

TECHNICAL NOTE

RFB-OECD Project on Transfer Pricing

CNI evaluates as positive the results of the first phase of the Transfer Pricing Project developed by Receita Federal do Brasil and the OECD Secretariat, published on December 18, 2019.

As the representative of Brazil in the Business at OECD, CNI has participated actively in this Project from the beginning, supporting the convergence of Brazil to best international practices and to the OECD Transfer Pricing Guidelines. We believe that such convergence will allow a greater insertion of Brazil in global value chains and which tends to increase foreign direct investment in the Country.

In addition to hosting the Project launch event, in February 2018, and the July 2019 event in which the project results were released, CNI supported the OECD and RFB in the design and launch of the Survey about the different methodologies, and in the engagement of businesses in Brazil and abroad to ensure the supply of information and opinions which have provided factual support to the study published by RFB and the OECD.

Our technical proposal, contained in the documents "International Tax Policy: OECD, BEPS and G20 - Implications for Brazil?", of 2015, and "Corporate Tax: Brazil needs to adapt do the new global standards", of 2018, which were discussed with RFB, has always been the full adoption of the Arm's Length Principle (ALP) with the introduction of the OECD Guidelines into the Brazilian legal system, along with the maintenance and enhancement of the Brazilian methodology of fixed margins, which, through changes that would ensure compliance with the ALP, would function as optional "safe harbor" rules, available to all taxpayers irrespective of size reflecting their economic reality, and as a permanent and not transitory rule.

In addition to the introduction of the methodology of the OECD Guidelines, CNI advocates that an enhanced version of the Brazilian rule would be maintained and revised in a manner coherent with the ALP. This enhancement of the Brazilian rules could even serve other countries, so that the Brazilian experience in transfer pricing would be useful to the OECD and in particular to developing economies, without harm to the ALP and to the convergence.

CNI welcomes the introduction of the OECD TP Guidelines into the Brazilian legal system, and finds extremely positive the potential development by RFB and the OECD of a system of optional safe harbors with fixed margins, inspired by the Brazilian tradition.

It will be important to ensure the freedom of taxpayers to opt between the full application of the methodology of the Guidelines, or the simplified system of safe harbors with fixed margins, given necessary eligibility criteria to ensure coherence with the ALP. We believe this system would be based on functional profiles of taxpayers, applicable methods and fixed margins varying per sector and profile, published and updated periodically by the RFB and based on economic reality as determined based on market research. Taxpayers would be free to opt to apply these safe harbors consistent with the ALP or to apply the comparability analysis based on the OECD Guidelines. It will be also important to develop a robust program of Advance Pricing Agreements (APA) to diminish conflicts, as well a stable practice of effective dispute resolution through Mutual Agreement Procedures (MAP).

CNI will remain engaged in the next phases of the Project (Blueprint and Roadmap), seeking the alignment of business sectors and contributing so that the objectives of the first phase of the Project do materialize adequately into Brazilian law and regulations and in the practice of the relationship between taxpayers and the tax administration.

To this end, CNI defends, in addition to the extension of Brazil's treaty network which will provide greater legal certainty, the possibility of *MAP Arbitration*, which could be particularly useful in transfer pricing.

We understand the challenges and complexity arising in the next phases and in the work that lays ahead and we remain engaged in a constructive manner, for the institutional and economic development of Brazil.