



New transfer pricing rules in Brazil: opportunities & risks

Last week (on 15 June 2023), the provisional measure n. 1152/22 – published on 29 December 2022 – was converted into law with the publishing of Federal Law n. 14.596/23 (the “Law”). With the Law, Brazil’s transfer pricing (“TP”) rules are aligned with the at arm’s length standard as reflected in the OECD TP Guidelines (“TPG”). Brazilian taxpayers need to comply with the Law for financial years starting on or after 1 January 2024 (FY2024). However, they also have the option to ‘early adopt’ to the Law with respect to the prior financial year.

Background

The purpose of the Law is to (i) integrate Brazil into multinational enterprises (“MNEs”) global value chains and (ii) limit double taxation and double non-taxation. In addition, the Law will likely facilitate tax-credit recognition in the United States on income tax paid and/or withheld in cross-border transactions involving Brazil.

Key aspects of the New rules

We have highlighted some key aspects of the Law below:

- Reference to arm’s length principle
- A broader “related party” concept
- All intercompany transactions in-scope for TP purposes
- Elimination of the royalty deductibility limitation currently in force and allowance

- deduction of royalty payments, if in accordance with the arm’s length principle
- Introduction functional and economic analysis
- Profit-based methods are accepted
- Benchmarks required to determine margins / interest rates
- Specific guidance for IP transfers and business restructurings
- OECD’s three-step approach for TP documentation
- Tax certainty via unilateral APAs and MAPs possible
- Year-end TP adjustments possible

Risks, opportunities & next steps

To pro-actively manage opportunities and risks relating to the Law, MNEs need to take the following actions as soon as possible:

- Assessment of intercompany transactions
- Determine arm’s-length pricing (via benchmarking studies)
- Implementing arm’s-length pricing in agreements
- Monitor intercompany pricing, calculation year-end adjustments, and prepare financial reporting accordingly
- Review whether APA and/or MAP procedures are preferred
- Prepare Master- and Local File documentation



Brazilian taxpayers that want to “early adopt” need to notify the Brazilian local authorities ultimately on 30 September 2023. In view of this short timeframe, MNEs are well advised to immediately start the assessment of in-scope intercompany transactions to quantify opportunities.

If you have any questions or comments, we are happy to assist.

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