Unofficial Translation of Brazil's 2023 Transfer Pricing Legislation

LAW NO. 14.596, OF 14 JUNE 2023

Provides for transfer pricing rules related to Corporate Income Tax (IRPJ) and Social Contribution on Net Profit (CSLL); amends Laws Nos. 9430 of 27 December 1996, 12973 of 13 May 2014, and 12.249, of 11 June 2010; and revokes provisions of Laws Nos. 3470 of 28 November 1958, 4131 of 3 November 1958 and 4131 of 3 November 1958 September 1962, 4.506, of 30 November 1964, 8.383, of 30 December 1991, 10.637, 30 December 2002, 10.833, of 29 December 2003, 12.715, of 17 September of 2012, 12.766, of 27 December 2012, and 14.286, of 29 December 2021, and of Decree-Law 1.730, of 17 December 1979.

THE PRESIDENT OF THE REPUBLIC

I hereby make known that the National Congress decrees and I sanction the following Law:

CHAPTER I
SUBJECT MATTER AND SCOPE

Art. 1 This Law provides for transfer pricing rules related to the Corporate Income Tax (IRPJ) and the Social Contribution on Net Profits (CSLL).

Sole Paragraph. The provisions of this Law apply when determining the tax basis of the IRPJ and CSLL of legal entities domiciled in Brazil that carry out controlled transactions with related parties abroad.

CHAPTER II
GENERAL PROVISIONS

Section I

The Arm's Length Principle

Art. 2 For purposes of determining the tax calculation basis of the taxes referred to in the sole paragraph of art. 1 of this Law, the terms and conditions of a controlled transaction will be established according to those that would be established between unrelated parties in comparable transactions.

Section II

Controlled Transactions

Art. 3 For the purposes of the provisions of this Law, controlled transaction comprises any commercial or financial relationship between 2 (two) or more related parties, established or performed directly or indirectly, including contracts or arrangements under any form 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 diverge from those that would be established between unrelated parties in comparable transactions.

§ 1. Related parties are considered, without prejudice to other cases that fall under the provisions

of the caput of this article:

I - the controller and its subsidiaries;

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

III - the affiliated companies;

IV - the entities included in the consolidated financial statements or that would be included if the ultimate parent of the multinational group of which they form a part prepared such statements if their equity were traded on the securities markets in their home jurisdiction;

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

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

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

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

§ 2 For the purposes of the provisions of this article, the term entity comprises any person, natural or legal, and any contractual or legal arrangements devoid of legal personality.

§ 3 For the purposes of the provisions of § 1 of this article, a control relationship is characterized 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 assure it preponderance in corporate resolutions or the power to elect or dismiss the majority of the administrators of another entity;

II - hold, directly or indirectly, more than 50% (fifty percent) of the capital stock of another entity;

or

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

§ 4 For the purposes of the provisions of clause III of § 1 of this article, an associated company is considered to be the entity that holds significant influence over another entity, as provided for in §§ 1, 4 and 5 of art. 243 of Law No. 6404 of 15 December 1976.

Section IV

Comparable Transactions

Art. 5 A transaction between unrelated parties will be considered comparable to a controlled transaction when:

I - there are no differences that may materially affect the financial indicators examined by the most appropriate method under article 11 of this Law; or

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

§ 1 For the purposes of the caption sentence of this article, the existence of differences shall be considered between the economically relevant characteristics of the transactions, including their terms and conditions and economically relevant circumstances.

§ 2 The financial indicators examined under the most appropriate method referred to in Article 11 of this Law include prices, profit margins, indexes, division of profits between the parties or other data deemed relevant.

Section V

Application of the Arm's Length Principle

Subsection I

General Provisions

Art. 6 In order to determine whether the terms and conditions established in the controlled transaction are in accordance with the principle provided for in Art. 2 of this Law, the following shall be carried out

I - the delineation of the controlled transaction; and

II - the comparability analysis of the controlled transaction.

Subsection II

Delineation of the Controlled Transaction

Art. 7 The delineation of the controlled transaction referred to in subitem I of the main section of art. 6 of this Law shall be based on the analysis of the facts and circumstances of the transaction and on the evidence of the effective conduct of the parties, with a view to identifying the commercial and financial relations between the related parties and the economically relevant characteristics associated with these relations, also considering:

I - the contractual terms of the transaction, which derive from both formalised documents and contracts and 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 subject of the controlled transaction;

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

V - business strategies and other characteristics considered economically relevant.

§ 1 In delineating the controlled transaction, the options realistically available to each of the parties to the controlled transaction will be considered, in order to assess the existence of other options that could 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.

§ 2 In the event the economically relevant characteristics of the controlled transaction identified in the formal agreements and in the documents presented, including the documentation pursuant to Article 34 hereof, diverge from those verified from the analysis of the facts, circumstances and evidence of the effective conduct of the parties, the controlled transaction shall be delineated, for purposes of the provisions of this Law, based on the facts, circumstances and evidence of the effective conduct of the parties.

§ 3 The economically significant risks referred to in item II of the head of this Article consist of those risks that influence significantly the economic results of the transaction.

§ 4. Economically significant risks shall be considered as assumed by the party of the controlled transaction that exercises the functions relating to its control and has the financial capacity to assume them.

Art. 8 For the purposes of the provisions of this Law, where it is concluded that unrelated parties, acting in comparable circumstances and behaving in a commercially rational manner, considering the options realistically available to each of the parties, would not have carried out the controlled transaction as had been outlined, in view of the transaction as a whole, the transaction or series of controlled transactions may be disregarded or substituted by an alternative transaction, with the purpose of determining the terms and conditions that would be established by unrelated parties in comparable circumstances and acting in a commercially rational manner.

Sole Paragraph. The controlled transaction referred to in the caption sentence of this article may not be disregarded or substituted exclusively on the grounds that comparable transactions between unrelated parties have not been identified.

Subsection III

Comparability Analysis

Art. 9 The comparability analysis shall be performed with the purpose of comparing the terms and

conditions of the controlled transaction, outlined in accordance with the provisions of art. 7 of this Law, with the terms and conditions that would be established between unrelated parties in comparable transactions, and shall also consider:

I - the economically relevant characteristics of the controlled transaction and of transactions between unrelated parties;

II - the date on which the controlled transaction and the transactions between unrelated parties were entered into, so as to ensure that the economic circumstances of the transactions being compared are comparable;

III - the availability of information of transactions between unrelated parties, which allows the comparison of their economically relevant characteristics, in order to identify the most reliable comparable transactions performed between unrelated parties;

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

V - the existence of uncertainties in the pricing or valuation existing at the time of the controlled transaction and whether such uncertainties were addressed as non-related parties would have done in comparable circumstances, also considering the adoption of appropriate mechanisms, in order to ensure the compliance with the principle provided for in article 2 of this Law; and

VI - the existence and relevance of group synergy effects, pursuant to art. 10 of this Law.

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

Sole Paragraph. Group synergy effects that do not arise from a deliberate action under the caput of this article and that merely result from the entity's participation in the multinational group will be considered incidental benefits and will not be subject to offsetting.

Subsection IV

Selection of the most Appropriate Method

Art. 11 For the purposes of the provisions of this Law, the most appropriate method shall be selected among the following:

I- Comparable uncontrolled price (CUP), which 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;

II - Resale Price Minus (RPM), which consists of comparing the gross margin that an acquirer of a controlled transaction earns on subsequent resale made to unrelated parties with the gross margins earned on comparable transactions made between unrelated parties;

III - Cost Plus Method (CPM), which consists of comparing the gross profit margin obtained on the supplier's costs in a controlled transaction with the gross profit margins obtained on costs in comparable transactions carried out between unrelated parties;

IV – Transactional Net Margin Method (TNMM), which consists of comparing the net margin of the controlled transaction with the net margins of comparable transactions carried out between unrelated parties, both calculated on the basis of an appropriate profitability indicator;

V - Profit Split Method (PSM), which consists of the division of profits or losses, or part thereof, in a controlled transaction in accordance with what would be established between unrelated parties in a comparable transaction, considering the relevant contributions provided in the form of functions performed, assets used and risks assumed by the parties involved in the transaction; and

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

§ 1 The most appropriate method is considered to be that which provides the most reliable determination of the terms and conditions that would be established between unrelated parties in a comparable transaction, also considering 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 especially from the analysis of the functions performed, the assets used and the risks assumed by the parties involved in the controlled transaction as provided for in sub II of the head of article 7 of this Law;

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

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

§ 2 The CUP method, provided for in item I of the caption sentence of this article, shall be considered the most appropriate when there is reliable information on prices or amounts of consideration arising from comparable transactions carried out between unrelated parties, unless it can be established that another method provided for in the caption sentence of this article is more appropriately applicable, with a view to observing the principle provided for in article 2 of this Law.

§ 3 When the taxpayer selects other methods referred to in item VI of the caput of this article, for application in hypothesis other than those foreseen by the Special Secretary of the Federal Revenue of Brazil of the Ministry of Treasury, it must be demonstrated by the transfer pricing documentation referred to in art. 34 of this Law that the methods foreseen in items I, II, III, IV and V of the caput of this article are not applicable to the controlled transaction, or that they do not produce reliable results, and that the other selected method is considered more appropriate, under the terms of § 1 of this article.

§ 4 The Special Secretariat of the Federal Revenue of Brazil will regulate the provisions of this article, including the possibility of combining methods, with a view to ensuring the correct application of the principle provided for in Article 2 of this Law.

Subsection V

Commodities

Art. 12 For the purposes of the provisions of Art. 13 of this Law, the following are deemed to be

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

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

Art. 13 When there is reliable information of comparable independent prices for the traded commodity, including the quoted prices or prices practiced with non-related parties (internal comparables), the CUP method will be considered the most appropriate to determine the value of the commodity transferred in the controlled transaction, unless it can be established, in accordance with the facts and circumstances of the transaction and with the other elements referred to in art. 11 of this Law, 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 provided for in art. 2 of this Law.

§ 1 When 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 shall be made to ensure that the economically relevant characteristics of the transactions are comparable.

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

§ 3 In the hypotheses in which the CUP method is applied based on the quotation price, the value of the commodity will be determined based on the date or period of dates agreed upon by the parties to price the transaction when:

I - the taxpayer provides timely and reliable documentation evidencing the date or period of dates agreed upon 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 end clients, non-related parties, and performs the registration of the transaction, as set forth in article 14 hereof; 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 Article 7 and the principle provided for in Article 2 hereof.

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

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

§ 5 The information contained in public prices should be used for transfer pricing control in the same way it would be used by unrelated parties in comparable transactions.

§ 6 Under 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 provided for in art. 2 of this Law.

§ 7 The Special Secretariat of the Federal Inland Revenue of Brazil will regulate the provisions of this article, including as to the guidelines on the election of commodities and futures exchanges, research agencies or governmental agencies referred to in sub II of the head of Article 12 of this Law.

§ 8 For the purposes of the provisions of § 7 of this article, the Special Secretariat of the Federal Revenue of Brazil may provide for the use of other sources of price information, recognized and reliable, when their quotations or indexes are used as reference by unrelated parties to establish prices in comparable transactions.

Art. 14 - The taxpayer will register the controlled transactions of export and import of commodities declaring its information in the form and within the period established by the Special Secretariat of the Federal Revenue of Brazil.

Subsection VI

The Tested Party

In cases in which the application of the method requires the selection of one of the parties to the controlled transaction as the tested party, the party in relation to which the method can be applied in the most appropriate manner and for which there is the availability of more reliable data of comparable transactions carried out between unrelated parties will be selected.

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

§ 2 In case of non-compliance with the provisions of § 1 of this article and if the information available regarding the functions, assets and risks of the other party to the transaction is limited, only the functions, assets and risks that can be reliably determined as effectively performed, used or assumed will be allocated to this party of the transaction, and other functions, assets and risks identified in the controlled transaction will be allocated to the related party in Brazil.

Subsection VII

The Arm's Length Range

Art. 16 When the application of the most appropriate method leads to a range of observations of financial indicators of comparable transactions carried out 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 provided for in art. 2 of this Law.

§ 1 The determination of the appropriate interval shall be made so as to consider the financial indicators of transactions between unrelated parties that have the highest degree of comparability in relation to the controlled transaction, excluding those resulting from transactions of a lower degree.

§ 2 If the interval obtained after the application of the provisions in § 1 of this article consists of observations of transactions between unrelated parties that meet the comparability criterion provided for in art. 5 of this Law, it shall be considered as an appropriate interval:

I - the interquartile range, when there are uncertainties regarding the degree of comparability between comparable transactions that cannot be precisely identified or quantified and adjusted; or

II - the full range, when the transactions between unrelated parties have an equivalent degree of comparability in relation to the controlled transaction and when there are no comparability uncertainties under the terms of the caption I of this article.

§ 3 When the financial indicator of the controlled transaction examined under the most appropriate method is comprised in the appropriate range, it will be considered that the terms and conditions of the controlled transaction are in accordance with the principle provided for in art. 2, in which case the adjustments mentioned in art. 17 of this Law will not be required.

§ 4 For purposes of determining the adjustments mentioned in art. 17 of this Law, when the financial indicator of the controlled transaction examined under the most appropriate method is not comprised in the appropriate interval, the median value will be attributed to the controlled transaction.

§ 5 - Statistical measures other than those provided for in this article may be used in the cases of implementation of results agreed in solutions to disputes carried out within the scope of international agreements or conventions to eliminate double taxation of which Brazil is a signatory, as well as in those disciplined by the Special Secretariat of the Federal Revenue of Brazil, with a view to ensuring the correct application of the principle provided for in article 2 of this Law.

Section VI

Adjustments to the Calculation Basis

Art. 17 For the purposes of the provisions of this Law, the following are deemed to be

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

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

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

Art. 18 - When the terms and conditions established in a controlled transaction diverge from those that would be established between unrelated parties in comparable transactions, the tax calculation basis referred to in the sole paragraph of art. 1 will be adjusted so as to compute the results that would be obtained if the terms and conditions of the controlled transaction had been established according to the principle provided for in art. 2 of this Law.

§ 1 The legal entity domiciled in Brazil will make the spontaneous or compensatory adjustment when the non-compliance with the provisions in art. 2 of this Law results in the calculation of a calculation basis lower than that which would be calculated if the terms and conditions of the controlled transaction had been established according to those that would be established between non-related parties in comparable transactions.

§ 2 The Special Secretariat of the Federal Revenue of Brazil will establish the form and conditions for making compensatory adjustments.

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

§ 4 Adjustments will not be allowed with a view to:

I - reduce the tax base of the taxes referred to in the sole paragraph of art. 1 of this Law; or

II - increase the amount of the IRPJ tax loss or the negative tax base of the CSLL.

§ 5 The prohibition provided for in § 4 of this article will not apply in the cases of compensatory adjustments made in the manner and within the period established by the Special Secretariat of the Federal Revenue of Brazil or of results agreed in a dispute resolution mechanism provided for in international agreements or conventions to eliminate double taxation of which Brazil is a signatory.

CHAPTER III
SPECIFIC
PROVISIONS

Section I

Transactions with Intangibles

Art. 19 - For the purposes of the provisions of this Law, the following are deemed to be

I - intangible asset: the asset that, not being a tangible or financial asset, is susceptible to being owned or controlled for use in business activities and that would have its use or transfer remunerated if the transaction occurred between unrelated parties, regardless of being subject to registration, legal protection or being characterized and recognized as an asset or intangible asset for accounting purposes;

II - intangible assets that are difficult to value: intangible assets for which it is not possible to identify reliable comparables at the time of their transfer between related parties, and the projections of future income or cash flows or the assumptions used for their valuation are highly uncertain; and

III - relevant functions performed in relation to the intangible asset: the activities related to the development, enhancement, maintenance, protection and exploitation of the intangible asset.

Art. 20 - The terms and conditions of a controlled transaction involving intangible assets shall be established in accordance with the principle provided for in art. 2 of this Law.

§ 1 The delineation of the transactions referred to in the caput of this article shall be carried out in accordance with the provisions of art. 7 of this Law and shall also consider the:

I - identification of the intangibles involved in the controlled transaction;

II - determination of the ownership of the intangible asset;

III- determining 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, with emphasis on determining the parties that exercise control and have the financial capacity to assume them; and

IV - determination of the parties responsible for providing financing or other contributions in relation to the intangible asset, who assume the associated economically significant risks, with emphasis on determining which parties exercise control and have the financial capacity to assume them.

§ 2 For the purposes of the provisions of this Law, the party will be considered the owner of the intangible:

I - that is identified as the holder in the applicable contracts, registrations or legal provisions; or

II - that exercises control over decisions related to the exploitation of the intangible and has the capacity to restrict its use, in cases where ownership cannot be identified in the manner set forth in item I of this paragraph.

The allocation of the results of controlled transactions involving intangibles shall be determined on the basis of the contributions provided by the parties and, in particular, the relevant functions performed in relation to the intangible and the economically significant risks associated with these functions.

§ 1 Mere legal ownership of the intangible asset will not give rise to the award of any remuneration resulting from its exploitation.

§ 2 The remuneration of the related party involved in the controlled transaction, including the holder of the intangible, who is responsible for providing financing shall not exceed the amount of the remuneration determined on the basis of:

I - risk-free interest rate if the related party does not have the financial capacity or control over the economically significant risks associated with the financing provided and neither assumes nor controls any other economically significant risk related to the transaction; or

II - interest rate adjusted to the risk assumed, if the related party has the financial capacity and exercises control over the economically significant risks associated with the financing, but without assuming and controlling any other economically significant risk related to the transaction.

Section II

Hard-to-Value Intangibles

Art. 22 In controlled transactions involving intangibles difficult to value, the following shall be considered

I - the pricing or valuation uncertainties existing at the time of the transaction; and

II - whether the uncertainties referred to in item I of this caput were duly addressed in the manner in which the unrelated parties would have done so in comparable circumstances, including through the adoption of short-term contracts, the inclusion of price adjustment clauses or the establishment of contingent payments.

§ 1 The information available in periods after the controlled transaction was carried out may be used by the tax authority as evidence, subject to proof to the contrary under the terms of § 3, as to the existence of uncertainties at the time of the transaction and especially to assess whether the taxpayer complied with the provisions of the main section of this article.

§ 2 In the event of non-compliance with the provisions of the caput of this article, the value of the transaction will be adjusted for purposes of determining the calculation basis of the taxes referred to in the sole paragraph of art. 1 of this Law and, unless it is possible to determine the appropriate remuneration in the form of a single payment for the time of the transaction, the adjustment will be made by determining annual contingent payments that reflect the uncertainties arising from the pricing or valuation of the intangible involved in the controlled transaction.

§ 3 The adjustment mentioned in § 2 of this article will not be made in the following hypotheses: I - when the taxpayer:

a) provide detailed information on the projections used at the time of the transaction, including those demonstrating how risks were considered in the pricing calculations, and on the consideration of events and other reasonably foreseeable uncertainties and the likelihood of their occurrence; and

b) demonstrate that any significant difference between the financial projections and the results

effectively obtained arises from events or facts occurred after the determination of the prices that could not have been foreseen by the related parties or whose probability of occurrence was not significantly overestimated or underestimated at the time of the transaction; or

II - when any difference between the financial projections and the results effectively obtained does not result in a reduction or increase in the remuneration for the hard-to-value intangible asset in excess of 20% (twenty per cent) of the remuneration determined at the time of the transaction.

Section III

Intra-group Services

Art. 23 The terms and conditions of a controlled transaction involving the provision of services between related parties shall be established in accordance with the principle provided for in art. 2 of this Law.

§ 1 For the purposes of the provisions of this Law, a service is considered to be any activity developed by a party, including the use or availability by the service provider of tangible or intangible assets or other resources, which results in benefits to one or more parties.

§ 2 The activity undertaken results in benefits when it provides reasonable expectation of economic or commercial value to the other party to the controlled transaction, so as to improve or maintain its business position, such that unrelated parties in comparable circumstances would be willing to pay for the activity or undertake it themselves.

§ 3 Without prejudice to other hypotheses, it will be considered that the activity developed does not result in benefits under the terms of § 2 of this article when:

I - the activity is characterized as a partner activity; or

II - the activity represents the duplication of a service already rendered to the taxpayer or which he has the capacity to perform, except in cases where it is demonstrated that the duplicate activity results in additional benefits to the taxpayer as provided for in § 2 of this article.

§ 4 Activities of partners are characterised as those performed in the capacity of partner or shareholder, direct or indirect, in their own interest, including those whose sole objective or effect is to protect the provider's capital investment in the borrower or to promote or facilitate compliance with legal, regulatory or reporting obligations of the provider, such as:

I - activities related to the corporate structure of the partner or shareholder, including those related to the holding of meetings of its investors, board meetings, issuance of shares and listing on stock exchanges;

II - preparation of reports related to the partner or shareholder, including financial reports, consolidated statements and audit reports;

III - raising of funds for acquisition, by the partner or shareholder, of equity interests and activities related to the performance of investor relations; and

IV - activities performed for compliance by the partner with obligations imposed by the tax legislation.

§ 5 When the activity performed to the taxpayer by another related party does not result in a benefit under the terms of paragraphs 2, 3 and 4 of this article, the tax base of the IRPJ and CSLL will be adjusted.

§ 6 For the purposes of this Law, incidental benefits obtained by the taxpayer as provided for in the Sole Paragraph of Article 10 of this Law shall not be considered services and shall not give rise to any compensation.

Art. 24 In applying the CPM method, provided for in sub III of the caput of art. 11 of this Law, all costs related to service provision shall be considered.

§ 1 Whenever it is possible to individualise the costs of service provision in relation to the service taker, the determination of the cost base used for the purposes of applying the method referred to in the caption of this article will be made by the direct charging method.

§ 2 In cases where the service is provided to more than one party and it is not reasonably possible to individualise the costs of the service in relation to each taker, as provided for in § 1, the use of indirect charging methods will be admitted for determining the cost base used for purposes of

applying the method referred to in the caption of this article.

§ 3 In indirect charging methods, the determination of the cost base shall be made by apportioning costs by using one or more allocation criteria that achieve a cost similar to that which unrelated parties in comparable circumstances would be willing to accept, which shall:

I - reflect the nature and use of the services provided; and

II - be capable of producing a remuneration for the controlled transaction that is compatible with the actual or reasonably expected benefits for the service taker.

§ 4 In determining the remuneration for the services referred to in the caption of this article, it will not be permitted to charge a profit margin on the provider's costs that constitute a transfer of amounts referring to activities performed or acquisitions made from other related or unrelated parties, in relation to which the provider does not perform significant functions, also taking into account the assets used and the economically significant risks assumed.

§ 5 In the hypothesis foreseen in § 4 of this article, a profit margin determined according to the principle provided for in art. 2 of this Law will be allowed only on the costs incurred by the service provider to carry out the said functions.

§ 6 The provisions of the caput of this article apply to the cases in which the TNMM method, provided for in sub IV of the caput of art. 11 of this Law, is adopted as the most appropriate for the determination of the transfer prices of the services dealt with in art. 23 of this Law and in which a cost- based profitability indicator is used.

Section IV

Cost Sharing Agreement

Art. 25 - Cost sharing Agreement are those in which two or more related parties agree to share contributions and risks relative to the joint acquisition, production or development of services, intangibles or tangible assets, based on the proportion of the benefits that each party expects to obtain from the contract.

§ 1. Participants in the cost-sharing agreement are considered to be those who, in relation to it, exercise control over the economically significant risks and have the financial capacity to assume them and who reasonably expect to obtain the benefits:

I - of the services developed or obtained, as provided for in article 23 of this Law, in the case of agreement whose object is the development or procurement of services; or

II - of intangibles or tangible assets, by means of the attribution of a stake or right over such assets, in the case of agreement whose object is the development, production or obtaining of intangibles or tangible assets, and which are capable of exploring them in their activities.

§ 2 The contributions referred to in the caption sentence of this article comprise any kind of contribution provided by the participant that has value, including the provision of services, the performance of activities related to the development of intangibles or tangible assets, and the making available of existing intangibles or tangible assets.

§ 3 The contributions of the participants shall be determined according to the principle provided for in Art. 2 of this Law and proportional to their shares in the total expected benefit, which shall be evaluated by means of estimates of the increase in revenues, reduction of costs or any other benefit expected to be obtained from the contract.

§ 4 In hypotheses in which the participant's contribution is not proportional to its share in the total benefit expected, adequate compensation shall be made between the participants of the contract, in order to reestablish its balance.

§ 5. In the cases in which there is any change in the participants of the contract, including the entry or withdrawal of a participant, or in those in which there is a transfer among the participants of the rights in the benefits of the contract, compensation will be required in favour of those who cede their share by those who obtain or increase their share in the results obtained in the contract.

§ 6 In the event of termination of the contract, the results obtained shall be allocated among the participants in a manner proportional to the contributions made.

Section V

Business Restructuring

Art. 26 - Modifications in commercial or financial relations between related parties that result in the transfer of potential profit or in benefits or losses for any of the parties and that would be remunerated if performed between unrelated parties in accordance with the principle provided for in art. 2 of this Law are deemed as business restructuring.

§ 1 The potential profit referred to in the caput of this article comprises the expected profits or losses associated with the transfer of functions, assets, risks or business opportunities.

§ 2 The restructurings referred to in the caption of this article include hypotheses in which the potential profit is transferred to a related party as a result of the renegotiation or termination of commercial or financial relations with unrelated parties.

§ 3 In determining compensation for the benefit obtained or the loss suffered by any of the parties to the transaction, the following shall be considered:

I - the costs incurred by the transferor as a consequence of the restructuring; and

II - the transfer of the potential profit.

§ 4 The compensation for the transfer of the potential profit will consider the value that the transferred items have together.

Section VI

Financial Transactions

Subsection I

Loans

Art. 27 (1) When the controlled transaction involves the supply of financial resources and is formalized as a debt transaction, the provisions of this Law shall be applied to determine whether the transaction will be outlined, fully or partially, as a debt or equity transaction, taking into account the economically relevant features of the transaction, the prospects of the parties and the realistically available options.

Sole Paragraph. Interest and other expenses related to the transaction outlined as capital operation will not be deductible for purposes of calculation of the IRPJ and CSLL.

Art. 28 The terms and conditions of a controlled transaction delineated as a debt transaction, as provided for in art. 27, shall be established in accordance with the principle provided for in art. 2 of this Law.

§ 1 For the purposes of the main Section of this Article, the economically relevant characteristics of the controlled transaction, as provided for in Article 7 hereof, shall be taken into account, including the debtor's credit risk in relation to the transaction.

§ 2 In order to determine the debtor's credit risk in relation to the transaction, the effects arising from other controlled transactions shall be considered and adjusted when they are not in accordance with the principle provided for in Article 2 hereof.

§ 3 The determination of the debtor's credit risk in relation to the transaction shall consider, if any, the effects of implicit group support.

§ 4 The benefits obtained by the debtor arising from the implicit support of the group shall be considered incidental benefits, pursuant to the Sole Paragraph of Article 10, and shall not give rise to any remuneration.

Art. 29 - In the event of a controlled transaction delineated as a debt operation, when it is verified that the related party, creditor of the debt operation

I - does not have the financial capacity or control over the economically significant risks associated with the transaction, its remuneration may not exceed the value of the remuneration determined on the basis of a risk-free rate of return;

II - has the financial strength and exercises control over the economically significant risks associated with the transaction, its remuneration may not exceed the value of the remuneration determined on the basis of a risk-adjusted rate of return; or

III - exercises only intermediation functions, so that the resources of the debt transaction come from another party, its remuneration will be determined based on the principle provided for in article 2 of this Law, in order to consider the functions performed, the assets used and the risks assumed.

Sole Paragraph. For the purposes of the provisions of the head of this article, the following is deemed to be the case

I- risk-free rate of return: that which represents the return that would be expected from an investment with lower risk of loss, in particular investments made in public securities, issued by governments in the same functional currency as the creditor of the operation and which present the lowest rates of return; and

II - Risk-adjusted rate of return: that determined from the rate referred to in item I of this paragraph, adjusted by a premium that reflects the risk assumed by the creditor.

Subsection II

Intra-group Guarantees

Art. 30. Where the controlled transaction involves the provision of guarantee in the form of a legally binding commitment by the related party to assume a specific obligation in the event of default by the debtor, the provisions of this Law shall be applied to determine whether the provision of the guarantee shall be delineated, in whole or in part, as:

I - service, in which case the guarantor will be entitled to remuneration, as provided for in Art. 23 of this Law; or

II - partner activity or capital contribution, in which case no remuneration shall be due.

Sole Paragraph. For the purposes of the provisions of this Law, the additional amount of funds obtained in debt transaction before the unrelated party due to the existence of the guarantee provided by a related party shall be delineated as capital contribution, and no payment by way of guarantee shall be due in relation to this amount, except when it is reliably demonstrated that, in accordance with the principle provided for in art. 2 of this Law, another approach would be deemed more appropriate.

Art. 31 The terms and conditions of a controlled transaction involving the provision of guarantee outlined as a service shall be established in accordance with the principle provided for in Art. 2 of this Law.

Sole Paragraph. For purposes of the main Section of this Article, the amount of the compensation payable to the related party guaranteeing the obligation shall be determined on the basis of the benefit obtained by the debtor that exceeds the incidental benefit arising from the implicit support of the group referred to in Article 28, paragraphs 3 and 4, and may not exceed fifty percent (50%) of such amount, except when it is reliably demonstrated that, pursuant to the principle provided for in Article 2 hereof, another approach would be deemed more appropriate.

Subsection III

Cash Pool Agreements

Art. 32 - The terms and conditions of a controlled transaction delineated as a Cash Pool Agreement, in any form, of the cash balances of related parties resulting from an agreement aimed at the management of short-term liquidity shall be established in accordance with the principle provided for in art. 2 of this Law.

§ 1 In outlining the transaction referred to in the caput of this article:

I - the options realistically available to each of the parties to the transaction will be considered;

and

II - it will be verified whether the taxpayer party to the agreement obtains benefits proportional to the contributions it makes or whether its participation is restricted to providing financing to the other parties to the transaction.

§ 2 For the purposes of the provisions in the caput of this article, the synergy benefits obtained as a result of the agreement shall be allocated among its participants, with due regard for the provisions in article 10 of this Law.

§ 3 When the taxpayer or other related party performs the coordination function of the agreement, its remuneration will be determined according to the principle provided for in art. 2 of this Law, considering the functions performed, the assets used and the risks assumed to perform said function.

Subsection IV

Insurance Contracts

Art. 33 - The terms and conditions of a controlled transaction involving an insurance transaction between related parties, in which one party assumes the responsibility of guaranteeing the interest of the other party against predetermined risks through the payment of a premium, and which is delineated as a service pursuant to art. 23 of this Law, shall be established in accordance with the principle provided for in art. 2 of this Law.

§ 1 For the purposes of the provisions in the caput of this article, the arrangements that involve insurance operations carried out with non-related parties, in which part or all of the insured risks are transferred from the non-related party to related parties of the insured party, will be considered as controlled transactions, will be subject to the principle provided for in art. 2 of this Law and will be analyzed in their entirety.

§ 2 In cases where the insurance entered into with a related party is related to an insurance transaction entered into with an unrelated party, the related insurer that performs the intermediation functions between the insured bound and the unrelated party shall be remunerated in accordance with the principle provided for in art. 2, considering the functions performed, the assets used and the risks assumed, and the synergy benefits obtained as a result of the arrangement shall be allocated among its participants in accordance with their contributions, subject to the provisions of art. 10 of this Law.

§ 3 When it is verified that the insurance contract referred to in the caput of this article is part of an arrangement in which related parties pool a set of risks subject matter of insurance entered into with a non-bound insurer, the synergy benefits obtained as a result of the arrangement shall be allocated among its participants according to their contributions, with due regard for the provisions of art. 10 of this Law.

§ 4 In the event the taxpayer or other related party performs the function of coordination of the arrangement referred to in paragraph 3 of this article, its remuneration shall be determined according to the principle provided for in art. 2 of this Law, considering the functions performed, the assets used and the risks assumed.

CHAPTER IV
DOCUMENTATIO
N AND
PENALTIES

Art. 34 - The taxpayer shall present the documentation and provide the information to demonstrate that the tax calculation basis of the taxes referred to in the sole paragraph of art. 1, relative to his controlled transactions is in conformity with the principle provided for in art. 2 of this Law, including those necessary for the delineation of the transaction and the analysis of comparability and those relative to

I - to controlled transactions;

II - to related parties involved in controlled transactions;

III - the structure and activities of the multinational group to which the taxpayer and its other member entities belong; and

IV- the global allocation of revenues and assets and the income tax paid by the group to which the taxpayer belongs, together with indicators related to its overall economic activity.

§ 1 In the event the taxpayer fails to provide the information necessary for the precise delineation of the controlled transaction or for the performance of the comparability analysis, the following measures will be adopted by the tax authority:

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

II - adopt reasonable estimates and assumptions to perform the transaction delineation and comparability analysis.

§ 2 The Special Secretariat of the Federal Revenue of Brazil shall regulate the manner by which information on the delivery or availability of the documents referred to in the caput of this article shall be provided, without prejudice to additional proof to be required by the tax authority, including as to the presentation of the documentation provided for in this Law with respect to the first calendar year of its application, in order to grant additional time for compliance with the accessory obligations arising from the change in legislation.

Art. 35 - Non-compliance with the provisions of Art. 34 of this Law shall result in the imposition of the following penalties, without prejudice to the application of other sanctions provided for herein

I- as to the presentation of the statement or of another specific accessory obligation instituted by the Special Secretariat of the Federal Revenue of Brazil for the purposes of the provisions of Article 34 of this Law, regardless of the form of its transmission:

a) a fine equivalent to 0.2% (two tenths per cent), per calendar month or fraction, on the value of the gross revenue of the period to which the obligation refers, in the event of failure to file in due time;

b) a fine equivalent to 5% (five per cent) on the value of the corresponding transaction or 0.2% (two tenths per cent) on the value of the consolidated revenue of the multinational group of the previous year to which the information refers, in the case of an accessory obligation instituted to declare the information referred to in items III and IV of the main section of Article 34 of this Law, in the event of submission with inaccurate, incomplete or omitted information; or

c) a fine equivalent to 3% (three per cent) on the value of the gross revenue of the period to which the obligation refers, in the event of submission without meeting the requirements for submitting an accessory obligation; and

II- for failure to timely submit the information or documentation required by the tax authority during a tax procedure or other prior tax measure, or for any other conduct that entails hindrance to the tax inspection during the tax procedure, a fine equal to 5% (five per cent) of the value of the corresponding transaction.

§ 1. The fines referred to in this Article shall 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 In order to establish the value of the fine provided for in subparagraph "c" of clause I of the caput, the maximum value provided for in § 1 of this Article will be used:

I - where the taxpayer fails to report the value of the multinational group's consolidated revenues 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 subparagraph "a" of clause I of the main section of this Article, the day following the end of the term originally established for compliance with the obligation shall be considered as the initial term and the date of compliance or, in the event of non- compliance, of the issue of the tax assessment notice or of the notice of assessment, as the final term.

§ 4. The fine provided for in item "b" of the head paragraph I of this Article will not be applied in cases of duly proven formal errors or immaterial information, under the conditions set out in regulations issued by the Special Secretariat of the Federal Revenue of Brazil.

Art. 36 - In case the tax authority disagrees, during the tax procedure, with the determination of the tax basis of the IRPJ and CSLL made by the legal entity in the manner provided for in this Law, the taxpayer may be authorized to rectify the tax return or the tax bookkeeping exclusively in relation to the transfer price adjustments for its regularization, respecting the following premises:

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

II- have been cooperative with the Special Secretariat of the Federal Revenue of Brazil, including during the tax procedure;

III - have undertaken reasonable efforts to comply with the provisions of this Law; and

IV- adopted consistent and reasonably justifiable criteria for determining the tax base.

§ 1 In the event provided for in the caput of this article, no penalty that is directly related to the rectified information will be applied, provided that the bookkeeping for the calculation of the IRPJ and CSLL and the other statements or bookkeeping arising therefrom are rectified, including for the constitution of a tax credit, with its extinguishment through the payment of the corresponding taxes, with the increases in arrears dealt with in article 61 of Law 9430 of 27 December 1996.

§ 2 The rectification accepted by the tax authorities will imply the homologation of the assessment in relation to the matter that has been regularised by the taxpayer, and subsequent rectifications of statements and bookkeeping by the taxpayer without the authorisation of the Special Secretariat of the Federal Revenue of Brazil will become null and void.

§ 3 The Special Secretariat of the Federal Revenue of Brazil will regulate the provisions of this article, including the conditions, requirements and parameters to be observed in its application.

CHAPTER V SPECIAL MEASURES AND THE INSTRUMENT FOR LEGAL CERTAINTY

Section I

Simplification Measures and Other Measures

Art. 37 - The Special Secretariat of the Federal Revenue of Brazil may establish specific rules to discipline the application of the principle provided for in art. 2 of this Law to certain situations, especially to

I - simplify the application of the stages of the comparability analysis provided for in Article 9, including for dispensing with or simplifying the presentation of the documentation provided for in Article 34 of this Law;

II - providing additional guidance in relation to specific transactions, including transactions with intangibles, cost-sharing agreements, business restructuring, cash pool agreements and other financial transactions; and

III - provide for the treatment of situations in which the information available regarding the controlled transaction, the related party or comparable parties is limited, so as to ensure the adequate application of the provisions of this Law.

Section II

The Specific Consultation Procedure on Transfer Pricing

Art. 38 - The Special Secretariat of the Federal Revenue of Brazil may institute a specific consultation process with respect to the methodology to be used by the taxpayer for the compliance with the principle provided for in art. 2 of this Law with respect to future controlled transactions and establish the necessary requirements for the request and compliance with the consultation.

§ 1 The methodology referred to in the caput of this article comprises the criteria set forth in this Law for the determination of the terms and conditions that would be established between unrelated parties in comparable transactions carried out, including those related to:

I - the selection and application of the most appropriate method and the financial indicator examined;

II - the selection of comparable transactions and the appropriate comparability adjustments;

III - the determination of the comparability factors deemed significant for the circumstances of the case; and

IV - the determination of critical assumptions regarding future transactions.

§ 2 If the consultation request is accepted by the competent authority, the taxpayer will have a

period of 15 (fifteen) working days, as from the date of the decision, to pay the fee mentioned in § 8 of this article, on pain of forfeiture.

§ 3 The solution to the consultation will be valid for up to 4 (four) years and may be extended for 2 (two) years at the request of the taxpayer and approved by the competent authority.

§ 4 The solution to the consultation may be rendered ineffective at any time, with retroactive effect from the date it is issued, when it is based on:

I - erroneous, false or misleading information; or

II - omission by the taxpayer.

§ 5 The Special Secretariat of the Federal Revenue of Brazil is authorised to review the solution to consultations, ex officio or at the request of the taxpayer, in cases of change:

I - the critical assumptions that served as the basis for issuing the solution; or

II - of the legislation modifying any matter disciplined by the consultation.

§ 6 In case there is a change in the critical premises that served as grounds for the solution of the consultation, this will become invalid as from the date on which the change occurs, except if there is a provision to the contrary by the Special Secretariat of the Federal Revenue of Brazil.

§ 7 The Special Secretariat of the Federal Revenue of Brazil may authorize the application of the methodology resulting from the consultation to previous calculation periods, provided that it is verified that the relevant facts and circumstances related to these periods are the same as those considered for the issuance of the solution to the consultation.

§ 8 The presentation of a consultation request, as provided for in the caput of this article, and accepted by the competent authority shall be subject to a fee of

I - R$ 80,000.00 (eighty thousand reals);

II - R$ 20,000.00 (twenty thousand Reais), in the event of a request for an extension to the period of validity of the response to the consultation.

§ 9 The fee referred to in § 8º of this article:

I- will be managed by the Special Secretariat of the Federal Revenue of Brazil, which may issue complementary acts to regulate the matter;

II- will be due by the interested party in the consultation process, from the date of acceptance of the request;

III - will not be refunded if the taxpayer withdraws the application after its acceptance by the Secretaria Especial da Receita Federal do Brasil;

IV - shall be subject to the same conditions, time limits, penalties and privileges set out in the general rules applicable to the other taxes administered by the Special Secretariat of the Federal Revenue of Brazil, subject to the specific rules set out in this article; and

V - may have their values updated annually, by the National Consumer Price Index (INPC), or by the index that replaces it, by act of the Minister of Finance, who will establish the initial and final terms of the update.

§ The proceeds from the collection of the fee referred to in § 8 of this Article shall be allocated to the Special Fund for Development and Improvement of Inspection Activities (Fundaf), established by Decree-law 1.437 of 17 December 1975.

Section III

Mutual Agreement Procedure

Art. 39 - In cases of results agreed to in a dispute resolution mechanism provided for in the scope of an international agreement or convention to eliminate double taxation of which Brazil is a signatory, including those dealing with matters not governed by this Law, the tax authority shall review, ex officio, the assessment made in order to implement the agreed result in conformity with the provisions, objective and purpose of the international agreement or convention, with due regard for the regulations issued by the Special Secretariat of the Federal Revenue of Brazil.

CHAPTER VI
FINAL
PROVISIONS

Art. 40 - Articles 24 and 24-A of Law No. 9430, of 27 December 1996, shall come into force with the following changes:

"Art. 24 The provisions set forth in arts. 1 to 37 of the law arising from the conversion of Provisional Measure No. 1,152, of December 28, 2022, also apply to transactions carried out by an individual or legal entity resident or domiciled in Brazil with any entity, even if an unrelated party, resident or domiciled in a country that does not tax income or taxes it at a maximum rate lower than 17% (seventeen percent).

.....

§ Paragraph 2 (Revoked).

....." (NR)

"Art. 24-A. The provisions set forth in articles 1 to 37 of the law resulting from the conversion of Provisional Measure no. 1,152, of December 28, 2022, also apply to the transactions carried out by an individual or legal entity resident or domiciled in Brazil with any entity resident or domiciled abroad which is a beneficiary of a privileged tax regime, including in the case of an unrelated party.

Sole Paragraph. For the purposes of the provisions of this article, a privileged tax regime is considered to be that which presents, at least, one of the following characteristics:

I - does not tax income or does so at a maximum rate lower than 17% (seventeen per cent);

.....

III - does not tax income earned outside its territory or does so at a maximum rate lower than 17% (seventeen per cent);

....." (NR)

Art. 41 The caput of Art. 86 of Law No. 12,973, of May 13, 2014, shall come into force with the following wording:

"Art. 86 - The amounts referring to additions, spontaneously made, resulting from the application of the transfer pricing rules provided for in articles 1 to 37 of the law resulting from the conversion of Provisional Measure no. 1,152, of December 28, 2022, and of the rules provided for in articles 24, 25 and 26 of Law no. 12.249, of June 11, 2010, provided that the profits earned abroad have been considered in the respective calculation basis of the IRPJ and CSLL of the controlling legal entity domiciled in Brazil or equivalent, pursuant to article 83 of this Law, and whose corresponding income tax and social contribution, in any of the cases, have been paid.

....." (NR)

Art. 42 - Arts. 24 and 25 of Law No. 12249 of 11 June 2010 shall come into force with the following changes:

"Art. 24. Without prejudice to the provisions in articles 1 to 37 of the law arising from the conversion of Provisional Measure no. 1,152, of December 28, 2022, the interest paid or credited by a source located in Brazil to the related party under article 4 of the law arising from the conversion of Provisional Measure no. 1.152, of December 28, 2022, resident or domiciled abroad, not incorporated in a country or dependency with favored taxation or under a privileged tax system, will only be deductible, for purposes of determining the taxable income and the tax basis of the Social Contribution on the Net Income (CSLL), when it is verified that it constitutes a necessary expense to the activity, as established in article 47 of Law no. 4,506, of November 30, 1964, in the ascertainment period, provided the following requirements are met:

I - in case of indebtedness with related party abroad that holds equity interest in the legal entity resident in Brazil, the value of the indebtedness with the related party abroad, ascertained at the time the interest is appropriated, is not higher than 2 (two) times the value of the interest of the related party in the net equity of the legal entity resident in Brazil;

II - in case of indebtedness with related party abroad that does not hold equity interest in the

legal entity resident in Brazil, the value of the indebtedness with the related party abroad, ascertained at the time the interest is appropriated, does not exceed two (2) times the value of the net equity of the legal entity resident in Brazil; and

III - in the events provided for in clauses I and II of this caption, the value of the sum of the indebtedness with related parties abroad, verified at the time of appropriation of interest, does not exceed two (2) times the value of the sum of the interests of all related parties in the net equity of the legal entity resident in Brazil.

.....

§ 2 The provisions of this article apply to debt transactions of legal entities resident or domiciled in Brazil in which the guarantor, attorney-in-fact or any intervening party is a related party.

.....

§ 4 The indebtedness and the interest of the related party in the net equity to which this article refers shall be calculated by the monthly weighted average.

§ 5 The provisions in item III of the main section of this article do not apply in the case of indebtedness exclusively with related parties abroad that do not have a corporate interest in the legal entity resident in Brazil.

§ 6 In the hypothesis provided for in § 5º of this article, the sum of the indebtedness amounts with all related parties without interest in the capital of the entity in Brazil, verified at the time of interest appropriation, cannot exceed 2 (two) times the value of the net equity of the legal entity resident in Brazil.

....." (NR)

"Art. 25. Without prejudice to the provisions in articles 1 to 37 of the law arising from the conversion of Provisional Measure no. 1,152, of December 28, 2022, the interest paid or credited by a source located in Brazil to the entity domiciled or incorporated abroad, in a country or dependency with favored taxation or under a privileged tax regime, pursuant to articles. 24 and 24-A of Law no. 9430, of December 27, 1996, shall only be deductible, for purposes of determining the taxable income and the CSLL calculation basis, when it is verified that it constitutes a necessary expense for the activity, as established in art. 47 of Law no. 4.506, of November 30, 1964, during the ascertainment period, meeting cumulatively the requirement that the total value of the sum of the debts with all the entities situated in country or dependency with favored taxation or under a privileged tax regime does not exceed thirty percent (30%) of the value of the net equity of the legal entity residing in Brazil.

....." (NR)

Art. 43 - The provisions of Art. 24 of Law No. 11457 of March 16, 2007, do not apply to the consultation provided for in Art. 38 of this Law and to the dispute resolution mechanisms provided for in international agreements or conventions to eliminate double taxation of which Brazil is a signatory.

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

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 under the laws of its jurisdiction; or

III - the amounts are destined to finance, directly or indirectly, deductible expenses of related parties that result in the events referred to in items I or II of this caption.

Sole Paragraph. The Special Secretariat of the Federal Revenue of Brazil shall regulate the provisions of this article.

Art. 45 - The taxpayer may opt for the application of the provisions in articles 1 to 44 of this Law as from 1 January 2023.

§ 1 The option referred to in the caput shall be irreversible and shall result in the observance of the provisions set forth in Articles 1 to 44 and the effects of the provisions of Article 46 of this Law as

from January 1, 2023.

§ 2 The Special Secretariat of the Federal Revenue of Brazil shall establish the form, term and conditions of the option referred to in the caput of this article.

Art. 46 The following provisions are hereby revoked as from January 1, 2024:

I - Art. 74 of Law 3470 of 28 November 1958;

II - of Law No. 4.131 of 3 September 1962:

a) art. 12; and

b) art. 13;

III - of Law No. 4.506, of 30 November 1964:

a) art. 52; and

b) paragraphs "d", "e", "f" and "g" of the sole paragraph of art. 71;

IV - Article 6 of Decree-Law No. 1.730, of 17 December 1979;

V - Art. 50 of Law No. 8.383 of 30 December 1991;

VI - of Law No. 9.430, of 27 December 1996:

a) arts. 18 to 23; and

b) § Paragraph 2 of art. 24;

VII - Art. 45 of Law nº 10.637, of 30 December 2002;

VIII - Art. 45 of Law nº 10.833, of 29 December 2003;

IX - of Law No. 12,715 of 17 September 2012:

a) Art. 49, in the part that alters Art. 20 of Law No. 9430, of 27 December 1996; and

b) arts. 50 and 51;

X - Art. 5 of Law No. 12,766, of 27 December 2012; and

XI - Art. 24 of Law No. 14.286, of 29 December 2021, in the part that modifies Art. 50 of Law No. 8.383, of 30 December 1991.

Art. 47 This Law shall enter into force on 1 January 2024, except for art. 45, which shall enter into force on the date of its publication.

Sole Paragraph. To the taxpayers that make the option provided for in art. 45 of this Law, the following shall apply as of January 1, 2023:

I - Articles 1 to 44; and

II - the revocations provided for in Art. 46.

Brasília, June 14, 2023; 202nd of Independence and 135th of the Republic.