

Brazilian tax authorities implement additional ancillary obligations under new transfer pricing rules

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In brief

What happened?

The Brazilian tax authorities recently published Declaratory Acts implementing ancillary transfer pricing (TP) obligations: (1) the Executive Declaratory Act COPEs 2/2023 related to the Commodity Transaction registry, mandatory for transactions from January 1, 2024 and (2) the Declaratory Act (COFIS) no. 59/2023 approving layout '10' of the Corporate Income Tax Return (ECF). The new layout was expected to be published since it provides important details with regard to the general TP information that should be reported to the Brazilian tax authorities by July 31, 2024.

Why is it relevant?

For taxpayers that opted for the early adoption of the new Brazilian TP rules, the new layout requires the completion of TP information in accordance with Law no. 14,596/2023 and Normative Instruction (IN/RFB) no. 2,161/2023, and must be filed by the taxpayer by July 31, 2024.

The Declaratory Acts represent a significant change by imposing additional compliance obligations related to the implementation of updated Transfer Pricing rules in Brazil.

Beyond the already established Local File, CbCR, and Master File, Brazilian taxpayers now will be compelled to generate several new schedules as part of the local TP return. The volume and intricacy of information requested by tax authorities are substantial.

The creation of this expanded set of required information imposes a robust internal preparation obligation for all taxpayers and a thorough synchronization with supporting documentation that sustains the results of the taxpayer's TP analysis.

What to consider?

For commodities, the obligation commenced on January 1, 2024, and for the new TP return the deadline is set for July 31 (or the last business day of July) of the following year. Taxpayers opting for early adoption must promptly initiate the preparation of the required documentation.

For taxpayers that did not opt for early adoption, grasping the nuances of the new TP requirements is imperative. This understanding is a prerequisite for establishing internal controls and a comprehensive process framework to enable compliance in the coming year.

In detail

Executive Declaratory Act COPES 2/2023

On December 21, 2023, the Executive Declaratory Act COPES 2/2023, issued by the Brazilian tax authorities, implemented the Commodity Transaction Registry, containing the following fields:

- Brazilian Tax ID (CNPJ) of the declaring entity;
- Date of the transaction;
- Nature of the transaction (import or export);
- Internal identification code of the counterparty to the transaction;
- Country of residence of the counterparty to the transaction;
- Name of the counterparty to the transaction;
- NCM (tariff code) of the commodity;
- Source of price information used; and
- Date or period of dates agreed to price the transaction.

According to IN/RFB no. 2,161/23, registration of the transaction must be completed by the 10th day following the 10-day period in which the transaction occurred.

Declaratory Act (COFIS) no. 59/2023

The layout of the 'TP Return' was approved on December 22, 2023 as part of the ECF, through the Declaratory Act (COFIS) no. 59.

In accordance with IN/RFB no. 2,161/2023, all Brazilian entities that performed any 'controlled transactions,' including entities that are not required to present the 'Local File' (art. 57, item III of IN RFB no. 2,161/2023) and entities that are subject to the 'Simplified Local File' (art. 57, item II of IN RFB no. 2,161/2023), must report the amounts of those transactions within the ordinary tax return in Schedules ('blocks'):

- X360 (General Transfer Pricing Information),
- X365 (Information regarding Counterparties in Controlled Transactions),
- X366 (Entities with which Controlled Transactions were performed),
- X370 (Information regarding Controlled Transactions),
- X371 (Information regarding Compensatory Adjustments), and
- X375 (Information regarding Methods)

Regarding the Schedule X375, taxpayers will have to provide specific information by TP method:

- A (PRL – Resale minus),
- B (MCL – Cost Plus),
- C (MLT – Transaction Net Margin Method, TNMM),
- D (MDL – Profit Split), and
- E (PIC – Comparable Uncontrolled Price, CUP).

The application of Law no. 14,596/2023 and IN RFB no. 2,161/2023 is mandatory for all taxpayers from calendar year 2024 onwards. However, for taxpayers that have chosen to apply for early adoption in calendar year 2023, forms X360 - X375 also must be completed.

Note that the information to be disclosed in the various forms/blocks is extremely detailed and includes (among others):

- values of transactions between related parties;
- transactions with tax havens/countries with favorable taxation;
- counterparty information;
- method used;
- corresponding transfer pricing adjustment;
- if there was a transaction involving the transfer of intangibles;
- business restructuring;
- information about cost-sharing agreements;
- financial operations;
- tested part and the country of the tested part;
- numerous pieces of financial information (gross profit, gross margin, etc.);
- comparable type (internal/external and domestic/non-domestic);
- country risk adjustment.

Fields that require information on the values of controlled transactions must be filled in with the transaction amount before any TP adjustments are made. **Note:** The counterparty, total amount of the transaction, method, corresponding TP adjustment, account and cost center also must be disclosed, among other relevant information.

Let's talk

For a deeper discussion of how these additional obligations might affect your business, please contact:

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