

# Brazil

## Transfer Pricing Country Profile

February 2022

		SUMMARY	REFERENCE
<b>The Arm's Length Principle</b>			
1	<b>Does your domestic legislation or regulation make reference to the Arm's Length Principle?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  There is no direct reference to the Arm's Length Principle in the transfer pricing legislation.	
2	<b>What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?</b>	The TPG can be used as a supplementary means of interpretation whenever it does not contradict domestic legislation.	
3	<b>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.</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  The law that introduced Transfer Pricing rules in Brazil has a definition of related parties. This definition encompasses the following situations: <ul style="list-style-type: none"> <li>• a non-resident parent company;</li> <li>• a non-resident subsidiary or branch;</li> <li>• a non-resident individual or legal entity that is considered the controller or associated shareholder under Article 243 of Corporate Law;</li> <li>• a non-resident legal entity that is defined as controlled or associated company under Article 243 of Corporate Law;</li> <li>• a non-resident legal entity which, together with the Brazilian company, is under common corporate or administrative control, or when at least 10% of the share capital of each one belongs to the same individual or legal entity;</li> </ul>	<a href="#">Law 9,430/1996</a> , Article 23  <a href="#">Normative Instruction RFB 1,312/2012</a> , Article 2

- a non-resident individual or legal entity which, together with the legal entity domiciled in Brazil, owns an interest in a third legal entity the sum of which makes them controlling or associated shareholders, under Article 243 of Corporate Law;
- a non-resident individual or legal entity that is associated to the Brazilian company in any business through a joint venture or co-ownership, as defined under Brazilian law;
- a non-resident individual who is a relative or kin down to the third degree, spouse or cohabitant of its directors or officers, or of its direct or indirect controlling partner or shareholder;
- a non-resident individual or legal entity that is the exclusive agent or distributor of the Brazilian entity for the purchase and sale of goods, services, or rights; and
- a non-resident individual or legal entity for which the Brazilian entity is the exclusive agent or distributor for the purchase and sale of goods, services, or rights.

## Transfer Pricing Methods

4	<p><b>Does your domestic legislation provide for transfer pricing methods to be used in respect of transactions between related parties?</b></p>	<p><input checked="" type="checkbox"/> <b>Yes</b></p> <p><input type="checkbox"/> <b>No</b></p> <p>If affirmative, please check those provided for in your legislation:</p> <table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <thead> <tr> <th style="width: 16.6%;">CUP</th> <th style="width: 16.6%;">Resale Price</th> <th style="width: 16.6%;">Cost Plus</th> <th style="width: 16.6%;">TNMM</th> <th style="width: 16.6%;">Profit Split</th> <th style="width: 16.6%;">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 traditional methods inspired by the OECD Transfer Pricing Guidelines (Cost Plus and Resale Price Methods) rely on a formulaic approach that incorporates fixed margins.</p> <p>In addition to these methods, the domestic framework also foresees specific methods for export and import of commodities and interest on intra-group loans.</p> <p>Transactional methods (TNMM and Profit Split Method) and other methods (e.g. valuation techniques) are not foreseen in the domestic framework.</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><a href="#">Law 9,430/1996</a>, 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 exports of commodities; Article 22 (interest on intra-group loans).</p> <p><a href="#">Normative Instruction RFB 1,312/2012</a>, Articles 8-11 (CUP – import); Articles 12-14 (RPM – import); Article 15 (Cost Plus – import); Articles 16-19 (CUP commodity – import); Article 30 (CUP – export); Article 31-32 (RPM – export); Article 33 (Cost Plus export); Article 34 (CUP commodity – export); Articles 38, 38-A, 39 and 58 (intra-group loans)</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><b>Which criterion is used in your jurisdiction for the application of transfer pricing methods?</b></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> <hr/> <p>Except for commodities and financial transactions, taxpayers have the freedom to choose any of the applicable methods. The selection of the transfer pricing method is not determined based on a hierarchy or its appropriateness given the facts and circumstances of a particular case.</p> <p>With respect to commodities and interest on intra-group loans, the use of specific methods is mandatory.</p>	<p><a href="#">Law 9,430/1996</a>, Articles 18, 18-A, 19, 19-A, 20-A, and 22.</p>
6	<p><b>If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.</b></p>	<p><input type="checkbox"/> For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the TPG is followed.</p> <p><input checked="" type="checkbox"/> Domestic legislation mandates the use of a specific method for controlled transactions involving commodities (<i>if so, please explain</i>)</p> <p><input type="checkbox"/> Other (<i>if so, please explain</i>)</p> <hr/> <p>The use of the commodity method is mandatory for commodities with reference prices in commodities and futures exchanges. The transfer pricing regulations provide a list of products and commodities and futures exchanges for the application of the method.</p>	<p><a href="#">Law 9,430/1996</a>, Articles 18-A and 19-B.</p> <p><a href="#">Normative Instruction RFB 1,312/2012</a>, 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>
<b>Comparability Analysis</b>			
7	<p><b>Does your jurisdiction follow (or largely follow) the guidance on comparability analysis outlined in Chapter III of the TPG?</b></p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <hr/> <p>The TPG is not legally binding in Brazil. It can be used as a supplementary means of interpretation whenever it does not contradict the domestic legislation.</p>	
8	<p><b>Is there a preference in your jurisdiction for domestic comparables over foreign comparables?</b></p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	

9	Does your tax administration use secret comparables for transfer pricing assessment purposes?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
10	Does your legislation allow or require the use of an arm's length range and/or statistical measure for determining arm's length remuneration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  The transfer pricing legislation does not foresee the use of ranges. However, a deviation of the established transfer price from the arm's length is tolerated, whereby no transfer pricing adjustment is required. The rules tolerate a general deviation of 5% and a special deviation of 3% for commodity transactions.	<a href="#">Normative Instruction RFB 1,312/2012</a> , Article 51-A.
11	Are comparability adjustments required under your domestic legislation or regulations?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  The comparability adjustments under the Brazilian legislation are limited and take into consideration aspects related to differences in commercial conditions, physical nature, and content of the products (examples: payment term; negotiated quantity; climatic influences on the characteristics of the goods; intermediation costs; packaging; transportation costs; etc.). Such adjustments are foreseen for the equivalent of the CUP method.  The other traditional methods inspired by the TPG (Cost Plus and Resale Price Methods) rely on a formulaic approach that incorporates fixed margins. The formulaic approach as adopted by such methods eliminates most of the comparability analysis.	<a href="#">Normative Instruction RFB 1,312/2012</a> , Articles 9º, § 1º, § 4º, and § 7º; 10; 11; 16, § 6º, § 8º, § 9º, § 11º, § 12º; 22, § 1º, § 4º, § 7º, § 10º; 24; 30; 31; 32; 34, § 9º, § 10, § 12, § 13; 36-A, § 5º.
<b>Intangible Property</b>			
12	Does your domestic legislation or regulations contain guidance specific to the pricing of controlled transactions involving intangibles?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  The Brazilian transfer pricing framework does not have specific guidance to transactions involving intangibles. The general framework applies.  With respect to royalties, transfer pricing rules do not apply to most transactions involving royalty payments. Those transactions are subject to special measures whereby the deductibility of the royalty expenses is limited to fixed percentages of	<a href="#">Law 9,430/1996</a> , Article 18, § 9º  <a href="#">Income Tax Regulation</a> (Decree 9,580/2018), Articles 362-365  <a href="#">Normative Instruction RFB 1,312/2012, article 55</a>  <a href="#">Ordinance of the Ministry of Finance 436/1958</a>

		the taxpayer's turnover. Those limits are established based on the industry sector (from 1% to 5%).	
13	<b>Does your domestic legislation or regulation provide for transfer pricing rules or special measures regarding hard-to-value intangibles (HTVI)?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<a href="#">HTVI Implementation Questionnaire</a>
14	<b>Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  For royalty payments, there are special measures whereby the deductibility of the royalties expenses are limited to fixed percentages of the taxpayer turnover. Those limits are established based on the industry sector (from 1% to 5%).	<a href="#">Law 9,430/1996</a> , Article 18, § 9º <a href="#">Income Tax Regulation</a> (Decree 9,580/2018), Articles 362-365 <a href="#">Normative Instruction RFB 1,312/2012, article 55</a> <a href="#">Ordinance of the Ministry of Finance 436/1958</a>
<b>Intra-Group Services</b>			
15	<b>Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  The Brazilian transfer pricing framework does not have specific guidance to intra-group services transactions. The general framework applies.  Transfer pricing legislation does not apply to payments for technical assistance. Those transactions are subject to special measures whereby the deductibility is limited to fixed percentages of the taxpayer's turnover.	<a href="#">Law 9,430/1996</a> , Article 18, § 9º <a href="#">Normative Instruction RFB 1,312/2012</a> , Article 55 <a href="#">Income Tax Regulation</a> (Decree 9,580/2018), Article 362-365
16	<b>Do you have any simplified approach for low value-adding intra-group services?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
17	<b>Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  Transfer pricing legislation does not apply to payments for technical assistance. Those transactions are subject to special measures whereby the deductibility is limited to fixed percentages of the taxpayer' turnover.	<a href="#">Law 9,430/1996</a> , Article 18, § 9º <a href="#">Normative Instruction RFB 1,312/2012</a> , Article 55 <a href="#">Income Tax Regulation</a> (Decree 9,580/2018), Articles 362-365

## Financial Transactions

18	<p><b>[NEW] Does your domestic legislation or regulations provide guidance specific to financial transactions?</b></p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	<p><a href="#">Law 9,430/1996</a>, Article 22</p> <p><a href="#">Normative Instruction RFB 1,312/2012</a>, Articles 38, 38-A, 39 and 58</p> <p><a href="#">Ordinance of the Ministry of Finance 427/2013</a></p>
		<p>The Brazilian transfer pricing framework does not have specific guidance to financial transactions.</p> <p>However, there is a specific and mandatory method for pricing interest on intra-group loans. By this method, the compensation for financing is calculated based on fixed interest rates prescribed by the Law which are increased by predetermined spreads defined by the Ministry of Finance. The interest rates are determined based on the currency in which the loan is denominated. Accordingly, in the case of intra-group loans:</p> <ul style="list-style-type: none"> <li>- in USD with a fixed interest rate, the interest rate cap will be the rate payable on the sovereign bonds of the Federative Republic of Brazil issued on the foreign market in US dollars;</li> <li>- in Brazilian Reais (BRL) with a fixed interest rate, the interest rate cap will be determined as the interest rate payable on the sovereign bonds of the Federal Republic of Brazil issued on the foreign market in Brazilian reais; and</li> <li>- with different terms, the six-month London Interbank Offered Rate (LIBOR).</li> </ul> <p>With regard to the spread, the Ministry of Finance defined a 3.5% spread for inbound loans and a 2.5% spread for outbound loans.</p>	
19	<p><b>[NEW] Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of financial transactions?</b></p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	<p><a href="#">Income Tax Regulation</a> (Decree 9,580/2018), Article 311</p> <p><a href="#">Law 12,249/2010</a>, Articles 24-25</p> <p><a href="#">Normative Instruction RFB 1,154/2011</a></p>
		<p>In addition to the prescriptive transfer pricing method, the deduction of interest is also subject to a general deductibility test and to thin capitalization rules.</p> <p>By the general deductibility test, expenses and costs are deductible from Corporate Income Tax when they are necessary, usual, and normal in the enterprise activities.</p> <p>The balance between debt and equity is tested by thin capitalizations rules. For related parties' debts, thin capitalization rules set a debt-to-equity ratio that may not exceed 2:1 of the net equity of the Brazilian entity. In cases where the interest is paid to a related or unrelated party in a low-tax jurisdiction or subject to a privileged tax regime, the debt-to-equity ratio may not exceed 0.3:1 (30%).</p>	

Cost Contribution Agreements		
20	Does your jurisdiction have legislation or regulations on cost contribution agreements?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Transfer Pricing Documentation		
21	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"> <li><input type="checkbox"/> Master file consistent with Annex I to Chapter V of the TPG</li> <li><input type="checkbox"/> Local file consistent with Annex II to Chapter V of the TPG</li> <li><input checked="" type="checkbox"/> Country-by-country report consistent with Annex III to Chapter V of the TPG</li> <li><input type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return)</li> <li><input checked="" type="checkbox"/> Other (specify): Brazil has a simplified Local File that must be submitted with the Corporate Income Tax Return.</li> </ul>
22	Please briefly explain the relevant requirements related to the filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)	<p>Transfer pricing documentation is submitted on a yearly basis with the Corporate Income Tax Return. In this set of documentation, taxpayers must provide the relevant information about:</p> <ul style="list-style-type: none"> <li>- the intercompany transactions (the amount of the transactions, the counterparties, their jurisdictions, whether it is a transaction with goods, services or rights, general information about the good/service/right, etc.); and</li> <li>- the transfer pricing analysis (TP method chosen for each transaction, description of the comparability adjustments made, TP adjustment, etc).</li> </ul> <p>Country-by-Country Report must be also filed with the Corporate Income 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>The Corporate Income Tax Return is filled by taxpayers through a system named ECF (abbreviation, in Portuguese, to Tax Accounting Bookkeeping). The ECF's</p>

[The ECF manual](#)

The specific guidance related to transfer pricing and Country-by-Country Reporting can be found on pages 389-424, and 609, and 440-495, respectively.

[Normative Instruction RFB 1,681/2016](#)

		manual provides guidance for filling the information required, including those required for purposes of transfer pricing and Country-by-Country Reporting.	
23	<b>Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  There is no specific penalty for transfer pricing documentation. The general framework applies: <ul style="list-style-type: none"> <li>- Late filing penalty: BRL 1 500 for each month of delay;</li> <li>- Negligence penalty: if taxpayers submit the tax return omitting or with incomplete or inaccurate information, a penalty of 3% on the value of the transactions omitted/incomplete/inaccurate applies.</li> </ul> In TP audits, if an underpayment is proved and a tax debt is confirmed by the tax auditor, a tax assessment will be issued demanding the principal amounts, interest, and penalties. Penalties may vary from 75% to 225% on the tax amount due and not paid. In the case of an assessment made by the tax authorities, as a general rule, the penalty for underpayment of federal taxes is 75%. This penalty is increased to 150% in cases involving fraud or sham. Both of these penalties may be increased by half (to 112,5% in the case of the general penalty or 225% in the case of penalty for fraud or sham) if the taxpayer does not cooperate with the tax authorities during a tax audit, i.e. where the taxpayer fails to meet deadlines to present files, documents, archives, or present any clarification.	<a href="#">Decree-Law 1,598/1977</a> , Article 8°-A <a href="#">Provisional Measure 2,158-35/2001</a> , Article 57
24	<b>If your legislation provides for exemption from transfer pricing documentation obligations, please explain.</b>	For export transactions that are in-scope of the safe harbour rules, the legislation provides a simplification to the documentation requirement.  With respect to CbCR, Brazil adopts the threshold stipulated in BEPS Action 13 (EUR 750 million or the equivalent amount in domestic currency). Therefore, those MNEs that do not achieve the threshold are exempted to present the CbCr.	<a href="#">Normative Instruction RFB 1,312/2012</a> , Articles 48-50
<b>Administrative Approaches to Avoiding and Resolving Disputes</b>			
25	<b>Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?</b>	Please check those that apply: <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Rulings</li> <li><input type="checkbox"/> Enhanced engagement programs</li> <li><input type="checkbox"/> Advance Pricing Agreements (APA) <ul style="list-style-type: none"> <li><input type="checkbox"/> Unilateral APAs</li> </ul> </li> </ul>	<a href="#">Normative Instruction RFB 1,396/2013</a> <a href="#">Brazilian DTA network</a> <a href="#">Normative Instruction RFB 1,846/2018.</a> <a href="#">MAP manual</a> <a href="#">Brazil's MAP Profile</a>



		<input type="checkbox"/> Bilateral APAs <input type="checkbox"/> Multilateral APAs <input checked="" type="checkbox"/> Mutual Agreement Procedures <input type="checkbox"/> Other ( <i>please specify</i> ):	
		<p>All the DTAs that Brazil has entered into foresee the Mutual Agreement Procedure (MAP). Brazil has MAPs regulations and MAP guidance in place.</p> <p>For further information, please refer to Brazil's MAP Profile.</p>	
<b>Safe Harbours and Other Simplification Measures</b>			
26	<p><b>Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?</b></p>	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b> <p>The Brazilian transfer pricing rules provide three safe harbour regimes (which do not apply to commodity transactions):</p> <ul style="list-style-type: none"> <li>- <i>De minimis</i> export amount: Brazilian taxpayers with export revenues of 5% or less of total revenue (in relation to both related and unrelated parties) do not have to adopt transfer pricing methods for export transactions;</li> <li>- 90% test: This is a transaction-by-transaction test under which, if the export price represents at least 90% of the domestic market price, the export price adopted is deemed acceptable;</li> <li>- Profitability test: Under this test, where a Brazilian exporter is able to demonstrate that, on an overall basis, exports to related parties generated a minimum of 10% net profit margin, the transactional conditions are deemed to be acceptable. This safe harbour does not apply to taxpayers entering into outbound intercompany transactions whose net revenue from related parties represents more than 20% of the total outbound transaction net revenue.</li> </ul>	<p><a href="#">Law 9,430/1996</a>, Article 19</p> <p><a href="#">Normative Instruction RFB 1,312/2012</a>, Articles 48-50</p>
27	<p><b>Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.</b></p>	<input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b>	

### Other Legislative Aspects or Administrative Procedures

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

### Attribution of Profits to Permanent Establishments

30	<b>[NEW] Does your jurisdiction follow the Authorised OECD Approaches for the attribution of profits to PEs (AOA)?</b>	<input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b>	<a href="#">Brazilian DTA network</a>
		<i>In how many tax treaties?</i>  All of them.	
31	<b>[NEW] Does your jurisdiction follow also another approach?</b>	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	
		Brazil follows the 2008 approach (2008 OECD MTC) in all DTAs, with some specific variations. The variations in Brazilian DTC practice are mainly related to Art. 7(4) of the 2008 OECD MTC. In fact, only 2 DTCs (China and Venezuela) have the aforementioned version of Art. 7(4). Finally, Art. 7(6) of the 2008 OECD MTC is included only in DTCs negotiated with Japan, China, Russia, Portugal and Uruguay.	

### Other Relevant Information

32	<b>Other legislative aspects or administrative procedures regarding transfer pricing</b>	N/A	
33	<b>Other relevant information</b> (e.g. <i>whether your jurisdiction is preparing new transfer</i>	In February 2018, the OECD and Brazil launched a joint project to examine the similarities and divergences between the Brazilian and OECD transfer pricing	

	<i>pricing regulations, or other relevant aspects not addressed in this questionnaire)</i>	approaches to value cross-border transactions between associated enterprises. One of the objectives is to eliminate the gaps between the two systems promoting the alignment of the Brazilian transfer pricing rules with the OECD transfer pricing guidelines.	
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For more information, please visit: <https://oe.cd/transfer-pricing-country-profiles>