



ANNUAL REPORT
**REAL ESTATE
TRANSACTIONS AND
INVESTMENTS**

December, 2022





Introduction

Throughout 2022, there were several legislative innovations and changes in the understanding of the courts on matters of great relevance to the real estate market, such as the establishment and modification of theses on the incidence of ITBI, creation of the law that brought relevant changes for the public records law and other related laws, the creation of the SERP, and the law that promoted the modification of quorum for the changes of destination of condominiums, among others. In this way, the Real Estate Transactions and Investments team of Tauil & Chequer Advogados in association with Mayer Brown prepared a retrospective of the main legislative and jurisprudential claims that impacted the real estate market in the year 2022.





SUMMARY

Timeline

February 22nd
2022

1.

PEC no. 39/11 – Transference of Marine Land

PEC no. 39/11 has been approved by the House of Representatives. Regulated the transference of marine lands to states and municipalities governments, and also for private entities (landowners/occupiers).

Learn more at: [PEC no. 39/11 – Transference of Marine Land](#)

February 24th
2022

2.

STJ consolidates understanding regarding changes over the Property Transfer Tax's (ITBI) basis

On deciding the Special Appeal no. 1.937.821/SP (RE n° 1.937.821/SP), the Brazilian Superior Court of Justice (STJ) established that the tax base applicable for the Property Transfer Tax (ITBI) must be the value declared by parties, which is, presumably, compatible with the property's market value.

Learn more at: [STJ consolidates understanding regarding changes over the Property Transfer Tax's \(ITBI\) basis](#)

April 8th
2022

3.

PGFN enacts Ruling confirming the position of STJ regarding the taxation on land swap contracts

The Office of PGFN enacted the Ruling 167, of April 8th, 2022, waiving the filing of appeals on cases discussing the levy of IRPJ, CSLL, PIS and COFINS on real estate barter performed by companies on presumed profit tax regime.

Learn more at: [PGFN confirms the position of STJ regarding the taxation on land swap contracts](#)

April 19th
2022

4.

STJ decides controversy regarding the incidence of ITBI collection in a spin-off procedure of entities with real estate assets

At the judgment of Interlocutory Appeal in Special Appeal no. 1.760.009/SP (AGint. no REsp n° 1.760.009/SP), the Brazilian Superior Court of Justice (STJ) discussed the incidence of ITBI in a corporate de-merging procedure, of entities with real estate assets.

Learn more at: [STJ decides controversy regarding the incidence of ITBI collection in a spin-off procedure of entities owners of real estate assets](#)

May 20th
2022

5.

Program "Requalifica Centro"

Municipal Decree no. 61.311/2022 regulates the Program "*Requalifica Centro*" created by Law no. 17.576/2021, bringing new urban and tax incentives in order to stimulate the entry of private law entities at the program.

Learn more at: [Program "Requalifica Centro"](#)

May 26th
2022

6.

STJ | Special Appeal no. 1.990.552/RS. Maximum term for compulsory renewal of the commercial lease agreement

Brazilian Supreme Court of Justice (STJ), on deciding the Special Appeal no. 1.990.552/RS (REsp nº 1.990.552/RS), established a new position regarding the maximum term for compulsory renewal of the commercial lease agreement.

Learn more at: [STJ. Special Appeal No. 1.990.552/RS. Maximum term for compulsory renewal of the commercial lease agreement](#)

June 27th
2022

7.

Law no. 14.382/2022: MP of Registries converted in law

MP of Registries converted in Law. The creation of SERP and the adoption of new measures to centralize data and the provision of services by the Public Registry Offices is now official. The deadlines for impugnation of doubts procedure have been changed. Extrajudicial Compulsory Adjudication forecasting.

Learn more at: [Law no. 14.382/2022: MP of Registries converted in Law](#)

July 12th
2022

8.

Law no. 14.405/2022 – Modification of the Quorum for Approval of Change of Building Condominium Destination

Law no. 14.405/2022 was enacted, by which the required quorum of condominium members to change the building and autonomous unit's destination was modified.

Learn more at: [Law no. 14.405/2022 – Modification of the Quorum for Approval of Change of Building Condominium Destination](#)

August 30th
2022

9.

STF | Differentiation between theseis regarding ITBI incidence

During the judgment of Interlocutory Appeal in Extraordinary Appeal no. 1.294.969/SP (ARE n° 1.294.969/SP), the Brazilian Federal Supreme Court (STF) reinforced its dominant understanding over the taxable event of the Property Transfer Tax (ITBI), which is only chargeable from the real estate property's transfer.

Learn more at: [STF | Differentiation between thesis regarding ITBI incidence](#)

September 1st
2022

10.

PL n° 709/22 – Tax benefits for income tax return obtained from property's rent

In order to stimulate the report of earnings obtained through residential properties' rent, the Legislative Bill no. 709/2022 foresees tax benefits for lessor and lessee, which report the incomes correctly, as well as, more severe measures to the party which does not report, or misreport, the receipt of the residential rent.

Learn more at: [PL no. 709/2022 – Tax benefits for income tax return obtained from property's rent](#)

September 27th
2022

11.

STJ | Special Appeal no. 1.504.916/DF. Averse acquisition (usucapio) of public properties in condominium?

During the judgment of Special Appeal no. 1.504.916/DF (REsp n° 1.504.916/DF), the Brazilian Superior Court of Justice faced controversy related with the possibility of adverse acquisition of property (*usucapio*), in which there is a indivisible condominium between Public Authorities and Private Law Entities.

Learn more at: [STJ | Special Appeal no. 1.504.916/DF. Adverse acquisition \(usucapio\) of public properties in condominium?](#)



PEC no. 39/11 – Transference of Marine Land

February 22th, 2022

Was approved by the House of Representatives, the Constitutional Amendment Proposal no. 39th of 2011 ("PEC 39/11"), which deals with the extinction of the marine lands and its additions, and provides the shape that these lands properties will take place.


According to PEC 39/11, the ownership of marine lands occupied by public services of state and municipal governments will be carried out free of charge for the respective states and municipalities, and the transmission of ownership for private entities occupiers will be proceeded through payment of a certain price.

The PEC 39/11 also provides that the transfer of ownership of marine lands, where state and municipal services are installed under licensing authorization or permission, will be carried out free of charge. There is provision for free transfer also for social interest housing, such as fishing villages.

Once the PEC come into effect, the marine land will no longer exist, for which reason the Federal Union will discontinue the charge of rent, occupancy fees, and

acknowledgment money (*laudemium*) over these lands. Therefore, other arrangements for the acquisition procedure will be regulated by the Republic Presidency.

After the approval by the House of Representatives, PEC 39/11 was forwarded to the Senate, where it remains unmoved until now.

 PEC no. 39/11- transference of marine land:	
1) Free of charge: State and Municipal Governments. Objective: territorial expansion and social interest housing.	2) Payment of certain price: private entities occupiers or landowners of marine lands, as long as: <ul style="list-style-type: none"> i. Registered at Federal Heritage Office; ii. Not registered, if confirmed: (ii.a) previous occupancy of 5 (five) years of PEC approval; e (ii.b) good faith.






STJ consolidates understanding regarding changes over the Property Transfer Tax's (ITBI) basis

February 24th, 2022

The Brazilian Superior Court of Justice (STJ), on deciding Special Appeal no. 1.937.821/SP (RE n° 1.937.821/SP), established that the tax base applicable over the Property Transfer Tax (ITBI) must be the value declared by parties, which is, presumably, compatible with the property's market value.

The ITBI, according to Article 35 of the National Tax Code (CTN), is a municipal tax on the onerous transfer, by acts of living people (*inter vivos*), of properties and the constituted rights over them. ITBI's value is usually calculated by municipalities over the highest amount between (i) the price negotiated between parties; and (ii) the property's nominal value, used as the Urban Building and Land Tax's (IPTU) basis, and estimated unilaterally by the municipality.

This duality on the ITBI's tax base reached the STJ by an Special Appeal interposed by the Municipality of São Paulo. At the trial, the Superior Court established 3 (three) theses regarding the subject, which are:

 A	 B	 C
"The ITBI's tax base is the property's value transferred under regular market conditions, and is not related to the IPTU's tax base, which could not even be used as a taxation's basis."	"The value of the transaction declared by the taxpayer enjoys a presumption that it is compatible with the market value, which could only be disregarded by the Tax Authority by means of the initiation of its own regular administrative procedure."	"The Municipality cannot previously set the ITBI's tax base according to the reference nominal value established unilaterally by it."

Against the decision, it was brought an Extraordinary Appeal that is still pending judgement at the Brazilian Federal Supreme Court (STF), which is why this sentence has not become final.



PGFN confirms the position of STJ regarding the taxation on land swap contracts

April 8th, 2022

After several decisions rendered by the Superior Court of Justice (STJ) understanding that real estate companies on presumed profit tax regime should not pay Corporate Income Tax (IRPJ); Social contribution on net income (CSLL); Contribution to Social Integration Program (PIS) and Contribution to Social Security (COFINS) on real estate land swap, the Office of Attorney-General of the National Treasury (PGFN) enacted the Ruling 167, of April 8th, 2022, waiving the filing of appeals on the matter.

IRS and PGFN have insisted for years that the barterland swap of real estate should be equivalent to the purchase and sale for purposes of IRPJ, CSLL, PIS and COFINS taxation, since the amount of the real estate commuted should be considered an income of the taxpayer submitted to presumed profit tax regime.

However, STJ confirmed that the amount of the real estate commuted does not fit the legal and constitutional concepts of income, profit, revenue or sales results, reason why only the additional amount eventually received on the barterland swap must be subject to taxation.





STJ decides controversy regarding the levy of ITBI in a spin-off procedure of entities with real estate assets

April 19th, 2022

Brazilian Superior Court of Justice (STJ), at the judgment of Interlocutory Appeal in Special Appeal no. 1.760.009/SP (AGint. no REsp n° 1.760.009/SP), examined controversy regarding the levy of Property Transfer Tax (ITBI) in a corporate split-off procedure that resulted in the property transfer from the demerged company to the newly formed companies.

STJ maintained the same position taken by the Brazilian Federal Supreme Court (STF), at the judgment of Interlocutory Appeal in Extraordinary Appeal (ARE) no. 1.294.969/SP, in sense that the taxable event of the ITBI collection occurs only upon the transfer of property, which — under Article no. 1.245 of Brazilian Civil Code — occurs through registry of the transference title, alongside the competent Real Estate Registry Office (RERO).

Therefore, STJ has established the understanding that, even in a transfer of

property resulted from a corporate de-merging procedure, the taxable event of ITBI remains the registry of the transference title (prior, owned by the demerged company), to the newly formed companies, with the competent RERO.

The occurrence of a taxable events of ITBI's hypotheses are the object of discussion at STF. Learn more at: [STF. Distinction between thesis regarding ITBI incidence.](#)





"Requalifica Centro" Program

May 20th, 2022

The "Requalifica Centro" program establishes tax and building incentives to stimulate the retrofit of old buildings in the central region of the city of São Paulo. The goal is to stimulate a bigger real estate residential offer to strengthen the center and retrieve its vocation of attractive environments to investments. The program was instituted by Municipal Law no. 17.576/2021 and regulated by Municipal Decree no. 61.311/2022.

The requalification, on legal terms, consists in an intervention in a preexisting building targeting its adequacy, recovery, and modernization through the update of its operational and building systems, with or without the increase of the built internal area to the original building, being allowed the change of its use.

Municipal Law no. 17.576/2021 determines that the program is designated to existing buildings previous to, or licensed according to, the building legislation current up to September 23th, 1992, regardless of its regularity condition at the time of the protocol of the request.

The Municipal Decree no. 61.311/2022, which regulates the "Requalifica Centro" Program, has created countless urban and tax benefits incentives, such as:

Urban Incentives
Remission of financial contribution in cases of change of use of the existing building to a new one allowed by legislation.
Possibility of barter transactions between computable and non-computable areas, in function of the requalification project, regarding the originally built areas with remission of financial contribution to the eventual addition of computable area.
Permission to demolish up to 20% of the total built area from the building combined with the possibility of reconstruction of demolished areas, for achieving the original parameters, with remission of the corresponding financial contribution.
Dismissal from the provision of vehicle parking spaces and possibility of dismissal from the area of loading and unloading.
Dismissal from the environmental share to the requalification with modification of built area up to 20% and the possibility of dismissal in the situations described on Article no 16, §2º of the Decree.
Tax Incentives
Urban Building and Land Tax (IPTU) exemption in the first three years, or for the period of ten years, after the requalification, to residential buildings.
Exemption of fees and charges regarding the permit procedure.



STJ | Special Appeal No. 1.990.552/RS. Maximum term for compulsory renewal of the commercial lease agreement

May 26th, 2022

At the trial of the Special Appeal no. 1.990.552/RS (REsp n° 1.990.552/RS), the Superior Court of Justice (STJ) established that, concerning rental renewal lawsuits, the maximum term of extension of the commercial lease contract is five years, regardless if the term of validity established at the last contract is superior to that period.

The STJ understood that the interpretation given by the Brazilian Federal Supreme Court (STF) regarding the Decree no 24.150/1934 (former “*Lei de Luvas*”) — in the sense that the compulsory renewal of the rental contract would be limited to the period of five years — must be applied to the Article no. 51 of the Law no. 8.245/1991 (“*Lei de Locações*”).

Therefore, concerning the commercial rental renewal lawsuit provided for in Article no. 51 of Law no. 8.245/1991, according to STJ’s position, the maximum term of contractual extension must be of five years, even if the term of the contract to be renewed is superior to this period of time.

Law no. 14.382/2022: MP of Registries converted in Law

June 27th, 2022

The Provisional Measure no. 1.085/2021 (MP of Registries) was converted into Law no. 14.382/2022, promoting important and countless alterations at the Law of Public Registries (Law no. 6.015/1973), at Law of Real Estate Development (Law no. 4.591/1964), and Law of Urban Ground Division (Law no. 6.766/1973), among others.

Under these alterations and innovations, which created the Electronic System of Public Registries (SERP) — which should be implemented until January 31th, 2023 — and will interconnect all registry activities governed by the Law of Public Registries (Real Estate, Titles and Documents, Civil and Legal Entities Documents Registries). The implementation of SERP will speed up the processing of extra-judicial services, enhancing the tracking of acts performed, which can be viewed electronically and instantly, and will also create technological solutions for installment payment of fees.

By Law no. 14.382/2022, all terms were modified, were in relation to the certificates issuance, or provided registry or annotation of certain titles. As described next page:



Certificate	Before the MP	After the MP
Real Estate Registry File (RERF) full content or Book no. 3rd - electronic	5 consecutive days	4 business hours
Real Estate Registry File (RERF) full content or Book no. 3rd - physical	5 consecutive days	5 business hours
Transcriptions full content	5 consecutive days	5 business hours
Property legal status	5 consecutive days	1 business hours
From perspective/ research by tangible index and personal	5 consecutive days	5 business hours

Act	Before the MP	After the MP
Registry request (prenotation)	30 consecutive days	20 business days
Real Estate Development Registration without pendencies or presentation of pendencies	15 consecutive days	10 business days
Real Estate Development Registration after presentation of pendencies	15 consecutive days	10 business days
General registration or annotation without pendencies or presentation of pendencies	30 consecutive days	10 business days
Registration or annotation after presentation of pendencies	30 consecutive days	5 business days
Public Deed registration without special clauses	30 consecutive days	5 business days
Construction annotation	30 consecutive days	5 business days
Annotation of guarantees termination	30 consecutive days	5 business days
SERP Electronic Documents	new	5 business days
Impugnation of doubt	15 consecutive days	15 business days
Social interest housing regularization	60 consecutive days + 60 consecutive days	40 business days



Real Estate Development

Law no. 14.382/2022 also resulted in several modifications in Law no. 4.591/1964 (Law of Real Estate Development), such as:

Provision	Modification
Inclusion of paragraph no. 15 to article 32	The institution of condominium is now performed in a single registration act along with the Real Estate Development registration.
Modification of article 33	Criteria were created for the Real Estate Development to be considered completed for the purpose of the provision, as follows: (i) formalization of conditional sale or disposal of future units; (ii) funding borrowing for construction; (iii) start of construction works for the endeavor.
Modification and creation of paragraphs (a) and (b) of article 43	Paragraph (a): The periodicity of the Real Estate developer's obligation to the present state of the construction was altered, changing from semiannually to quarterly; It also created the obligation of the developer to demonstrate the correspondence of the state of the construction with respect to the deadline for the delivery of the set established at the construction schedule.
	Paragraph (b): Created, for the developer, the obligation to submit the list of purchasers to the Representative Committee, which must observe the terms of Brazilian Data Protection Law regarding the treatment of purchasers' data.
Modification of article 50	Provided new wording to make the developer responsible for appointing a Representative Committee (whether in the construction agreement, or elected in a meeting) within six months from the date of registration of the Real Estate Development.
Modification of article 68	Creation of a new modality of Real Estate Development for detached or connected houses.

Extrajudicial Compulsory Adjudication

Compulsory adjudication, which, until the enactment of Law no. 14.382/2022, was only possible judicially (court proceedings), now can be requested extrajudicially by the purchaser or the seller, directly to the Registry Officer from the Real Estate Registry Office, provided the legal conditions set by the new article 216-B from the Law of Public Registries, as described in the table below:

Conditions:
Proof of default, characterized by the non-signing of the tittle of transmission of full ownership;
Constitution in arrears of the party that avoids drawing up the Public Deed (15 days);
Presentation of negative certificates for the existence of procedures and disputes regarding the purchase and sale commitment of the property that is the object of the adjudication;
Presentation of the proof of settlement of the ITBI;
Presentation of a power of attorney with specific powers.



Law no. 14.405/2022 – Modification of the Quorum for Approval of Change of Condominium Destination

July 12th, 2022

Law no. 14.405/2022 was enacted, by which the required quorum of condominium members to change the building and autonomous unit's destination was modified.

The main justifications for the legislative change were (i) the great difficulty in changing the destination imposed by the previous quorum, since the opposition of only one condominium member was enough to inhibit modifications of common interest; and (ii) searches in the sector state that the demand for commercial spaces were decreasing over the years and, consequently, generating vacancy in rooms and buildings with this destination, a scenario that had been especially intensified by the Covid-19 pandemic, since the home-office was implemented and maintained, successfully, by several companies, offices, and government agencies.

To proceed to the changing of destination, a full unanimous approval of the condominium members was required. After the enacting of Law no. 14.405/2022, the required quorum was altered to 2/3 of the total number of condominium members.

In addition to the quorum reduction, questions around the law's constitutionality were raised, as it would, supposedly, harm the ownership fundamental right granted by the 5th Article, XXII of the Brazilian Federal Constitution. However, despite the critics, the law remains valid, in force, and generating all its effects.





Finally, the Municipal Decree no. 61.311/2022 has also provided the possibility of public call to projects by the Municipal Government Secretariat along with the Municipal Secretariat of Urbanism and Licensing (SMUL), through the publication of public notice, in order to achieve private-law entities to present real estate requalification projects, as long as it is suitable to the program.



STF | Distinction between thesis regarding ITBI incidence

August 30th, 2022

In 2021, the Brazilian Federal Supreme Court (STF) reinforced its dominant understanding over the fact that the Property Transfer Tax (ITBI) is only chargeable from the real estate property's transfer, which occurs exclusively through the deed of title's registry in the competent Real Estate Registry Office (RERO). The matter was examined at the Interlocutory Appeal in Extraordinary Appeal no. 1.294.969/SP (ARE n° 1.294.969/SP), with general repercussion no. 1124 ("Tema n° 1124").

The appeal was argued by the Municipality of São Paulo (SP) against São Paulo Court of Justice (TJSP) decision, which considered the ITBI's charge at the assignment of acquisitive rights, arising from the property's Purchase and Sale Commitment signed by parties, illegal.

However, against STF's decision, the Municipality of São Paulo brought a Request for Clarification, which was accepted by the Court, excluding the application of former court decisions, that were used as foundation to their first decision, since the past facts did not match the ones in the suit that led to the current appeal (according to the Supreme Court the assignment of acquisitive rights is not the same as the real estate transfer for purposes of ITBI levy).



Therefore, STF will reconsider the merits of the appeal to, only then, render a new decision over ITBI's tax triggering event in the hypothesis of assignment of acquisitive rights arising from the property's Purchase and Sale Commitment.

The suit was assigned to the Reporting Justice André Mendonça and it is available for his analysis and judgement since October 5th, 2022. Although, despite Superior Courts reinforce the understanding, even if it is with general repercussion, it must be pointed out that those decisions do not change the current tax legislation, which establishes, in most municipalities, the ITBI charge in case of assignment of acquisitive rights arising from the property's Purchase and Sale Commitment.



PL no. 709/2022 – Tax benefits for income tax return obtained from property's rent

September 1st, 2022

The Legislative Bill no. 709/2022 (PL) from the Senator Alexandre Silveira, provides about the incidence of Individual Income Tax (IRPF) over the earnings obtained through residential properties' rent. The bill foresees an increase in the tax fine in case of intentional misrepresentation or unreported rent income.

The bill is intended to stimulate the lease agreement parties to report the amounts received by lessor as residential rent income. For this purpose, the bill foresees tax benefits for those who report the incomes correctly and more severe measures to the lessor who does not report, or misreports, the receipt of the residential rent.

- 1. Lessor's benefits:** partial exemption of 75% over the reported rent amount received by the owner, so that the IRPF will not be levied over a relevant percentage of this earnings; and
- 2. Lessee's benefits:** deduction of the amount spent with the rent from the IRPF tax basis, reducing the total amount of tax due by lessees who reports the payment of rent in their IRPF.



The benefits proposed will be in force for five years, during the fiscal years of 2023 to 2027.

On the other hand, the legislative bill determines that fees linked to the default in the collection of IRPF, the lack of report or inaccurate report, when involving income from the rental of residential real estate, will be applied in double.



STJ | Special Appeal no. 1.504.916/DF. Adverse acquisition (*usucapio*) of public properties in condominium?

September 29th, 2022

During the judgment of the Special Appeal no. 1.504.916/DF (REsp n° 1.504.916/DF), the Minister Luis Felipe Salomão faced controversy, resulting from adverse possession (*usucapio*) procedure, regarding a property where there exists a indivisible condominium (in Brazil Civil Code – *condomínio pro indiviso*) between Public Authorities and a certain private law entity.

Initially, it should be pointed out that there is a solid understanding that public properties, even those not used for the provision of services by public authorities (in Brazil bens dominicais), are not subjects of adverse possession (*usucapio*). This position has already been summarized by Brazilian Federal Supreme Court (Súmula 340/STF).

The principal case focuses on a land constituted in indivisible condominium, of which the property belongs partially to public authorities and partially to private law entities, without any demarcation of area occupied by each of the owners.

Considering this scenario, Brazilian Superior Court of Justice understood that the lack of demarcation or division of the part of the property that belong to the public authorities and the private entity, does not prevent the prosecution of adverse possession (*usucapio*) regarding the part of the property that belongs exclusively to the private law entity.



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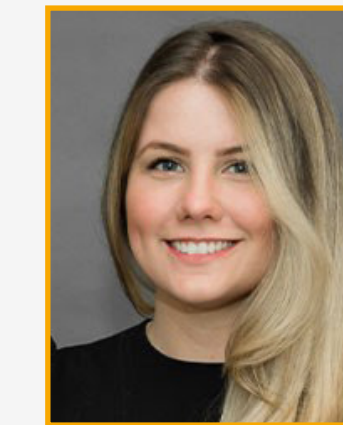
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