Brazil changes transfer pricing rules on import transactions and commodities

February 11, 2019

In brief

The Brazilian Federal Revenue Department (RFB) published on January 29, 2019, Normative Instruction (NI) 1870/2019 amending NI 1312/12 on some aspects of transfer pricing rules, mainly related to import transactions and commodities. These amendments are effective as of calendar year 2019.

In detail

The main aspects presented by NI 1870/2019 are the following:

- The average tested price on import transactions must be calculated considering the amounts of import transactions performed in the current year, divided by the total corresponding quantities, for purposes of applying the Comparable independent price method (PIC), the Production cost plus profit method (CPL), and the Quotation price on imports method (PCI). For adoption of the Resale price less profit method (PRL), the taxpayer must consider, in the calculation of the average tested price on import transactions, all amounts and respective quantities of the import transactions in the year under analysis, plus the initial inventory, less the final inventory.
- The parameter prices must be calculated on the year that the product, service, or right was imported, except for the PRL method, which will be calculated when the imported item affects the P&L.
- The PRL method must be calculated considering solely the sales performed by the importer to unrelated parties in the local market. Also, NI 1870/2019 provided details on the calculation of the percentage participation of the imported item (tested price) in the total cost – the tested price must consider the International Commercial Terms (Incoterm).
- In the adoption of the PIC method, it is possible to consider purchases and sales between unrelated parties (among themselves), resident or non-resident.
- For purposes of applying the PCI and PECEX methods (which are mandatory for imports and exports of commodities, respectively), commodities are considered to be the products listed in appendix I of NI 1213/12 and subject to public prices on (i) commodity exchanges and futures listed in appendix II or (ii) institutions involved in researches of specific sectors listed in appendix III. Products traded on exchanges and futures listed

in appendix II and not listed on appendix I no longer are considered as commodities.

- PCI and PECEX methods must be calculated per each transaction (not the average in the year) and based on the average quotation of the date of the transaction. Beijing Iron Ore Trading Center Corporation (COREX) was included in the appendix II.
- For inter-company import and export transactions, even if the tested price exceeds the export parameter price or is below the parameter import price, no adjustment will be required as long as the difference is within the allowed divergence margin (5% as general rule, except for commodities, which is 3%). As of January 1, 2019, the allowed divergence margin must be calculated based on the parameter price by one of the Brazilian transfer pricing methods. Until December 31, 2018, the calculation was based on the tested price.

The takeaway

The impact of these changes in the pricing policy, which are effective as of calendar year 2019, should be carefully analyzed by companies in order to avoid potential double taxation issues.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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