

**Annual International Bar Association Conference 2019  
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**Recent Developments in International Taxation  
Brazil**

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## **RECENT HIGHLIGHTS**

During the past year, the most significant international tax developments that took place in Brazil concerns mainly the implementation and amendments of Double Tax Treaties and Tax Information Exchange Agreements; as well as the change in transfer pricing guidelines. These can be seen as an intent of the Brazilian Government to tackle BEPS<sup>1</sup> practices and conform to OECD<sup>2</sup> international tax policy<sup>3</sup>.

### **A. DOUBLE TAX TREATIES (DTT)**

#### **• NEW DTT**

Brazil is part to 34 Double Tax Treaties (DTT) with different countries in force and, recently, just entered into three new DTTs with Switzerland (May, 2018), Singapore (May, 2018) and the United Arab Emirates (November, 2018). Those new tax treaties are not yet in force and pend on ratification of the Brazilian Congress.

Worth noticing that, so far, the Unites Arab Emirates are part of a low tax jurisdiction list (black list) according to Brazilian Tax Authorities. Singapore was removed from the black list in 2018, but certain Singapore tax regimes are still considered privileged tax regimes (grey list) to Brazilian Tax Authorities, as well as certain Swiss tax regimes. It is expected that Brazil changes its perspective on the Unites Arab Emirates' domestic tax legislation before the DTT enter into force.

#### **• AMENDMENT PROTOCOLS**

Apart from the new tax treaties, some Amendment Protocols to DTTs were executed or entered into force on 2018/2019. In the effort of complying with the BEPS project "Actions", Brazil amended the DTTs with Norway, South Korea, India, South Africa, Argentina, Denmark and Sweden in the last years.

The protocols to the DTTs signed with Norway, South Korea, India and South Africa replaced the Article 26 or 27 regarding exchange of information to comply with the OECD's suggestions on the topic. These protocols entered into force in the beginning of 2018.

The protocols signed with Argentina, Denmark and Sweden were also amended under the BEPS project scope, but they also address several other changes to the original wording.

Argentina's protocol is already in force and its main highlights are the introduction of withholding taxes on dividends (exemption revoked); the replacement of the existing tax exemption method for a tax credit system; a broader definition of technical services and technical assistance agreements, in order to qualify this income under the Royalties Article, which grants shared taxing rights and allows for Brazil to apply its withholding tax; and

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<sup>1</sup> Base Erosion and Profit Shifting

<sup>2</sup> Organisation for Economic Co-operation and Development

<sup>3</sup> Brazil officially applied for OECD membership in 2017

anti-abuse provisions. The protocol recently signed with Sweden follows the same amendments, but did not enter into force until the present moment.

Lastly, the protocol signed with Denmark mainly amends the wording of the article 23 regarding methods for avoiding double taxations, resulting in the termination of the tax sparing regime.

- **MAP GUIDANCE**

The Brazilian Tax Authorities issued in 2018 an official manual addressing the Mutual Agreement Procedure (MAP) for resolution of cross-border tax disputes. The MAP manual highlights some of the Tax Authorities interpretations of the MAP provisions on DTTs signed by Brazil and general administrative normative instructions on the matter.

## **B. TAX INFORMATION EXCHANGE AGREEMENTS (TIEA)**

In the beginning of 2019, two new TIEAs signed by Brazil with Switzerland and Jersey entered into force. The agreements are applicable to requests made on or after the date of its entry into force, concerning information related to any taxable period beginning on or after 1 January 2020 or, where there is no taxable period, for all charges to tax arising on or after 1 January 2020. Brazil also signed a TIEA with the United Kingdom, but it is not in force yet.

## **C. TRANSFER PRICING RULES (TP)**

The transfer pricing rules in Brazil are one of the main issues in order for the country to become an OECD member. In this regard, Brazilian Authorities met with OECD officials and launched a 15-month joint project, from March, 2018, to examine the similarities and mismatches between the Brazilian and OECD approaches to valuing cross-border transactions between associated firms for tax purposes. The project aims to analyze the legal and administrative framework behind the Brazilian transfer pricing system, as well as its implementation.

Nonetheless, in January, 2019, the Brazilian Tax Authorities also issued a guidance<sup>4</sup> clarifying several aspects of the transfer pricing rules, such as the definition of commodities for TP purposes. However, more substantial changes that are further expected in order to align the Brazilian TP rules with OECD practices require a new legislation on the topic. Tax Authorities guidance cannot address these matters.

## **D. CRYPTOCURRENCIES**

The Brazilian Tax Authorities issued a guidance<sup>5</sup> on cryptocurrency transactions. According to the document published in May, 2019, entities and individuals must provide information regarding the type of operation and the amount of the cryptocurrency involved

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<sup>4</sup> Normative Instruction n. 1,870/19

<sup>5</sup> Normative Instruction n. 1,888/19

- up to ten decimal places -, the transaction value in the domestic Brazilian currency (BRL), the address of the remittance and receipt wallet, and, if the Digital Currency Exchangers (DCE) is domiciled overseas, the DCE's name. Penalties are imposed for late filing, non-compliance with ancillary obligations and inaccurate information.