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New Brazilian Transfer Pricing Rules

TTN Conference - 2023

Introduction – Brazilian TP Rules

- In December 2022, the Brazilian Government issued new Proposed Regulations through a "Provisory Law" (MP 1152/22), which changed the transfer pricing rules, intending to aligning them with the OCDE standards.
 - MP 1152/22 needs to be approved by Brazilian Congress to become a "permanent law" and its contents may change when converted into law
- The Government stated that this was due to the previous system being outdated and distant from international standards, mostly those of OCDE.
- They also mentioned the new U.S. Foreign Tax Credit Regulations (TD 9959), which requires that for a foreign tax to be credited, it must adopt the Arm's Length principles for related-party transactions.
- The MP has not yet been converted into law and may change; however, the Brazilian Revenue Service (RFB) has issued instructions for the application of the new rules.

The Old TP Rules

- Partial adoption of the Arm's Length Principle
- Focus on tangible goods, services and rights.
- The tested entity could choose the method which gave them the best economic result.
- Only Brazilian entities could be tested.
- The comparative analysis was based on fixed profit margins, defined by economic sector
- There were no specific rulings regarding Intangibles, intragroup services, corporate restructuring, most financial transactions and cost-sharing agreements.
- Formulary approach

The New TP Rules

- **Arm's Length Principle:** "Article 2. For the purpose of determining the tax base of the taxes referred to in the sole paragraph of Article 1, the terms and conditions of a controlled transaction shall be established according to those that would be established between unrelated parties in comparable transactions." (MP 1152/2022)
- **Controlled Transactions:** "Article 3. For the purposes of this Provisional Measure, a controlled transaction shall comprise any commercial or financial relationship between two or more related parties, established or conducted directly or indirectly, including contracts or arrangements in any form and series of transactions."(MP 1152/2022)

The New TP Rules

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- **Related Parties:** The new regulations broadened the concept of related parties to include any party under direct or indirect influence of another party.
 - **Methods:** (i) Comparable Uncontrolled Price (ii) Cost-Plus (iii) Resale-Minus (iv) Transactional Net Margin (TNMM) (v) Profit Split
 - The Entity can no longer choose the method which provides the best economic result and must instead use the “Best method”.
 - Detailed approach to Intangibles, intragroup services, corporate restructuring, most financial transactions and cost-sharing agreements.
 - The adoption of these rules is optional for 2023, but mandatory for 2024 and going forward.
 - **Final Remarks:** Permanent Adoption? What if the MP is not converted into Law?

Contact Information

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