

Regulation of the Tax Reform

General regulations of the new taxes: IBS, CBS, and IS

Considering the repercussions of the Tax Reform on consumption in the form of Constitutional Amendment No. 132/2023, especially after the presentation of the regulatory project by the Government, the team at **schneider, pugliese**, is here to present an analysis of each point related to the guidelines of EC No. 132/2023 and the general characteristics of the new taxes: IBS, CBS, and IS.

The debates to be held in the coming months, before the start of the transition period (2026 to 2032), will be of extreme relevance for the construction of our new National Tax System. This is the moment for civil society, as taxpayers, to make their voices heard at the tables of the National Congress in order to support a simplified, transparent system that respects equality and tax capacity.

The law firm **schneider, pugliese**, boasts a team of experts in direct and indirect taxation and also has an on-site presence in the National Congress aimed at improving the tax proposals currently under consideration. Our office is available to assist you and to clarify any questions about the Tax Reform.

We hope you have an excellent read!

H. Philip Schneider
Eduardo Pugliese Pincelli
Cassio Sztokfisz
Diogo de Andrade Figueiredo
Guilherme Yamahaki

PLP No. 68/2024 – Regulation of the Tax Reform

General rules of IBS and CBS: taxable event

The Complementary Law Project (PLP) No. 68/2024, presented by the Government, aims to regulate the Tax Reform promoted by Constitutional Amendment No. 132/2023, promulgated by the National Congress on 12/20/2023.

The proposal establishes the Tax on Goods and Services (IBS), shared among States, Municipalities, and the Federal District, and the Social Contribution on Goods and Services (CBS), under federal jurisdiction. Additionally, the project introduces the Selective Tax (IS), also under federal jurisdiction, with a regulatory nature to discourage the consumption of goods harmful to health and the environment.

Although not specified in the project, it has been indicated by the Government that the average rate of IBS and CBS will be 26.5%, ranging between 25.7% and 27.3%.

Next, we will discuss some details about the taxable event, location of the operation, tax base, tax rate, tax liability, and the non-cumulative nature of the new taxes, as well as perspectives for the next steps of the proposal.



TAXABLE EVENT

What does EC No. 132/2023 say?

The IBS and CBS will apply to:

- Transactions involving tangible or intangible goods, including rights, or services;
- Import of tangible or intangible goods, including rights, or services by an individual or legal entity, even if they are not a regular taxpayer of the tax, regardless of the purpose.



Incidence of IBS and CBS according to PLP No. 68/2024

- Onerous transactions with goods or services and non-onerous transactions explicitly dictated in the Complementary Law;
- Donations by taxpayers to related parties, which are those defined by the transfer pricing legislation in the context of Income Tax;
- Provision of gifts and bonuses, provided they are not unconditional discounts, except if the good given as a bonus is subject to a specific tax rate per unit of measure;
- Non-onerous supply or supply at a value lower than the market price of goods and services for personal use and consumption of the taxpayer themselves, partners, shareholders, managers, and employees of the taxpayers;
- Arrangements involving the transmission of shareholdings; of assets as a result of mergers, splits, incorporations, as well as capital contributions and returns; financial income; transactions with securities; and receipt of dividends and results from shareholdings (anti-abuse rule).



Onerous operation with goods and services refers to the supply of goods or services and can arise from any act or legal transaction, such as: purchase and sale; exchange; barter; payment in kind; leasing; licensing, concession, assignment; loan; onerous donation; onerous establishment of real rights; leasing, including financial leasing; and service provision.

Any operation that does not qualify as an operation with goods **will be considered** an operation with services. Thus, any supply that does not involve a tangible or intangible good, including rights, will be considered a service operation.

The incidence of IBS and CBS will not alter the tax base of ITCMD (Tax on Causa Mortis Transmission and Donation of Any Goods or Rights) and ITBI (Real Estate Transfer Tax).

In cases of simultaneous supply of goods and services without a specified value in the fiscal document, the same tax rules will apply as those of the **main supply**, if the other supplies are considered **ancillary**, i.e., their occurrence depends on the supply of the main one and represents **up to 10%** of the value of the main supply; or the higher tax rate or more onerous regime related to the supplied goods and services will be applied.

Relevant Topics!



There is no exhaustive list regarding the operations considered onerous for the purposes of CBS and IBS taxation;



IBS and CBS will also apply to operations involving the supply or below-market value of goods and services for personal use and consumption by spouses, partners, or relatives, blood-related or by marriage, up to the third degree of individual taxpayers; partners, shareholders, and managers of the legal entity; as well as the employees of the taxpayers.

Non-occurrence of IBS and CBS

- Provision of services by individuals as a result of employment relationships with the taxpayer or their role as administrators or members of the taxpayer's boards/committees;
- Transfer of goods between establishments owned by the same taxpayer, with the requirement to issue a fiscal document;
- Transmission of shareholdings, including alienation;
- Transfer of assets as a result of mergers, splits, and incorporations, and of capital contributions and returns;
- Financial income (except specific regime for financial services);
- Transactions with securities, provided they do not result in the supply of goods/services (except financial services regime);
- Receipt of dividends and results from shareholdings, provided they do not result in the supply of goods or services (except financial services regime).



Time of occurrence of the taxable event

- At the time of supply or payment, whichever occurs first, in transactions involving goods or services;
- In the case of continuous or fractional execution of each supply of goods or services, even if partial, or of each payment, whichever occurs first; and
- When payment becomes due, in transactions:
 - With treated water, sanitation, piped gas, communication services, and electricity, including in cases of generation, transmission, distribution, commercialization, and supply to the final consumer; and
 - Of continuous or fractional execution where it is not possible to identify the moment of delivery or availability of the goods or the completion of the service, as **specified in the regulations**.



The supply will occur at the moment: **(i)** of the start of transportation, in the provision of transport services initiated within the country; **(ii)** of the end of transportation, in the provision of transport services initiated abroad; **(iii)** of the completion of the service, in the case of other services; **(iv)** when the good is found without proper fiscal documentation; **(v)** of the acquisition of the good in an auction promoted by the public authority or in a public sale.

LOCATION OF THE OPERATION

Location of the operation according to PLP No. 68/2024

The location of the operation varies depending on the object of the legal transaction, being defined as:

- **Tangible movable goods:** the location of delivery or availability of the goods to the recipient;
- **Real estate, intangible real estate, including rights related to real estate, and services provided on real estate:** the location where the property is situated.
- **Service provided by an individual:** the location of the service provision;
- **Service of planning, organizing, and managing events:** the location of the event the service refers to;
- **Service provided on tangible movable goods:** the location of the service provision;
- **Passenger transportation service:** the location where the transportation starts;
- **Cargo transportation service:** the location of delivery or availability of the goods to the recipient;
- **Service of operating a highway through the collection of fees or tolls:** the territory of each Municipality and State, or the Federal District, proportionally to the corresponding extension of the highway operated.
- **Communication service involving physical transmission:** the location of service reception.
- **Other services and other intangible movable goods, including rights:** the location of the recipient's main domicile.



The location of the operation is defined by the 'destination' of the operation for the purposes of determining the applicable tax rate and the distribution of the IBS tax revenue.

In operations with electricity, the location of the operation is considered as:

- the place of availability, in operations intended for the final consumer;
- the location of the main establishment of the purchaser, that is, the place where their economic relations are most significant, in cases of generation, transmission, distribution, or commercialization.

TAX BASE



What does EC No. 132/2023 say?

The tax base of IBS and CBS will be the **total value of the operation** charged by the supplier, under any title, including increments resulting from adjustments to the operation's value; interest; fines; additional charges and fees; discounts granted conditionally; transportation costs (by the supplier or on account and order); taxes and public prices, including tariffs, levied on the operation or borne by the supplier; and insurances and fees.



Exclusion hypotheses

The following are not included in the calculation base of IBS and CBS:

- IBS, CBS, and IPI levied on the operation;
- Unconditional discounts (as long as they are stated in the respective fiscal document and do not depend on a subsequent event);
- Reimbursements or refunds received for amounts paid related to operations on behalf of third parties, provided that the fiscal documentation related to these operations is issued in the name of the third party;
- From January 1, 2026, to December 31, 2032, ICMS, ISSQN, PIS contribution, and COFINS.



Cases where the calculation basis is undetermined

- The calculation basis shall correspond to the market value of goods or services in the event of: **(i)** lack of transaction value; **(ii)** transaction with undetermined value; **(iii)** transaction value not represented in money; and **(iv)** transaction between related parties, as defined in paragraph 2 of article 5.
- If the taxpayer enters into derivative financial instruments outside market conditions that partially or fully conceal the transaction value, the gain on the derivative shall be included in the calculation basis of IBS and CBS.
- The transaction value shall be determined by the tax authority when the necessary elements to prove the transaction value are not presented to the inspection

TAX RATE

What does EC No. 132/2023 say?

The rates of CBS and IBS shall be established by specific law of the respective federative entity:

- The Union shall establish the rate of CBS.
- Each State shall establish its IBS rate.
- Each Municipality shall establish its IBS rate.
- The Federal District shall establish its IBS rate, which shall correspond to the sum of the state and municipal rates.

The IBS rate applicable to each transaction shall correspond to:

- The sum of: **(i)** the rate of the destination State of the transaction; and **(ii)** the rate of the destination Municipality of the transaction; or
- The rate of the Federal District, when it is the destination of the transaction.

TAXPAYER LIABILITY

Who is the taxpayer according to PLP No. 68/2024?

Is a taxpayer for IBS and CBS:

- The supplier who carries out operations: **(i)** in the development of economic activity; **(ii)** habitually or in a volume that characterizes economic activity; or **(iii)** in a professional manner, even if the profession is not regulated;

Other hypotheses of passive liability attribution:

- The supplier resident or domiciled abroad with regard to operations occurring in the country;
- Digital platforms, even if domiciled abroad, are responsible for collecting IBS and CBS related to operations carried out through them in the following cases: **(i)** in lieu of the supplier, if the supplier is resident or domiciled abroad; and **(ii)** jointly with the taxpayer, if the taxpayer is resident or domiciled in the country and has not registered with the IBS/CBS registry or has not recorded the operation in an electronic fiscal document;
- Entities without legal personality who are not taxpayers for IBS and CBS: **(i)** condominium; **(ii)** consortium; and **(iii)** partnership.



Hypotheses of joint liability attribution

They are jointly responsible for the payment of IBS and CBS:

- The person who, under any title, acquires, imports, receives, inputs or outputs, or keeps in deposit goods, or takes services, not covered by a valid fiscal document;
- The transporter, including postal service or express delivery company: **(i)** concerning goods transported without a valid fiscal document; and **(ii)** when delivering goods to a location different from the one indicated in the fiscal document;
- The developers or suppliers of programs or applications used for recording operations with goods or services, concerning non-compliance with taxpayer obligations, provided they have contributed to their use in violation of tax legislation;
- The auctioneer, for the IBS and CBS due on the operation carried out at auction;
- Any individual or legal entity that contributes through their acts and omissions to the non-compliance with tax obligations, through: **(i)** concealing the occurrence or value of the transaction; or **(ii)** abuse of legal personality, characterized by the misuse of purpose or commingling of assets; and
- The customs warehouse, bonded warehouse, or establishment equivalent thereto, the depository, or the customs broker, concerning the goods: **(i)** destined for abroad without corresponding fiscal documentation; **(ii)** received for exportation and not exported; or **(iii)** destined for a person other than the one who imported or purchased it.



NON-CUMULATIVITY



What does EC No. 132/2023 say?

The IBS and CBS will follow the same rules regarding non-cumulativity and tax credit:

- IBS will not apply to exports, ensuring the exporter the **maintenance and utilization of credits** related to transactions in which they are the acquirer of tangible or intangible goods, including rights, or services;
- IBS will be non-cumulative, **with the tax due by the taxpayer offsetting the amount charged on all transactions** in which they are the acquirer of tangible or intangible goods, including rights, or services, except exclusively those considered for personal use or consumption as specified in complementary law and the hypotheses provided for in the Constitution.



What does PLP 68/2024 say?

The taxpayer may claim a credit when paying the IBS and CBS amounts levied on transactions in which they are the **acquirer**.

Credit by the taxpayer is prohibited for the acquisition of goods and services considered for **personal use or consumption**:

- Jewelry, precious stones and metals; Works of art and antiques of historical or archaeological value; Alcoholic beverages; Tobacco derivatives; Weapons and ammunition; Recreational, sports, and aesthetic goods and services, except when **necessary** for the taxpayer's operations.

Relevant Topics!



Operations that are immune, exempt, or subject to a zero-rate will **not allow** the appropriation of credits for subsequent operations ("forward credit"), as there was no payment of IBS and CBS in the transaction;



However, in cases of deferral or suspension, credit will be admitted only at the time of **actual** tax payment;



Regarding credits for acquisitions ("backward credit"), the sales of goods and services that are immune or exempt will result in the **annulment** of the credit related to previous operations of the supplier. However, this rule **does not apply to exports**, which, despite being immune, have their credit from acquisitions constitutionally guaranteed;



If a supplier carries out immune or exempt operations as well as taxable operations subject to IBS and CBS, the annulment of "backward" credits will be **proportional** to the value of the immune and exempt operations over the value of all operations of the supplier. In the case of operations subject to a zero-rate, the credit related to the acquisitions of the supplier conducting such operations will be maintained.

Non-cumulativity in specific regimes



Fuels and lubricants

- In transactions involving fuels subject to single taxation, no credit shall be allowed for acquisitions intended for distribution, commercialization, or resale;
- Credit for IBS and CBS shall be ensured in other transactions;
- Exporters shall be entitled to credit for IBS and CBS.



Financial services, real estate transactions, health assistance plans, and betting contests

- No credit shall be allowed for IBS and CBS on the acquisition of the following services: **(i)** financial intermediation operations involving the collection and allocation of resources; **(ii)** foreign exchange operations; **(iii)** transactions with securities and financial derivatives, including acquisition, trading, settlement, custody, brokerage, distribution, and other forms of intermediation, as well as investment advisor activities; **(iv)** securitization operations; and **(v)** factoring operations.



Hotel services, amusement parks, travel/tourism agencies, bars and restaurants, Football Corporation, and regional aviation

- No credit shall be allowed for IBS and CBS for bars and restaurants, including snack bars, on their acquisitions, and for purchasers of food and beverages provided by bars and restaurants, including snack bars;
- Credit for IBS and CBS is allowed on acquisitions of goods and services by hotel service providers, amusement parks, and theme parks;
- The appropriation of IBS and CBS credits by the purchaser of hotel services, amusement parks, and theme park services is prohibited.



Services of intermunicipal and interstate road, railway, and waterway passenger transport

- Regarding urban, semi-urban, and metropolitan railway and waterway passenger transport services, no credit shall be allowed for acquisitions by the service provider and the service acquirer;
- For intermunicipal and interstate road, railway, and waterway passenger transport services, credit is allowed for acquisitions of goods and services by transport service providers, but the appropriation of credits by the transport service acquirer is prohibited.
- For regional air passenger transport services, credit is allowed for acquisitions of goods and services by transport service providers, at 60% of the IBS and CBS values paid on these acquisitions, and credit is also allowed for the transport service acquirers.

GENERAL RULES OF THE SELECTIVE TAX



Incidence Hypothesis

- The Selective Tax (IS) shall apply to the production, extraction, commercialization, or importation of goods harmful to health or the environment, such as: **(i)** vehicles; **(ii)** vessels and aircraft; **(iii)** tobacco products; **(iv)** alcoholic beverages; **(v)** sugary beverages; and **(vi)** extracted mineral goods. The IS shall not apply: **(i)** to exports; **(ii)** to operations involving electricity and telecommunications, **(iii)** to public transportation services; and **(iv)** to goods and services subject to a 60% reduction in IBS and CBS rates.

Taxable Event

- The taxable event for the IS is **(i)** the first commercialization of the good; **(ii)** the auction purchase; **(iii)** the non-onerous transfer of extracted or produced mineral goods; **(iv)** the incorporation of the goods into fixed assets; **(v)** the exportation of extracted or produced mineral goods; or **(vi)** the consumption of the goods by the producer or manufacturer.

Tax Base

- The tax base for the IS is: **(i)** the selling price in commercialization; **(ii)** the bid value in auctions; **(iii)** the reference value in non-onerous transactions or in the consumption of the goods; or **(iv)** the accounting value of the incorporation of the goods into fixed assets. Additionally, the following do not integrate the tax base of the IS: **(i)** the amount of CBS, IBS, and IS itself levied on the operation; and **(ii)** unconditional discounts.

Tax rates

- The rates of the IS will be established by ordinary law.

Non-cumulativity

- The IS will be levied only once on the goods, and any type of credit utilization of the tax with previous operations or generation of credits for subsequent operations is prohibited.

Taxpayer liability

- The taxpayer of the IS is: **(i)** the manufacturer, in the first commercialization, in the incorporation of the asset into fixed assets, in the transfer of the asset in a non-onerous transaction, and in the consumption of the asset; **(ii)** the importer upon the entry of the foreign-origin goods into the national territory; **(iii)** the bidder at the auction; or **(iv)** the producer-extractor who performs the extraction, in the first commercialization, in the consumption, in the non-onerous transaction, or in the export of the asset.

LEGISLATIVE PROCESS

Current phase

The PLP No. 68/2024 was presented in the Chamber of Deputies on April 25th (Thursday) and is still awaiting a decision by the President of the Chamber, Deputy Arthur Lira (PP-AL), on how its proceedings will unfold in the House.

The determination regarding the proceedings of a bill is crucial to define the opportunities in which the subject matter may be subject to proposed amendments.

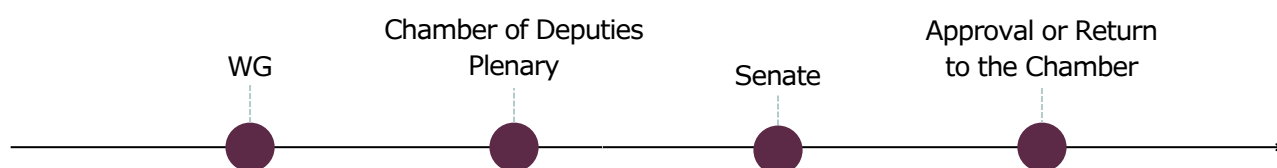
In an interview, the President of the Chamber expressed that the working group designated to provide an opinion on the project will be announced soon. Once the opinion is issued, the text will be forwarded to the Chamber's Plenary for analysis and approval, which, according to Lira, is expected to take place in early July 2024.



During the legislative process, it is possible to present suggestions for improvements to the text to the parliamentarians, who may incorporate them into amendments to the legislation.

Perspectives

Formation of a Working Group



Observations

- The Presidency of the Chamber of Deputies can create temporary working groups to improve legislative and administrative processes;
- According to the President of the Chamber, the supplementary bill will have its reporting divided among the members of the working group that will be created to address the issue.