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Direct Foreign Investment into Brazil

Foreign Investment

Generally speaking, foreign investment in the form of stock and share investments is effected by the acquisition of such securities, by the taking up of new issues when further capital is raised to finance expansion or collaborative projects, or through the formation of a new undertaking.

The object of this paper is a close examination, by reference to the case of Brazil, of the frequently unrecognised incipient problems encountered by the foreign investor on the formation of a business undertaking. In that the entrepreneur meets with basically similar difficulties with every foreign investment, the example of Brazil, which is currently one of the most popular foreign investment locations, is therefore of general relevance. Whilst the paper ignores corporate investment criteria, it examines the problems relating to the organisational form, financing and taxation of foreign investment.

To the extent that the right to engage in private enterprise is legally permitted by a country's constitution, that right is generally granted to foreigners.¹ The pre-condition for business activity by a foreigner is of course submission to the law of the country of his choice. Thus, an investor is obliged to form his undertaking in accordance with the law of the land in which he proposes to engage in business.² It is therefore necessary to analyse the law regulating business organisations to determine the entity form that is most favourable to the purposes of the investment.

In that the expansion of the industrial, and to a lesser extent, agricultural, production capacity is a high priority in the economic policies of the majority of developing countries, most of them have laws for the promotion of industry and investment.³ Hence, alongside the incentives of the home country,⁴ those measures aimed at the promotion of new business that are promulgated by the investee country's government, are numbered among the most important financial and fiscal criteria that must be taken into account on the setting up of a business undertaking abroad. From a legal standpoint, the advantages granted in the form of investment incentives by the investee countries are largely of a uniform character.⁵ Such advantages may be classified in accordance with the formative stages of the enterprises and the subsequent phases of their business activity. Incentives connected with future business expansion, or replacement, offer a further basis for classification. Finally, a guarantee that the capital in foreign businesses may be repatriated to the investor country may also be regarded as a formation incentive.

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The Legal Form of Business Organisation as the Basis of a Foreign Investment

Probably the easiest and cheapest means by which a business may penetrate a foreign market is through the creation of an agency. A further possible means of doing foreign business without incurring high costs is an arrangement with a domestic importer in a potential foreign market. Neither of these methods of entering a foreign market produce recognisable investments and both have the disadvantage that the exporter to the foreign market does not acquire his own legal status — not to mention the drawback that the duration of the business relationship can suddenly be terminated by the retirement or death of the foreign partner. They are specifically not to be recommended when, as is currently the position in Brazil, there are stringent import restrictions.⁶

In Brazil the formation of a business establishment without separate legal personality (*Estabelecimento permanente*)⁷ by a foreign requires the express consent of the Federal Government [of Brazil] in the form of a presidential decree. Due to the comprehensive bureaucratic requirements relating to its formation and subsequent business activity, such an undertaking is rarely formed in Brazil at present.⁸

The simplest legal form of foreign investment in Brazil is therefore represented by the formation of a sole proprietorship (*Empresa individual*)⁹ by a Brazilian-domiciled foreign entrepreneur. The formation of an *Empresa individual* is constituted by the entry of the firm in the commercial register (*Registro do comércio*), together with details of its business objects and contributed capital.¹⁰ The sole proprietor is liable for the debts and obligations of his business to the full extent of his personal wealth. For tax purposes, sole proprietorships are treated as corporate bodies and are assessed accordingly.¹¹

A foreign investor who desires to act with Brazilian partners must form a subsidiary company in accordance with Brazilian law¹². This can be effected in the form either of a civil law company (*Sociedade civil*) or of a trading partnership (*Sociedade mercantil*).

A *Sociedade civil* may not pursue business activities.¹³ It is a suitable form of commercial organisation for consulting engineers, practising accountants, consultancy firms, market research institutes and other service companies which enjoy income from self-supporting activities. The partners may choose to have unlimited or limited liability and their names are entered in the civil documentary register (*Registro de títulos e documentos*).

A distinction is made between the limited and unlimited liability versions of the *Sociedades mercantis*, which is required to be entered in the commercial register. In Brazil, trading partnerships are treated as corporate bodies and are taxed accordingly.¹⁴

Trading partnerships without limited liability

Whilst an ordinary Brazilian partnership (*Sociedade em nome coletivo* or *Sociedade com firma*)¹⁵ is subject to the same kind of statutory regulation as the German general partnership (*Offene Handelsgesellschaft*), the Brazilian partnership which results from "the subscribing of capital and active participation" (*Sociedade de capital e industria*)¹⁶ has a legal form of its own. In addition to partners who provide capital

(sócio capitalista), as in the case of the general partnership (OHG), a Sociedade de capital e indústria also has partners (sócio de indústria), who contribute only services to the partnership. The partners who, in lieu of capital, only contribute services are, in contrast to the other partners, subject to limited liability so long as they neither introduce capital nor act for partnership in an executive capacity.

The limited partnership (Sociedade em comandita simples)¹⁷ is, as in the case of the German limited partnership, constituted by general partners (Sócios comanditados) and limited partners (Sócios comanditários). The management and liability is regulated as under the German statutory provisions.

The partnership limited by shares having one or more general partners (Sociedade em comandita por ações)¹⁸ is similar to the corresponding German form (Kommanditgesellschaft auf Aktien). It is not widely used.

The legally constituted forms of business organisation which do not enjoy limited liability are not used in Brazil because the unlimited liability of the partner is not respected. Thus, banks, for example, will generally require, as a precondition to the granting of credit, that business organisations have the legal status either of a public company (AG) or, of a private limited company (GmbH) with at least three shareholders.¹⁹ Furthermore, partnerships which engage in business are taxed in the same way as limited liability companies.

Business firms with limited liability

Private limited company (GmbH)

The Sociedade por quotas de responsabilidade limitada²⁰ is the legal form of organisation that is most frequently chosen by the small and medium-sized foreign investor. It also offers advantages to large foreign companies. Although the Sociedade por quotas de responsabilidade limitada can be constituted in a manner closely resembling the German private limited company (GmbH), attention needs to be paid to several of the particulars encountered in its formation and subsequent business activity. These are briefly outlined below.²¹

The company is formed by virtue of its constitution (Contrato social), the content of which is not stringently regulated. The company comes into existence through its entry in the commercial register.²² The Brazilian private legal company (GmbH) must be designated "Limitada" otherwise its members will be jointly and severally liable to the full extent of their personal wealth.²³ If the company's constitution (Contrato social) does not contain special provisions regulating majority rights, that constitution can only be amended by a unanimous resolution from its members.²⁴ In contrast to the situation in Germany, a shareholders' decision to change their company's constitution does not require notarial verification.

The shareholders of a "Limitada" may be Brazilian or foreign corporations or natural persons. They need not reside in Brazil but at least one of the managing shareholders must live in the country or have delegated his executive authority to a resident managing director. In principle, the managing director of a "Limitada" must also be a shareholder of the company. The constitution may contain specific limitations on the authority delegated to a managing director which have consequences for third parties.

If a close personal tie between the shareholders and the limited liability advantage of a joint stock company is intended, the "Limitada" is the appropriate legal form of organisation. A particular advantage of the "Limitada" compared with a sociedade anônima is that in the case of the Brazilian private limited company certain special minority rights may be regulated by the Contrato social itself. The minority shareholder can be sure that, for example, changes in a company's constitution which do not take cognisance of his contractual rights are not recognised by the trade registry and are thereby rendered ineffective.

Further advantages enjoyed by a Brazilian private limited company compared with its public limited counterpart include, in addition to the greater freedom with which a private company may be designed, simpler formation regulations and the application of less stringent legal rules to its every day business activity, and therefore the lower administration costs which result therefrom.³² Since, in addition, the Brazilian private limited company is neither subject to the disclosure obligations of the public companies act nor required to comply with statutory dividend minima, it qualifies as the most preferred legal form of joint venture.

Investment Incentives as a Criterion for the Formation of Companies Abroad

Incentives affecting the formation of subsidiary companies and the early period of their business activity, belong to the most important category of investment criteria. The incentives may result in foreign investors being offered financing programmes or newly formed companies enjoying tax advantages. A further investment criterion for foreign entrepreneurs is the possibility of transferring profit.

Although a distinction is not always made in incentive programmes for business firms between measures for the promotion of new and expansion investments, a separation facilitating systematisation should at least be attempted here.³³

Financial and fiscal incentives

Investment incentives can be viewed from different standpoints; for example, from the perspective of the institutions which implement and administer the measures in question. Accordingly, in the case of Brazil, incentives may be classified as federal, state and municipal measures. The federal measures relate primarily, on the one hand, to the construction and expansion of particular sectors of the economy and, on the other, to investments in backward regions. The state and municipal measures are particularly concerned with the promotion of industrial objectives by the provision of industrial estates, the granting of municipal tax concessions and long term financing.³⁴ — Another point of view is that investment incentives can be differentiated on the criterion of measures favourable to the investor.³⁵ In the following pages, inducements are classified either as incentives represented by the granting of loans or tax reliefs.

At present, national incentives are granted pre-eminently to companies, the majority of the capital of which is owned by natural persons or corporations residing in Brazil.³⁶

Incentives in the form of loans

In Brazil, financing programmes supporting specific objectives and undertakings are implemented under national supervision.³⁷ A number of such programmes is provided for by the national development bank (Banco Nacional de Desenvolvimento Econômico – BNDE). As a rule, they also include a specified percentage participation in the investment by the BNDE. An example of such a programme is the finance plan for small and medium-sized firms (Programa de Crédito Orientado para Pequenas e Médias Empresas – PROPEME).

In greatest demand in Brazil are loans granted from funds for the financing of Brazilian-made machines and equipment (Fundo de Financiamento para Aquisição de Maquinas e Equipamentos Industriais – FINAME). These loans are however only granted if majority interests in both the buyer and seller of machines and equipment are enjoyed by an entrepreneur residing in Brazil.³⁸

Programmes for the promotion of exports, in which the Brazilian commercial banks have made finance available on particularly attractive terms, have also been developed.

Incentives in the form of tax reliefs

The Brazilian government provides fiscal incentives to stimulate investment in basic industries, and other industrial sectors of special importance, as well as in various geographically-disadvantaged regions of Brazil. Such fiscal policy measures provide for the partial or full relief of taxes and refunding of indirect taxes.³⁹

For example, in the case of regional investments and those for the promotion of designated sectors of the economy, the Brazilian government grants tax relief amounting to 26 % of the corporation tax burden.⁴⁰

(a) Promotional measures and industrial objectives

Eligible projects in the industrial sector are scrutinised by the industrial development council (CDI), which is responsible for industrial policy, including the associated tax concessions and incentives, and are considered for support in accordance with national priorities.⁴¹ CDI incentives include the following principal tax concessions.⁴²

- a) reduction of import duty (Imposto de importação) on particular imports
- b) granting of further customs preferences through the Brazilian customs council (Conselho de Política Aduaneira – CPA)
- c) import relief by a reduction in the industrial products tax (IPI)⁴³
- d) refunding of the IPI on the acquisition of industrial equipment
- e) granting of special depreciation allowances on Brazilian equipment constituents of fixed assets.

(b) Regional incentive programmes

To promote the industrial development of particularly backward regions, the Brazilian federal government has set up an incentive programme which embodies the various financial policy stimuli for these areas. The most important areas in which the incentives

can be claimed are north east Brazil and the Amazon region, especially the Manaus free-trade zone.⁴⁴

Among other things, the following fiscal inducements are available in these areas:

- a) relief from corporation tax (Imposto de Renda) of up to 50 % thereof in the case of industrial firms that are already active in the above-named regions
- b) dispensation from the payment of corporation tax for 10 to 15 years in the case of new industrial firms that are formed in these regions⁴⁵
- c) remission of corporation tax of up to 25 % in the case of undertakings which, though not themselves resident in the above-named areas, nevertheless invest parts of their corporation tax liability in their own or third party assets located there
- d) reduction of import duty on machinery and asset imports for newly established industrial firms in these areas if similar equipment is not produced in Brazil⁴⁶
- e) industrial firms in the Amazon region which use local raw material can obtain additional tax concessions
- f) in Manaus further special tax privileges related to the free trade area can be granted.

(c) Promotion of sectors of the economy

The sectoral incentives relate primarily to fishing, forestry, tourism and mining.⁴⁷ The tax reliefs for these sectors are similar to those that are embodied in the regional incentive schemes.

In conjunction with the support of mining activity,⁴⁸ undertakings receive fiscal encouragement to increase the export of Brazilian minerals on the one hand and, on the other, to improve the mining and processing of such minerals as have hitherto been imported.

Investment stimuli in the form of income and transfer taxes

The basis of Brazilian tax assessment is the taxation law of 1962 (Código Tributário Nacional).⁴⁹ Taxes can be raised by the federal government, by individual states and by municipalities. The most important tax borne by the firm, namely, the income or corporation tax (Imposto de Renda) amounting to 30 % of taxable income, is collected by the federal government only. All civil law corporate bodies (Pessoas jurídicas) domiciled in Brazil are subject to the corporation tax; they are treated as independent taxable entities. The business establishments of foreign companies are also treated as taxable entities, as are such natural persons recorded in the commercial register, who permanently engage in trade, or provide services, or trade professionally in real estate.

Apart from national tax statutes, a foreign investor should also take cognisance of international tax treaties. An example is the agreement of 27th June, 1975,⁵⁰ between the Federal Republic of Germany and Brazilia for the avoidance of double taxation on income and property. This agreement became effective on 30th December, 1975, with the exchange of the ratification certificates and applied from 1st January, 1976.⁵¹

The taxation of distributed profit

All dividends from an investment which are remitted to entrepreneurs or undertakings not residing in Brazil are, in addition to the 30 % Imposto de Renda and a 5 % distri-

bution tax (Imposto sobre lucro distribuido)⁵², subject to a unified withholding tax (Imposto de Renda na fonte) at the rate of 15 %.⁵³ Business establishments are also subject to the 15 % withholding tax in addition to the corporation tax.⁵⁴

The withholding tax is deducted only from dividends, or business profits, which are paid, or transferred, and the restriction to 15 % is first valid as from 1st January, 1978.⁵⁵ In accordance with paragraph 9 of the protocol to the double taxation agreement, the restriction on the rate of withholding tax only applies if the income of the Brazilian undertaking is derived from so-called effective activity as defined in paragraph 8 of the protocol. In other cases the withholding tax is at the rate of 25 %.⁵⁶

To prevent double taxation, a dividend paid by a Brazilian company, at least 25 % of the capital of which is German-owned, is exempted from taxation in Germany.⁵⁷ Under paragraph 8 of the protocol, the precondition is that the Brazilian company exercises at least 90 % of the effective activity. Otherwise, under article 24, paragraph 2, of the double taxation agreement, the principles of German taxation apply — subject to the imputation of the Brazilian withholding tax.

If the German investor possesses less than 25 %, but at least 10 %, of the capital with voting rights, the German tax dispensation does not apply; the dividends then suffer German tax, subject to the imputation of the Brazilian withholding tax.⁵⁸ In this case a withholding tax of 25 %, and not 15 %, is assumed for the purposes of the imputation procedure. The intention is the provision of a particular tax relief to stimulate investment.⁵⁹ In this situation the tax concession is also dependent upon the effective activity of the Brazilian operation.⁶⁰

If the German investor owns less than 10 % of the voting capital, the imputation method also applies and a Brazilian withholding tax of 20 % is assumed — provided the Brazilian company is effectively active to a significant degree.⁶¹

The profits of business establishments are treated like dividends and, under article 10, paragraph 6 of the double taxation agreement, are subject to Brazilian withholding tax at the rate of 15 %.

The profits of Brazilian business establishments are, in principle, exempted from German income or corporation tax. Such profits are however taken into account in fixing the rate of German tax on German income (so-called dispensation with progressive restriction). However, this only applies if the business establishment has substantial regular income. Otherwise, the business establishment profits also suffer German taxation subject to the imputation of Brazilian taxes,⁶² in which case withholding tax at the rate of 25 % is deducted.⁶³

The taxation of financial transfers

A precondition for the transfer of profits from Brazil (and also for the return of capital) is the registration of the invested capital at the Central Bank.⁶⁴ There is no absolute limit on profit transfers in the case of registered capital. However, in addition to the withholding tax, a progressive supplementary tax (Imposto suplementar) is payable on excess profit transfers (net dividends) if the average of the last three years' remitted dividends exceeds 12 % of the total of the notified foreign currency capital.⁶⁵ The supplementary tax is at graduated rates of 40 %, 50 %, and 60 % on profit transfers which respectively exceed 12 %, 15 % and 25 % of the average notified foreign currency capital. In that the withholding and supplementary taxes are borne by

the dividend recipient, distributions are to be grossed up accordingly if the intention is to remit a given net dividend.

Profits from invested foreign capital can also be reinvested and are in fact also subject to registration at the Central Bank. If a registered reinvestment is maintained for at least five years, it can be transferred abroad as capital free of any supplementary tax.

As a rule, royalties due from foreign-owned business establishments and subsidiary companies cannot be remitted to parent companies abroad and may only be credited thereto, in which case they are subject to a 25 % withholding tax. The level of royalties and similar licence fees (*Assistência técnica*) remitted from subsidiary companies in which there are Brazilian majority holdings is restricted (1–5 % of the total proceeds of production) and, in the case of non-resident persons, royalties, etc., are subject to the 25 % withholding tax.⁶⁶

Under the double taxation agreement, the withholding tax is, on the one hand, limited to 15 %⁶⁷ and, on the other, is extended to licensors with majority holdings.⁶⁸ To this extent licence fees from foreign-controlled business establishments and subsidiary companies can be regarded as being transferable.⁶⁹

Incentives for Future Business Expansion or Replacement as a Stimulus to the Establishment of Foreign Undertakings

When taking an investment decision, the perspicacious entrepreneur will also consider whether, and how, his investment can be expanded or replaced in the future. A country which supports its development plans with inducements will *ceteris paribus* be preferred to a country which does not. Such promotional measures can include, on the one hand, the facilitation of external financing through, for example, the granting of loans on favourable terms and the reduction of taxes and, on the other, the encouragement of internal financing through accounting policies which have tax effects.

Incentives facilitating external financing

Loan incentives

The PROPEME-plan,⁷⁰ which was mentioned earlier in connection with measures for the promotion of new firms, also finances the expansion of small and medium-sized companies. In addition, resources from the social integration programme (*Programa de Integração Social-PIS*) are provided, principally to public limited companies, for expansion and modernisation.

Projects promoted by the CDI are eligible for a financial incentive in the form of advance financing, for example, the financing of imports and exports.⁷¹

These incentives are primarily enjoyed by companies that are controlled by Brazilian-domiciled investors.

Fiscal inducements

The Brazilian government has passed regulations applying to machines and equipment, tools, etc., that are not produced domestically but which are needed for particular

industrial key projects.⁷² These regulations provide for tax relief or, under special conditions and subject to the consent of the state president, the remission of import duties and value added tax (IPI and ICM) on industrial products and merchandise.⁷³

The Brazilian export trade is specially promoted by the following measures:⁷⁴

- a) remission of income or corporation tax on export profits⁷⁵
- b) reduction, dispensation or refunding of the withholding tax on interest payments on foreign currency loans and on commissions, etc.⁷⁶
- c) dispensation of duties and taxes on imported goods, the further processing of which contributes to the export trade
- d) dispensation of the value added tax (IPI and ICM) on exports⁷⁷
- e) tax deductibility of outlays to the business activity of foreign subsidiaries, to participation in foreign trade exhibitions and to advertising.⁷⁸

Accounting policy measures to encourage internal financing

Revaluation of assets

The annual revaluation of the book value of fixed assets is a feature of the Brazilian system of inflation accounting.⁷⁹ Among other things, this revaluation partially counteracts illusory profits because it results in higher depreciation charges.

Companies which export their production may supplement fixed asset values calculated in accordance with official revaluation indices, by reference to market value so that the depreciation charge becomes even higher. They must of course commit themselves to an expansion of their export activity.⁸⁰

Shortening of the amortisation period

A concession in the form of the higher depreciation charges that result from a reduction in the amortisation period is also one of the promotional measures in the armoury of the CDI. This concession applies only to machines and equipment which are produced in Brazil.⁸¹

The Repatriation Guarantee on Invested Resources as a Safeguard to Foreign Investment

In the final analysis, the legal regulations governing the repatriation of invested resources are of considerable significance to the investment decision. This being so, attention should be paid to two problem areas, namely, the admissibility under the foreign exchange regulations of the continuous servicing of foreign loan interest and capital on the one hand and, on the other, the repatriation of company capital on the termination or on the sale of the proprietary rights therein.

The encouragement of foreign currency loans

Foreign currency loans which have to be registered at the central bank⁸² must be repaid in equal instalments over the borrowing period. Withholding tax at the rate of 25 % is normally deducted on the transfer of interest and, together with financing costs can, under certain conditions, be reduced or cancelled by the finance minister.⁸³

Under article 11, paragraph 2 no. b of the double taxation agreement, the Brazilian withholding tax is reduced to 15 %. Under article 11, paragraph 1, interest income from Brazil is taxed in Germany. However, under article 24, paragraph 3, no. b of the double taxation agreement, 20 % of the gross interest is attributed as German taxation so that a supplementary financing stimulus is provided.

Capital repatriation on the termination of an undertaking or on the transfer of proprietary rights

Under the profit transfer law, the transfer of capital, profits, licence fees, etc., from and to Brazil must, together with reinvestments in Brazilian firms, be registered at the Brazilian central bank.⁸⁴ If these statutory formalities are satisfied, the monetary amount of the registered foreign currency capital introduced can, on the termination or sale of the firm, be repatriated from Brazil — provided that that capital is reduced by losses sustained.

Summary of Considerations Concerning the Establishment of Undertakings in Brazil

If, as in the case of Brazil, a country by its constitution guarantees investor property and the right of disposal, the preconditions for contemplating investment are fulfilled. In investment decisions in these circumstances it is primarily such economic prerequisites for the establishment of undertakings as, for example, the product market, raw materials supply, potential labour supply, infrastructure, etc., which need to be examined. Such an examination should embrace federal, state and municipal investment incentives which, in Brazil, are of substantial significance both at the level of the firm and for economic development of the country. Above all, the financial and tax law possibilities characterising investment incentives should be scrutinised; and most certainly from the standpoint of support for the setting up of a new business as well as from the perspective of further investment aid for ongoing and expanding businesses. Weighty inducements have been granted in Brazil and, of course, primarily to joint ventures involving domestic companies controlled by Brazilian residents, as well as to exporting companies.

Once an investment has been evaluated and vindicated from an economic standpoint, the appropriate legal form of business organisation should be investigated. Notwithstanding the multiplicity of legal forms of business organisation which present themselves, the public and private limited companies are the preponderant legal forms of investment in Brazil. This is, in contrast to conditions in other countries, partly due to

the fact that, in the case of Brazilian trading firms, no difference is made between the taxation treatment of unincorporated and incorporated companies and therefore such criteria as entrepreneur's liability, formation procedure, statutory flexibility, disclosure and the debt-raising capacity of a particular legal form are the foremost considerations on the establishment of a business. In these circumstances, both the public and private company are advantageous. The former provides capital market advantages to the financially-strong investor, whilst the latter can make it possible for minority interests to exert a strong influence on the company's directorate by an appropriate drafting of its constitution.

Footnotes

- 1 Michael Bothe, "Die Behandlung ausländischer Investitionen in Lateinamerika", *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, Stuttgart, Berlin, p. 741 et seq.
- 2 As a rule, the entrepreneur is also encouraged to become domiciled in the investee country.
- 3 The precondition for obtaining investment inducements can generally be summarised in the proposition that the activities of the benefitting company must, given the state of economic development, be conducive to government plans.
- 4 For example, in the Federal Republic of Germany the political risk inherent in promotion-worthy investments can be insured against by the acceptance of guarantee obligations. Moreover, incentives can be claimed under the foreign investment act (*Auslandsinvestitionsgesetz*) and the developing countries finance act (*Entwicklungsländer-Steuer-gesetz*) which also applies to Brazil. There is also the possibility of a direct incentive to private investment in developing countries from the *Deutsche Gesellschaft für wirtschaftliche Zusammenarbeit* (*Entwicklungsgesellschaft*) mbH – DEG. In addition, German investors may be refinanced through the *Kreditanstalt für Wiederaufbau* by means of ERP – *Niederlassungskredit* (establishment credits) and training in the developing country may be subsidised by the *Gesellschaft für Technische Zusammenarbeit* (GTZ).
- 5 Michael Bothe, op. cit. p. 754.
- 6 In Brazil, both the commercial agency (*Representação*) and importer of foreign products (*Empresa importadora*) must be registered at the foreign trade department of the Bank of Brazil (*Carteira de Comércio Exterior – CACEX, Banco do Brasil*). (*CACEX news*, no. 78/1 sect. I, no. 5, 2.1.1978). In addition to increased import duty, statutory decree no. 1.427/75 also requires that 100% of the FOB-value of the imports be deposited for 360 days.

See also article 5, paragraph 4, of the German-Brazil double taxation agreement (*DBA-Bundesgesetzblatt 1975 II*, pp. 2245–2270) under which the bestowing of contractual capacity upon a commercial agent creates a business establishment.
- 7 Under article 300 of the new Brazilian companies act (*Lei das Sociedades por Ações*) no. 6.404/76 in conjunction with article 64–70 of the old Brazilian companies act no. 2.627/40, permission is required for branches, establishments, agencies and other businesses (*filial, sucursal, agência, estabelecimentos*).
Apropos of foreign company establishments see, Brazilian Embassy (Trade department, Germany), *Leitfaden für Investitionen in Brasilien*, Bonn – Bad Godesberg, 1974, p. 22 et seq.
- 8 For a discussion of tax problems see section 3.2.1.
- 9 Decree no. 916/1890.
- 10 Further necessary information are: the disclosure of the names of such persons who may use the firm, the firm's location, the date on which business is to commence, and the addresses of branches (if any).
- 11 Eduard Metzger, *Die Besteuerung von Tochterunternehmen in Brasilien nach deutschem und brasilianischem Recht*, Hamburg, 1974, p. 13.
- 12 As a rule, Brazilian company law does not distinguish between Brazilian and foreign entrepreneurs or undertakings.
- 13 Civil law code (*Código civil*), no.4.657/42, article 1.363.
- 14 Brazilian civil law code no.4.657/42, article 16. The exception is a limited partnership (*Sociedade conta de participação*), commercial code (*Código comercial*), no.556/1850, articles 325–328.

- 32 For a detailed comparison of Brazilian private and public companies see, *Leitfaden für Investitionen in Brasilien*, Commercial section, Brazilian Embassy (Germany), p. 26.
- 33 For example, for this reason export incentives and the special rules relating to the calculation of profit are discussed in section 4.
- 34 Compare Klaus Henkel, Hans Joachim Moebius, Helmut Treiber, *Investieren in Brasilien. Leitfaden für den deutschen Investor*, Rio de Janeiro, Bonn, 1974.
- 35 A further classification criterion for investment inducements would be the objective that the measures are designed to attain. See, for example, the communiqué of the international conference, „Lateinamerikanische Modelle der Investitionspolitik: Probleme der ausländischen Direktinvestitionen“, Hamburg 13th–14th October, 1971, published in *Aktuelle Fragen ausländischer Investitionen in Lateinamerika – Information und Diskussion*, p. 95 et seq.
- 36 Ernst Günther Lipkau, „Partnerschaftssuche in Brasilien unter veränderten Voraussetzungen“, *Geschäftsbericht der Deutsch-Brasilianischen Industrie- und Handelskammer in São Paulo, 1974–1977*, p. 189.
- 37 From the industrial development council (Conselho de Desenvolvimento Industrial – CDI) which is constituted by the ministers of industry and trade, planning, finance, interior, mining and energy together with the presidents of the central bank, the Bank of Brazil and the national development bank, the presidents of the national industrial and trade alliance and the general inspector of the Brazilian armed forces – decree no.67.706/70, article 2.
- 38 Under CDI edict no.513 of 2nd February, 1977, an indispensable prerequisite for financing by state financial institutions (as in the case of deliveries to government departments) is that machines, plant and equipment constituting production and trading capacity are installed subject to compliance with minimum levels of national production as provided by the CDI resolution no.49/76.
- 39 See, Gerd W. Rothmann, „Estrafiscalidade e Desenvolvimento Econômico – Die Besteuerung als wirtschaftspolitisches Lenkungsmittel“, *Geschäftsbericht der Deutsch-Brasilianischen Industrie- und Handelskammer 1966–1970*, São Paulo, pp. 107–126.
- 40 But which must be invested directly or indirectly in the context of the promotional programmes.
- 41 In addition to industrial undertakings, agricultural business is also promoted by the CDI with tax inducements.
- 42 Statutory decree no.1.137/70, article 1.
- 43 The federal tax Imposto sobre Produtos Industrializados – IPI is a value-added tax with differentiated rates on virtually all agricultural and industrial products. Subject to certain provisos pre-tax deduction is possible.
- 44 The incentive programme for the north east is implemented by the north east development authority (Superintendência para o Desenvolvimento do Nordeste – SUDENE, statute no.5.508/68); that for the Amazon region by the Amazon development authority (Superintendência para o Desenvolvimento da Amazônia – SUDAM, statutory decree no.756/69) and the incentive programme of the free trade zone by the free trade zone authority (Superintendência da Zona Franca de Manaus – SUFRAMA, statute no.288/67).
- 45 Statutory decree no.1.564 of 29th July, 1977.
- 46 Statutory decree no.1.428/75.
- 47 The tax incentives for the Brazilian fishing industry are administered by the fishing development authority (Superintendência para o Desenvolvimento da Pesca – SUDEPE, statutory decree no.221/67). The inducements for forestry are controlled by the national forestry development institute (Instituto Brasileiro de Desenvolvimento Florestal – IBDF, statutory decree no.1.134/70 and statute no.5.106/66), and those for the promotion of the tourist trade by the Brazilian tourist agency (Empresa Brasileira de Turismo – EMBRATUR, statutory decree no.1.191/71).
- 48 Statutory decree no.76.186/75, article 197 and 198.
- 49 Brazilian tax code no.5.172/62 (Código Tributário Nacional). –On the Brazilian tax system see, Reinhard Hinne, „Die Gewinnbesteuerung der Unternehmen in Brasilien“, *Riw/Awd*, Heidelberg, 1971, pp. 221–224. – Max Horn „Die Belastung brasilianischer Tochtergesellschaften deutscher Unternehmen mit brasilianischen Steuern und betrieblichen sozialen Lasten“, *Die Wirtschaftsprüfung*, Düsseldorf, 1971, pp. 265–271. – Eduard Metzger, *Die Besteuerung von Tochterunternehmen in Brasilien nach deutschem und brasilianischem Recht*, op.cit.
- 50 Text of the double taxation agreement and protocol published in *Bundesgesetzblatt*, 1975 II, pp. 2245–2270.
On the German-Brazilian double taxation agreement see Helmut Krabbe, „Übersicht über das deutsch-brasilianische Doppelbesteuerungsabkommen“, *Der Betrieb*, Düsseldorf, 1974, pp. 1641–1645.

- 79 For details of the principle of the Brazilian inflation accounting see: Hartmut Hess, Klaus-Wilhelm Lege, „Zur neueren brasilianischen Inflationsbilanzierung“, *Die Wirtschaftsprüfung*, Düsseldorf, 1976, pp. 345–352. Max Horn, „Die Inflationsbereinigung der Bilanz und deren brasilianische Lösung“, *Der Betrieb*, Düsseldorf, 1977, pp. 1424 and 1425. The regulations concerning the taxation of corporate income promulgated by statutory decree no.1.598 of 26th December 1977, in anticipation of a general reform of corporation tax, also contain an adaption of the monetary value corrective to the new Brazilian public companies act no.6.404/76. For details see: Helmut Probst, „Anpassung des Steuergesetzes an das Aktiengesetz vom 15th December, 1976“. *Geschäftsbericht der Deutsch-Brasilianischen Industrie- und Handelskammer in São Paulo, 1974–77*, p. 234 et seq.
- 80 Statutory decree no.1.532/77.
- 81 Statutory decree no.1.137/70, article 1d. Historic cost depreciation charges on all assets used over a number of years, and other taxation provisions relating to investment outlays play an important rôle in the assessment of taxes on business income. Their significance for the burden of taxation suffered by business undertakings is however frequently over-estimated. See, for example, Annemarie Mennel, „Internationaler Vergleich der steuerlichen Abschreibungen und Investitionsvergünstigungen“, *Rw/Awd*, Heidelberg, 1976, pp. 321-327.
- 82 Statutory decree no.1.215/74 and no.1.351/74.
- 83 Statutory decree no.1.351/74, article 9, in the draft of statutory decree no.1.411/75 as well as resolution no. 335/75 of the central bank.
- 84 Profit transfer act no.4.131/62, in the draft of statute no.4.390/64 and statutory decree no.55.762/65.