Momentum

Journalism & Tech Task Force

Big Tech Taxation and Journalism: Paths for Brazil

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Introduction

The current international tax system uses physical presence as a criterion for taxing a foreign entity in another country. However, growing concern about this model stems mainly from large technology companies ('big techs'), which operate globally with no need for physical establishments in the countries where they generate revenue. This reality can result in under-taxation, undermining local tax collection and creating competitive inequality with domestic companies. This scenario, particularly in the context of the digital economy, led to growing pressure for a reformulation of international tax models, seeking to ensure that these companies pay fair taxes in the countries where they actually generate value.

With the advancement of big tech's global operations, the OECD and the G20 have developed strategies to address the main tax challenges arising from the digitalisation of the economy, dividing the proposals into two 'pillars': Pillar 1, focused on elements of connection and on the allocation of profits to countries; and Pillar 2, focused on establishing a global minimum tax.
In addition, several countries have developed unilateral initiatives to tax the gross revenue of such companies, derived from the provision of digital activities in their jurisdictions – instituting the so-called Digital Services Taxes (DST).

Although such actions are not restricted to the taxation of big tech companies, they directly impact the sector and digital platforms, as such companies generally meet the requirements for being subject to this control (such as Google, Amazon, Meta, Microsoft, etc.).

In the Brazilian context, based on the adoption of Pillar 2, on 27 December 2024, Law No. 15,079/24 was published, establishing the "Additional Social Contribution on Net Income" (Additional CSLL), which applies to multinational groups of companies that are subject to an effective tax rate in Brazil of less than 15%. In addition, there are several bills pending in the Brazilian National Congress that address the issue of taxation of digital platforms, but based on unilateral measures.

In this context, it is important to highlight the interest of the traditional journalism sector in supporting global measures aimed at taxing large digital platforms, especially in the field of communication. These platforms, which have made a strong entry into the online advertising and content distribution market, many of them without a physical presence, have had a profound impact on the business model of traditional media companies around the world.
There are several approaches to addressing this global challenge, one of which is through tax measures.

Therefore, when evaluating means of taxing these large players, the journalism sector seeks not only a way to ensure fairer taxation in line with current OECD global guidelines, but also a way to level the playing field, combating anti-competitive practices that have undermined the sustainability of more traditional media companies with a physical presence.

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International Experience

Pillars 1 and 2 of the OECD

After years of debate on the issues surrounding taxation of the global digital economy, in 2020 the OECD presented the so-called 'Unified Approach' as an alternative to fiscal challenges based on two main pillars.

Below, we highlight some of the characteristics of Pillar 1 and Pillar 2:

1. **Pillar 1:**

- The application of Pillar 1 is based on three main elements: (i) Amount A: provides adjustment for income tax in consumer market countries on intangible assets, focusing on countries where consumers are located, which is the relevant topic for this analysis; (ii) Amount B: proposes simplified rules for transactions involving the purchase and sale of goods with predetermined profit margins for 'marketing and distribution' functions; and (iii) provides mechanisms for the prevention and/or resolution of international tax disputes related to transfer pricing and permanent establishments.
- For the purposes of this analysis, "Amount A" of Pillar 1 deals with the reallocation of a share of the profits of multinational companies with connection rules, so that they are taxed in the countries where the goods or services are actually used or consumed.
- For Big Tech to be taxed, certain requirements are being debated: (i) its global turnover must be at least €20 billion; (ii) its profitability must exceed 10% of its revenue; and (iii) at least €1 million of its revenue must come from the jurisdiction in which it operates in order for it to be taxed by that jurisdiction.
- Taxation would apply to only 25% of profits exceeding 10% of total revenue.
- The treaty would affect investment centres that the OECD defines as jurisdictions with a total foreign direct investment position above 150% of GDP.
- Considering these guidelines, due to the high tax threshold and the fact that only 25% of residual profits would be allocated to market jurisdictions, the proposal has been criticised for not meeting the demands of developing countries. Furthermore, considering the premise of profit reallocation to the countries where consumers are located, if large economies do not adhere to it (such as the United States and the European Union, for instance), it would not make sense for developing countries to join.
- By adopting Pillar 1, countries commit to eliminating digital taxes (such as digital services taxes) that they have unilaterally instituted and to not establishing new taxes of this nature, since Pillar 1 aims precisely to avoid unilateral tax measures.

The idea is that the proposal for 'Amount A' would be implemented through a Multilateral Convention and through relevant changes to agreements and domestic legislation. The deadline for the ratification of Pillar 1 was 30 June 2024, but it was not met.

Negotiations continue, but the lack of consensus on technical and political issues, together with resistance from some countries, such as the United States, has hampered the global implementation of Pillar 1. As a result, some countries have adopted unilateral measures to tax big tech (digital services taxes), which could jeopardise the global coordination envisaged by the OECD.

2. Pillar 2:

- Also known as the 'GloBE' (Global Base Erosion Rule) proposal, it seeks to develop rules that give jurisdictions the right to tax when other jurisdictions have not exercised their taxing rights or when the payment is subject to low levels of effective taxation, i.e. it provides for minimum global taxation.
- The goal is for the global tax burden of large multinational groups (with turnover of more than €750 million in at least 2 of the 4 tax years prior to 2024) to be at least the effective rate of 15% on adjusted accounting profit in each of the jurisdictions where the multinational group has a tax presence.
- It can be implemented in four different ways:

1. Qualified Domestic Minimum Top-Up Tax (QDMTT):
    a. If the country in which the multinational generates profits has a rate lower than 15%, the country can apply an additional tax until it reaches 15%.
2. Income Inclusion Rule (IIR):
    a. If the country where the multinational generates profits doesn't apply the additional tax, the country where the company is based can.
3. Undertaxed Payments Rule (UTPR):
    a. If neither the country where it generates profits nor the country where it is based applies the additional tax, another country where that multinational also operates can deny tax deductions to make up the difference.
4. Subject to Tax Rule (STTR):
    a. It is not directly related to the 15 % percentage under the GlobBE rules, but it is part of Pillar 2;
    b. It follows the same logic as the previous mechanisms, but instead of being applied to annual net profit, it is applied to individual payments (interest/royalties) when the rate normally used is lower than 9%.
    c. A surcharge is applied to bring it up to 9%.
    d. Criticism: In most developing countries, the withholding tax rate on interest and royalties is already higher than 9%.

The proposal was approved by the member countries of the European Union in 2023. Several countries have already approved or are in the process of approving measures to implement Pillar 2.

Digital Services Taxes ("DST"):

Faced with the political difficulties inherent in reaching an international consensus and the need for tax revenue, the European Commission proposed the introduction of a tax on certain digital services - the 'Digital Services Tax' - as a temporary measure for taxing the digital economy. While this proposal did not receive support at the EU level, it did inspire the introduction of similar taxes by different countries. Among them are Spain, France, India and the United Kingdom. Many countries have decided to adopt this unilateral measure, in line with a "Digital Services Tax", a tax of a 'hybrid' nature (with elements of an income tax and a consumption tax) levied on gross revenues from the provision of certain services, considering the "creation of value by the user" as a central element to justify the attribution of the right to tax in the jurisdiction where users are located.

Despite the doctrinal discussions on the subject, these taxes were instituted mainly to avoid double taxation agreements, allowing unlimited taxation by countries.

In short, DSTs represent taxes levied on the gross revenue derived from the provision of certain digital services in which the creation of value by users plays a central role. There is no standardised concept of DST, as states have adapted the European proposal according to their own needs, choosing different scopes, rates and monetary limits for the incidence of the tax, which can lead to distortions, difficulties in collection and charging, and situations of double taxation.

Given this scenario, we present the main features of the European Commission's DST proposal:

- Premises: (i) protecting the European market, (ii) ensuring sustainable public finances, (iii) preserving social fairness, ensuring fair conditions for companies in the European Union, and (iv) combating aggressive tax planning, especially in the digital sector, by closing loopholes that allow tax evasion.

- Main structural features:

1. Taxable revenues: (a) displaying, on a digital interface, of advertising targeted at users of that interface; (b) providing users with access to a multilateral digital interface that enables them to find and interact with other users and may also facilitate the provision of underlying goods or services directly between users; (c) transmitting of data collected about and generated by users' activities on digital interfaces.
2. Tax rate: fixed at 3%.
3. Taxpayer: an entity that meets both conditions: (i) annual global revenues above €750 million and (ii) taxable revenues obtained in the European Union exceeding €50 million.
4. Location: The DST would be owed to the country where the user is located. The location of the user is determined based on the Internet Protocol ("IP") address or any other localisation method. The country of residence of the company, the place of payment and the place of supply are irrelevant for the DST.

Practical experience:

Country	Incidence	Monetary limits	Rate	Status
Canada	Online marketplaces, digital advertising, social media, and user data monetisation	Domestic revenue > C$ 20 million and global revenue > € 750 million	3%	In force since June,2024
India	Online advertising services (6%) and e-commerce operators (2%)	INR 20 million	2% and 6%	In force since 2016
Kenya	Streaming services; downloading digital content; transmission/sale of data collected from users; digital marketplaces; subscription to media and news websites; electronic ticket booking and sales services; provision of search tools and automated helpdesk; distance learning; and any other service provided via digital means or an electronic platform	-	1,50%	In force since 2021
Argentina	Bets placed on digital platforms within or outside Argentina	-	5%, 10% and 15%	Implemented from December 2020
Spain	Online advertising services; online intermediation; data transmission	> €750 million (global)> €3 million (domestic)	3%	Since 2019
Italy	Advertising on a digital interface; Provision of a multilateral digital interface that allows users to buy/sell goods and services; Transmission of user data.	> €750 million (global)> €5.5 million (domestic)	3%	Since January 2020
France	Provision of a digital interface; Advertising services based on user data	> €750 million (global)> €25 milion (domestic)	3%	Since 2019
Portugal	Audiovisual commercial communication on video-sharing platforms (4%); subscription to video-on-demand services (1%).	-	1%/4%	February, 2021

In turn, the United States implemented, back in 2017, a tax on earnings from intangible assets abroad, known as Global Intangible Low-Taxed Income (GILTI). This tax is levied on the profits of US companies' subsidiaries abroad, generated by intangible assets, aiming to prevent these subsidiaries from repatriating profits to tax havens.

In addition, it is worth noting that other countries such as Australia, New Zealand and Canada have implemented or are in the process of implementing other non-tax measures to regulate payments by platforms to news media companies for the use of news content.

National Experience

Since early 2024, the Brazilian Federal Government has advocated taxing big tech companies as a way to finance public initiatives aimed at digital inclusion. In August 2024, the Government made a public statement on the issue, saying that it is considering proposing a new tax on Big Tech companies. Following the statement, the Economic Affairs Committee (Comissão de Assuntos Econômicos - CAE) requested clarification on the issue from the Minister of Finance through Request No. 140/2024.

In short, the CAE seeks to obtain more information about the Government's intention to introduce a national tax on digital platforms, given that they play a significant role in the national economy. The request highlights that, due to the relevance of the issue, society needs greater transparency and publicity regarding the proposal. The Committee thus raises a series of pertinent questions about the nature and objectives of this taxation.

In this scenario, this trend is reinforced by discussions on the creation of Brazilian measures to tax big tech companies, as a 'retaliation' against the United States, especially in response to some statements by the US government regarding raising import tariffs on steel and aluminium, which would significantly impact the Brazilian economy. Despite the discussions, Finance Minister Fernando Haddad has denied that this initiative is a direct consequence of the US tax increase, especially since it is still based on unofficial statements by the US president.

Besides, the request refers to complementary bills related to the Consumption Tax Reform, approved in December 2023 through Constitutional Amendment No. 132 ('EC No. 132') and mentions that several other bills are currently pending in the National Congress, aimed at regulating digital platforms. These bills address issues such as copyright, journalistic remuneration and other related matters, including the imposition of taxes on these economic agents. In this context, the CAE emphasises the importance of a 'taxation proposal' for digital platforms being widely disseminated and detailed, to ensure public debate on the subject. As of now, Request No. 140/2024 has not received an official response, with the last movement being registered on 25 September 2024.

Given this scenario, Brazil may choose to follow the OECD's international guidelines on the subject and/or pursue unilateral solutions.

In this context, we present below some of the legislative measures recently approved or currently pending in the National Congress, focused on the taxation of digital platforms, which are relevant to understanding the possibilities in the current tax scenario.

Law 15.079/24 – Additional CSLL (Pillar 2)

- This law, which is the result of the conversion of Bill No. 3,817/24 and which content was initially also presented in the form of a provisional measure (MP No. 1,262/24), is based on the establishment of an 'Additional Social Contribution on Net Income (CSLL),' equivalent to the Qualified Domestic Minimum Top-Up Tax (QDMTT), applicable to multinational groups of companies that are subject to an effective tax rate in Brazil of less than 15%. In other words, if the effective tax rate is below 15%, the Additional CSLL will be calculated and due to supplement taxation in the country until the minimum taxation of 15% is reached.
- The measure is based on Brazil's adoption of Pillar 2 and the adaptation of Brazilian legislation to the Global Anti-Base Erosion Rules (GloBE).
- For the purposes of applying the Additional CSLL, taxpayers are considered to be entities that are part of multinational groups that have earned consolidated annual revenues of at least €750 million in two of the last four fiscal years.
- The measure is not restricted exclusively to the taxation of digital platforms and big tech companies. However, due to its scope, which covers multinational groups with substantial revenues, it may impact some of the main players in the sector if they meet the other established conditions.
- Current status: sanctioned and published on December 27th 2024, effective from January 2025, with payment required only from July 2026 onwards.

Draft bills in the Legislative process

Complementary Draft Bill 218/2020 (Social Contribution on Digital Services / Contribuição Social sobre Serviços Digitais - CSSD):

- Establishes the Social Contribution on Digital Services levied on the gross revenue from digital services provided by large technology companies ('CSSD').
- The proceeds from the collection will be used to finance basic income programmes established at the federal level.
- The rationale for the bill reveals that the goal is to tax the gross revenue of large technology companies, as has been done internationally, such as by the European Commission and implemented by France, where the revenue limit and tax rate served as inspiration for the CSSD. In other words, the CSSD is a sort of Brazilian DST.
- A CSSD taxpayer is considered to be a legal entity, domiciled in Brazil or abroad, that has earned revenue in Brazil and belongs to an economic group that, in the previous calendar year, earned global gross revenue greater than the equivalent of BRL 4.5 billion. There are specific rules for currency conversion.
- The taxable event is the earning of revenue from (i) displaying advertising on a digital platform for users located in Brazil, (ii) providing a digital platform that allows interaction between users aiming to sell goods or provide services directly between these users, as long as at least one of them is located in Brazil; or (iii) transmission of data from users located in Brazil collected during the use of a digital platform or generated by these users.
- Digital services are considered to be the provision of any kind of data supplied in digital form, including electronic files, programmes, applications, music, videos, texts, games and similar items, and the provision of electronic applications that allow the transfer of any digital content between users.

- The location criterion is the location of the device used (users who access the digital platform on a device physically located in Brazil are considered to be located in Brazil).
- The calculation basis is the revenue from these activities, and the tax rate is 3% of the revenue.
- Status: it was presented on August 19th 2020, and appended to PLP 241/2020 (which is an improved version of the text). The texts are awaiting the appointment of a rapporteur in the Finance and Taxation Committee (CFT).

Complementary Draft Bill 241/2020 (Special Social Contribution on Digital Services/Contribuição Social Especial sobre Serviços Digitais- CSESD):

- Purpose and scope similar to PLP 218/2020, but covering a much larger number of companies, given taxpayers of the Special Social Contribution on Digital Services (CSESD) are considered to be legal entities domiciled in Brazil or abroad that have earned gross revenue in Brazil exceeding R$ 100 million.
- The bill is innovative in that it considers 'digital services' to include, in addition to those mentioned in PLP 218/2020, bets marketed via electronic channels such as the internet, mobile telephony, mobile computing devices or any other digital communication channel, with a planned tax rate of 10%, demonstrating the intention to tax the virtual gambling market.
- Status: The PLP was presented on September 24th 2020, and was appended to PLP 218/2020. The texts are awaiting the appointment of a rapporteur in the Finance and Taxation Committee (CFT).

Draft Bill 2.358/2020 (CIDE-Digital):

- Establishes the Contribution for Intervention in the Economic Domain levied on the gross revenue from digital services provided by large technology companies.
- The revenue is allocated to the National Fund for Scientific and Technological Development (Fundo Nacional de Desenvolvimento Científico e Tecnológico - FNDCT) as provided for in Law No. 11.540 of November 12th 2007.
- A CIDE-Digital taxpayer is considered to be a legal entity domiciled in Brazil or abroad that earns income from these activities in Brazil and belongs to an economic group that, in the previous calendar year, had total gross income exceeding the equivalent of BRL 3 billion and gross income exceeding BRL 100 million in Brazil. There are specific rules for currency conversion.
- It has almost identical taxable events to those of PLP 218/2020: I – display of advertising on a digital platform for users located in Brazil; II – provision of a digital platform that allows users to contact and interact with each other aiming to sell goods or provide services directly between these users, provided that one of them is located in Brazil; III – transmission of data from users located in Brazil collected during the use of a digital platform or generated by these users.
- The calculation basis is the revenue from these activities, and the tax rate is progressive, ranging from 1% to 5%.
- Status: The PLP was presented on May 4th 2020, and appended to PLP No. 640/2021.

Draft Bill 640/2021 (CIDE-Internet):

- Establishes the Contribution for Intervention in the Economic Domain levied on the availability, distribution, dissemination or provision of content on the internet in Brazil for economic exploitation – CIDE-Internet.
- The revenue will be used for investments in public education infrastructure, targeting the provision of computer equipment and free internet access, as well as for the defence of the Brazilian state against cyber warfare, which will be supervised by the Army Command, part of the Armed Forces, based on the National Defence White Paper, as provided for in Complementary Law 136/2010.
- CIDE-Internet will be levied on gross revenue from the economic exploitation of the availability, distribution, dissemination or provision of content on the internet in the country, even if earned abroad.
- The economic exploitation of the activity may occur through: I - advertising, sponsorship or merchandising; II - content targeting; III - collection, distribution or processing of user-related data; IV - encouragement or targeting of service use; V - payment platform; or VI - exploitation or dissemination of images, text, video or sound related to individuals or legal entities.
- Any legal entity that, as a result of the exploitation of taxable activities, earns revenue in Brazil or abroad is considered a CIDE-Internet taxpayer. There is no revenue limit.
- The contribution rate is 3% of revenue.
- Status: The PLP was presented on March 1st 2021, and appended to PLP No. 2.358/2020.

Complementary Draft Bill 131/2020 (COFINS – digital platforms):

- The Social Security Financing Contribution (Contribuição para o Financiamento da Seguridade Social - COFINS) paid by legal entities that use digital platforms will be calculated based on a rate of 10.6% levied on gross monthly revenue earned in Brazil.
- Is considered a taxpayer any legal entity, regardless of its place of establishment, if it cumulatively earns monthly revenues above the following limits: I – US$ 20,000,000.00 or the equivalent in another currency, for services provided worldwide; II – BRL 6,500,000.00 in Brazil. There are specific rules for currency conversion.
- The taxable income on the increased rate would be derived from (i) the provision, through electronic communications, of a digital interface that allows users to contact other users and interact to offer goods or services; or (ii) marketing to advertisers or their agents, aiming to place targeted advertising messages on a digital interface based on data related to the user who consults it. Item (ii) could also include services for the purchase, storage and transmission of advertising messages, advertising control and performance measures, as well as services related to the management and transmission of user-related data.
- The calculation basis would be the monthly revenue earned in Brazil, and COFINS would be calculated under the non-cumulative regime.
- Status: submitted on May 22nd 2020, and on June 28th 2023, it is pending review by the Communication and Digital Law Committee.

Draft Bill 2768/2022 (Fiscalisation fee for Digital Platforms"):

- The bill concerns the regulation, supervision and sanctioning of digital platforms that offer services to the Brazilian public.
- Amongst other issues, it establishes a 'digital platform supervision fee,' payable annually by digital platform operators that offer services to the Brazilian public and hold essential access control power.
- The fee amounts to 2% of the gross operating revenue earned by digital platform operators.
- There is no specification as to the proportion of gross revenue earned in Brazil.
- Those considered 'digital platform operators [...] with essential access control power' – and therefore subject to the fee – are those who earn annual operating revenue equal to or greater than BRL 70 million (subject to revision) from offering services to the Brazilian public.
- Envisages the creation of the Digital Platforms Fiscalisation Fund (Fundo de Fiscalização das Plataformas Digitais - FisDigi), with resources coming from this digital platform fiscalisation fee.
- The National Telecommunications Agency (Agência Nacional de Telecomunicações - Anatel) would be the regulatory agency for this fee.
- Status: submitted on November 10th 2022, and currently awaiting the opinion of the rapporteur in the Economic Development Committee (CDE).

Draft Bill 2.331/2022 (Contribution to the Development of the National Film Industry/ Contribuição para o Desenvolvimento da Indústria Cinematográfica Nacional – CONDECINE)

- Regulates the provision of video-on-demand services, audiovisual content sharing platforms and television via internet protocol to the Brazilian market and creates a new type of Contribution for the Development of the National Film Industry (Contribuição para o Desenvolvimento da Indústria Cinematográfica Nacional - CONDECINE).
- The proceeds from CONDECINE's collection make up the Audiovisual Sector Fund (Fundo Setorial do Audiovisual - FSA), which is directly allocated to the promotion of the sector.
- Amongst other topics, CONDECINE establishes the tax due for the provision of video-on-demand services, audiovisual content sharing platforms, and internet television, which will correspond to progressive rates of up to 3% on gross revenue from their provision to the Brazilian market, including advertising revenue and excluding direct taxes and commissions due to marketing, broadcasting, or distribution partners. The measure aims to tax streaming service platforms.
- Economic agents providing services to users based in Brazil are subject to CONDECINE, regardless of the location of their headquarters or the infrastructure for providing the service.
- Companies with annual revenues above BRL 96 million will pay 3%. Platforms with revenues between BRL 4.8 million and BRL 96 million will pay 1.5%.
- For services with revenues below BRL 4.8 million, the rate will be zero.
- Status: The bill was approved on April 16th, 2024, by the Economic Affairs Committee (CAE) and was sent to the Chamber of Deputies for consideration.
- The National Film Agency (Agência Nacional do Cinema - Ancine) is the regulatory agency for CONDECINE.

Draft Bill 1068/2025("CIDE-Digital Detox"):

- Establishes the Contribution for Intervention in the Economic Domain levied on gross revenue derived from the exploitation of digital platforms and content (CIDE–Detox Digital)..
- The taxable event for CIDE–Detox Digital is the collection of revenue from the economic exploitation of digital platforms, social networks, streaming services, online electronic games, and other interactive digital content within the national territory.
- Legal entities domiciled in Brazil or abroad that earn gross annual revenue exceeding BRL 100,000,000.00 (one hundred million Brazilian reais) in Brazil in the previous calendar year are subject to the contribution.
- The CIDE rate will be 1% of the gross annual revenue earned by digital platform operators.
- Provides for the allocation of CIDE-Detox Digital revenues to the National Fund for Children and Adolescents (Fundo Nacional para a Criança e o Adolescente - FNCA) referred to in Article 6 of Law No. 8.242 of 12 October 1991.
- Status: presented on March 18th 2025 and currently awaiting a decision by the President of the Chamber of Deputies.

In addition, other bills tangentially address the issue but do not deal with tax measures, such as Bills No. 2.630/2020 ('Fake News Bill') and No. 2.338/2023 (Artificial Intelligence Framework Bill).

Consumption Tax Reform - Selective Tax

On December 20, 2023, Constitutional Amendment (EC) No. 132/2023 was approved, establishing the Consumption Tax Reform in Brazil. The reform creates a Value Added Tax ("DUAL VAT") system, consisting of the Goods and Services Tax ("IBS") and the Contribution on Goods and Services ("CBS"), in addition to a Selective Tax ("IS"), aimed at specific goods and services considered harmful to health or the environment.

EC No. 132/2023 was regulated by Complementary Law No. 214 of 16 January 2025 ('LC No. 214/25').

As the reform introduced a new special consumption tax (the IS), aimed at specific goods and services of an extra-fiscal nature (whose objective is to discourage consumption) and considering that there is still much discussion about which activities will be subject to this tax, it is important to highlight its scope.

EC No. 132/2023 amended Article 153 of the Constitution, including item VIII, which delegates to the Federal Government the power to levy taxes on the production, extraction, commercialisation or importation of goods and services that are harmful to health or the environment.

Amongst goods and services subject to the IS, LC No. 214/25 regulated that, amidst other activities, it included, in Article 409, item VII, 'betting services' and fantasy sports.

These services, which may also be offered by digital platforms, will therefore be subject to IS taxation if the proposal is approved in its current form. The rationale for including these services within the scope of IS is that, although their moderate consumption does not harm most consumers, their abusive use by a portion of the population has harmful consequences for society, especially in terms of public health.

LC No. 214/25 makes no mention of services provided by big tech companies as a possible target for IS.

A brief analysis of the tax proposals in the Brazilian context

Considering the national and international experiences discussed, we present below our considerations on each measure proposed in the Brazilian context, with a special focus on the legal nature of each project and the viability of these measures within the current tax system.

Variations of digital services taxes (DST) in Brazil

CIDE:

National proposals such as CIDE-Digital, CIDE-Internet, CONDECINE and CIDE-Detox Digital are based on the establishment of contributions for intervention in the economic domain, known as CIDEs.

For the financing of intervention measures in the economic domain, Article 149 of the Federal Constitution grants the Union the power to establish CIDEs. As for the economic bases subject to taxation, CIDEs are subject to Article 149, paragraph 2, III, meaning that contributions established on other bases could be challenged.

As stated in the heading of Article 149 of the Federal Constitution, CIDE represents an instrument of action by the Federal Government in the economic area and, therefore, cannot be used for the sole purpose of raising revenue. Like all social contributions, CIDE is a tax linked to the activities of the State, and the proceeds from its collection are earmarked for the purpose for which it was established (i.e., there must be a provision in the legal rule establishing the tax that the revenue collected must be allocated to a fund or a specific purpose).

There are some discussions in the judiciary involving CIDEs. This is because the most relevant prerequisite for the creation of a CIDE is the effective need for state intervention in an economic sector due to imbalances. Furthermore, the requirement of referability (i.e., a link between the taxpayer and the purpose of the intervention in a given economic sector) and the allocation of resources for the constitutionally established purpose must be observed.

In this sense, back in 2005, ADI No. 2.925/DF defined any use of CIDEs that do not reflect constitutional objectives as unconstitutional, even if this occurs due to budget constraints. Within this scope, several CIDEs have already been established, and, to date, none have been declared unconstitutional by the Brazilian Supreme Court (STF).

In 2016, the STF recognised the General Repercussion of Theme 914 (RE 928.943), which will discuss the constitutionality of the CIDE on 'shipments abroad'. The merits of the case have not yet been analysed, but the outlook indicates that the ruling on the issue will be decisive in defining the validity requirements for the establishment of a CIDE, especially concerning the requirements of referability and the need for intervention through the creation of a contribution.
Furthermore, on this issue, the STF has also ruled that it is not necessary to enact a complementary law to establish the CIDE, which can therefore be established by ordinary law.

Given this scenario and considering CIDE's legal natures, without delving into the specific details of each legislative proposal, proposals aimed at creating a tax with the legal nature of CIDE, levied on the gross revenue from digital services provided by large technology companies, seem to be a good instrument for the issue in question. This is because CIDE could finance journalism and other activities impacted by the dominance of these companies, since this type of contribution is specifically intended to allocate its resources to the sector subject to state intervention.

However, the proposal is not exempt from legal challenges that will need to be overcome in order to establish a CIDE in this context. Among these challenges, the following stand out: (i) discussion on the (in)existence of a 'digital economic domain' that justifies the creation of this CIDE, (ii) the need to prove the link between the amount paid and state intervention (an issue that will be analysed by the STF), (iii) the possibility of violating the principles of equality and free competition, in addition to other analyses that may arise in relation to the elements of each of the proposals (taxable event, calculation basis, taxpayers, rates, etc).

Social Contributions:

As their names suggest, proposals to create a CSSD (Social Contribution on Digital Services) and CSESD (Special Social Contribution on Digital Services) are subject to the nature of 'social contributions.'

Social contributions may be allocated to social security or other social sources.

The granting of competence to the Federal Government to establish social security contributions must comply with the provisions of Article 154, item I, of the Federal Constitution, which provides that the Federal Government may establish, only through a complementary law, taxes not provided for in Article 153 of the Federal Constitution, provided that they are non-cumulative and do not have a taxable event or calculation basis specific to those listed in the Federal Constitution. As these contributions are intended for social security, the proceeds from this new contribution would be specifically used to ensure rights relating to health, social security and social assistance.

Contributions for social purposes other than social security are referred to as 'general social contributions'". As for the economic bases subject to taxation, social contributions are subject to the same Article 149, §2, III, which refers to CIDE. General social contributions serve as an instrument for action in the social area and must be analysed in light of the objectives established in Title VIII of the Federal Constitution, 'Social Order,' as these will define the activities that can be funded by these contributions, so that the resources collected must be allocated for this purpose. General social contributions may be established by ordinary law.

Although the bills presented to date do not explicitly mention issues related to the Title 'Social Order' in the Federal Constitution that would be relevant to the subject matter of the intended measures (i.e., the taxation of platforms), we suggest 'Chapter V' of the Federal Constitution, which deals with 'Social Communication', as the constitutional basis for the introduction of these contributions. This is because traditional journalism performs an essential social function, aligned with the constitutional purpose of promoting access to information.

However, considering that the proposals to establish a CSSD and a CSESD were made through complementary legislation and that the funds collected will be allocated to 'finance basic income programmes established at the federal level,' it is possible to suggest that the legal nature of this proposed social contribution is, in fact, geared towards social security.
Nevertheless, we believe that the introduction of a general social contribution is more appropriate than the creation of a new contribution exclusively for social security. This is because the resources from a new social security contribution would be limited to specific purposes related to health, social security and social assistance, in addition to the fact that its taxable event and calculation basis cannot be the same as those already provided in the Federal Constitution for other taxes. On the other hand, a general social contribution allows for greater flexibility, as it can be calculated based on turnover, gross revenue or the value of the transaction.

For these reasons, creating a DST in Brazil through a general social contribution seems to be a more viable alternative than establishing a contribution linked to social security, provided that it is properly justified in light of the rights established in Title VIII of the Federal Constitution relating to 'Social Order.'

Differentiated regime for the Contribution for the Financing of Social Security (Contribuição para o Financiamento da Seguridade Social - COFINS):

COFINS is a social contribution intended to finance social security, as provided for in Article 195 of the Federal Constitution. This implies that the collection of this contribution must be channelled to the Federal Government, to fund the health, social security and social assistance systems.

As such, the proposal to establish a differentiated COFINS regime for digital services does not seem to us to be the most appropriate measure, given that COFINS revenue is earmarked for social security, which means that the proceeds from this tax will be used for these purposes and not for sectoral or specific financing purposes.

Pillar 2 (Additional CSLL)

The CSLL is also a social contribution intended for social security. Therefore, the Brazilian proposal to collect the Additional CSLL will be allocated to the Federal Government to fund the health, social security and social assistance systems.

Furthermore, it is important to highlight some legal issues related to the Additional CSLL proposal. The proposal for a differentiated tax rate for multinational companies with revenues exceeding €750 million raises questions as to its compliance with Article 195, §9, of the Federal Constitution, which only allows differentiation of social contribution rates based on economic activity, intensive use of labour, company size or labour market structure, in addition to authorising the adoption of differentiated calculation bases. Another relevant point of the proposal is the requirement to calculate accounting profit in Brazil, which may differ from CIDE proposals that aim to obtain revenue from entities not established in Brazil.

Finally, although it may reach the niche of digital platforms, it should be noted that the legislative measures aimed at adapting Brazil to Pillar 2 of the OECD are not specifically targeted at big tech companies. From a political perspective, this implies that such measures may move forward independently of specific initiatives targeting this sector, such as the DST proposals.

Therefore, we do not believe this to be the most appropriate measure to address this specific issue.

Selective Tax

As for the IS as proposed by EC No. 132 and PLP 68/24, we don't see any reason to include services provided by big tech companies within the scope of the IS.

The constitutional rule that defines the IS clearly limits its application to goods and services that cause harm to health or the environment.

Given that digital platforms and their services do not fall into these categories, we do not consider it legally plausible for the IS to be applied to them. Furthermore, this tax is extra-fiscal in nature, aimed at discouraging the consumption of harmful goods and services, and cannot be used exclusively as a means of tax collection. Finally, the IS is an unearmarked tax, meaning that the amounts collected go to the general federal budget and therefore cannot be used to finance a specific sector.

Therefore, we believe that the IS would not be an appropriate tax measure to impose a charge on digital platforms or the services provided by big tech companies, given its extra-fiscal nature and its restricted application.

FAQ

01

What can be taxed, i.e. on what basis will any taxation be levied (gross revenue, profit, price etc.)?

Regarding initiatives to establish a DST in Brazil, the basis for taxation will depend on the legal text that is eventually approved.

In general terms, the bills under consideration tend to fix the gross revenue of legal entities subject to taxation, i.e., the revenue derived from the taxpayer's digital operating activities, with each bill providing its own definition of what constitutes digital services for tax purposes. Proposals for the establishment of Social Contributions (such as CSSD and CSESD), CIDEs (CIDE-Digital, CIDE-Internet, CONDECINE and CIDE-Detox Digital) or the inspection fee converge in this sense.

As an exception, if big tech is subject to the Additional CSLL established by Law No. 15.079/24, the tax will be levied on excess profits, as defined by that law.

02

Would taxation be exclusive to big techs?

Although big techs may be included in the proposals under discussion, taxation is not limited to them. The initiatives under consideration aim to cover legal entities, domiciled in Brazil or abroad, that obtain 'digital operating revenue' in the country. Some proposals establish a minimum global turnover threshold for the tax to apply, while others do not, which could include smaller companies.

Regarding the Additional CSLL, the incidence necessarily depends on the global revenue of the multinational group, but is independent of the activity carried out by the taxpayer. This is because the purpose of the Additional CSLL is, in general, to prevent tax evasion and not to target companies specifically identified as big tech companies.

03

Would the amount collected have a specific destination, such as a fund? Would the amount be “stamped”, i.e. would it be tied to some application?

The allocation of the amount collected depends on the nature of the tax levied.

If a social contribution is created, such as CSSD and CSESD, the amount must be allocated to social security costs – that is, to support government spending in the areas of health, social security or social assistance. The same rationale applies to the differentiated COFINS regime, proposed by one of the bills, and to the Additional CSLL (already established by Law No. 15.079/24).

If any type of CIDE is established, the proceeds from the collection will be allocated to the purpose that determined its establishment. For instance, the bill that seeks to create the CIDE-Internet provides for the application of resources in investments in public education infrastructure, with an emphasis on the provision of computer equipment and free internet access. Similarly, the bill that aims to establish an inspection tax on Digital Platforms allocates the amount collected to a fund, the ‘FisDigi’ (Digital Platform Inspection Fund).

Likewise, the proceeds from CIDE-Detox Digital will be allocated to the National Fund for Children and Adolescents (FNCA) to finance public policies, programmes and actions aimed at preventing, treating and raising awareness about the excessive use of digital technologies by children and adolescents.

Thus, based on the current proposals and the types of taxes presented, it seems possible that the eventual Brazilian DST will have a specific allocation.

However, we highlight that, to date, none of the proposals refer to the application of the revenue for the exclusive benefit of the journalism sector.

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