



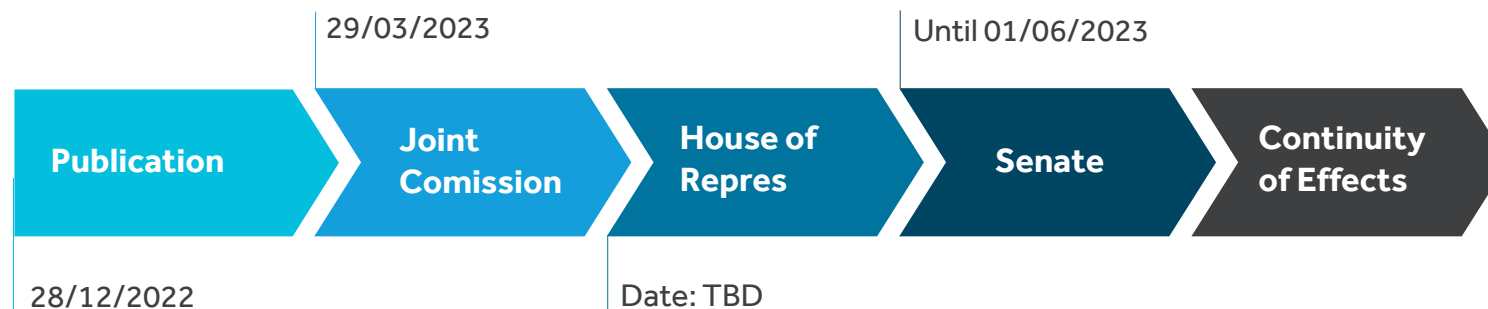
BRAZILIAN NEW TRANSFER PRICING RULES

AMMENDMENTS OF MP 1,152/22



MP 1,152/22 – BRAZILIAN NEW TP RULES

- Provisional Measure 1,152/22 currently in the process of being voted into law at the House of Representatives received on 03/29/2023 the Joint Commission Opinion, with the approved text and the inclusion of 24 of the 107 amendments to the original wording.
- The amendments received were related to Royalties, Secondary Adjustment, Commodities, and Effective Date of the New Rules.
- On April 2nd, the first 60 days of the MP's validity expires, and may be extended for another 60 days - final deadline 06/01
- Expected to be voted in the House of Representatives still this week



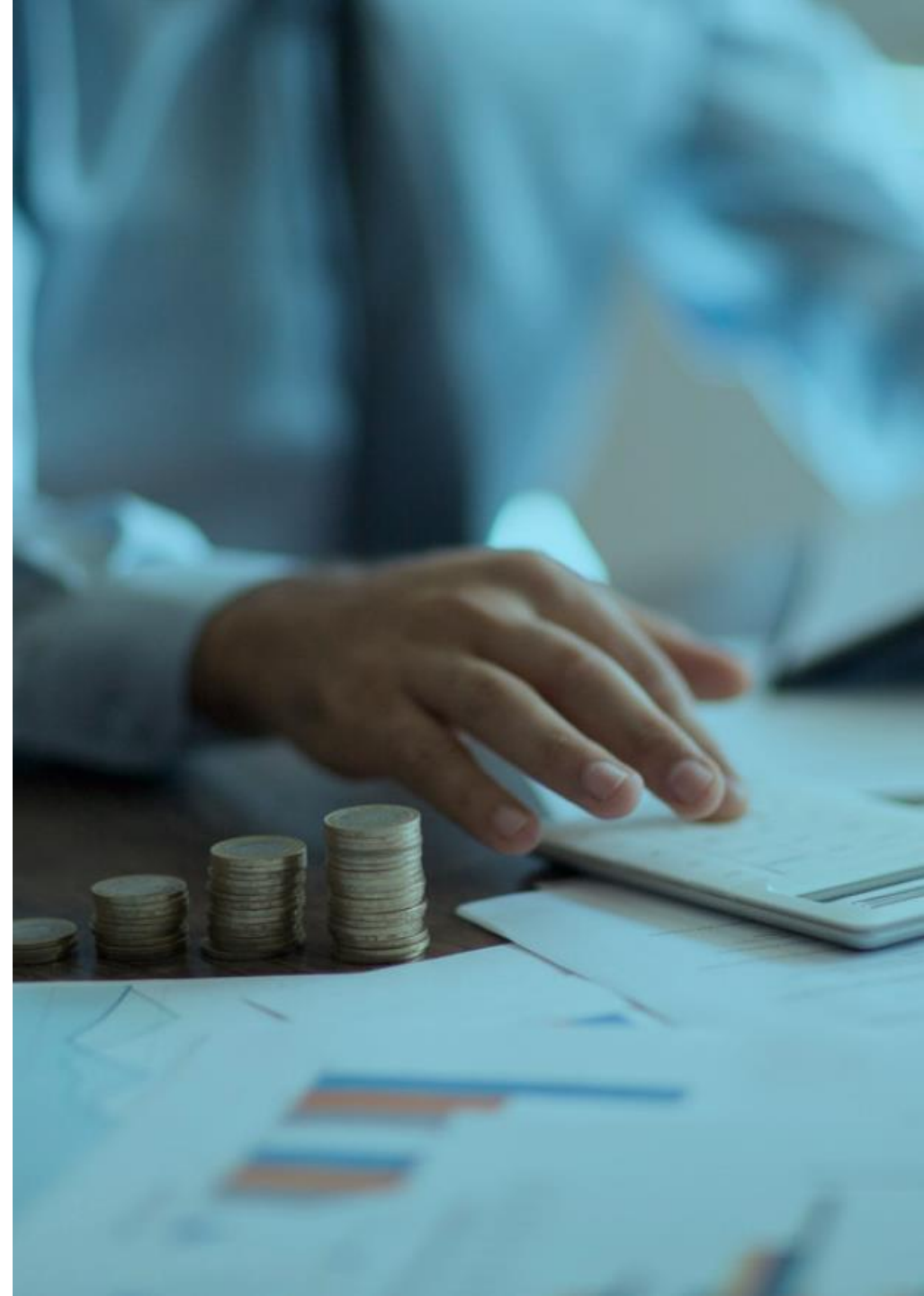
OVERVIEW - AMMENDMENTS



OVERVIEW - AMMENDMENTS

In summary, the amendments are beneficial to the taxpayer:

1. Allows more time to adapt to the new system by extending the requirement by two years. New Rules become mandatory for fiscal year 2025 and optional (early adoption) for 2023 and 2024;
2. The royalty deductibility rules are more in line with the international system;
3. Suppression of the secondary adjustment will avoid contentious disputes, given the complexity of the matter and the country's inexperience with OECD rules;
4. Flexibility of the PIC method for commodities.



AMMENDMENTS – ROYALTIES ^(1/2)

- Eliminates item I of art. 45 of the MPV to allow the deductibility of the payment of royalties to entities resident or domiciled in tax havens or which are beneficiaries of anti avoidance rules.

Ammendments n°:

11	22	36	42
47	48	58	77

Art. 44 - The amounts paid, credited, delivered, employed or remitted as royalties and technical, scientific, administrative or similar assistance to related parties under the terms of art. 4, when the deduction of the amounts results in double non-taxation in any of the following hypotheses, are not deductible in the determination of the taxable income and the CSLL calculation basis:

I - entities residing or domiciled in a country or dependency with favored taxation or which are beneficiaries of a privileged tax regime, as per art. 24 and art. 24-A of Law n° 9.430, of 1996; or

I - the same amount is treated as a deductible expense for another related party;

II - the amount deducted in Brazil is not treated as taxable income of the beneficiary according to the legislation of his jurisdiction; or

III - the amounts are destined to finance, directly or indirectly, deductible expenses of related parties, which result in the hypotheses mentioned in item "a" or in item "b".

AMMENDMENTS – ROYALTIES (2/2)

- Includes a provision in the MPV to include a paragraph in art. 13 of Law No. 9249, of December 26, 1995, which interprets the calculation of the taxable income of legal entities engaged in seed multiplication in order to remove the limits on the deductibility of payments or pass-through made to an unrelated legal entity domiciled in the country for the exploitation or use of transgenic technology or the licensing of cultivars by third parties, waiving the requirement to register the contracts relating to these transactions with the inspection or regulatory agencies for this specific purpose.

Ammendments n°:

16	17	20
21	23	24

Art. 45 Art. 13 of Law n° 9.249, of December 26, 1995, shall come into force with the following paragraph 3:

"Art. 13.....

..... § Paragraph 3 For the purposes of interpreting Article 74 of Law 3470 of November 28, 1958 and Article 12 of Law 4. 131, of September 3, 1962, are not subject to the limits of deductibility of the net income the amounts paid or transferred by a legal entity operating in the seeds chain, to another legal entity without a corporate link, domiciled in the country, related to the license of use of patented transgenic technology and/or cultivars; royalties for the exploitation of brands and invention patents; technical, scientific, administrative or similar assistance; as well as the registration of the contract of assignment or license for the use of a patent at the National Institute of Industrial Property is exempted for the purposes of deduction of these amounts from the ascertainment of the income tax of the legal entity and the social contribution on the net profit". (NR)

AMMENDMENTS – SECONDARY ADJUSTMENT

- Removes item IV of art. 17 and art. 19 of the MPV to eliminate the secondary adjustment mechanism to the calculation basis.

Ammendments n°:

13	32
45	88

Art. 17 For the purposes of the provisions of this Provisional Measure, the following are considered:

I - spontaneous adjustment - that made by the legal entity domiciled in Brazil directly in the calculation of the calculation base for the taxes referred to in the sole paragraph of art. 1, with the purpose of adding the result that would be obtained if the terms and conditions of the controlled transaction had been established according to the principle provided for in art. 2;

II - compensatory adjustment - that made by the parties to the controlled transaction until the closing of the calendar year in which the transaction is carried out with the purpose of adjusting its value so that the result obtained is equivalent to that which would be obtained if the terms and conditions of the controlled transaction had been established according to the principle provided for in art. 2;

III - primary adjustment - that made by the tax authority with the purpose of adding to the calculation basis of the taxes referred to in the sole paragraph of art. 1 the results that would be obtained by the legal entity domiciled in Brazil, if the terms and conditions of the controlled transaction had been established according to the principle provided for in art. 2; and

IV - secondary adjustment - that made as a result of the adjustments provided for in items I or III of the caput.

AMMENDMENTS – COMMODITIES (1/3)

- Amends the wording of the caput of art. 13 of the MPV to clarify that, (i) even in cases where there is a quotation, the internal comparable prices, arising from transactions with non-related parties, continue to be reliable for the application of the PIC method, even with greater reliability than the quotation prices; and (ii) in the definition of the most appropriate method of control of transfer prices, it is relevant to examine the entire value chain of the commodities and the other elements of § 1 of art. 11.

Ammendments n°:

5

Art. 13 - When there is reliable information on comparable independent prices for the traded commodity, including quoted prices or prices charged to unrelated parties (internal comparables), the PIC method will be considered the most appropriate to determine the value of the commodity transferred in the controlled transaction, unless it can be established, in accordance with the facts and circumstances of the transaction and other elements of art. 11, including the assets, functions and risks of each entity in the value chain, that another method is more appropriately applicable in order to observe the principle provided for in art. 2

AMMENDMENTS – COMMODITIES (2/3)

- Amends § 2 of art. 13 of the MPV to remove the presumption that the PIC method will be the most appropriate for commodities in cases where the magnitude of the required comparability adjustments affects the very reliability of this method.

Amendments n°:

4

Art. 13 [...]:

§2 The adjustments provided for in § 1 will not be made if the comparability adjustments affect the reliability of the PIC method and justify the consideration of other transfer pricing methods, pursuant to art. 11.

AMMENDMENTS – COMMODITIES (3/3)

- Includes paragraphs in art. 13 of the MPV to establish limits on the use of quotation prices, especially in cases where the information so obtained is not reliable or appropriate.

Amendments n°:

2

Art. 13 [...]:

§3 Paragraph 3 If the provisions of Paragraph 2 are not complied with, the tax authority may determine the value of the commodity based on the quotation price referring

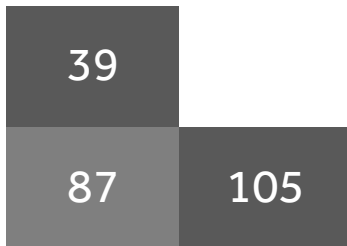
I - to the date or period of dates that is consistent with the facts and circumstances of the case and with that which would be established between unrelated parties in comparable circumstances; or

II - the average of the quotation price on the date of shipment or registration of the import declaration, when it is not possible to apply the provisions of item I.

AMMENDMENTS – EARLY ADOPTION AND EFFECTIVE DATE

- Amends arts. 46 to 48 of the MPV to make the new regime available in 2023 and 2024, making it mandatory as of 2025.

Ammendments n°:



Art. 46 The taxpayer may opt for the application of the provisions in articles 1 to 44 of this Law as of January 1, 2023.

Art. 47: The following are hereby revoked as of [January 1, 2025](#):

Art. 48 This Law takes effect on [January 1st 2025](#), except for art. 45 and art. 46, which go into effect on the date of its publication.

RECOGNITION



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