wts global

Brazil

WTS Global Country TP Guide

Last Update: December 2017

1. Legal Basis	
Is there a legal requirement to prepare TP documentation?	Yes
Since when does a TP documentation requirement exist in your country?	1997
Are TP policies of multinational enterprises in principle accepted by the tax authorities, if they are in line with the OECD TP Guidelines?	No. Brazilian transfer pricing rules are substantially different from OECD guidelines in the following main topics, inter alia: (i) the concept of related parties adopted for the purposes of verifying which transactions shall be subject to Brazilian transfer pricing rules is broader than the concept of associated enterprises adopted under OECD guidelines; (ii) the scope of Brazil's transfer pricing rules are more limited (whereas the OECD arm's-length principle applies to all commercial or financial relations between associated enterprises, the domestic concept does not apply to royalties/technical and administrative assistance paid by Brazilian legal entities abroad and to business restructurings, for example; (iii) they are not based on a comparability analysis but rather, in most cases, adopt fixed profit margins.
Does your country apply the arm's length standard?	No
Which TP methods may be applied?	Imports :Comparable Independent Price (PIC) method (similar to the Comparable Uncontrolled Price (CUP) method) / Resale Price Less Profit (PRL) method (similar to the resale price (RP) method) / Production Cost Plus Profit (CPL) method (similar to the cost plus (CP) method) / Quotation Price on Imports (PCI) method (exclusively for commodities) Exports : Export Sales Price (Pvex) method (similar to the CUP method) / Retail Sale Price (PVV) method (similar to the RP method) / Wholesale Price (PVA) method (similar to the RP method) / Purchase Cost Plus Profit (CAP) method (similar to the CP method) / Quotation Price on Exports (PECEX) method (exclusively for commodities)
Are any TP methods preferred over others?	Taxpayers may choose the most favourable method among the methods provided by the legislation
Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?	CbCR implemented; No MF/LF
Reference to documentation and statements of local-government or tax authorities regarding OECD BEPS implementation status	Brazilian Federal Revenue Service (RFB) Normative Instruction 1681/16
Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general:	Articles 18-24B of Law 9430, RFB Normative Instruction 1312/12, RFB Normative Instruction 1422/13 and RFB Normative Instruction 1681/16.

2. Master File (MF)	Not implemented

3. Local File (LF)	Not implemented

4. Country-by-Country Reporting	Yes
What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?	R$ 2.26 billion consolidated revenue in the previous fiscal year if the ultimate parent entity is a Brazilian tax resident; and EUR 750 million consolidated revenue in the previous fiscal year if the ultimate parent entity is not a Brazilian tax resident.
Euro Equivalent	EUR 750,000,000
As from which year does this CbCR obligation exist?	Fiscal year starting on January 2016.
When and how do the tax authorities need to be notified who the reporting entity is?	By means of the Tax Bookkeeping Accounting (Escrituração Contábil Fiscal - ECF) that should be filed until the last business day of July of the following year it corresponds to.
If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?	At the time the ECF is filed (until the last business day of July of the following year it corresponds to).
Are there any deviating submission deadlines for the secondary mechanism?	Yes. Exceptionally for the fiscal year starting in January 2016, Brazil shall request that the Brazilian company appoint another reporting entity within 60 days as of December 31, 2017 if the reporting entity previously identified is a tax resident of a country with which Brazil (i) does not have an agreement in place for the exchange of CbCRs on December 31, 2017, or (ii) has a signed an information exchange agreement that only covers fiscal years starting in January 2017 only.
Does your country have a requirement that the financial figures of the group need to be aligned with?	No
Does your country have a requirement that the financial years of the group need to be aligned with?	Yes. Fiscal year must be aligned with the fiscal year of the ultimate parent entity.
Where is the CbCR to be submitted ?	By means of the ECF software.
How is the CbCR to be submitted, specifically, is there any prescribed standard?	By means of the ECF software.
What are the possible consequences of not having the CbCR available?	
Penalties?	Yes
Imprisonment?	No
Shifting of the burden of proof?	No
Other?	No
To which extent do your local rules differ from the OECD standard regarding the content requirements for the CbCR as shown in the 2017 OECD TP Guidelines?	Consistent with OECD requirements.
Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbC Reports ("CbC MCAA")?	Yes
Did your country enter into other information exchange agreements, such as on a bilateral basis?	Yes
Please specify the country involved and date the agreement came into force.	<u>Bilateral CbC Agreement</u> **US** - Agreement on Automatic of Country-By-Country (CbC) Reports (signed, but not internalized yet) <u>Other Agreements</u> **Argentina** - Agreement on the Exchange of Tax Information of Previous Periods (not in force yet) **US** - Agreement on the Exchange of Tax Information (Decree 8003/13) **US** - Agreement on the Enhancement of International Tax Compliance (Decree 8506/15)

Can a taxpayer in your country fulfil his CbCR requirement by referring to the reporting entity in the same or another country?	Yes

5. TP disclosure in tax return or transfer pricing specific returns	
Does a taxpayer need to disclose information regarding TP documentation in his tax return?	Yes
What would be the filing deadline?	Until the last business day of July of the following year it corresponds to.
When a taxpayer files a tax return for which he understands or should understand that the result reported in that tax return is too low due to incorrect transfer pricing, what could be the legal consequences?	Tax authorities could calculate the Corporate Income Tax (IRPJ) and the Social Contribution on Net Income (CSLL) based on whichever transfer pricing method they choose and demand the payment of the tax due plus fines of up to 150% and interest.
What could be the consequences for the tax advisor/accountant/administrator drafting and filing the tax return of a client where that advisor/accountant/administrator understands or should understand that the result reported is too low due to incorrect TP?	No specific legal consequences for the tax advisor/accountant/administrator have been established in the Brazilian TP rules.
Does a taxpayer need to file TP-specific returns?	Yes
Please state the filing form number and name.	Block X of the ECF: Registry X001 - Opening of Block X Registry X280 - Incentivised Activities - Legal Entities in General Registry X291 - Foreign Operations - Related Party/Country with Favourable Taxation Registry X292 - Foreign Operations - Non Related Party/Country without Favourable Taxation Registry X300 - Exports (Currency Inflow) Registry X310 - Contracting Party of the Exports Registry X320 - Imports (Currency Outflow) Registry X330 - Contracting Party of the Imports Registry X340 - Identification of Participations Abroad
What would be the filing deadline?	Until the last business day of July of the following year it corresponds to.
What would be the penalties for non-compliance?	Yes. The penalty for not submitting the ECF is, If the legal person calculates its corporate tax based on the actual profit method, of 0.25%/month of the net profit before IRPJ, limited to 10% and BRL 5 million, subject to reductions depending on when the date of the final submission. If the legal person calculates its corporate tax based on the deemed or arbitrate profit methods, the penalty for not submitting the ECF is of BRL 500.00/month.

6. Benchmarking	
Is there any local guidance or requirement with regard to the preparation of a benchmark study?	No. The Brazilian legislation provides for fixed profit margins that must be used when calculating benchmark prices. Those fixed profit margins vary depending on the product/sector under analysis.
Are there any materiality thresholds that apply for the requirement to have a benchmark study available?	Yes. Safe harbour on exports: transfer prices are considered appropriate when the average export sales price is at least 90% of the average comparable domestic sales price. If the company does not sell in the Brazilian market, the determination of the average price is based on the sales of other companies that sell similar goods, services or intangible rights in the domestic market.

Does your country apply the general guidance by the OECD to prepare a new benchmarking search every three years and an update of the financial data of the accepted comparable in year 2 or 3?	No

7. Year-end adjustments

Are year-end adjustments permissible?	Yes
Does the taxpayer have to comply with any specific features or guidance?	Yes. Precedents have established that the debit or credit note (i) must be issued, (ii) its value must be paid in the same exercise of the adjustment, (iii) it must be related to a specific imported product, and (iv) its payment must result in the increase of the product's COGS or of its inventory value.

8. Transfer Pricing Audit and Dispute Resolution Mechanisms

What are currently the main TP areas of scrutiny by the tax authorities in your country?	Every year, the RFB informs the main operations that will be more scrutinized in that year. In 2017, transfer pricing operations were not indicated as a point of attention for the tax authorities. Nevertheless, this does not mean that tax authorities will not audit transborder transactions between related parties in 2017, nor that it will not be more scrutinized in the next years. Our experience shows that transfer pricing audits are very thorough and encompass any transaction between related parties (there is no threshold to exclude certain operations considered less important). It is more common, however, for tax authorities to pay more attention to transactions involving goods and services than interest.
Based on your experience, are joint or multilateral audits initiated and carried out?	No
Does the taxpayer have the option to apply for bilateral or multilateral APAs?	No

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