



Brazil's accession to OECD

October, 9th 2019 – São Paulo - SP

www.kpmg.com.br/





Program

1. Introduction
2. Brazil and OECD
3. OECD's evaluation on Brazilian rules
4. Proposal for alignment on transfer pricing rules - OECD
5. Challenges and next steps
6. TP – International Model

1.

Brazil's
accession
to OECD

Introduction イントロダクション



1. Introduction

With you, presenting...



Edson Costa

Director

Transfer Pricing

T: + 55 (11) 3940-5313

edsoncosta@kpmg.com.br



Koji Yoshida

Seconded Partner

Head of Japan Desk of KPMG

Brazil and South America

T: + 55 (11) 3940-3643

kojiyoshida1@kpmg.com.br

2.

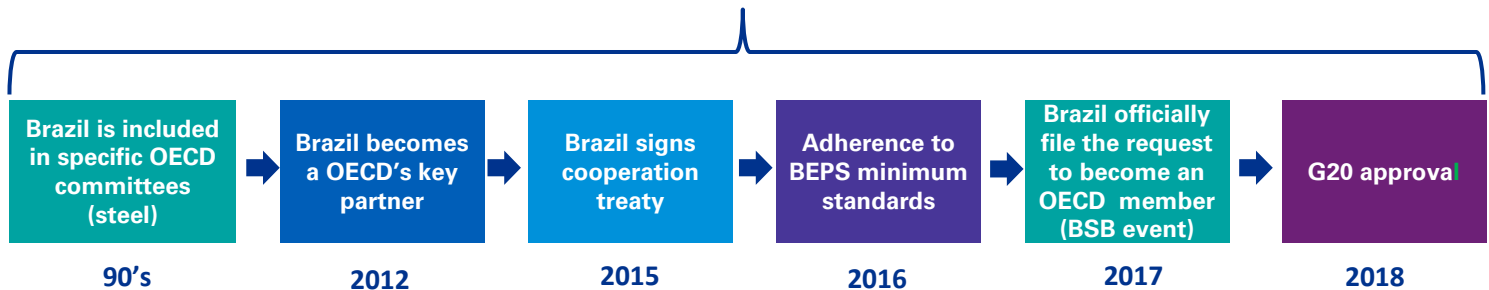
Brazil's
accession
to OECD

Brazil and OECD ブラジルとOECD



2. Brazil and OECD

Brazil representation in OECD



2. Brazil and OECD

Current Status

- Peer Review in progress : policy review by member States.
- Analysis of the 245 *Acquis* (means) ongoing in committees:
 - 65 means acceded by 2018
 - 142 ongoing analysis that don't exhibit risks
 - 8 ongoing analysis
 - 30 means present challenges (12%).

Ongoing assessments: electric sector governance, digital economy, public bidding.

Sensible issues: environment, actions against corruption, tax regulations (transfer pricing and agreements to avoid double taxation).

3.

Brazil's
accession
to OECD

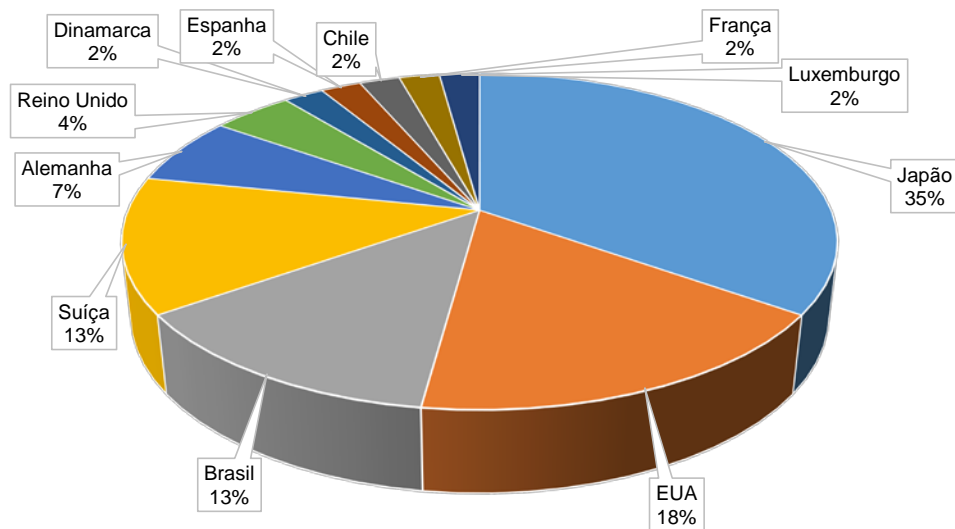
Evaluation on Brazilian regulations made by OECD

OECDによるブラジル制
度の評価



3. Evaluation on Brazilian regulations made by OECD

OECD/CNI questionnaire – HQ's location



In 2018, the Centre for Tax Policy and Administration (CTPA) backed by CNI (Nacional Industry Confederation) and BIAC (Business and Industry Advisory Committee to the OECD), developed a questionnaire to map the TP scenery on multinational companies.

52 respondents

3. Evaluation on Brazilian regulations made by OECD

Arm's length principle - ALP

- Brazilian regulations do not contemplate *arm's length principle*
- Several differences were identified, including the enforcement of pre fixed margins.

Other considerations

- Norms enforced to operations with non-related parties, although located in "tax havens (*black list*).
- Limited scope – norms not applicable to operations regarding payments on royalties/technical services

3. Evaluation on Brazilian regulations made by OECD

Transfer Pricing methods

- Methods based on international laws, although does not reflect *arm's length* principle.
- Lack of ***transactional profit methods (TNMM, Profit Split)***.

Other remarks

- Tax payer has freedom to choose the preferred method.

3. Evaluation on Brazilian regulations made by OECD

Comparability factors

- Limited comparability adjustments (Methods PIC/PVEX, PCI/PECEX, PVA/PVV)
- Lack of comparability factors for the following methods, PRL, CPL and CAP.
- Product by product analysis without possibilities of grouping
- Limited similarity concepts
- Comparison between margins not applicable

Other remarks

- Use of comparative financial databases not applicable.

3. Evaluation on Brazilian regulations made by OECD

Intangible transactions

- Lack of appropriate methods or specific approaches
- Limits on deductibility to specific payments (*royalties*)
- *Royalties* payments outside the transfer pricing scope

Other remarks

- Lack of specific treatment to *Cost Contribution/Sharing Arrangements*

3. Evaluation on Brazilian regulations made by OECD

Safe Harbor Rules

- Only applicable to exports transactions
- Representativeness for Safe Harbor do not consider the size of the Company
- 5% limit on net income may encourage the exportation under lower prices
- 90% rule on exports disregard operations profitability potential (domestic x exports)
- Profitability Safe Harbor: is 10% net profit before tax enough?

3. Evaluation on Brazilian regulations made by OECD

Commodities operations

- Mandatory application of specific methods (PCI / PECEX)
- Comparability factors do not comprise basic comparability assumption provided by OECD Guidelines (CUP Method)

Other remarks

- It's improbable that discounts adjustments and premiums that are foreseen in legislation reflect contractual matters, operational and other economic circumstances (**Functional analysis**)

3. Evaluation on Brazilian regulations made by OECD

Other significant remarks

- *Masterfile and Local file* were not implemented in the Country by Country Report (BEPS' Action 13)
- Lack APA (Advance Pricing Agreement) and Corresponding Adjustments provisions.
- Functional and economical analyses are not applicable

4.

Brazil's
accession
to OECD

Proposal for transfer pricing rules alignment - OECD

OECD移転価格制度適
用のための提案



4. Proposal for alignment on transfer pricing rules - OECD

OECD proposes Brazil to adopt ALP - arms' length principle – full scope. In other words, transfer pricing regulations in Brazil must be fully implemented according to the OECD Guidelines (TP), disregarding the current transfer pricing model characteristics. Under said scenario, two implementation options were recommended.

Alternative 1 – Immediate Alignment

This implementation model would include changing the transfer pricing rules for all tax payers after a given date

Alternative 2 – Progressive Alignment

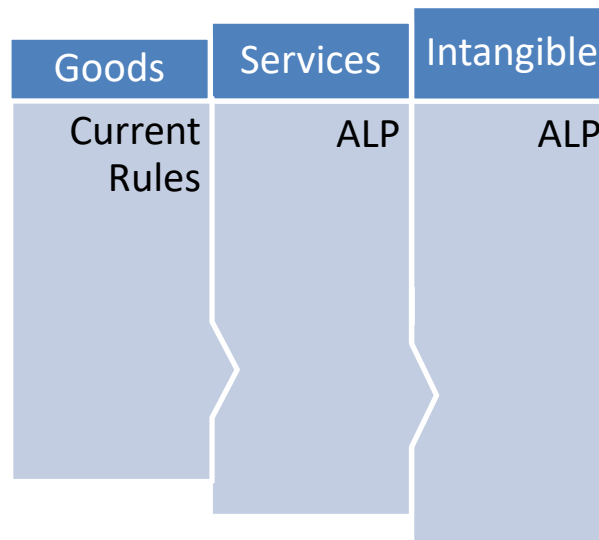
This alignment would be carried out based on transaction types and the business characteristics (large, medium, small)

4. Proposal for alignment on transfer pricing rules - OECD

Alternative 2 – Progressive Alignment (Example 1)

Progressive Alignment based on operation types

- For instance, initially, operations involving goods would maintain under current rules;
- Meanwhile, operations involving services and intangibles would begin to be tested based on the ALP.



4. Proposal for alignment on transfer pricing rules - OECD

Alternative 2 – Progressive Alignment (Example 2)

Progressive alignment based on business characteristics

Largest Companies

- Revenue limits
- ALP implementation in accordance to the Group's global policies

Large Companies

- Lower revenue limits
- Choice of following ALP

Other Companies

- Specific criteria
- Choice of following ALP

5.

Brazil's
accession
to OECD

Challenges and next steps

課題と今後のステップ



5. Challenges and next steps

Some changes are necessary...

- Draft of Transfer Pricing regulations base on OECD TP guidelines
- Technical capacitation for the Fiscal Authorities and tax payers
- Implementations of procedures and tax returns
- Alignment of other tax related topics (for example, *Royalties* payements deductibly)

6.

Brazil's
accession to
OECD

TP – International Model

TP – 国際モデル

6. TP - International Model



Description	OECD Guidelines	Brazilian Rules
Analyses subjectivity	✓	
Economical/Functional Analysis	✓	
Basket Approach	✓	
Item to Item Analysis		✓
Gross Profit Margin defined by law		✓
Comparison between companies	✓	
Advanced Pricing Agreements (“APAs”)	✓	

6. TP - International Model

Sectorial Analysis

Analysis of external factors influencing the activity's sector profitability. E.G.: Competitive levels, regulatory aspects



Business Analysis

Analysis of internal factors that influence the company's profitability. E.G.: Market strategy, major competencies.

6. TP - International Model

Transactions Description & Functional Analysis

Refers to factual information relevant to the operations itself

- Operation's character and volume, it's terms and conditions
- Functions, assets and risks allocated within the Group



Economic Analysis

Based on previous steps and resulting in the best transfer pricing approach. Selection of the transfer pricing method best appropriate to justify the practiced prices
Analysis of the comparable information available for application of the selected method



Thank you for your attention.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

www.kpmg.com.br

    /kpmgbrasil

© 2019 KPMG Assessorios Ltda., uma sociedade simples brasileira e firma-membro da rede KPMG de firmas-membro independentes e afiliadas à KPMG International Cooperative ("KPMG International"), uma entidade suíça. Todos os direitos reservados. Impresso no Brasil.

O nome KPMG e o logotipo são marcas registradas ou comerciais da KPMG International.



Speak with our team

Edson Costa

edsoncosta@kpmg.com.br

T: + 55 (11) 3940-5313

Koji Yoshida

kojiyoshida1@kpmg.com.br

T: + 55 (11) 3940-3643

© 2019 KPMG Assessores Ltda., uma sociedade simples brasileira e firma-membro da rede KPMG de firmas-membro independentes e afiliadas à KPMG International Cooperative ("KPMG International"), uma entidade suíça. Todos os direitos reservados. Impresso no Brasil.

O nome KPMG e o logotipo são marcas registradas ou comerciais da KPMG International.