

# Indirect taxation



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#### IV. Indirect taxes

##### IV.1 Federal Tax on Industrialized Goods – IPI

This federal tax is paid by manufacturers at the time of sale, either to another manufacturer who will continue the manufacturing process or to the retailer or final customer. However, the subsequent manufacturer is allowed a credit against its IPI debts, equal to the IPI paid its suppliers. The IPI is also levied in the import of goods. Credits amount could be transport for future monthly calculations.

Generally, the IPI calculation basis is the value of the transaction carried out by the taxpayer. Regarding import operation, the IPI calculation basis would consider the value of the goods (CIF) plus customs duties (II).

IPI rates tend to be selective and may vary according to the nature of goods, from zero-rate for basic supplies and rising for non-essential goods, depending on the product's specific code in the Harmonized Tariff Schedule – HTS. Please see below some of the IPI rate for equipments commonly used in the upstream activities.

In short, the mechanism used for IPI calculation is that each individual establishment offsets the total IPI paid on purchases (inputs) against the total IPI collected on its sales (outputs). The amount of tax due by the Company (considering the IPI due/credit in all its establishments) must be calculated and paid monthly.

Brazilian legislation establishes that products imported under some special customs regimes, such as the drawback regime, are exempt from IPI, if some obligations are observed. In addition, products or merchandise imported into free trade zones might also be exempt from the aforementioned tax. Goods exported from Brazil are exempt from IPI and the corresponding credits accrued can be kept and used to offset other federal taxes.

Furthermore, the sale of crude oil and its derivatives are not subject to IPI taxation (Constitutional Immunization).

Product	Tax Classification	Rate (%) (*)
Wet Christmas trees	8481.80	0; 4; 5 or 12
Vessels destined to support research, exploration, drilling, production and storage of oil and natural gas	8906.10/90	0
Vessels used in activities of research and acquisition of geological and geophysical and geodesical data related to exploration of oil and natural gas	8905.90.00 8906.10/90	0; or 5
Equipment for acquisition of geological and geophysical and geodesical data related to the research of oil and natural gas	9015.10/20/30 9015.40/80/90	5
Equipment for auxiliary services in drilling used in drilling and producing wells	8431.43	5
Floating crane used in offshore rig facilities	8905.90	0; or 5
Tugs for vessels and support equipment used in research, exploration, drilling, production and storage of oil and natural gas	8904.00	0
Drilling and production risers	7304.29	0
Fixed exploration, drilling or production units (machinery)	8430.41/49	0
Floating, production, storage, offloading units	8905.90	0; or 5
Floating or semi-submersible exploration, drilling or production units (platforms)	8905.20	0
Remote operation submarine vehicles (robots)	8479.89	0; or 5

(\*) Please note that the IPI rates can change during the course of the time through a simple decree, without needing to observe any grace period. In this sense, it important to note that IPI rates must be closed monitored and confirmed before any operation involving this tax.

#### IV.2 State Tax on the Circulation of Merchandise – ICMS

The Constitution granted authority to the Brazilian States to charge the tax on the circulation of merchandise and on rendering of interstate and intermunicipal transportation services and on communications (ICMS), even when the transaction and the rendering of services start in another country, including import operations.

It is a non-cumulative tax and the calculation involves a system that, in each payment period, the taxpayer must check the amount of ICMS debts (generated on the circulation of merchandise/ rendering of services) and ICMS credits (generated on the acquisition of goods). The ICMS liability is the result of debts and credits balance sheet. Therefore, credits amount could be transport for future monthly calculations.

Credits are allowed on the cost with ICMS due on purchases or circulation of goods. ICMS debts are related to the taxed outflow of merchandise, goods or services taxable. In case the outflow is exempt of ICMS, regardless credit must take out of offset balance sheet. Only exports allow maintaining the credits.

Moreover, specially, goods for consumption or assets receive a proper treatment, considering the ICMS taxpayer is the final costumer of supply chain. Consumption does not allow ICMS credits.

On the other hand, assets purchase allows an ICMS amortization in 48 months against debts due in each period.

The ICMS calculation basis is the value of the transaction or service carried out by the taxpayer. The tax calculation basis includes the value of the tax itself (gross-up method) – the indication of the tax separately is only for control purposes. In case of final consumer, IPI is also included into calculation basis, in completion to the taxation burden method on supply chain value add.

Regarding import operations, the ICMS calculation basis will consider the CIF value (customs valuation, according to the GATT 1994) plus customs expenses, and the customs taxes included: II, IPI, PIS, COFINS, and ICMS itself (gross-up method).

The ICMS rate depends on the State bylaw, operation performed and the nature of goods negotiated, varying from 13% to 19%. Generally, on local acquisitions, ICMS is collected by most states at the rate of 17%, except for the states of São Paulo and Minas Gerais, whose tax rate is 18%, and Rio de Janeiro, whose tax rate is 19%.

A part of that, Brazilian Federation adopted interstate rates to the ICMS for interstate circulation of goods, aiming to balance the difference among the “poor” and “rich” Federative States operation, as demonstrated in the chart below:

From	To	Rate
South and Southeast Region	South and Southeast Region	12%
South and Southeast Region	North, Northeast and Mid-West	7%
North, Northeast and Mid-West	Any other State	12%
Any State	Non-taxpayer	Internal rate from the state of the sender

Besides, Brazilian Constitution foresees a National Council of Federative Members to deal agreements given ICMS certain incentives, a part of local ones, such as exemptions. Nowadays, Brazilian Federation is composed of 27 states, each one with its own ICMS bylaw and regulation, and also different benefits.

#### ***IV.2.A Operations related to Oil and Natural Gas:***

In general, Oil and Gas operations are taxed by the ICMS similarly to other usual operations. Otherwise, some specific issues should be taken into account regarding Oil and Gas operations, for instance, special prescriptions for manufacturing.

##### ***IV.2.A.1. Intra-State (Local) Operations***

Normal taxation applies to these operations, which means that all oil and natural gas sales made by an oil company to refineries will be subject to the ICMS at the rate of 17%, 18% or 19% (internal rate for the state where the buyer is located). Note that the usual rate applicable on the sale of natural gas is twelve per cent (12%).

On the other hand, the seller for export manufacturing will be normally exempt by legislation. For instance, suppliers of REPETRO's tool manufacturing are exempt on outflow of raw material and intermediary products, i.e. steel. This issue is described better in a specific chapter about the REPETRO regime, as bellow.

##### ***IV.2.A.2. Interstate Operations***

According to the Constitution, interstate operations involving petroleum and its derivatives are immunized of ICMS taxable. Regarding the natural gas, rate applicable to interstate sales is the normal rate – either twelve per cent (12%) or seven per cent (7%), the latter applicable to shipments to states located in the nation's Northern and Northeastern regions.

Additionally, note that mid and downstream operations with gas, oil and its byproducts might be subject to the tax substitution system. In short, the tax substitution system involves the calculation and collection of the ICMS by one company for the entire supply chain, based on an estimated final price for the product.



#### IV.3 Municipal Tax on Services Rendered (ISS)

Service providers are subject to a cumulative tax named "Imposto Sobre Serviços" (ISS). Basically, the services taxable are foreseen in a list at Annex to ISS National Law 116/2003. Calculation basis is the price charge for the service including the ISS value (gross-up) method.

In general, the service tax is due to the municipality in which the company is established even though the service is rendered in another location. The exceptions are described specifically on the article 3 of ISS National Law 116/2003 (such as construction industry, dock services and towage vessel). In such cases, the ISS is levied to the municipality in which the work is performed (to avoid jurisdiction conflicts, some companies open a specific establishment at work site). ISS rate varies according to the municipality bylaw, from 2% to 5%, as National Law foreseen. In practice, most counties charge the ISS at 5% rate.

Regarding the services performed by overseas companies (import of service), ISS is triggered in the following conditions:

- Service performed in Brazil; or
- The result of service is verified in Brazil.

Both cases are ISS taxable, wherein the render located in Brazil withholding the amount due in favor of municipality wherein the work was performed or the results of service were verified. Thus, foreign provider will receive the net value of ISS discounted.

On the other hand, services provided by Brazilian companies to foreign contractors, when such services are verified outboard Brazil (export of service), ISS is not triggered.

#### IV.4 Social Integration Program (PIS) and Social Contribution on Revenues (COFINS)

The Social Integration Program (PIS) was conceived as a mean to share the business profits with the employees, through a mandatory national savings program, financed by monthly deposits collected as a percentage of 0,65% on the gross sales. Some federal social programs are also financed with these funds. The Social Contribution on Gross Sales (COFINS) was created to finance special social programs enforced by the Federal Government through the collection of a social contribution at the rate of 3%.

Since December, 2002, the PIS and COFINS legislation has suffered alterations, with the objective of collection increase and the effectiveness charge in respect to the principle of contributors capacity claimed by public opinion. In the midst of these changes, the non-cumulative system was adopted in order to charge properly the value added during in supply chains, under the same methodology used by IPI and ICMS legislation.

In this context, non-cumulative system mainly included allowing the taxpayer to offset the amount due with specific credits, and raised PIS and COFINS rates to 1,65% (since December 2002) and 7,6% (as from February 2004), respectively.

##### IV.4.A Calculation Basis:

PIS/COFINS calculation basis includes all revenues earned by a legal entity, regardless of the accounting classification. Legislation also foresees some exclusion from PIS/COFINS calculation basis, exempting some revenues.

- canceled sales and unconditional discounts
- accounting adjustments such as reversal of provisions, recovery of costs and expenses;
- equity pick-up and dividends;
- non-operational revenues, resulting from the sale of permanent assets;
- revenues already taxed, due to the application of tax substitution system; and;
- revenues derived from the sale of alcohol (used as fuel);

- revenues exempted, not taxed, or taxed at rate 0%.

Exportation of goods are exempt of PIS and COFINS. Services rendered to entities resident or domiciled abroad (export of service) are exempt of PIS and COFINS, if the respective payment implies in the inflow of foreign currency into the country.

#### ***IV.4.B Non-Cumulative System – PIS and COFINS Credits:***

Until November 2002, the taxpayer was not able to claim any tax credit regarding PIS. In December 2002, Federal Law 10,637/2002 was enacted, resulting from the conversion of Provisional Measure 66/2002. Such legislation introduced some changes in the PIS calculation, increasing its rate from 0,65% to 1,65%, and allowing the taxpayer to offset the amount due with specific credits.

Regarding the COFINS, its rate was increased from 3% to 7,6% and the non-cumulative methodology was implemented as from February 2004, with the edition of Federal Law 10,833/2003 – originated from Provisional Measure 135/2003. Some provisions related to the non-cumulative system were changed by Federal Law 10,865/2004 and Federal Law 10,925/2004, edited on April 30<sup>th</sup>, 2004 and July 31<sup>th</sup>, 2004, respectively.

Considering the legislation in force, the taxpayer can calculate PIS and COFINS credits to offset against the amount due. This calculation is done applying the respective rates (1,65%, for PIS, and 7,6%, for COFINS), on the amounts related to:

- Goods acquired for resale;
- Goods and services used as an input in the rendering of services and to produce (manufacturing) other goods for sale, including fuel and lubricants;
- Buildings, machines and equipment rentals, paid to another legal entity, used in the company activities;
- Expenses related to commercial leasing transactions;
- Depreciation of machines, equipment and other assets incorporated to fixed assets, acquired to be rent to other companies or to be used for production (manufacturing) of goods for sale, or to

render services;

- Depreciation of buildings and improvements on its own property or on third parties properties, used in the company activities;
- Goods that have returned;
- Storage of goods and freight due on sales transactions, when the burden is supported by the seller;
- Electricity and thermal energy consumed in establishments of the company.

Credits **cannot** be calculated considering:

- salaries paid to individuals;
- goods and services not subject to such contributions, exempt from PIS/COFINS (in this case when resold or used as an input for goods or services not subject or exempt of PIS/COFINS, or taxed by such contributions at a 0% rate)

At first, the rights to the PIS and COFINS credits apply only to goods and services acquired from legal entities established in the country; costs and expenses incurred, paid or credited to legal entities established in the country. However, in several cases, credits from imported goods and services are allowed, as long as those were subject to PIS-importation and COFINS-importation (please refer to the next section for further information).

Please note that, as from August 1<sup>st</sup>, 2005, the taxpayer is only allowed to calculate credits, for PIS and COFINS purposes, on the depreciation of fixed assets acquired as from May 1<sup>st</sup>, 2004, and when the depreciation is accounted for as an operational expense.

Alternatively, the calculation of PIS and COFINS credits on the acquisition of goods destined to the fixed asset can be performed monthly, by means of applying such contributions rates on the amount correspondent to 1/48 of the asset's acquisition value (48 installments). In some specific cases, PIS/COFINS credits on the acquisition of goods destined to the fixed asset can also be performed by applying the contributions rates on the amount correspondent to 1/24 and 1/12 of the asset's acquisition.

The PIS and COFINS are due on a monthly basis and credits not used on one month may be carried forward to the following month.

It is important to mention that the exemption granted to the revenues from export transactions does not imply on the loss of the PIS and COFINS credits calculated on the inputs acquired throughout the period. Indeed, exporting companies are granted the right to use and maintain the PIS and COFINS credits associated with the revenues from export transactions, to offset against future liabilities of PIS and COFINS or any other federal taxes administrated by the Federal Revenue Service.

It is important to know that, as from August, 2004, the non-cumulative PIS and COFINS levy on financial revenues at a 0% rate (inclusively hedge transactions), exceptionally in relation to revenues derived from interest on net equity – JCP.

Also, please note that the non-cumulative system is not applicable to all companies and revenues. Companies using the estimated profit method, for example, are subject to the PIS and COFINS in the cumulative method (no credits allowed), at a 0,65% and 3% rate, respectively.

#### **IV.5 PIS-Importation and COFINS-Importation**

In this sense, in 2004, Provisional Measure 164/2004, afterwards converted in Federal Law 10,865/2004, has issued the PIS and COFINS taxation imports of goods and services, at rate of 1,65% and 7,6%. The PIS/COFINS costs on imports could be registered as credits to the calculation under non-cumulative, being offset against the taxed outflow debts.

##### ***IV.5. A Importation of Goods***

Therefore, since May 1<sup>st</sup>, 2004, goods imported by Brazilian entities have been subject to the PIS-Importation and COFINS-Importation. Due to customs duties collection, the trigger event elected was the registration of the respective DI (Import Declaration).

The PIS-Importation and COFINS-Importation calculation basis considers the CIF value (customs valuation according to the GATT 1994) plus the amount of taxes duty on import, including the PIS and COFINS due (gross-up method); thus II, IPI, ICMS and the PIS/COFINS.

##### ***IV.5.B Services Rendered by Foreign Entities***

Also, services rendered by foreign entities to Brazilian companies are subject to the PIS-Importation and COFINS-Importation, as long as:

- Service is rendered in Brazil; or
- Service is performed abroad, but its results occur in Brazil.



The taxable event is the moment that taxpayer (Brazilian company) remits money abroad as payment for the rendering of services. The calculation basis of the PIS-Importation and COFINS-Importation comprises the amount paid, credited, delivered, utilized or remitted abroad; including the amount charged as Withholding Tax (IRRF), Municipal Tax on Services (ISS), and the PIS/COFINS Importation themselves (gross up method).

#### IV.6 Taxation on Foreign Trade

##### IV.6. A Import Process - Goods

In accordance with the rules established by the *Secretaria de Comércio Exterior* - SECEX (Foreign Trade Secretariat), all person or legal entities intending to participate in any import procedure must be registered at that Secretariat as trader. This registration allows to use the Foreign Trade Integrated System (known as SISCOMEX), the official system used to perform and attend the foreign trade operations within SECEX and RFB.

In addition, other authorities has been accepting the program for those goods that require previous license for import, for instance: Army, Health and Medicine Agency (ANVISA), Environment Agency (IBAMA), among others.

Generically, regarding goods, as WTO member, Brazil follows the regular international trade rules, as the Incoterms, Harmonized Tariff Schedule (HTS), Customs Valuation (article 7 of GATT 1994), and other requirements for documents full set (B/L, AWB, ProForma, Exchange Contract, etc.). Specifically, for the special customs regime, others documents are required for the concession of such benefit, in example: contracts, terms, warranty, etc.

In this context, the following taxation will be charged due import of goods.

- **Custom Duty (II):** is paid by the importer, and calculated upon CIF cost (price of the merchandise, insurance and international freight). II cost is not recoverable, as the most taxes on value added on import, under the non-cumulative system. II rate varies according to the good's fiscal classification following the Harmonized Tariff Schedule (HTS) table.

In South America block, commerce practiced among Mercosur (Southern Common Market) members: Argentina, Paraguay and Uruguay; there specific classification and tariffs.

Regularly, goods imported without similar products made in Brazil (technology or function), are benefit with the rate reduction to 0%. Independently to the government plan, Importer could also claim for "ex-tarifario" with SECEX, in case the "non-existence of a similar product manufactured in Brazil during the time of the reduction solicitation".

- **Federal Tax on Industrialized Goods (IPI):**  
As mentioned before, the IPI is levied in the importation, paid by the importer, and is calculated based on the sum of the CIF cost plus the II. As with the II, the IPI rate applicable on imported goods varies according to the product classification code.
- **State Tax on the Circulation of Merchandise (ICMS):** The import of goods is ICMS taxable. The ICMS tax rate, which varies depending on the State to where the goods are destined, is applied upon the value of the CIF value plus customs expenses, considering the II, IPI, PIS, COFINS and the ICMS itself (gross-up method).
- **PIS and COFINS Importation:** The PIS and COFINS Importation is levied in the importation of goods. The calculation basis comprises the CIF, and whole tax burden: II, IPI, ICMS, and PIS and COFINS itself (gross-up method). Normative Instruction RFB 572/2005 provides the formula to calculate the basis to PIS and COFINS Importation.

- **AFRMM:** Besides the federal and state taxes levied on the importation, imported goods are also subject to other charges, as the AFRMM – levied on all imports transported via maritime freight.

The Supplemental Freight Charge for Renewal of the Merchant Marine (“AFRMM”) is levied on the freight charged by Brazilian and foreign navigation companies operating in Brazilian ports. Such charge is calculated on freight price, through the application of the following rates:

- 25%, regarding deep-sea navigation;
- 10% on cabotage freight; or
- 40%, concerning lake and river navigation (only in the case of bulk cargo transported in the North and Northeast regions).

Under non-cumulative method, credits on IPI, ICMS, PIS and COFINS are allowed proportionally to the cost incurred. Such amount of credits should be offset against the debts in respective tax calculation.

#### IV.6.B Import Process – Services

Regarding the foreign services rendered or which the results are verified in Brazil, the calculation basis of the PIS-Importation and COFINS-Importation comprises the amount paid, credited, delivered, utilized or remitted abroad; including the amount charged as Withholding Tax (IRRF), Municipal Tax on Services (ISS), and the PIS/COFINS Importation themselves (gross up method).

In such cases, the contractor must withhold and collect the tax, pay the net value to the foreign supplier.

#### IV.6.C Demonstration of Total Tax Cost

The chart below presents an example tax burden upon imports. Please note that this calculation is for exemplification purposes, and should be not used for determining the tax burden for the referred operation.

#### IV.6.C.1. Import of Goods

Assumptions: II rate of 20%; IPI rate of 10%; and ICMS rate of 16% (Rio de Janeiro State), PIS and COFINS-Importation rates of 1,65% and 7,6%, respectively:

#### Tax on Importation of goods

Description	Tax rate	Amounts	Ref.	Fórmula
FOB Value Freight		90.000		
		10.000		
CIF cost		100.000	A	
<b>II</b>	<b>10,00%</b>	<b>10.000</b>	<b>B</b>	<b>A × Tax rate</b>
CIF + II		110.000	C	A + B
<b>IPI</b>	<b>15,00%</b>	<b>16.500</b>	<b>D</b>	<b>C × Tax rate</b>
CIF + II + IPI + ICMS + PIS + COFINS		165.653	E	C + D + F + H
<b>ICMS</b>	<b>16,00%</b>	<b>26.505</b>	<b>F</b>	<b>E × Tax rate (1)</b>
CIF + II + IPI + ICMS		150.595	X	C + D + Y
ICMS (for PIS and Cofins purposes)	16,00%	24.095	Y	X × Tax rate (1)
CIF + II + IPI + ICMS + COFINS		136.744	G	A + H + X
<b>PIS and COFINS</b>	<b>9,25%</b>	<b>12.649</b>	<b>H</b>	<b>G × Tax rate (1)</b>
Total tax cost		65.653	I	B + D + F + H
% of tax costs		65,65%	J	(I/A)
<b>Total cost</b>		<b>165.653</b>	<b>K</b>	<b>A + I</b>

(1) – gross-up method

#### IV.6.C.2. Importation of Services

Assumptions: Withholding Income Tax (IRRF) rate of 15% (grossed-up), ISS rate of 5%, PIS and COFINS Importation rates of 1,65% and 7,6%, respectively:

#### Tax on Services – Foreign Providers

Description	Tax rate	Amounts	Ref.	Fórmula
Service Price (Net of Brazilian Taxes)		<b>100.000</b>		
Service Price (with IRRF + ISS)		125.000	A	
Withholding Income Tax (IRRF)	15,00%	18.750	B	(A + B + D) × 15%
CIDE	10,00%	12.500	C	(A + B + D) × 10%
ISS	5,00%	6.250	D	(A + B + D) × 5%
PIS	1,65%	2.273	E	(A + B + D) × 1,65%
COFINS	7,60%	10.468	F	(A + B + D) × 7,6%
<b>Total tax payment</b>		<b>50.241</b>	<b>G</b>	<b>(B + C + D + E + F) × 15%</b>
Effective tax burden		50,24%		

Please note that the calculation above is solely for illustrative purposes, and considers that the amount to be received by the foreign supplier will be net of all Brazilian taxes. The above described calculation can vary according to the contractual arrangement and the overall tax position of the involved parties.

#### IV.6.D Export of Goods

Today, Brazilian legislation exempts or charges at 0% rate the value added taxes on export of goods related to oil and gas operations.

### V. Special customs regime for suspension of taxes

#### V.1 REPETRO

The special customs regime for goods to be used in the research and production of oil and natural gas fields – REPETRO – was introduced in 1999, by Decree 3,161/1999, as a means to hasten the development of the newly opened Brazilian oil & gas industry<sup>1</sup>. It was first regulated by Normative Instruction 87/2000 (September 1, 2000), which was revoked on January 16, 2001, by Normative Ruling 04/2001, which was revoked on May 12, 2008, by Normative Ruling 844/2008. Such special custom regime will be in force until December 31, 2020.

The REPETRO aims primarily to reduce the tax burden on companies involved in exploring and extracting of oil and natural gas, basically, through the total suspension of federal taxes (II, IPI, PIS, COFINS and AFRMM) due on the purchase or importation of selected equipment and spared parts used in drilling. The three main features of the REPETRO are:

- Suspension of taxes on local and foreign acquisitions of raw material, parts and pieces for the manufacturing in Brazil, normally, in a bonded warehouse. Since November 27<sup>th</sup>, 2007, the ICMS Agreement 130/2007 provides the exemption for local supply to REPETRO manufacturers. Other issues regard to ICMS taxation are better described in item VIII.2.
- After the manufacturing, suspension of taxes on the “symbolic export regime”, under which foreign company may purchase the final good from Brazilian manufacturers and deem such purchases to be exports. Please note that a foreign company must purchase the goods that are delivered in Brazilian territory (the goods actually not leave Brazil).

- Suspension of taxes on the import under “Temporary Admission” of goods, which ought to be related to leasing, borrow or rent from a foreign owner; thus without exchange cover and period for the contract schedule.

In this context, REPETRO will admitted industrialization for upstream sector and direct import of goods for upstream activities (E&P). In any case of direct import of goods, the regime will follow the same rules for the “Temporary Admission for Economic Purposes” whereas with total suspension of federal taxes. Therefore, the REPETRO concession will be conditioned to:

- Beneficiary qualified as field operator, direct supplier or subcontracted supplier;
- Imports without exchange cover;
- Supply contract with the period of goods in Brazil. The REPETRO concession will follow the time foreseen in the terms, until the regime being in force (December 31, 2020).
- Guarantee by a term to be signed within Customs Authorities subscribing the amount of taxes suspended. It could be done by a bank insurance or not.

The Annex to Normative Instruction RFB 844/2008 establishes an example list of the goods eligible for tax suspension are the following: Vessels supporting research, production and storage activities of oil or natural gas;

- Machines, apparatus, instruments, tools and equipments destined to the research and production activities of oil or natural gas;
- Drilling and production platforms, and those destined to support the research and production activities of oil and natural gas;
- Motor vehicles assembled with machines, equipments, instruments and tools destined to research and production activities of oil and natural gas;
- Special made structures to conceive platforms.

<sup>1</sup> Please note that since 1953, up to 1997, the exploration, extraction and refining of oils and natural gas in Brazil were monopolies of the state-owned Petrobrás.

Before, Normative Instruction RFB 844/2008, Normative Instruction 4/2001 brought a tied list of goods based on Harmonized Tariff Schedule (HTS). However, on that time, authorities recognized that such list was inflexible to the upstream, sector, and revoked it in new legislation, open the horizon of goods electable to the REPETRO regime.

#### ***VIII.1.A. ICMS***

The ICMS Agreement 130/2007 is in force since November, 2007, provides the ICMS tax treatment for goods brought to Brazil under the REPETRO.

According to this federative agreement, the States are authorized to grant a (i) exemption or 1,5% (cumulative) rate on importation of goods related to oil and gas exploration phase, (ii) 3% (cumulative) or 7,5% (non-cumulative) rates for goods imported under REPETRO to be applied on production phase. The non-cumulative rate of 7,5% for the production phase imports is optional to the REPETRO beneficiaries.

In the concept of production, the ICMS Agreement 130/2007 considers the development phase as part of production phase; thus, the imports charged accordingly.

Moreover, since the agreement was signed in the period Normative Instruction 4/2001 had been in force, its Annex brings the goods electable to the ICMS benefit, as follows. Otherwise, State Revenues Secretariats have been discussing the extension of these ICMS benefits in accordance with the Federal Legislation for REPETRO, what means that such list is not inflexible to goods listed by HTS code, but those ones exemplified in Annex to Normative Instruction 844/2008.

Therefore, although the Customs Authorities should clear the goods imported under REPETRO without the ICMS collection, State Tax Authorities could assess the ICMS in case the HTS code of goods imported is not listed in Annex to ICMS Agreement 130/2007 nowadays.



Annex to ICMS Convention 130/2007	
Products	NBM/SH
Umbilical	3917.39
Rigid steel pipes	7304.10.10 ou 7305.1
Drilling and production risers	7304.29
Steel pipes commercially known as "Steel Flowline"	7305.19.00
Steel pipes and valves used for connection between the steel pipes and flexible lines, commercially known as "pipeline end terminators - PLETs"	7307.19.20
Wellhead systems	7307.99
Submarine equipment made of steel tubes, fuse pieces and valves, used to connect the flexible line to the PLET, commercially known as "Vertical connection module – VCM"	7307.99.00
Jaquets or Caisson	7308.90
Steel cable	7312.10
Aluminum "Riser" used for drilling and production of oil	7608.20.90
Flexible lines	8307.10
High pressure concrete pump unity	8413.40.00
Plumping system with motor, box of reduction, valve and a centrifuge pump with maximum capacity of 442 l/min used to transfer fluids from the measurement tank to other equipments used on oil well productive tests.	8413.70.90
No oil vacuum pump for RST tools used on acquisition of geological basis related to the research of oil and natural gas	8414.10
Reciprocating Compressor, used to refrigerate the energy distribution room of the vessel, with capacity of 60.010 frigorias/h a 3500 RPM, destined to pipe launching activities, commercially known as "flexible lines", that connect the oil wellhead to hydrocarbon delivery point (natural gas or oil)	8414.30.19
Natural gas compressor, used for carriage in gas pipeline	8414.80
Natural gas compressor, used for artificial lift activity in wells	8414.80
Three head burner for oil fields	8417.80.90
Centrifuge used to recover drilling fluid found on gravel cut by bit.	8421.19.90
Vertical axis centrifuge projected to recover drilling gravel liquids, with motors, with discharge and related materials to be used on drilling units called "Verti-G".	8421.19.90
Davit to rescue boat	8425.19.10
Subterranean Hoistes for geological data acquisition, related to the Oil and Gas research.	8425.20.00
Electrical hoists for vessels	8425.31
Fixed exploration, drilling or production units	8430.41 e 8430.49
Equipment to ancillary services on oil wells drilling and production	8431.43
Thermal plotter used for data registering	8471.60.49
Chemicals products mixer used on oil well treatment	8474.39.00
Mixer and recycler of cement together with pipes belonging to the equipment, intended to prepare the portfolio for dry cement, for ancillary services used on drilling and production of oil wells, commercially called by "CBS mixer"	8474.80.90
Remote operation submarine vehicles (robots)	8479.89
High pressure hydraulic unit, complete, with electric motors, pumps, hydraulic fluid filters, tanks, pipes, used for shipping and filtering the risers hydraulic system fluid and also used to compensate the drilling mobile unit movement.	8479.89.99
Security flow valve (model FBSV-E series 01016) used for closing of the well in case of operational emergency.	8481.40.00
Manifold	8481.80
Wet Christmas three	8481.80
Equipment made of valves and connections, used for cementing of oil well walls, commercially known as "Cementing head 13-3/8".	8481.80.99
Transformer (460V) with power 2.500kVA to be used on drilling, exploration or production vessels	8504.34.00
Tool calibrator	8543.89.99
Armored cable, commercially known as "Multi-conductor wireline – model 1-23"	8544.59.00
Relief Tanker used for transshipment and transportation of oil stored in FPSOs units	8901.20.00
Tugs for vessels and support equipment used in research, exploration, drilling, production and storage of oil and natural gas.	8904.00
Floating or semi-submersible exploration, drilling or production units (platforms)	8905.20
Floating crane used in offshore rig facilities	8905.90
Floating, production, storage, offloading units	8905.90
Vessels destined to the research and gathering of geological, geophysical and geodesic data relating to the exploration of oil or natural gas	8905.90.00 ou 8906.00
Vessels supporting research, exploration, drilling, production and storage activities of oil or natural gas	8906.00
Life safe boat	8906.90.00
Equipment for acquisition of geological and geophysical and geodesical data related to the research of oil and natural gas	9015.10, 9015.20, 9015.30, 9015.40, 9015.80 e 9015.90
Instruments parts and accessories and apparatus classified on subposition 9015.40	9015.90.90
Electronic micro-processor, used on well logging equipments	9015.90.90

Please note that there are 27 different Federative States in Brazil, and at present, only 8 States have regulated the Convention, granting its benefits. In this context, find below the States that have issued internal Decrees regulating the rules introduced by the Convention 130/2007:

States	Decrees
Amazonas	Decree 27.439/2008
Bahia	Decree 11.167/2008
Ceará	Decree 29.106/2008
Espírito Santo	Decree 2.113-R/2008
Mato Grosso	Decree 1.133/2008
Mato Grosso do Sul	Decree 12.455/2008
Minas Gerais	Decree 44.767/2008
Rio de Janeiro	Decree 41.142/2008
Rio Grande do Sul	Decree 45.738/2008
Rondônia	Decree 13.608/2008
Roraima	Decree 8.580/2007
Tocantins	Decree 3.310/2008

## V.2 Temporary Admission for Economic Purposes

In case the good is not electable to REPETRO, could be imported benefit by the suspension given by the Temporary Admission. Within this special customs regime, goods intended for economic use in Brazil can be imported on a temporary admission basis. Economic use considers the allocation of goods for the production of other goods, i.e. oil, gas, and other hydrocarbons; or other equipments.

Under temporary admission rules, available to all industries, the taxes due on importation (II, IPI, PIS, COFINS, ICMS and AFRMM) must be paid proportionally to the useful life of the asset compared to the length of time it will stay in Brazil.

Concession period of suspension, related to the time of goods remain in Brazil, corresponds to the term stipulated on leasing contract operations or in rental or loan agreements.

Financial leasing, with purchase option clause, is not electable to the regime. In this import, all the taxes are levied normally.

Examples of imports electable to Temporary Admission:

- A company brings a specific asset to Brazil under an operating agreement (or rental or loan contract). The term of this agreement is three (3) years.
- The useful service life span of this asset, under Brazilian tax legislation, is ten (10) years.
- The total amount relating to taxes required in regular importation of this asset will be ten thousand United States Dollars (US\$ 10,000.00).
- Based on such assumptions, the total amount of the tax to be paid will be calculate, as follows:

(Term of the agreement/useful life span) vs. tax due on regular importation =  $(3/10) \times 10,000 = 3,000$

The ICMS Agreement 58/1999 grants the proportional payment of ICMS due on imports admitted temporarily in most of Federative State.

## V.3 Other Special Customs Regime

A part of this specific and useful regimes in upstream sector, there are other special customs regime that could be applied in some operations, grating the reducing of tax burden in order to improve the project's ITR into cash flow scheme. There are:

- Drawback Exemption and Suspension;
- Manufacturing Bonded warehouse for Oil and Gas Platforms;
- Certified Bonded Warehouse for Export (DAC);
- Temporary admission for industrialization.

Please note that those regimes can only be applied in certain specific operations, and need to be analyzed based on a case by case basis.