

# Regulation of state and supplementary pension schemes in Brazil: overview

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A Q&A guide to pensions law in Brazil.

The Q&A gives a high level overview of the key practical issues including: state pensions; supplementary pensions; funding and solvency requirements; tax on pensions; business transfers; participation in pension schemes; and employer insolvency and overall scheme solvency.

The Q&A is part of the Global Guide to Pensions law. For a full list of jurisdictional Q&As visit [www.practicallaw.com/pensions-mjg](http://www.practicallaw.com/pensions-mjg).

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# Pensions

## State pensions

### 1. Do employers and/or employees make pension contributions to the government in your jurisdiction?

#### Contributions paid to the government

Both employers and employees make pension contributions to the government that are intended to fund the General Social Security Regime (*Regime Geral de Previdência Social*), which is managed by the Brazilian Social Security Institute (*Instituto Nacional do Seguro Social*) (INSS). These contributions are paid monthly and tax rates may vary substantially.

Generally, the INSS contribution is taken from employers (whether individuals or companies) and other entities that are regarded under the law as employers at a rate of 20% (or 22.5% for financial institutions) on payments made through their payroll. It also applies to other employment benefits paid or credited, on any account, to individuals that provide services to them, whether or not under an employment relationship.

These entities must also pay contributions for labour accident insurance at a rate of up to 6% for compensation paid under their payroll. The rate depends on the level of risk of the activities carried out by the company. Contributions must also be paid to entities of the "S" System, which are entitled to promote social services and welfare or the formation of professional services. Such contributions are paid in accordance with the activity of the company (industrial, commercial or services), usually at a rate of up to 5.8%.

The rates of social contributions that employees must pay vary according to their salaries, and are withheld by the employer. For 2015, employees must pay social security contributions at the following monthly rates:

- Up to BRL1,399.12 at a rate of 8%.
- From BRL1,399.13 to BRL2,331.88 at a rate of 9%.
- From BRL2,331.89 to BRL4,663.75 at a rate of 11%.

If employees earn above BRL4,663.75, the rate of 11% must be calculated on the fixed amount of BRL4,663.75, regardless of the amount of salary. Therefore, the current cap of social security contributions is BRL513,00, which corresponds to 11% of BRL4,663.75.

Other taxpayers, such as domestic employers, self-employed workers and certain companies carrying out specific activities, are subject to different rates and rules. Public sector (government) workers are subject to a different regime, under specific pension provisions.

#### Taxation of contributions

Contributions made to the public pension program may be deducted from the employee's taxable income for income tax purposes (*Article 8( II)( d), Law No 9250, 26 December 1995*). Employer contributions are deducted from the employer's income as a deductible expense for corporate tax purposes.

#### Monthly amount of the government pension

Social Security provides several types of benefits and aids to the insured workers.

As a general rule, retirement is granted on compliance with the following conditions:

- For men, 35 years of contribution and for women, 30 years of contribution.
- or
- 65 years of age, for men, and 60 years, for women.

Additional factors may mean the person is entitled to pensions payments from an earlier date than listed above, such as:

- Time spent on education.
- Activities carried out under certain conditions that are harmful to health or physically prejudicial.
- Where the insured persons have disabilities.

The amount of state pension received depends on the amount of contributions made during active employment, among other things. Currently, the range for monthly state pension payments is between BRL788 and BRL4,663.75.

## Supplementary pensions

**2. Is it common (or compulsory) for employers to provide access, or contribute, to supplementary pension schemes for their employees? If they do, are they:**

- **Occupational (that is, linked to an employment or professional relationship between the plan member and the entity that establishes the plan)?**
- **Personal (that is, not linked to an employment relationship, established and administered directly by a pension fund or a financial institution acting as pension provider, where individuals independently purchase and select material aspects of the arrangements, though the employer may make contributions)?**

Many employers provide supplementary pension plans to their employees even though this is not a legal requirement.

Under the law, a private pension scheme (*Regime de Previdência Privada*) is complementary and must be organised on an autonomous basis in relation to the governmental scheme. Private schemes are optional and based on the formation of reserves that guarantee the contracted benefit.

There are two types of complementary pension entities:

- **Open Private Pension Entities (*Entidades Abertas de Previdência Complementar*).** These offer pension plans to any individual, regardless of the existence of employment or occupational relationships. The plans offered by such entities can be personal (accessible to any individual) or collective (accessible to individuals linked, directly or indirectly, to certain companies).
- **Closed Private Pension Entities (*Entidades Fechadas de Previdência Complementar*).** These are also known as pension funds and are non-profit entities engaged in the management and implementation of social security benefits that are only accessible to employees of a single

company or group of companies, to public servants or members of a professional category, class or sector.

### **3. Where supplementary schemes are provided, do these schemes provide pensions, the value of which:**

- **Is linked to the employee's salary (defined benefit)?**
- **Is linked to employer and/or employee contributions and investment return on those contributions (defined contribution)?**

Private pension plans can be classified as either:

- **Defined contribution plans.** Here the contributions to be paid by the participants or employers (as sponsors) are defined when the relevant agreement is executed. In this type of scheme, the pension or benefits are defined at the time they are granted based on the amount of the contributions that were made.
- **Defined benefits plans.** Here the pension or benefits to be granted to participants are previously defined, based on calculations set out in the rules of the scheme.

There are also variable contribution plans, the benefits of which have characteristics of the other two types of plans. For instance, the criteria for pensions may be defined when the plan is agreed and the contributions may vary.

Enrolment in these plans is always voluntary and the law does not set out minimum levels of contributions to be provided by either participants or employers.

### **4. For supplementary pensions:**

- **Is there a minimum period of service before workers are entitled to receive vested rights?**
- **Are there any legal requirements for schemes or providers to index pensions in payment and/or revalue pension rights in deferment?**

#### **Minimum period of service**

Given the contractual nature of the supplementary pension schemes, eligibility to vesting rights depends on the rules of each plan.

#### **Legal requirement to index**

Supplementary pension schemes are regulated by Complementary Law No 109 of 29 May 2001 and regulations issued by regulatory bodies (see [Question 6](#)).

#### **Funding and solvency requirements**

### **5. In relation to supplementary schemes, are these generally funded or unfunded? If funded, are there any solvency requirements on the sponsoring employer or provider?**

## **Funded or unfunded?**

Complementary private plans are generally funded. Participants or employers (as sponsors) make regular contributions that are managed by the private plan entities in order to grant future pension or benefits.

## **Solvency requirements for funded schemes**

To ensure the solvency of private pension plans, Complementary Law No 109 of 29 May 2001, together with the regulations issued by regulatory bodies, set out guidelines that must be followed by private pension entities when managing and investing the funds. These rules seek to enforce, in a conservative and prudential manner, economic (interest rates) and demographic (longevity) assumptions.

### **6. In relation to access for members to the funds in their supplementary pension scheme:**

- **To what extent can members transfer their funds to another pension scheme?**
- **How do members normally take the benefit of their funds (for example, lump sums, income withdrawals (drawdown), life annuity arrangements)?**
- **What are the legal restrictions upon access to the funds (for example, age)?**
- **What are the common arrangements for early retirement and ill-health retirement?**
- **Are dependants of deceased members entitled to receive benefits payable on the member's death? What form do these commonly take?**

## **Member's transfer of funds**

Rights of an individual under a private pension plan can be transferred to another plan. For example, an employee can transfer his rights in an existing plan to another one (either closed or open entities) where there is termination. In this case, it is not possible to make withdrawals, only to choose to receive the benefit in accordance with the income defined by the new plan conditions.

## **Taking pension benefits**

Benefits granted to participants of private pension plans depend on the rules applicable to each plan, which are usually set out in the relevant contract. Usually pensions are granted by programmed withdraws or lump sums paid to the participants on the fulfilment of certain conditions.

## **Legal restrictions**

Only individuals can participate in private pension plans. Companies can only make contributions as sponsors, providing benefits to be granted to individuals (usually their employees or officers). There are no legal restrictions concerning participation of individuals.

## **Early and ill-health retirement**

Benefits to be granted to participants of private pension plans depend on the rules applicable to each plan, which are usually set out in the relevant contract. Early and ill-health retirement provisions are not compulsory under Brazilian law and rules applicable to these benefits, if they

are granted, vary greatly from one private plan to another. Rules and requirements can be freely negotiated between the parties.

## **Dependants' benefits**

Contributions for private pension plans are made to finance benefits for the participants. Therefore, where the participant dies, their dependants (or persons appointed by them in the plan contract) are entitled to receive benefits or pensions or to withdraw amounts referring to the past contributions, in accordance with the rules applicable to each plan.

### **7. Is there a regulatory body that oversees the operation of supplementary pension schemes? Do any other governance regimes apply to supplementary pension schemes?**

#### **Regulatory body/framework**

Open pension plans are overseen by the Private Insurance Supervisory Authority (*Superintendência de Seguros Privados*) (SUSEP), which is linked to the Ministry of Finance. The National Board of Private Insurance (*Conselho Nacional de Seguros Privados*) (CNSP), which is also attached to the Ministry of Finance, is in charge of the regulations.

The National Superintendence of Complementary Pensions (*Superintendência Nacional de Previdência Complementar*) (PREVIC) is linked to the Ministry of Social Security and oversees the closed pension plans. The National Board of Complementary Pensions (*Conselho Nacional de Previdência Complementar*) (CNPC) is responsible for setting the relevant regulations.

#### **Penalties for non-compliance**

Complementary Law No 109 of 29 May 2001 sets out the penalties for breaching rules and regulations of private pension plans and is applicable to both entities and individuals. These penalties include:

- A warning.
- Suspension of activities.
- Loss of rights.
- Fines.

#### **Tax on pensions**

### **8. Are any tax reliefs available on contributions to supplementary pension schemes (by the employer and employees)?**

#### **Tax relief on employer contributions**

Companies are exempt from paying social security contributions to Brazilian Social Security Institute (*Instituto Nacional do Seguro Social*) (INSS) on the amounts paid to private pension plans where these plans are granted to all their employees and officers (*Article 214(9)(XV)*, *Decree No 3048 of 5 March 1999*).

Companies can also deduct their contributions to private pension plans from their taxable profits for corporate income tax purposes (corporate income tax (*Imposto de Renda da Pessoa Jurídica*) (IRPJ) and social contribution on net profits (*Contribuição Social sobre o Lucro Líquido*) (CSLL)), as operational expenses for an amount equivalent to 20% of the compensation paid to employees and officers participating in the plan (*Article 11, Law No 9532, 10 December 1997*).

Employees and officers are exempt from income tax on contributions made to supplementary pension schemes by their employers on their behalf.

## **Tax relief on employee contributions**

Employees may deduct from their annual taxable income the contributions they make to private pension schemes, for example, to the *Plano Gerador de Benefícios Livre* (PGBL). A deduction is limited to 12% of their annual taxable income and, in order to be entitled to the deduction, employees must also be contributing to the applicable public pension programme (*Article 11, Law No 9532, 10 December 1997*). Another type of private pension scheme is the *Vida Gerador de Benefício Livre* (VGBL) but contributions made into this plan are not deductible.

### **9. Are there any approval or registration requirements with the local tax authority where a supplementary scheme is established?**

The establishment of an open plan is subject to the approval of the Insurance Supervisory Authority (*Superintendência de Seguros Privados*) (SUSEP) and the establishment of closed pension entities are subject to the approval of the National Office for Complementary Private Pensions (*Secretaria de Previdência Complementar*) (SPC).

### **10. What is the tax treatment of investments made by the scheme?**

Investments are generally not subject to withholding income tax and corporate taxation since funds will be taxed when paid to individual participants. However, certain investments may trigger a tax on financial transactions (IOF).

### **11. What is the tax treatment of pension and lump sum payments made to members?**

There are two tax options for private pension products:

- The progressive taxation system (PGBL).
- The regressive taxation system (VGBL).

Members must choose one of these for a private pension plan.

Under the regressive taxation system, pension benefits are subject to a final or definitive withholding income tax levied at regressive rates that vary according to the length of time that contributions to the plans have been made, as follows:

- Up to two years at a rate of 35%.
- Between two and four years at a rate of 30%.
- Between four and six years at a rate of 25%.

- Between six and eight years at a rate of 20%.
- Between eight and ten years at a rate of 15%.
- Over ten years at a rate of 10%.

Under the progressive taxation system, withholding income tax will be levied at the regular withholding income tax rates (from zero to 27.5%) and this income will be added to the individual's ordinary taxable income under his annual income tax return. Taxes previously withheld at source will be credited against the individual's annual tax liability.

The main tax difference between the PGBL and the VGBL schemes is that under:

- The PGBL, income tax is levied on the whole amount of the funds received by the individual, including the original contributions made.
- The VGBL, income tax is levied only on the net income received, so the amounts corresponding to the original contributions made are not taxed.

## 12. Are there any other applicable tax charges on schemes?

Some pensions and benefits may be subject to other tax charges, such as a tax on financial transactions (*Imposto sobre Operações Financeiras*) (IOF) depending on the way that they are granted.

## Business transfers

### 13. Is there any legal protection of employees' pension rights on a business transfer?

Labour law expressly establishes and recognises the concept of labour succession in that a change in a company's ownership or legal structure does not affect existing employment contracts and vested rights of the respective employees.

## Participation in pension schemes

### 14. Can the following participate in a pension scheme established by a parent company in your jurisdiction:

- Employees who are working abroad?
- Employees of a foreign subsidiary company?

#### Employees working abroad

There are no legal restrictions for employees working abroad to participate in private pension plans established by a participating company in Brazil, provided that there are no restrictions in the relevant private pension plan contract.

#### Employees of a foreign subsidiary company

Collective pension plans offered by open private pension entities are accessible to individuals indirectly linked to certain companies, such as employees of subsidiary companies. Employees of a foreign subsidiary company may be a participant provided that there is no restriction in the relevant private pension plan contract.

## Employer insolvency and overall scheme solvency

**15. Is there any protection provided for pension scheme benefits where the sponsoring employer becomes insolvent? If so, who provides the protection, and how does this operate? If the scheme itself is underfunded, are there any funding obligations on connected or associated legal entities?**

The sponsoring employer participates in the pension scheme by making contributions to give benefits to its employees. The funds are not managed by the employer who has no influence over their investments. Therefore, the funds remain protected if the sponsoring employer becomes insolvent.

Complementary Law No 109/2001 sets out detailed rules where the private pension entity becomes (or will imminently become) insolvent.

The regulatory bodies (see [Question 6](#)) can intervene in the private plan entity to protect the rights of participants and beneficiaries where there are, among other things:

- Irregularities or insufficient technical reserves.
- Inappropriate application of the entities' assets.
- Non-compliance with statutory provisions.
- Obligations under the regulations of benefit plans.

An intervention by the regulatory bodies is performed during the period of time that it is necessary to prepare a recovery plan or an extrajudicial liquidation (in case of insolvency). In that case, participants' rights are given preference over other debts, under the relevant insolvency rules.

## Online resources

### Brazilian President's Office

W. [www2.planalto.gov.br/presidencia/legislacao](http://www2.planalto.gov.br/presidencia/legislacao)

**Description.** This website is maintained by the federal government and contains official and up-to-date legislation currently in effect in Brazil. All information is in Portuguese and there is no official translation in English.

### Ministry of Social Security

W. [www.previdencia.gov.br](http://www.previdencia.gov.br)

**Description.** This website is the source of social security information, maintained by the federal government. All information is in Portuguese and there is no official translation in English.

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