

7. Taxation of communication and broadcasting services

This chapter analyses the taxation of communication and broadcasting services in Brazil. It looks at taxes and fees applied to the communication sector, which affect both operators and consumers, before reviewing broadcasting and pay TV. In addition to discussing taxes and fees, it sheds light on the complexities of the system by examining related import duties, and administrative and compliance costs. It also examines tax incentives to encourage investment in the sector, both at the federal and state level.

Taxation of communication and broadcasting services in Brazil

Communication companies in Brazil face a multitude of taxes and fees. Some taxes are specific to the communication sector, while others apply to all sectors. The overall tax burden in Brazil is high compared to other countries, and similar or even greater than in some other OECD countries. In 2017, overall tax revenue to gross domestic product (GDP) in Brazil was 32.3%, while it was 16.2% in Mexico, 20.2% in Chile and 27.1% in the United States. Nevertheless, tax revenue to GDP is still lower than the OECD average of 34.2% (OECD, 2019^[1]).

General taxes, i.e. not specific to the telecommunication sector, include:

- the corporate income tax (Imposto sobre Renda de Pessoa Jurídica, IRPJ) with a standard tax rate of 15% and a surtax of 10% for profits above BRL 240 000 (USD 61 069)¹
- the social contribution on profit (Contribuição Social sobre o Lucro Líquido, CSLL) with a levy of 9% on profits (before provisions for IRPJ) for other than financial companies
- the contribution to the social integration programme (Programa de Integração Social, PIS; Programa de Formação do Patrimônio do Servidor Público, PASEP) with a 0.65% tax rate applied to turnover
- the contribution to the social security financing (Contribuição para o Financiamento da Seguridade Social, COFINS) with a 3% tax rate on turnover.

Companies in the communication sector tend to be large and formal. This contrasts with other sectors, such as food and beverage, where informal micro companies and small and medium-sized enterprises often prevail. Tax collection of large communication operators can therefore be carried out easier, but is not necessarily efficient or inexpensive.

Brazilian communication companies face a number of taxes and fees additional to the ones listed above. If these costs are passed on to consumers, they may influence the prices of communication services. In a 2017 survey, Brazilian households reported the costs of Internet access were the most important reason for not having it (CGI.br, 2018^[2]). Thus, high fees and taxes in the sector may risk hampering levels of adoption of communication services, as well as innovation and investment. This is especially problematic since the communication sector creates many positive spillover effects throughout the economy.

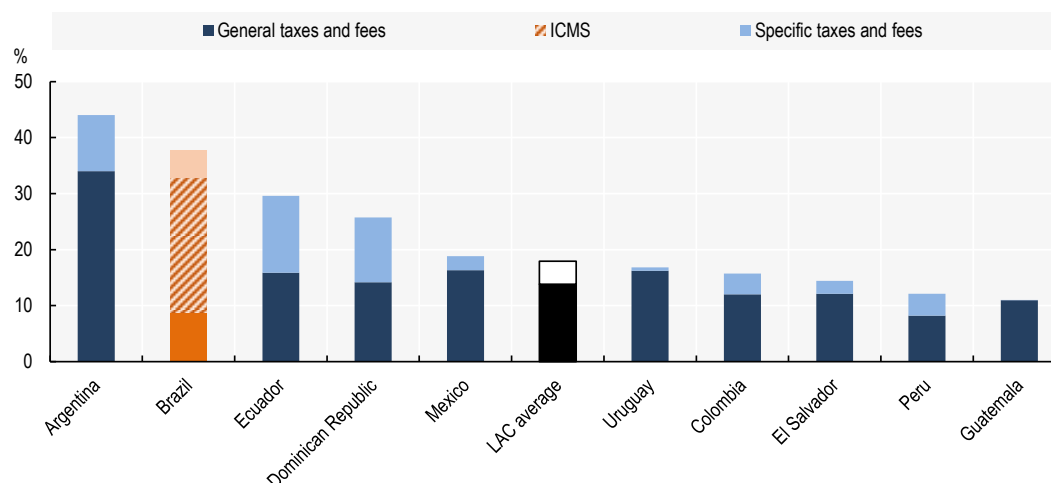
Taxes and fees applied to the communication sector

The Brazilian communication sector faces a wide variety of taxes, both on consumers and on operators. Consumers of mobile services in Brazil are subject to a substantial tax burden. Mobile devices are taxed at purchase, when services are activated and when they are used. Brazil is one of the countries in the region with the highest usage tax, as a result of significant sector-specific taxes (Figure 7.1).

ICMS

Brazil is fiscally decentralised, one of the countries where subnational governments have the highest tax revenue to GDP ratios (OECD, 2016^[3]). Brazilian states have a greater level of own-source revenue than the international average (OECD, 2018^[4]).

Figure 7.1. Level of taxation on communication services, as a percentage of mobile sector revenues, in Brazil and Latin American countries



Notes: Data based on actual tax payments as a percentage of mobile sector revenues. The ICMS is a dedicated Brazilian tax. It is levied on the movement of goods and transport and telecommunication services (see below). Data have been collected in 2018 for Brazil; in 2017 for Ecuador; in 2016 for Argentina; in 2015 for Mexico, Colombia and El Salvador; and in 2014 for the Dominican Republic, Uruguay, Peru and Guatemala.

Source: GSMA Intelligence (2020^[5]), *Data and Analysis for the Mobile Industry* (database), <https://data.gsmaintelligence.com/> (accessed on 20 March 2020).

The country does not have a general value-added tax system. However, Brazilian states levy the Imposto sobre Circulação de Mercadorias e Serviços (ICMS), which applies to the movement of goods and transport and telecommunication services. It represents one of the heaviest fiscal burdens to the communication sector. The rate, which lies between 25% and 37%, is determined by each state separately. Therefore, rates depend on where the services are consumed (Table 7.1).

Table 7.1. ICMS by federative unit (states and Federal District)

State	ICMS (%)
Acre, Espírito Santo, Piauí, Roraima, Santa Catarina and São Paulo	25
Maranhão and Minas Gerais	27
Bahia and Federal District	28
Amapá, Goiás, Mato Grosso do Sul, Paraná and Tocantins	29
Alagoas, Amazonas, Ceará, Pará, Pernambuco, Paraíba, Rio Grande do Norte, Rio Grande do Sul and Sergipe	30
Mato Grosso and Rio de Janeiro ¹	30
Rondônia ¹	37

1. In Rio de Janeiro and Rondônia, the aliquot includes 2% of a state fund to fight poverty.

Note: ICMS = Imposto sobre Circulação de Mercadorias e Serviços.

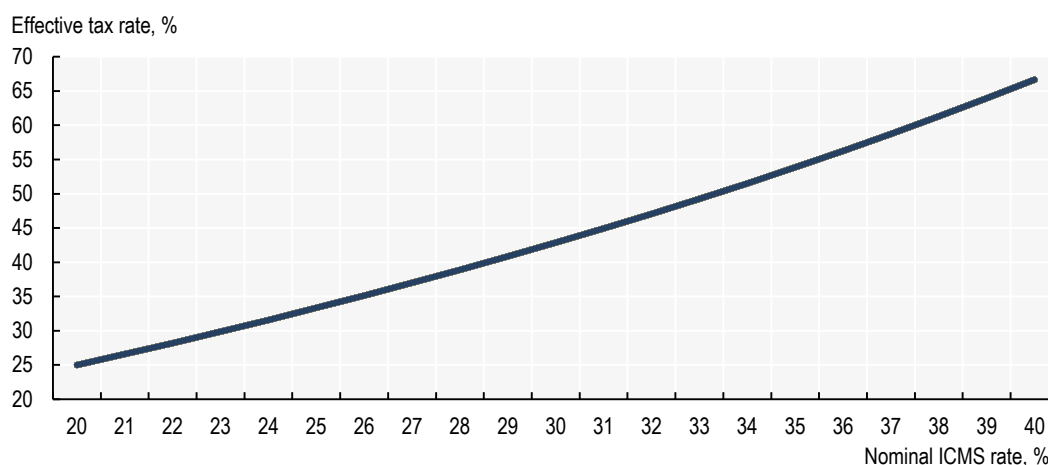
Source: MCTIC's response to the questionnaire of the review.

Designated ICMS tax rates can reach up to 37%, but may be misleading. The official ICMS rate does not represent the effective tax burden on customers. Unlike conventional taxation methodology where a certain percentage is levied on a base price, ICMS rates are applied to the sum of both the tax base and tax amount to be paid. In other words, the ICMS integrates its own tax base when goods and services that are charged with it are purchased (in Portuguese referred to as *imposto por dentro*, in contrast to conventional taxation methodology, or *imposto por fora*).²

The effective tax rate is therefore higher than the designated tax rate. In addition, the tax base for the ICMS is further increased as it incorporates contributions to the social integration programme (PIS) and the social security financing (COFINS). This artificial increase of the tax base prior to levying the ICMS rate results in a higher effective tax rate.

Moreover, the designated ICMS rate and the effective ICMS rate have a convex relationship. In other words, the effective tax rate increases proportionally faster than the nominal rate increases. Therefore, the effect of the “tax from within” weighs even heavier on states with higher rates (Figure 7.2).

Figure 7.2. Nominal and effective ICMS rate in Brazil



Notes: ICMS = Imposto sobre Circulação de Mercadorias e Serviços. The graph shows the effective tax rate when the nominal ICMS rate is considered (integrated into the tax base).

The availability and adoption of communication services usually have positive effects on the development of a country (Auriol and González Fanfalone, 2014^[6]). Nevertheless, some poorer Brazilian states have high ICMS rates.³ Such high rates are further aggravated by the convex relationship between nominal and effective ICMS rates. Hence, effective ICMS rates tend to be disproportionately higher in some lower income states. This may be a significant barrier for poorer parts of the population. It could prevent them from being able to connect to the Internet and participate in the digital economy.

Value-added services and telecommunication services

Due to historic reasons as described in Chapter 2, Brazilian law distinguishes between what is called value-added services (serviços de valor adicionado, SVAs) and telecommunication services. SVAs are all services that, in any way, “complement” and “assist” telecommunication activities. For fixed broadband access, the most common example of telecommunication services in Brazil are “multimedia communication services” (Serviços de Comunicação Multimídia, SCMs).⁴ The most prominent example of an SVA is the Internet connection service (essentially, the authentication of the user in the network).

Anatel generally does not regulate SVAs. They are also not subject to the ICMS because they are not considered telecommunication services. Thus, for example, the connection service of Internet access providers is not subject to the ICMS.⁵ On the other hand, SCMs facilitate the emission or reception of information. Thus, they establish simultaneous communication between peers, like any telecommunication service. As such, they are

considered communication services. Multimedia communication services are regulated, supervised by Anatel and subject to the ICMS.

Adding to the complexity of the ICMS, the distinction between SCMs and SVAs for tax purposes is subject to legal disputes between companies of the sector and tax authorities. Government bodies have been unable to provide clear guidance on the exact delineation between SCMs and SVAs or, for example, where Internet connection services end and telecommunication services start. MCTIC is currently conducting a public bidding process to commission the work of clarifying some of the technical and fiscal issues around SCMs and SVAs.

Lack of clarity between SCMs and SVAs is an added burden on the communication sector. It may affect the administrative resources needed by both companies and tax authorities, and also market structure. For example, the confusion may complicate the market entry, ongoing business and growth of smaller operators. These smaller operators may not have the financial and/or human resources for associated legal and administrative costs. However, smaller operators may also go under the radar of regulation and tax authorities, which might benefit them.

In both cases, the complexity of the ICMS leads to a loss of economic surplus. In light of convergence, a single-class licensing regime eliminating the distinction among different communication services (SCM, SeAC, SMP, STFC, SVAs) could minimise administrative burdens, legal costs and the potential for tax arbitrage.

Besides taxes, operators are obliged to contribute to sector-specific funds, which translate into additional levies for operators. Namely, they must contribute to the Telecommunications Oversight Fund (Fundo de Fiscalização das Telecomunicações, FISTEL), the Universal Service Fund (Fundo de Universalização dos Serviços de Telecomunicações, FUST), and the Telecommunication Technological Development Fund (Fundo para o Desenvolvimento Tecnológico das Telecomunicações, FUNTTEL).

FISTEL

FISTEL was established through Law No. 5 070 of 1966. It aimed to provide resources to cover administrative expenses of the federal government with respect to the monitoring of telecommunication services. The fund is financed through two complementary fees. An installation fee (Taxa de Fiscalização de Instalação, TFI) is charged once for every new radiocommunication station deployed.⁶ Meanwhile, an operational fee (Taxa de Fiscalização de Funcionamento, TFF) is charged yearly for every station.

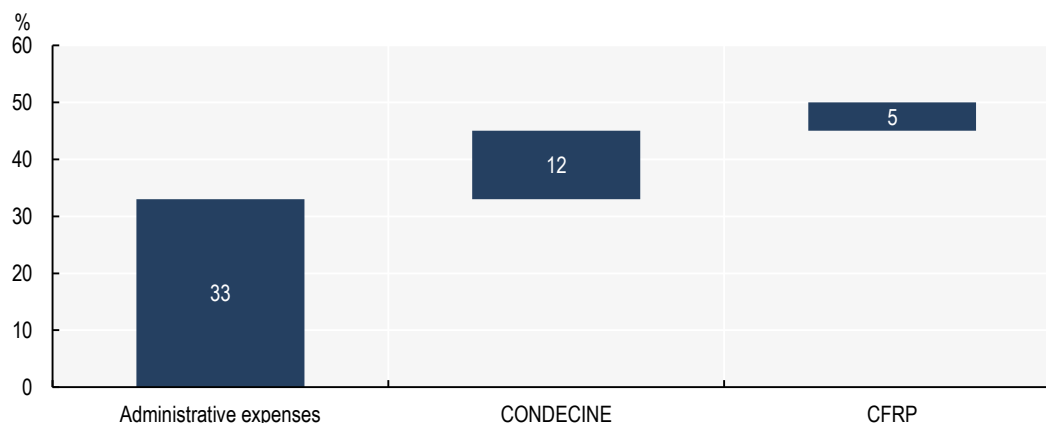
The annex of Law No. 5 070 determines the value of each TFI and TFF subject to FISTEL. It also determines the corresponding fee value in a table according to the technical characteristics of the station type, e.g. mobile versus base station.⁷ The TFI value corresponds to the value presented in the table, while the TFF amount corresponds to 33% of the TFI. Due to its level of detail, the annex of the FISTEL law has implications for the respective fees to be paid. It also has implications for definitions of types of services listed in the annex.

Revenues from station licensing are also used to promote the national film industry and public television. In 2011, the SeAC law (Lei do Serviço de Acesso Condicionado) established that telecommunication operators must also help develop Brazil's domestic film industry. Specifically, they contribute an additional 12% of the TFI annually through the Contribution for the Development of the National Film Industry (Contribuição para o Desenvolvimento da Indústria Cinematográfica Nacional, CONDECINE),⁸ which was created in 2001.

In addition, revenues from station licensing are used for the Contribution to Foster Public Broadcasting (Contribuição para o Fomento da Radiodifusão Pública, CFRP).⁹ This fund aims to improve public broadcasting services and increase their penetration through use of communication services. Telecommunication operators contribute 5% of the TFI yearly to CFRP.

Both CONDECINE and CFRP add to the regular burden stemming from FISTEL. Thus, the yearly contribution of the communication service providers for each licenced station corresponds effectively to half of the installation fee (Figure 7.3).

Figure 7.3. Annual fees for administrative expenses as a percentage of TFI in Brazil



Before September 2014, the TFI was imposed equally on all new SIM cards and the TFF on all active SIM cards. Under the FISTEL system, machine-to-machine (M2M) SIM cards were taxed at the same rate as traditional SIMs. However, M2M technologies and services represent a lower share in the average revenue of operators. Therefore, this tax rate hampered adoption of M2M technologies, as it became too expensive to provide related services.

This taxation policy was changed through Law No. 12 715 of 2012 and Decree No. 8 234 of 2014 to promote investment in M2M services. The changes reduced taxes imposed on M2M SIM cards. Specifically, the TFI on each M2M device was reduced from BRL 26.83 (USD 11.42) to BRL 5.68 (USD 2.42). Meanwhile, the TFF was reduced from BRL 8.94 (USD 3.80) to BRL 1.89 (USD 0.80).¹⁰ This policy reduced economic barriers to expand use of M2M technologies that are essential to develop and promote Internet of Things technologies.

Decree No. 9 854 of 2019 later defined the application of the tax break to “telecommunications networks, including access devices, that transmit data to remote applications for the purpose of monitoring, measuring and controlling the device itself, the environment around it or data systems connected to it through such networks”. This new definition helps to avoid uncertainty with respect to how much human interaction is allowed for devices to still classify as being part of the M2M category.

In September 2019, the Constitution, Justice and Citizenship Commission of the Chamber of Deputies approved Bill No. 7 656 of 2017, which reduces the TFI and TFF imposed on M2M SIM cards to zero. The bill was awaiting Senate approval.

FUST and FUNTTEL

FUST, established by Law No. 9 998 of 2000, aimed to expand the universal service coverage and provision of telecommunication services (voice) in areas that do not attract sufficient private investments.¹¹ FUST represents 1% of the gross revenues of telecommunication

operators (ICMS and other taxes deducted). The FUST law was amended recently, clarifying that the contribution is not levied on broadcasting services.

FUNTTTEL, established by Law No. 10 052 of 2000, aimed to foster technological development and research in Brazil. FUNTTTEL amounts to 0.5% of the gross revenues of telecommunication operators (other taxes deducted). The fund supports technological innovation, provides training, fosters job creation and provides small and medium enterprises with access to capital.

FUNTTTEL is administered by a management council, composed by representatives of Anatel; the Ministry of Development, Industry and Foreign Trade (Ministério da Economia, Indústria, Comércio Exterior e Serviços); the National Bank for Economic and Social Development (Banco Nacional de Desenvolvimento Econômico e Social); and the Funding Authority for Studies and Projects (Financiadora de Estudos e Projetos).¹²

Brazil should consider integrating FISTEL, FUST and FUNTTTEL into one single contribution. Recently, for example, Colombia consolidated different sectoral contributions (OECD, 2019^[7]). An integration of all fund contributions into one single contribution may furthermore reduce administrative costs and increase efficiency.

In the long run, all sectoral contributions and funds in the communication sector should be abolished. At the same time, the sectoral regulator should have solid funding. Specifically, resources should be available for specific broadband deployment projects in areas where private funding may prove to be insufficient. The plethora of contributions that has to be paid compromises the sector's potential for innovation and investment. In consequence, it hinders the adoption and affordability of communication services.

Revenues and use of funds

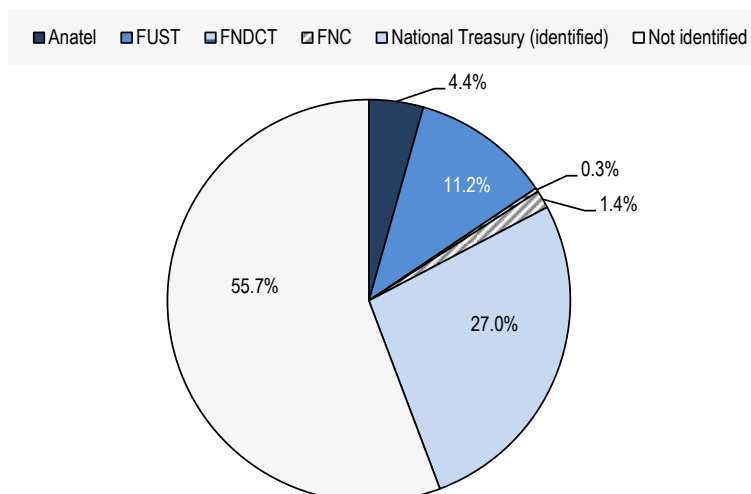
From January 1997 until December 2019, FISTEL's revenue amounted to BRL 93.59 billion (USD 23.8 billion). FISTEL's revenue for 2019 was BRL 2.6 billion (USD 0.66 billion) (Anatel, 2020^[8]). It should be noted that from 2016 onwards, these amounts consider the discount of the "Untying of Union Revenues" (Desvinculação de Receitas da União, DRU) instituted through Constitutional Amendment No. 93 of 2016. The DRU is a mechanism that allows the federal government to use 30% of all federal funds.

Total revenues from FUST amounted to BRL 22.2 billion (USD 5.7 billion), considering the period from 2001 until October 2019. Up to October 2019, FUST collected BRL 1.2 billion (USD 0.31 million) (Anatel, 2020^[9]).

In 2017, the Federal Court of Accounts (Tribunal de Contas da União, TCU) indicated that the actual destination and usage of revenues generated by FISTEL, FUST and FUNTTTEL had deviated historically from their legally defined destination and usage. Between 1997 and 2016, FISTEL collected BRL 85.45 billion (around USD 26.8 billion) in fees and fines. However, Anatel only used about BRL 3.73 billion (around USD 1.17 billion) or 4.4% to cover administrative expenses (*fiscalização de telecomunicações*) (TCU, 2017^[10]). Around 11.2% have been transferred to FUST, while around 27% have been identified to have been moved to the National Treasury. TCU assumes the remaining 55.7% have also been transferred to the National Treasury (TCU, 2017^[10])(Figure 7.4).

TCU stated that for resources channelled through FUST, actual usage deviates even more from the designated usage for universal service. Only around BRL 341 000 (around USD 106 897) has effectively been used for universalisation of telecommunication services, i.e. less than 0.002% (TCU, 2017^[10]). This stems from the fact, that to date, there has been only one plan for using the fund (Plano de Metas para a Universalização I).

Figure 7.4. Usage of FISTEL in Brazil, 1997-2016



Notes: FNDCT = Science and Technology Fund (Fundo Nacional de Desenvolvimento Científico e Tecnológico); FNC = National Culture Fund (Fundo Nacional de Cultura). Funds transferred to the National Treasury were first identified in 2008.

Source: OECD based on TCU (2017_[10]), “Acórdão No. 1 427”, <https://pesquisa.apps.tcu.gov.br/#/documento/acordao-completo/1427%252F2017%2520/%2520/DTRELEVANCIA%20desc,%20NUMACORDAOINT%20desc/0/%20?uuid=9a7ca480-f123-11e9-88b4-5bcfdb2e2702>.

This plan, established by Decree No. 6 039 of 7 February 2007, aimed at supporting institutions assisting hearing-impaired persons. However, most of the fund’s resources between 2004 and 2016 (BRL 20.6 billion [around USD 5.9 billion]) were used for other, only remotely related expenses. These include payment of the domestic public securities debt and social security benefits.

FUNTEL resources have historically gone beyond technological development and research. Between 2001 and 2016, around 28.1% of the BRL 7.18 billion (around USD 2.06 billion) was transferred to the Science and Technology Fund (Fundo Nacional de Desenvolvimento Científico e Tecnológico) and the Telecommunications Research and Development Centre (Centro de Pesquisa e Desenvolvimento em Telecomunicações). Around 35% remains in the fund for investments, while the rest of the money collected is channelled towards other purposes not directly linked to the fund’s (TCU, 2017_[10]).

There is currently a proposal for an amendment of the Constitution to reform public funds, which could lead to the abolishment of sectoral fees. The proposal, which was sent to Congress in November 2019, establishes that all funds will need to be recreated by law within two fiscal years after the enactment of the constitutional amendment. If the funds are not recreated, the sectoral funds would be automatically extinguished. This, however, would not cease the collection of revenues from service providers. Instead, it would effectively transform a fee into a tax.

Meanwhile, MCTIC is planning a specific amendment to the FUST law. It would modify use of funds generated through FUST, allowing them to be used to expand broadband in the country. Additionally, the Chamber of Deputies is discussing Bill No. 1 481 from 2007, which proposes to use FUST to provide broadband in schools. The Senate would have final approval.

As resources collected through FISTEL, FUST and FUNTEL have largely not been used for the purposes for which they are designated, the actual use of the fund contributions

exclusively for the development of Brazil's digital economy is highly recommended. Contributions could be reduced or used more effectively to develop digital transformation in Brazil, particularly through expansion of broadband services.

It is important to note that especially law proposals aiming at abolishing the sectoral funds for communication services but keeping sectoral fees cannot be recommended under any circumstance. Such proposals imply the transformation of fees into a *de facto* tax and would lead, again, to a double taxation of the communication sector.

In sum, fees and special taxes in the communication sector represent around 40.2% of the tax burden for fixed and mobile broadband services (Anatel, 2020^[11]). Table 7.2 summarises all sector-specific taxes and fees applying to the communication sector in Brazil.

Table 7.2. Taxes and fees applying to the telecommunication sector in Brazil

	Fee/tax	Description	Amount	Base
Regulatory/policy fees at national level	FISTEL/TFI	Installation fee	Between BRL 27 (USD 7.74) and BRL 34 000 (USD 9 742); single payment	New stations and subscribers
	FISTEL/TFF	Operation fee	33% of TFI	TFI
	CONDECINE	Fee to foster content production	12% of TFI	Stations and subscribers
	CFRP	Fee to foster public broadcasting	5% of TFI	Stations and subscribers
	FUST	Fund for the universalisation of telecommunications	1%	Gross operating revenue (other taxes deducted)
	FUNTEL	Fund for innovation and technological development	0.50%	Gross operating revenue (other taxes deducted)
General taxes at national level	IRPJ	Corporate income tax	15% + 10%	Profit
	CSLL	Social contribution	9%	Profit
	PIS/PASEP	Social integration programme	0.65%	Revenues
	COFINS	Social security financing	3%	Revenues
State level	ICMS	Circulation of goods and services, paid by consumer	25-37%	Revenues
Municipal level	ISS	Specific services, not under the scope of ICMS yet	2-5%	Revenues

Notes: Listed taxes and fees are recurring annually. This is with the exception of the installation fee within the FISTEL regime, which allow for payment in instalments.

Source: OECD based on MCTIC's response to the questionnaire of the review.

Taxes and fees applied to the broadcasting and pay TV sector

FISTEL, PPDUR, CONDECINE and CFRP also apply to the broadcasting sector, in addition to IRPJ, CSLL, PIS and COFINS (Table 7.3).

CONDECINE is levied on the “placement, production, licensing and distribution of cinematographic and video-phonographic works for commercial purposes” (Brazil, 2011, p. art. 32^[12]). A fixed amount must be paid for every audio-visual production registered with Ancine once every five years. The respective amount depends on the nature (advertisement/non-advertisement), length and origin of the title (domestic/non-domestic). Depending on the characteristics of the title, fees range between BRL 300 (around USD 82) and BRL 250 211 (around USD 68 551)^{13, 14}.

In addition to the sector-specific CONDECINE, pay TV service providers may be subject to the ICMS. However, as with the communication sector, the ICMS creates market distortions as the services subject to it are uncertain. Additionally, new services may not be taxed in the same manner. For example, the ICMS is not applied to over-the-top services that provide expenses (*fiscalização de telecomunicações*) (TCU, 2017_[10]). Around 11.2% have been transferred to FUST, while around 27% have been identified to have been moved to the National Treasury.

Furthermore, CONDECINE often excludes VoD. Currently, CONDECINE is applied only to two categories: “CONDECINE Teles” and “CONDECINE Remessa”. “CONDECINE Teles” is paid by telecommunication providers (holding a concession or an authorisation) to distribute audio-visual content. “CONDECINE Remessa” is applied to remittances that stem from the income of the commercialisation of audio-visual content abroad, content acquisition or import.

A working group formed by the Superior Cinema Council (Conselho Superior do Cinema) is discussing whether CONDECINE should be applied to VoD in a third category (CONDECINE Titulo). This category refers to the commercialisation of audio-visual content in any segment of the market, i.e. exhibition rooms, home video, pay TV, FTA television and others.

One study estimated the price elasticity of demand for pay TV to be -1.95 (FIPE, 2015_[13]). This represents a highly elastic demand, meaning that anything that inflates price by 1% can be expected to depress usage of pay TV services by nearly 2% (FIPE, 2015_[13]). In consequence, if taxes are passed on to the market, they could have a direct influence on consumer behaviour. However, compared to telecommunication services, the overall broadcasting tax burden of broadcasting services is proportionally lower.

Table 7.3. Taxes and fees applying to the broadcasting sector

Taxes and fees	VoD	Pay TV	Free-to-air television
FISTEL	No	Yes	Yes
CONDECINE	Yes ¹	Yes	Yes
CFRP	No	Yes	Yes
IRPJ	Yes	Yes	Yes
CSLL	Yes	Yes	Yes
PIS	Yes	Yes	Yes
COFINS	Yes	Yes	Yes
PPDUR	No	Yes	Yes
ICMS	No	Yes	No
ISS	Yes	No	No

1. CONDECINE is applied to VoD in the case of distribution and remittances that stem from the income of the commercialisation of audio-visual content abroad, content acquisition or import.

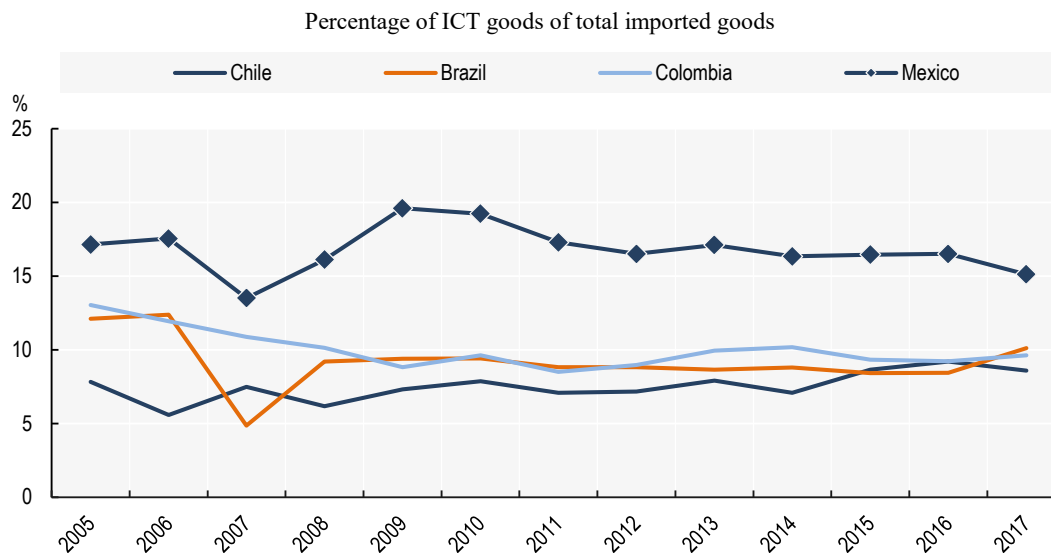
Source: OECD based on responses to the questionnaire for the review by MCTIC and Anatel.

Import duties

The share of information and communication technology (ICT) goods in total imported goods has been stable over the past ten years. It amounted to 8% on average, with a slight increase to 10.11% in 2017 (Figure 7.5).

Import duties for those goods have been relatively high in Brazil. In 2017, effectively applied duties on imported goods amounted to around 12.1% of the imported value. They amounted to 0.7% in OECD countries (Figure 7.6).

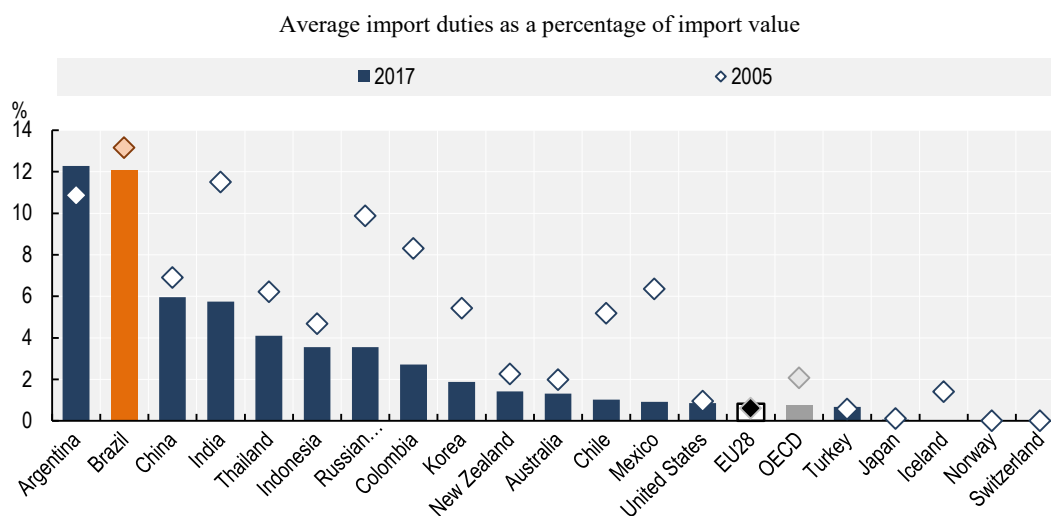
Figure 7.5. Share of ICT imports in Brazil among total imports, in Brazil and regional peer countries (2005-17)



Source: The World Bank (2019^[14]), “ICT goods imports (% total goods imports), Brazil, Chile, Mexico, Colombia”, <https://data.worldbank.org/indicator/TM.VAL.ICTG.ZS.UN?locations=BR-CL-MX-CO> (accessed on 20 April 2020).

The Brazilian government has acted to reduce duties, especially for goods unavailable from Brazilian producers. A regime called Ex-Tarifário provides the legal framework for temporary reductions in import duties when there is no equivalent national production. The rules for the concession of the Ex-Tarifário regime have been established by the Brazilian Foreign Trade Chamber (Câmara de Comércio Exterior) Resolution No. 66/2014 (Michelon, 2018^[15]).

Figure 7.6. Effectively applied duties on ICT goods in Brazil and selected countries, 2017



Note: For Thailand, data refer to 2015 instead of 2017.

Source: OECD (2019^[16]), *Measuring the Digital Transformation: A Roadmap for the Future*, <https://dx.doi.org/10.1787/9789264311992-en>, based on UNCTAD, *Trade Analysis Information System* (December 2018).

Products must meet a number of requirements to take advantage of the tax reduction. Detailed forms must be completed to justify the rate reduction, which can only be claimed for capital goods, ICT goods or automotive supply. Among data required are technical information, how much will be imported, the price of the product and why it has no equivalent in Brazil. This complex application process feeds the administrative and compliance costs discussed below.

While the tax reduction measures are steps in the right direction, the basket of goods exempted from import tariffs is still limited. With only 34 ICT goods falling under the new regime, import duties still apply to other, potentially crucial components (Global Trade Alert, 2020^[17]). Brazil should therefore actively promote the entry of Mercosur countries into the World Trade Organization's (WTO) Information Technology Agreement (ITA). This agreement would create a credible schedule for the reduction of tariffs on an increasing number of ICT goods.

One estimate suggests that access to the ITA could increase GDP growth by 0.08 percentage points in the first year alone. The increase in tax revenues from higher growth, including in the ICT sector, would exceed the loss in import tariffs from the fourth year onwards (Ezell and Foote, 2019^[18]).

Anatel requires all telecommunication products and equipment for sale in Brazilian territory to be tested and certified by designated bodies. This rule applies to both imported and national products. This policy may protect consumers from fraudulent devices, low-quality ones or stations not adapted to the Brazilian environment. However, it may also lead to compliance costs and delays for foreign products to reach markets.

The entire process can take from one to two months, and can have an effect not only on the costs of the product supplier, but also competition as this may delay market entry.

In October 2019, a new conformity assessment framework for telecommunication products was approved (Resolution No. 715/2019). This regulation gives Anatel more flexibility to establish technical requirements and operational procedures for assessing conformity of equipment. After the resolution's entry into force, the agency started to review the framework, which was expected to be replaced in 2020. Proposed changes include a new list of requirements. A conformity assessment model, for example, would approve low-risk products through presentation of a Supplier Declaration of Conformity.

Tax incentive mechanisms

In Brazil, several tax incentive mechanisms expand the supply of and demand for telecommunication services. Many of these mechanisms entail a partial or full deduction of the ICMS. Some extend connectivity and foster digital inclusion, especially for vulnerable parts of society.

In 2012, Law No. 12 715 established a special taxation regime for deployment of broadband (Regime Especial de Tributação do Programa Nacional de Banda Larga para Implantação de Redes de Telecomunicações, REPNBL-Redes). Regulations were put into place in 2013 by Decree No. 7 921.

The decree stated that tax incentives would be given to projects presented by operators and approved by the Ministry of Communications (before it became MCTIC in 2016). Regarding equipment acquisition, operators would be exempt from the payment of PIS/PASEP, COFINS and the Industrialised Products Tax (IPI). However, obligations on minimum national content were imposed. The law expired at the end of 2016.

According to MCTIC estimates, REPNBL implied a waiver of tax revenues of about BRL 502 million (USD 144 million). Investments in broadband networks for the projects amounted to BRL 4.1 billion (USD 1.2 billion), distributed in 847 municipalities across the country. Some 110 000 km of fibre optic cables were purchased, in addition to 14 million other items, such as modems, radios, antennas, multiplexers, amplifiers and routers.

Another example at the national level is the Electronic Government Service for Citizens (Governo Eletrônico – Serviço de Atendimento ao Cidadão, GESAC). This was established through Ordinance No. 256 of 2002 and co-ordinated by MCTIC. GESAC aims to provide Internet access to vulnerable communities around Brazil, mainly through satellite connections. This, in turn, seeks to promote digital inclusion and encourage use of e-government programmes. The federal government pays for the services, which are supplied by private companies, without the ICMS tax of the respective state. As of 14 February 2020, GESAC provided broadband services to approximately 11 218 institutions and public sites (Chapter 5).

Tax incentives have also been used at the state level. Some state governments have developed programmes to encourage deployment of infrastructure in sparsely populated regions, as well as in regions with low coverage. For example, states such as Minas Gerais and Ceará have used tax incentives based on ICMS reductions to deploy antennas for 3G mobile services in municipalities. Anatel has documented how a lower ICMS rate has helped expand coverage. Between 2014 and 2016 in Minas Gerais, for example, coverage expanded rapidly after ICMS reductions compared to Bahia (Anatel, 2016^[19]).

Administrative and compliance costs

The inherent complexity of fees combined with state, federal and municipal taxes of the Brazilian fiscal system increase the financial burden of compliance. The federal government, the 27 states and 5 570 municipalities are all involved in the collection process.

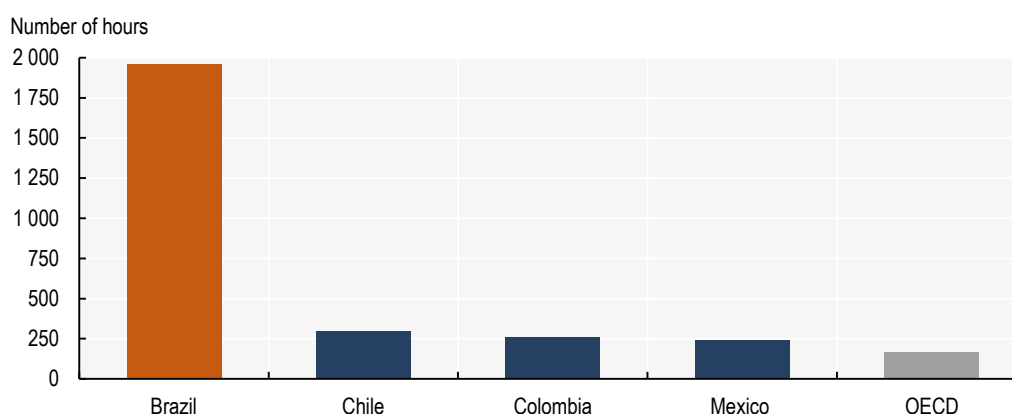
Frequent legislative and regulatory changes and demanding reporting requirements add to these compliance costs (The World Bank, 2018^[20]). For example, a medium-sized company in Brazil requires more than 6.5 times more time to comply with tax reporting and collection than peers in OECD countries such as Chile, Colombia and Mexico (Figure 7.7).

Compliance costs for companies in the communication sector are probably even higher due to the high number of sector-specific fees. High compliance costs may be associated with larger informal sectors and lower levels of investments (Djankov et al., 2010^[21]). Thus, high compliance costs in the communication sector may have contributed to lower levels of investments (Chapter 3).

Congress is reviewing two proposals to reduce the administrative burden by unifying different taxes into one single tax. In addition, the government sent a proposal to Congress that, among other aims, seeks to unify the social integration and social security contributions (PIS and COFINS).

The proposal consists of four phases. In the first phase, the government would put forward a bill that unifies PIS and COFINS. In the second phase, scheduled for the beginning of 2020, it would turn IPI into a selective tax that applies only to goods such as cigarettes, beverages and vehicles. The third phase, which was to be sent to the legislature by the end of the first quarter of 2020, would concentrate on income tax for individuals. To that end, it would increase the exemption range and create a new tax rate for high-income brackets. The last stage, planned for mid-2020, would exempt companies' payrolls (Fucs, 2019^[22]).

Figure 7.7. Hours spent by companies to comply with the tax regime in Brazil compared to regional peer countries and the OECD average (2019)



Note: The graph shows the number of hours needed by a medium-sized case study company to comply with profit, labour and consumption tax legislation in the respective country.

Source: OECD based on PWC (2019^[23]), *Paying Taxes 2019: Overall Ranking and Data Tables* (database), https://www.pwc.com/gx/en/services/tax/publications/paying-taxes-2019/overall-ranking-and-data-tables.html?WT.mc_id=CT13-PL1300-DM2-TR2-LS1-ND30-TTA4-CN_payingtaxes-2019-ranking-data-table-button (accessed on 10 September 2019).

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Notes

¹ Using the exchange rate of 3.93 BRL/USD for the year 2019 from OECD.stat (<https://stats.oecd.org/>).

² Suppose, for example, a customer purchases a voice and data plan for BRL 100. If the customer purchases this plan in the state of São Paulo, an indicated ICMS rate of 25% means that one would pay BRL 25 of ICMS. In consequence, the effective ICMS rate for São Paulo is 33% (i.e. BRL 25/BRL 75 = 33%). It is 42.8% (i.e. BRL 30/ BRL 70 = 42.8%) for Rio de Janeiro.

³ For example, the ICMS rate in Alagoas, Ceará and Pará is 30%, which corresponds to an effective rate of 42.8%.

⁴ Both concepts are laid out in Law No. 9 472 of 1997, Articles 60 and 61: “Art. 60. Telecommunication services is the set of activities that enables the offer of telecommunication. §1º Telecommunication is the transmission or reception of symbols, characters, signs, writings, images, sounds or information of any nature, by wire, radio-electricity, optical means or any other electromagnetic process. [...]”

Art. 61. Added value service is the activity that adds to a telecommunication service that supports its new utilities related to access, storage, presentation, movement or retrieval of information, but shall not be confused with the telecommunication service itself. §1º Added value service does not constitute telecommunication service and its provider can be classified as a user of the telecommunications service that supports it, with the rights and obligations inherent to this condition.”

⁵ Precedent No. 334 of the Superior Court of Justice (Superior Tribunal de Justiça – STJ): “The service of Internet access providers is not subject to ICMS.”

⁶ “Station” refers to equipment or devices necessary for the realisation of telecommunications (Article 60, paragraph 2, of the General Law of Telecommunications – LGT).

⁷ For details, see Annex I to Law 5070/1966: www.planalto.gov.br/ccivil_03/LEIS/L5070.htm.

⁸ Law No. 12 485 of 2011.

⁹ Established by Article 32, of Law No. 11 652/2008.

¹⁰ Using the exchange rate of 2.35 BRL/USD for the year 2014 from OECD.stat (<https://stats.oecd.org/>).

¹¹ www.planalto.gov.br/ccivil_03/LEIS/L9998.htm.

¹² www.planalto.gov.br/ccivil_03/LEIS/L10052.htm.

¹³ Using the exchange rate of 2018 of 3.65 BRL/USD for the year 2014 from OECD.stat <https://stats.oecd.org/>.

¹⁴ Amounts to be paid for advertisements can be found at <https://www.ancine.gov.br/sites/default/files/CONDECINE%20Obras%20Publicit%C3%A1rias.pdf>; amounts to be paid for non-advertisements can be found at <https://www.ancine.gov.br/sites/default/files/CONDECINE%20Obras%20N%C3%A3o%20Publicit%C3%A1rias.pdf>.



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