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In this article, the author examines Brazil's efforts to combat the economic impact of the coronavirus pandemic, focusing on federal tax provisions.

Amid the COVID-19 pandemic, Brazil's President Jair Bolsonaro seems more concerned about the virus's economic consequences than its health risks.[1] Media outlets worldwide have reported on, and widely criticized, his efforts to downplay the death toll from coronavirus.[2] A federal court even halted Bolsonaro's planned media campaign because it lacked technical or scientific basis, endangered the health of Brazil's citizens, and could cause the collapse of the country's healthcare system.[3]

The health risks of COVID-19 must not be downplayed. Medical experts agree that quarantines and lockdowns are vital to slowing the spread of the virus.[4] Estimates suggest that more than 1 million Brazilians are likely to die from the coronavirus in 2020 unless social distancing takes hold.[5]

But the economic effects of a quarantine should not be ignored. When people isolate, countless industries suffer. While a few businesses that supply remote or online services may actually thrive during this crisis, the negative economic effects have strongly outweighed the positive ones across the globe — and Brazil is no exception.[6] The OECD warns that the world economy is at risk.[7] It recommends governments act swiftly to tend to people's basic needs, keep businesses alive, and enforce sound monetary policies. One of its recommendations is for countries to delay or reduce taxes on firms.

I. Overview of Tax Relief Measures

At Bolsonaro's request, the National Congress's Legislative Decree 6/2020 declared a state of public calamity in Brazil for fiscal 2020. This allows the federal government to ignore the spending limits and positive fiscal balance goals mandated by Supplementary Law 101/2000, Brazil's fiscal responsibility law. The federal government then issued the following tax relief measures:

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[1] William Hoke, "Brazil's Bolsonaro Downplaying Danger of COVID-19 Pandemic," *Tax Notes Int'l*, Apr. 6, 2020, p. 87.

[2] *See, e.g.*, Stephen Eisenhammer and Jake Spring, "Bolsonaro Urges Brazilians Back to Work, Dismisses Coronavirus 'Hysteria,'" Reuters, Mar. 24, 2020.

[3] "Justiça Suspende Campanha de Bolsonaro Contra Isolamento Social," iG Último Segundo, Mar. 28, 2020 (in Portuguese).

[4] "COVID-19: Learning From Experience," 398(10225) *The Lancet* 1011 (Mar. 28, 2020).

[5] "Report 12 — The Global Impact of COVID-19 and Strategies for Mitigation and Suppression," Imperial College London (Mar. 26, 2020).

[6] *See, e.g.*, María Fernández, "Economia Global em Quarentena," *El País*, Mar. 9, 2020 (in Portuguese); and Jamil Chade, "Brasil Tem Fuga de US$ 7 bi e ONU Prevê Crise Profunda Para Emergentes," UOL, Mar. 30, 2020 (in Portuguese).

[7] Laurence Boone, "OECD Interim Economic Outlook — Coronavirus: The World Economy at Risk," OECD Economic Outlook Interim Report (Mar. 2020).

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- Rule (Portaria) 139/2020, as amended by Portaria 150/2020, defers the federal taxes on gross income (the Programa de Integração Social (PIS), Contribuição para Financiamento da Seguridade Social (COFINS), Contribuição Previdenciária Sobre a Receita Bruta (CPRB), and rural employers' contributions) and the welfare contributions on payroll (Instituto Nacional de Seguridade Social (INSS) and Risco de Acidente do Trabalho (RAT)) for March and April to the due dates for July and September, respectively.
- Rule (Normative Instruction) 1932/2020 defers the deadline to file federal tax and contributions returns (Declaração de Débitos e Créditos Tributários Federais, or DCTF) from the 15th business days of April, May, and June to the 15th business day of July. It also defers the deadline to file the PIS and COFINS digital tax accounting originally from the 10th business days of April, May, and June to the 10th business day of July.
- Resolution CGSN 152/2020 provides a six-month payment deferral for all federal taxes under the Simples Nacional System for March, April, and May.
- Provisory Measure 927/2020 includes a three-month deferral of severance fund payments.
- Provisory Measure 932/2020 offers a 50 percent reduction of contributions to the "S System," a series of taxes destined to autonomous social services that support vocational education and training.
- Decree 10,305/2020, reduces the financial transactions tax (Imposto sobre Operações Financeiras, or IOF) on credit transactions to zero.
- Joint Rule (Portaria Conjunta) 555/2020 extends the validity of Federal Tax Debt Clearance Certificates for 90 days.
- Rule (Normative Instruction) RFB 1,927/2020 offers a simplified import process for specified goods necessary to fight or prevent COVID-19.
- Resolution CAMEX 17/2020 reduces the import tax rate to zero for listed goods necessary to fight or prevent COVID-19.
- Decree 10,302/2020 removes the excise tax (Imposto sobre Produtos Industrializados, or IPI) on national or imported products necessary to fight COVID-19.
- Provisory Measure 936/2020 includes, *inter alia*, the non-levy of income tax and welfare contributions on the compensatory aid that employers may provide employees in addition to the Job and Income Preservation Emergency Benefit that the government will provide employees who have their contracts suspended or their working hours reduced.
- Rule (Normative Instruction) 1,930/2020 defers the deadline to file individual income tax returns from April 30 to June 30, and defers the payment deadline for individual income tax (Imposto de Renda das Pessoas Físicas, or IRPF) to June 10 (single payment), June 11 (first payment), and June 30 (second payment);
- Rule (Portaria) PGFN 7,820/2020 creates an extraordinary settlement program for actionable tax debts owed to the federal union. The debtor can make initial payments of 1 percent in up to three installments and pay the balance in up to 81 monthly installments (or 97 monthly installments for individuals, individual firms, and small businesses). The first installments for this program are due on the last business day of June.
- Rule (Portaria) PGFN 7,821/2020 offers a 90-day suspension of defense, debt collection, and other administrative deadlines that fall under the Office of the Attorney General for the National Treasury.

Although some of these measures provide actual economic relief to businesses, many simply give taxpayers more time to pay their taxes or turn in their tax returns. Once the extended deadline arrives, taxpayers will have to file two or more tax returns and pay the associated taxes on the same date. Only a few measures actually help taxpayers save their tax pennies, and many of those strictly target products that fight or prevent COVID-19, so they don't really help most businesses. Two exceptions — the 50 percent reduction of System S contributions and the zero IOF rate on credit transactions — are explored more thoroughly below.

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II. Reduction of System S Contributions

System S encompasses several autonomous social services — private entities created by law that cooperate with the public administration and provide assistance or education services to specified economic or professional groups.[8] These services are funded by public budgetary allocations or by special taxes called parafiscal contributions. The fees are not established in but are accepted by the 1988 constitution, and they are generally paid in connection with a business entity's payroll. Different sectors pay for different programs:

- commercial companies support the Commercial Social Service (Serviço Social do Comércio, or SESC) and the National Service of Trade Apprenticeship (Serviço Nacional de Aprendizagem do Comércio, or SENAC);
- manufacturing companies support the Industrial Social Service (Serviço Social da Indústria, or SESI) and the National Service of Industrial Apprenticeship (Serviço Nacional de Aprendizagem Industrial, or SENAI);
- transportation companies support the Transportation Social Service (Serviço Social do Transporte, or SEST) and the National Service of Transportation Apprenticeship (Serviço Nacional de Aprendizado dos Transportes, or SENAT);
- agricultural sector and rural producers fund the Rural National Learning Service (Serviço Nacional de Aprendizagem Rural, or SENAR); and
- Brazilian cooperatives support the National Service of Cooperativism Apprenticeship (Serviço Nacional de Aprendizagem do Cooperativismo, or SESCOOP).

Under Law 8,029/1990, commercial, industrial, and transportation companies must also pay an additional parafiscal contribution of 0.3 percent to the Brazilian Micro and Small Businesses Support Service (Serviço Brasileiro de Apoio às Micro e Pequenas Empresas, or SEBRAE) based on the amount of the other contributions. SEBRAE itself only receives 70 percent of this additional contribution with 12.25 percent going to the Trade and Investment Promotion Agency (Agência Brasileira de Promoção de Exportações e Investimentos, or Apex-Brasil), 2 percent to the Agency for Industrial Development (Agência Brasileira de Desenvolvimento Industrial, or ABDI), and 15.75 percent to the Tourism Board (Empresa Brasileira de Turismo, or Embratur).

Provisory Measure 932 of March 31, 2020, reduced the rates of the parafiscal contributions by 50 percent only for April, May, and June. The table shows these rates.

System S Payments: Original and Special Rates

Contribution	Original Rate	Reduced Rate
SESC	1.5% of payroll costs	0.75% of payroll costs
SENAC	1% of payroll costs	0.5% of payroll costs
SESI	1.5% of payroll costs	0.75% of payroll costs
SENAI	1% of payroll costs	0.5% of payroll costs
SEST	1.5% of payroll costs	0.75% of payroll costs
SENAT	1% of payroll costs	0.5% of payroll costs
SESCOOP	2.5% of payroll costs	1.25% of payroll costs
SENAR	2.5% of payroll costs; 0.25% of the entity's rural production sales income; or 0.2% of an individual's rural production sales income.	1.25% of payroll costs; 0.125% of the entity's rural production sales income; or 0.1% of an individual's rural production sales income.

Although the rule does not explicitly state it, the reduction also affects the SEBRAE contribution since it is calculated based on the amount of the SESC/SENAC contributions, the SESI/SENAI contributions, or the SEST/SENAT contributions. Thus, a 50 percent reduction of the relevant group of contributions generates a 50 percent reduction in the SEBRAE contribution, even though no nominal rate reduction applies directly to SEBRAE.

[8] Hely Lopes Meirelles, *Direito Administrativo Brasileiro* (2000) (in Portuguese).

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The provisory measure did not reduce other parafiscal contributions — such as those designated for the National Agrarian Reform Institute (Instituto Nacional de Colonização e Reforma Agrária, or INCRA), or to the National Fund for Education Development (Salário Educação) — that are not part of System S.

Provisory Measure 932/2020 will now undergo a special legislative process,[9] and it will either be converted into law or discarded. Members of both houses of National Congress have already presented 118 amendments to the measure.[10] Some senators are uncomfortable with the rate reduction and the potential negative impact on the activities of the autonomous social services involved. The National Industry Confederation (Confederação Nacional da Industria, or CNI) suggests that the rate reduction will negatively affect the work of SESI and SENAI, including specific initiatives from these services aimed at fighting the COVID-19 epidemic.[11]

Nonetheless, it is worth reiterating that this is one of the few federal measures that provide actual tax savings to help businesses face the economic crisis.

III. Zero IOF Rate on Credit Transactions

The IOF is a tax on financial transactions, specifically on credit transactions, foreign exchange transactions, insurance transactions, and transactions involving securities. Unlike most Brazilian taxes, IOF rates can constitutionally be increased or reduced by executive decree rather than by law.

The IOF on credit transaction (IOF-Credit) usually includes two parts, which are governed by Decree 6.306/2007 (in particular, articles 7 and 8): a daily rate (generally of 0.0041 percent or 0.0082 percent per day, but not greater than 1.25 percent per day) and an additional, fixed rate (of 0.38 percent). The application of the daily rate is limited to 365 days, regardless of whether the payments are in installments.

Decree 10,305, of April 1, 2020, reduced both daily and additional rates for IOF-Credit to zero for transactions entered into between April 3 and July 30. This applies to transactions such as loans, credit lines, sale of receivables at a discount, depositor advances, and financings. It also applies to new IOF-Credit levies on the prorogation, renewal, novation, composition, consolidation, debt confession, and other modifications of credit transactions, as long as there is no change of debtor. Notably, the zero rate applies even if the debtor does not pay the debt on time.

With this relief measure, the government intends to further reduce the cost of low-interest, emergency credit lines that the federal government is making available to the public through the Emergency Program for Jobs Support, a nontax measure discussed briefly in Section V, *infra*.[12]

IV. New Tax Measures on the Horizon?

The United States has passed and is continuing to consider similar — and perhaps more meaningful — proposals for the health and economic well-being of its people and businesses.[13] It is also possible that Brazil will implement new emergency tax measures. New tax rules addressing the COVID-19 crisis in Brazil are being issued on a weekly, and even daily, basis.

Also, taxpayers have filed lawsuits to obtain larger and more meaningful tax benefits from the federal government,[14] with questionable success so far, given the absence of a clear legal framework to support these requests. For example, the Federal Regional Court of the Fourth Region revoked a temporary injunction that

[9] On April 1 both houses of the National Congress issued Joint Act n. 1, establishing a much shorter legislative process for provisory measures issued during the pandemic-related state of calamity. Instead of the regular review period of 60 days (renewable once), the Chamber of Deputies has the first nine days during which a provisory measure is in force to analyze it and send it to the Senate, which has until the 14th day the provisory measure is in force to conclude its works. If the Senate makes changes to the provisory measure, the Chamber of Deputies has two additional business days to analyze them.

[10] Da Redação, "Congresso Apresenta 118 Emendas à MP que Reduz Contribuições ao Sistema S," Agência Senado (Apr. 6, 2020) (in Portuguese).

[11] Estadão Conteúdo, "Governo Publica MP que Reduz Contribuição das Empresas Para o 'Sistema S,'" Exame, Apr. 1, 2020 (in Portuguese).

[12] Gustavo Garcia e Lais Lis, "Governo Reduz a Zero Cobrança de IOF de Operações de Crédito, Anuncia Receita," G1, Apr. 1, 2020 (in Portuguese).

[13] *See* Benjamin M. Willis, "Likely Democratic Tax Proposals for COVID-19 Medical Expenses," *Tax Notes Federal*, Apr. 6, 2020, p. 107; and Willis, "Likely Future Republican Coronavirus Tax Proposals," *Tax Notes Federal*, Mar. 30, 2020, p. 2073.

[14] Adriana Fernandes, "Empresas Cobram que Governo Acione Portaria de Mantega para Adiar Cobrança de Impostos por 3 Meses," *Jornal O Estado de S. Paulo*, Mar. 25, 2020 (in Portuguese).

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granted a deferral of all federal taxes during the pandemic.[15] If anything, these lawsuits are an indication that the tax measures implemented so far are insufficient.

Meanwhile, the Federal Senate is considering Constitutional Amendment Proposal (PEC) 10/2020 — a proposal to amend the constitution and create an extraordinary financial, contractual, and tax regime to address the national public calamity arising from the international pandemic. This amendment would enhance public spending and hiring, and waive public revenue requirements that cannot be met in light of increased tax incentives and other benefits. The Senate is also considering Legislative Bill 949/2020, which would suspend enumerated payroll federal taxes.[16]

Finally, an idea that has been brewing in the minds of federal legislators is to implement a tax on dividend distributions by revoking an exemption put in place in 1996 based on article 10 of Law 9,249/1995. Initially proposed as part of a more substantial and integrated tax reform,[17] the taxation of dividends is now being considered as a way to partially fund the federal government's unexpected spending initiatives.

Other ideas to help fund the COVID-19 fight include a 0.5 to 1 percent tax on great fortunes (which would mean equity equal to or greater than BRL 22,847,760 (about $4.35 million) in 2020)[18] and a compulsory loan program that would require large companies (that is, those with equity equal to or greater than BRL 1 billion) to lend money to the government (up to 10 percent of the company's net profits in the previous 12-month period, with interest-based penalties for failure to comply).[19]

Therefore, new tax measures may likely arise in the future from the legislative, rather than the executive, branch.

V. Nontax Measures

The federal government has crafted other, nontax, economic measures that may prove more beneficial for businesses than the tax-related proposals. These include flexibility in labor rules (Provisory Measure 927), suspension of employment agreements, reduction of working hours and salaries under the Emergency Program for Maintenance of Employment and Income (Provisory Measure 936), and the credit lines to assist businesses with payroll under the Emergency Program for Jobs Support (Provisory Measure 944).

Perhaps these measures will be sufficient to avoid massive employee dismissals, as well as bankruptcy and insolvency suits. Perhaps not.

In connection with the suspension of employment agreements and reduction of working hours and salaries under the Emergency Program for Maintenance of Employment and Income, Provisory Measure 936/2020 directs employers to pay compensatory aid to employees. The provision states that the compensatory aid (a) shall be an indemnification, (b) is not taxable as income to the employee and thus (c) not subject to income tax withholding by the employer, (d) shall not be included when calculating the basis for the welfare contribution and of all (employer and employee) taxes levied upon payroll, (e) shall not integrate into the calculation basis of the severance fund, and (f) may be excluded from the calculation basis of the corporate income tax (Imposto de Renda Sobre Pessoa Jurídica, or IRPJ) and of the corporate employer's social contribution on net profit (Contribuição Social Sobre o Lucro Líquido, or CSLL).

VI. Unprecedented and Evolving

The health and economic crises stemming from COVID-19 are unprecedented. The scenario is changing rapidly — and so is Brazil's response. It may be years before we can truly evaluate whether the relief provided was enough. ■

[15] *See* "Estado de Calamidade Pública Não Prorroga Vencimento de Tributos Federais Durante COVID-19," Justiça Federal Tribunal Regional Federal da 4ª Região (Apr. 6, 2020) (in Portuguese).

[16] A similar initiative, originated at the Chamber of Deputies and now in the Senate, is Bill 985/2020.

[17] Constitutional Amendment Proposal 45/2019. *See* José Rubens Scharlack, "How Will Brazilian CFCs Respond to the TCJA?" *Tax Notes Int'l*, Dec. 16, 2019, p. 1005.

[18] Legislative Bill 183/2019. *See* Da Redação, "Senador Sugere Taxar Grandes Fortunas Para Bancar Combate Ao Coronavírus," Agência Senado (Mar. 23, 2020) (in Portuguese).

[19] Legislative Bill 34/2020. *See* Câmara dos Deputados, "Projeto Obriga Empresas Bilionárias a Emprestarem Dinheiro ao Governo Para Gastos com Pandemia," Camara dos Deputados (Mar. 26, 2020) (in Portuguese).

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