STANDARDS

RFB NORMATIVE INSTRUCTION NO. 2161, OF 28 SEPTEMBER 2023

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Provides for the transfer prices to be applied in transactions carried out by legal entities domiciled in Brazil with related parties abroad and makes other provisions.

Change history

(Rectified on 03 October 2023)

THE SPECIAL SECRETARY OF THE FEDERAL REVENUE OF BRAZIL, using the powers conferred on him by item III of art. 350 of the Internal Regulations of the Special Secretariat of the Federal Revenue of Brazil, approved by Ordinance ME no. 284, of 27 July 2020and in view of the provisions of art. 16 of Law no. 9.779, of 19 January 1999, Law no. 14.596, of 14 June 2023, and art. 2 of Decree no. 6.022, of 22 January 2007resolves:

BOOK I OF
TRANSFER PRICING CONTROL RULES

TITLE I
GENERAL PART

CHAPTER I
THE OBJECT AND SCOPE

Art. 1 This Normative Instruction sets out the rules for controlling transfer prices in determining the basis for calculating Corporate Income Tax (IRPJ) and Social Contribution on Net Profit (CSLL) for legal entities domiciled in Brazil for controlled transactions with related parties abroad.

§ 1 The provisions of this Normative Instruction also apply to transactions carried out by a legal entity resident or domiciled in Brazil with any entity characterised in the cases provided for in articles 24 and 24-A of Law No. 9430 of 27 December 1996.

§ 2 The provisions of the caput apply to the IRPJ and CSLL taxpayers referred to in Article 4 of Instruction Normative no. 1700, of 14 March 2017Paragraph 1 shall apply to IRPJ and CSC taxpayers, including subsidiaries, branches and any business units that constitute an economic or professional unit, even if they are not regularly constituted as legal entities under private law in Brazil.

§ 3 The provisions of this Normative Instruction apply to the determination of the IRPJ and CSLL of taxpayers subject to real, presumed or arbitrated profit.

§ 4 The guidelines of the Organisation for Economic Co-operation and Development - OECD, embodied in the report entitled "OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration 2022", as well as future amendments thereto, when expressly approved by the Special Secretariat of the Federal Revenue of Brazil - RFB, are subsidiary sources for the interpretation and integration of transfer pricing control rules, unless they are contrary to or inconsistent with Law 14.596, of 14 June 2023, this Normative Instruction or other normative acts issued by the RFB.

CHAPTER II
GENERAL PROVISIONS

Section I
The arm's length principle

Art. 2 For the purposes of determining the basis for calculating the taxes referred to in Art. 1, the terms and conditions of a controlled transaction must be established in accordance with those that would be established between unrelated parties in comparable transactions.

§ 1. Failure to comply with the provisions of the caput implies that the adjustments set out in art. 48 will have to be made.

Section II

Controlled transactions

Art. 3 A controlled transaction comprises any commercial or financial relationship between two or more related parties, established or carried out directly or indirectly, including contracts or arrangements in any form and series of transactions, such as:

I - transactions with tangible goods, including commodities;

II - transaction involving intangibles;

III - services of any kind;

IV - cost-sharing contracts;

V - business restructuring, including the closure or renegotiation of commercial or financial relations;

VI - financial operations, including debt operations, intra-group guarantees, centralised treasury management agreements and insurance contracts;

VII - transactions whose object is the disposal or transfer of assets, including shares and other participations, even if they occur in capital return or subscription operations; and

VIII - any sale, assignment, loan, lease, licence, advance and contribution.

§ 1 For the purposes of this article, the term or expression:

I - "transaction" comprises any commercial or financial relationship, including practices, understandings, actions or omissions, regardless of whether they are, or are intended to be, legally enforceable and whether the terms and conditions of such transaction are formally documented;

II - "series of transactions" includes reference to more than one transaction carried out in relation to the same contract or arrangement, whether they are carried out in sequence or not; and

III - "arrangement" includes any structure, operation or agreement of any kind.

§ 2 - A controlled transaction is also considered to be one made between a legal entity resident or domiciled in Brazil and any entity characterised in the hypotheses set out in articles 24 and 24-A of Law 9.430 of 1996.

§ 3 Annex I exemplifies arrangements involving indirect transactions and series of transactions.

Section III

Related parties

Art. 4 Parties are considered to be related when at least one of them is subject to influence, exercised directly or indirectly by another party, which may lead to the establishment of terms and conditions in their transactions that differ from those that would be established between unrelated parties in comparable transactions.

§ 1 Without prejudice to other hypotheses that fall under the heading, the following are considered related parties:

I - the controlling shareholder and its subsidiaries;

II - the entity and its business unit, when the latter is treated as a separate taxpayer for the purposes of calculating income tax, including the head office and its subsidiaries;

III - affiliated companies;

IV - the entities included in the consolidated financial statements, or which would be included if the ultimate controller of the multinational group of which they form part were to prepare such statements in the event that their capital were traded on the securities markets of their jurisdiction of residence;

V - the entities, when one of them has the right to receive, directly or indirectly, at least 25 per cent (twenty-five per cent) of the profits of the other or of its assets, in the event of liquidation;

VI - entities that are directly or indirectly under common control or in which the same partner, shareholder or owner holds 20% (twenty per cent) or more of the share capital of each;

VII - entities in which the same partners or shareholders, or their spouses, partners, relatives, consanguineous or related, up to the third degree, hold at least 20% (twenty per cent) of the share capital of each;

VIII - the entity and the natural person who is the spouse, partner or relative, consanguineous or related, up to the third degree, of a counsellor, director or controller of that entity; and

IX - the legal entity resident or domiciled in Brazil and any entity characterised in the cases provided for in articles 24 and 24-A of Law no. 9430, of 1996.

§ 2 The term entity includes any person, natural or legal, and any contractual or legal arrangements without legal personality.

§ 3 For the purposes of this article, a business unit located in Brazil includes any economic or professional unit, regardless of whether it is regularly constituted as a legal entity under private law in Brazil.

§ 4 Notwithstanding the situations provided for in Paragraph 1, the tax authority may demonstrate, in other cases, the existence of influence over one of the parties, exercised directly or indirectly by another party, which may lead to the establishment of terms and conditions in their transactions that differ from those that would be established between unrelated parties in comparable transactions under the terms of the caput.

§ 5 Related parties under the terms of this article are entities located in the same country, including Brazil, even in situations where transactions between them are not subject to transfer pricing control.

Art. 5 A control relationship is characterised, for the purposes of the provisions of §1 of art. 4, when an entity:

I - holds, directly or indirectly, alone or jointly with other entities, including by virtue of the existence of voting agreements, rights that give it a preponderance in company resolutions or the power to elect or dismiss the majority of the directors of another entity;

II - participate, directly or indirectly, in more than 50% (fifty per cent) of the share capital of another entity; or

III - holds or exercises the power to administer or manage, directly or indirectly, the activities of another entity.

§ 1. For the purposes of item III of the caput, the power to administer or manage may be exercised or exercisable, directly or indirectly, legally enforceable or not, including that resulting from the actions of two or more entities acting in concert with a common objective or purpose.

Art. 6 For the purposes of item III of § 1 of art. 4, an entity that has significant influence over another entity is considered an associate.

§ 1 Significant influence is considered to exist when the investor holds or exercises the power to participate in the financial or operational policy decisions of the investee, without controlling it.

§ 2 Significant influence is presumed when the investor holds 20% (twenty per cent) or more of the votes conferred by the capital of the investee, without controlling it.

Section IV

Comparable transactions

A transaction between unrelated parties will be considered comparable to a controlled transaction when:

I - there are no differences that could materially affect the financial indicators examined by the most appropriate method referred to in article 33; or

II - reasonably precise adjustments can be made to eliminate the material effects of differences, if any.

§ 1 Differences that may materially affect the financial indicators examined by the most appropriate method are those relating to the economically relevant characteristics of the transactions, including their terms and conditions as well as their economically relevant circumstances.

§ 2 Differences will only be considered material when there is a non-negligible effect on the financial indicator examined under the most appropriate method.

§ 3 The analysis of the facts and circumstances of each case shall determine whether the differences in economic characteristics have a material effect on the financial indicators and whether reasonably precise adjustments should be made to eliminate the material effects of such differences.

§ 4 The expression "financial indicator", examined by the most appropriate method, includes prices and interest, gross profit margins, profitability indicator, division of profits between the parties or other data and indicators deemed relevant.

CHAPTER III
APPLICATION OF THE ARM'S LENGTH PRINCIPLE

Section I
General Provisions

Art. 8 In order to determine whether the terms and conditions established in the controlled transaction are in accordance with the principle set out in Art. 2, the following must be carried out:

I - the outline of the controlled transaction; and

II - the comparability analysis of the controlled transaction, as outlined.

Section II

Outlining the controlled transaction

Subsection I
Preliminary provision

Art. 9 The delineation of the controlled transaction referred to in item I of the main body of art. 8 will be based on an analysis of the facts and circumstances of the transaction and evidence of the effective conduct of the parties with a view to identifying the commercial and financial relationships between the related parties and the economically relevant characteristics associated with these relationships.

§ 1 In order to carry out the delineation referred to in the heading, an overview is typically required:

I - the economic sector in which the multinational group operates, the economic activities of the multinational group and the elements that affect the performance of a company's commercial operation in that economic sector;

II - the organisational structure of the multinational group;

III - the relevant functions, assets and risks assumed by the entities that are part of the multinational group; and

IV - the supply chain and its added value for each entity in the multinational group.

§ 2 The fact that the taxpayer makes recurring losses while the multinational group or the related parties with which controlled transactions are carried out are profitable may indicate that the principle laid down in Article 2 is not being observed.

Subsection II

Options Realistically available

Art. 10. In compliance with the principle of art. 2, when outlining the controlled transaction, the options realistically available to each of the parties to the controlled transaction shall be considered, in order to assess the existence of other options that could clearly have generated more advantageous conditions for any of the parties and that would have been adopted if the transaction had been carried out between unrelated parties, including not carrying out the transaction.

Subsection III

Comparability factors

Art. 11 - The economically relevant characteristics, also known as comparability factors, which must be taken into account for the purposes of delineating the controlled transaction and analysing comparability are:

I - the contractual terms of the transaction, which derive both from formalised documents and contracts and from evidence of the actual conduct of the parties;

II - the functions performed by the parties to the transaction, taking into account the assets used and the economically significant risks assumed;

III - the specific characteristics of the goods, rights or services that are the object of the controlled transaction;

IV - the economic circumstances of the parties and the market in which they operate;

V - business strategies; and

VI - other characteristics considered economically relevant.

§ 1 The analysis of the economically relevant characteristics set out in the caput provides evidence of the effective conduct of the parties for the purpose of delineating the controlled transaction referred to in Article 9.

§ 2 In the event that the economically relevant characteristics of the controlled transaction identified in the formalised contracts and in the documents submitted, including the documentation referred to in TITLE IV, differ from those verified from the analysis of the facts, circumstances and evidence of the parties' actual conduct, the controlled transaction will be delineated, for the purposes of the provisions of this Normative Instruction, on the basis of the facts, circumstances and evidence of the parties' actual conduct.

Subsection IV

Contractual terms

Art. 12 Contractual terms refer to the allocation of rights and obligations between the parties, which can be derived from documents, including contracts and written or telematic communications between the parties, from the analysis of facts and circumstances and from evidence of the actual conduct of the parties, which will supplement or, in the event of disagreement, take precedence over written documents.

§ 1 The contractual terms include, among others, the following elements:

I - terms and forms of payment, including conditions for amortisation or early settlement and associated costs;

II - volume and quantities traded;

III - scope and terms of the guarantees involved;

IV - contractual purchase and sale options;

V - transport and insurance obligations;

VI - duration of the contract and renegotiation conditions;

VII - geographical area covered; and

VIII - exclusivity rights in the licensing of intangibles.

§ 2 The contractual terms referred to in this article will only be an economically relevant characteristic for the delineation of the controlled transaction to the extent that they are consistent with evidence of the actual conduct of the parties.

§ A commercial or financial relationship must be outlined, even if it is not formalised in documents.

§ 4: Examples of non-formalised commercial or financial relationships:

I - undocumented contracts involving technology transfer;

II - creation of group synergies resulting from a deliberate action; and

III - services rendered, even if by means of employees assigned or sent to the country of destination of the services.

Subsection V

Functional analysis

Art. 13: The functions performed by the parties involved in the controlled transaction, taking into account the assets used and the economically significant risks assumed, are identified by means of functional analysis, which must take into account:

I - the activities actually carried out by the parties and the capacities or skills they contribute, including decisions regarding risks and business decisions;

II - the structure and organisation of the group to which the parties belong, and how they influence the context in which they operate;

III - how the functions performed by the parties interrelate and contribute to the group's value generation chain;

IV - the rights and obligations of each of the parties when carrying out their duties;

V - the economic relevance of the function, in view of its frequency, nature and value for the respective parties to the transaction; and

VI - the type of assets used, such as machinery, equipment, valuable intangibles or financial assets, their nature and their relevant attributes, such as age, useful life and location.

§ 1 The term "function" shall mean an economically significant activity performed by one or more related parties in relation to a controlled transaction and which contributes to the creation of value and whose economic relevance shall be gauged on the basis of frequency, nature and value for the respective parties to the transactions.

§ 2 Examples of functions include the following activities:

I - research and development;

II - production and assembly;

III - extraction;

IV - provision of services;

V - purchases;

VI - sales;

VII - intermediation, distribution and representation;

VIII - marketing and publicity;

IX - storage and warehousing;

X - transport and logistics;

XI - finance and accounting;

XII - legal;

XIII - management;

XIV - credit and collection; and

XV - human resources and training.

Art. 14 - Economically significant risks shall be deemed to be assumed, for the purposes of this Normative Instruction, by the party to the controlled transaction that exercises the functions relating to its control and that has the financial capacity to assume them.

§ 1 The risk analysis must consider:

I - specific identification of the economically significant risks for the transaction;

II - the identification of how economically significant risks are contractually assumed by the parties to the controlled transaction;

III - the identification of how related parties operate in relation to the assumption and management of economically significant risks, in particular:

a) which parties perform the control and risk mitigation functions;

b) how the positive or negative results of those risks impact the parties to the transaction; and

c) which of the parties has the financial capacity to absorb said results; and

IV - verification of the consistency between the contractual assumption of risks and the actual conduct of the parties, with the risk actually assumed prevailing, which should be allocated to the party exercising the functions relating to its control and having the financial capacity to assume them under the terms of the caput.

§ 2 Economically significant risks consist of risks that significantly influence the economic results of the transaction and may include, as the case may be, the following risks, among others:

I - the market, including fluctuations in costs, demand, prices and inventory levels;

II - associated with the success or failure of research and development activities;

III - financial, including exchange rate and interest rate fluctuations;

IV - credit and collection;

V - product liability;

VI - general business relating to properties, industrial plants and equipment; and

VII - inventory.

§ 3 The expression "risk management" referred to in item III of Paragraph 1 corresponds to the function performed to assess and respond to the risk associated with the transaction, and includes:

I - the ability to make decisions to assume or decline a risk opportunity, together with the effective performance of this decision-making function;

II - the ability to make decisions about whether and how to respond to the risks associated with the opportunity, together with the effective performance of this decision-making function; and

III - the ability to take measures to mitigate the risk, such as measures to reduce uncertainty or other measures to reduce its consequences in cases where negative impacts relating to risks materialise.

§ 4 The functions relating to risk control are necessarily represented by those set out in items I and II of Paragraph 3.

§ 5 The ability to perform decision-making functions and their effective performance in relation to a specific risk requires the decision-makers of that party to possess:

I - an understanding of the risk based on an analysis of the information necessary to assess the foreseeable results of the decisions involved and the consequences for the company's business, so that the decision-makers have the necessary competence and experience in the area of the specific risk for which the decision is being made and an understanding of the impact of their decision on the company's business; and

II - access to relevant information to support the decision-making process, collecting the information themselves or exercising the authority to specify and obtain this relevant information.

§ 6 The mere definition of general risk policies shall not be considered a function associated with risk control.

§ 7 The mere formalisation of the result of decision-making in the form, for example, of meetings organised to approve decisions taken elsewhere, minutes of board meetings and the signing of documents relating to the decision does not qualify as the exercise of the decision-making function sufficient to demonstrate control over the risk.

Subsection VI

Characteristics of goods, rights and services

Art. 15: The specific characteristics of goods, rights and services to be taken into account when outlining controlled transactions and analysing comparability are those that may lead to differences in their value and may include, as the case may be and by way of example:

I - in the case of tangible assets, their physical characteristics and quality, reliability, as well as the availability and volume of supply, among others;

II - in the case of rights and other intangibles, their type, such as patents, trademarks or copyrights, as well as the form of the transaction, including, for example, whether the transaction is carried out through licensing or assignment, its duration, degree of protection and anticipated benefits from the use of the property, among others;

III - in the case of the provision of services, their nature and extent, among others;

IV - in the case of financial transactions, the principal amount, the payment deadline, the conditions for amortisation or early settlement, the debtor's credit risk, the existence of guarantees and the interest rate, among others; and

V - in the case of shareholdings, the present value of projected profits or cash flows, among others.

§ 1. The transfer of a tangible asset with an integrated intangible will generally not be considered as the transfer of that intangible if the acquirer does not acquire rights to exploit the intangible other than the rights relating to the resale of the tangible property under usual commercial practices.

§ 2 The value of the tangible asset may be influenced by the value of the integrated intangible, which must be taken into account during the design and analysis of comparability.

§ 3 In the case of the transfer of a tangible property that grants the acquirer the right to separately exploit the intangible property integrated into the tangible property, it may be necessary to determine the remuneration of the intangible property separately from the remuneration of the tangible property.

Subsection VII

Economic circumstances

Art. 16: The economic circumstances of the parties and the market in which they operate may include, as appropriate and by way of example:

I - geographical location and the existence of regional markets;

II - the size of markets and other characteristics, including those that give rise to location savings and potential cost savings;

III - the competitiveness of the markets and the relative position of buyers and sellers;

IV - the availability of substitute goods and services;

V - the levels of supply and demand in the market as a whole and in particular regions;

VI - consumer purchasing power;

VII - the nature and extent of government regulation in the market, including government policies;

VIII - production costs, including land, labour and capital costs;

IX - transport costs;

X - the market level (retail or wholesale);

XI - the date and time of the transactions; and

XII - the existence of an economic, business or production cycle.

Subsection VIII

Business strategies

Art. 17: The business strategies pursued by the parties to achieve their business objectives that may be considered relevant may include, as appropriate and by way of example:

I - innovation and development of new products;

II - degree of diversification and risk aversion;

III - adapting to political and economic changes; and

IV - duration of contracts and other factors that influence the day-to-day running of the business.

§ 1 In exceptional cases, business strategies may include initiatives, such as temporary market penetration initiatives, which imply a reduction in current profits as compensation for a plausible expectation of an increase in future profits, including by negotiating prices lower than those of comparables in the same market or by contracting for higher costs, such as the initial establishment of the company or marketing efforts.

§ 2 In the case provided for in Paragraph 1, the following conditions must be observed and documented:

I - the conduct of the parties over time and in the set of transactions must be consistent with the proposed business strategy;

II - the nature of the relationship between the parties to the transaction must be consistent with the costs of the business strategy, so that the costs incurred to implement it are borne by the party that has a plausible expectation of obtaining the future profits resulting from the strategy;

III - there must be a plausible expectation that the business strategy will produce an adequate return for the party that undertook the strategy, justifying its costs within a similar timeframe and under similar circumstances that would be acceptable between unrelated parties;

IV - costs, expected returns and any agreements between related parties must be established before the strategy is implemented; and

V - the business strategy must be carried out for a limited period and must not continue for longer than is reasonable, taking into account the branch and product involved.

Subsection IX

Other economically relevant characteristics

Art. 18 Other economically relevant characteristics, including the group synergies dealt with in Art. 31, must be outlined.

Subsection X

Non-recognition of controlled transactions

Art. 19 - For the purposes of this Normative Instruction, when it is concluded that unrelated parties, acting in comparable circumstances and behaving in a commercially rational manner, considering the options realistically available to each party, would not have carried out the controlled transaction as outlined, in view of the operation in its entirety, the transaction or series of controlled transactions may be disregarded or replaced by an alternative transaction with the objective of determining the terms and conditions that would be established by unrelated parties in comparable circumstances and acting in a commercially rational manner.

§ 1 Only one specific term or condition of the outlined transaction may also be disregarded or replaced when it is demonstrated that it does not comply with the provisions of the caput.

§ 2 The substitute term or condition referred to in Paragraph 1 shall reflect the realistically available option that meets the commercial rationality test.

§ 3 The structure of the substitute transaction must differ from the structure of the replaced transaction to the extent necessary to reflect the option mentioned in Paragraph 2.

§ 4. The controlled transaction referred to in the heading may not be disregarded or replaced solely because comparable transactions between unrelated parties have not been identified.

§ 5. Disregard or substitution must be made if it appears that an unrelated party, when negotiating a contract or continuing an ongoing business, would have opted for another realistically available and commercially rational alternative that is clearly more advantageous, including its termination or renegotiation, especially in the case of long-term contracts.

§ 6 Commercial rationality cannot be justified on the grounds that an option is more advantageous from a tax point of view or any other non-commercial interests.

Section II

Comparability analysis

Subsection I
Preliminary provision

Art. 20. The comparability analysis shall be carried out with the aim of comparing the terms and conditions of the controlled transaction, outlined in accordance with the provisions of Art. 9, with the terms and conditions that would be established between unrelated parties in comparable transactions, and shall include consideration of:

I - the economically relevant characteristics of the controlled transaction, outlined in accordance with the provisions of Article 9, and of transactions between unrelated parties;

II - the date on which the controlled transaction and transactions between unrelated parties were carried out, in order to ensure that the economic circumstances of the transactions to be compared are comparable;

III - the availability of information on transactions between unrelated parties, enabling a comparison of their economically relevant characteristics, with a view to identifying the most reliable comparable transactions between unrelated parties;

IV - the selection of the most appropriate method and the financial indicator to be examined;

V - the existence of uncertainties in pricing or valuation existing at the time of the controlled transaction and whether such uncertainties were addressed as unrelated parties would have done in comparable circumstances, including the adoption of appropriate mechanisms to ensure compliance with the principle set out in Article 2; and

VI - the existence and relevance of group synergy effects, under the terms of article 31.

§ 1 The comparability of transactions must be assessed taking into account all economically relevant characteristics that may materially affect the financial indicators.

§ 2 The degree of importance of each economically relevant characteristic in the comparability analysis will depend on the method provided for in Article 33 applied.

§ 3 The existence of different degrees of comparability and reliability between the comparables initially selected will be taken into account when selecting comparables and determining the interval referred to in Article 47.

§ 4 Sources of information on comparable transactions may be obtained from:

I - internal comparables, which consist of transactions carried out between unrelated parties in which one of the parties is also a party to the controlled transaction; or

II - external comparables, which consist of transactions carried out between unrelated parties in which none of the parties is a party to the controlled transaction.

Subsection II

Typical stages of comparability analysis

Art. 21: The comparability analysis typically includes the following steps:

I - the determination of the period to be covered in the analysis, with due regard for the provisions of item II of the caput of art. 20;

II - verification of the existence of internal comparables, including the provisions of art. 24;

III - the identification of available sources of information on external comparables, when their use is necessary, and taking into account their relative reliability and limitations in terms of the specificity and quality of the data;

IV - the selection of the most appropriate method and, depending on the method, the choice of profitability indicator and the part tested;

V - the identification of potential comparables, including the determination of the essential characteristics that must be present in any transaction between unrelated parties in order for it to be considered potentially comparable, taking into account the design of the controlled transaction and the comparability factors;

VI - identifying and making reasonably accurate comparability adjustments when appropriate; and

VII - the interpretation and use of the data collected with the determination of the appropriate remuneration in accordance with the principle set out in Article 2.

§ 1 In order to carry out the comparability analysis, the steps set out in the caput do not need to be carried out in a linear fashion, in particular the steps set out in items III to V, in which case it may be necessary to carry them out repeatedly in order to satisfactorily conclude the analysis and correct inaccuracies in the process that may affect the reliability of the selection of the method and the result achieved.

§ 2 The provisions of Paragraph 1 apply, in particular, when it is not possible to identify comparable transactions or to make reasonably accurate comparability adjustments, as provided for in items V and VI of the heading, respectively.

§ 3 - Subject to the provisions of article 47, when applying the methods set out in items II to IV of article 33 using data from external comparables sourced from reliable databases, if fewer than four comparables are identified as a result of combining all the appropriate filters for their selection, including the selection filter relating to the independence criterion determined on the basis of a percentage share of 20%, the use of a reliable independence criterion determined on the basis of a percentage share of 25% will be permitted when the relaxation of the criterion serves to increase the reliability of the range of comparables.

Subsection III

Internal and external comparables

Art. 22. The use of internal or external comparables, as defined in § 4 of art. 20, must be assessed on a case-by-case basis, considering the facts and circumstances of the transaction, the degree of comparability of the transactions, taking into account their economically relevant characteristics and the reliability of the information available to carry out the comparability analysis.

§ 1. Transactions between related parties are not considered comparable, even if the parties to the transaction are located in Brazil or one of them is an individual.

Subsection IV

Domestic and non-domestic comparables

The use of domestic or non-domestic comparables must be assessed on a case-by-case basis, considering the facts and circumstances of the transaction, the degree of comparability of the transactions in view of their economically relevant characteristics and the reliability of the information available.

§ 1 For the purposes of this Normative Instruction, the following are considered:

I - domestic comparables - those identified in the geographic market where the tested party operates; and

II - non-domestic comparables - those identified in other geographical markets.

§ 2 - Subject to the provisions of the caput, comparable transactions should normally be identified in the geographic market where the tested party operates ("domestic comparables"), since there may be significant differences in the economic circumstances of different markets.

§ 3 If there is no available or reliable information for the purposes of paragraph 2, non-domestic comparables shall be used, provided that reasonably accurate adjustments can be made to take account of existing material differences.

§ 4 Annex II provides guidance for adjusting comparability in relation to country risk differences.

Subsection V

Transactions not ordinarily considered comparable

Art. 24: The following are not reliable comparables:

I - transactions that have not been carried out in the ordinary course of business; or

II - when one of the purposes of the transaction was to establish a transaction comparable to the controlled transaction.

Subsection VI

Combined transactions

Art. 25: The principle set out in Art. 2 must be applied, in general, to each transaction separately.

§ 1. In specific circumstances, it may be necessary to value two or more transactions in combination when the transactions are intrinsically linked or continuous, in such a way that the combined valuation produces a more reliable result and in accordance with the principle set out in Article 2.

Subsection VII
The use of non-transactional data

Art. 26 - The use of non-transactional data from unrelated parties will be permitted, especially when applying the method provided for in item IV of the main body of art. 33, when such data represents reliable comparables for the controlled transaction.

§ 1 The term "non-transactional data" refers to data aggregated from a set of transactions that cannot be identified at the transactional level.

§ 2 Non-transactional data may be aggregated at the levels:

I - the entity as a whole; or

II - from a segment of the organisation.

§ Non-transactional data will not provide reliable comparables for the controlled transaction when they cover a wide range of materially different transactions in relation to those performed by the tested party.

§ 4 The use of aggregated data at the level of the entity or a segment of the entity, as provided for in Paragraph 2, must be assessed on a case-by-case basis, especially considering the availability of the data and its reliability, including in relation to the criteria adopted for its segmentation, observing that:

I - in general, data from a segment of the entity is considered more reliable than data from the entity as a whole; and

II - data from the entity as a whole may represent better comparables than data from a segment of the entity, in certain circumstances, as set out in paragraph 3, including when the activities reflected in the comparables correspond to the set of controlled transactions carried out by the tested party.

Subsection VIII

Intentional compensation

A related party may offset the benefit provided to another related party in a controlled transaction by means of a benefit received from the other related party in a different controlled transaction.

§ 1 For the purposes of compliance with Article 2, when related parties agree on compensation, the following conditions must be met:

I - the benefit of each transaction must be quantified; and

II - the compensation must involve only two parties and be intentionally agreed between them at the time of concluding the transaction, provided that the agreement has been documented.

§ 2 The offsetting referred to in the heading does not remove the need for the conditions established for the offset transactions to comply with the principle set out in Article 2.

§ 3 The transactions that give rise to offsets must be considered, delineated and documented individually, in their full amount, and the taxpayer's net gain or loss must be computed when determining the basis for calculating the taxes referred to in Article 1.

§ 4 The provisions of this article do not preclude fulfilment of the requirements to record transactions in accordance with accounting standards and compliance with the rules relating to other taxes.

Subsection IX

Temporal issues

Art. 28: The taxpayer must seek to establish the terms and conditions of the controlled transaction in accordance with the principle set out in Art. 2 at the time the controlled transaction is entered into, including the realistically available options.

§ 1 The taxpayer must collect all the information necessary to establish the terms and conditions at the time the controlled transaction is entered into, and may have other information that subsequently becomes known when it relates to that time.

§ 2 If the determination of the transfer price is based on estimated or projected data on costs, expenses, production or profitability, among others, the projections and estimates must be justified on the basis of the experience of previous years and based on economically grounded projections, adjusting the differences in relation to what is actually realised for the purposes of complying with the principle laid down in Article 2, preferably over the course of the calendar year, or at least until its end, observing the provisions of Article 50 if the compensatory adjustment is used.

§ 3 In applying the provisions of the caput, it must be presumed that unrelated parties have knowledge of the significant circumstances of the business relationship, that they behave in a commercially rational manner and take into account the realistically available options in accordance with the provisions of Article 10.

Art. 29: The information on transactions between unrelated parties used for the purposes of analysing comparability should, in principle, be contemporaneous with the conclusion of the controlled transaction, with a view to obtaining information with a greater degree of comparability and reliability.

§ 1 If there is no information available under the terms of the caput, information from comparable non-contemporary transactions that reveal the highest degree of comparability possible and that are reliable should be used, taking into account the economic circumstances of the transactions and making any necessary adjustments.

§ 2 The provisions of Paragraphs 3 and 4 of Article 37 shall apply to transactions in which the method provided for in item I of the main body of Article 33 is applied on the basis of the quotation price.

The use of data from multiple years on comparable transactions may be admitted when it increases the reliability of the comparability analysis, including to improve the understanding of the facts and circumstances of the controlled transaction, in particular those that could or should have influenced the determination of the value of the transaction in accordance with the provisions of Article 2.

§ 1 The extent to which it is appropriate to consider data from multiple years when carrying out the comparability analysis depends on the method applied and the specific circumstances of each case.

§ 2 The use of data from multiple years is not commonly appropriate for the purposes of applying the CUP method.

§ 3 Circumstances which, as the case may be, may justify the use of multi-year data include, for example, the effect of business cycles in the taxpayer's sector of activity and the effects of product life cycles.

§ 4 In the event that data from multiple years of comparable transactions is used to form the range referred to in Article 47, the arithmetic average of the financial indicators of each of the comparables in the multiple years shall be calculated, and the value thus obtained shall be used to form the range of comparables.

§ 5 For the purposes of the provisions of Paragraph 4, the weighted arithmetic average shall be used according to the following denominators used in the calculation of the financial indicator examined under the most appropriate method:

I - net resale revenue, in the case of the method provided for in item II of the caput of art. 33;

II - the direct and indirect costs associated with the transaction, in the case of the method provided for in item III of the main body of article 33; and

III - the net revenue, direct and indirect costs, operating assets or other denominator used in the profitability indicator for calculating the net margin of the method provided for in item IV of the caput of article 33.

§ 6 - When analysing multiple years, especially when using the method provided for in item IV of the caput of Article 33 based on external comparables, the following requirements shall be taken into account:

I - the multi-year average of the comparables must be obtained, in principle, from the last 3 (three) years, i.e. the current or previous year, depending on the availability of the information, plus 2 (two) immediately preceding years;

II - in exceptional cases, in line with the facts and circumstances, and provided that duly justified by the taxpayer in view of the principle referred to in art. 2, the use of data covering different periods may be appropriate; and

III - non-related parties whose weighted average financial indicators are negative for multiple years and those with negative financial indicators for more than one period should be rejected from the range.

§ 7 Annex III exemplifies the determination of the financial indicator range with multi-year data in accordance with Paragraphs 4 to 6.

Subsection X

Synergies

The benefits or losses obtained as a result of group synergy effects, resulting from deliberate action in the form of functions performed, assets utilised or risks assumed that produce an identifiable advantage or disadvantage in relation to other market participants, shall be allocated between the parties to the controlled transaction in proportion to their contributions to the creation of the synergy effect and shall be subject to offsetting.

§ 1 The effects of group synergy that do not result from a deliberate action under the terms of the caput and are merely the result of the entity's participation in the multinational group shall be considered incidental benefits and shall not be subject to compensation.

§ 2 The effects of group synergy, including in the case of incidental benefits not subject to offsetting, should be taken into account in the comparability analysis.

Subsection XI

Comparability adjustments

Art. 32: Reasonably accurate comparability adjustments must be made to eliminate the material effects of differences in relation to the controlled transaction or the tested party, provided that:

I - comparability adjustments to eliminate material differences should be made if, and only if, they are expected to increase the reliability of the results;

II - comparability adjustments must be made after applying consistent criteria for filtering and selecting transactions between unrelated parties that reveal the highest degree of comparability;

III - the same difference must not be adjusted more than once by means of the same comparability adjustment, or of different adjustments, so that the effect of the adjustment that eliminates the same difference multiple times is not calculated;

IV - the need to make numerous or substantial comparability adjustments may indicate that transactions between unrelated parties are not sufficiently comparable; and

V - each adjustment must be duly justified and documented, including the provision of information demonstrating the need for each adjustment with reference to the differences, with statements of the grounds for making the adjustments, the procedures adopted and the calculations made, detailing all the steps followed, the variables used and the results obtained in the comparisons.

§ 1 The determination of the relevance of differences in economic characteristics, and of their possible material effect on financial indicators, and of the need for reasonably precise adjustments to be made to eliminate the material effects of such differences will depend on an analysis of the facts and circumstances of each case.

§ 2 are examples of comparability adjustments that must be made depending on each case:

I - accounting standard and consistency adjustments, including exchange rate adjustments;

II - adjustments for differences in functions, risk-taking, assets and capital, including working capital;

III - adjustments to contractual terms, including, for example, sales conditions (volume, payment term and International Commercial Terms - Incoterm), debt amortisation or early settlement conditions and contractual options;

IV - adjustments to the financial statements to segment its activities, including the elimination of non-comparable transactions or transactions between related parties;

V - adjustments to the characteristics of goods and services;

VI - adjustments for market differences, including country risk adjustments; and

VII - netback adjustment.

§ 3 Annex IV exemplifies the netback adjustment referred to in item VII of Paragraph 2.

Section III

Methods

Subsection I

Selecting the most appropriate method

Art. 33: For the purposes of this Normative Instruction, the most appropriate method will be selected from among the following:

I - Comparable Uncontrolled Price - CUP;

II - Resale Price Minus - RPM;

III - Cost plus Method - CPM;

IV – Transactional Net Margin Method - TNMM;

V – Profit Split Method - PSM; and

VI - other methods, provided that the alternative methodology adopted produces a result consistent with that which would be achieved in comparable transactions between unrelated parties.

The most appropriate method is that which provides the most reliable determination of the terms and conditions that would be established between unrelated parties in a comparable transaction, including the following aspects:

I - the facts and circumstances of the controlled transaction and the appropriateness of the method in relation to the nature of the transaction, determined in particular by analysing the functions performed, the risks assumed and the assets used by the parties involved in the controlled transaction and considering the advantages and disadvantages of each method;

II - the availability of reliable information on comparable transactions between unrelated parties necessary for the consistent application of the method; and

III - the degree of comparability between the controlled transaction and transactions between unrelated parties, including the need and reliability of making adjustments to eliminate the effects of any differences between the compared transactions.

§ 1 The completeness and accuracy of the information on comparable transactions, the reliability of the assumptions made and the sensitivity of the results to possible deficiencies arising from these assumptions and information are particularly relevant when assessing the degree of comparability referred to in item III of the heading.

§ 2 The CUP method will be considered the most appropriate when there is reliable information on prices or values of consideration arising from comparable transactions between unrelated parties, unless it can be established that another method provided for in the main body of Article 33 is more appropriately applicable, with a view to observing the principle provided for in Article 2.

§ 3 The use of a combination of methods may be appropriate when the aspects indicated in the caput of this article show that the use of a single method is inconclusive.

§ 4 In the event that the methods provided for in items I to III and the methods provided for in items IV and V, all of the main body of Article 33, can be applied with an equal degree of reliability, the use of the methods provided for in items I to III shall be preferable.

Subsection II
The CUP method

Art. 35: The CUP method consists of comparing the price or value of the consideration for the controlled transaction with the prices or values of the consideration for comparable transactions between unrelated parties.

§ 1 The reliability of the CUP method is generally conditional on a significant similarity between the economically relevant characteristics of the comparable transaction and those of the controlled transaction, since any differences can have a material impact on the price of the transactions, especially with regard to the characteristics of the goods and services that are the subject of the transaction.

§ The following are examples of factors that may be particularly relevant when applying this method:

I - characteristics of the goods and services and their quality;

II - contractual terms, including delivery terms, negotiated volume and debt amortisation or early settlement conditions and contractual options;

III - the market level (retail or wholesale);

IV - date and time of transactions, especially in the case of commodities; and

V - price differences in geographical markets.

§ 3 In order to assess whether controlled and non-controlled transactions are comparable, the effect on the price of the functions performed must also be taken into account and not only the comparability of the characteristics of the goods and services.

Art. 36: For the purposes of the provisions of art. 37, the following shall be considered:

I - commodity - the physical product, regardless of its stage of production, and derivative products for which quotation prices are used as a reference by unrelated parties to establish prices in comparable transactions; and

II - quotation price - quotations or indices obtained from recognised and reliable commodities and futures exchanges, research agencies or government agencies, which are used as a reference by unrelated parties to establish prices in comparable transactions.

§ 1. The assessment of the use of the quotation prices referred to in item II of the caput as a reference by unrelated parties should consider whether they are widely and routinely used by unrelated parties in comparable transactions.

Art. 37: If there is reliable information on comparable independent prices for the commodity traded, including quotation prices or prices practised with unrelated parties ("internal comparables"), the CUP method shall be considered the most appropriate method for determining 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 the other elements referred to in Art. 34. 34, including the functions, assets and risks of each entity in the value chain, that another method is more appropriately applicable, with a view to observing the principle set out in Art. 2.

§ 1 If there are differences between the conditions of the controlled transaction and the conditions of transactions between unrelated parties or the conditions that determine the quotation price that materially affect the price of the commodity, adjustments will be made to ensure that the economically relevant characteristics of the transactions are comparable.

§ 2 The adjustments provided for in Paragraph 1 shall not be made if they affect the reliability of the CUP method and justify the consideration of other transfer pricing methods, pursuant to Article 34.

§ 3 In the event that the CUP method is applied on the basis of the quotation price, the value of the commodity shall be determined on the basis of the date or period of dates agreed by the parties to price the transaction when:

I - the taxpayer provides timely and reliable documentation proving the date or period of dates agreed by the parties to the transaction, including information on the determination of the date or period of dates used by the related parties in the transactions carried out with the final clients, unrelated parties, and registers the transaction, as established in art. 38; and

II - the date or period of dates specified in the documentation submitted is consistent with the actual conduct of the parties and with the facts and circumstances of the case, subject to the provisions of arts. 9 to 19 and the principle set out in art. 2.

§ 4 If the provisions of Paragraph 3 are not complied with, the tax authority may determine the value of the commodity on the basis of the relevant quotation price:

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

II - the average 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.

§ 5 Information contained in public prices must be used for transfer pricing control in the same way as it would be used by unrelated parties in comparable transactions.

§ 6. In extraordinary market conditions, the use of public prices will not be appropriate for transfer pricing control if it leads to a result incompatible with the principle set out in Article 2.

§ 7. For the purposes of this article, an end customer shall be deemed to be the first purchaser who is an unrelated party under the terms of articles 4 to 6 and provided that there is no other purchaser who is a related party at a subsequent stage.

Art. 38: The taxpayer shall register controlled commodity export and import transactions by declaring their information as established in art. 64.

§ 1. Until the RFB establishes a specific mechanism for providing the information referred to in art. 64, compliance with the provisions of item I of § 3 of art. 37 will not be required with regard to the requirement to record the transaction as a condition for determining the value of the commodity based on the date or period of dates agreed by the parties to price the transaction, and the other requirements set out in § 3 of art. 37 will remain applicable.

Subsection III
The RPM method

The RPM method consists of comparing the gross margin that an acquirer of a controlled transaction obtains on the subsequent resale to unrelated parties with the gross margins obtained on comparable transactions between unrelated parties.

§ 1 The gross margin referred to in the caput shall be defined as the ratio between the gross profit and the net revenue of the resale associated with the transaction, representing the amount that an unrelated party would require to cover the operating expenses related to that transaction and which, considering the functions performed, assets used

and risks assumed, provides the operating profit that would be established between unrelated parties in a comparable transaction.

§ 2 The RPM method is generally more appropriate for transactions that are commercial in nature and, in general, its reliability will decrease to the extent that the reseller adds value to the object of the resale by performing additional functions, including processing, or when there has been participation by the reseller in the development, maintenance or utilisation of intangibles associated with the product that are held by a related party.

§ 3 For the purposes of paragraph 2, packaging, labelling and small assembly activities do not constitute added value that necessarily prevents the use of the RPM method.

§ 4 Although greater differences between products and comparables are more acceptable in the RPM method than in the CUP method, it is more likely that they may reflect differences in functions that have not been adequately identified, so the reliability of applying the RPM method will increase as there is a greater degree of comparability between the products involved in the analysis.

§ 5 The following comparability factors are particularly relevant for the RPM method:

I - the functions performed, risks assumed and assets used;

II - the contractual terms, especially the scope of the guarantees provided, the volumes of purchases and sales, the credits negotiated and the transport conditions;

III - sales, marketing and advertising programmes and services, including promotional programmes, discounts and cooperative advertising;

IV - the market level (retail or wholesale); and

V - foreign exchange risks.

§ 6 The degree of consistency between the accounting criteria used in the information of the controlled transaction and comparable transactions that materially affect the gross margin of the transactions influences the reliability of the result achieved through the application of the RPM method.

§ 7 - If necessary, adjustments should be made to eliminate the material effects of any divergences that affect comparability, including between the accounting criteria of the information of the controlled transaction and the comparable transactions, in order to ensure that similar criteria are used to determine the gross margin of the compared transactions.

Subsection IV
The Cost Plus method

The Cost Plus method consists of comparing the gross profit margin obtained on the supplier's costs in a controlled transaction with the gross profit margins obtained on the costs in comparable transactions carried out between unrelated parties.

§ 1 The gross profit margin referred to in the caput shall be defined as the ratio between the gross profit and the sum of the direct and indirect costs associated with the transaction, representing the amount that an unrelated party would require to cover the operating expenses related to that transaction and which, considering the functions performed, assets used and risks assumed, provides the operating profit that would be established between unrelated parties in a comparable transaction.

§ The Cost Plus method is generally more appropriate for controlled transactions consisting of the supply of semi-finished products or services.

§ Although greater differences between products and their comparables are more acceptable under Cost Plus than under CUP, it is more likely that they may reflect differences in functions that have not been properly identified, so the reliability of applying the Cost Plus method will increase as there is a greater degree of comparability between the products involved in the analysis.

§ 4 The following comparability factors are particularly relevant for Cost Plus:

I - the functions performed, risks assumed and assets used, including the complexity and type of industrialisation or assembly;

II - purchasing and inventory control activities;

III - testing functions;

IV - foreign exchange risks; and

V - the contractual terms, especially the scope of the guarantees provided, the volumes of purchases and sales, the credits negotiated and the transport conditions.

§ 5 The degree of consistency between the accounting criteria used in the information of the controlled transaction and comparable transactions that materially affect the gross profit margin of the transactions influences the reliability of the result achieved through the application of the Cost Plus method.

§ 6 - If necessary, adjustments should be made to eliminate the material effects of divergences that affect comparability, including between the accounting criteria of the information of the controlled transaction and the comparable transactions, in order to ensure that similar criteria are used to determine the gross profit margin of the compared transactions.

Subsection V
The TNMM method

The TNMM method consists of comparing the net margin of the controlled transaction with the net margins of comparable transactions between unrelated parties, both calculated on the basis of an appropriate profitability indicator.

§ 1 Net margin is the ratio between the operating profit of the controlled transaction and a denominator that reflects an appropriate profitability indicator.

§ 2 For the purposes of determining the net margin, the following criteria must be observed, except when there is a more appropriate treatment to reflect the correct application of the principle set out in Article 2:

I - items of an operational nature that are directly or indirectly related to the controlled transaction should be computed;

II - items not related to the controlled transaction and which materially affect comparability must be excluded;

III - non-operating or financial income and expenses, in general, and expenses or provisions for taxes on profit should not be computed.

§ 3 Subject to the provisions of Article 26, an appropriate level of segmentation of financial information may be necessary for the determination of the profitability indicator to be compared, if the tested party engages in a variety of controlled transactions.

§ 4 The reliability of the TNMM method may be adversely affected by other factors that have less effect on the CUP, RPM and Cost Plus methods, such as, depending on the facts and circumstances of each case, the competitive position, management efficiency and commercial strategy, differences in the cost of capital and the degree of business experience.

§ 5 The degree of consistency between the accounting criteria used in the information of the controlled transaction and comparable transactions that materially affect the net margin of the transactions influences the reliability of the result achieved through the application of the TNMM method.

§ 6 - If necessary, adjustments should be made to eliminate the material effects of any divergences that affect comparability, including between the accounting criteria of the information of the controlled transaction and the comparable transactions.

Art. 42 The selection of the appropriate profitability indicator must be based on the criteria set out in art. 34, in order to provide the most reliable determination of the terms and conditions that would be established between unrelated parties in a comparable transaction.

§ 1 Subject to the provisions of the heading, the selection of the denominator used in the profitability indicator for calculating the net margin must be consistent with the functional profile of the tested party, and typically the following may be used:

I - the net revenue of the transaction, generally for cases of resale to unrelated parties;

II - the direct and indirect costs of the good or service, generally in the case of industrial activity or the provision of services;

III - operating assets, generally in capital-intensive activities; and

IV - others, if the denominators provided for in items I to III are less reliable.

§ 2 The selected denominator must be reasonably independent of transactions between related parties.

§ 3 In the event that the denominator is materially affected by transactions between related parties, these may not materially distort the analysis or the reliability of the method, and these transactions must also have been priced in accordance with Article 2.

§ 4 The denominator must be capable of being measured reliably and consistently for controlled and comparable transactions.

§ 5 - Subject to the provisions of this article, in particular the provisions of item IV of Paragraph 1, the ratio between gross profit and operating expenses - Berry ratio may be used as a financial indicator in exceptional circumstances:

I - the value of the functions performed in the controlled transaction, considering the assets used and risks assumed, is proportional to the operating expenses;

II - the value of the functions performed, considering the assets used and risks assumed, is not materially affected by the value of the products sold or services rendered; and

III - the entity does not perform other significant functions in the controlled transactions that should be remunerated using another financial method or indicator.

§ 6 The reliability of the financial indicator referred to in Paragraph 5 is particularly dependent on the extent to which the composition of the operating expenses of the tested party is similar to that of unrelated parties.

Subsection VI

Provisions common to the RPM, Cost Plus and TNMM methods

Art. 43 The following considerations are particularly useful when applying the RPM, Cost Plus and TNMM methods:

I - the reliability of the methods referred to in the heading is unlikely for the purposes of complying with the principle set out in Article 2 if the parties to the controlled transaction make unique and valuable contributions, in which case the Profit Split will generally be the most appropriate;

II - comparability under the methods referred to in the heading is dependent on the similarity of the functions performed, risks assumed and assets used, although the other economically relevant characteristics of the transactions should also be considered; and

III - the application of the methods referred to in the caput may be carried out using information from internal or external comparables, subject to the provisions of art. 22.

Subsection VII
The Profit Split method

Art. 44: The Profit Split method consists of dividing the profits or losses, or part of them, in a controlled transaction according to what would be established between unrelated parties in a comparable transaction, taking into account the relevant contributions provided in the form of functions performed, assets utilised and risks assumed by the parties involved in the transaction.

§ 1 The profits or losses to be divided under the Profit Split method are those of the related parties resulting from the controlled transaction.

§ 2 The Profit Split method is generally more appropriate for cases in which:

I - each of the parties to the controlled transaction makes unique and valuable contributions, especially intangible contributions, to the controlled transaction;

II - there are highly integrated operations; or

III - the parties share the assumption of economically significant risks or separately assume closely interrelated risks.

§ 3: Unique and valuable contributions will be considered when:

I - they are not comparable to contributions made by unrelated parties in comparable circumstances; and

II - they represent an essential source for the generation of actual or potential economic benefits in operations.

§ 4 Highly integrated transactions shall be those in which the isolated assessment of the performance of functions, utilisation of assets and assumption of risks of each of the parties to the controlled transaction cannot be reliably carried out.

§ 5 The absence of comparables alone is not sufficient to determine that the Profit Split is the most appropriate method.

§ 6. The division of results can be done in the following ways:

I - contribution analysis, according to which the total profit or loss of the controlled transactions is divided among the related parties according to a criterion or apportionment factor that reflects the contributions of the parties and that would be adopted in comparable transactions between unrelated parties; and

II - residual analysis, to be carried out in two stages as follows:

a) determining the remuneration of the less complex contributions, based on one of the methods set out in items I to IV of the main body of article 33; and

b) division of the residual profit according to a criterion or apportionment factor that reflects the contributions of the parties and that would be adopted in comparable transactions between unrelated parties.

§ 7 In the contribution analysis or in the second stage of the residual analysis:

I - the criterion or apportionment factor used for the division of profits must be similar to that which unrelated parties would use in comparable transactions; or

II - if there is no reliable criterion or comparable factor, the apportionment shall be based on the value of the relative contributions of each related party participating in the controlled transactions, according to the group's internal information, in a division that unrelated parties would have agreed upon.

§ 8. The determination of the profits to be shared under the Profit Split method shall be aligned with the risks identified in the design of the controlled transaction as follows:

I - actual profit sharing, when the parties share the assumption of the same economically significant risks associated with the business opportunity or separately assume risks closely associated with the business opportunity; or

II - division of projected profits, when one of the parties does not share the assumption of the same economically significant risks and does not separately assume risks closely associated with the business opportunity that may occur after the conclusion of the transaction.

§ 9 - Examples of apportionment criteria or factors used, alone or in combination, are as long as they indicate a reliable form and reflect the relative contributions to the generation of income, in line with that which would be used by unrelated parties:

I - assets;

II - capital;

III - costs;

IV - increase in revenue;

V - employee remuneration; and

VI - number of people involved or time spent by employees with similar qualifications and responsibilities.

§ 10 The choice of apportionment criteria or factors, and their relative weight in cases where more than one factor is used, shall take into account:

I - the use of objective and independent data, excluding transactions between related parties;

II - its verifiability;

III - whether it is based on comparables, internal data or both; and

IV - functional analysis and the context in which transactions take place.

§ 11 Differences in accounting standards and rules, including with regard to the timing of recognition and treatment of expenses, should be identified and consistently standardised.

§ 12 The relevant results to be divided and the apportionment factors used must be determined at the time the transaction was entered into, taking into account the facts and circumstances known to the parties or reasonably foreseeable to them, and consistently maintained throughout the lifetime of the agreement, unless extraordinary facts and circumstances reveal that different results and factors would have led to the renegotiation of the agreement if they had occurred between unrelated parties.

Subsection VIII
Other methods

Art. 45: For the purposes of this Normative Instruction, other methods may be selected, under the terms of item VI of the caput of art. 33, if:

I - the alternative methodology adopted produces a result consistent with that which would be achieved in comparable transactions between unrelated parties; and

II - the methods set out in items I to V of the main body of article 33 are not applicable to the controlled transaction, or do not produce reliable results, and the alternative methodology selected is considered more appropriate.

§ 1 The use of other methods includes generally accepted techniques or models for the economic valuation of assets, in particular income-based valuation methods, such as the discounted cash flow methodology which, in general, will be more appropriate in the event of transactions involving intangibles that are difficult to value or shareholdings for which it is not possible to identify reliable comparables at the time of their transfer between related parties.

§ 2 When the taxpayer selects other methods referred to in the caput, it must:

I - demonstrate, through the transfer pricing documentation referred to in TITLE IV, compliance with the provisions of the heading of this article;

II - adopt reasonable and reliable valuation criteria and critical assumptions, especially regarding financial projections, growth and discount rates, useful life and other elements used in the analysis; and

III - itemise in detail in the transfer pricing documentation referred to in TITLE IV the criteria used, including assumptions about the risks inherent in the valuation technique employed and any other elements that are relevant to the analysis.

Subsection IX
The tested part

Art. 46: In the event that the application of the method requires the selection of one of the parties to the controlled transaction as the tested party, the party for which the method can be applied most appropriately and for which the most reliable data is available on comparable transactions between unrelated parties shall be selected.

§ 1 The following methods require the selection of one of the parties to the controlled transaction, whose respective financial indicator will be examined:

I - RPM;

II - Cost Plus;

III - TNMM; and

IV - the first stage of the Profit Split residual analysis.

§ 2 The choice of tested part must be consistent with the functional analysis and, in general, will be the one with the least complex functional profile.

§ 3 In the residual analysis of the Profit Split referred to in Paragraph 1(IV), it may be necessary for other parties to be tested if they have less complex contributions.

§ 4 The tested party in a controlled transaction may be located in Brazil or abroad, subject to the provisions of the caput.

§ 5 - The taxpayer must provide the information necessary for the correct determination of the functions performed, the risks assumed and the assets used by the parties to the controlled transaction, in order to demonstrate the appropriate selection of the tested party and will prove the reasons and justifications for the selection made.

§ 6 - In the event of non-compliance with the provisions of Paragraph 5 and the information available regarding the functions, risks and assets of the other party to the transaction is limited, only the functions, risks and assets that can be reliably determined as effectively performed, assumed or utilised shall be allocated to this party to the transaction and the remaining functions, risks and assets identified in the controlled transaction shall be allocated to the related party in Brazil.

Section IV
The comparable range

Art. 47: When the application of the most appropriate method leads to a range of observations of financial indicators of comparable transactions between unrelated parties, the appropriate range shall be used to determine whether the terms and conditions of the controlled transaction are in accordance with the principle set out in Art. 2.

§ 1 The appropriate interval will be determined in accordance with the following criteria:

I - the interval must be made up of observations obtained from comparables in accordance with the provisions of Article 7;

II - the selected observations that have a lower degree of comparability in relation to the controlled transaction or that are not sufficiently reliable must be eliminated;

III - after the elimination referred to in item II, if uncertainties remain regarding the degree of comparability of the comparable transactions in relation to the controlled transaction that have not been precisely identified or quantified and adjusted, or if any uncertainty remains regarding reliability, the interquartile range shall be considered as the appropriate range; and

IV - if there are no uncertainties about the degree of comparability of the comparable transactions in relation to the controlled transaction, nor about their reliability, the full range will be considered the appropriate range.

§ 2 When the application of the most appropriate method leads to the identification of a comparable that presents the highest degree of reliability and comparability in relation to the controlled transaction, the use of the interquartile range will not be appropriate.

§ 3 Reliability shall be determined on the basis of access to the necessary information on comparability factors that allow a reliable comparison of controlled transactions with comparable ones.

§ 4 The assessment of the uncertainties referred to in Paragraph 1 shall consider the following criteria, among others:

I - whether the information available on the controlled transaction and the compared transaction is sufficiently complete and accurate to determine the effect of the differences between the compared transactions in relation to the relevant comparability factors;

II - the likelihood that all material differences have been identified, that their effects are definitive and reasonably determinable and that appropriate adjustments have been made;

III - the nature and number of comparability adjustments, the magnitude and impact of each adjustment, and the reliability of the manner in which the adjustment was made in light of the method adopted;

IV - the existence of significant differences between the points in the range may indicate that there are unidentified or unadjusted comparability differences; and

V - when the comparables demonstrate differences in comparability due to economic circumstances, originate in different years or a multi-year analysis is performed, or the comparables are selected from different markets in relation to the controlled transaction.

§ 5. Subject to the provisions of Article 49, when the financial indicator of the controlled transaction examined under the most appropriate method falls within the appropriate range, the terms and conditions of the controlled transaction shall be deemed to be in accordance with the principle set forth in Article 2, in which case the adjustments mentioned in Article 48 shall not be required.

§ 6. For the purposes of determining the adjustments referred to in Article 48, when the financial indicator of the controlled transaction examined under the most appropriate method is not within the appropriate range, the median value shall be attributed to the controlled transaction.

§ 7 Statistical measures other than those provided for in this article may be used in the event of the implementation of results agreed in dispute settlements carried out within the scope of international agreements or conventions to eliminate double taxation to which Brazil is a signatory, in specific consultation processes on transfer pricing, as well as in other cases to be regulated by the RFB.

§ 8 Annex V provides guidance on calculating the median and interquartile range.

Section V

Adjustments to the calculation base

Subsection I
Preliminary provisions

Art. 48: For the purposes of this Normative Instruction, the following are considered:

I - spontaneous adjustment - the adjustment made by the legal entity domiciled in Brazil directly in the calculation of the tax base referred to in art. 1 with a view to adding the results that would have been obtained if the terms and conditions of the controlled transaction had been established in accordance with the principle set out in art. 2;

II - compensatory adjustment - the adjustment made by the parties to the controlled transaction up to the end of the calendar year in which the transaction is carried out with a view to adjusting its value in such a way that the result obtained is equivalent to that which would have been obtained if the terms and conditions of the controlled transaction had been established in accordance with the principle set out in art. 2; and

III - primary adjustment - the adjustment made by the tax authority with a view to adding to the tax base referred to in art. 1 the results that would have been obtained by the legal entity domiciled in Brazil if the terms and conditions of the controlled transaction had been established in accordance with the principle set out in art. 2.

Art. 49: When the terms and conditions established in the controlled transaction differ from those that would be established between unrelated parties in comparable transactions, the tax base referred to in Art. 1 shall be adjusted so as to compute the results that would have been obtained if the terms and conditions of the controlled transaction had been established in accordance with the principle set out in Art. 2.

§ 1 The legal entity domiciled in Brazil shall make the spontaneous or compensatory adjustment when non-compliance with the provisions of Article 2 results in the calculation basis of the taxes referred to in Article 1 being lower than that which would be calculated if the terms and conditions of the controlled transaction had been established in accordance with those that would be established between unrelated parties in comparable transactions.

§ 2 In the event of non-compliance with the provisions of this article, the fiscal authority shall make the primary adjustment.

§ 3. Adjustments will not be allowed with a view to:

I - reduce the calculation base of the taxes referred to in art. 1; or

II - increase the value of the IRPJ tax loss or the CSLL negative calculation basis.

§ 4 The prohibition provided for in Paragraph 3 shall not apply in the following cases:

I - compensatory adjustments made in compliance with the form and conditions set out in art. 50; or

II - of results agreed in dispute resolution mechanisms provided for in international agreements or conventions to eliminate double taxation to which Brazil is a signatory.

§ 5 - The spontaneous adjustment and the primary adjustment must be computed in the IRPJ and CSLL calculation basis for the calculation periods ending on 31 December, even if the calculation regime is quarterly, except in the case of incorporation, merger, spin-off or closure of activities, where the adjustment will be made on the date of the special event.

§ 6 - In the event that the taxpayer opts for annual real profit, the adjustments provided for in this article do not apply when calculating the bases for calculating estimated payments.

§ 7. For the purposes of the provisions of the caput, it is understood that the terms and conditions established in the controlled transaction diverge from those that would be established between unrelated parties in comparable transactions, including when they do not include terms and conditions that would be established by unrelated parties in a comparable transaction.

§ 8 - The fiscal authority may use the information on comparables available up to the moment referred to in Paragraph 2 of Article 50 to make the primary adjustment.

Subsection II

Compensatory adjustment

Art. 50 - Subject to the provisions of art. 28, the compensatory adjustment must comply with the following forms and conditions:

I - be carried out symmetrically and definitively in the bookkeeping of the legal entity domiciled in the country and of the other parties to the controlled transaction, observing the same value and nature of the controlled transaction;

II - be supported by the issue of debit or credit notes or tax and commercial documentation, as the case may be, indicating the nature and amount of the adjustment;

III - be ratified by a declaration from the legal representative of the other parties to the controlled transaction, stating that they have made the adjustment in the same amount as that made by the legal entity domiciled in the country, attested to by the latter's representative; and

IV - does not refer to transactions carried out by a legal entity resident or domiciled in Brazil with any entity characterised in the hypotheses set out in articles 24 and 24-A of Law no. 9430 of 1996.

§ 1 The adjustment referred to in the heading is independent of prior authorisation from the RFB, without prejudice to the possibility of its subsequent verification in a tax procedure.

§ 2 The compensatory adjustment may be made up to the time of submission of the Tax Accounting Bookkeeping - ECF, as long as its accounting record is made, on a permanent basis, in the accounting bookkeeping of the legal entity for the calendar year relating to the calculation period to which the controlled transaction refers.

§ 3 In the event of compensatory adjustments that result in an increase in the calculation basis of the taxes referred to in Article 1 or a decrease in the amount of the IRPJ tax loss or the CSLL negative calculation basis, the forms and conditions set out in items III and IV of the heading shall not apply.

§ 4 If more than one compensatory adjustment is made in relation to the same party for transactions carried out in the same calendar year, the taxpayer may obtain a single declaration, in accordance with the provisions of item III of the caput, for the set of adjustments in relation to the same party.

§ 5. The documents provided for in item II of the caput must indicate which controlled transactions they refer to.

Subsection III

Effects on other taxes

Art. 51 - Spontaneous or compensatory adjustments do not automatically imply adjustments to the basis for calculating other taxes, including those levied on the import of goods and services, which must be calculated in compliance with the legislation applicable to each tax.

TITLE III
SPECIAL MEASURES AND THE LEGAL CERTAINTY INSTRUMENT

SINGLE CHAPTER
ON SIMPLIFICATION MEASURES AND OTHER MEASURES

Section I
Preliminary provisions

Art. 52: The RFB may establish specific rules to regulate the application of the principle set out in Art. 2 to certain situations, especially for:

I - simplify the application of the stages of the comparability analysis, including to dispense with or simplify the presentation of the documentation referred to in TITLE IV;

II - provide additional guidance in relation to specific transactions, including transactions with intangibles, cost-sharing agreements, business restructuring, centralised treasury management agreements and other financial transactions; and

III - establish the treatment for situations in which the information available regarding the controlled transaction, the related party or comparables is limited, in order to ensure the proper application of the provisions of this Normative Instruction.

Section II

Low value-added intra-group services

Art. 53 - In the case of a controlled transaction consisting of the provision of low value-added services, the taxpayer may opt for a simplified approach to the application of this Normative Instruction, according to which the remuneration for said services will have a gross profit margin, calculated on the total direct and indirect costs relating to the transaction, of:

I - at least 5% (five per cent), in the event that the service provider is a legal entity domiciled in Brazil;

II - a maximum of 5% (five per cent) in the event that the provider is a related party abroad.

§ 1 - Only those services with low added value will be considered:

I - are of a support nature;

II - are not part of the main activities of the related party or multinational group;

III - do not require the use of unique and valuable intangible assets and do not contribute to their creation;

IV - do not imply the assumption or control of economically significant risks by the service provider and do not lead to the creation of such a significant risk for it; and

V - do not contribute significantly to the creation, increase or maintenance of value in the multinational group, to essential capabilities or to the chances of success of the multinational group's business.

§ 2. Low value-added services that the multinational group also provides to unrelated parties are not considered to be low value-added services.

§ 3. If necessary, an appropriate attribution method or apportionment criterion must be used to determine the cost of intra-group services with low added value among the members of the group in proportion to the benefits or expected benefits for each member of the group.

§ 4 The services referred to in § 1 do not include:

I - services that constitute one of the main business activities of the multinational group;

II - research and development (R&D) activities, including software development, unless they fall within the scope of low value-added information technology services;

III - manufacturing and production services;

IV - purchasing activities related to raw materials or other materials that are used in the manufacturing or production process;

V - sales, marketing and distribution activities;

VI - financial transactions;

VII - extraction, exploitation or processing of natural resources;

VIII - insurance and reinsurance activities;

IX - senior corporate management services, with the exception of those consisting of the management of services that qualify as low value-added services; and

X - international transport, leasing or chartering services.

§ 5 Examples of low value-added services are:

I - human resources management services;

II - accounting, auditing, processing and account management services;

III - legal services;

IV - information technology (IT) services that are not part of the group's core business, for example, the installation, maintenance and updating of IT systems used in the business, training on the use or application of information systems or the development of IT guidelines; and

V - other general administrative or clerical services.

§ 6 For the purposes of this article, payments for low value-added services will only be considered deductible from the IRPJ and CSLL calculation basis when the activity carried out by the other party provides a reasonable expectation of economic or commercial value for the taxpayer, in order to improve or maintain its commercial position, in such a way that unrelated parties, in comparable circumstances, would be willing to pay for the activity or carry it out on their own account.

TITLE IV
DOCUMENTATION AND PENALTIES

Art. 54: The taxpayer shall submit the documentation and provide the information necessary to demonstrate that the IRPJ and CSLL calculation bases relating to its transactions subject to transfer pricing control are in conformity with the principle set out in art. 2, including those necessary to delineate the transaction and analyse comparability.

Art. 55: For the purposes of art. 54, the taxpayer must submit:

I - Country-by-Country Statement, containing information on the global allocation of revenues and assets and the income tax paid by the multinational group to which it belongs, together with indicators relating to the global economic activity of the multinational group;

II - Global File, containing information on the structure and activities of the multinational group to which it belongs and the other entities that make up the multinational group; and

III - Local File, containing information relating to the controlled transactions and the parties involved in the controlled transactions.

§ 1 The submission of the Country-by-Country Report shall comply with the provisions of Instruction Normative RFB December 2016.

§ 2 The presentation of the documentation referred to in this article does not exempt the taxpayer from the obligation to present documents and evidence and to provide additional clarifications that may be requested by the tax authority.

Art. 56: The taxpayer will submit the Global File and the Local File in Digital Process, through the service available at the RFB's Virtual Service Centre - e-CAC, within 3 (three) months of the deadline for transmitting the ECF for the corresponding calendar year.

§ 1 Part of the information provided for in articles 59 and 60 will also be provided in the ECF, considering the definitions and instructions contained in the ECF Readout Guidance Manual, published by the General Inspection Coordination through an Executive Declaratory Act (ADE) published in the Federal Official Gazette (DOU).

§ 2 For the calendar year 2024 or, if the option provided for in Article 45 of Law 14,596 of 2023 is made, for the calendar year 2023, the deadline for submitting the Global File and the Local File will be the last working day, respectively, of the calendar years 2025 and 2024.

Art. 57: The Local File:

I - must be prepared in accordance with the provisions of articles 59 and 60, if the total value of the taxpayer's controlled transactions, before transfer pricing adjustments, in the calendar year prior to the calendar year to which the Local File refers is greater than or equal to R$ 500,000,000.00 (five hundred million reais);

II - must be prepared in accordance with the provisions of article 61, if the total value of the taxpayer's controlled transactions, before transfer pricing adjustments, in the calendar year prior to the calendar year to which the Local File refers is greater than or equal to R$ 15,000,000.00 (fifteen million reais) and less than R$ 500,000,000.00 (five hundred million reais); and

III - will be waived if the total value of the taxpayer's controlled transactions, before transfer pricing adjustments, in the calendar year prior to the calendar year to which the Local File refers is less than R$ 15,000,000.00 (fifteen million reais).

§ 1 The Global File will be dispensed with in the event of item III of the heading.

§ 2 For the purposes of items I and II of the caput, the Local File must include:

I - the following controlled transactions with the highest value in the calendar year, before transfer pricing adjustments:

a) the import of goods, which together represent 80% (eighty per cent) of the total value of controlled transactions involving the import of goods in the calendar year, with the exception of transactions involving commodities, which must be reported in their entirety;

b) the export of goods, which together represent 80% (eighty per cent) of the total value of controlled transactions involving the export of goods in the calendar year, with the exception of transactions involving commodities, which must be reported in their entirety;

c) the import of services, which together represent 80% (eighty per cent) of the total value of controlled transactions involving the import of services in the calendar year; and

d) service exports, which together represent 80% (eighty per cent) of the total value of controlled service export transactions in the calendar year; and

II - all transactions controlled in the calendar year, in the case of rights, business restructuring, cost sharing, financial operations and transactions involving intangibles.

§ 3 The provisions of this article do not exclude the obligations referred to in Paragraph 1 of Article 56 and Articles 62 and 64, nor do they release the taxpayer from applying transfer pricing legislation to all its controlled transactions.

§ 4 In the year of initial adoption of Law 14.596, of 2023, as provided for in Article 72 of this Normative Instruction, those transactions subject to transfer pricing control under the terms of Law 9430, of 27 December 1996, will be considered controlled transactions for the purposes of calculating the limits referred to in the headings.

Art. 58: The Global File must contain:

I - the organisation chart of the multinational group, including the geographical location of its entities;

II - a general description of the multinational group's activities, including:

a) a description of the activities of the multinational group that contribute most to generating profits;

b) a brief functional analysis describing the main contributions to value creation of the entities that make up the multinational group, specifying the main functions performed, the main assets used and the main risks assumed;

c) a description of the supply chain for the five (5) largest products and/or services in terms of gross revenue and other products and/or services that represent more than five per cent (5%) of the multinational group's gross revenue, with a description of the main geographical markets in question;

d) a description of the main contracts or arrangements for the provision of services in force between the entities of the multinational group, except for research and development services, identifying the competences of the entities that actually provide the services in question, the location from which these services are provided, the pricing policy to be paid for the services and the criteria for apportioning the costs; and

e) a description of the most important business restructuring, acquisition and divestment operations that took place in the multinational group, which imply a change or reallocation of functions, assets and risks in the calendar year;

III - information on the multinational group's intangibles, including:

a) a description of the multinational group's strategy for the development, ownership and exploitation of intangibles, including the location from which the main research and development functions and the main intangibles management functions of the multinational group are carried out;

b) the identification of the intangibles or group of intangibles relevant for transfer pricing purposes held by the multinational group, such as patents, trademarks, commercial brands and know-how, among others, and who owns them;

c) a description of the main contracts relating to the multinational group's intangibles, including those relating to the licensing of rights, the provision of research and development services and the sharing of costs;

d) a description of the multinational group's transfer pricing policies in relation to research and development activities and intangibles; and

e) a description of any relevant intra-group transfer in the calendar year related to intangibles, indicating the entities, countries and assets involved, as well as the terms and conditions applied, including any compensation;

IV - information on the multinational group's financial operations, including:

a) a description of the multinational group's financing policy, identifying the main financing granted to group companies by independent entities and describing the transfer pricing policies applied to intra-group financing; and

b) the identification of the entities that centralise the main financing functions of the multinational group, indicating the country where the entities are located and the country from which the management functions of these entities are actually carried out;

V - a list and brief description of prior agreements on unilateral transfer pricing, rulings and any other agreements or administrative guidelines with tax administrations that have implications regarding the allocation of income and expenses between countries; and

VI - the most recent consolidated financial statements of the multinational group.

§ 1 The Global File written in a foreign language must be accompanied by a simple translation into Portuguese, except for those written in English or Spanish, in which case the translation will only be presented if requested by the tax authority.

§ 2 If necessary for procedural instruction, the tax authority may request a translation by a public translator.

Art. 59: The Local File must contain:

I a description of the taxpayer's activities, including:

a) a description of its organisational and functional structure, identification of the people responsible for the various management areas and the people to whom they report, indicating the position they hold, the entity in which they work and the jurisdiction of this entity;

b) a characterisation of the activities carried out by the taxpayer, identifying its business areas, the economic circumstances and the market in which it operates, the business strategies implemented, which may influence the determination of transfer prices or the distribution of profits or losses from operations and the main geographical markets in which it operates, as well as an analysis of its economic and financial performance;

c) a detailed description of the business restructuring operations and transfer of intangibles in which the taxpayer participated or was affected, including as a result of the alteration and/or reallocation of functions, assets and risks, which occurred in the calendar year and the previous calendar year; and

d) the identification of the taxpayer's main competitors;

II - the identification of each of the entities with which the taxpayer carries out operations, indicating the link that characterises them as related parties, under the terms of art. 4, and/or the circumstance that it is an entity characterised in the hypotheses mentioned in § 1 of art. 1;

III - information on controlled transactions, including:

a) a description of each of the controlled transactions in which the taxpayer participates, stating their value, the country of residence of the counterparty and the context in which they occur;

b) the justification for the circumstances that led to the combined valuation of the transactions, if applicable, under the terms of the sole paragraph of Article 25;

c) a detailed description of the goods, rights or services that are the subject of the controlled transactions;

d) a detailed description of the terms and conditions of the controlled transactions, indicating:

1. the scope of intervention of the parties involved, the functions performed, the assets used and the risks assumed by both the taxpayer and the counterparties;

2. the conditions of delivery of the products or provision of the services and the ancillary activities involved, especially after-sales services, technical assistance and guarantees;

3. the price, how it is calculated, its assumptions, the circumstances in which it is subject to revision, a breakdown of the respective rules and a detailed explanation of the multi-annual price adjustments, if applicable, indicating the quantitative effects arising from factors linked to economic cycles, and the payment terms;

4. the agreed or planned duration and the permitted methods of cancellation; and

5. penalties and the respective calculation procedure, including default interest;

f) the economic circumstances of the parties and the market in which they operate;

g) business strategies and other characteristics considered economically relevant; and

h) copies of the contracts or other documents formalising the agreements related to the controlled transactions;

IV - information on the application of transfer pricing methodologies, including:

a) the indication and demonstration of the application of the method or methods adopted for the determination of the transfer price and the indication of the reasons for the selection of the method considered most appropriate, with identification of the critical assumptions made in the application of these methodologies;

b) the information necessary for the correct determination of the functions performed, the assets used and the risks assumed by the parties to the controlled transaction, in order to demonstrate the appropriate selection of the tested party, documenting the reasons and justifications for such selection;

c) the indicator considered in the analysis, giving the reasons and justifications behind the choice made;

d) an indication of the number of periods covered in the multi-year analysis, if applicable, giving the reasons and justifications for the choice made;

e) identification of the database or other external sources of information used, giving the reasons for the choice made and attaching the consultation screens used to select potential and definitive comparables;

f) identification of the internal and external comparables adopted, explaining:

1. the justification for the criteria used in the selection and rejection of comparables, accompanied, where appropriate, by the respective technical data sheets and analyses of sensitivity and statistical certainty;

2. the analyses carried out to assess the degree of comparability between the controlled transactions and the non-controlled transactions considered and between the entities involved, including the respective functional analyses, their financial information and the sources of information used;

3. the dates on which the controlled transaction and the transactions between unrelated parties were carried out; and

4. how the availability of information on transactions between unrelated parties has affected the identification of the most reliable comparable transactions;

g) the indication and justification of the adjustments made to eliminate the existing comparability differences, including the provision of information demonstrating the need for each of the adjustments relating to the differences, with a demonstration of the grounds for making the adjustments, the procedures adopted and the calculations made and detailing all the steps followed, the variables used and the results obtained in the comparables;

h) an indication of the value or range of values obtained and a description of the reasons for concluding that the terms and conditions applied in the controlled transactions, based on the methodology used, comply with the principle set out in Article 2;

i) justification for the assumptions used in economic and financial studies;

j) a detailed description of the method used on the basis of item VI of the caput of art. 33, subject to the provisions of art. 45;

k) an explanation of the spontaneous and compensatory transfer pricing adjustments made during the calendar year;

l) any other information deemed relevant to the delineation of the transaction, the analysis of the comparability of the transactions or the adjustments made, with a view to determining the price based on the principle set out in Article 2;

m) the declaration of responsibility for the information and techniques contained in a technical study prepared by a third party, issued by the person who prepared the study, if the taxpayer submits said study; and

n) copies of prior unilateral, bilateral or multilateral transfer pricing agreements, rulings and any other transfer pricing agreements or administrative guidelines with tax administrations to which Brazil is not a party and which relate to controlled transactions; and

V - the taxpayer's accounting information, which includes:

a) the financial statements for the calendar year, including a breakdown by activity or business area, when necessary to apply the transfer pricing method adopted; and

b) the reconciliation between the values considered when applying the selected transfer pricing methods and the values of the relevant items in the financial statements, in cases where this is necessary.

§ 1 For the purposes of subparagraph "c" of item I of the caput, the taxpayer who has not made the option referred to in art. 45 of Law 14,596 of 2023 must also provide information, in the Local File for the calendar year 2024, on transfers of intangibles that took place in the calendar year 2022.

§ 2 The documents referred to in item III, point "h" and item IV, point "n" of the heading, which are written in a foreign language, must be accompanied by a simple translation into Portuguese, except for those written in English or Spanish, in which case the translation will only be presented if requested by the tax authority.

§ 3 If necessary for procedural instruction, the tax authority may request a translation by a public translator.

Art. 60: Without prejudice to the provisions of art. 59, the taxpayer must include the following information in the Local File:

I - in the case of transactions involving intangibles:

a) the identification of the intangible;

b) determining the ownership of the intangible;

c) the determination of the parties that perform the functions, use the assets and assume the economically significant risks associated with the relevant functions performed in relation to the intangible (development, enhancement, maintenance, protection and exploitation), with emphasis on the determination of the parties that exercise control and have the financial capacity to assume them; and

d) the determination of the parties responsible for granting financing or providing other contributions in relation to the intangible, who assume the associated economically significant risks, with emphasis on determining the parties that exercise control and have the financial capacity to assume them;

II - in the case of intangibles that are difficult to value:

a) the specification of uncertainties in pricing or valuation existing at the time the transaction was carried out;

b) detailed information on the projections used at the time the transaction was carried out, including those showing how risks were taken into account in the calculations for determining the price and those relating to the consideration of events and other reasonably foreseeable uncertainties, and the probability of their occurrence; and

c) a description of how the uncertainties have been addressed, demonstrating that the manner in which they have been addressed is consistent with the manner in which unrelated parties would have done so;

III - in the case of commodity transactions, whenever the CUP method is applied based on the quotation price:

a) the sources of price information used;

b) proof of the date or period of dates agreed by the parties to the transaction, including information on the determination of the date or period of dates used by the parties to the transaction in transactions carried out with end customers, unrelated parties;

c) the pricing criteria for transactions, including the formula and a detailed explanation of each of the variables used to set the price;

d) other conditions that may affect the price, such as the concepts and values considered for the formation of premiums or discounts agreed on the quotation; and

e) the numbers of the receipts relating to the transaction issued by the system referred to in art. 64, except in the case provided for in the sole paragraph of art. 38;

IV - in the case of intra-group services:

a) an explanation of the multinational group's general policy on the provision of services between its members;

b) identification of the types of services provided and their providers, the place from which they are provided and the recipients of the services;

c) a description of the actual and expected benefits for the recipients;

d) a description of the structure through which the services are provided, with an indication of whether there is a central service provider;

e) a description of the costing systems used to determine the overall cost bases, demonstrating and justifying the criteria for apportioning indirect costs;

f) an indication of the criteria for identifying the costs associated with the partner activities referred to in § 4 of art. 23 of Law no. 14,596 of 2023, to be excluded from the overall cost bases, as they do not result in benefits for the parties to the contract or arrangement, in accordance with the provisions of item I of § 3 of art. 23 of the aforementioned law;

g) the justification for the profit margin applied or why a profit margin is not applied to certain services;

h) a description of the invoicing system, deadlines, means and methods of payment and any adjustments resulting from differences between budgeted costs and costs incurred;

i) an explanation of how new services are integrated into the service provision system and how the provision of a service is finalised or suspended; and

j) an explanation of the system of services to order; and

V - in the case of contracts or cost-sharing arrangements:

a) identification of the participants and the expected duration of the contract or arrangement;

b) the nature and types of activities carried out under the contract or arrangement, with an indication of the organisations carrying them out and the geographical location where they are carried out;

c) the identification of the contributions and risks of each participant based on the proportion of the benefits that each party expects to obtain in the contract, explaining the methods and calculations used to determine them;

d) the assumptions made in the projections of expected benefits, the frequency of revision of the estimates and a description of the method envisaged and the calculations carried out to make adjustments to the contributions resulting from changes in the expected benefits;

e) the procedures envisaged and the calculations made for determining compensation in the event of a change in participants or the transfer of rights to benefits between the participants in the contract or arrangement;

f) the procedures envisaged and the calculations made for the allocation among the participants of the results obtained in the event of cancellation of the contract or arrangement;

g) the costing method used to calculate the overall costs to be shared between the participants, the deadlines, means and methods of payment and any adjustments due to the budgeted costs;

h) data on any public subsidies or tax incentives linked to participants' contributions, and their respective impact; and

i) demonstrating that the cost apportionment criteria have been applied consistently for a given service.

Art. 61 For the purposes of the provisions of item II of the caput of art. 57, the Local File must contain the following information:

I - the identification of the entities involved in the controlled transactions, including their name, country of residence, tax identification number, if any, the link that characterises them as related parties, under the terms of Article 4, and/or the circumstance that it is an entity characterised in the hypotheses mentioned in Paragraph 1 of Article 1;

II - a description of the type, characteristics and value of the controlled transactions;

III - identification of the transfer pricing methods used in each controlled transaction;

IV - the comparables obtained and the values or ranges of values resulting from the application of the transfer pricing methods used in each controlled transaction;

V - the justification for selecting the transfer pricing method and the comparables used; and

VI - an explanation of the spontaneous and compensatory transfer pricing adjustments made during the calendar year.

Art. 62: The taxpayer must organise the transactions at the same time as they take place and keep the supporting documents capable of proving the application of transfer pricing legislation, which must be made available to the tax authority on request.

§ 1 Supporting documents written in a foreign language must be provided to the tax authority accompanied by a simple translation, except for those written in English or Spanish, in which case the translation will only be provided if requested by the tax authority.

§ 2 If necessary for procedural instruction, the tax authority may request a translation by a public translator.

Art. 63: Upon request, the taxpayer must reproduce, at its premises and in the presence of the tax authority, the queries made in the systems or databases that were used to select the comparables.

Art. 64 - For the purposes of the provisions of § 3 of art. 37, in cases where the CUP method is applied based on the quotation price, the taxpayer shall register the date or period of dates agreed by the parties to price the transaction in a system available on the RFB's e-CAC, up to the 10th (tenth) day following the ten-day period in which the transaction took place.

Art. 65: In the event that the taxpayer fails to provide the information necessary to precisely delineate the controlled transaction or to carry out the comparability analysis, the tax authority shall adopt the following measures:

I - allocate to the Brazilian entity the functions, risks and assets attributed to another party to the controlled transaction that do not have reliable evidence of having been effectively performed, assumed or used by it; and

II - adopt reasonable estimates and assumptions to carry out the delineation of the transaction and the comparability analysis.

Art. 66: Without prejudice to the provisions of art. 65, the taxpayer shall be subject to the following penalties:

I - the Global File and the Local File:

a) a fine equivalent to 0.2% (two-tenths per cent), per calendar month or fraction thereof, on the value of the taxpayer's gross revenue for the period to which the obligation relates, in the event of failure to submit it on time; and

b) a fine equivalent to 3% (three per cent) of the taxpayer's gross revenue for the period to which the obligation relates, in the event of submission without complying with the requirements for submission;

II - with regard to the Global File, a fine of 0.2% (two tenths per cent) of the value of the multinational group's consolidated revenue for the previous year to which the information relates, in the event of inaccurate, incomplete or omitted information being submitted; and

III - for failure to present information or documentation requested by the tax authority in a timely manner during a tax procedure or other prior inspection measure, or for other conduct that implies embarrassment to the inspection during the tax procedure, a fine equivalent to 5% (five per cent) of the value of the corresponding transaction, as priced by the tax authority.

§ 1 The fines referred to in this article will have a minimum value of R$ 20,000.00 (twenty thousand reais) and a maximum value of R$ 5,000,000.00 (five million reais).

§ 2 will be used to establish the amount of the fine provided for in item II of the caput, using the maximum amount provided for in Paragraph 1:

I - if the taxpayer does not inform the value of the multinational group's consolidated revenue in the previous year; or

II - when the information provided has not been duly substantiated.

§ 3 For the purposes of imposing the fine provided for in item "a" of section I of the caput, the initial term shall be the day following the end of the period originally established for compliance with the obligation and the final term shall be the date of compliance or, in the event of non-compliance, the date on which the infraction notice or notice of entry was drawn up.

§ 4 The fine provided for in item II of this article shall not be applied in the event of duly proven formal errors or immaterial information.

§ 5 For the purposes of the provisions of Paragraph 4, immaterial information is considered to be that which does not compromise the reliability of the results of the application of the principle referred to in Article 2.

Art. 67 - If the tax authority disagrees, during the tax procedure, with the determination of the IRPJ and CSLL calculation basis made by the taxpayer in the manner provided for in this Normative Instruction, it must, prior to carrying out the ex-officio assessment, inform the taxpayer by means of a Statement of Findings, giving it the option, within 30 (thirty) days, to rectify the ECF and the Statement of Federal Tax Debits and Credits - DCTF, exclusively in relation to the transfer pricing adjustments, in order to regularise them.

§ 1 The provisions of the caput shall apply only in cases where the tax authority finds that the taxpayer fulfils the following requirements:

I - has not acted contrary to a binding normative or interpretative act of the tax administration;

II - was co-operative with the RFB, including during the tax procedure;

III - has made reasonable efforts to comply with the provisions of this Normative Instruction; and

IV - adopted coherent and reasonably justifiable criteria for determining the calculation basis.

§ 2 If there is more than one controlled transaction which is the subject of the tax procedure, the Statement of Findings referred to in the caput shall indicate, for each controlled transaction, the transfer pricing adjustment ascertained by the tax authority and its grounds.

§ 3 - Each of the controlled transactions specified in Paragraph 2 will be considered a matter that can be regularised by the taxpayer, and partial rectification will not be accepted.

§ 4 The rectification of the DCTF will only be required if the transfer pricing adjustment determined by the tax authority results in a tax credit being demanded.

§ 5. In the event provided for in Paragraph 4, an ex-officio fine shall not be applied in relation to infractions directly related to the information rectified in the ECF and DCTF, provided that the corresponding tax credit is extinguished through full payment, with the late payment increases referred to in Article 61 of Law No. 9430 of 1996, up to the deadline set for rectification.

§ 6 - The rectification accepted by the tax authority will imply the approval of the entry in relation to the matter that has been regularised by the taxpayer, and subsequent rectifications by the taxpayer without the RFB's authorisation will become null and void.

§ 7 - If the tax authority considers that any of the requirements set out in items I to IV of Paragraph 1 have not been met, it must include in the infraction notice the reasons for not authorising the rectification.

§ 8 Non-delivery or late delivery of the Global File or the Local File, when the taxpayer is not exempt under the terms of item III of the caput and paragraph 1 of art. 57, constitutes failure to comply with the requirement set out in item III of paragraph 1.

TITLE V

THE OPTION FOR EARLY APPLICATION FOR 2023

Art. 68: Taxpayers may choose to apply the provisions of articles 1 to 44 of Law 14,596 of 2023 for the calendar year 2023.

Art. 69 - The option referred to in art. 1 will be formalised during the period from 1st September to 31st December 2023, by means of:

I - the opening of a digital process through the Virtual Service Centre Portal (e-CAC Portal); and

II - attaching the option form in Annex VI.

§ 1. In the event of the legal entity's extinction, the option referred to in the caput must be formalised in the month of extinction.

Art. 70 - The option made under the terms of art. 69 will be irreversible and will entail compliance as of 1st January 2023:

I - the provisions of articles 1 to 44; and

II - the effects of the provisions of art. 46 of Law no. 14.596, of 2023.

Art. 71 - Taxpayers who are not obliged to apply the transfer pricing rules when calculating IRPJ and CSLL may apply the provisions of art. 78 for the calendar year 2023, provided that they make the option referred to in art. 69 in good time.

TITLE VI
INITIAL ADOPTION OF ARTS. 1 TO 44 OF LAW NO. 14.596 OF 2023

Art. 72: The initial adoption of articles 1 to 44 of Law 14.596, of 2023, will take place on 1 January 2023, for legal entities opting under the terms of article 45 of said Law, and on 1 January 2024, for those not opting.

The provisions of articles 1 to 44 of Law 14,596 of 2023 shall also apply to contracts entered into and operations carried out in calculation periods prior to the dates mentioned in article 72, in the event that their effects on the IRPJ and CSLL calculation bases occur in periods after said dates.

TITLE VII
FINAL PROVISIONS

Art. 74 RFB Normative Instruction no. 1520, of 4 December 2014, shall come into force with the following amendment:

"Art. 23. The amounts referring to the additions, spontaneously made, of adjustments resulting from the application of the transfer pricing rules, provided for in arts. 18 to 22 of Law no. 9430, of 1996, and in arts. 1 to 44 of Law no. 14,596, of 14 June 2023, and the rules provided for in arts. 24 to 26 of Law no. 12,249, of 11 June 2010, may be deducted when calculating the actual profit and the CSLL calculation base of the controlling legal entity in Brazil.

§ 1º .....

.....

II - the corresponding income tax and social contribution have been paid, in any of the hypotheses provided for in the heading, when a real profit or positive CSLL calculation base is calculated.

§ 2º .....

.....

IV - must be limited to the basis for calculating the tax due in Brazil as a result of the adjustments provided for in the heading, in the event that actual profit or a positive CSLL calculation basis is calculated.

§ 4 The tax paid abroad in relation to the subsidiary, in proportion to the portion of the investment value that is no longer taxed as a result of the application of the provisions of the caput, may not be used to deduct the amount due as Income Tax in Brazil." (NR)

Art. 75: The preamble to RFB Normative Instruction No. 1,681, of 2016, now reads as follows:

"THE SPECIAL SECRETARY OF THE FEDERAL REVENUE OF BRAZIL, using the powers conferred on him by item III of art. 350 of the Internal Regulations of the Special Secretariat of the Federal Revenue of Brazil, approved by Ordinance ME no. 284, of 27 July 2020and in view of the provisions of §2 of art. 243 of Law no. 6.404, of 15 December 1976, art. 16 of Law no. 9.779, of 19 January 1999, art. 34, item IV, and art. 35, of Law no. 14.596, of 14 June 2023, art. 2 of Decree no. 6.022, of 22 January 2007and in international agreements, treaties and conventions signed by Brazil that contain specific clauses for the exchange of information for tax purposes:" (NR)

Art. 76 RFB Normative Instruction no. 1681, of 2016, shall come into force with the following changes:

"Art. 11: The member entity resident for tax purposes in Brazil that fails to fulfil the obligations provided for in this Normative Instruction or fulfils them with inaccuracies or omissions shall be subject to the following fines:

I - for untimely submission: 0.2 per cent (two tenths of a per cent), per calendar month or fraction thereof, of the taxpayer's gross revenue for the period to which the obligation relates;

II - for failing to submit information or documentation requested by the tax authority in a timely manner, during a tax procedure or other prior inspection measure, or for other conduct that implies embarrassment to the inspection during the tax procedure: 5% (five per cent) of the value of the corresponding transaction as priced by the tax authority under the terms of Law no. 14,596 of 2 June 2023;

III - for the omission of information relating to the obligation provided for in this Normative Instruction or the provision of inaccurate or incomplete information: 0.2% (two tenths per cent) of the value of the multinational group's consolidated revenue for the previous year to which the information relates;

IV - for submission without complying with the requirements for submitting the obligation: 3% (three per cent) of the taxpayer's gross revenue for the period to which the obligation refers.

§ 1 The fines referred to in this article will have a minimum value of R$ 20,000.00 (twenty thousand reais) and a maximum value of R$ 5,000,000.00 (five million reais).

§ 2: The maximum amount provided for in Paragraph 1 shall be used to establish the amount of the fine provided for in item III of the caput:

I - if the taxpayer does not inform the value of the multinational group's consolidated revenue in the previous year; or

II - when the information provided has not been duly substantiated.

§ 3 For the purposes of applying the fine provided for in item I of the caput, the initial term shall be the day following the end of the period originally established for compliance with the obligation and the final term shall be the date of compliance or, in the event of non-compliance, the date on which the notice of infraction or notice of entry was drawn up.

§ 4 The fine provided for in item III of the caput shall not be applied in the event of duly proven formal errors or immaterial information.

§ 5 For the purposes of the provisions of Paragraph 4, immaterial information is considered to be information that does not compromise the reliability of the results of the application of the principle referred to in Article 2 of Law 14,596 of 2023." (NR)

Art. 77 - RFB Normative Instruction No. 1846, of 28 November 2018, shall come into force with the following amendments:

"Art. 13 .....

.....

§ 3 The tax authority shall review, ex officio, the entry made in order to implement the agreed result in accordance with the provisions, objective and purpose of the international agreement or convention." (NR)

"Art. 14-A. The provisions of art. 24 of Law no. 11457, of 16 March 2007, do not apply to the amicable procedure referred to in this Normative Instruction." (NR)

Art. 78: 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 are not deductible in determining the real profit and the CSLL calculation base, when the deduction of the amounts results in double non-taxation in any of the following cases:

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 their jurisdiction; or

III - the amounts are intended to finance, directly or indirectly, deductible expenses of related parties that result in the hypotheses referred to in items I or II of the heading.

Art. 79: Annexes I to VI of this Normative Instruction are hereby approved.

Art. 80 is hereby repealed:

I - from 1st January 2024:

a) RFB Normative Instruction no. 1312, of 28 December 2012; and

b) arts. 86 to 88 of RFB Normative Instruction no. 1700, of 14 May 2017; and

II - on the date of publication of this Normative Instruction:

a) subparagraphs "a" and "b" of item I of art. 11 of RFB Normative Instruction no. 1681, of 28 December 2016; and

b) RFB Normative Instruction 2,132 of 17 February 2023.

Art. 81 This Normative Instruction comes into force on the date of its publication in the Federal Official Gazette.

§ 1. Taxpayers who make the choice provided for in art. 69 shall apply, as of 1st January 2023:

I - articles 1 to 73, 76 and 78; and

II - the revocations provided for in item I of article 80.

ROBINSON SAKIYAMA BARREIRINHAS

ANNEX I INDIRECT TRANSACTIONS AND SERIES OF TRANSACTIONS Annex I.pdf
ANNEX II COMPARABILITY ADJUSTMENT FOR COUNTRY RISK Annex II.pdf
ANNEX III MULTI-YEAR DATA – TNMM Annex III.pdf (Rectified on 03/10/2023) Annex III.pdf
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ANNEX VI OPTION FORM Annex VI.docx

ANNEX I

INDIRECT TRANSACTIONS AND SERIES OF TRANSACTIONS

Article 1 of the Normative Instruction states that the transfer pricing rules are applicable in determining the IRPJ and CSLL calculation basis of legal entities domiciled in Brazil in controlled transactions with related parties abroad.

Article 3 defines a controlled transaction to include any commercial or financial relationship between two or more related parties, whether established directly or indirectly, including contracts or arrangements in any form and series of transactions.

Point II of §1 of Article 3 clarifies that the expression "series of transactions" includes reference to more than one transaction carried out in relation to the same contract or arrangement, whether they are carried out in sequence or not. In this sense, transactions within a series do not have to occur in an identifiable sequence. They can occur simultaneously or separated from each other in time, as long as they form part of a larger arrangement.

In addition, the existence of a series of transactions should be recognised even if, for example, there is no transaction in the series to which both related parties are directly party or when there are one or more transactions in the series to which none of the related parties are party.

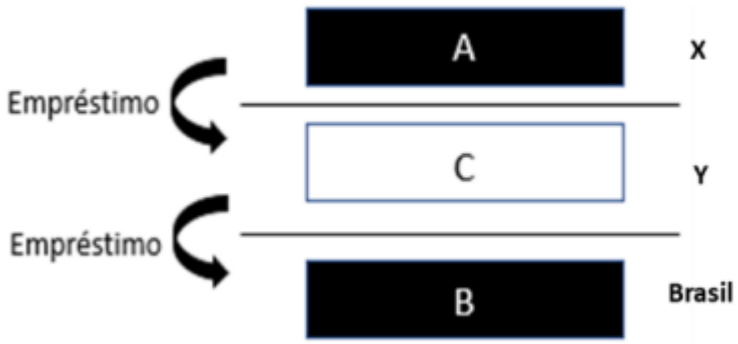
By including indirect transactions and series of transactions in the definition of controlled transaction, it is ensured that the transfer pricing control rules apply not only to transactions established directly between two related parties but also to those in which third parties are involved, such as in more complex and indirect structures or operations.

Examples

The descriptions provided in the examples below are simplified for illustrative purposes only. In this sense, in the situations reported "C" is a simplification and could cover more than one unrelated party in the indirect transaction or series of transactions.

Example "1"

"A" is the parent company of the multinational group "AB" and is resident in jurisdiction X. "B" is a legal entity resident in Brazil and controlled by "A". "C" is a financial institution resident in jurisdiction Y and is not part of the "AB" group. "A" makes a loan to bank "C" which, in turn, lends the funds to "B".



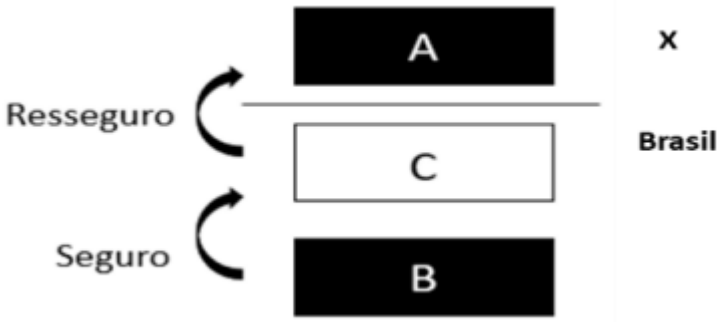
The existence of a controlled transaction between "A" and "B" subject to pricing rules should be recognised

transfer.

Example "2"

"A" and "B" are related parties belonging to the multinational group "AB". "A" is resident in the jurisdiction X. "B" is a legal entity resident in Brazil. "C" is a financial institution also resident in Brazil and is not part of the "AB" group.

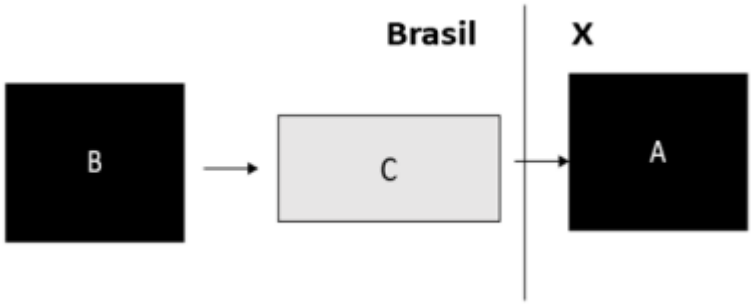
"B" enters into an initial insurance contract with "C" which, in turn, reinsures with "A", transferring most or all of the risk and the insurance premium to the latter entity. As a result, the reinsurer underwrites the group's insurance risk through a partnership with a "third-party" insurer ("C"). "C" issues the local insurance policies and then transfers part of the risk to the group's captive reinsurance entity ("A").



The existence of a controlled transaction between "B" and "A" subject to pricing rules should be recognised transfer.

Example "3"

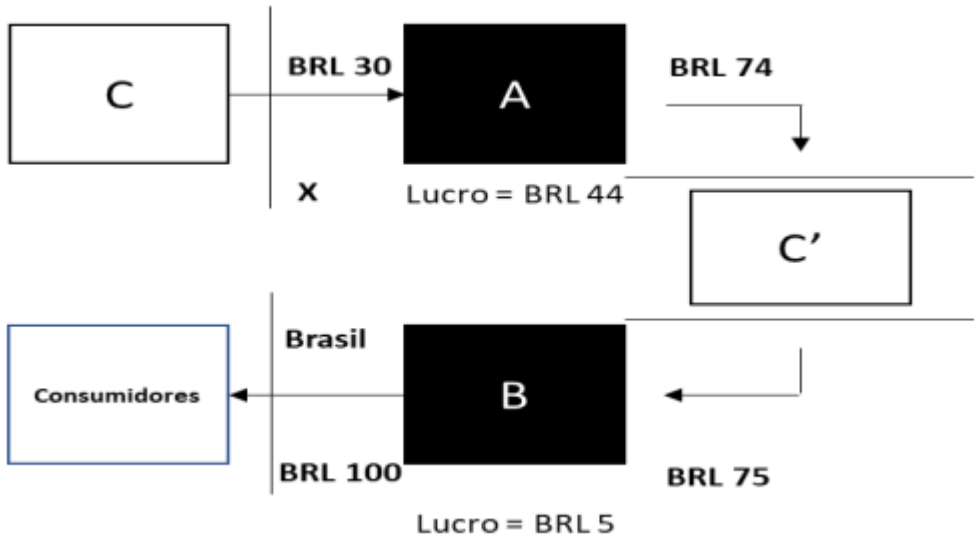
"A" and "B" are related parties belonging to the multinational group "AB". "A" is resident in the jurisdiction X. "B" is a legal entity resident in Brazil. "C" is a commercial exporting company resident in Brazil. "C" purchases goods from "B" for export to "A".



The existence of a controlled transaction between "B" and "A" subject to pricing rules should be recognised.

Example "4"

"A" and "B" are related parties belonging to the multinational group "AB". "A" is resident in jurisdiction X, a low-tax country. "B" is a legal entity resident in Brazil. "A" acquires a product manufactured by a third party ("C") for BRL 30 and resells it directly to an unrelated party (C') for BRL 74. C' resells it to "B" for BRL 75. The product acquired by "A" is sent directly to "B". "B" commercialises the product in the Brazilian market for BRL 100 and makes a profit of "5", after computing the cost of the product acquired and the relevant marketing and commercialisation expenses.



The existence of a controlled transaction between "B" and "A" subject to pricing rules should be recognised transfer.

ANNEX II

COMPARABILITY ADJUSTMENT FOR COUNTRY RISK

Without prejudice to making comparability adjustments motivated by the discovery of differences arising from other economically relevant characteristics, in cases where domestic comparables are not used, it may be appropriate to make comparability adjustments to take into account possible differences between the economic circumstances existing between the market where the tested party operates and the one where the potential comparables operate.

Prices agreed between unrelated parties may vary if they operate in different markets, even for transactions involving the same goods or services. Therefore, in order to improve the degree of comparability, it is necessary that the markets in which the related and unrelated parties operate do not differ in such a way as to materially affect prices or margins, or that comparability adjustments can be made. Therefore, when analysing transfer prices, it is essential to identify the market and geographical location of the parties in order to determine whether differences in economic circumstances affect prices or margins and, where appropriate, comparability adjustments are made to eliminate the effects of these differences.

When applying the TNMM method, for example, it is common to use financial information from unrelated companies to analyse transfer prices and, depending on the circumstances of each case, it may be necessary to use data from companies operating in other markets ("non-domestic comparables"). In order to adjust for the differences between the two markets, a practical approach consists of computing a premium for the country risk difference in the comparable companies. Direct comparison of the net margin of comparables without adjustment may result in an inappropriate result from the perspective of comparability. The formula below illustrates a possible approach to the adjustment:

Adjustment = (Country Risk Premium of the tested party - Country Risk Premium of the Comparable) x Capital Employed

***Where:**
Capital Employed = Operating Fixed Assets plus Working Capital
Working Capital = Current Assets - Current Liabilities

EXAMPLE

Company A is an entity operating in Brazil. The only comparables available are from Country "C". After functional analysis, it is determined that the TNMM method is the most appropriate and return on revenue ("ROS") is the most appropriate profitability indicator (Company A is the tested party). The table below shows the financial information of the comparables identified before the adjustment was applied:

Year 20x3				
Comparables ratio (without adjustment)				
	Revenue	Operating Profit	Capital employed	ROS
A	1.000,00	30,00	100	3,00%
B	1.500,00	50,00	120	3,33%
C	2.300,00	80,00	150	3,48%
D	1.050,00	40,00	130	3,81%
E	4.000,00	200,00	200	5,00%
F	2.000,00	110,00	300	5,50%
G	3.000,00	200,00	150	6,67%

*Fictitious data

The formula suggested for the adjustment requires determining the differential relative to the country risk premium of the tested party and the comparables:

	20x3
Country Risk Premium (Brazil)	5,19%
Country Risk Premium (Country-Comparable)	1,46%
Differential	3,73%

* Hypothetical premium

The differential is applied to the "Capital Employed" and the product is added to the operating profit of the comparables. For example, in the case of comparable "A", the value of the adjustment will correspond to the result of multiplying the differential (3.73%) by the capital employed (100). The result (3.73) is added to the unadjusted operating profit (30.00), giving the adjusted operating profit (33.73). The table below shows the financial information of the comparables identified after the adjustment has been applied:

Year 20x3				
Comparables ratio (after adjustment)				
	Revenue	Operating Profit	Capital employed	ROS
A	1.000,00	33,73	100	3,37%
B	1.500,00	54,48	120	3,63%
C	2.300,00	85,60	150	3,72%
D	1.050,00	44,85	130	4,27%
E	4.000,00	207,46	200	5,19%
F	2.000,00	121,19	300	6,06%
G	3.000,00	205,60	150	6,85%

*Fictitious data

ANNEX III

MULTI-YEAR DATA - TNMM

Article 30 of the Normative Instruction regulates the use of multi-year data. Paragraphs 4 to 6 provide guidelines for determining the range of comparables that must be observed, especially when using the TNMM method. The example below illustrates the application of these provisions.

Example

Company "A" is an entity operating in Brazil. After the functional analysis, it is concluded that the TNMM method is the most appropriate and the return on costs ("NCP") the most appropriate profitability indicator (Company "A" is the tested party). In accordance with § 6 of Article 30, potential comparables were selected with data available for the current year and two previous years, as shown in the table below:

Comparable		Year X1	Year X2	Year X3 (Current Year)	Sum of Costs and Operating Profit	Weighted Average
A	Operating Profit	12,00	10,00	35,00	57,00	12,00%
	Costs	100,00	150,00	225,00	475,00	
B	Operating Profit	10,00	5,00	7,00	22,00	8,40%
	Costs	80,00	90,00	92,00	262,00	
C	Operating Profit	22,00	26,00	18,00	66,00	9,04%
	Costs	250,00	230,00	250,00	730,00	
D	Operating Profit	22,00	22,00	19,00	63,00	9,29%
	Costs	230,00	220,00	228,00	678,00	
E	Operating Profit	3,00	-6 ,00	- 2,00	- 5,00	-1,54%
	Costs	115,00	110,00	100,00	325,00	
F	Operating Profit	21,00	14,00	15,00	50,00	11,90%
	Costs	160,00	120,00	140,00	420,00	
G	Operating Profit	21,00	12,00	13,00	46,00	10,57%
	Costs	150,00	130,00	155,00	435,00	
H	Operating Profit	30,00	25,00	24,00	79,00	13,69%
	Costs	190,00	193,00	194,00	577,00	

The data for unrelated party "E" was rejected due to the losses calculated (art. 30, § 6, item III), indicating the existence of specific non-comparable economic conditions (e.g. high risk-taking, business strategy or other non-comparable circumstances). After rejecting the "E" data, the range was determined again, arriving at the range of comparables that will be used to determine the interquartile range.

ANNEX IV **NETBACK** ADJUSTMENT

A **netback** adjustment approach can be used in certain circumstances to adjust the price of a product when the known **arm's length price** is available at a point in the value chain that differs from the relevant valuation point for the transfer pricing analysis. Typically, the approach is used when there is a known arm's length price (i.e. a price from a transaction between unrelated parties) at a later stage in the value chain than the relevant valuation point for the purposes of the transfer pricing analysis. In general terms, the adjustment using this approach identifies the relevant costs between the valuation point (controlled transaction) and the **arm's length** price point and adjusts for these costs. Typically, the best starting point for transfer pricing is the actual price paid by the independent third party, as it tends to provide the best evidence of what would be considered an **arm's length** price.

The **netback** adjustment approach can be used in situations where the necessary adjustments are simpler, as well as in others that require more complex adjustments. However, the reliability of the result obtained for compliance purposes must be assessed in each case.

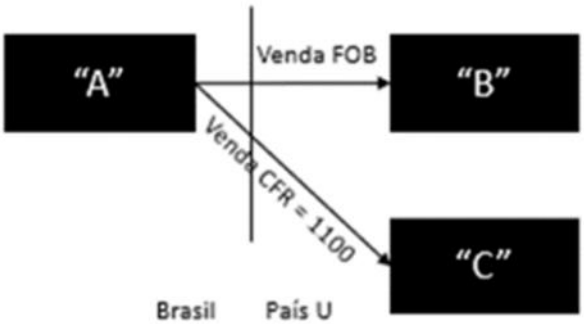
The simplest adjustments made using this approach can be applied, for example, in cases where the **arm's length** price (i.e. the starting point for making the adjustment) refers to the same product, but delivered to a location other than the valuation point (i.e. the valuation point of the controlled transaction). When the **arm's length** price refers to the price of a product with different characteristics (for example, when the product whose **arm's length** price is known has different characteristics because it has undergone processing), more complex adjustments are usually required. In these cases, it may be relevant to consider typical industry practices in order to determine a reliable **netback** adjustment and take into account, for example, treatment, refining and transport costs (all measured according to the **arm's length**).

The examples below illustrate the application of this adjustment in different situations. The description of the business models and the economically relevant characteristics of the transactions controlled in these examples are simplified and serve illustrative purposes. It is worth emphasising that the examples do not present a complete transfer pricing analysis, but serve to illustrate the adjustment in question.

Example "1"

Company "A", resident in Brazil, exports product "Z" to a related party (company "B"), which is destined for country "U". The export to the related party is carried out under the **Free on Board** - FOB - condition, so that the goods are delivered on board the ship indicated by the buyer at the Brazilian port of shipment. Freight is not included in the negotiated value of the goods.

On the same date, company "A" sells the same product to an unrelated party, company "C", also located in Country "U", but obliged to deliver the product to the port of destination (INCOTERM used **Cost and Freight** - CFR). In this operation, the total value of the sale is $ 1,100, and the freight costs contracted by "A" from a third party in the operation were $ 100.



Despite the differences in terms of delivery, it will be assumed, by way of example, that both transactions have comparable economically relevant characteristics. The difference in terms of delivery can be adjusted.

Adopting the **netback** approach for the adjustment, the **arm's length** price adopted as a starting point would be the sale price to company "C". There are differences between the terms of delivery of the transaction carried out by "A" with the related party "B" and those envisaged for the operation with the third party "C". In order to make the adjustment, the relevant costs existing between the valuation point relating to the **arm's length** price (CFR Country "U") and the point to which the controlled transaction refers (FOB Brazilian Port) must be identified. In this case, there are freight costs between the two countries.

Based on the value of the freight spent on the transaction with "A" (a cost measured

according to the **arm's length**), an adjustment can be made to the value of the **arm's length** price to bring it into line with the controlled transaction. The value of the freight ($100) is deducted from the **arm's length price** ($1,100), thus arriving at a FOB price of $1,000 used to price the controlled transaction between "A" and "B".

Example "2"

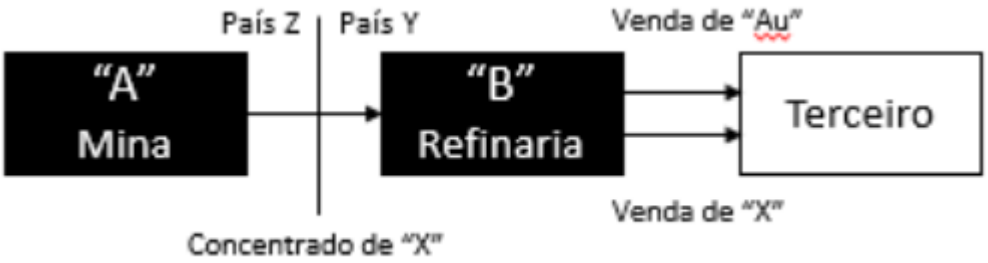
Suppose that the market price of the already refined commodity "M" sold by the refinery is 100 currency units (cu) per tonne. The controlled transaction involves the sale of unrefined product "M" at the mine gate (company "A") to a related party (company "B"). Trading between unrelated parties, under normal market conditions, of unrefined commodity M is rare. If 1 tonne of refined commodity "M" requires 2 tonnes of unrefined commodity "M" (i.e. a 50% yield) and an **arm's length** price for refining and transport (from the mine to the refinery) amounts to 15 c.u. per tonne, using the **netback** approach, the price of unrefined commodity "M" could be calculated as follows: (100 * 50%) - 15 = 35 c.u. per tonne.

Example "3"

The product "X" is present in a variety of ores, but generally these ores contain a low concentration of "X". The metallurgy of "X" can vary, but in one of its most important processes, the ore is crushed and then subjected to a concentration process which results in a product with a concentration of "X" of around 30 per cent and which can also contain other products which have a high market value (for example, the "Au" product). The ore is not often commercialised. The "X" concentrate, on the other hand, is widely traded between independent parties and is exported to refineries that continue the beneficiation process until the desired product is obtained. In transactions between unrelated parties, it is

common to see that the pricing of the sale of "X" concentrate is generally based on a formula that starts from the final price of the already processed "X" product sold to a third party (**arm's length price**) and from there certain additions and deductions are applied to the formula. These adjustments are made due to (i) the existence of other products in the concentrate that have economic value (e.g. "Au" product) and that add value to the concentrate; (ii) the existence of excessive impurities that jeopardise the quality of the product; and (iii) the performance of activities by the refinery to smelt and refine the material (**treatment and refining charges**).

In the example below, mine "A", located in country "Z", extracts ore containing product "X". After extraction and concentration, mine "A" exports the concentrate of "X" to related party "B", resident in jurisdiction "Y", which smelts, refines and sells product "X" and product "Au" to unrelated parties.



In this case, suppose:

- the purchase by "B" of a total of 875 tonnes of concentrate from "A";
- 30 per cent concentration of "X" in the concentrate;
- 40 per cent concentration of "Au" in the concentrate;
- the sales value of product "X" and product "Au" to third parties was, respectively $ 5.32 and $ 1.12 a piece (**arm's length** price);
- the arm's length remuneration for refining and treatment activities is $ 105 for product "X" and $ 1.7 for product "Au".

Using the **netback** approach, the sale price of "X" concentrate from "A" to "B" could be established on the basis of the sale price of the final products (product "X" and product "Au"), making the necessary adjustments - in this case, the deduction of refining and treatment charges. As a result, the controlled transaction could be attributed the value of $ 1,615 corresponding to the sum of the ***arm's length*** price of product "X" and product "Au" determined after the necessary adjustments.

	Total Concentrate Produced	a	875
	% percentage of "X" in the concentrate	b	30%
	Qty of "X" in the Concentrate	c = a*b	262,5
	% percentage of "Au" in the concentrate	d	40%
	Quantity of "Au" in the Concentrate	e = d*a	350
"X"	Sale value of "X" to a third party (*arm's length* price*)*	f	5,32
	Gross value of "X"	g = f*c	1.396,11
	Treatment rate (*arm's length*)	h	105,00
	Refining rate (*arm's length)*	i	67,20
	Net value of "X"	j = g - h - i	1.224
"Ouch"	Sale value of "Au" to a third party (arm's length price)	k	1,12
	Gross value of "X"	l = k*e	392,44
	Refining rate (*arm's length)*	m	1,70
	Net value of "Au"	n = l - m	390,7
	Total value attributed to *intercompany*	o = j + n	1.614,6

ANNEX V

MEDIAN AND INTERQUARTILE RANGE

For the purposes of Article 47, the median and interquartile range will be determined using the procedure detailed below:

Determining the Median (2nd Quartile)

1. The financial indicators of comparable transactions should be ordered in ascending order according to their value.
2. Each of the financial indicators will be assigned a sequential integer number, starting with the unit and ending with the total number of sample members.
3. The order number of the financial indicator corresponding to the median will be obtained by adding one unit to the total number of elements that make up the sample of financial indicators and the result obtained will be divided by two.
4. The median value will be determined by locating the financial indicator corresponding to the sequential integer of the result obtained in item 3 (i.e. the order number).

In cases where the result obtained in item 3 is a number made up of integers and decimals, the median value will be determined as follows:

4.1. The value of the difference between the financial indicator whose order number corresponds to the whole number of the result obtained in item 3 and the immediately higher financial indicator should be obtained.

4.2. The result obtained in item 4.1 will be multiplied by the decimal value of the result obtained in item 3 and added to the financial indicator whose order number corresponds to the whole number of the result obtained in item 3.

Determining the 1st Quartile

5. The position of the first quartile will be obtained by adding one unit to the order number corresponding to the median obtained in item 3 and dividing the result by two.
6. The first quartile will be determined by locating the financial indicator corresponding to the sequential integer (order number) obtained in item 5.

If the result obtained in item 5 is a number made up of integers and decimals, the first

quartile of the interval will be determined as follows:

6.1. The value of the difference between the financial indicator whose order number corresponds to the whole number of the result obtained in item 5 and the immediately higher financial indicator should be obtained.

6.2. The result obtained will be multiplied by the decimal places of the result obtained in item 5 and added to the financial indicator whose order number corresponds to the whole number of the result obtained in item 5.

Determining the 3rd Quartile

7. The position of the third quartile will be obtained by subtracting one unit from the order number corresponding to the median, referred to in item 3, adding to the result the order number corresponding to the first quartile, obtained in item 5.

8. The third quartile of the range will be determined by locating the financial indicator corresponding to the sequential integer (order number) obtained in item 7.

If the result obtained in item 7 is a number made up of integers and decimals, the third quartile of the interval will be determined as follows:

8.1. The value of the difference between the financial indicator whose order number corresponds to the whole number of the result obtained in item 7 and the next highest financial indicator should be obtained, taking into account its value.

8.2. The result obtained will be multiplied by the decimal places of the result obtained in item 7 and a financial indicator added whose serial number corresponds to the whole number of the result obtained in item 7.

When the same financial indicator is found among the comparables more than once, the interquartile range should be determined with all the cases found, including the financial indicators that are repeated as if they were different values.

The procedure described above is equivalent to using the **QUARTILE.INC** function in excel

Example "1"

Company A is an entity operating in Brazil. After the functional analysis, it is determined that the TNMM method is the most appropriate and the return on costs ("NCP") is the most

appropriate profitability indicator (with Company A as the tested party). The table below shows the financial information of the comparables identified:

Comparable	NCP
A	12,00%
B	7,32%
C	9,04%
D	10,00%
E	5,00%
F	11,90%
G	10,57%
H	15,00%

The following is a step-by-step demonstration of the procedure described above for determining the interquartile range:

1. *The financial indicators of comparable transactions should be ordered in ascending order according to their value.*

Comparable	NCP
E	5,00%
B	7,32%
C	9,04%
D	10,00%
G	10,57%
F	11,90%
A	12,00%
H	15,00%

2. *Each of the financial indicators will be assigned a sequential integer number, starting with the unit and ending with the total number of sample members.*

Number Order	Comparable	NCP
1	E	5,00%
2	B	7,32%
3	C	9,04%
4	D	10,00%
5	G	10,57%
6	F	11,90%
7	A	12,00%
8	H	15,00%

3. *The order number of the financial indicator corresponding to the median will be obtained*

by adding one unit to the total number of elements that make up the sample of financial indicators and the result obtained will be divided by two.

(8+1)/2 = 4,5

4. *The median value will be determined by locating the financial indicator corresponding to the sequential whole number of the result obtained in item 3.*

In cases where the result obtained in item 3 is a number made up of integers and decimals, the median value will be determined as follows:

4.1. *The value of the difference between the financial indicator whose order number corresponds to the whole number of the result obtained in item 3 and the next highest financial indicator should be obtained, taking into account its value.*

(10,57%-10,00%) = 0,57%

4.2. *The result obtained in item 4.1 will be multiplied by the decimal value of the result obtained in item 3 and added to the financial indicator whose order number corresponds to the whole number of the result obtained in item 3.*

(0,57%*0,5)+10,00%=10,29%

Median = 10.29%

5. *The position of the first quartile will be obtained by adding one unit to the order number corresponding to the median obtained in item 3 and dividing the result by two.*

(4,5+1)/2 = 2,75

6. *The first quartile will be determined by locating the financial indicator corresponding to the sequential integer obtained in item 5.*

If the result obtained in item 5 is a number made up of integers and decimals, the first quartile of the interval will be determined as follows:

6.1. *The value of the difference whose order number corresponds to the whole number of the result obtained in item 5 and the immediately higher financial indicator should be obtained, taking into account its value.*

(9,04%-7,32%) = 1,72%

6.2. *The result obtained will be multiplied by the decimal places of the result obtained in item 5*

and added to the financial indicator whose order number corresponds to the whole number of the result obtained in item 5.

(1,72%*0,75)+7,32%=8,61%

First Quartile = 8.61%

7. *The position of the third quartile will be obtained by subtracting one unit from the order number corresponding to the median, referred to in item 3, adding to the result the order number corresponding to the first quartile, obtained in item 5.*

(4,5 - 1)+2,75 =6,25

8. *The third quartile of the range will be determined by locating the financial indicator corresponding to the sequential integer obtained in item 7.*

If the result obtained in item 7 is a number made up of integers and decimals, the third quartile of the interval will be determined as follows:

8.1. *The value of the difference between the financial indicator whose order number corresponds to the whole number of the result obtained in item 7 and the immediately higher financial indicator should be obtained, taking into account its value.*

(12%-11,90%) = 0,10%

8.2. *The result obtained will be multiplied by the decimal places of the result obtained in item 7 and a financial indicator added whose serial number corresponds to the whole number of the result obtained in item 7.*

(0,10%*0,25)+11,90% = 11,93%

Third Quartile = 11.93%

RESULT

Minimum 5,00%
1st Quartile 8,61%
Median 10,29%
3rd Quartile11 .93%
Maximum15%

Example "2"

Company A is an entity operating in Brazil. After the functional analysis, it is determined that

the TNMM method is the most appropriate and the return on costs ("NCP") is the most appropriate profitability indicator (with Company A as the tested party). The table below shows the financial information of the comparables identified:

Comparable	NCP
E	5,00%
B	7,32%
C	9,04%
D	10,00%
G	10,57%
F	11,90%
A	12,00%

The following is a step-by-step demonstration of the procedure described above for determining the interquartile range:

1. *The financial indicators of comparable transactions should be ordered in ascending order according to their value.*
2. *Each of the financial indicators will be assigned a sequential integer number, starting with the unit and ending with the total number of sample members.*

Order Number	Comparable	NCP
1	E	5,00%
2	B	7,32%
3	C	9,04%
4	D	10,00%
5	G	10,57%
6	F	11,90%
7	A	12,00%

3. *The order number of the financial indicator corresponding to the median will be obtained by adding one unit to the total number of elements that make up the sample of financial indicators and the result obtained will be divided by two.*

$$(7+1)/2 = 4$$

4. *The median value will be determined by locating the financial indicator corresponding to the sequential whole number of the result obtained in item 3.*

In cases where the result obtained in item 3 is a number made up of integers and decimals, the median value will be determined as follows:

Número de Ordem	Comparáveis	NCP
1	E	5,00%
2	B	7,32%
3	C	9,04%
4	D	10,00%
5	G	10,57%
6	F	11,90%
7	A	12,00%

5. *The position of the first quartile will be obtained by adding one unit to the order number corresponding to the median obtained in item 3 and dividing the result by two.*

(4+1)/2 = 2,5

6. *The first quartile will be determined by locating the financial indicator corresponding to the sequential integer obtained in item 5.*

If the result obtained in item 5 is a number made up of integers and decimals, the first quartile of the interval will be determined as follows:

6.1. *The value of the difference whose order number corresponds to the whole number of the result obtained in item 5 and the immediately higher financial indicator should be obtained, taking into account its value.*

(9,04%-7,32%) = 1,72%

6.2. *The result obtained will be multiplied by the decimal places of the result obtained in item 5 and added to the financial indicator whose order number corresponds to the whole number of the result obtained in item 5. (1.72%*0.50)+7.32%=8.18%*

First Quartile = 8.18%

7. *The position of the third quartile will be obtained by subtracting one unit from the order number corresponding to the median, referred to in item 3, adding to the result the order number corresponding to the first quartile, obtained in item 5.*

(4 - 1)+2,5 =5,5

8. The third quartile of the range will be determined by locating the financial indicator corresponding to the sequential integer obtained in item 7.

If the result obtained in item 7 is a number made up of integers and decimals, the third quartile of the interval will be determined as follows:

8.1. The value of the difference between the financial indicator whose order number corresponds to the whole number of the result obtained in item 7 and the next highest financial indicator should be obtained, taking into account its value.

(11,90% - 10,57%) = 1,33%

8.2. The result obtained will be multiplied by the decimal places of the result obtained in item 7 and a financial indicator added whose serial number corresponds to the whole number of the result obtained in item 7.

(1,33%*0,5)+10,57% = 11,24%

Third Quartile = 11.24%

Minimum	5,00%
1st Quartile	8,18%
Median	10,00%
3rd Quartile	11,24%
Maximum	12,00%

ANNEX VI
OPTION FORM

OPTION TO ANTICIPATE THE EFFECTS OF LAW 14.596 OF 2023.

Contributor: _____

CNPJ: _____

Address: _____

_____

City:_____ UF: _____ POSTCODE: _____

E-mail: _____ Telephone: _____

Representante

Legal/Procurador: _____

CPF of Legal Representative/Proxy: _____

REQUEST

The taxpayer identified above, under the terms of the relevant legislation, declares to opt for the application, for the calendar year 2023, of the provisions contained in arts. 1 to 44 of Law no. 14.596, of 14 June 2023.

He also declares that he is aware that exercising the option is irreversible and will entail, as of 1st January 2023, compliance with the provisions of arts. 1 to 44 and the effects of art. 46, all of Law no. 14.596, of 14th June 2023, regardless of the date of the option.

_____
Place and date

_____
Signature Taxpayer/Legal Representative/Attorney General
Contact telephone number: _____