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TAX INCENTIVES AND UNCERTAINTIES REGARDING INFRASTRUCTURE INVESTMENT IN BRAZIL

AN OVERVIEW OF RECENT LEGISLATIVE
CHANGES AND THEIR IMPLICATIONS

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September 19, 2024

INTRODUCTION

Overview of Infrastructure Investment in Brazil

Importance of infrastructure for economic growth

- Development of key sectors for Brazilian economics - e.g., natural gas, energy, transportation, among others.
 - Infrastructure development supports the growth of key sectors, reducing dependency on a single industry and promoting economic resilience;
 - Modern infrastructure attracts both domestic and foreign investments by providing a stable and efficient environment for businesses; etc.

Current state of infrastructure investment

- Studies indicate that 4% of Gross Domestic Product in capital investments (Capex) over two decades is required to achieve modernized infrastructure.
- Brazilian infrastructure requires an additional R\$ 200 billion in investments annually, beyond current projections, to achieve modernization and universal coverage for the entire population.

Importance of tax incentives for attracting investment

- Infrastructure projects become more attractive to investors by improving financial returns and reducing investment risks.
- Accelerating development and completion of critical infrastructure projects, supporting faster economic growth and improved public services.

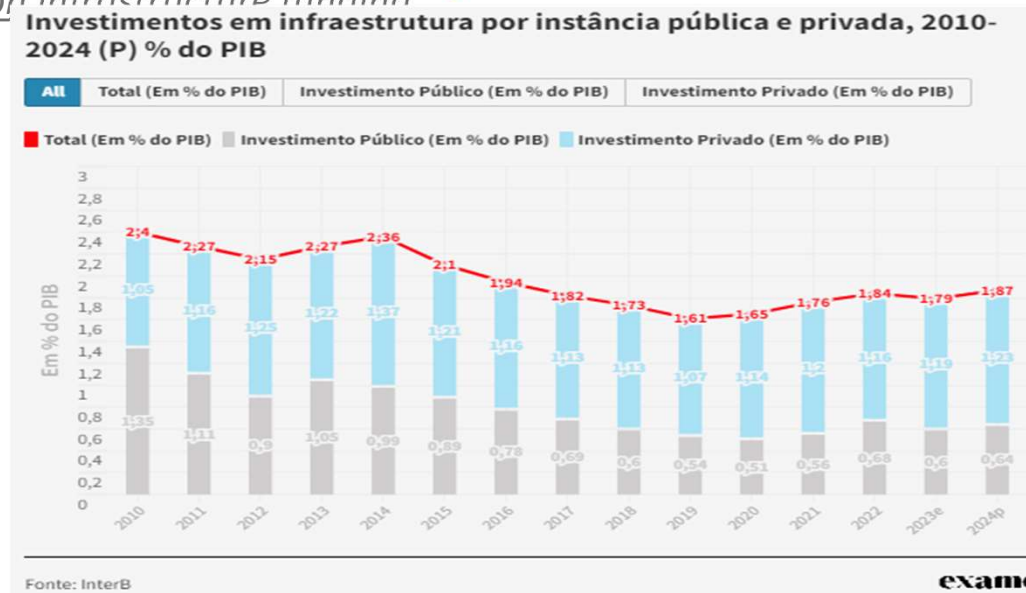
Incentivized Debentures

Law No. 12,431/2011

Introduction of incentivized debentures

- *Purpose:* incentivized debentures (debt instruments issued by corporations, with tax incentives) were designed to encourage investments in specific infrastructure projects (e.g., energy, transportation) by offering tax benefits to investors.
- *Tax Benefits:* income tax exemption or reduction on interest incomes related to the incentivized debentures.

Success and impact on infrastructure funding



<https://exame.com/economia/faltam-r-200-bilhoes-anuais-em-investimentos-para-modernizar-a-infraestrutura-mostra-estudo/>

LAW No. 14,801/2024 AND DECREE No. 11,964/2024

Overview

Key changes to incentivized debentures regulations

- Regulation may (i) waive prior ministerial approval for projects in the priority infrastructure sectors; and (ii) establish new criteria and measures to encourage the development of projects that offer significant environmental or social benefits.
- The reimbursement period for expenses or debts funded through *incentivized debentures* will be gradually extended up to 37 months.

New rules for infrastructure-targeted debentures, bonds, and funds

- Withholding income tax relief on interest from debentures issued abroad, provided they are intended to fund infrastructure projects in Brazil.
- Issuer may deduct interests from Corporate Income Tax (IRPJ and CSLL); and exclude 30% of interests paid during the fiscal year from the Real Profit and CSLL calculation basis.
- Possibility to issue debentures with exchange variation clauses.
- Debentures may not be acquired by related parties of the issuer, including those located abroad.

ELIGIBLE SECTORS FOR TAX INCENTIVES

Decree No. 11,964/2024

Eligible sectors

- Impact on different economic activities, as regulated by Decree No. 11,964/2024:
 - *Transportation Infrastructure*, including highways, railways, public and private ports, and support airports.
 - *Energy*, including **(i)** renewable energy projects; **(ii)** electricity transmission and distribution; **(iii)** natural gas and biofuel; among others.
 - *Telecommunications*.
 - *Basic Sanitation*.
 - *Urban Mobility*.
 - *Social Infrastructure*, including public healthcare and education; etc.

LEGISLATIVE CHANGES AND INNOVATIONS

Corporate Income Tax Benefits

Bill of Law No. 3,027/2024

- Creates the Program for the Development of Hydrogen Industry with Low Carbon Emission (“PHBC”)
 - Granting of Social Contribution on Net Profits (“CSLL”) credits on sale of hydrogen with low carbon emission.
 - Up to BRL 18.3 billion in credits for low-carbon hydrogen producers and consumers.
 - CSLL credits may be **(i)** used to offset other federal taxes regulated and charged by Brazilian IRS; or **(ii)** even reimbursed in cash.
 - Taxpayers must be registered with the tax authorities as per regulations to be issued following the Bill's approval.
 - Tax credits applicable on transactions carried out as of January 1st, 2028, up to December 31, 2032.
- The Bill of Law was already approved by Brazilian Congress and is awaiting presidential approval.

GAS PARA EMPREGAR PROGRAM

Decree No. 12,153/2024

Objectives of the program

- Investment in the natural gas chain
 - *Increase Natural Gas Supply:* Enhance the availability of natural gas in the domestic market to meet growing demand.
 - *Reduce Consumer Costs:* Lower the price of natural gas for end consumers, making it more affordable.
 - *Third-Party Access:* Regulate the conditions for non-discriminatory and negotiated access to natural gas offloading, treatment, processing, and storage infrastructure.
 - *Attract Investments:* Encourage both domestic and foreign investments in the natural gas sector, fostering economic growth.

Taxation questions and implications

- *Pending regulation of REGAS activities at CONFAZ level:* different ICMS benefits granted at state level.
- *Tax controversies on multi-users terminals:* e.g., uncertainties on the ICMS aspects applicable on borrowing and lending transactions.
- *Improvements on Regulations currently in force:* adjustments on “Ajuste Sinief No. 3/2018” that regulates tax aspects applicable on gas transportation through pipelines.

CONSUMPTION TAXES FRAMEWORK

Constitutional Reform

Changes to ISS, ICMS and PIS/COFINS

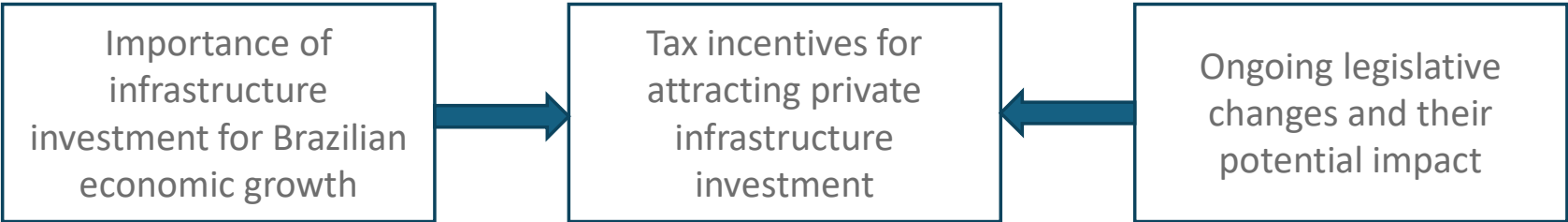
- Dual Added-Value Taxes:
 - Substitution of indirect taxes (ISS, ICMS, PIS/COFINS and IPI) charged by different federative entities by the Tax on Goods and Services (“IBS”) and Contribution on Goods and Services (“CBS”).
 - IBS and CBS are broadening their scope to include new sectors and types of transactions - e.g., new taxes will apply over assignment of rights and rental transactions.

Uncertainties regarding the new VAT

- Undefined of IBS and CBS statutory tax rates.
- Recovery of accumulated ICMS credits.
- Extinction of local ICMS and ISS tax incentives.

CONCLUSION

Summary of Key Points





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THANK YOU!

