

**FACT SHEET**

# ISS: The Brazilian Tax on Services

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Since it is controlled by the Municipalities, the rate of *Imposto Sobre Serviços* (“ISS” or Tax on Services) is variable depending on the Municipality where the service provider is located. The rate also depends on the service; and in some case, on the location of the client.

## Scope

The ISS is a tax which falls within the jurisdiction of Municipalities and covers the services provided by companies, corporations, or by autonomous professionals, as long as the operation is neither within the jurisdiction of the Federation nor the Federal State.

Most of services are within the scope of ISS, but some are within the scope of ICMS (i.e. within the scope of the Federal State). For example, the provision of telecommunications services, production and distribution of electricity, transport, etc.... are not subject to the ISS as it falls within the jurisdiction of the Federation or the Federal States. Other services are out of the scope of both ISS and ICMS (for example renting space)!

The ISS is not due on exports as long as they generate foreign exchange. ISS applies to imports. The event is the provision of services. There is no right to tax credit. This tax is “cumulative”, i.e. the higher the number of companies taking part in the process of production, the higher the tax burden for the final client. See hereafter an example:

### How ISS do accumulate?

#### Taxes added along the productive chain: clothing factory



Taxes paid: 5 + 10 + 20 = \$35,00

Total % of taxes = \$35,00 / \$400,00 = 8,75%

## TAXPAYER AND LIABLE

The payer of this tax is the service provider. It is usually the service provider's responsibility to collect and pay the tax.

The role of 'Responsible' is present also in the payment of this tax. Indeed, municipalities can assign to clients the responsibility of paying the ISS. For example, the State of São Paulo requires the client to pay the ISS due, if the provider does not furnish neither an invoice, nor a receipt as proof that tax was paid.

The ISS is due to the Municipality where the service is physically provided. Generally, the tax is due to the Municipality where the service provider is based.

Nonetheless, for a limited list of services (consult law n° 116 31/07/2003), the tax must be paid to the Municipality where the client is based. For example, services of cleaning, security, painting, catering... are physically provided on the clients' premises and therefore ISS is paid to the clients' Municipality.

But since ISS is the main financial resource for the budget of Municipalities, you end up in situations where both Municipalities demand that ISS be paid to them; and some companies decide to pay ISS twice rather than going to court!

### Doing business with a client in the Municipality of SP?

If your company is based outside the Municipality of SP and sells to client based within the Municipality of SP, the following might happen: you send an invoice of 100 R\$ to your client and expect to receive the full payment. But you receive only 95 R\$.

Your client has actually made a consultation of the *Secretaria Municipal de Finanças* and found out that your company is not registered there. Therefore, the responsibility of paying the ISS stands on this client and it has paid the ISS to the Municipality of SP.

Conclusion: if you sell to clients in the Municipality of SP, do register your company in order to avoid double taxation (called *bi-tributação*).

Here is the link to register: <http://www.prefeitura.sp.gov.br/cidade/secretarias/financas/servicos/ccm/>

## RATE, BASIS FOR CALCULATION AND DEADLINE

The applicable rate depends on each municipality. It is almost always between 2% and 5%.

As this rate depends on them, Municipalities tend to use this rate to compete among themselves in order to entice companies to (re)locate to within their circumscriptions. The ISS is the main tool for tax competition between municipalities. For example, for most types of services, a company that would leave São Paulo to settle in Alphaville (new city 30Km from São Paulo) would see its ISS rate slashed from 5% to 2%.

The calculation basis is the price of the service.

ISS (like ICMS) is calculated “por dentro”. This means that for a product of 100 net of ISS tax, the amount ISS included won’t be 105, but  $100/0.95 = 105.26$ !

VAT in most of Countries is not calculated “por dentro”. See below the difference and the impact:

**VAT method applied in most of countries (assuming a rate of 5%):**

[Price before tax] x [VAT 5%] = [Price after tax] Example:  $100 * 1.05 = 105$

**ISS applied in Brazil on most of services (assuming a rate of 5%):**

[Price before tax] x [VAT 5%] = [Price after tax] Example:  $100 * 1.0526 = 105.26$

**The 5% ISS is applied to 105.26 :**

Exemple:  $5\% * 105.26 = 5.26$

The ISS must be paid each month. Deadlines depend on Municipalities. For example in the city of São Paulo, the deadline is the seventh day of the following month.