights the importance of the **split payment mechanism**, one of the main innovations introduced by the new tax system.

Under this mechanism, the IBS and CBS portion of a transaction may be automatically segregated when the customer makes the payment and directed toward settlement of the corresponding tax liability.

While split payment is primarily intended to improve tax collection and reduce non-compliance, its implications for businesses are much broader.

The mechanism may affect accounts receivable, bank reconciliations, treasury procedures, cash flow projections, working capital management and the integration between tax, financial and banking systems.

Companies should therefore evaluate whether their current ERP and financial systems are prepared to reconcile invoices, payments, tax liabilities and tax credits under the new model.

The implementation of split payment should consequently be considered not only a tax project, but also a finance and technology project.

2026: accounting challenges during the transition period

One of the most sensitive matters addressed by CFC Technical Guidance No. 01/2026 concerns the accounting treatment of IBS and CBS during the 2026 transition period.

The first year of implementation has specific rules under the Tax Reform legislation, creating practical questions regarding the appropriate accounting treatment of the new taxes during this initial stage.

The CFC Guidance recognizes these particularities and the need for professional judgment when defining the accounting approach applicable to certain situations.

In this environment, the key issue is not simply selecting a particular accounting treatment. Companies should ensure that the position adopted is **technically supported, formally documented and consistently applied**.

Businesses should therefore assess their individual circumstances and establish a clear accounting policy for the transition period together with their accounting and tax professionals.

This documentation will be especially important for companies subject to independent audits and Brazilian subsidiaries of multinational groups, as the criteria adopted locally may need to be explained and reconciled with the accounting policies and reporting requirements of their foreign headquarters.

Preparation and governance will be essential

Brazil's transition to the new consumption tax system will continue over several years. During this period, companies will have to operate under a complex environment in which elements of the existing and new systems will coexist.

Mourão Campos Group

Alameda Santos, 2300 – 3rd floor
Cerqueira César
01418-200 - São Paulo - SP/Brasil
T (+55) 11 3179 1480
www.mouraocampos.com.br

**Mourão
Campos**
Group

Mourão Campos Group

Alameda Santos, 2300 – 3rd floor
Cerqueira César

01418-200 - São Paulo - SP/Brasil

T (+55) 11 3179 1480

www.mouraocampos.com.br

**Mourão
Campos**
Group

CFC Technical Guidance No. 01/2026 is therefore an important step toward establishing the accounting framework for the new tax environment.

It also makes clear that successful implementation of IBS and CBS will require much more than correctly calculating the new taxes. Businesses will need to adapt systems, strengthen internal controls, assess financial impacts, document accounting policies and promote effective coordination among different areas of the organization.

For multinational groups, early preparation will also facilitate communication with foreign headquarters and help ensure that the Brazilian Tax Reform is appropriately reflected in financial reporting and corporate planning.

Although the transition will be gradual, several accounting and operational effects already require attention in 2026. Planning, documentation and cross-functional coordination will therefore be essential for companies seeking a controlled and efficient transition to Brazil's new tax system.

The Boom of Biological Inputs in Brazil from a Legal Perspective

Brazilian agribusiness is entering an important regulatory transition. The country's position as a major producer and exporter of soybeans, corn, sugarcane, coffee, cotton and beef has historically depended on intensive crop-protection practices. At the same time, biological inputs (products, processes and technologies of biological origin used for plant nutrition, plant health, and pest and disease management) have moved from a specialist segment toward a structural component of agricultural production. Their rise coincides with a changing legal framework for pesticides and growing litigation concerning environmental, occupational and public-health impacts. For foreign investors and agribusiness leaders, this convergence makes bioinputs both a commercial opportunity and a tool for managing regulatory exposure.

Bioinputs encompass, among other solutions, microorganisms, macroorganisms, biochemicals, plant extracts and semiochemicals. In practice, the category includes biological control agents and biopesticides, inoculants and biofertilizers, and biostimulants. Inoculants based on nitrogen-fixing bacteria in soybean cultivation illustrate the established role biological technologies can play in Brazilian production systems.

The potential advantages are not limited to replacing agrochemicals in particular applications. Bioinputs may reduce chemical residues and resistance pressure, support soil health, lower environmental and occupational footprints, and help producers respond to increasingly demanding residue standards in export markets. The expansion of on-farm biofactories and growing investment activity indicate that the sector is no longer peripheral.

The Brazilian legal environment is evolving on two related tracks. The pesticides regime shifted from Law No. 7,802/1989 to Law No. 14,785/2023. Registration continues to involve agricultural, health and environmental authorities (MAPA, ANVISA and IBAMA) while the newer statute reinforces MAPA's coordinating role and seeks to revise timelines and coordination mechanisms. This reform remains politically and legally sensitive because it concerns the allocation of regulatory authority and the balance between agricultural efficiency, health protection and environmental safeguards.



Glaucio Alves Martins

Partner

gmartins@sperling.adv.br

Sperling Advogados*

Av. 9 de Julho, 4.939, 6th floor

Torre Jardim – 01407-200

Jardim Paulista – São Paulo/SP

T (+55) 11 3704 0788

www.sperling.adv.br

Sperling Advogados

Sperling Advogados*

Av. 9 de Julho, 4.939, 6th floor
Torre Jardim – 01407-200
Jardim Paulista – São Paulo/SP
T (+55) 11 3704 0788
www.sperling.adv.br

Sperling Advogados

Bioinputs, meanwhile, have acquired a more distinct legal regime. Decree No. 10,375/2020 created the National Bioinputs Program, and Law No. 15,070/2024 established a National Bioinputs Policy. Together with MAPA's normative instruments, this framework seeks to address definitions, research and commercialization pathways, and on-farm production. The policy direction is favorable, but implementation will determine its value. Federal requirements coexist with an expanding set of state-level initiatives, creating potential divergences in compliance, quality control and market access. Regulatory certainty will depend on coherent standards for biosafety, product quality and on-farm production.

Litigation involving agrochemicals is increasing the strategic importance of this debate. In ADI 5553, the Federal Supreme Court has been asked to examine tax incentives related to pesticides through environmental and public-health arguments. The case is relevant not only for its immediate fiscal implications, but also because it places the public cost of chemical dependence at the center of constitutional scrutiny. Further disputes may arise in connection with Law No. 14,785/2023 and the distribution of responsibilities among MAPA, ANVISA and IBAMA.

Public Civil Actions brought by public prosecutors have addressed contamination, water quality and aerial-spraying practices related to pesticides. State and municipal restrictions on aerial application, including Ceará's prohibition, have triggered additional legal disputes. Occupational and community-exposure claims add a product-liability dimension. Collectively, these proceedings can affect operating certainty, insurance costs, reputational risk and the economics of crop-protection portfolios.

This is where bioinputs assume a broader strategic role. For producers, they can be integrated into compliance and ESG programs as part of a risk-based approach to crop protection. For companies, a portfolio that combines biological and chemical pesticides may be better positioned to respond to residue requirements, resistance management and stakeholder expectations. As for the regulatory authorities, the central task is to ensure that the legal architecture does not create avoidable friction. Harmonized federal and state rules, predictable registration pathways, robust quality and biosafety controls would improve both adoption and investment conditions.

Trade policy is equally important. Brazil's export competitiveness increasingly depends on demonstrating compliance with market-access requirements that extend beyond volume and price. Biological technologies can support

this objective, provided that regulatory standards preserve technical rigor.

Brazil's bioinputs boom should therefore be understood as more than a change in agricultural technique. It reflects a strategic inflection point at which policy momentum for biologicals meets the repricing of chemical risk through litigation, regulatory scrutiny and commercial expectations. The opportunity is to turn that pressure into a coherent regulatory agenda: one that protects health and the environment, provides legal certainty to businesses, and enables bioinputs to become a mainstream pillar of productive and competitive Brazilian agriculture.

Sperling Advogados*

Av. 9 de Julho, 4.939, 6th floor
Torre Jardim – 01407-200
Jardim Paulista – São Paulo/SP
T (+55) 11 3704 0788
www.sperling.adv.br

Sperling Advogados

*Author of the publication ***So Geht´s Besteuerung von Unternehmen in Brasilien***



Sonia Marques Döbler
Lawyer and Founding-Partner
C (+55) 11 94492-1142
sonia@dobler.com.br



Roberta Gemente
Senior Tax Lawyer
roberta.gemente@dobler.com.br

Sonia Marques Döbler
Advogados*
Rua Dona Maria Paula, 123
19th floor - Edifício Main Offices
01319-001 - São Paulo - SP/Brasil
T (+55) 11 3105 7823
E smda@dobler.com.br
www.dobler.com.br

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Tax Credits for Corporate Expenses under the Tax Reform: Rights, Conditions and Risks for Companies

The Tax Reform changed the system for assessing taxes on consumption and broadened the circumstances in which companies may claim credits relating to goods and services acquired in the course of their activities. In simple terms, a tax credit corresponds to the amount of IBS or CBS levied on certain acquisitions made by the company. This amount may be used to reduce the same taxes payable on the legal entity's own transactions.

It is not, therefore, an automatic reimbursement of any expense, nor a deduction from the Income Tax base. The credit operates as a compensation mechanism embedded in the economic chain, allowing the company to offset against the tax due on its transactions the amount of IBS and CBS paid on acquisitions that meet the requirements established by law.

The credit, however, does not indiscriminately cover all business expenses. The possibility of claiming it will depend, as applicable, on the nature of the goods or services acquired, the economic purpose of the expense, the manner in which the benefit is granted, the existence of a collective bargaining agreement, the tax regime applicable to the supplier, the effective levy of IBS and CBS on the transaction, and the existence of documentation capable of proving both that the acquisition took place and that it is connected with the company's business activities.

For this reason, an expense may be necessary for the company, form part of its internal policy or benefit its employees and still fail to generate a tax credit. The analysis must consider not only whether the expense exists, but also whether it falls within the circumstances provided for by law and whether the conditions established for each situation have been met.

The treatment of corporate expenses is therefore not uniform. In certain circumstances, the credit has been expressly recognized by law; in others, its use depends on the existence of a collective bargaining agreement, the tax regime adopted by the supplier or proof that the expense is effectively connected with the company's economic activity.

This distinction prevents the issue from being reduced to the former debate over goods for use and consumption. The analysis must take into account the nature of the expense, the purpose of the benefit, the manner in which it is granted and the relationship between the expense and the generation of revenue subject to IBS and CBS. Assessing the right to the credit will therefore require a joint understanding of these elements and of the documentation supporting each transaction.

The Historical Uncertainty Surrounding the Right to Claim Credits

Legal uncertainty is not new. With respect to ICMS, Supplementary Law No. 87/1996 provided for the right to claim credits for goods intended for use and consumption, but its application was repeatedly postponed.

In the most recent amendment, in 2019, the right was scheduled to take effect on January 1, 2033. However, the Tax Reform approved in 2023 provided for the abolition of ICMS itself.

This episode illustrates the distance that may exist between a statutory provision and economic reality: for decades, taxpayers awaited a right that, as it was nearing the date on which it would become applicable, lost its purpose.

This precedent explains the relevance of the new rules applicable to IBS and CBS, as their progress lies in defining more clearly situations that had previously depended on broad interpretations.

Nevertheless, it is important to emphasize that the controversy has not disappeared; it has merely shifted, since it will be necessary to correctly classify each expense, comply with the specific requirements and produce sufficient evidence.

Expenses Directly Related to Working Conditions

The first category comprises uniforms and work clothing, personal protective equipment, food and non-alcoholic beverages, healthcare services provided at an in-house clinic located at the workplace, and corporate childcare services.

The credit may be claimed without the need for a collective bargaining agreement, provided that the goods or services are made available during working hours and that the other legal requirements are met.

The temporal requirement serves as the link between the expense and the company's business activity.

Sonia Marques Döbler

Advogados*

Rua Dona Maria Paula, 123
19th floor - Edifício Main Offices
01319-001 - São Paulo - SP/Brasil
T (+55) 11 3105 7823
E smda@dobler.com.br
www.dobler.com.br

**SONIA
MARQUES
DÖBLER**
ADVOCADOS

Sonia Marques Döbler**Advogados***

Rua Dona Maria Paula, 123
19th floor - Edifício Main Offices
01319-001 - São Paulo - SP/Brasil
T (+55) 11 3105 7823
E smda@dobler.com.br
www.dobler.com.br

SONIA
MARQUES
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The express provision of these circumstances reduces the scope for disputes based solely on the essentiality of the expense, but it does not make the credit automatic, since the company must still prove that the goods or services were effectively made available, that the transaction falls within the statutory provision and that the tax documents correspond to the transaction carried out.

Benefits Subject to Collective Bargaining

Healthcare assistance and educational benefits are subject to a more restrictive rule. Although they may form part of an employee appreciation policy, the credit may only be claimed when the benefit is granted pursuant to an obligation established in a collective bargaining agreement.

In the case of healthcare assistance provided to employees and their dependents, the specific rules applicable to health plan operators also apply. Since these transactions are subject to a 60% reduction in IBS and CBS rates, the credit available to the contracting company is limited to the tax actually applicable to the supplier.

The same reasoning applies to educational benefits, from early childhood education through higher education: an allowance or cost assumed voluntarily, without provision in a collective instrument, does not generate a credit.

This distinction highlights the partial nature of the legislative progress, since the social purpose of the benefit is not sufficient and its tax effectiveness also depends on the manner in which it has been legally structured.

On the one hand, this requirement may encourage collective bargaining; on the other, it makes part of the tax outcome dependent on a process that the company does not fully control.

Transportation, Meal and Food Vouchers

These benefits occupy an intermediate position with regard to the requirements for the credit to be valid.

Although the requirement of union's consent has been removed, the validity of the credit still depends on its connection with the supplier's tax liability, compliance with the rules applicable to payment arrangement transactions, and the limit corresponding to the gross amount disbursed by the company, including the administration fee.

Accordingly, contracts, invoices, processing reports and documents linking the amounts paid to the supplier's taxation will be essential, and the mere

disbursement, by itself, does not ensure the right to the credit.

Corporate Goods and Services: Business Purpose

A fourth group comprises mobile phones, telephone lines, computers, laptops, vehicles, internet services, electricity, water, and telecommunications and information technology infrastructure. These resources form part of the company's structure but may involve mixed use or a personal component.

To claim the credit, it will be necessary to demonstrate predominant use in the company's economic activity and a direct or indirect connection with the generation of revenue subject to IBS and CBS.

In this group as well, evidence will be essential and, despite the fact that an invoice proves the acquisition, it does not, by itself, demonstrate the business purpose or the predominance of corporate use.

It should be emphasized that expressions such as "predominant use" and "connection with the generation of revenue" still require interpretation, leaving taxpayers exposed to divergent views and the risk that the credit will be disallowed. Administrative organization will be essential to reduce risks related to the disallowance of the credit.

Conclusions

The new rules broaden the circumstances in which credits may be claimed, but they do not establish a uniform right with respect to corporate expenses, since the treatment depends on the nature of the expense, the manner in which the benefit is granted, collective bargaining, the supplier's tax regime and, in the case of goods subject to mixed use, proof of their business purpose.

Accordingly, companies should classify their expenses, review their benefits policies and assess, together with their tax, labor and finance departments, the effects of any collective formalization.

For corporate goods and services, contemporary controls- such as usage records, user identification, internal policies and fleet controls -will be decisive in demonstrating the connection with the company's economic activity.

Furthermore, continuous monitoring of legislative developments and case law, together with the adaptation of business practices, will be essential until more reliable parameters emerge.

Sonia Marques Döbler

Advogados*

Rua Dona Maria Paula, 123

19th floor - Edifício Main Offices

01319-001 - São Paulo - SP/Brasil

T (+55) 11 3105 7823

E smda@dobler.com.br

www.dobler.com.br

**SONIA
MARQUES
DÖBLER**
ADVOCADOS

Sonia Marques Döbler

Advogados*

Rua Dona Maria Paula, 123

19th floor - Edifício Main Offices

01319-001 - São Paulo - SP/Brasil

T (+55) 11 3105 7823

E smda@dobler.com.br

www.dobler.com.br

Thus, a legitimate tax credit will be one that combines a legal basis, economic coherence and documentation capable of clearly demonstrating the true purpose of the expense.

*Author of the publication ***So geht's M&A in Brasilien***

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MARQUES
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Beyond Workplace Safety: Social Security Tax Risks for Mining Companies

Mining companies face a social security cost that often sits in payroll rather than the mine plan. Brazil's sector combines underground work, blasting, drilling, crushing and hauling. These activities can expose workers to intense noise and vibration, airborne dust and other physical agents, silica and mineral dust as chemical agents, and biological agents in some confined or poorly ventilated environments.

The risk is not determined by job title or mine entry alone. It depends on the tasks performed, duration and frequency of exposure, controls in place and whether harmful effects remain. This matters because Article 22, II of Law 8,212/1991 imposes the ordinary SAT/RAT (Occupational Accident Insurance) at 1%, 2% or 3%, according to the risk level of the company's predominant activity. Where an employee's conditions qualify for special retirement, the employer may also owe an additional 6, 9 or 12 percentage points, tied respectively to work permitting retirement after 25, 20 or 15 years. Article 57 §6 of Law 8,213/1991 and Article 202 §1 of Decree 3,048/1999 provide the basis for this charge.

For mining, the distinction can affect the whole payroll, but it must be made by employee and condition, not by assuming every role carries the same exposure. That is why "effective exposure" is the central practical test. It does not mean that a harmful agent is present somewhere at the site, or that a worker occasionally passes through an area where a limit may be exceeded. In practical terms, harmful effects persist after all protective measures are in place, so the question is whether engineering controls, administrative measures and personal protective equipment have actually eliminated or neutralized the harmful effect for that worker and task on a permanent, non-occasional and non-intermittent basis. A crusher may be enclosed, drilling may use wet suppression, a haul road may be watered and a worker may wear hearing protection; those steps do not answer the question without evidence of the resulting exposure.

The evidence should identify the work area, equipment, shift, process, agent, measured level, control measure and residual exposure, rather than rely on a



Marcello Pedroso Pereira

Partner

T (+55) 11 3356 1818

mppedroso@demarest.com.br



Henrique Wagner de Lima Dias

Associate

hwdias@demarest.com.br

Demarest Advogados

Av. Pedroso de Moraes, 1201
05419-001 - São Paulo - SP/Brasil

T (+55) 11 3356 1800

www.demarest.com.br

DEMAREST

Demarest Advogados

Av. Pedroso de Moraes, 1201
05419-001 - São Paulo - SP/Brasil
T (+55) 11 3356 1800
www.demarest.com.br

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generic statement that mining is dangerous. NR-22 supplies the sector-specific occupational health and safety framework, while Annex IV to Decree 3,048/1999 identifies situations relevant to special retirement, including underground activities for which the qualifying period may be 20 or 15 years rather than 25-year period. The LTCAT should record the technical assessment, and the PPP should translate it into each employee's occupational history. Both should distinguish exposure that remains harmful from an agent adequately controlled; the mere presence of dust, noise, vibration or another agent is not enough.

Those conclusions now feed directly into tax compliance through eSocial. Event S-2240 reports the worker's occupational conditions, including harmful agents, exposure information and protective measures. The Brazilian Federal Revenue can cross-reference S-2240 data against the payroll codes used to calculate the ordinary SAT and the additional contribution. If S-2240 identifies a qualifying exposure but payroll omits the corresponding percentage, or payroll applies it while S-2240, the PPP or the LTCAT says exposure was neutralized, the mismatch can trigger automatic flags and a request for records or a broader audit. Similar issues arise when a generic LTCAT is used for different pits, plants, shifts or contractors, or when a PPP no longer matches the mine.

Theme 555 of the STF is particularly important because noise is pervasive in drilling, blasting, crushing, loading and hauling. The Court recognized that, for most agents, effective personal protective equipment can eliminate an employee's right to special retirement and therefore the basis for the additional SAT contribution.

However, noise received specific treatment. The STF held that an employer's unilateral declaration in the PPP that hearing protectors are effective is not enough by itself to exclude the benefit. That concern reflects the nature of noise exposure and the limitations of current measurement and attenuation methodologies, including difficulty proving what protection reached the worker throughout the shift. A box checked in the PPP cannot replace site-specific technical evidence.

The controversy begins when the Federal Revenue carries that reasoning from the benefit case into employer taxation. Interpretative Declaratory Act 2/2019 has been used to support collection of the additional SAT in noise-related circumstances, even where a company points to controls and hearing protection. But Theme 555 decided an employee's entitlement to special retirement, not the employer's tax obligation. The legal basis, factual inquiry and burden of

proof are not identical: a rule protecting access to a benefit does not automatically establish that every employer must pay an additional payroll charge.

Extending Theme 555 to taxation without separately proving effective exposure therefore remains contested, particularly where objective measurements show that controls reduced exposure below harmful levels. ADI 7,773/DF may provide further clarity, and mining companies should track its progress rather than assume the administrative approach is final.

In the meantime, compliance should be practical and evidence-led. Keep each LTCAT current and specific to the pit, plant, process and shift; avoid generic templates. Reconcile each PPP with actual working conditions and controls observed in the field. Ensure S-2240 events match LTCAT findings, and review payroll codes against reported exposure before closing payroll. Preserve dosimetry, environmental monitoring, calibration, training and equipment-delivery records.

These records help prove a contribution is due when exposure persists and support a challenge when an assessment treats the mere presence of an agent, or a noise declaration in the PPP, as conclusive.

Demarest Advogados

Av. Pedroso de Moraes, 1201
05419-001 - São Paulo - SP/Brasil

T (+55) 11 3356 1800

www.demarest.com.br

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Deutsch-Brasilianische Industrie- und Handelskammer São Paulo

Rua Verbo Divino, 1488 - 3. Stock
04719-904 São Paulo - SP - Brasilien
T (0055 11) 5187-5216
E juridico@ahkbrasil.com

www.ahkbrasil.com