quilombola lands or indigenous lands were identified. Therefore, it can be concluded that the activities authorized by the exploration permits will not suffer restrictions resulting from the interference of its polygon with such areas.

VIII. Environmental affairs

92 In the complex landscape of mineral exploration and environmental law, it is crucial to differentiate between the exploratory phases of mineral exploration and the full-scale mining operations. This distinction carries significant implications for the legal requirements concerning environmental licensing. Understanding this difference is essential for the analysis of legislation across various states, namely Minas Gerais and Mato Grosso.

93 Mineral exploration, viewed environmentally, should not be conflated with mining operations. As it usually involves superficial fieldwork that does not necessitate environmental interventions, like vegetation suppression or create environmental impacts, the activity is often exempt from the environmental licensing process.

94 Nonetheless, it's important to note that mineral exploration activities covered by a *guia de utilização* might entail experimental mining. Such activities may necessitate specific environmental authorization or licensing.

95 Regulatory agencies commonly distinguish between mineral exploration activities conducted with and without a *guia de utilização* in their environmental licensing guidelines. This distinction serves to determine whether the activity requires environmental licensing or another form of environmental authorization. Consequently, a thorough evaluation of the legislation in the states of Minas Gerais and Mato Grosso is imperative for this analysis.

96 In the state of Minas Gerais, Normative Deliberation COPAM No. 217/2017 delineates the activities requiring environmental licensing. It specifies that mineral exploration is subject to such licensing only if it involves the use of a *guia de utilização*, or if the title holder lacks a guia de utilização[15] and fieldwork necessitates the suppression of vegetation in the Atlantic Forest biome at medium and advanced stages of regeneration.

[15] In a first interpretation of the legislation, one might think that upon obtaining the *guia de utilização*, the enterprise would be obliged to obtain an environmental license. However, environmental licensing in these scenarios only becomes mandatory if the mineral exploration includes mining activity. If the holder of the mining right has the *guia de utilização* but chooses not to mine the mineral, the licensing remains dispensable.

> Art. 21 – Mineral exploration involving the use of a Guia de Utilização must be licensed according to the size and pollutant/degrading potential characteristics of mining activities and location criteria outlined in Table 3 in this Normative Deliberation. §1 – Mineral research is not subject to environmental licensing procedures when it does not involve the use of a Guia de Utilização issued by the entity responsible for its concession or does not involve the suppression of vegetation in the Atlantic Forest biome at medium and advanced stages of regeneration.
>
> §2 – The mineral research referred to in the previous paragraph does not exempt the entrepreneur from regularizing any environmental interventions and the use of water resources or implementing a Plan for the Recovery of Degraded Areas (PRAD), as applicable.

97 In the state of Mato Grosso, Complementary Law No. 592/2017 mandates that mineral exploration, whether or not it involves a *guia de utilização*, is an activity requiring environmental licensing. The law establishes a specific license for this type of activity.

> Art. 31 SEMA, in the exercise of its competence, shall issue the following mandatory licenses and authorizations:
>
> [...]
>
> VIII - Operation License for Mineral Research ("LOPM")[16]: authorizes mineral research activities with or without Guia de Utilização.

98 To obtain the "LOPM," the entrepreneur must submit to the environmental agency all documents and studies indicated in the Standard Reference Term No. 26/SUMIS/SEMA/MT. This documentation will be reviewed by the environmental agency, and if it is complying, the license is issued, with a determined validity period according to the validity of the guia de utilização or the exploration permit.

99 Regular updates and renewals of the license are required, especially in case of project or ownership changes, with renewal applications due at least 120 days before the license expires.

100 After overcoming the exploration phase and obtaining positive results, environmental licensing for mining activities must be arranged as a standard procedure, both for the state of Minas Gerais and for the state of Mato Grosso.

[16] Acronym in Portuguese for the type of environmental license.

101 Mineral exploration in the development concession, as introduced, is subject to licensing in the states of Minas Gerais and Mato Grosso, as provided for, respectively, in Normative Deliberation COPAM No. 217/2017 (MG) and State Decree No. 1,268/2022 (MT).

102 In the state of Mato Grosso, mineral extraction activities will be licensed, as a rule, in the three-phase modality, that is, the prior, installation, and operation licenses will be obtained individually and sequentially, as established in Annex II of State Decree No. 1,268/2022.

103 In Minas Gerais, the size of the mineral extraction activity (defined by the gross production in cubic meters per year or tons per year) and the overall pollutant potential, as established by legislation, will determine the class of the enterprise.

104 In turn, the combination of the enterprise class with the locational criteria for classification will determine the licensing modality of the enterprise and the environmental study that must be submitted.

105 These considerations present general aspects of environmental licensing for mining rights in the mining concession phase, which may be further developed and/or altered based on the specific case, as the Resouro projects progress.

106 The present analysis covers the Tiros Tenements, Novo Mundo Tenements and Santa Ângela Tenement. Based on the documentation we had access to, we conclude that only tenement 866.035/2009 has a *guia de utilização*.

107 In summary, considering the information provided, particularly that the intended mineral exploration is not covered by any *guia de utilização* and won't require vegetation suppression, prior environmental licensing is only necessary in Mato Grosso. After conducting mineral exploration and achieving satisfactory results, Resouro should assess the environmental licensing rules for mining activities in each of the states evaluated here.

VIII.1 – Tiros Tenements

108 Considering the information provided, particularly that the intended exploration is not covered by any *guia de utilização* and won't require vegetation suppression of the Atlantic Forest biome in the medium and advanced successional stages of regeneration, no environmental licensing is required, according to Normative Resolution COPAM No. 217/2017, articles 1017 and 21.

[17] Article 10 - Activities or enterprises not classified in any of the classes or not listed in the Activity List of the Sole Annex of this Normative Resolution are exempt from state environmental licensing.

109 Activities exempted from obtaining an environmental license do not depend on any administrative act to attest to this condition.

110 Nevertheless, certificates of Environmental Permitting Waiver were issued for the exploration activities in tenements 830.026/2021, 830.450/2017, 830.915/2018, 831.045/2010, 831.083/2014, 831.237/2021, 831.314/2021, 831.390/2020, and 831.720/2020.

111 For this purpose, the applicants RBM Consultoria Mineral, Leonardo Lopes Souza, and Rodrigo de Brito Mello, conducted the characterization of the activities and filed a field report on mineral exploration activities with the "SLA"18 for each of the mining rights.

112 The certificate of Environmental Permitting Waiver is a purely declaratory act, issued based on information provided by the entrepreneur, which simply reinforces that such activity is not subject to environmental licensing.

113 The issuance of the certificate is not a requirement for the regular exercise of mineral exploration activities without *guia de utilização* and without vegetation suppression.

114 In addition, the information mentioned in paragraph 5 indicates that the tenements areas do not interfere with indigenous land, quilombola territory and are not located in an Environmental Conservation Unit.

115 If the project progresses to the environmental licensing phase, the interferences of the polygons of these mining rights with, for example, cultural heritage, existence of cavities, typology of the vegetation to be intervened, priority areas for conservation, and areas of influence of conservation units should be evaluated.

VIII.2 – Novo Mundo Tenements and Santa Ângela Tenement

116 As stated, environmental licensing is required for mineral exploration in the Novo Mundo Tenements and Santa Ângela Tenement, each located in Mato Grosso.

117 Tenement 866.035/2009, related to the Novo Mundo Project, includes a copy of the Mineral Exploration Operation License No. 208/2022, authorizing the extraction of gold through mineral exploration with a *guia de utilização*, issued on July 06th, 2021, valid until July 06th, 2025.

118 In relation to mining tenements 866.171/2018 and 866.320/2018 of the Novo Mundo Project, and 867.624/2021 of the Santa Ângela Project, no environmental licenses were provided, and in the public consultation on the website of the Mato Grosso State Environmental Secretariat

[18] "SLA" is the electronic system used by Minas Gerais's environmental agency.

- "SEMA/MT," no environmental licenses were found for these polygons. For this reason, it was not possible to assess the environmental compliance of the mineral exploration activities carried out in these mining processes.

119 Analyzing the copy of mining process 867.624/2021, the holder Leonardo Lopes de Souza ME informed, on June 29th, 2022, that the mineral exploration activities had begun, which obliges the entrepreneur to obtain the "LOPM".

120 The same information was observed in mining process 866.171/2018, with Nexa Recursos Minerais informing ANM, on September 26th, 2023, that Ison do Brasil resumed mineral exploration work.

121 In mining process 866.320/2018, Ison do Brasil informed, on October 05th, 2023, the resumption of mineral exploration work within the polygon of this process.

122 Operating without an environmental license is considered irregular and constitutes an administrative infraction[19]. The penalties for this infraction are a simple fine[20] and suspension of activities[21].

123 If the mineral exploration in the polygons of mining rights 866.171/2018, 866.320/2018 and 867.624/2021 was irregularly conducted, the entrepreneur may voluntarily request regularization of their activity by submitting a corrective licensing project. In this case, if the irregular operation has not caused environmental damage, the enterprise will not be held liable for the administrative infraction. That is provided for in Article 35 of Complementary Law No. 592/2017:

> Article 35. When an entrepreneur carrying out an activity without a license requests the spontaneous regularization of their activity, by submitting a licensing project, no fine will be imposed, provided that no environmental

[19] Complementary law n. 38/1995. article 95: For the purposes of this Code. any action or omission that violates the legal rules of use, enjoyment, promotion, protection, and recovery of the environment, or that results in non-compliance with the rules provided for in this complementary law and other normative acts, including relevant federal legislation, is considered an administrative infraction.

[20] Complementary law n. 38/1995, article 109: Simple fine will be applied whenever the agent, through negligence or intent, violates the legal rules regarding the use, enjoyment, promotion, protection, and recovery of the environment, obstructs inspection, or fails to remedy irregularities for which they have been warned.

[21] Complementary law n. 38/1995, article 102: Administrative infractions are punished with the following sanctions (...) IX - partial or total suspension of activities.

damage resulting from the activity is found, and that they comply with all notifications issued by SEMA during the environmental licensing process.

124 Based on the above, if the mineral exploration activities in these polygons are irregular, it is recommended that the entrepreneur voluntarily report the irregularity and make the necessary corrections.

125 In addition, the information consulted on SigMine indicates that the polygonal areas of mining rights 866.035/2009, 866.171/2018, 866.320/2018 and 867.624/2021 do not interfere with indigenous land, quilombola territory and are not located in an Environmental Conservation Unit or its buffer zone.

IX – Summary on Brazilian Tax System

126 Regarding the attribution of competence to demand taxes, the Brazilian tax system can be divided into federal, state and municipal taxes. As for the object of taxation, taxes can be divided into taxes on income and/or capital, on consumption and on property.

127 In addition to these, Brazil imposes specific tax requirements for mining activities. These obligations will be analysed separately, outside the context of taxes on income, consumption or property.

128 The table below summarizes the main aspects of the taxes that will be analysed in further section of this Report:

Executive Summary			
Obligation	**Calculation basis**	**Rate**	**Calculation period**
IRPJ *Income Tax*	Actual profit (adjusted net profit) or presumed profit.	15% plus an additional 10% on the calculation base that exceeds BRL 240 thousand per year, or monthly proportional (BRL 20 thousand per month).	Annual or quarterly, at the option of the taxpayer.
CSLL *Income Tax*		9%.	
PIS *Gross Revenues Taxes*	Gross income or total income earned. Exemption for exports.	3% in the cumulative system, 7.6% in the non-cumulative system.	Monthly.
Cofins *Gross Revenues Taxes*		0.65% cumulative, 1.65% non-cumulative.	
IOF *Tax on Financial Operations*	Financial transaction value.	It may vary according to the nature of the transaction.	Per operation or monthly, in the case of loans.
ICMS *State Value-Added Tax*	Value of the sale operation. Immunity for exports.	It may vary according to the product, nature of the operation (internal or interstate) and from State to State.	Monthly.
IPI *Federal Value Added Tax*	Value of the sale of the imported good. Immunity for exports.	May vary by product. As a rule, mineral goods are not subject to IPI.	Monthly.
ITR *Rural Land Tax*	Property value, reduced from its usable area.	It may vary from 0.03% to 20% depending on the size of the property and its degree of use.	Annual.
CFEM *Mining Royalties*	Value of the economic use of the mineral good.	2% for noble metals.	Monthly.
Taxa de controle *Inspection Tax*	Fixed value per amount of ore.	Fixed value per amount of ore.	Monthly.
TAH *Mining fee per property*	Fixed amount per hectare.	R$4.33/hectare for the first term of the research authorization. If the permit is renewed, the amount of R$6.48/hectare will be due.	Annual.

129 To better guide this Section, we will segregate our comment according to the object of taxation.

IX.1 - Tax on income and/or capital

130 In Brazil, income taxation is predominantly levied by five different taxes: Income Tax ("IRPJ"), Social Contribution on Net Profits ("CSLL"), Contribution to PIS, Cofins and Financial transaction tax (IOF), the latter with a greater extra-taxation objective.

IX.1.1 - Income Tax (IRPJ), Social Contribution on Net Profits (CSLL)

131 IRPJ and CSLL are very similar from the perspective of measuring the calculation base, therefore the comments made in this section are equally applicable to these both taxes. These are federal taxes and, as a rule, the calculation base is calculated annually. At the option of the taxpayer, the calculation may be made on a quarterly basis.

132 The IRPJ rate is 15%, with an additional 10% on the portion of the calculation base that exceeds BRL 240 thousand reais for the annual basis, or, proportionally, BRL 20 thousand monthly.

133 Despite being due annually or quarterly, each month the taxpayer must calculate the tax and collect the amount due if a positive base is determined.

134 At the closure of the calculation period (annual or quarterly), advance payments can be offset against the amount calculated on an annual or quarterly basis. If prepayments exceed the amount due, the taxpayer will be entitled to a refund, if prepayments are less than the amount due, the taxpayer will need to supplement the tax amount.

135 The measurement of the calculation base for IRPJ and CSLL can be done by adopting the actual profit or presumed profit. In summary, these regimes can be described as follows.

IX.1.1.1 - Actual profit

136 The adoption of actual profit is mandatory for taxpayers whose total revenue, in the previous calendar year (to the calculation year), has exceeded the limit of BRL 78,000,000.00 (seventy-eight million reais) or BRL 6,500,000.00 (six million, five hundred thousand reais) multiplied by the number of months in the period, when less than 12 (twelve) months.

137 In addition to these criteria, taxpayers who carry out certain activities, described in the governing legislation, must adopt the actual profit as a systematic calculation of IRPJ and CSLL. Among those activities for which the adoption of real profit is mandatory, mining is not included.

138 Pursuant to art. 258 of the Income Tax Regulation - RIR (Decree No. 9,580/2018), taxable income corresponds to net income (as accounting) for the calculation period, adjusted by the additions, exclusions or offsets prescribed or authorized by law.

139 Compared to the presumed profit system, the actual profit proves to be more complex, as it requires the taxpayer to carry out separate controls and keep certain documents to prove the adjustments made. From another perspective, it may be more beneficial for start-up or ramp-up taxpayers, as they tend to experience reduced profit margins or even losses.

140 Of the aforementioned adjustments, we highlight the following, commonly performed by Brazilian mining companies with foreign control.

IX.1.1.1.1 - Transfer pricing.

141 Law No. 14,596 of June 14, 2023, amended the IRPJ and CSLL legislation, aligning Brazilian rules for transfer pricing with international standards, based on OECD guidelines. The law enters into force on January 1, 2024. Considering that the law was enacted in 2023, there was an authoritative provision that taxpayers could choose for it to take effect that same year. This aspect loses relevance in 2024, when its effectiveness is mandatory for everyone. The publication of the Law is the result of work that formally began in 2017, when a technical group was created by the Federal Revenue, dedicated to the study and modernization of transfer pricing rules. In 2018, with the support of the OECD, studies were started to analyse the efficiency of the Brazilian standard.

142 The result, published in 2019, pointed out the inefficiency of the Brazilian model which, according to the report, allowed for numerous situations of double taxation and double non-taxation of international operations, being ineffective as an anti-avoidance rule, also indicating that it is an outdated norm and detrimental to attracting new investments to the country.

143 The main change arising from the alignment with the OECD guidelines is the insertion in the legal text of the Arm's Length principle, present in article 2 of Law No 14.596/2023. Widespread principle among countries that adopt the OECD model for transfer pricing.

144 As an immediate result of the adoption of this principle, it is noted that Brazilian legislation has significantly privileged the economic essence of the transaction to the detriment of the legal form that has been attributed to it.

145 Both, in the text of Law No 14,596/2023, and in the draft of the Normative Instruction that will regulate the matter (placed in Public Consultation between 07.03.2023 and 07.25.2023), there are rules that determine the requalification of the transaction whenever the "analysis of the facts and circumstances and evidence of the effective conduct of the parties" points to the

execution of a materiality different from that formally established in a contract or other legal forms.

146 Even though it is an anti-avoidance rule, the preponderance of the economic essence under the legal form is a practice that must be used exceptionally. The requalification of legal acts only takes place when proven defect in the legal transaction, such as fraud, simulation or dissimulation, which does not seem to us to be the hypotheses disciplined by the rule in question.

147 The new transfer pricing rules go in the opposite direction, allowing the tax authority to reclassify the operation, even if the defect in the legal transaction is not found, on the grounds that the economic objective to be achieved is not compatible with the legal form. Naturally, any excess from tax authority can only be verified on a case-by-case basis, however, it is possible that the application of the concept of supremacy of essence over form is the subject of great controversy between the tax authorities and taxpayers.

148 In addition to making the Arm's Length positive and adopting the principle of the primacy of essence over form, a relevant innovation is the fact that the choice of method is no longer an option for the taxpayer, and the option for the most appropriate method becomes mandatory, among the following, brought by Law No. 14,596/2023, replacing the previous methods in force:

148.1 **Comparable Independent Price** ("PIC"): which consists of comparing the price or value of the controlled transaction with the prices or values of comparable transactions carried out between unrelated parties;

148.2 **Resale Price minus Profit** ("PRL"): which consists of comparing the gross margin that an acquirer of a controlled transaction earns on subsequent resale to unrelated parties with the gross margins earned in comparable transactions between unrelated parties;

148.3 **Cost plus Profit** ("MCL"): which consists of comparing the gross profit margin obtained on the supplier's costs in a controlled transaction with the gross profit margins obtained on costs in comparable transactions carried out between unrelated parties;

148.4 **Net Transaction Margin** ("MLT"): which consists of comparing the net margin of the controlled transaction with the net margins of comparable transactions carried out between unrelated parties, both calculated based on an appropriate profitability indicator;

148.5 **Profit Division** ("MDL"): which consists of the division of profits or losses, or part thereof, in a controlled transaction in accordance with what would be established between unrelated parties in a comparable transaction, considering the relevant

contributions provided in the form of functions performed, assets used and of risks assumed by the parties involved in the transaction;

149 Also, Article 11 of Law No. 14,596/2023 provides for the adoption of "other methods, provided that the alternative methodology adopted produces a result consistent with that which would be achieved in comparable transactions carried out between unrelated parties".

150 The criterion for delimiting controlled transactions has also changed. According to the replaced rule, transactions with tangible assets, rights and services, in addition to the payment and receipt of interest, involving related parties abroad or with third parties domiciled in a tax haven were subject to the transfer pricing test.

151 The new rule imposes the application of the transfer pricing test to any financial and commercial transaction, including intangibles, between related parties, carried out directly or indirectly.

152 The concept of related party, previously defined in a restrictive role, has been expanded. Pursuant to Law 14,596/2023, the relationship between the parties must be recognized whenever influence of one party over the other is verified, a situation "that may lead to the establishment of terms and conditions in their transactions that differ from those that would be established between unrelated parties in comparable transactions". The new legislation adopts an exemplary role by discriminating conditions in which the influence of one party over the other is verified.

153 Another innovation is the "Tested Part" concept. Unlike the provisions then in effect in Law No. 9,430/1996, which determines that the transfer pricing test is carried out by the Brazilian company. Law No. 14,596/2023 brings the possibility that the tested party is the entity abroad, if the performance of the test by the foreign party brings greater reliability to the comparison, especially in view of the eventual greater availability of more reliable data on comparable transactions performed between unrelated parties.

154 The functions performed, the assets involved and the risks assumed by the parties to the controlled transaction may influence the definition of the tested party. That is, the adequacy test should prevail for the party that substantially assumes the business and economic risks of the transaction.

155 The draft "Normative Instruction" excludes the need to select the tested part of the PIC, a method that should preferably be adopted in transactions with commodities. That is, in operations whose PIC is adopted, the selection of the tested part does not apply, being mandatory the demonstration of adequacy of the operation by the Brazilian company.

156 In addition to the changes in the general aspects of incidence, mentioned so far, criteria for applying the transfer pricing in (i) operations with commodities were changed; (ii) financial operations; and (iii) payment of royalties. These changes must be observed by taxpayers as of 2024, or already for 2023, if the taxpayer chooses to anticipate the effects of the rule.

157 Until the end of 2023, the transfer pricing rules set forth in Law No. 9,430/96, amended by Law No. 12,715/12, and regulated by Normative Instruction No. 1,312/2013, which, among other provisions, provide for the methods applicable to the parameter price setting.

158 In export operations, the methods defined by the governing legislation are:

158.1 **Export Quoted Price Method** ("Pecex"): the use of this method is mandatory for the sale of commodities quoted on an internationally recognized commodity and futures exchange. The verification of the adequacy of the price practiced is carried out by comparing the value of the transaction with the daily average values of the price of the traded good. The stock exchanges capable of providing the daily quotation of imported goods are listed in the list attached to IN SRF No. 1.312/12, as well as the goods considered as commodities.

158.2 **Export Selling Price Method** ("PVEx"): the sales revenue from exports will be determined by the weighted arithmetic average of the sales prices from exports made by the company itself, to other customers, or by another national exporter of goods, services or rights, identical or similar, during the same period of calculation of the income tax calculation basis and under similar payment conditions.

158.3 **Wholesale Price Method in the Country of Destination, Less Profit** ("PVA"): the sales revenue from exports defined as the weighted arithmetic average of the sales prices of goods, identical or similar, practiced in the wholesale market of the country of destination, under similar payment conditions, minus the taxes included in the price, charged in that country, and a profit margin of fifteen percent on the wholesale price.

158.4 **Retail Sales Price Method in the Country of Destination, less Profit** ("PVV"): Revenue from sales in exports may be determined as the weighted arithmetic average of the sales prices of goods, identical or similar, practiced in the retail market of the country of destination, under similar payment conditions, minus the taxes included in the price, charged in said country, and a profit margin of thirty percent on the retail price.

158.5 **Acquisition or Production Cost Method plus Taxes and Profit** ("CAP"): Sales revenue from exports may be defined as the weighted arithmetic average of the acquisition or production costs of exported goods or services, plus taxes charged in Brazil and a profit margin of fifteen percent on the sum of costs plus taxes and contributions.

159 For import, the methods currently in force are:

159.1 **Price under Import Quotation** ("PCI"): Similar to the PECEX method, the use of PCI is mandatory for the sale of commodities that are quoted on an internationally recognized commodity and futures exchange. Verification of the adequacy of the price practiced is carried out by comparing the value of the transaction with the daily average values of the price of the traded good. The stock exchanges capable of providing the daily quotation of imported goods are listed in the list attached to IN SRF No. 1.312/12, as well as the goods considered as commodities.

159.2 **Compared Independent Prices** ("PIC"): Refers to the weighted arithmetic average of the prices of goods, identical or similar, determined in the Brazilian market or in other countries, in purchase and sale operations carried out between unrelated persons, under similar payment conditions. For comparison purposes, the following goods are considered identical or similar:

- sold by the same exporting company to unrelated legal entities, resident or not in Brazil;
- acquired, by the same importer, from unrelated legal entities, resident or not in Brazil;
- acquired or sold by other unrelated legal entities, resident or not.

159.3 **Resale Price less Profit** ("PRL"): The method is defined as the arithmetic mean of the resale prices of goods, services and rights, less unconditional discounts granted, taxes and contributions levied on sales, commissions and brokerage fees paid and a profit margin of 40% (forty percent), 30% (thirty percent) or 20% (twenty percent) depending on the economic sector in which the taxpayer who carried out the import operates. Applicable also in cases where the imported good is resold, without being subjected to an industrial process that adds value.

159.4 **Cost of Production plus Profit** ("CPL"): Defined as the average cost of production of goods, identical or similar, in the country where they were originally produced, plus taxes and fees charged by that country on export and a profit margin of 20% (twenty percent), calculated on the calculated cost.

160 For operations with commodities, the use of the PECEX (export) and PCI (import) methods is mandatory, and the taxpayer is not allowed to adopt different methods.

161 Apart from the special rule dealing with operations with commodities, the taxpayer is allowed to choose the method that is most beneficial, in other words: the one that entails the smallest adjustment.

162 Interest paid or received from related persons is also subject to transfer pricing rules. However, unlike operations involving services, goods or rights, the criterion for verifying the adequacy of interest paid or received is dealt with in detail by art. 38-A of Normative Instruction No. 1.312/2012. The amount of interest recognized by Brazilian companies (in transactions with related persons abroad) cannot exceed[22]:

- the market rate of Brazilian sovereign bonds issued in the foreign market in US dollars, in the event of operations in dollars with a fixed rate;
- the market rate of Brazilian sovereign bonds issued in the foreign market in reais, in the case of transactions in reais abroad with a fixed rate; and
- the Libor rate for a period of 6 (six) months, in other cases.

163 In conclusion, whether for commercial operations (with goods, services or rights) or financial ones, the adequacy to the transfer pricing rules must be verified by comparing the price effectively practiced in operations with related parties with a parameter price defined from the adoption of one of the methods described above. In cases where the price charged exceeds the parameter price, the difference must be offered for taxation, through adjustments in the calculation of taxable income.

IX.1.1.1.2 - Thin capitalization

164 In line with international practices, the thin capitalization rules aim to establish the maximum deductibility limit for interest paid to related persons abroad, adopting as a criterion the proportion between the liabilities arising from the indebtedness (thus conceived the principal indebtedness plus interest) and the shareholders' equity of the Brazilian investee.

165 In addition to mitigating the chances of implementing abusive tax planning, thin capitalization aims to limit the chances of financing the activities of Brazilian investees through debt, to the detriment of their capitalization through the acquisition of equity interest.

[22] In any case, the rate will be increased by a percentage margin as a spread. As determined by the Ministry of Finance, for imports the spread to be considered will be 3.5% and, for exports, 2.5% (Ordinance MF No. 427/2013).

166 The application of thin capitalization rules does not exclude the need to calculate the transfer price, and vice versa.

167 Thin capitalization rules can be summarized as follows:

167.1 in the case of indebtedness with a related legal entity abroad that has a shareholding in the Brazilian company, the amount of the debt with the related entity abroad cannot exceed 2 (two) times the value of the related entity's share in the shareholders' equity of the legal entity resident in Brazil;

167.2 in the case of indebtedness with a related legal entity abroad that does not have a corporate interest in the legal entity residing in Brazil, the amount of the debt with the related person abroad, verified at the time of appropriation of interest, does not exceed 2 (two) times the value of the net worth of the legal entity resident in Brazil; and

167.3 in any of the above hypotheses, the sum value of debts with related persons abroad, verified at the time of the appropriation of interest, does not exceed 2 (two) times the sum value of the interests of all related persons in the shareholders' equity of the legal entity resident in Brazil.

168 If the limits determined by the application of the standard are exceeded, the surplus, calculated in accordance with the governing legislation must be added to the actual profit calculation. Therefore, this portion cannot be deducted from IRPJ and CSLL.

169 If the application of the transfer price and thin capitalization results in the need to adjust the IRPJ and CSLL calculation basis, the taxpayer must make the highest adjustment, and it is not necessary for the adjustment values to be added together.

IX.1.1.1.3 Exchange variation - (cash basis vs. accrual basis)

170 Provisional Measure No. 2,158-35/01 determines that monetary variations of credit rights and obligations of the taxpayer, depending on the exchange rate, must be recognized, for purposes of calculating IRPJ and CSLL, upon settlement of the corresponding operation (cash basis); optionally, the taxpayer is allowed to recognize the fluctuation of its assets or liabilities (originally measured in foreign currency) based on the accrual basis (considering the exchange rates fixed at the end of each period, regardless of the settlement - performance - of the contract).

171 Thus, under the accrual basis of taxation, the gains and losses recorded in the accounts would be taxed/deducted monthly depending on the exchange rate variation in the period. In taxation on the cash basis, gains and losses would only be considered at the time of settling the amounts due.

IX.1.1.1.4 Capitalization of expenses

172 Companies in the pre-operational phase are authorized to capitalize their expenses so that they can amortize them after the start of operations.

173 This possibility avoids the formation of relevant tax losses in pre-operational periods, in addition to allowing expenses incurred in the pre-operational phase to be deducted from the IRPJ and CSLL calculation basis measured after the start of activities, through the amortization of the deferred tax asset constituted.

IX.1.1.1.5 Partner remuneration

a) Dividends

174 Once the criteria established by corporate law (Law No. 6,404/1976) are met, the distribution of dividends by a legal entity taxed based on actual or presumed profit, is not subject to WHT, as provided for in article 10 of Law no. 9,249/1995.

175 From an accounting perspective, dividends are recognized as a debit to the Profit Reserves account, therefore not being reflected in income. For this reason, and also due to the absence of an express legal provision, the amount of dividends paid cannot be deducted when calculating IRPJ and CSLL from the paying source.

176 As pointed out in a separate topic below, the proposal to reformulate income taxation in Brazil has, as one of its pillars, the end of the exemption of dividends.

b) Interest on shareholders' equity

177 The payment of interest on equity (JCP), similar to dividends, is a mechanism for remunerating invested capital.

178 Pursuant to Article 9 of Law No. 9,249/1995, the JCP paid will be deductible, provided it does not exceed (i) the amount corresponding to the application of the Long-Term Interest Rate - TJLP, pro rata dia, on the accounts of the net worth; and, cumulatively, (ii) do not exceed the amount corresponding to half of the net income for the year (before the provision for IRPJ and the deduction of JCP) or the amount corresponding to half of the sum of retained earnings and profit reserves.

179 It appears from the wording of paragraph 2 of article 9 that the payment of interest on equity is subject to the incidence of WHT, at the rate of 15% (fifteen percent).

180 In this regard, it should be clarified that there is no distinction in the legislation regarding the payment of interest on equity paid to individuals or legal entities domiciled in Brazil or abroad (even in privileged tax regimes).

181 This understanding is recommended in the response to Consultation Solution No. 52/2010:

> *"SUMMARY: Amounts paid, credited, delivered, used or remitted to a beneficiary residing or domiciled abroad, under a privileged tax regime, as interest on equity, are subject to the incidence of Income Tax at source at the rate of 15 % (fifteen percent). In kind, it is a legal entity incorporated under the form of a "Limited Liability Company", located in Delaware, United States of America, whose participation is composed of non-residents, not subject to Federal Income Tax, with regard to the North legislation -American."*

182 Also, regarding the receipt of interest on equity, it is recommended that the double taxation treaties between Brazil (paying source) and the place of receipt of these amounts be evaluated, with the effect of evaluating the existence of clauses that exempt payment at destination or, at least, allow the deduction of tax withheld in Brazil.

183 The income tax reform provides for the extinction of JCP.

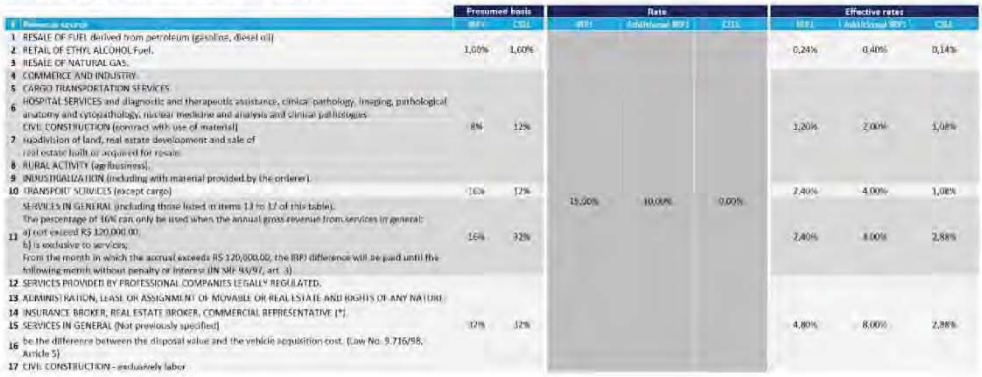
IX.1.1.2 Presumed profit

184 In the form of art. 13 of Law No 9.718/98, the presumed profit regime consists of a systematic calculation of IRPJ and optional CSLL for legal entities not obliged to make actual profit, whose annual gross revenue is equal to or less than BRL 78,000,000, 00 (seventy-eight million reais).

185 The calculation system is defined in Articles 25 and 29 of Law No. 9,430/1996, and basically consists of attributing presumed profit margins, which, applied to gross operating revenue, inform the calculation base for IRPJ and CSLL. These calculation bases are subject to rates of 15%, referring to IRPJ (plus an additional 10% rate on the portion of profit that exceeds BRL 20,000.00 per month), and 9% of CSLL.

186 The presumed margins set by Articles 15 (IRPJ) and 20 (CSLL) of Law No. 9,249/1995 vary according to the economic activity that originates the revenue. In the event of diversified activities, the legislation determines that the percentage corresponding to each activity that has generated operating income be applied (§4 of article 15 of Law No. 9,249/1995).

187 The margins currently in force, as well as the effective rates supported by taxpayers are summarized in the table below:



		Presumed basis		Rate			Effective rates		
#	Revenue source	IRPJ	CSLL	IRPJ	Additional IRPJ	CSLL	IRPJ	Additional IRPJ	CSLL
1	RESALE OF FUEL derived from petroleum (gasoline, diesel oil)	1,6%	1,6%				0,24%	0,40%	0,14%
2	RETAIL OF ETHYL ALCOHOL Fuel.								
3	RESALE OF NATURAL GAS.								
4	COMMERCE AND INDUSTRY.								
5	CARGO TRANSPORTATION SERVICES								
6	HOSPITAL SERVICES and diagnostic and therapeutic assistance, clinical pathology, imaging, pathological anatomy and cytopathology, nuclear medicine and analysis and clinical pathologies	8%	12%				1,20%	2,00%	1,08%
7	CIVIL CONSTRUCTION (contract with use of material) Subdivision of land, real estate development and sale of real estate built or acquired for resale.								
8	RURAL ACTIVITY (agribusiness).								
9	INDUSTRIALIZATION (including with material provided by the orderer).								
10	TRANSPORT SERVICES (except cargo)	16%	12%	15,00%	10,00%	0,00%	2,40%	4,00%	1,08%
11	SERVICES IN GENERAL (including those listed in items 13 to 17 of this table). The percentage of 16% can only be used when the annual gross revenue from services in general: a) not exceed R$ 120,000.00; b) is exclusive to services; From the month in which the accrual exceeds R$ 120,000.00, the IRPJ difference will be paid until the following month without penalty or interest (IN SRF 93/97, art. 3)	16%	32%				2,40%	8,00%	2,88%
12	SERVICES PROVIDED BY PROFESSIONAL COMPANIES LEGALLY REGULATED.								
13	ADMINISTRATION, LEASE OR ASSIGNMENT OF MOVABLE OR REAL ESTATE AND RIGHTS OF ANY NATURE								
14	INSURANCE BROKER, REAL ESTATE BROKER, COMMERCIAL REPRESENTATIVE (*).								
15	SERVICES IN GENERAL (Not previously specified)	32%	32%				4,80%	8,00%	2,88%
16	be the difference between the disposal value and the vehicle acquisition cost. (Law No. 9.716/98, Article 5)								
17	CIVIL CONSTRUCTION - exclusively labor								

188 As a rule, the sale of ore, raw or processed, is subject to a presumption margin of 8% for IRPJ and 12% for CSLL.

189 The presumed profit rules do not authorize the application of a presumed profit margin on non-operating revenues. In these cases, IRPJ (25%) and CSLL (9%) are levied directly on earned income. In other words, for revenue arising from outside activities determined in the corporate purpose, the margin of presumption will not be applied, incurring the rate of 25% for IRPJ and 9% for CSLL on the total revenue earned.

190 An exception to this rule is the taxation of capital gains on the disposal of assets, which even in the case of atypical activity, the IRPJ and CSLL rates do not affect directly on the revenue, but on the difference between the historical cost and the value of sale of good.

191 The definition of gross revenue is found in art. 12 of Decree-Law No. 1,598/1977, which after being amended by Law No. 12,973/2014, includes four types of operating revenue:

> *"Art. 12. Gross revenue comprises:*
> *I - proceeds from the sale of goods in own account operations;*
> *II - the price of providing services in general;*
> *III - the result obtained in the operations of third-party accounts; and*
> *IV - revenues from the main activity or object of the legal entity not included in items I to III."*

192 In addition to the proceeds from the sale of goods in own account operations, the price of providing services and the result earned in third-party account operations, gross revenue also includes other revenues arising from the main activity of the legal entity. That is, the revenues

from the main activity or object must compose the operating result of the entity's activities, since they constitute income arising from the activities ordinarily carried out.

193 Article 12 of Decree-Law No 1.598/1977 transcribed above had its wording revised after the Supreme Court judged RE 585.235/MG (Topic 110) and recognized the unconstitutionality of the expansion of the PIS and Cofins calculation base in the cumulative regime.

194 The adjustment made in art. 12 implied the acknowledgment that billing and gross revenue are different concepts: operating revenues, or those related to the main object of the legal entity, make up billing, while non-operating revenues, or atypical for the main object, do not make up billing. The latter make up gross revenue, which includes both operating and non-operating revenue.

IX. 1.1.2.1 Partner remuneration

a) Dividends

195 As with actual profit, the payment of dividends is exempt from IRPJ and CSLL also for taxpayers opting for presumed profit.

IX.1.2 Contributions to PIS and Cofins

196 Just as for IRPJ and CSLL, PIS and Cofins Contributions are federal responsibility and have identical calculation bases, with distinction only in the applicable rates.

197 PIS and Cofins must be calculated monthly and centrally, that is, considering all operations carried out by the taxpayer's establishments.

198 Pursuant to art. 5 of Law No. 10.637/2002 and art. 6 of Law No. 10,833/2003, revenues arising from exports are not covered by the levy of PIS and Cofins, and are, therefore, exempt from this tax.

199 Determining the basis for calculating PIS and Cofins can be done using two different systematics, cumulative and non-cumulative.

a. Cumulative:

200 This system is mandatory for certain economic segments (not applicable to mining) and for legal entities taxed by income tax based on presumed profit (article 8, II of Law No 10.637/2002 and article 10 of Law No 10.833/ 2003).

201 For this calculation system, a rate of 0.65% is applied for PIS and 3% for Cofins on gross revenue, with no possibility of appropriating and deducting credits.

b. Non-cumulative:

202 Companies that do not operate in economic segments for which the use of the cumulative regime is mandatory or that are taxed by IRPJ and CSLL on actual income, must calculate PIS and Cofins using the non-cumulative system.

203 For these hypotheses, the determination of these Contributions must be carried out by matching the accounts between the credits appropriated in the inputs (of goods and services used in the production process) and the debits calculated on the gross revenue earned.

204 The rate, for credit and debit, is 1.65% for PIS and 7.6% for Cofins.

205 As a rule, the appropriation of credits on the acquisition of inputs (products and services), amounts spent on electricity, rents and leasing of assets used in the production process and depreciation charges of fixed assets used in activities operational.

206 The input criterion for appropriating PIS/Cofins credits is the subject of relevant disputes between taxpayers and the Federal Revenue Service. In 2018, the Superior Court of Justice issued an important decision, in the sense of establishing that all goods and services acquired and that are essential or relevant for the Taxpayer's activity will be considered input for PIS/Cofins.

207 Although there is still a certain degree of subjectivity, the decision is an important paradigm for the purposes of applying the PIS/Cofins rule.

IX.1.3 IOF - Financial Transaction Tax

208 The IOF is a tax of an extra fiscal nature, of federal competence, and is levied on: (i) credit operations (e.g. loans, mutuals); (ii) exchange operations; (iii) insurance operations; (iv) operations with bonds and real estate securities.

209 In the case of foreign loans, the rules inherent to the IOF Exchange prevail over the rules that regulate the incidence of the IOF Financial Operations.

210 The basis for calculating the tax, as a rule, corresponds to the value of the transaction. The rates vary according to the nature of the operation performed, the most common being:

- Loan operations with legal entities in reais: rate of 0.0041% per day (applicable on the amount due, with an additional 0.38% applicable on the calculation basis. Depending on the terms of the loan contract, the sum of the rates cannot exceed the corresponding to the daily incidence of the rate of 0.0041%, limited to 365 days, plus the additional rate of 0.38%.

- Loan operations with individuals in reais: rate of 0.0082% per day (applicable on the amount due, with an additional 0.38% applicable on the calculation basis. Depending on the terms of the loan contract, the sum of the rates cannot exceed the corresponding to the daily incidence of the rate of 0.0082%, limited to 365 days, plus the additional rate of 0.38%.

- Operations involving inflows and outflows of funds, whether for capital payment, payment of dividends, interest on own capital, return of capital to shareholders, among other operations, are subject to the IOF Exchange. The rate can vary between 0 and 0.38%.

    - *On export revenues a zero rate is applied.*

211 The temporal aspect of incidence may vary according to the taxable transaction. In the case of the IOF Exchange, as a rule, the taxable event occurs at the time of closing the exchange contract for the purpose of remittances or inflows of funds into the country. In the case of loans, the IOF is levied on the debt balance calculated monthly.

212 Therefore, the verification of the incidence criteria must be done on a case-by-case basis, observing the particularities of the operation.

IX.2. Consumption taxes

IX.2.1 ICMS - State Value-Added Tax

213 ICMS is a non-cumulative tax, of state competence, whose incidence falls on the circulation of goods, commercialization of electric energy and on transport services (interstate and intercity).23.

214 For ICMS, the autonomy of the establishment prevails, therefore, the calculation must be made individually by establishment. The calculation must be done monthly.

215 Similar to what happens to PIS/Cofins, the Constitution, in its art. 155, § 2, X, "a" establishes ICMS immunity on export operations.

216 In order to calculate the ICMS due, the appropriation of credits on raw material, packaging material and intermediate products is allowed (one that, used directly in the industrialization process, is part of the new product, or that, although not being part of the new product, is consumed, immediately and fully, in the course of industrialization as long as it is not classified

[23] This tax also applies to telecommunication services.

in property, plant and equipment). Appropriation of credits on goods acquired to fixed assets is also allowed, provided they are used in the production process.

217 The ICMS rule determines the reversal of credits whenever the subsequent departure is exempt or not taxed. The reversal must take place in proportion to the exempt or non-taxed outflows over the total outflows of taxpayers. Exports, although not covered by ICMS, do not require the proportional reversal of credits.

218 The ICMS debit is calculated on the value of the sale of merchandise, in a mercantile transaction. In the event of importation of goods for use and consumption, including fixed assets, the importer is responsible for paying ICMS upon nationalization of the goods.

219 As it is a state tax, states are authorized to establish specific rules for the incidence of ICMS. Thus, the rates in internal operations may vary from State to State, for interstate operations, the rates are regulated by the Federal Senate.

220 In addition, some practical aspects of calculating and fulfilling an accessory obligation may also vary according to the policy established by the State.

IX.2.2 IPI - Federal Value-Added Tax

221 The IPI is a non-cumulative tax, of federal jurisdiction and calculated monthly, which falls on the industrialization of goods. As with ICMS, the IPI calculation is individualized by establishment.

222 For the purpose of applying the standard, the following processes are characterized as industrialization:

a. **Transformation:** exercised on raw materials or intermediate products and results in obtaining a new species;

b. **Processing:** act that involves modifying, improving or, in any way, altering the operation, use, finish or appearance of the product;

c. **Assembly:** act consisting of the assembly of products, parts or parts and which results in a new product or autonomous unit, even if under the same tax classification;

d. **Packing or Repackaging:** act that involves changing the presentation of the product, by placing the packaging, even if replacing the original, except when the packaging placed is intended only for the transport of the goods; or

e. **Renovation or Reconditioning:** exercised on a used product or remaining part of a deteriorated or unusable product, renew or restore the product for use.

223 In addition to industrialization, the IPI is also levied on the import and sale of industrialized products.

224 In internal operations, the IPI debit base will correspond to the value of the exit operation, in the case of sales. If no value is attributed to the operation, the current price of the merchandise or similar in the wholesale market of the sending place.

225 In the case of imports, the calculation basis will be the value of the imported goods, plus Import Tax and other taxes levied due to the entry of the foreign good into the Country.

226 Credits must be calculated on the acquisition value of inputs (raw material, intermediate product and packaging materials), here understood restrictively to goods intrinsically linked to production.

227 The IPI rates may vary according to the product that is industrialized. As a rule, operations with ore are not taxed by the IPI. This is what happens with rare earth minerals and metals and with aluminium ores and concentrates. However, if the processing of the ore results in a new substance, the good produced may be subject to taxation.

228 In a ruling published in 2022, the First Section of the STJ – responsible for settling tax disputes in the Court – ruled on an important issue related to the possibility of using IPI credits on the entry of encumbered inputs, even when the output of a product with an "NT" notation in the TIPI (not taxed) occurs. This is the judgment of the Embargoes of Divergence in REsp n. 1,213,143.

229 The STJ understood that the Federal Revenue Service, through infralegal acts, promoted the restricted restriction of the scope of the tax benefit to the departure of "NT" products. First, with the advent of IN RFB No 33/1999 and RIPI (Decree No 4.544/2002), which granted the use of credits only when the inputs are applied in the industrialization of immune products. Later, when editing ADI No 05/2006, the Tax Authorities further restricted its understanding, to allow the credit only for the shipment of products supported by the immunity resulting from exportation, which was replicated by the 2010 RIPI.

230 In view of this context, the STJ understood that art. 11, of Law No. 9,779/1999, directly confers the IPI credit when "the taxpayer cannot offset" the IPI credit balance on the output of other products. And the term "other products" should be understood as those exempt, subject to zero rate or not taxed ("NT"). Therefore, in the impracticability of using the credits resulting from the encumbered entry, the law establishing the tax benefit provides the opportunity of arts.

73 and 74, of Law No. 9,430/1996, which allow the use of balances for reimbursement, refund or compensation.

231 In continuity, the STJ understood that the expression "not taxed", in this context, refers to the products designated as such in the TIPI. From the markings in that table, it appears that immune products and those subject to pure non-incidence are included. This is the case, for example, of mineral commodities (subject to the immunity of article 155, paragraph 3, of the Constitution, even industrialized by processing) sold in raw form.

232 This comparison is essential, to the extent that, both in products not taxed due to non-incidence and in those that are immune, the taxpayer is unable to offset the credit arising from the encumbered entry, attracting the possibility of autonomous credit provided for in the law establishing the tax benefit.

233 It was stated in the judgment that it is unacceptable to restrict, by an infralegal act, the tax benefit granted, especially when the three situations (exemption, zero rate and non-taxation) are equivalent in terms of the practical result provided for by law.

234 124. Although it pacifies the jurisprudence, the performance of the Federal Revenue and its Official Lawyer is not linked to the terms of the decision, insofar as the judgment did not occur under the rite of repetitive appeal. In practical terms, this means that the Federal Revenue will be able to maintain its historical understanding, in the sense of glossing over the maintenance of credits linked to NT outputs, as expressed in the Interpretive Declaratory Act (ADI).

235 It is worth mentioning that the Precedent no. 20, contrary to the guidance now pacified by the First Section of the STJ, still in force at the Administrative Court (CARF): "There is no right to IPI credits in relation to the acquisition of inputs applied in the manufacture of products classified in the TIPI as NT.". While such procedure is in force, the decisions of the CARF are bound by the understanding expressed therein.

236 In any case, it would be possible to discuss the topic in case of disallowance of the credits by the RFB, demonstrating a jurisprudential novelty, which may culminate in an administrative victory, for example, if the STJ consolidates this understanding in a decision under the rite of repetitive appeals. Otherwise, the taxpayer will take the discussion to the Judiciary, with remote risk of loss.

IX.3. Property taxes

IX.3.1 ITR - Rural Land Tax

237 The National Tax Code ("CTN") provides that the taxable event of the ITR is ownership, useful domain or possession of immovable property by nature, as defined in civil law, located outside the urban area of the municipality.

238 The provisions of Law No 9.393/1996 and Decree No 4.382/2002 are of identical content when establishing the hypothesis of incidence of this tax.

239 Normative Instruction No. 1,467/2014, issued by the Federal Revenue Service of Brazil with the aim of regulating the collection of the tax, is very clear when it says in its art. 5, § 3, that the tax can only be collected from those possessors who do not have their possession subordinated, thus understood as those who have animus domini.

240 Thus, the taxpayer of the ITR must be the one who effectively holds the economic availability of the property, with total abstraction of the legal title to the property, which may even suffer from incurable vices, or even not exist. And being the owner in the legal sense is not enough to fulfill the material aspect of the ITR taxable event. It is necessary for the owner to gather the three attributes of property: the right to use, enjoy and dispose of the thing, in the exact terms of art. 1.228 of the Civil Code of 2002.

241 Under the terms of Normative Instruction RFB No 256/2002, the ITR, due annually, is calculated on the Value of Bare Land (VTN) which, according to art. 32 of the same diploma, refers to the market value of the land with its surface. In other words, the VTN will reflect the market price of the land, calculated on January 1st of the year in which the triggering event for the ITR occurs.

242 In the absence of a document justifying the value of the property, the VTN can be arbitrated by the supervisory authority, considering the price obtained from the Land Price System (SIPT), through which the RFB centralizes the VTN values informed by the municipalities.

243 Recognizing that in certain circumstances properties located in rural areas do not lend themselves properly to rural activities, the governing legislation, for the purpose of measuring the ITR calculation base, allows the segregation of the rural property area between usable area (for rural activity) and unusable area.

244 In short, the portion of land classified as: (i) flooded areas; (ii) permanent preservation areas; (iii) legal reserve area; (iv) private natural heritage reserve area ("RPPN"); (v) area of ecological interest; (vi) environmental easement area; (vii) area covered by native forest.

245 Therefore, the tax calculation base will correspond to the value of the property, reduced by its unused portion.

246 The rate can vary from 0.03% to 20% according to the size of the property and its degree of use.

IX.4. Typical mining obligations

IX.4.1 CFEM - Mining Royalties

247 Article 20, § 1, of the Constitution guarantees to the States, Federal District and Municipalities, as well as to bodies of the direct administration of the Union, the participation in the result of the mineral exploration or respective financial compensation.

248 From the constitutional authorization, Law No 7.990/1989 created the exaction and established that the obligation to collect the CFEM arises, for the holder of the Mining Right, when the economic use of the mineral resources is verified, configuring its incidence hypothesis until the last stage of the beneficiation process and before its industrial transformation.

249 The temporal criterion of the incidence hypothesis, in turn, was elected as the output by sale of the mineral product. Despite considering that the triggering event of the CFEM (temporal criterion) occurred with the sale, art. 15, of Decree No 01/1991, equated it with the consumption or use of the mineral substance, in any establishment of the miner.

250 In order to regulate art. 6, of Law No 7.990/1989 (which provided that the triggering event of CFEM occurs after the last stage of the adopted beneficiation process and before its industrial transformation) item III, of art. 14 of Decree No. 01/1991 discriminates what can be considered processing of the mineral substance (for example, fragmentation, pulverizing, classification, concentration, etc.), but adds the following: "provided that it does not result in the mineralogical mischaracterization of the processed mineral substances or that do not imply its inclusion in the scope of the Tax on Industrialized Products (IPI)".

251 The aforementioned norm lists two criteria that anticipate the CFEM triggering event at the time of the mineral product's output, configuring the consumption of the substance in the production process: the mineralogical mischaracterization or its inclusion in the field of incidence of the IPI.

252 Given this normative context, it can be said that the generating fact of CFEM occurs when the economic use of the mineral substance is verified (material criterion of the incidence hypothesis), practiced by the holder of the Mining Right authorizing that use (personal criterion).

253 And this will occur (i) on the first sale of the mineral product, carried out by the holder of the Mining Right; or, if the holder consumes the substance, in (ii) mineralogical mischaracterization; (iii) or in the industrialization of the substance, subjecting it to the scope of the IPI, even at a 0% rate.

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254 Law No. 13,540/2017 defines the basis for calculating consumption as the calculated gross revenue, considering the current price of the mineral good, or its similar, in the local, regional, national or international market, as the case may be, or the value of reference, defined from the value of the final product obtained after the completion of the respective improvement process. The paragraph 10 of the new art. 2, of Law No 8.001/1990, provides that the ANM will decide, for each mineral good, whether the criterion will be the current price or the reference value.

255 On March 26, 2018, Ordinance No. 239 of the Director General of the DNPM was published, which defined: (a) that the CFEM rate will be levied on the reference value for the mineral substances listed in its Appendix, according to the methodology of Decree No. 9,252/2017; (b) the adjustment factors mentioned in Decree No. 9,252/2017, with their respective enrichment ranges, for each mineral asset listed in the Appendix; (c) the adjustment factor selected affects the production cost, being able to reduce it by 10%, keep it as a calculation basis or increase it by 10%; (d) for other mineral substances not listed in the Appendix, the CFEM will apply to "the current price of the mineral good, or its similar, in the local, regional, national or international market, as the case may be"; (e) in the event that there is no current market price, the interested party may request the regulatory authority of the sector, duly justified, to include a mineral substance in the Appendix to the Ordinance; i.e. the application of the base "reference value".

256 As stated, as a rule, CFEM is levied on the sale of mineral goods or their consumption. In the first hypothesis, the tax calculation basis corresponds to the sales value, and only the taxes levied on the sale can be deducted, since Law No. 13,540/2017 prohibits the deduction of freight and insurance24.

257 In the case of exports, Brazilian standards for transfer pricing can be applied to measure the minimum CFEM calculation base. Considering that there have been recent changes to transfer pricing rules and the CFEM governing standard has not been modified, there is a regulatory gap that prevents the application of transfer pricing rules to CFEM, in which case the sales price must be used.

258 In short, Law No. 13,540/2017 defined that the consumption and use of the mineral are events that generate CFEM.

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[24] There is litigation regarding the deduction of freight and insurance on the CFEM basis, with favorable and unfavorable decisions, awaiting an outcome in the Superior Courts. There is also discussion about the concept of "incidental taxes", pending regulation by the ANM. We understand that any tax levied on the operation must be deductible, including mining taxes (TFRMs) and contributions allocated to state funds.

259 In consumption, the standard establishes as a calculation basis:

a) the current price of the mineral good, or its similar, in the local, regional, national or international market, as the case may be; or

b) the reference value, regulated by presidential decree and by the National Mining Agency – ANM.

According to legislation, it will be up to ANM to establish, for each mineral substance, whether the criterion will be the current price or the reference value.

260 The regulation of the reference value (criteria for calculation) and the fixation of mineral assets that would be subject to the aforementioned calculation basis, instead of the current price, were implemented through Decree No. 9,252, of 12/28/2017 and by DNPM Ordinance No. 239, of 03/23/2018, diplomas that will be discussed below.

261 Initially, Decree No. 9,252, published on December 29, 2017, established the calculation methodology for the reference value (calculation basis), which is obtained by the following formula:

262 Reference value = Production value x Adjustment factor

263 The production value represents the "sum of direct and indirect operational and administrative expenses incurred up to the last stage of processing the mineral asset". In other words, it is the production cost incurred until the moment the ore is transformed into another type of product.

264 The adjustment factor, in turn, consists of an "index established by means of an act of the regulatory entity of the mining sector, through a table, for each mineral substance".

265 Subsequently, on 03/26/2018, DNPM General Director's Ordinance No. 239 was published, which defined:

a) that the CFEM rate will apply to the reference value for the mineral substances listed in its Annex, which expressly includes the substances Vanadium, Niobium, Nickel sulfide, Zinc sulfide, Zinc silicate, Phosphate, Magnesite (sinter), Cobalt, Limestone , Salt and Clay, but does not include Bauxite and Rare Earths;

b) the adjustment factors mentioned in Decree No. 9,252/2017, with their respective enrichment ranges, for each mineral asset listed in the Annex.

The selected adjustment factor affects the production cost and can (i) reduce it by 10%; (ii) keep it as a calculation basis; or (iii) increase it by 10%.

c) that for other mineral substances not listed in the Annex, CFEM will apply to the current price of the mineral good, or its similar, in the local, regional, national or international market, as the case may be;

d) that in the event that there is no current price on the market, the interested party may request the sector's regulatory entity, in a duly justified manner, for the inclusion of a mineral substance in the Annex to the Ordinance; that is, the application of the "reference value" basis.

266 This is the current regulatory scenario in force in relation to the royalty levied on the consumption of mineral substances.

267 CFEM is a Financial Compensation for the Exploration of Mineral Resources, paid to the Federal Government of Brazil for the economic use of these mineral resources. CFEM is levied on net revenue, in the case of the sale of raw and processed ore, or on the intermediate production cost, when the mineral product is consumed or transformed in an industrial process. The rates will vary according to the mineral substance. As mentioned in paragraphs 310 et seq. the hypothesis of incidence of CFEM is the sale and/or consumption of the mineral. The CFEM calculation basis corresponds to the sale value of the ore, and taxes on sales (ICMS and PIS/Cofins, as a rule) can be deducted. If the sale is export (to a related party or not), the calculation basis is also the sales revenue, and transfer pricing rules must be applied to verify the adequacy of the transaction value. If the ore is consumed in the industrial transformation process, the calculation basis will be the production cost up to the stage prior to transformation into a new product.

268 On these bases, the following rates are applied for calculating the amount of the CFEM (i.e. government royalty) payable to the Federal Government by the tenement holder, i.e, RSM's subsidiaries:

- Iron ore: fixed rate of 3.5%.
    - *o Exceptionally, upon individual application made to the ANM based on criteria to be set in a Presidential Decree, the rate may be reduced to up to 2%, with the objective of guaranteeing the economic use of deposits with low performance and profitability due to the content, scale of production, payment of taxes and number of employees.*
- Niobium and bauxite: 3% rate.

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- Diamond, precious stones, cutable colored stones, carbonaceous, rare-earth elements and noble metals: at the rate of 2%.
- Gold, including when mined under Mining Mining Permission, rate of 1.5%.
- Rocks, sand, gravel, gravel and other mineral substances when intended for immediate use in civil construction; ornamental rocks; mineral and thermal waters, 1% rate.

IX.4.2 Mining inspection and control fee

269 Since 2011, several Brazilian states have started to create a new tax on mining, with features of a mineral royalty of the unit-based royalty type. This is the case of Minas Gerais, Pará, Amapá, Mato Grosso do Sul, Mato Grosso and Tocantins. This tax has been formally called TFRM, an acronym that stands for "Mineral Resources Inspection Fee", supposedly created with the purpose of paying for the inspection carried out by states environmental agencies on mining activities.

270 The Brazilian Supreme Court recently stated that States have the power to create this tax. However, it declared the unconstitutionality of the TFRM created by the State of Mato Grosso because the amounts charged to mining companies were much higher than the cost of monitoring taxpayers. This means that each TFRM must be analyzed individually from this perspective.

271 Likewise, it is possible that municipalities will begin to institute fees like this. For this reason, for investment analysis purposes, it is advisable to pay special attention to this type of exaction. Based on the successful experience of States that charge the TFRM, dozens of mining municipalities in Brazil also began to charge this tax. Initially, this occurred in the State of Pará, but the tax is already being introduced in municipalities in the Northeast and Southeast.

272 There is a risk, therefore, that the Municipalities where mineral exploration takes place will create the TFRM, which could be charged cumulatively with the state tax of the same name.

273 It should be noted that the Brazilian Supreme Court, when judging Direct Unconstitutionality Action No. 4,786, regarding the TFRM created by the State of Pará, observed the phenomenon of a proliferation of municipal taxes equivalent to the state tax that was under trial. Justice Nunes Marques, in his vote, stated that the Supreme Court has a meeting scheduled in the future to decide on the constitutionality of cumulating TFRMs at all federative levels, as this charge may prove to be excessively burdensome for miners.

IX.4.3 TAH – Mining fee per property

274 The TAH – Annual Fee per Hectare was instituted in DL No 227/1967 (Mine Code) by Law No 7.886/1989. This is an annual fee payable by the exploration permit holder, which must be paid until the final exploration report is delivered (ie, it is not due before the start of the extraction phase).

275 The current values are BRL 4.33/hectare for the first term of the exploration permit If the permit is renewed, the amount of BRL 6.48/hectare will be due.

276 The fee is due annually.

IX.5 Tax reform

IX.5.1 Amendment to the Constitution No. 132/2023– Reform of taxation on consumption

277 Corporate taxation in Brazil was substantially changed by Amendment to the Constitution No. 132/2023, resulting in the need for new tax planning for those who operate or intend to operate activities in the country. The last major regulatory change at this level occurred in the 1960s, with the creation of the current National Tax Code.

278 Regarding taxation on consumption, Amendment to the Constitution No. 132/2023 was approved, with the aim of bringing the Brazilian tax system closer to what is observed in most developed and developing countries. Its new features are:

- The creation of a dual VAT – the Tax on Goods and Services (IBS), which will be shared between States and Municipalities, and the Contribution on Goods and Services (CBS), of the Federal Union.
- The creation of a Selective Tax, levied on activities harmful to health or the environment, with a primarily extra-fiscal purpose.
- Authorization for some Brazilian States to create an unprecedented tax on primary and semi-finished products, mainly affecting mining, agribusiness and the oil and gas sector, which could also be charged on exports.
- On the other hand, the gradual extinction, by 2033, of the current taxes levied on consumption was foreseen, at all federal levels: Tax on Services (ISS, the municipal VAT), Tax on Goods and Transport and Telecommunications Services (ICMS, the State VAT), Contributions on Gross Revenue and Tax on Industrialized Products (PIS/Cofins and IPI, the Federal VAT).

279 Next, these changes will be detailed.

280 A VAT is a non-cumulative tax charged at all stages of the production and marketing process, guaranteeing, at each stage, the credit corresponding to the tax paid in the previous stage. This characteristic of VAT makes it a neutral tax.

281 Because of this, the following characteristics are part of the nature of a VAT: (1) broad base of incidence; (2) full appropriation of credits from previous stages, leading to tax neutrality throughout a production chain; (3) little or no exceptions to the general taxation rule (no tax incentives or beneficial sectoral treatments).

282 The Brazilian tax regime on consumption, structured in the 1960s, lacked all these characteristics. It was decided to grant each federative entity (Union, States and Municipalities) its own VAT. But this specific VAT, granted to each political person, did not capture the same tax bases.

283 The Union was given a VAT on all revenues of the legal entity, called Contributions to PIS and Cofins, as well as a VAT levied only on industrialized products (IPI). Its incidence and crediting rules are different, having jointly generated the biggest dispute in the history of the Brazilian tax system.

284 States were granted a VAT, charged at origin – and not at destination –, levied on transactions involving goods, as well as two types of services: telecommunications and intercity and interstate transport (ICMS).

285 This tax, therefore, has incidence and crediting rules that are completely different from the VAT charged by the Union, which has always generated great complexity for taxpayers. Furthermore, with there being 27 States in the Brazilian Federation, each State created different rules for this VAT, making it the most tormenting tax in national history.

286 The Municipalities, in turn, received VAT levied only on services (ISS), except telecommunications and intermunicipal and interstate transport, which belong to the state VAT incidence hypothesis.

287 As each VAT has a distinct materiality (revenue, industrialized products, goods and services), the Supreme Court was called upon to decide dozens of cases on the meaning of these terms. There have been many conflicts of competence between federal entities in recent years, mainly due to the digitalization of the economy and the granting of tax incentives to attract investments.

288 This complex scenario of consumption taxation in Brazil was the main reason that led to the approval of Amendment to the Constitution nº 132/2023, which aims to abolish all mentioned VAT, so that only two are created: the Brazilian dual VAT.

289 The idea of creating a single VAT was debated in the National Congress. But this was not possible, due to the distrust that Brazilian States and Municipalities have in relation to the Union. Hence the alternative was the creation of two VAT, one shared between States and Municipalities (the IBS) and another for the Union (the CBS).

290 To prevent these two VAT from being different, Amendment to the Constitution nº 132/2023 determined that both taxes have the same characteristics. In other words, IBS and CBS will, by law, have the same incidence hypotheses, calculation basis, taxable persons, exemptions, special regimes, and crediting system.

291 However, as these taxes will be managed by different tax administrations, it is expected that there will be interpretative divergences regarding the legislation establishing each VAT. The IBS will be managed by a Management Committee, made up of representatives from the 27 States and 27 Municipalities chosen from the 5,570 existing in the country. The CBS will be managed by the Union, through the Federal Revenue Service. There is no guarantee that the IBS Management Committee and the Federal Revenue Service will adopt the same interpretations of the IBS and CBS rules, even though these rules are theoretically identical, which can lead to complexity for taxpayers.

292 See the main normative characteristics of the Brazilian dual VAT:

- It will be levied on operations with material or immaterial goods, including rights, or services.
- It will be levied on the import of material or immaterial goods, including rights, or services carried out by an individual or legal entity, even if they are not habitual taxpayers.
- It will levy on the transaction's destination, and no longer on its origin, as was the Brazilian paradigm in taxation on consumption.
- It will not be levied on exports, guaranteeing the exporter the maintenance and use of credits from previous operations.
- It will not be levied on itself (avoiding the inclusion of VAT in its own calculation basis) and on other contributions and taxes charged in the country, except for the Selective Tax.
- The general immunities provided for in the Constitution will apply to IBS and CBS.
- Non-cumulative nature, based on the principle of neutrality, with the exception of the right to receive credit only for goods and services considered to be for personal use or consumption.
- The right to credit, as a rule, is not conditional on payment of VAT in the previous stage. However, there are two exceptions: (1) when the purchaser must collect the VAT, denoting, in addition to imports, the possibility of tax substitution or deferral rules; or (2) when VAT is collected through financial settlement (split payment);

- There will be, according to the law, the right to presumed tax credit in the acquisition of goods and services from (1) a rural producer, an individual or legal entity that obtains annual revenue of less than R$ 3,600,000.00, as well as from an integrated producer, who are not opting by IBS/CBS; (2) self-employed individual cargo transporter who is not a tax payer; (3) waste and other materials intended for recycling, reuse or reverse logistics, from individuals, cooperatives or other forms of popular organizations; and (4) movable property used by a non-taxpaying individual, for resale.
- The rates will be set by each federative entity by specific law, and the total dual VAT rate will correspond to the sum of each of these rates, considered in the destination of the operation.
- The rates will be uniform for all goods and services, except in cases reserved by the Constitution.
- The Senate will set IBS reference rates, with three objectives: (1) maintaining the current tax burden, when compared to GDP; (2) compensate for the absence of tax rates in any federal entity, notably municipal; (3) define the IBS rates during the transition period, from 2026 to 2033.
- Dual VAT does not allow for tax benefits or special regimes, except in cases reserved by the Constitution (in addition to rate reductions, there are provision for differentiated regimes for a series of situations).

293 The hypotheses for reducing the dual VAT rate by 60% are as follows:

- Education services.
- Health services.
- Medical devices.
- Accessibility devices for people with disabilities.
- Medicines.
- Basic menstrual health care products.
- Collective public transport services for road and metro passengers of an urban, semi-urban and metropolitan nature, which may also be exempt, in accordance with the law.
- Food intended for human consumption.
- Personal hygiene and cleaning products mostly consumed by low-income families.
- Agricultural, aquacultural, fishing, forestry and plant extractive products in natura.
- Agricultural and aquaculture inputs.
- National artistic, cultural, event, journalistic and audiovisual productions, sporting activities and institutional communication.
- Goods and services related to sovereignty and national security, information security and cybersecurity.

294 A 30% reduction in dual VAT rates may be granted, relating to the provision of services of an intellectual profession, of a scientific, literary, or artistic nature. This is the case of lawyers, doctors, engineers, accountants, and other independent professionals.

295 The reduction in rates can reach 100%, according to the law, in the cases of (1) vegetables, fruits and eggs; (2) medical and accessibility devices for people with disabilities; (3) medicines and basic menstrual health care products; (4) services provided by a non-profit Scientific, Technological and Innovation Institution (ICT); (5) passenger cars, when purchased by people with disabilities or professional taxi drivers; (6) higher education education services under the terms of the University for All Program (Prouni); (7) urban rehabilitation activities in historic areas and critical areas for urban recovery and conversion.

296 Among the sectors and operations that will have different tax regimes, the following stand out: (1) the maintenance of the Manaus Free Trade Zone and Free Trade Areas; (2) special customs regimes; (3) fuels, with a uniform rate throughout the country, single-phase regime, ad valorem or ad rem rates; (4) favored tax regime for biofuels and low-carbon hydrogen; (5) goods and services that promote the circular economy aiming at sustainability in the use of natural resources; (6) financial services, transactions with real estate and health care plans, which may be subject to cumulative VAT, with uniform rates throughout the national territory; (7) acquisition of capital assets may be exempted; (8) cooperatives and (9) hospitality industry, amusement parks and theme parks, restaurants and regional aviation.

297 Conceptually, these are very important changes to simplify consumption taxation in Brazil. In order for them to be well implemented, it will be up to the National Congress to enact laws establishing these taxes in a reasonable and rational manner.

298 Alongside the dual VAT, Amendment to the Constitution nº 132/2023 authorized the Union to institute a tax with a markedly extra-fiscal aspect, to discourage certain acts of consumption that would be, theoretically, "harmful to health and the environment": the Selective Tax. This is an unprecedented tax in the national experience – which cannot be confused with the Tax on Industrialized Products (IPI).

299 Taxes such as the Selective Tax are verified in foreign experience and doctrine and have objectives (1) to collect, focusing on highly consumed goods, such as tobacco, alcoholic beverages, oil and motor vehicles; (2) internalizing negative externalities (the "Pigouvian tax", based on Pigou Theory, in The Economics of Welfare); and (3) to discourage certain acts of consumption, considered harmful to human health or state interests.

300 The Selective Tax will have the following characteristics:

- Its institution must occur by complementary law, and its rates can be established by ordinary law.
- Extraction was included among the temporal criteria, alongside the production, commercialization and import of goods and services.
- Operations with electricity and telecommunications were immunized.
- When charged at the time of extraction, the tax will have a maximum rate of 1% on the market value of the extracted product and will apply regardless of its destination.
- It will be single-phase.
- Its rates can be specific, per unit of measurement adopted, or ad valorem.

301 In his report, Senator Eduardo Braga highlighted that the Selective Tax "will be a very useful instrument for the relevant climate change mitigation policy"; "it will not be used for its primary collection function"; and that "there is no need for multiphase incidence, which is why we included the monophase restriction".

302 The wording of Amendment to the Constitution nº 132/2023 suggests caution regarding the statement made by the rapporteur in the Senate, that this tax would not have a primarily revenue-raising purpose. Any human activity is potentially harmful to the environment, whether legal or illegal. It must be made clear that one thing is environmental impacts – legal and foreseen in environmental licensing, with its mitigating measures –, another thing is environmental damage, illegal, which gives rise to the obligation to compensate.

303 For environmental impacts, in addition to the mitigating measures provided for in the environmental licensing of the economic enterprise, there is a provision for financial imposition that implements the user-pays and polluter-pays principles. This is SNUC compensation, provided for in Law No. 9,985/2000, which created the National System of Nature Conservation Units. The idea of this compensation is that not every mitigating measure will completely avoid the impact on the environment, resulting in the duty to compensate – which cannot be confused with the duty to compensate, because the latter is always linked to environmental damage, illicit, and not to the impact, lawful.

304 The wording given to Amendment to the Constitution nº 132/2023 does not distinguish between the two situations and, potentially, authorizes the collection of the Selective Tax even on licensed economic activities and subject to SNUC compensation. This implies that any human activity could, from this perspective, be subject to this tax, which clearly does not seem to be the purpose of its creation, which is not primarily collection.

305 Therefore, depending on how the Selective Tax is implemented, given its broad scope in the constitutional text – since any human activity causes legal impacts on the environment –, the new tax may lose its supposed extra-fiscal nature and become a collection instrument.

306 With regard to its impact on acts of extraction, it should be noted that the intention expressed by the rapporteur in the Senate would be (1) to restrict mining activity in Brazil and (2) to have the Selective Tax applied even to mineral exports.

307 Once the constitutional amendment is promulgated, the possible intention of the legislator becomes just one, among many others, interpretative criteria of the promulgated text, which becomes the property of the legal system, and not of the individuals or bodies that participated in its drafting.

308 Therefore, it is necessary to check what the text of the amendment says, to know if the declared intention of the rapporteur in the Senate corresponds to what was promulgated. The answer is negative, both for the possibility of mining activity being restricted in Brazil, and for the tax to be charged on mineral exports.

309 The Brazilian Constitution determines that exploration and exploitation of mineral resources must be carried out in the national interest. This is not the interest of any federative entity specifically, but rather of the Brazilian people. The Attorney General's Office of the Union has a relevant statement in this regard: “Mineral resources, which, ultimately, belong to the people, must be explored with a view to the national interest (§1 of article 176 of the Constitution), to satisfy collective needs".

310 This is the basis for which, since Decree-Law No. 3,365/1941, the economic use of mines and mineral deposits has been included as cases of public utility (art. 5, f).

311 This implies that mining must be encouraged, through the granting of exploration authorizations and mining concessions, and not discouraged. That is the meaning of art. 176 of the Constitution, which does not authorize the use of the Selective Tax as an instrument to discourage mining.

312 As for the possible charge on exports, which is the intention expressed by the rapporteur in the Senate, this cannot be done without violating the Constitution, which enshrines, in several provisions, the principle of the country of destination. All taxes on consumption on exports were immunized, including to comply with international free trade agreements signed by Brazil, such as the General Agreement on Tariffs and Trade – GATT.

313 The Brazilian Constitution establishes the impossibility of regression in matters of fundamental rights and individual guarantees. Immunities, in general, are individual guarantees for taxpayers, which cannot be suppressed even by constitutional amendment. This is what the Supreme Court decided, when judging Direct Unconstitutionality Action No. 939.

314 Hence, tax immunity on exports is an individual guarantee for taxpayers, which cannot be suppressed under penalty of violating the principle of progressive rights and prohibition of retrogression.

315 On the other hand, the collection of the Selective Tax on extraction must consider the market value of the extracted product, in its raw state, as the calculation basis. Tax cannot be charged on the sales value or market value of the final product without violating the constitutional text.

316 There is also the unprecedented constitutional authorization for the creation of a State Contribution levied on primary and semi-finished products, destined for infrastructure and housing funds, including exports.

317 Amendment to the Constitution nº 132/2023 establishes the requirements for the creation of the new contribution by the States:

318 On 04/30/2023, have a Fund intended for investments in infrastructure works and housing. These are cumulative and not alternative destinations; in which case the word either would have been used: infrastructure or housing.

319 Still cumulatively, this Fund is financed by contributions on primary and semi-finished products established as a condition for the application of state VAT benefits, on 04/30/2023.

320 The new contribution will be valid until 12/31/2043 and may affect the export of primary and semi-finished products. This will return, unconstitutionally as seen with the Selective Tax, to the scenario that existed in Brazil before 1996, when state VAT was charged on exports of non-industrialized products.

321 The concept of primary and semi-finished products is given by Complementary Law No. 65/1991: (1) resulting from raw material of animal, vegetable or mineral origin subject to tax when exported in natura; (2) whose raw material of animal, vegetable or mineral origin has not undergone any process that involves modification of the original chemical nature; (3) whose cost of raw material of animal, vegetable or mineral origin represents more than 60% of the cost of the product.

322 In addition to the possible discussion regarding the levy of this State Contribution on exports, it is a measure that violates federal equality, because not all States will be able to create it. It is unacceptable, in a Federation, for some entities to have certain tax powers and others not.

323 Considering that the changes described in this text are very significant, the intention was to implement them gradually, from 2026 to 2033:

- In 2026: IBS will be charged at 0.1% and CBS at 0.9%. This 1% dual-VAT can be deducted from the Federal Cofins Contribution , without increasing the burden, and, until 2028, from the CBS itself.
- If the taxpayer does not have sufficient debts to deduct Cofins , the amount collected may be offset against any other federal tax or be reimbursed within 60 days.
- In 2027: CBS will be charged in full and Contributions to PIS and Cofins (federal VAT) will be eliminated.
- The IPI will have a 0% rate, except for industrialized products in the Manaus Free Zone.
- Selective Tax may be charged.
- From 2029 to 2032:
- Previous state and municipal VAT (ICMS and ISS) are reduced 10% per year, until they reach 60% in 2032.
- State VAT tax benefits will be maintained until 2032.
- The reference rates for IBS and CBS (dual VAT) in this period will be fixed by Senate resolution, in the year prior to their implementation.
- The reference rates will be revised annually aiming to maintain the tax burden.
- In 2033, all taxes on consumption prior to Amendment to Constitution No. 132/2023 will be extinguished, with dual VAT being charged in full. Studies by the Ministry of Finance and the Federal Court of Auditors estimate that the total dual VAT rate will be approximately 27%.

324 The new consumption taxation rules in Brazil require study and planning on the part of taxpayers and their investors. It is especially important to pay attention to the transition period, between 2026 and 2033, when the old and new tax systems will coexist. Great complexity and challenges are expected at this stage.

IX.5.2 Bill No. 2.337/2021 – Income Taxation

325 Bill No. 2,337/2021 was presented by the Executive Branch on 06/25/2021 and proposes relevant changes to the Income Tax and CSLL legislation.

326 Among the main points, the reduction of the Income Tax rate, from 15% to 8%, maintaining the additional 10%; and CSLL, from 9% to 8%.

327 In addition, the taxation of dividends, currently exempt, is foreseen. Dividends paid must be withheld at source at the rate of 15%, if the Bill is approved. In addition, with regard to the remuneration of shareholders, the text under vote extinguishes the deductibility of Interest on Own Capital, an important instrument for remuneration of shareholders.

X - Closure

328 This Opinion is issued only in accordance with the laws of Brazil in force on the date hereof and does not express any opinion in accordance with the laws of any other jurisdiction.

329 We also emphasize that this Opinion is restricted to what was provided in paragraph 2, and does not cover any technical, operational, commercial, or financial aspects of the Tiros Tenements, Novo Mundo Tenements and Santa Ângela Tenement.

Yours truly.

Tiago de Mattos

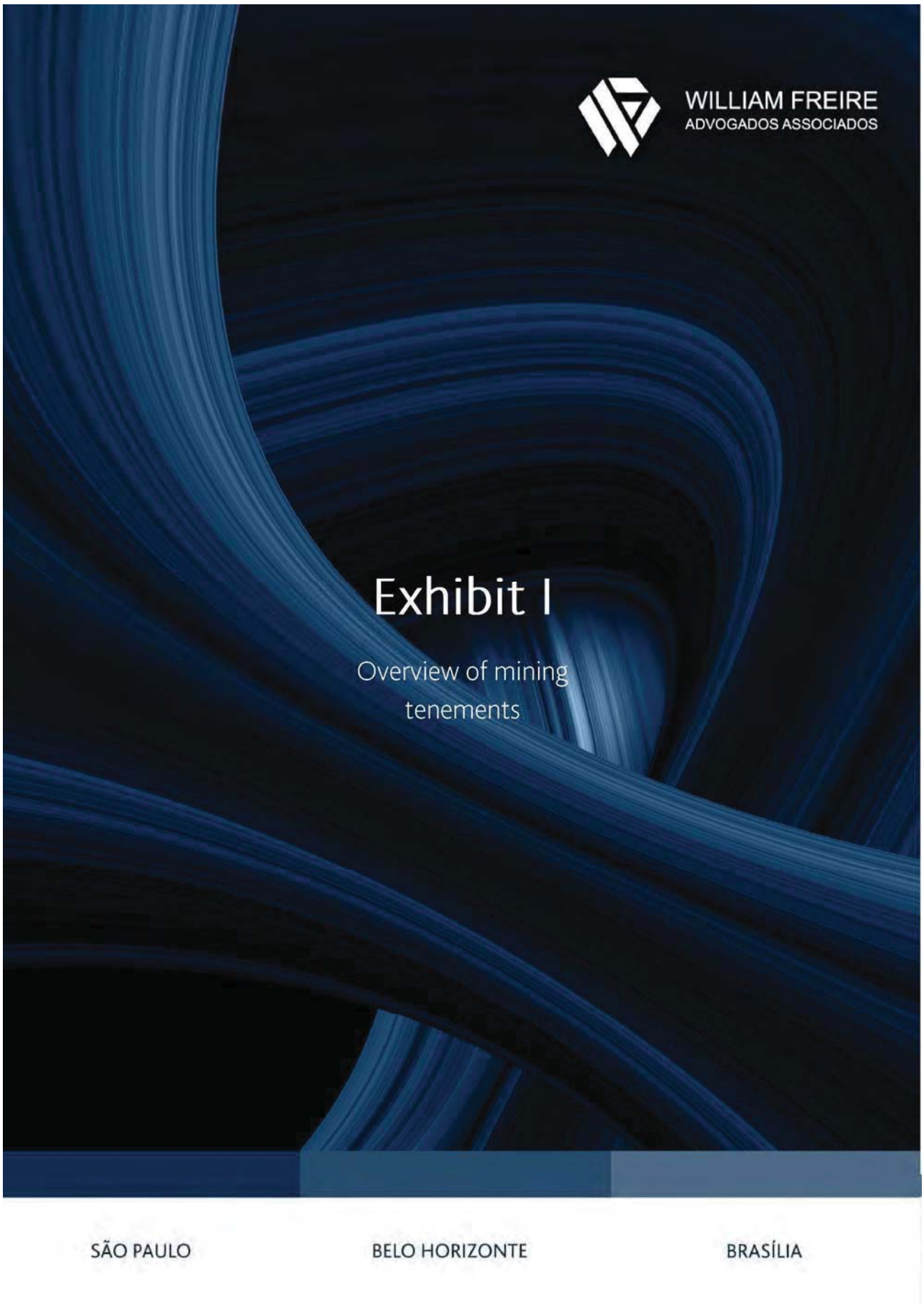
Bruno Costa

Caio Gomes

Bruno Malta

Bruno Feitosa

William Freire Advogados


WILLIAM FREIRE
ADVOGADOS ASSOCIADOS
Exhibit I
Overview of mining tenements
SÃO PAULO
BELO HORIZONTE
BRASÍLIA

Guide for interpreting the summaries of tenements

➢ Disclaimers

a) We have not identified, and we do not have any reason to think that there are encumbrances on the tenements.
b) We have reviewed the assignment contracts regarding the tenements pending the complete transfer process, and all of them comply with the requirements set forth by the National Mining Agency (ANM) for approval. In the context of an assignment request, there is no subjective analysis by the Agency to transfer the mining process; therefore, we can affirm that all mining processes not yet owned by Brazil Copper, and which have been subject to a transfer request, will shortly be approved for assignment without any hindrance.
c) The applicable legislation allows (i) mineral exploration to continue after the final exploration report has been submitted, which is why the term of each exploration permit should not be considered as a limitation to exploratory activities. This applies to tenements 833.082/2014, 833.083/2014, 831.045/2010 and 866.035/2009.
d) There are (i) no minimum spending commitments to maintain the tenements (ii) no regime whereby part of the tenements must be relinquished over time.
e) The tenements are situated in the State of Minas Gerais (Southeast Region), and Mato Grosso (Central-West Region).
f) There are no natives claims.
g) Beneficial interests do not apply to Brazilian law.

➢ List of repeating points of attention

a) Overlapping Incra Rural Settlements: Tenements overlap with the areas of PA Santa Cecília, PA Gleba 19 and PAC Peixoto de Azevedo. There is no automatic incompatibility between mining activities and the rural settlements created by the INCRA. The coexistence of the activities must be made compatible, to the extent possible, as both are considered of public interest. Recently, INCRA published Normative Instruction No. 112 to regulate the use of areas in settlement projects by mining, energy, and infrastructure projects.
b) Active Transmission Line Overlaps: ANM's public systems indicate that some Tenements overlap with active transmission lines. This overlap does not invalidate the tenements, but it could restrict certain exploration or exploitation activities. In specific cases, ANM may reduce the tenement's area to prevent interference with the transmission line. Such reductions are subject to a detailed administrative procedure initiated by the transmission line's concessionaire and will only occur if public interest and incompatibility between activities are proven.

c) Infraction Notices for New Substance Reporting Failures: The ANM has issued infraction notices to tenements 833.083/2014 and 833/082/2014 for the alleged untimely reporting of new mineral substance discoveries. While the tenement holder contends that the discoveries were reported promptly and followed by comprehensive research reports, the ANM has yet to conclude on the matter. If the infraction notices are maintained, the tenement holder may face fines totaling R$ 1,821.87 for each notice, subject to adjustments.

d) Interference with Artisanal Mining Permits: There is notable interference between Novo Mundo Tenement and existing artisanal mining permits (PLGs). All currently active PLGs have been verified as valid, including those renewed upon reaching their expiration. To mitigate potential conflicts and ensure compliance with regulatory requirements, it is essential to (i) ascertain the overlap of project areas with these artisanal mining zones and (ii) clearly define operational boundaries and responsibilities between the artisanal and commercial mining activities.

Summary of Tenements – Part I – Tiros Tenements										
Tenement	Area (Ha)	Status	Municipalities	Holder	Assignee	Grant date	PER Due	Renewal Date	FER Due	Comments
832.627/2023	1999,33	Exploration Permit	Campos Altos/MG	Brazil Copper Mineração LTDA	N/A	January 12, 2024	November 13, 2026	N/A	January 12, 2027	The mining right polygon partially overlaps with the area of the Incra rural settlement PA Santa Cecília as per figure 1 of Exhibit II.
832.625/2023	1988,15	Exploration Permit	Campos Altos/MG; and Ibiá/MG	Brazil Copper Mineração LTDA	N/A	January 12, 2024	November 13, 2026	N/A	January 12, 2027	N/A
832.624/2023	1978,98	Exploration Permit	Campos Altos/MG	Brazil Copper Mineração LTDA	N/A	January 12, 2024	November 13, 2026	N/A	January 12, 2027	The mining right polygon partially overlaps with the area of the Incra rural settlement PA Santa Cecília as per figure 2 of Exhibit II.
832.621/2023	1999,96	Exploration Permit	Campos Altos/MG; Santa Rosa da Serra/MG; and São Gotardo/MG	Brazil Copper Mineração LTDA	N/A	January 12, 2024	November 13, 2026	N/A	January 12, 2027	N/A
832.620/2023	1984,17	Exploration Permit	Campos Altos/MG	Brazil Copper Mineração LTDA	N/A	January 12, 2024	November 13, 2026	N/A	January 12, 2027	The mining right polygon partially overlaps with the area of the Incra rural settlement PA Santa Cecília as per figure 3 of Exhibit II.
832.604/2023	1998,62	Exploration Permit	Campos Altos/MG	Brazil Copper Mineração LTDA	N/A	December 29, 2023	October 30, 2026	N/A	December 29, 2026	N/A
832.601/2023	1999,78	Exploration Permit	Campos Altos/MG	Rodrigo de Brito Mello	Brazil Copper Mineração LTDA	December 29, 2023	October 30, 2026	N/A	December 29, 2026	N/A
832.226/2023	1972,27	Exploration Permit	Campos Altos/MG; and São Gotardo/MG	Brazil Copper Mineração LTDA	N/A	November 22, 2023	September 23, 2026	N/A	November 22, 2026	N/A
832.223/2023	1855,16	Exploration Permit	Rio Paranaíba/MG	Brazil Copper Mineração LTDA	N/A	November 22, 2023	September 23, 2026	N/A	November 22, 2026	The mining right polygon partially overlaps with the area of the Incra rural settlement PA Gleba 19 as per figure 5 of Exhibit II.

832.029/2023	1986,59	Exploration Permit	Rio Paranaíba/MG; and São Gotardo/MG	Brazil Copper Mineração LTDA	N/A	September 28, 2023	July 30, 2026	N/A	September 28, 2026	The mining right polygon partially intersects with the 500 kV power transmission line LT Emborcação - São Gotardo 2 C1 as per figure 9 of Exhibit II.
832.027/2023	1998,88	Exploration Permit	Rio Paranaíba/MG	Brazil Copper Mineração LTDA	N/A	September 26, 2023	July 28, 2026	N/A	September 26, 2026	The mining right polygon partially intersects with the 500 kV power transmission line LT Emborcação - São Gotardo 2 C1 as per figure 10 of Exhibit II.
832.026/2023	1981,41	Exploration Permit	Rio Paranaíba/MG; and São Gotardo/MG	Brazil Copper Mineração LTDA	N/A	September 28, 2023	July 30, 2026	N/A	September 28, 2026	N/A
832.025/2023	1995,44	Exploration Permit	Rio Paranaíba/MG; and São Gotardo/MG	Rbm Consultoria Mineral Eireli	Brazil Copper Mineração LTDA	September 28, 2023	July 30, 2026	N/A	September 28, 2026	N/A
832.023/2023	1055,16	Exploration Permit	Rio Paranaíba/MG	Rodrigo de Brito Mello	Brazil Copper Mineração LTDA	September 28, 2023	July 30, 2026	N/A	September 28, 2026	N/A
831.314/2021	871,55	Exploration Permit	Tiros/MG	Canopus Geologia e Projetos Ltda	Brazil Copper Mineração LTDA	November 29, 2021	September 30, 2024	N/A	November 29, 2024	N/A
831.237/2021	365,86	Exploration Permit	Tiros/MG	Canopus Geologia e Projetos Ltda	Brazil Copper Mineração LTDA	January 27, 2022	November 28, 2024	N/A	January 27, 2025	N/A
830.027/2021	1280,47	Exploration Permit Application	Campos Altos/MG; and Santa Rosa da Serra/MG	Rbm Consultoria Mineral Eireli	Brazil Copper Mineração LTDA	January 12, 2024	November 13, 2026	N/A	January 12, 2027	The the mining right polygon partially overlaps with the area of the Incra rural settlement PA Santa Cecília as per figure 4 of Exhibit II.
830.026/2021	1735,69	Exploration Permit	Campos Altos/MG; Santa Rosa da Serra/MG; and São Gotardo/MG	Rodrigo de Brito Mello	Brazil Copper Mineração LTDA	December 29, 2021	October 30, 2024	N/A	December 29, 2024	N/A

831.720/2020	1999,33	Exploration Permit	Campos Altos/MG	Brazil Copper Mineração LTDA	N/A	March 24, 2021	August 02, 2024	N/A	October 01, 2024	N/A
831.390/2020	1988,15	Exploration Permit Application	São Gotardo/MG	Brazil Copper Mineração LTDA	N/A	March 11, 2021	August 02, 2024	N/A	October 01, 2024	N/A
830.915/2018	1978,98	Exploration Permit	Tiros/MG	Brazil Copper Mineração LTDA	N/A	May 04, 2021	August 02, 2024	N/A	October 01, 2024	N/A
830.450/2017	1999,96	Exploration Permit	Tiros/MG	Brazil Copper Mineração LTDA	N/A	July 26, 2018	September 09, 2026	November 08, 2023	November 08, 2026	N/A

833.083/2014	1984,17	Exploration Permit	Tiros/MG	Brazil Copper Mineração LTDA	N/A	June 21, 2016	April 22, 2019	N/A	June 21, 2019	The process was subject to an infraction notice due to the failure to timely communicate the occurrence of a new substance. The Final Exploration Report is under analysis.
833.082/2014	1998.62	Exploration Permit	Tiros/MG	Brazil Copper Mineração LTDA	N/A	June 21, 2016	April 22, 2019	N/A	June 21, 2019	The mining right polygon partially intersects with the 345 kV power transmission line LT São Gotardo 2 - Três Marias C1 as per figure 11 of Exhibit II. The process was also subject to an infraction notice due to the failure to timely communicate the occurrence of a new substance. The Final Exploration Report is under analysis.
831.045/2010	1999,78	Exploration Permit	Tiros/MG	Brazil Copper Mineração LTDA	N/A	August 31, 2010	February 08, 2015	April 09, 2014	April 09, 2015	The mining right polygon partially intersects with the 345 kV power transmission line LT São Gotardo 2 - Três Marias C1 as per figure 12 of

										Exhibit II. The Final Exploration Report is under analysis.

Summary of Tenements – Part II – Novo Mundo Tenements										
Tenement	**Area (Ha)**	**Status**	**Municipalities**	**Holder**	**Assignee**	**Grant date**	**PER Due**	**Renewal Date**	**FER Due**	**Comments**
866.320/2018	7645,58	Exploration Permit	Novo Mundo/MT	Ison do Brasil Mineração Ltda	N/A	September 6, 2018	June 08, 2026	August 07, 2023	August 07, 2026	The mining right polygon partially overlaps with the area of the Incra rural settlement PAC Peixoto de Azevedo as per figure 8 of Exhibit II. It also partially interferes with artisanal mining permits (866.509/2019, 867.372/2021 and 866.278/2021), demonstrated on figure 13 of Exhibit II.
866.171/2018	8159	Exploration Permit	Novo Mundo/MT	Nexa Recursos Minerais S.A.	Brazil Copper Mineração LTDA	September 6, 2018	May 28, 2026	July 27, 2023	July 27, 2026	The mining right polygon partially overlaps with the area of the Incra rural settlement PAC Peixoto de Azevedo as per figure 7 of Exhibit II. It also interferes with artisanal mining permits (866.371/2020, 866.253/2021, 867.409/2021, 866.279/2021,

										866.256/2016, 300.586/2023, 300.588/2023 and 300.436/2016), demonstrated on figure 14 of Exhibit II.
866.035/2009	930,35	Right to Apply for Mining Concession	Novo Mundo/MT	Ison do Brasil Mineração Ltda	N/A	April 4, 2009	March 24, 2015	May 23, 2012	May 23, 2015	The mining right polygon partially overlaps with the area of the Incra rural settlement PAC Peixoto de Azevedo as per figure 6 of Exhibit II. It also interferes with artisanal mining permits (866.256/2016, 866.608/2016, 866.732/2015 and 866.593/2015) demonstrated on figure 15 of Exhibit II.

Summary of Tenements – Part III – Santa Ângela Tenement										
Tenement	**Area (Ha)**	**Status**	**Municipalities**	**Holder**	**Assignee**	**Grant date**	**PER Due**	**Renewal Date**	**FER Due**	**Comments**
867.624/2021	8700,69	Exploration Permit	Colíder/MT; and Nova Santa Helena/MT	Canopus Geologia e Projetos Ltda	N/A	June 6, 2022	August 05, 2025	N/A	June 6, 2025	The mining right polygon partially overlaps with the area of the Incra rural settlement PAC Peixoto de Azevedo as per figure 8 of Exhibit II. It also partially interferes with artisanal mining permits (866.509/2019, 867.372/2021 and 866.278/2021), demonstrated on figure 13 of Exhibit II.

EXHIBIT II

Compilation of figures demonstrating overlaps

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SÃO PAULO BELO HORIZONTE BRASÍLIA

Overlapping Incra Rural Settlements:

Figure 1. - Tenement 832.627/2023 in blue and PA Santa Cecilia in grey.

Figure 2. - Tenement 832.624/2023 in blue and PA Santa Cecilia in grey.

Figure 3. - Tenement 832.620/2023 in blue and PA Santa Cecilia in grey.

Figure 4. - Tenement 830.027/2021in blue and PA Santa Cecilia in grey.

Figure 5. - Tenement 832.223/2023 in blue and PA Gleba 19 in light blue.

Figure 6. - Tenement 866.035/2009 in blue and PAC Peixoto de Azevedo in grey.

Figure 7. - Tenement 866.171/2018 in blue and PAC Peixoto de Azevedo in grey.

Figure 8. - Tenement 866.320/2018 in blue and PAC Peixoto de Azevedo in grey.

Overlapping Transmission Lines:

Figure 9. - Tenement 832.029/2023 in light purple and transmission line LT 500 kV Emborcação - São Gotardo 2 C1 in blue.

Figure 10. - Tenement 832.027/2023 in light purple and transmission line LT 500 kV Emborcação - São Gotardo 2 C1 in blue.

Figure 11. - Tenement 833.082/2014 in light purple and transmission line LT 345 kV São Gotardo 2 - Três Marias C1 in blue.

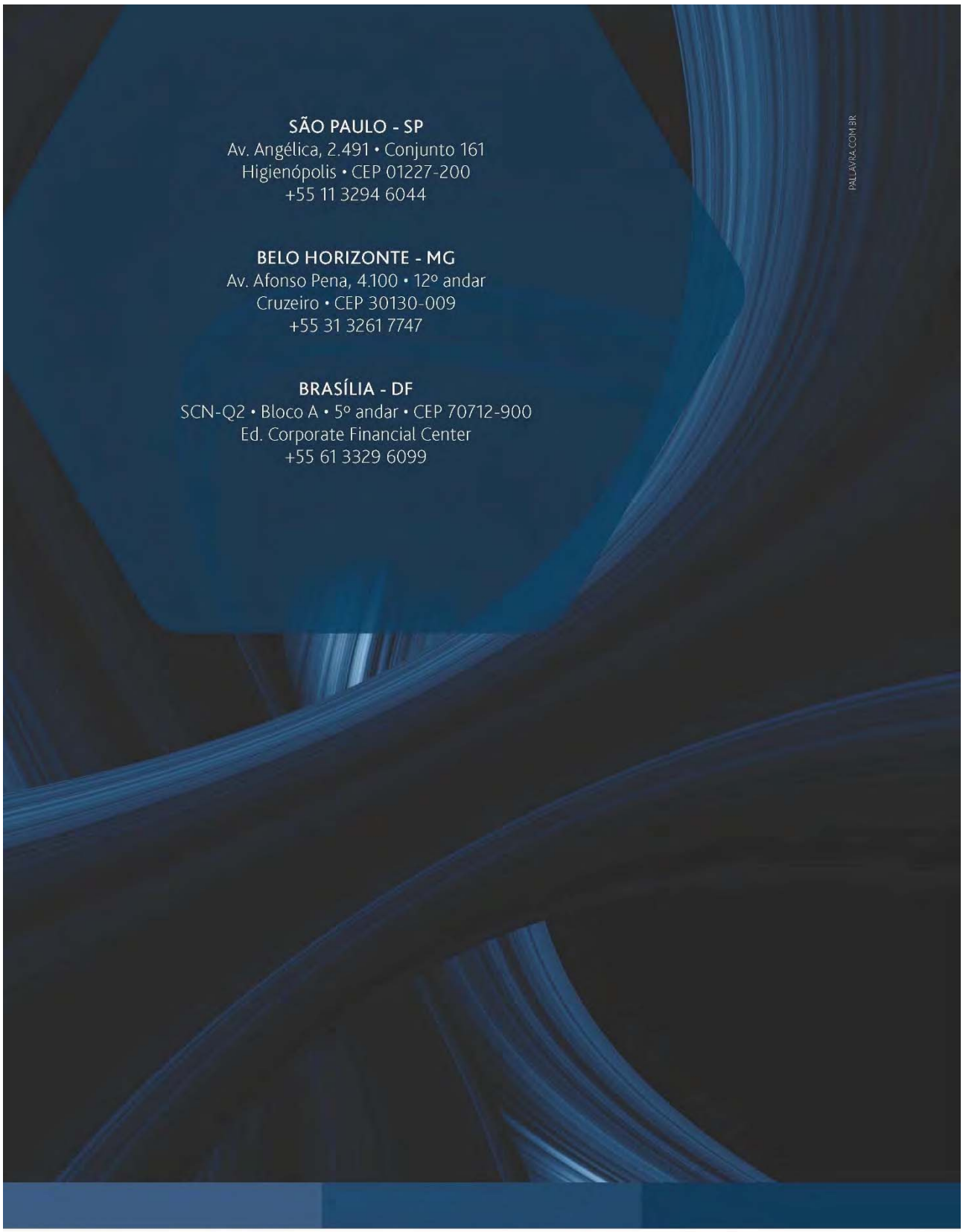
Figure 12. - Tenement 831.045/2010 in light purple and transmission line LT 345 kV São Gotardo 2 - Três Marias C1 in blue.

Overlapping Artisanal Mining Permits:

Figure 13. - Tenement 866.320 in blue and artisanal mining permits 866.509/2019, 867.372/2021 and 866.278/2021in red.

Figure 14. - Tenement 866.171/2018 in blue and artisanal mining permits 866.371/2020, 866.253/2021, 867.409/2021 and 866.279/2021 in red.

Figure 15. - Tenement 866.035/2009 in blue and artisanal mining permits 866.608/2016 and 866.732/2015, 866.593/2015 in red.



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