

Brazil

Transfer Pricing Country Profile

Updated October 2017

	SUMMARY	REFERENCE
The Arm's Length Principle		
1	<p>Does your domestic legislation or regulation make reference to the Arm's Length Principle?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>The Arm's Length Principle is a principle that governs the Brazilian Transfer Pricing legislation. However, there is no direct reference to the arm's length principle or its Portuguese translation in the transfer pricing legislation in Brazil. For example, the Explanatory Statement of the Law 9430/1996 which introduced the Transfer Pricing Rules in Brazil says the law conforms rules adopted by OCDE member countries.</p>	<p>See page 115, paragraph 12 in the Explanatory Note of the Project of the law http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra?codteor=1132081&filename=Dossie+-PL+2448/1996</p>
2	<p>What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?</p> <p>The TPG can be used as a subsidiary interpretation guidance, whenever it does not contradict the Brazilian transfer pricing legislation and the national legal system.</p>	<p>Brazilian Tax Code imposes rules of tax law interpretation (See Articles 108 to 111 of the Brazilian Tax Code: http://www.planalto.gov.br/ccivil_03/leis/L5172.htm)</p>
3	<p>Does your domestic legislation or regulation provide a definition of related parties? If so, please provide the definition contained under your domestic law or regulation.</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>The law that introduced Transfer Pricing legislation in Brazil, has a definition of related parties. The concept encompasses:</p> <ul style="list-style-type: none"> • The foreign parent company of a Brazilian company; • A foreign subsidiary or branch of a Brazilian company; • The foreign controller of or affiliated to a Brazilian company; • A foreign company controlled by or affiliated to a Brazilian company; 	<p>Law 9.430/1996, Article.23 (http://www.planalto.gov.br/ccivil_03/leis/L9430.htm)</p>

	<ul style="list-style-type: none"> • A foreign company that is under control or management of the same company that controls or manage a Brazilian company; • A foreign company which at least 10% of its capital and the capital of a Brazilian company belongs to same shareholder; • A foreign company that together with the Brazilian company controls a third company or the aggregate participation on its capital follows under de concept of affiliated company; • A foreign associated company (consortium or condominium); • A foreign exclusive agent of the Brazilian company; • A foreign company for which the Brazilian company is an exclusive agent; • An exclusive agent, distributor or dealer of a Brazilian company; • A foreign company for which the Brazilian company is an exclusive agent, distributor or dealer; <p>An non-resident individual, relative, spouse or companion of the manager, the director, or the shareholder controller of the Brazilian company.</p>	
--	---	--

Transfer Pricing Methods

4	<p>Does your domestic legislation provide for transfer pricing methods to be used in respect of transactions between related parties?</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>If affirmative, please check those provided for in your legislation:</p> <table border="1" style="width: 100%; text-align: center;"> <thead> <tr> <th>CUP</th> <th>Resale Price</th> <th>Cost Plus</th> <th>TNMM</th> <th>Profit Split</th> <th>Other (<i>If so, please describe</i>)</th> </tr> </thead> <tbody> <tr> <td><input checked="" type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </tbody> </table> <p>The transfer pricing rules in Brazil has a commodity method that is a CUP method that makes use of public available prices.</p>	CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (<i>If so, please describe</i>)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>Law 9.430/1996, Article.18, I (CUP), II (Resale Price), and III (Cost Plus) for imports of goods, services and rights; Article 18-A (CUP) for imports of commodities; Article 19, § 3º, I (CUP), II and III (Resale Price), and IV (Cost Plus) for exports of goods, services and rights; Article 19-A (CUP) for imports of commodities</p> <p>http://www.planalto.gov.br/ccivil_03/leis/L9430.htm)</p>
CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (<i>If so, please describe</i>)									
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>									
5	<p>Which criterion is used in your jurisdiction for the application of transfer pricing methods?</p> <p>Please check all that apply:</p> <p><input type="checkbox"/> Hierarchy of methods</p> <p><input type="checkbox"/> Most appropriate method</p> <p><input checked="" type="checkbox"/> Other (<i>if so, please explain</i>)</p>	<p>Law 9.430/1996, Articles 18, 18-A, 19, and 19-A.</p> <p>http://www.planalto.gov.br/ccivil_03/leis/L9430.htm)</p>												

		The taxpayer is free to use any method and the tax administration can only change the taxpayer choice of the method if the taxpayer cannot provide enough documentation to support its calculation of the arm's length price. The exceptions are the commodity method (CUP) that is mandatory for transactions involving certain types of commodities and the interest payments derived from financial transactions that are subject to a specific methodology. See also answer to question 12.	
6	If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.	<input type="checkbox"/> For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the TPG is followed. <input checked="" type="checkbox"/> Domestic legislation mandates the use of a specific method for controlled transactions involving commodities (<i>if so, please explain</i>) <input type="checkbox"/> Other (<i>if so, please explain</i>)	<p>Law 9.430/1996, Articles 18-A and 19-B. http://www.planalto.gov.br/ccivil_03/leis/L9430.htm)</p> <p>Normative Instruction RFB 1312/2012, Annex I (list of commodities to which the method applies), Annex II (list of International Recognized Mercantile Exchange), and Annex III (International Recognized Research Institutions)</p> <p>http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?visao=anotado&idAto=39257)</p>
Comparability Analysis			
7	Does your jurisdiction follow (or largely follow) the guidance on comparability analysis outlined in Chapter III of the TPG?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		The TPG as a whole has no legal binding effect in Brazil. It can be used as a subsidiary interpretation guidance, whenever it does not contradict the Brazilian transfer pricing legislation and the national legal system . Notwithstanding, the Brazilian Transfer Pricing Law was inspired by the TPG.	
8	Is there a preference in your jurisdiction for domestic comparables over foreign comparables?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
9	Does your tax administration use secret comparables for transfer pricing assessment purposes?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

10	<p>Does your legislation allow or require the use of an arm's length range and/or statistical measure for determining arm's length remuneration?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>After the transfer pricing analysis, the controlled price can vary in a range of 10% width, being the centre of the distribution the price achieved through the application of the appropriate method. If the actual price falls into this range, no adjustment is required. For commodity transactions the range is 6% width.</p>	<p>Normative Instruction RFB 1312/2012, Articles 51. http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?visao=anotado&idAto=39257.</p>
11	<p>Are comparability adjustments required under your domestic legislation or regulations?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>The comparability adjustments under Brazilian domestic legislation are limited. Basically, they take into consideration differences due to business conditions, physical nature and content (examples: payment term; quantities traded; guaranty; promotion of the good, service or right, through advertising and publicity; quality control, standard of services and hygiene conditions; intermediation services; packaging; climatic influences to the characteristics of the product).</p>	<p>Normative Instruction RFB 1312/2012, Articles 9°, § 1°, § 4°, and § 7°; 10; 11; 16, § 6°, § 8°, § 9°, § 11°, § 12°; 22, § 1°, § 4°, § 7°, § 10°; 24; 30; 31; 32; 34, § 9°, § 10, § 12, § 13; 36-A, § 5°. http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?visao=anotado&idAto=39257</p>
Intangible Property			
12	<p>Does your domestic legislation or regulations contain guidance specific to the pricing of controlled transactions involving intangibles?</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Transfer Pricing legislation only applies to income from royalties. For royalties payments the Brazilian legislation has fixed deductibility limits.</p>	<p>Law 9.430/1996, Article 18, § 9°. http://www.planalto.gov.br/ccivil_03/leis/L9430.htm</p> <p>Law 4.506/1964, paragraph of Article 71 http://www.planalto.gov.br/ccivil_03/LEIS/L4506.htm#art71</p> <p>Portaria MF nº436/1958 (Administrative Act of the Finance Ministry). http://www.inpi.gov.br/menu-servicos/transferencia/arquivos/legislacao-transferencia-de-tecnologia/portaria436.pdf</p>

13	Does your domestic legislation or regulation provide for transfer pricing rules or special measures regarding hard to value intangibles (HTVI)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
14	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No See answer to question 12.	
Intra-group Services			
15	Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No The Brazilian Transfer Pricing legislation encompass the Law 9430/1996 and the Normative Instruction 1312/2012. These legislations applies to intra-group services, but none of these legislations has specific guidance to intra-group services. The guidance is general to all controlled transactions.	
16	Do you have any simplified approach for low value-adding intra-group services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
17	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Transfer Pricing legislation does not apply to payments for technical, scientific, management, or similar, assistance because the Brazilian legislation has fixed limit for deducting such payments.	Law 9.430/1996, Article 18, § 9º. (http://www.planalto.gov.br/ccivil_03/leis/L9430.htm) Law 4.506/1964, paragraph of Article 52 (http://www.planalto.gov.br/ccivil_03/LEIS/L4506.htm#art71) Income Tax Regulation, (Decree 3000/1999, Article 355. (http://www.planalto.gov.br/ccivil_03/decreto/d3000.htm#art354)

Cost Contribution Agreements

18	Does your jurisdiction have legislation or regulations on cost contribution agreements?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
----	---	--	--

Transfer Pricing Documentation

19	Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>If affirmative, please check all that apply:</i> <ul style="list-style-type: none"> <input type="checkbox"/> Master file consistent with Annex I to Chapter V of the TPG <input type="checkbox"/> Local file consistent with Annex II to Chapter V of the TPG <input checked="" type="checkbox"/> Country-by-country report consistent with Annex III to Chapter V of the TPG <input type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return) <input checked="" type="checkbox"/> Other (specify): Brazil has a simplified Local File that must be filled together with the annual corporate tax return. 	
----	--	---	--

20	Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)	<p>Transfer pricing documentation is submitted annually, together with the annual corporate tax return, referring to the immediate preceding fiscal year, and includes, among other information, the identification of material intercompany transactions with respect to amount, company and country involved, product/service traded, TP method applied and value of the adjustment – if applicable.</p> <p>Country-by-Country Report must be also filed with the corporate tax return.</p> <p>Most of the TP information is submitted in Portuguese. With respect to Country-by-Country Report, taxpayers are allowed to choose one of the three following languages to fill the free text fields: Portuguese, Spanish or English.</p> <p>This corporate tax return is filled by taxpayers through a system called ECF (abbreviation, in Portuguese, to Tax Accounting Bookkeeping). There is a ECF's manual which provides guidance for filling all the ECF information which encompasses the information required for purposes of transfer pricing and Country-by-Country Reporting.</p>	<p>The ECF manual can be accessed by the following link:</p> <p>http://sped.rfb.gov.br/estatico/D5/0A17B6181874C505B51F6ECBD9B32F8E035AEB/Manual_de_Orienta%C3%A7%C3%A3o_da_ECF_Maio_2017.pdf</p> <p>The specific guidance related to transfer pricing and Country-by-Country Reporting can be found on pages 428-463 and 377-416, respectively.</p>
----	---	---	--

21	<p>Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>The penalties to filing obligation are general. There is no specific penalty to transfer pricing documentation.</p> <p>In case of untimely filing, taxpayers are subject to the penalty of R\$ 1.500,00 (aprox. US\$ 450) for each month or fraction of delay.</p> <p>In case of omitted, incomplete or inaccurate information, taxpayers are subject to the penalty of 3% on the value of the commercial or financial transactions omitted.</p> <p>If during a tax audit the taxpayer does not present the supporting documentation related to the transfer pricing adjustments, the general penalty rate applicable of 75% raise to 112,5%.</p>	<p>DL 1.598/1977, Article 8º-A (http://www.planalto.gov.br/ccivil_03/decreto-lei/De11598.htm)</p> <p>MP2.158-35/2001, Article Art. 57 (http://www.planalto.gov.br/ccivil_03/mpv/2158-35.htm)</p>
22	<p>If your legislation provides for exemption from transfer pricing documentation obligations, please explain.</p>	<p>There is no filing obligation exemption in Brazil.</p> <p>However, the Brazilian legislation provides a simplification to the documentation requirement for export transactions, if the income derived from those transactions represents less of 5% of the total net income of the entity. This simplification does not apply to commodities transactions.</p>	<p>Law 9.430/1996, Articles 49 and 50,III. (http://www.planalto.gov.br/ccivil_03/leis/L9430.htm)</p>
Administrative Approaches to Avoiding and Resolving Disputes			
23	<p>Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?</p>	<p>Please check those that apply:</p> <p><input checked="" type="checkbox"/> Rulings</p> <p><input type="checkbox"/> Enhanced engagement programs</p> <p><input type="checkbox"/> Advance Pricing Agreements (APA)</p> <p style="padding-left: 20px;"><input type="checkbox"/> Unilateral APAs</p> <p style="padding-left: 20px;"><input type="checkbox"/> Bilateral APAs</p> <p style="padding-left: 20px;"><input type="checkbox"/> Multilateral APAs</p> <p><input checked="" type="checkbox"/> Mutual Agreement Procedures</p> <p><input type="checkbox"/> Other (<i>please specify</i>):</p> <hr/> <p>Private rulings are also available.</p>	<p>Normative Instruction RFB 1396/2013. (http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?visao=anotado&idAto=46030)</p> <p>Brazilian DTA network. (https://idg.receita.fazenda.gov.br/aceso-rapido/legislacao/acordos-internacionais/acordos-para-evitar-a-dupla-tributacao/acordos-para-evitar-a-dupla-tributacao)</p> <p>Normative Instruction RFB 1696/2016. (http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?visao=anotado&idAto=78559)</p>

Safe Harbours and Other Simplification Measures

24	Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Law 9.430/1996, Article 19, and 19-A, § 4°. http://www.planalto.gov.br/ccivil_03/leis/L9430.htm
		Brazilian legislation provides a safe harbour applicable only to export transactions, except those involving commodities.	
25	Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.	No.	

Other Legislative Aspects or Administrative Procedures

26	Does your jurisdiction allow/require taxpayers to make year-end adjustments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
		Brazilian transfer pricing legislation requires year-end adjustments for tax purpose only. There is no requirement to reflect them in financial statements.	
27	Does your jurisdiction make secondary adjustments?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Other Relevant Information

28	Other legislative aspects or administrative procedures regarding transfer pricing		
29	Other relevant information (e.g. <i>whether your jurisdiction is preparing new transfer pricing regulations, or other relevant aspects not addressed in this questionnaire</i>)		