

Tax

Intelligence

From complexity to execution



Brazil's VAT Reform

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PLP No. 108/2024: Establishment of the Management Committee for the IBS (Subnational Tax on Goods and Services)

Tax Reform: it's time to evaluate impacts and extract value

The Constitutional Amendment (EC) No. 132/2023, which establishes the Tax Reform ([see Tax Intelligence \(TI\) No. 26](#)), set a 180-day deadline for the Executive to send bills to the National Congress to regulate its terms.

To meet the deadline, at the end of April, the Complementary Law Project (PLP) No. 68/2024 was filed in the House of Representatives, aiming to establish the Tax on Goods and Services (IBS), the Contribution on Goods and Services (CBS), and the Federal Excise Tax (IS), which are new taxes anticipated in EC No. 132/2023, and to regulate their main aspects, such as non-cumulativeness, the differentiated and specific regimes of the IBS and CBS, and the transition period ([refer to TI No. 32](#)).

Continuing with the regulation, on June 5, 2024, another Complementary Law Project (PLP No. 108/2024) was filed in the House of Representatives, which aims, among other matters, to regulate the topics below, which will be discussed later on.

- IBS Management Committee (competences, guidelines, among other related topics).
- IBS tax administrative process (ex-officio assessment and tax administrative litigation).
- Tax on Circulation of Goods and Services (ICMS) transition (homologation, compensation, transfer to third parties, and reimbursement of credit balances).
- Gift and estate tax (ITCMD) - (taxable event, calculation basis, rate, etc.).

The Federal Government's initial expectation was that the regulation of the Reform would be approved in Congress before the parliamentary recess (July). However, approval by the end of this year is now anticipated.



IBS Management Committee (CG-IBS)

Public entity under a special regime, headquartered and with jurisdiction in the Federal District (DF), endowed with technical, administrative, budgetary, and financial independence, regarding the shared competence to administer the IBS.

Key competencies



Single guideline

Edit the single guideline to standardize the interpretation and application of IBS legislation.



Collection

Collect the IBS, carry out the compensations, perform the withholdings, and distribute the collection proceeds to the States, DF, and Municipalities.



Litigation

Decide the IBS administrative litigation.



IBS and CBS harmonization

Work with the federal Executive Power to harmonize rules, interpretations, tax returns, and procedures related to the common rules applicable to IBS and CBS.



Shared management

Conduct the shared management, along with the Brazilian Secretariat of the Federal Revenue (RFB), of the system that records the initiation and outcome of the IBS and CBS inspections.



Information exchange

Share with the RFB and the National Treasury Attorney's Office (PGFN), in a cooperative and reciprocal manner, fiscal interest and collection information related to IBS and CBS.

IBS reference rates

- Develop the methodology and the reference rates calculation.
- Along with the RFB, develop the methodology for calculation, establish and announce the IBS and CBS rates for the specific regimes, as necessary.



Five-year review

In terms of social, environmental, and economic development policy quality, perform a five-year review of the efficiency, efficacy, and effectiveness of the existing special customs regimes, export processing zones, the Tax Regime for Incentives for Modernization and Expansion of the Port Structure (Reporto), the Special Regime of Incentives for the Development of Infrastructure (Reidi), the personalized refund (cashback), the National Basic Staple Food, the differentiated regimes, and the specific regimes, all concerning IBS.



Inspection and collection

Aiming for integration among federative units, and within their respective areas of competence, orchestrate the following activities:

- In terms of inspection, assessment, collection and administrative representation related to IBS, these will be carried out by the tax administrations of the States, DC, and Municipalities.
- Judicial and extrajudicial collection of IBS and administrative and judicial representation related to IBS, which will be carried out by the attorney's offices of the States, DF, and Municipalities.
- Registration of executable debts (centralized control).



Coordination of conflict resolution

Coordinate, in an administrative and judicial levels, the adoption of appropriate conflict resolution methods related to IBS among federative entities and taxpayers, as well as establish the criteria standardization for their implementation, in accordance with the provisions of specific legislation.

Penalties

Non-fulfillment of the main obligation (tax default)

- In general, a late payment penalty of 0.33% per day, limited to 20% of the IBS value and Selic (Basic interest tax defined by the Brazilian government) interest rates.
- If identified during a tax inspection: a 75% penalty over the undeclared and unpaid IBS value or over the credit amount, when undue, non-existent, or not formalized as required by legislation.

Non-compliance with tax returns - ancillary obligations (main hypotheses):

- Failure to submit a declaration and other documents results in a penalty of 10 Standard Fiscal Units of IBS (UPF/IBS) per document, valued at R\$ 200.00 each, updated by IPCA (Extended National Consumer Price Index), and 50% of the due IBS.
- Issuing a document lacking any requirement or indication mandated by IBS legislation, or issuing with insufficient or incorrect indications, incurs a penalty of 5 UPF/IBS per infraction, capped at 40% of the due IBS value.
- Failure to register a fiscal document leads to a 10% penalty of the transaction value, reduced to 5% in certain cases.
- Supplying, delivering, transporting, receiving, or having in stock or deposit goods unaccompanied by a fiscal document incurs a 30% penalty of the transaction value.
- Using IBS credit resulting from the registration of a fiscal document that does not correspond to the acquisition of goods or services leads to a 20% penalty of the transaction value indicated in the fiscal document.
- Improper use of fiscal credit (non-taxed operation or subject to a zero rate or subsequent operation exempt or immune) results in a 10% penalty of the service or transaction value.



IBS Tax Administrative Process in PLP No. 108

General aspects of the administrative process

Principles

The tax administrative process of assessment and review should be guided by the principles of simplicity, material truth, full defense, contradiction, publicity, transparency, loyalty and good faith, motivation, officiality, cooperation, efficiency, moderate formalism, reasonable duration of the process, and the speed of its progress.

Deadlines

The deadlines of the IBS administrative process will be computed in **business days**, excluding the start date and including the due date.

Electronic process

The tax administrative process will be formed, processed, and judged through the use of an electronic system to be implemented by the IBS committee.

Vices and nullities

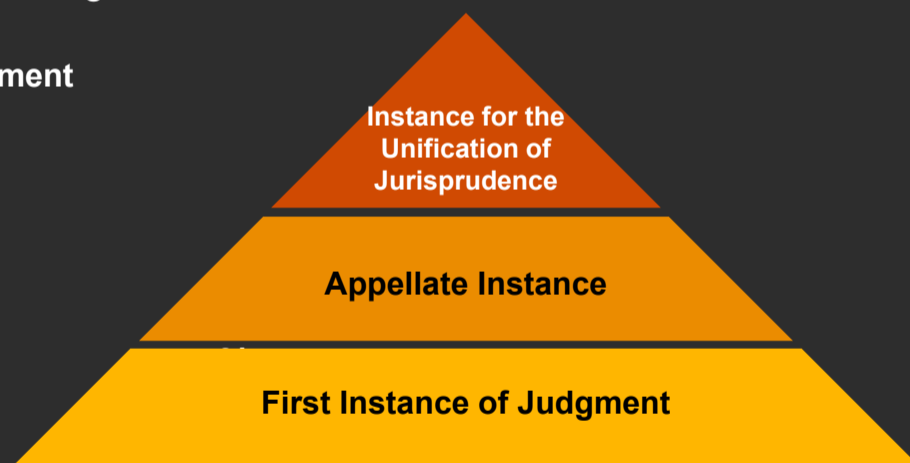
- The adjudicating authority will not declare nullity if the merit can be decided in favor of the taxpayer.
- Irregularities, inaccuracies, and omissions incurred during the ex-officio assessment will not result in nullity, provided that it contains the necessary elements to determine the nature of the infraction and the identification of the taxpayer with certainty.
- The person wrongly qualified will be excluded from the passive pole (defendant's side).

Ex-officio assessment

- Conducted in the form and terms provided by the complementary law that establishes the IBS and CBS.
- The constitution of the tax credit through official assessment does not preclude the possibility of consensual resolution for the settlement of debts.

IBS Administrative Litigation

Instances of Judgment



First Instance of Judgment

Composition: 27 virtual Judgment Chambers, integrated in a collegiate and equal manner, exclusively by career civil servants from the State and respective Municipalities, or from the Federal District.

Competence: judge the contested tax assessment and the Requests for Rectification.

Appellate Instance

Composition: 27 virtual Judgment Chambers, integrated in a collegiate and equal manner, by career civil servants from the State and respective Municipalities, or from the Federal District, and by taxpayer representatives. In the event of a tie, the Chamber President (from the Treasury) will cast the deciding vote (quality vote).

Competence: judge Ex-officio Appeals (automatic for decisions against the Public Treasury) and Voluntary Appeals, and Requests for Rectification.

Instance for the Unification of Jurisprudence

Composition: The Superior Chamber of IBS, integrated in a collegiate and equal manner, exclusively by career civil servants from the State and their respective Municipalities or the Federal District.

Competence: judge the Appeals for Unification, Incidents of Unification, and Requests for Rectification.

ICMS Transition

Treatment of existing credit balances as of December 31, 2032



Concept and recognition of credit balances

The credit balance is considered to be the value of the ICMS appropriated as credit and not offset or used by the taxpayer until December 31, 2032, provided that:

- It is regularly registered in the tax books of the establishment.
- It is admitted by the state or district legislation in force on December 31, 2032, and results from operations that occurred up to the mentioned date.

The credit balances will be recognized by the States and the Federal District.



Credit Balance Transfer

Transfer of the ICMS credit balance to third parties exclusively for offsetting with the ICMS itself or IBS.

Tacitly approved credit balance may only be transferred from January 1, 2038.

The transfer is conditioned on the regularity of the credit balance holder in relation to IBS and other taxes due to the respective State or the Federal District.



Homologation

For general ICMS credit balances, the taxpayer must observe the following

- Submission of the request within a maximum period of 5 years, counted from January 1, 2033.
- The State or the Federal District must issue a statement within a maximum period of 24 months, extendable for an equal period in case of inspection.

Regarding the ICMS credit balances resulting from the entry of goods intended for fixed assets:

- Submission of the request in the same period of determination in which the credit utilization began, in the case of an asset whose entry into the establishment occurs from January 1, 2029.
- The statement regarding the credit balances related to the entry of permanent assets will observe a deadline of up to 60 days.

In the absence of a response to the request for approval within the mentioned deadlines, the respective credit balances will be considered tacitly approved. However, the approval does not prevent the determination and assessment of amounts related to the respective credit balance.



ICMS compensation of credit balance with ICMS itself

With an agreement between the State, or the Federal District, and the taxpayer, the approved credit balance may be used for offsetting with a definitively constituted debit or not, of the ICMS itself.



Compensation of credit balance with IBS

The States and the Federal District will inform the IBS committee, within 30 days, counting from the approval, the value of the approved credit balance, the identification of its holder, and the date of completion of the compensation to which it refers.

As already provided by Constitutional Amendment No. 132, the utilization of credit balances will be made through compensation with IBS.

- For the remaining term of the current regime for credits related to the entry of goods intended for fixed assets.
- In 240 monthly installments, in other cases.
- Updated by the IPCA from 2033



Reimbursement of the credit balance

In case of impossibility of the mentioned compensations, the taxpayer who has an approved credit balance may be reimbursed, in cash, by the IBS committee, in 240 equal and successive monthly installments, or, in relation to ongoing compensations, for the remaining term.

The reimbursement will occur within 90 days after the end of the month in which the respective compensation would take place. If there is a delay in payment, the amount will be updated from the ninety-first day, based on the Selic Rate.

The reimbursement is conditioned on the regularity of the credit balance holder in relation to IBS and other taxes due to the respective State or the Federal District.

Gift and estate tax (ITCMD)

General incidence system



Taxable event

Incidence on the transmission of any goods or rights to which economic value can be attributed.

- Due to the occurrence of the death of its holder.
- By donation.

As many taxable events occur as there are successors or donees, in relation to each federative entity competent to demand the ITCMD, even if the goods or rights are indivisible.



Tax liable party

Taxpayers

- In the transmission *causa mortis*, the successor.
- In the transmission by donation, the donee.

Responsible parties

Among other hypotheses, the company, the financial institution, and all those who are responsible for the administration, custody, and registration of movable or immovable property and their respective rights subject to transmission are jointly and severally liable for the payment of ITCMD due by the taxpayer.



Tax rates

It will be established according to the legislation of each State and the Federal District, and:

- It will be progressive according to the value of the share, legacy, or donation.
- It will observe the maximum rate set by the Federal Senate.



Calculation base

As a general rule, it is the market value of the property or right transferred.

Attention points

For the purposes of ITCMD incidence, the following cases are considered donations, when transfers occur between related persons:

- Corporate acts that result in **disproportionate benefits** for a partner or shareholder carried out by liberality and without a business justification that can be proven, including disproportionate distribution of dividends, disproportionate split-off, and capital increase or reduction at differentiated prices.
- The debt forgiveness by liberality and without a business justification that can be proven.

Donations from abroad

The ITCMD will be due even if the donor or deceased is located abroad.

For the transmission of assets located abroad to a donee or successor residing in Brazil, ITCMD will also apply, being due to the State or Federal District of their domicile.

Trusts

ITCMD will be levied on transmissions involving assets and rights subject to a trust, including contracts with similar characteristics abroad.

The concept of trust as provided for in the Income Tax legislation will be applied.





Takeaways

Unlike the Complementary Law Project (PLP) No. 68/2024, which, in general, is consistent with the regulation of Constitutional Amendment (EC) No. 132, requiring specific adjustments, PLP No. 108 does not present this consistency when it deals with the IBS Management Committee (CG-IBS) and the administrative process.

Regarding the CG-IBS, PLP No. 108 provides, in the composition of its Superior Chamber - the last administrative instance that standardizes the jurisprudence of the IBS - only members representing the State, Federal District, and Municipal Treasuries, without representation of the taxpayers (even if the rule of the casting vote is applicable).

Much has been said in the approval process of EC about the redemption of a trust relationship between taxpayers and federative entities, in a dialogue of composition between active and passive subjects of the tax relationship. However, it seems that the proposed structure of the CG-IBS goes against this guidance.

Additionally, since the IBS and CBS taxes are very similar, according to the Constitutional Text (called 'Dual VAT'), and existing a provision indicating the possibility of the regulatory complementary law to foresee the integration of the administrative litigations related to them, it is an inconsistency that the text of PLP No. 108 deals with the IBS litigation separately from the CBS, with its own rules and independent judgment bodies.

If this format is indeed maintained, over the years there will likely be a progressive distancing of the understanding of these bodies regarding the incidence systems of IBS and CBS, compromising the simplification promised, and so eagerly awaited by taxpayers, with probabilities of judicial litigation.

It is observed that the so-called Instance of Uniformization of the IBS administrative litigation, which will judge the so-called Uniformization Appeal, conceived with the aim of standardizing the administrative jurisprudence of the IBS at the national level, to be filed in case of existence of divergent precedents, does not even consider the possibility of an appeal in the case of conflict between the decision pronounced by the CG-IBS, within the scope of the IBS, and another by the judging body of the CBS administrative conflicts.

In light of this scenario, we maintain our recommendation that companies, in various economic sectors, continue to seek the defense of their legitimate interests in the ongoing legislative debate process, reconciling them with the necessary simplification and rationalization of our consumption tax system to foster the improvement of the business environment in the country.

Transformation Journey

The next nine years will require a transformation across a range of business areas, permeated by technologies, as some examples below, to be complemented on a case-by-case basis.

Economic Modeling and Tax Intelligence	Organizational Strategy	Resilience and Risk Factors	Corporate and Operational Structure	Performance Indicators and Strategic Communications
<ul style="list-style-type: none"> Measurement of fiscal impacts with efficient use of data and technology Ideal timing and method for transitioning structures anchored in tax benefits Reasoning on Tax Reform aspects 	<ul style="list-style-type: none"> Specific aspects of the segment Business case viability on the light of the Tax Reform Governance required for the transition period 	<ul style="list-style-type: none"> Tax Reform as a new factor in the spectrum of corporate risks and advantages Pricing strategies versus demand impacts Repercussion on contracts/agreements in general 	<ul style="list-style-type: none"> Consolidation / company formation, real estate planning, human resources and others Logistics and distribution review Tax Reform impacts on suppliers / supplies 	<ul style="list-style-type: none"> Mapping of the effects on EBITDA and respective communications Repercussion among stakeholders in general

Key channels of transformation:

- 1 Processes
- 2 Technology
- 3 People
- 4 Data



Would you like to understand more about how this can affect your business? [Contact us.](#)

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