

Brazilian estate and gift taxes *present and future*

Raul de Paula Leite Filho



FREITASLEITE

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LEGISLATIVE COMPETENCE

1. Brazilian Federal Constitution

- ✓ The Brazilian Federal Constitution, in Article 155, paragraph 1, item I, gives the Member States and the Federal District the authority to impose the Brazilian Tax on Transmission of Property and gifts of any assets and rights ("ITCMD").
- ✓ In order to prevent possible conflicts among Member States, the constitution set forth that:
 - (a) Concerning real property and their rights, the ITCMD is owed to the Member State or the Federal District, where the property is located (Article 155, paragraph 1, section I);
 - (b) In relation to bonds, titles and credits, the ITCMD is owned to the Member State or the Federal District, in which the probate or enrollment takes place, or in which the donor is domiciled (Article 155, paragraph 1, section II); and
 - (c) For a donor that is domiciled or resident abroad and to the deceased with assets abroad, the collection of ITCMD shall be regulated by Complementary Law (Article 155, paragraph 1, section III).

PROSPECTIVE APPLICATION OF TAXES

2. Prospective Application of Taxes

- ✓ A law that imposes or increases a Tax is only valid in the subsequent fiscal year of its publication (the ex-post-facto rule);
- ✓ A law that imposes or increases a Tax is only valid after ninety days of its publication.

90 days + 1 year = Valid Law

A tax with an increased rate will be effective as of January 1, 2016, as long as the Law has been changed before October 1st, 2015.

TAX RATES

3. ITCMD Rates

- ✓ The Brazilian Federal Constitution sets forth that the Federal Senate must establish the maximum rates of ITCMD.
- ✓ Currently, the maximum rate is 8% (Article 1, Resolution No. 9 of Federal Senate, 1992).
- ✓ Recently, a draft resolution was submitted by Confaz to the Federal Senate whereby the maximum rate of ITCMD is increased from 8% to 20%.

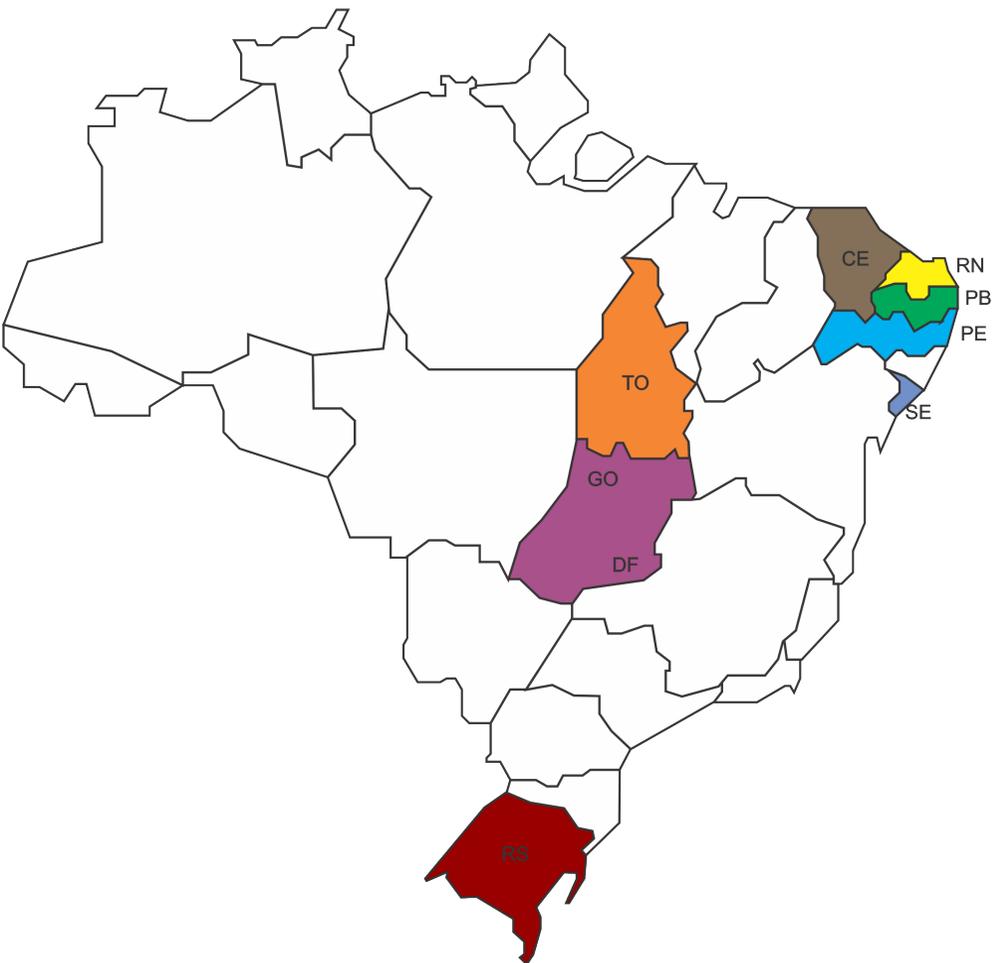
4. Bill of Amendment (“PEC 60/2015”)

- (i) The Federal Senate must determine a maximum and a minimum rates of the ITCMD;
- (ii) The ITCMD will be subject to progressive rates;
- (iii) The Federal Senate, Member States Governors and the Governor of the Federal District shall create tax exemptions by means of supplementary laws;
- (iv) The ITCMD exemptions shall be nationally uniform.

The Brazilian Supreme Court (“STF”) decided that the progressive rates of ITCMD are constitutional (Decision with general effect “RE No. 542,485, RS, 2013”).

This decision has a mandatory effect for the lower courts in similar cases.

TAX RATES



STATES	2015	2016
TO	2% - 4%	2% - 8%
GO	2% - 4%	2% - 8%
DF	4%	4% - 6%
CE	Estate Tax: 2% - 8% Gift Tax: 2% - 4%	Estate Tax: 2% - 8% Gift Tax: 2% - 8%
RN	4%	3% - 6%
PB	4%	Estate Tax: 2% - 8% Gift Tax: 2% - 8%
PE	Estate Tax: 5% Gift Tax: 2%	2% - 8%
SE	Estate Tax: 4% Gift Tax: 4%	Estate Tax: 2% - 8% Gift Tax: 4%
RS	Estate Tax: 4% Gift Tax: 3%	Estate Tax: 0% - 6% Gift Tax: 3% - 4%

CERTAIN TAX CONSIDERATIONS

5. Taxation of pension plans

- ✓ The Private Pension Plans (“VGBL” and “PGBL”) are widely used as an instrument of estate planning.
- ✓ The interests in the pension plans are not subject to probate and assets are released to beneficiaries within 30 days by the insurer and is not subject to ITCMD.
- ✓ Minas Gerais, Goiás, Paraná and Acre currently collect ITCMD on pension plans.
- ✓ Goiás approved the law No. 18,002/2013 establishing the taxation of ITCMD on payments of VGBL and PGBL to beneficiaries.
- ✓ Recent Answers to Advance Tax Ruling Request issued by São Paulo’s Tax authorities confirmed that pension products are not subject to ITCMD (Advance Tax Ruling Request No. 79/2012).
- ✓ Most of the Member States do not have legal provisions on such matter.

6. Taxation of real estate

- ✓ In Minas Gerais, for tax purposes, if the company's capital has been increased in the precedent five years, by the contribution of real estate and other assets or rights related thereto, the payment calculation base for taxation (ITCMD) will be not less than the market value of such real estate and assets (law No. 14,941/2003).

CERTAIN TAX CONSIDERATIONS

7. Capital Gain

- ✓ According to the Advance Tax Ruling Request (“Solução de Consulta COSIT”) No. 383, 2014, the transference of fixed income investment in Brazil arising from “causa mortis” succession is subject to Income Taxation.
- ✓ The Brazilian tax authorities understand that when the holder of closed ended fixed income investment fund dies, the quotas of the fund cannot be transferred to the heirs at their cost value. On the Tax Authorities’ opinion, once the succession is opened, there is a redemption or liquidation of the investment, subject to the Withholding Income Tax.

8. Usufruct

- ✓ Under the State of São Paulo legislation, the taxpayer may differ 1/3 of the ITCMD levied on the gift, if the donor retains the usufruct (enjoyment right) of the asset.
- ✓ The State of Rio de Janeiro, allows the deferral of ½ of the ITCMD due on the gifts in which the donor retains an enjoyment right in the asset.

NON-RESIDENT

9. Non-Resident

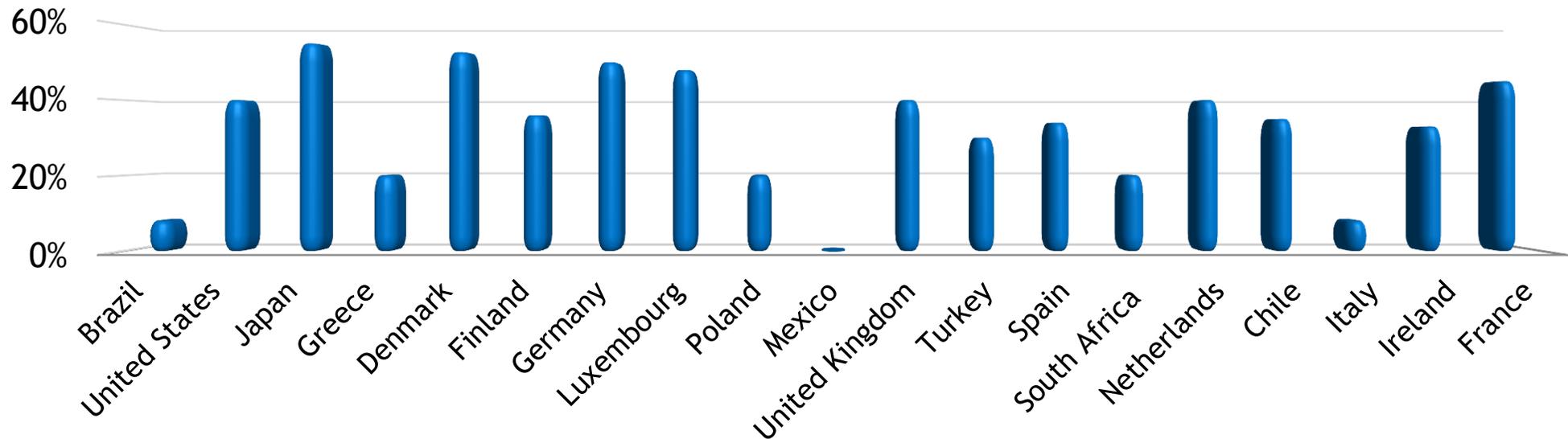
- ✓ The Brazilian Federal Constitution provides that supplementary law should regulate ITCMD when the donor is domiciled or resident abroad, the deceased owned property, was resident or domiciled abroad, or had his probate processed abroad.
- ✓ The Supplementary Law has multiple functions assigned the Brazilian Federal Constitution of 1988, among which are the division of tax powers (including the prevention of conflicts of competence) and the establishment of general rules on tax legislation.
- ✓ In principle, States Member and the Federal District cannot charge ITCMD when the Author of the inheritance owned a property, was resident or had a probate processed abroad. The regulation of this tax competence (not the general rules related to ITCMD) is reserved exclusively to the Supplementary Law.

The Brazilian Supreme Court (“STF”) recognized the existence of General Effect on an appeal regarding the ITCMD) of donors with residence or domicile abroad (“RE No. 851.108, SP”).

This decision has a mandatory effect for the lower courts in similar cases.

LOWER TAX RATES: A MYTH ?

Worldwide Estate and Inheritance Tax Guide 2015



- ✓ São Paulo exempts gifts up to R\$ 53,125.00.
- ✓ Rio de Janeiro exempts gifts up to R\$ 3,254.28.
- ✓ The United States of America exempts gift/estate of approximately US\$ 5 million.
- ✓ The United Kingdom exempts the gift/estate of approximately £ 325,000.

Source: EY

Raul de Paula Leite Filho
raul@fladv.com.br
Tel +55 11 3728.8100



FREITASLEITE