



A New Transfer Pricing System for Brazil

*The opinions expressed and arguments employed herein do not necessarily reflect
the official views of the member countries of the OECD.*

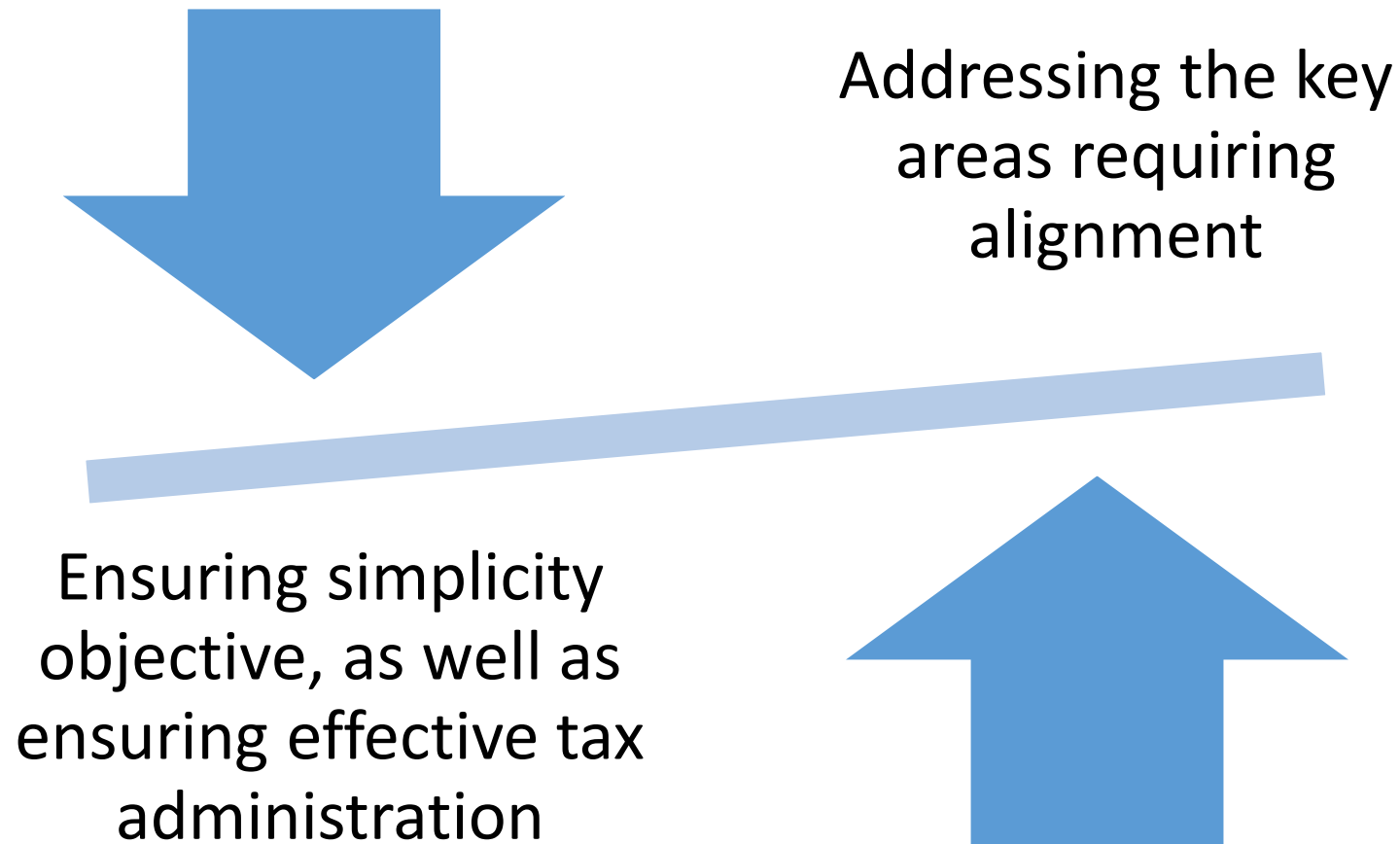
Project overview

- 2018-2019 – Detailed analysis of similarities and differences resulting in the policy decision of **full alignment to OECD standard**
- 2020-2021 – Implementation phase
 - Policy design considerations -> **Key features** (presented today)
 - Administrative considerations -> **Capacity building**
 - Simplification measures (e.g. safe harbours) -> **Consultation process and design work** continue
- 2022-2023 – Activities related to **adoption** and making the new system **operational**

Motivations for policy change

- New system to enable integration of Brazil into the **Global Value Chains** and fostering **trade** and **investment** into Brazil
 - Preventing and eliminating **double taxation**, which represents a trade and investment barrier and results from the existing gaps and divergences
 - Increasing **tax certainty** from an international perspective
- Contributing to meeting Brazil's **development goals**
 - Preventing **loss of revenue** due to current **BEPS practices**, which also create inequality between taxpayers within the current system
- Facilitating **Brazil's accession to the OECD**

Policy design



Key Features of the New System

Contemplated structure of primary law

- General principle-based guidance **based on Arm's Length Principle** in line with the **OECD standard**
- Considerations for **specific types of transactions** based on the general principles
 - Intangibles, Services, Cost-Contribution Arrangements, Reorganisations, Financial Transactions
- Striking the necessary balance between a **principle-based framework** and **more detailed provisions** to expand on the principles
- Considerations for links between transfer pricing and other tax law provisions

The Arm's Length Principle (ALP)

- **ALP** being the anchor of the new system
- Transfer pricing rules applicable to **all controlled transactions**
- **Definition of related parties** to be principle-based, but supported with a list of situations to provide tax certainty
- **Delineation of the actual transaction** based on the key economically relevant characteristics (comparability factors)
 - Contractual terms
 - Functions, assets and risks
 - Characteristics of property or services
 - Economic circumstances of parties and market
 - Business strategies

Transfer pricing methods

- **Introducing all the OECD-recognised methods**, including the transactional profit methods – Transactional Net Margin method and Transactional Profit Split method
- **Use of “other methods”** foreseen (e.g. valuation methods in case of unique and valuable intangibles)
- **Criterion for selection of the most appropriate method**
- **Choice of tested party (either domestic or foreign)**, when relevant for the application of the specific method (documentation requirement)

Comparability analysis

- Comparability analysis becoming a **cornerstone** of the new system
 - Guidance on comparability
 - Reliability of data on comparable uncontrolled transactions
 - Appropriateness and correctness of comparability adjustments
 - Guidance on arm's length range and its application

Transfer pricing adjustments

- Continued reliance on **spontaneous self-administered adjustments**
 - Tax administration authorised to make **primary adjustments** in case of non-compliance with ALP
- Policy consideration: **secondary adjustments** to address the consequences of profit shifting
 - Possibility to rely on the deemed loan approach with repatriation option
- Eliminating double taxation – **corresponding adjustments** and relying on the MAP mechanism
 - Downward adjustment made possible to resolve **double taxation** as outcome of MAP

Commodities

- As critical aspect of Brazilian economy deserves **special attention**
 - Addressing ongoing revenue losses
- Key considerations:
 - Definition of commodities linked to pricing approaches adopted by independent parties
 - Principle-based guidance focused on ultimate objective of capturing the market value of the commodity
 - Possibility of performing comparability adjustments, supplemented by documentary evidence and supported by market practices
 - Consideration for the determination of the pricing date

Intangibles

- Removing the gap present in the current system as follows:
 - Definition of **concept of intangible** for TP purposes
 - Application of fundamental principles applying in context of intangibles
 - Relevance of **DEMPE functions** for allocation of income
 - Guidance on how to deal with **limited** or **no comparables** (unique and valuable intangibles) as well as **uncertainty** in pricing/valuation
 - Relevance of the use of **valuation methods**
- Policy consideration on **royalty deductibility limitations** – revision of the current rules to ensure effective use as **anti-avoidance measure**, interacting with ALP
 - Prevention of **double taxation** as important consideration

Intra-group services

- Recognising importance of intra-group services through specific provisions which address issues such as:
 - Situations when it is appropriate to charge for a service
 - Situations where charges are not appropriate, e.g. when the activities relate to shareholder activities or duplicative services
 - Guidance on situations of centralised service operations including the possibility to use next to the **direct-charge methods** also **indirect-charge methods**, subject to relevant considerations
 - The concept of **low-value adding services (LVAS)** will be considered as one of the safe harbours

Cost-contribution arrangements (CCAs)

- Introducing comprehensive guidance on CCAs
 - Considerations for both types – the **development CCAs** and **services CCAs**
- Provide principle-based guidance on:
 - Determining when taxpayers are **participants** to the CCA or playing other roles
 - Considerations of **appropriate compensation** including the situations of **entry** or **departure**

Business restructurings

- Guidance to address the **transfer pricing considerations** resulting from business restructurings
 - Including the situations involving the transfer of functions, risks and activities which carry a profit potential
- Principle-based guidance on determination of the **appropriate compensation**

Financial transactions (FTs)

- Guidance on applying ALP to deal with the **challenges arising from various types of FTs**
 - Including considerations for most common types of FTs, such as debt arrangements, cash-pooling, guarantees, insurance, etc.
- Policy consideration: the TP rules will **not** preclude other **interest limitation rules**

Tax certainty

- Preventing **disputes** and **enhancing certainty**
 - Legal framework to design safe harbours in line with economic reality – safe harbour design work in progress (benefiting from input received)
 - Implementation through secondary law
 - Relevance of ongoing work on Amount B (Pillar 1 of work on addressing the tax challenges of digitalisation)
 - RFB authorised to enter into APAs
 - Consultations with taxpayers and also foreign tax administrations with a view to providing guidance in specific cases

Documentation

- **TP documentation** – following international best practices
- **Three-tiered approach** to TP documentation:
 - Country-by-Country Reporting as well as equivalent of Master File and Local File
- Policy consideration: relevance of **penalties** and **rebuttable presumptions**

Way Forward

Steps ahead

- Engagement with stakeholders
- Processing any input received
- Finalisation of the legislative package and submission to Congress
- Focus on remaining implementation considerations
 - Tax administration and compliance aspects
 - Simplification measures (safe harbours)
 - Dispute prevention and resolution
 - Secondary law/regulations

Thank You!

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