

Philanthropic Freedom Pilot Study: Brazil Country Report

Overall Philanthropic Freedom Score: 3.44

General Background Information on Brazil

- GDP per capita: \$ 12,594¹
- Population: 199 million²
- Percent of population reporting “giving money”: 24%³
- Percent of population reporting “volunteering time”: 12%⁴
- There are two main forms for civil society organizations: an association and a foundation (private and public). An association is formed via the organization of individuals, while a foundation is set up around a fund or property. Civil society organizations can be further delineated into five different designations that have specific permissible activities.
- Corruption scandals have contributed to a general lack of trust in civil society organizations. Due to cultural and historical reasons, the foundation sector in Brazil is under developed, particularly those acting as grant-makers.

Philanthropic Freedom Score Summary

Category	Score	Notes
Civil Society Regulation	4.33	<ul style="list-style-type: none"> • Individuals can form associations easily, with few government restrictions. • In general, there is little government interference in CSOs affairs and they operate in an open environment and under a discourse of freedom and independence. However, depending on the tax exemption certificate of the CSO, the organization can be required to fulfill several reports, which may constitute a heavy burden. • A CSO governing body is able to voluntarily terminate the organization and there are hardly any cases of involuntary termination by government.
Domestic Tax Regulation	3.00	<ul style="list-style-type: none"> • There are no general tax incentives for individuals. However, certain exceptions are made for donations to specific projects, in areas such as culture, sports and children (with a global ceiling of 6% of income tax). • Corporations can deduct the amount donated to CSO (qualified as OSCIP or UPF) up to 2% of their operational profit. They can also make donations to pre-selected projects in the areas of culture (up to 4%), sports (up to 1%), children and the elderly (up to 1%). • To receive a tax-exempt status, organizations cannot distribute profit among members, must comply with all reporting requirements, and limit their activities and expenditure of resources to Brazil. Generally, nonprofit organizations that are active in education and social assistance are tax-exempt.
Cross-Border Flows Regulation	3.00	<ul style="list-style-type: none"> • A tax of up to 2% and about \$50 in banking fees is needed for the exchange rate procedure when receiving funds from abroad. For transfers from Brazil, fees and taxes will amount to up to 35% and the process is lengthy and bureaucratic – taking up to two months to complete a transaction. • The obstacles to charitable flows are mostly administrative and monetary.
Overall	3.44	<ul style="list-style-type: none"> • The policy environment in Brazil is somewhat restrictive to philanthropic activity on the donor side due to significant limitations on fiscal incentives for donor entities and recipient organizations.

¹ World Bank. (2012). Data retrieved December 26, 2012, from World Bank Databank.

² Central Intelligence Agency. (2012). Data retrieved December 26, 2012, from The World Factbook 2012.

³ World Giving Index. (2012). Kent, UK: Charities Aid Foundation, 2012.

⁴ Ibid.

Socio-Cultural Background on Brazil's Giving Environment
Provided by Andre Degenszajn
Brazil Country Expert
Grupo de Institutos Fundações e Empresas (GIFE)

Philanthropy in Brazil has been traditionally associated with charity, mostly developed by the church (historically, by the Catholic Church). Philanthropy is viewed as relevant and somewhat important in society, but often seen as having little impact on the social conditions. The state in Brazil is the main entity responsible for social policies and, very often, charitable organizations contribute to delivering social assistance.

Due to historical, cultural and fiscal tax factors, the foundation sector in Brazil is underdeveloped, relying mostly on corporate institutions. This is demonstrated by the composition of GIFE members. GIFE is a membership organization of Brazilian foundations and is composed of 80% corporate members and 20% independent, family and community foundations. Most foundations are not endowed and rely on annual budget transfers from the sponsor company. A state tax that applies to all donations above \$25,000 and cumulative within a fiscal year applies to both charitable donations and inheritance. Therefore there are few incentives for creating an endowed family foundation.

There is little data on individual giving, making it difficult to decipher whether Brazilians are big or small donors. Crowdfunding initiatives have emerged in Brazil in the last 3-5 years and are still incipient in terms of volume. In the last 5-10 years, Brazil has experienced strong economic growth and sustained stability, which have contributed to creating a more favorable environment for philanthropy. New millionaires are emerging at a fast pace but the sector has not seen a similar increase in terms of philanthropic institutional giving.

The grant making culture in Brazil is still very weak. Out of the total \$1.2 billion invested annually by GIFE's members, only 19% could be attributed to grant making organizations. Most of the resources are operated directly by the foundations with the CSOs acting more often as service providers.

There are a few factors that contribute to the lack of philanthropic contributions to CSOs. These include: a lack of trust in CSOs, mostly due to corruption scandals involving government resources; the perception that CSOs have poor management and evaluation systems; the perception that companies or company-sponsored foundations are better equipped to develop social projects, because they are able to afford professionals and rely on sound management systems. The latest official survey on Brazilian CSO estimate that, in 2010, there were 291 thousand private foundations and nonprofit associations officially registered in the country (IBGE, FASFIL, 2010). The main challenge for CSO remain in their operations and funding, as with all the necessary documents in hand, an association can be registered in two months in Brazil.

Recent efforts have been taken in developing independent foundations supporting human rights causes – largely neglected by corporate investors. But this process is in its early stages, with a few initiatives with small endowment funds.

**Scoring of Brazil's Civil Society Regulation
Provided by Andre Degenszajn**

<p>Indicator Question 1: To what extent can individuals form and incorporate the organizations defined?</p>	<p>Score: 4.5</p>	<p>Individuals are free to form organizations, without government restrictions on their purpose. Under normal circumstances, an association must only register its charter with the public register office to obtain legal personality. It does not have to seek any other kind of public authority permit to register as a nonprofit private legal entity. The process of registration can be bureaucratic, which may delay the registration but hardly represents a barrier to the creation of the CSO. If there are no restrictions on the documentation presented, the process is quick, taking up to two months. You need to register the statutes at a public register and then, through a registered accountant, you need to request a CNPJ (registration number) with the Ministry of Finance.</p>
<p>Indicator Question 2: To what extent are CSOs free to operate without excessive government interference?</p>	<p>Score: 4.5</p>	<p>In general, there is little government interference in CSOs affairs and they operate in an open environment and under a discourse of freedom and independence. However, CSOs operating particularly in public policy, are increasingly dependent financially from government support. Depending on the tax exemption certificate they hold, they are required to fulfill several reports, which may constitute a heavy burden to an organization. In addition, recent corruption scandals involving CSOs receiving government money have increased the perception that NGOs are corrupt, ill-governed and should be closely monitored by government. The corruption cases are very few compared to the number of contracts between government and CSOs, but it has affected the image of the sector as a whole.</p>
<p>Indicator Question 3: To what extent is there government discretion in shutting down CSOs?</p>	<p>Score: 4</p>	<p>A CSO governing body is able to voluntarily terminate the organization and there are hardly any cases of involuntary termination by government. There are cases of involuntary termination by judicial order, mostly in cases of bankruptcy, particularly involving labor disputes. Brazilian labor legislation imposes heavy taxes on the employer (and employee) and the courts usually favor the employee's demands in a judicial dispute.</p> <p>Although CSOs are free to terminate their activities, the process of termination is often lengthy, costly and bureaucratic.</p>
<p>Average Score on Civil Society Regulation: 4.33</p>		

**Scoring of Brazil's Domestic Tax Regulation
Provided by Andre Degenszajn**

<p>Indicator Question 4: Are there income tax incentives (at national, state, or provincial levels) in the form of credits or deductions for individuals and/or corporations to donate money or charitable gifts?</p>	<p>Score: 2.5</p> <p>There are income tax incentives in Brazil for both individuals and corporations, but they are complex, vary greatly and are very limited, particularly for individual giving. Donations to CSOs can only benefit from tax incentives if the particular CSO has specific certificates, such as OSCIP (<i>public interest civil society organization</i>) or Utilidade Pública Federal (<i>federal public utility</i>). In these cases, corporations (but not individuals) are eligible for income tax incentives to a limit of 2% of the total operating profit. The company is able to deduct the donation from the operational profit thus reducing the baseline for the calculation of the tax to be paid. The company will therefore recover 34% of the amount given.</p> <p>In addition, there is a state tax that applies to all donations above \$25,000 and cumulative within a fiscal year, including to nonprofit organizations, called ITCM D. The percentage varies from one state to another but, in general, it is 4%. The recipient organization is responsible for paying the tax (there are few cases of exemption) and the donor is responsible in case the recipient does not comply. This works as a counterincentive and may create difficulties for donations in some cases. Curiously, this same tax (ITCMD) also applies to transfer of money or goods as bequests, which ends up working as an incentive for people to leave their inheritance to his or her heirs, and not establish a foundation – considering the low percentage of the tax.</p> <p>There are other income tax incentives in some particular areas such as culture (<i>Lei Rouanet</i>), children and adolescents (<i>FIA</i>) and sports (<i>Lei do Esporte</i>). Each of them involves very complex mechanisms that entitle up to 100% deduction (in some cases such as audio-visual projects up to 125%) with a global ceiling of 6%.</p> <p>FIA (children and adolescent funds): both individuals and companies can donate and are eligible for tax incentives. Individuals can donate up to 6% of the total tax to be paid and companies up to 1%. Donors are able to deduct 100% of the donation.</p> <p>Culture (<i>Lei Rouanet</i>): projects supported by donations via <i>Lei Rouanet</i> need to be pre-approved by the Ministry of Culture. The deductible amount ranges from 60% to 100%.</p> <p>Audio-Visual: Similar to the mechanism established by <i>Lei Rouanet</i>, projects need to be pre-approved by a government agency (ANCINE). The limit is 6% of total income tax to be paid and the donation can also be deducted from the operating profit (thus reducing the baseline on which the income tax will be calculated). With this up to 125% of the donation can be deducted.</p> <p>Sports (<i>Lei do Esporte</i>): Mechanism similar to <i>Lei Rouanet</i>, allowing donations from individuals (up to 6%) and companies (up to 1%), with 100% deduction.</p> <p>Overall, total limit for companies and individuals is 6% of the total income tax to be paid. There are also some state tax incentives, but in general are less relevant than the federal tax incentives.</p> <p><i>(This question did not require a score by the country expert; CGP applied a score of 2.5 due to the complex and limited incentives for individuals and corporations.)</i></p>
---	--

<p>Indicator Question 5: To what extent is the tax system favorable to making charitable donations?</p>	<p>Score: 3.0</p>	<p>Given the background presented on question 4, overall, tax incentives in Brazil are very limited and concentrated in some particular areas, such as culture. Individuals have even less incentives to donate and the juridical insecurity makes donation even more difficult. In any case, only individuals that calculate their income tax to be paid using the complete for (not applying a flat rate over total income) are eligible to donate. And this represents a minority of the population, including only those with higher income. The same applies to companies, which are only eligible if they calculate their income tax based on actual profit (and not estimate). Only around 7% of the companies in Brazil fall within this category, which includes the large companies.</p> <p>As stated, ITCMD represents an additional barrier to donations, although government control is very weak on this particular tax.</p>
<p>Indicator Question 6: Do CSOs receive tax exemptions in the form of property tax exemptions, income tax exemptions, or others? If so, what are these exemptions?</p>	<p>Score: 3.5</p>	<p>CSOs are generally tax-exempt, except if they sell services or merchandises, which leads to the payment of VAT (5% ISS for services or 18% ICMS for merchandises, together with 3% COFINS in both circumstances). The Federal Constitution exempts educational and social assistance CSOs from taxes at all levels. To be eligible, an educational or social assistance CSO must observe requirements set forth in federal law. These requirements may bring the organization closer to being equivalent to an IRS501(c)(3) organization.</p> <p>Organizations that do not qualify for constitutional tax exemptions may be eligible to receive some tax benefits at the federal, state, and municipal level, according to specific laws.</p> <p><i>(This question did not require a score by the expert; CGP applied a score of 3.5. On the positive side, there are exemptions available for nonprofits. On the negative side, there are many specifications in obtaining an exempt status.)</i></p>
<p>Indicator Question 7: To what extent is the tax system favorable to CSOs in receiving charitable donations?</p>	<p>Score: 3.0</p>	<p>There are limited incentives for charitable giving in Brazil. Only corporations, not individuals, are eligible for tax benefits for contributions to CSOs. Contributions are subject to tax exemption only to CSOs granted federal Public Utility Status or Public Interest Civil Society Organization (OSCIP). In these cases, corporate contributions may be deducted up to 2% of the corporation's tax base operating profit ("<i>lucro operacional</i>") before the corporation calculates its revenue tax liability.</p> <p>The process to obtain these tax exemptions is clear and consistent, but organizations pursuing such status must develop activities within the areas specified by the legislation. In general, organizations are able to raise limited funds from private donors, due both to the lack of more attractive tax incentives and to a weak or underexplored grant making culture.</p>
<p style="text-align: center;">Average Score on Domestic Tax Regulation: 3.00</p>		

**Scoring of Brazil's Cross-Border Flows Regulation
Provided by Andre Degenszajn**

<p>Indicator Question 8: Are there costs/taxes on cross-border philanthropic cash and/or in-kind donations (e.g. customs, duties, VAT, etc)? If so, what are these costs?</p>	<p>Score: 3.0</p>	<p>In general, it is significantly easier to receive funds from abroad than to send money from Brazil. In order to receive charitable donations, the CSOs need to complete documents at the bank indicating the purpose of the funds received. A tax of up to 2% and about \$50 in banking fees is needed for the exchange rate procedure when receiving funds from abroad. For transfers from Brazil, fees and taxes will amount to up to 35% and the process is lengthy and bureaucratic – taking up to two months to complete a transaction.</p> <p><i>(This question did not require a score by the country expert; CGP applied a score of 3.0 due to the costs and taxes applied to cross-border donations.)</i></p>
<p>Indicator Question 9: To what extent is the legal regulatory environment favorable to cross-border flows impeded?</p>	<p>Score: 3.0</p>	<p>The obstacles to charitable flows are mostly administrative and monetary. There are little government barriers to transfer of funds – and in general are weaker for receiving funds than sending away. Although a score 3.0 was given, there is no limitation in terms of activities that can be supported.</p>
<p align="center">Average Score on Cross-Border Flows Regulation: 3.00</p>		

Overall Philanthropic Freedom*: 3.44

*This score reflects equal weighting of the three categories described above.