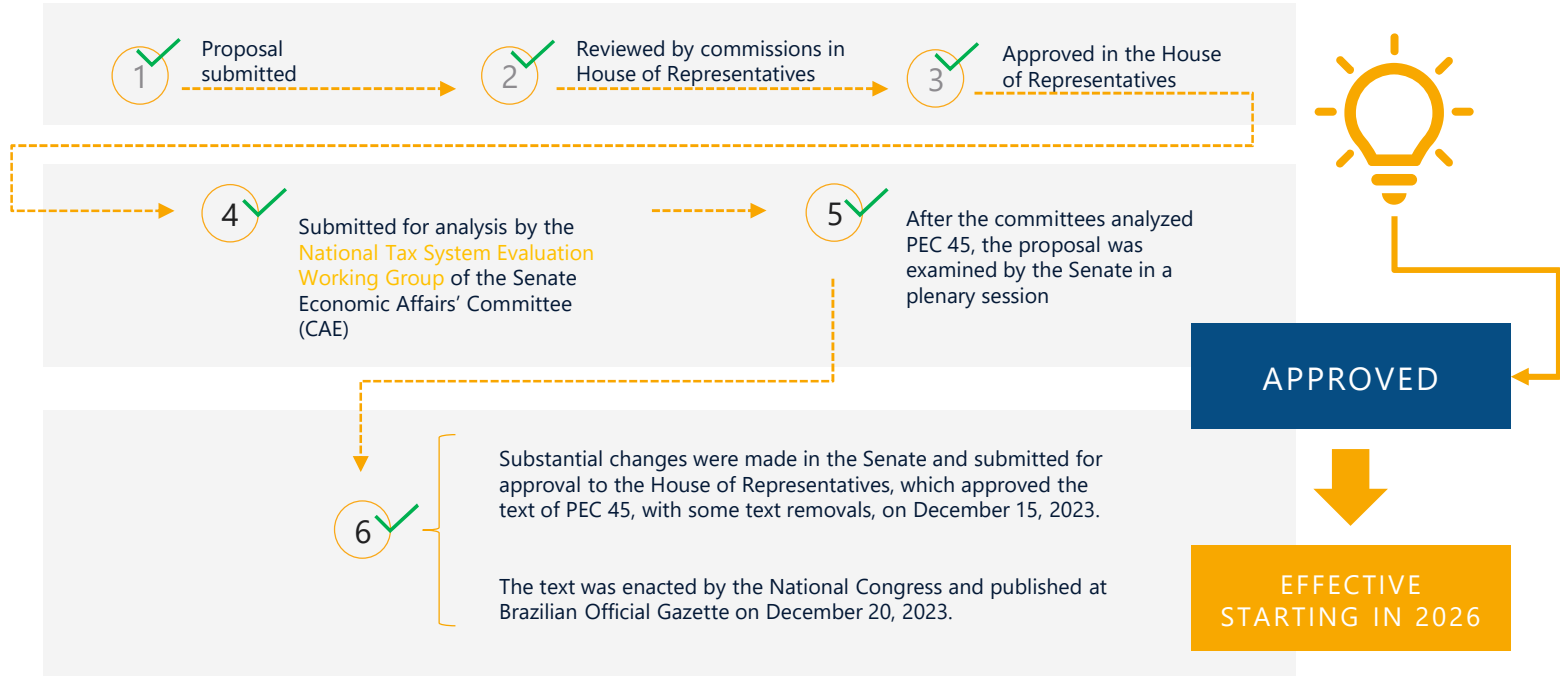


BRAZILIAN TAX REFORM

Constitutional Amendment no. 132/2023

Constitutional Amendment Proposal Procedure



Main Topics

Value Added Tax (IVA)

- **Dual IVA:** Broad-based and non-cumulative tax on goods and services, charged in the destination, with few tax rates and exceptions;
- Establishes (i) a Federal-level Goods & Services Contribution Tax (CBS), and (ii) a State and Municipal-level Goods & Services Tax (IBS). A **Management Committee** shall be responsible for setting rules on the States' and Municipalities' jurisdictions regarding the IBS levy. Both taxes will be regulated by a **Complementary Law** enacted by Congress;
 - CBS → Replaces the current Federal Social Contributions (PIS/COFINS);
 - IBS → Replaces the current State Tax on the Movement of Goods and Services (ICMS) and the State Tax on Services (ISS)
- Creation of an Excise Tax (IS) in order to partially replace the current taxation by the Tax on Manufactured Products (IPI):
 - Levied on the extraction, production, sale or import of goods and services harmful to human health and the environment (except exports, electricity and telecommunications, on which the IS will **not** be levied), to be defined by Complementary Law
 - Single levy and same calculation basis for IBS and CBS (IS is included in the calculation basis of IBS, CBS, ICMS and ISS – the latter while effective)
 - Tax Rates to be defined by ordinary law
 - On extraction, maximum rate of 1% on the market value of the asset

Main Topics

“Full” Non-Cumulativeness

- All expenses incurred by the taxpayer for performance of the economic activity will be entitled to credit, ensuring fiscal neutrality;
- Credits allowed as to all purchases of tangible and intangible goods and services, except **(i)** those destined for personal use or consumption, pursuant to Complementary Law; and **(ii)** the cases provided by the Federal Constitution (i.e. exemption or non-levy);
- A Complementary Law may establish hypotheses in which the use of the credit will be conditioned to the analysis of the effective payment of the tax levied on the transaction with tangible or intangible goods, including rights, or with services, provided that: a) the purchaser is able to pay the tax levied on their acquisitions of goods or services or b) the tax is paid when the transaction is settled.

Calculation Method

- Tax levied on the gross value of the goods or services ("outside" calculation) and **not** on the transaction value, understood as the final price including taxes ("inside" calculation).
- Taxation at destination.

Calculation Basis

- Broad Basis: applies to transactions involving (i) tangible and intangible goods (and any related rights) and (ii) services.
- The Complementary Law should establish the concept, content and scope of transactions involving services.
- Possibility of CBS and IBS being included in the ICMS and ISS calculation basis (while those taxes are effective) - Absence of express exclusion in articles 156-A, §1, IX and 195, §17.

Main Topics

Rates

- A resolution of the **Federal Senate** will set the reference tax rate for each federal entity.
- Each federal entity (the Union, states and municipalities) must set a single rate applicable to all goods and services, in accordance with the guidelines established by the referred Senate Resolution.

Rate Thresholds

- A rate threshold mechanism establishing that the Senate will limit the reference rates to maintain, in proportion to GDP, the revenue from extinct taxes.
- The collection reference threshold will be measured by the average level of participation in GDP, between 2012 and 2021, of the extinct taxes.

State Contribution on Primary and Semi-Finished Products

- The Contribution will be used to finance infrastructure and housing works, as a condition for enjoying deferral, special regime or any other favorable treatment regarding the ICMS.
- States that had, on **April 30, 2023**, funds destined to investments in infrastructure and housing works and financed by contributions on primary and semi-manufactured products established as a condition for the fruition of deferral, special regime or other differentiated treatment relating to the ICMS, may create similar contributions, not linked to the mentioned tax.
- The levy of this new contribution is conditioned to the extinction of the corresponding contribution.
- The levy could be extended **until 31.12.2043**.

Main Topics

Goods and Sectors Subject to Reduced Rates

- **60% reduction:** education, health and public transportation services; medical and accessibility devices for people with disabilities; medicines and basic menstrual health care products; agricultural, aquaculture, fishing, forestry and plant extraction products in natura; agricultural inputs, food intended for human consumption and personal hygiene products; national artistic, cultural, journalistic and audiovisual productions and sports activities; goods and services related to national security and sovereignty, information security and cyber security.
- **100% reduction:** urban rehabilitation of historic areas, medical and accessibility devices for people with disabilities; medicines and basic menstrual health care products; vegetables, fruit and eggs; higher education services - **ProUni** (University for All Program); services provided by Scientific, Technological and Innovation Institutions (**ICT**); urban recovery activities in historic areas or areas considered critical for urban recovery and rehabilitation; **National Basic Food Basket**, made up of items provided for in a Complementary Law.
- **30% reduction:** intellectual, scientific, literary or artistic professional services nature, subject to a professional council, to be defined by Complementary Law.

Main Topics

Special Customs Regimes and Export Processing Zones

- A Complementary Law will establish the tax deferral and exemption hypotheses applicable to special customs regimes and export processing zones.

Simples Nacional

- Maintenance of the tax regime of Simples Nacional

Favorable Tax Regimes

- Competitiveness of the Manaus Free Trade Zone (ZFM) will be maintained by the levy of IPI.
- Mechanisms to guarantee the region's competitiveness must be established by law.
- Creation of a Sustainability and Economic Diversification Fund in the State of Amazonas, financed by the Federal Government, to guarantee favorable tax treatment for transactions in the ZFM; and
- Inclusion of an express provision guaranteeing the maintenance of benefits for all Free Trade Areas.
- Continuity of IPI for products with incentivized manufacturing in the ZFM.

Main Topics

Presumed Credit

- Granted for purchases of (i) goods and services from farmers/rural producers who are not CBS taxpayers; (ii) services from self-employed transporters who are not **CBS** taxpayers; and (iii) materials intended for recycling, reuse or reverse logistics.

Cashback

- Aimed at returning part of the tax collected to low-income families, with a view to reducing income inequality. Provision for (i) a national basic food basket (zero rate) and (ii) an extended basic food basket (reduced rate).
- Mandatory in transactions involving the supply of electricity and liquefied petroleum gas to low-income consumers, and Complementary Law may determine that it be calculated and granted at the time the transaction is charged;
- A Complementary Law will establish the situations in which individuals will be entitled to a tax refund, including its limits and beneficiaries.

Digital Platform Taxation

- IBS and CBS are levied indiscriminately on imported tangible or intangible goods (including the respective rights attached to them) and on services provided by individuals and companies, even if they are not regular taxpayers.

Exemption of capital goods

- A Complementary Law will establish the exemption for the acquisition of capital goods by taxpayers, which may be implemented by means of:
 - a) full and immediate tax credit;
 - b) deferral; or
 - c) a 100% (one hundred percent) reduction in tax rates.

Main Topics

Specific Tax Regimes

- **Fuels and lubricants:** Subject to single-phase taxation levied at a uniform rate (per unit of measurement, differentiated by product).
- **Financial services, hotel services, sports activities carried out by Soccer anonymous society and regional aviation, real estate transactions, health plans, amusement/theme parks, restaurants, cooperative societies and lotteries, intercity and interstate road, rail and waterway passenger transportation services, transactions covered by international treaty or convention, including those relating to diplomatic missions, consular offices, representations of international organizations and their accredited officials:** Entitled to specific rates, credits and calculation bases, as taxation is levied on revenue/billing (as opposed to value added).

Management Committee

- Enacted by States, the Federal District and Municipalities, with technical, administrative, budgetary and financial independence.
- Inspection, assessment, collection, administrative representation and judicial representation of IBS will be carried out, within the scope of their respective powers, by the tax administrations and attorneys' offices of the States, the Federal District and the Municipalities, which may define hypotheses of delegation or sharing of powers, with the Management Committee being responsible for coordinating these administrative activities with a view to integration between the federative entities.
- **Duties:** (i) to issue a single regulation and standardize the interpretation and application of tax legislation; (ii) to collect the IBS, offset and distribute the tax revenue between the States, Federal District and Municipalities; (iii) ruling on administrative disputes.

Main Topics

Tax Benefits Compensation Fund

- Aimed at compensating taxpayers for the termination of current incentives (granted for a certain period and under certain conditions).
- With a contribution of **R\$160 billion** from the Federal Government, the fund will remain active until **December 31, 2032**, the date originally set for the end of all tax incentives.

National Regional Development Fund (FNDR)

- Aimed at States and Municipalities, for the infrastructure, productive activities and scientific and technological development sectors.
- Its aim is to reduce regional and social inequalities and encourage business activity in underprivileged regions, potentially affected by the reduction in tax collection, prioritizing environmentally sustainable projects.
- Financed by the Federal Government, although the States can decide on the use of funds.

Main Topics

Refund of IBS and CBS Credits

- Method and deadlines to be established by Complementary Law;
- This is an important aspect subject to further regulation, since a considerable portion of current **litigation** is related to differences in interpretation of the rules regarding the **offset of ICMS and PIS/Cofins credits**.

Refund of IPI, PIS, COFINS credit balances

- Methodology applicable to the use of accumulated IPI, PIS/COFINS credits to be regulated by Complementary Law;
- Possibility of offsetting these taxes against other federal taxes (including CBS) or reimbursement in cash.

Refund of ICMS credit balances

- Until 31.12.2032 → Credits can only be offset against the **remaining ICMS installments**.
- From 01.01.2033 → The remaining credit balance **must be approved by the States/Federal District** to enable offsetting against the IBS.
- Current credits relating to fixed assets will follow the system of 1/48th per month; in other cases, credits will be offset in 240 equal and consecutive monthly installments.
- From 2033 → Credit balances will be updated by the Special Broad National Consumer Price Index (**IPCA-E**).
- A Complementary Law will regulate the **transfer** of credits to **third parties** and the reimbursement of **remaining balances**.

Main Topics

Transition Period

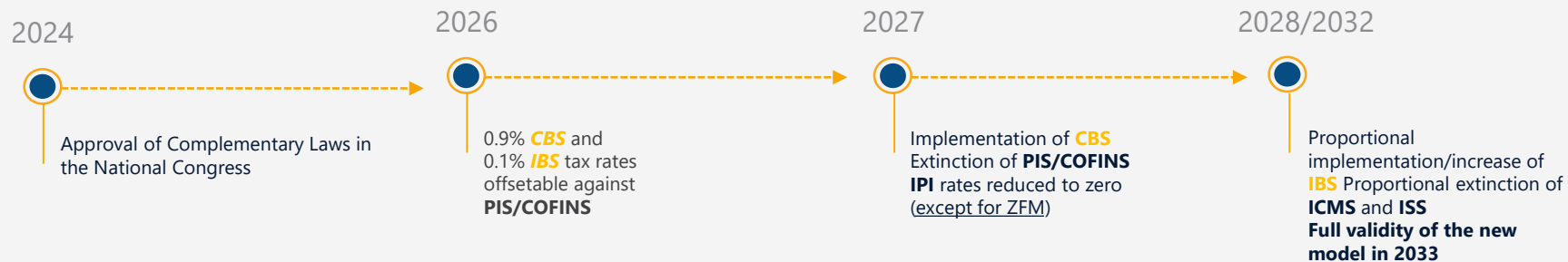
- The transition period from the current to the new tax regime will be **7 years** - **faster** in relation to the extinction of **PIS/Cofins** and **gradual** in relation to **ICMS** and **ISS** - as follows:
 - **2026**: Rates of 0.9% of CBS and 0.1% of IBS can be offset against PIS/COFINS.
 - **2027**: Implementation of CBS, extinction of PIS/Cofins and IPI rates reduced to zero (except ZFM, which will remain with positive rates).
 - **2029 a 2032**: Proportional levy/increase of the IBS rate and proportional extinction of ICMS and ISS.
 - **2033**: End of the transition period, when the new system comes into full effect.

Main Topics

Rules to be issued

- The following rules are expected to be issued:
- within 180 (one hundred and eighty) days of the enactment of the Constitutional Amendment, the bills of laws referred to in this Constitutional Amendment must be presented;
- within 90 (ninety) days of the enactment of the Constitutional Amendment, the bill of law reforming payroll taxation must be presented;
- within 90 (ninety) days of the enactment of the Constitutional Amendment, the bill of law reforming income taxation must be presented, followed by the corresponding estimates and studies of budgetary and financial impacts.

Transition to the new model



**7-year transition period, faster regarding PIS/COFINS and gradual as to ICMS and ISS*

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