

## Transfer Pricing

# Higher compliance costs and more disputes expected under Brazil's TP reform

Brazil's OECD-aligned transfer pricing (TP) system will result in higher initial compliance costs for taxpayers. Complex benchmarking analyses and expanded TP methods add further risks of lengthy disputes, say tax experts.

---

By **Leanna Reeves**

April 21 2022



Brazil's OECD TP system could cause costs and litigations

Brazil is set to adopt a [TP system](#) that will significantly strengthen the arm's-length principle (ALP) to align with OECD standards. While the revised regime is intended to eliminate double taxation and tax planning opportunities, organisations could face increased compliance burdens and costs. The OECD-aligned system could generate compliance costs for both, as well as increase the number of litigations in Brazil.

“The proposed changes announced by the Brazilian tax authorities are extensive and potentially very complex,” said Cristiane Drumond, international tax consultant at Drumond Vitae and visiting professor at the Brazilian Institute of Tax Law.

“Although no details have been provided regarding their timing and operationalisation, these changes are expected to increase the compliance burden for taxpayers, especially in the initial period,” she added.

## Moving away from traditional TP rules

Under the [Brazilian TP rules](#), taxpayers can only use the comparable uncontrolled price (CUP) method, based on comparables in line with OECD guidelines, and the cost-plus method or resale price method, which determines the market price based on pre-fixed margins instead of comparables.

These traditional rules mean that taxpayers in Brazil are not able to use profit splits or the transactional net margin method (TNMM), nor can they take advantage of advance pricing agreements (APAs). This has often led to tax planning opportunities and double taxation – issues that the revised TP system aims to tackle by fully aligning with the ALP and moving away from pre-fixed margin approaches.

Adopting the ALP-based system will not be an easy process, according to tax leaders. Taxpayers will now have to assess the price for their intra-group transactions and conduct benchmarking analyses, which can be a complex exercise due to the difficulty of finding reliable data.

Corporations will have to hire more people and prepare more documentation, according to Phelippe Oliveira, senior visiting researcher at the Vienna University of Economics and Business and professor at Ibmecc, as moving towards the ALP approach will create more complexities.

“We have to be trained on the OECD guidelines at least in general terms. I have already performed some trainings on the OECD in Mexico when I lived there – of course, it has to be updated. I’m trying to find some training that is available. We need to hire people with international background or finding people that have some familiarity with the OECD guidelines,” said Fernanda Amaral, tax and TP executive at Louis Dreyfus.

Taxpayers will also need to prepare documentation including country-by-country reporting (CbCR) in addition to TP filings, which will inevitably increase compliance costs.

“Applying TP rules is subjective – you have to consider the risk assets, the functions, and try and find a comparable, which is not easy. That may give rise to some disputes as well. It could be difficult for businesses to apply, but my main concern is not only for businesses. It could be challenging for the tax administration. Even though the OECD has provided capacity-building courses, you realise how difficult it is to apply and how subjective it is,” said Oliveira.

“My concern is on whether it is going to increase litigation, which is already huge in Brazil,” he added.

Corporations will have to adjust to the significant changes, which is why the Brazilian tax administration is considering eliminating penalties for a period of time as taxpayers submit their TP return and corporate income tax (CIT) return in July.

“We don’t have any regulation on the master and local file, so all of that will be new. I don’t believe companies are yet prepared,” said Hanna Lauar, tax manager at Azevedo Sette Advogados. “They will need to evaluate what the actual margin is. The challenge will be adjusting to the new approach, to a new system in which it is possible to have an APA with tax authorities,” added Lauar, who was formally the Americas TP specialist at RHI Magnesita.

Tax administrations will also need to change how they assess transactions and adjust to the less traditional TP methods being used by taxpayers.

Drumond is hopeful the legislative package will include simplification measures, such as well-designed safe harbours applicable to eligible transactions or taxpayers, which could maintain the tax certainty and objectivity regarded as “the strength of the current system based on fixed margins”.

Tax directors also expect the OECD and Brazil to initiate discussions with organisations when finalising the TP system and its technical aspects.

"I work in a company that is in agribusiness and we export commodities, and we know that they are going to change some aspects in the commodity side. We hope to have the opportunity to discuss this, because Brazil is a huge exporter of commodities. We hope to have more possibilities in terms of some adjustments that we could make," said Amaral.

Nevertheless, Brazil must adopt the TP-based regime to integrate the country into the [global value chain](#) and gain access to the organisation, as well as tax treaties with international trading partners such as the UK and the US. For now, taxpayers will need to familiarise themselves with the exercise of comparability analysis – an approach at the heart of the ALP under the OECD TP guidelines.

The material on this site is for financial institutions, professional investors and their professional advisers. It is for information only. Please read our [Terms and Conditions](#) and [Privacy Policy](#) before using the site. All material subject to strictly enforced copyright laws.

© 2021 Euromoney Institutional Investor PLC. For help please see [our FAQ](#).