

Provisional Measure (MP) 1152, published on December 29, 2022, substantially amended the Brazilian transfer pricing rules currently in force for transactions carried out between related parties, with the purpose of aligning them with OECD Guidelines.

The MP comes into effect on January 1, 2024, but taxpayers may choose to apply it as from January 1, 2023. The MP is still pending regulation by the Brazilian Federal Revenue Service.

The MP must be voted by the National Congress within 120 days and sanctioned by the President so that it can be valid after that period.

## Main changes:

### General rules

#### Arm's Length principle

- Adoption of the arm's length principle by the Brazilian legislation
- Scope of transfer pricing rules broadened to encompass any commercial or financial transactions with related parties abroad
- Non-exhaustive related party concept
- Analysis of the main economically relevant characteristics of the transaction (e.g., contractual terms, functions, characteristics of goods, services or rights, economic circumstances and business strategies) to outline the transaction

#### Methods and comparability analysis

- Selection of the most suitable method for the operation, among (non-exhaustive list):
  - Comparable Independent Price (PIC)
  - Resale Price minus Profit (PRL)
  - Cost plus (MCL)
  - Transactional Net Margin (MLT) – new
  - Profit Split (MDL) – new
  - Adoption of comparability analysis

#### Transfer pricing adjustments

- Introduction of compensatory adjustments (adjustment in the transaction amount until the end of the calendar year) and secondary adjustments, in addition to the spontaneous/primary adjustments (adjustment to the IRPJ and CSLL taxable basis)
- The secondary adjustment considers the amounts transferred to related parties in excess to what is allowed by transfer pricing rules as loans granted by the legal entity in Brazil to the related parties abroad, remunerated at a rate of 12% per year (the rate can be reduced to zero if amounts are repaid within 90 days)



### Para saber mais, entre em contato com:

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- Introduction of the concept of commodities, with no list of commodities
  - Need to properly evidence the date of the transaction
  - Specific ancillary obligation/registration for transactions involving commodities
- Commodities
- Introduction of specific rules for intangibles: analysis of relevant functions and economically significant risks
- Intangibles
- Inclusion of specific provisions to regulate intragroup services, including the use of indirect apportionment criteria under the MCL and the impossibility of charging a profit margin on the mere transfers of funds from third-parties
- Intragroup services
- Introduction of the definition of cost contribution arrangements
- Cost Contribution Arrangements
- Application of transfer pricing rules to business restructurings (e.g., transfer of assets to other jurisdictions), by assessing risks and potential profit, among others
- Business restructuring
- Inclusion of all financial transactions (e.g., guarantees, insurance, etc.) under the scope of transfer pricing rules
- Financial transactions
- Complete documentation, with information on the comparability analysis, structure and activities of the group and global allocation of revenues and assets
  - Imposition of fines based on percentages of gross revenue in case of non-compliance with the required documentation, limited to BRL 5 million
- Documentation
- Introduction of advance pricing arrangements (APA), valid for up to 4 years, subject to the payment of a fee
- APAs
- Tax deduction not allowed for IRPJ and CSLL purposes of royalties: (i) paid to tax havens and privileged tax regimes; or (ii) when the deduction of amounts results in double non-taxation
  - Current rules restricting tax deduction for IRPJ of royalties, expenses with technical assistance and others revoked
- Royalties



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