

## Brazil

Brazil has met all aspects of the terms of reference (OECD, 2017<sup>[3]</sup>) (ToR) for the calendar year 2018 (year in review) and no recommendations are made.

In the prior year report, Brazil did not receive any recommendations.

Brazil can legally issue two types of rulings within the scope of the transparency framework. In practice, Brazil issued rulings within the scope of the transparency framework as follows:

- 10 past rulings;
- For the period 1 April 2016 - 31 December 2016: no future rulings;
- For the calendar year 2017: no future rulings, and
- For the year in review: six future rulings.

These rulings are published on the Receita Federal do Brazil's ("RFB") website in a redacted form.<sup>1</sup>

No peer input was received in respect of the exchanges of information on rulings received from Brazil.

## Introduction

This peer review covers Brazil's implementation of the BEPS Action 5 transparency framework for the year 2018. The report has four parts, each relating to a key part of the ToR. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

## A. The information gathering process

Brazil can legally issue two types of ruling within the scope of the transparency framework: (i) rulings related to preferential regimes<sup>2</sup> and (ii) cross-border unilateral advance pricing agreements (APAs) and any other cross-border unilateral tax rulings (such as an advance tax ruling) covering transfer pricing or the application of transfer pricing principles.

### ***Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)***

For Brazil, past rulings are any tax rulings within scope that are issued either: (i) on or after 1 January 2014 but before 1 April 2016; or (ii) on or after 1 January 2010 but before 1 January 2014, provided they were still in effect as at 1 January 2014.

In the prior years' peer review reports, it was determined that Brazil's undertakings to identify past rulings and all potential exchange jurisdictions were sufficient to meet the minimum standard. Brazil's implementation in this regard remains unchanged, and therefore continues to meet the minimum standard.

### ***Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)***

For Brazil, future rulings are any tax rulings within scope that are issued on or after 1 April 2016.

In the prior years' peer review reports, it was determined that Brazil's undertakings to identify future rulings and all potential exchange jurisdictions have met all the ToR. Brazil's implementation in this regard remains unchanged, and therefore continues to meet the minimum standard.

### ***Review and supervision (ToR I.4.3)***

In the prior years' peer review reports, it was determined that Brazil's review and supervision mechanism was sufficient to meet the minimum standard. Brazil's implementation in this regard remains unchanged, and therefore continues to meet the minimum standard.

### ***Conclusion on section A***

Brazil has met all of the ToR for the information gathering process and no recommendations are made.

## B. The exchange of information

### ***Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)***

Brazil has the necessary domestic legal basis to exchange information spontaneously. Brazil notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

Brazil has international agreements permitting spontaneous exchange of information, including being a party to the (i) *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by*

the 2010 Protocol (OECD/Council of Europe, 2011<sup>[4]</sup>) (“the Convention”), (ii) bilateral agreements in force with 33 jurisdictions.<sup>3</sup>

### **Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)**

In the prior years’ peer review reports, it was determined that Brazil’s process for the completion and exchange of templates were sufficient to meet the minimum standard. Brazil’s implementation in this regard remains unchanged and therefore continues to meet the minimum standard.

For the year in review, the timeliness of exchanges is as follows:

Past rulings in the scope of the transparency framework	Number of exchanges transmitted by 31 December 2018	Delayed exchanges		
		Number of exchanges not transmitted by 31 December 2018	Reasons for the delays	Any other comments
	0	0	N/A	N/A
Future rulings in the scope of the transparency framework	Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted	Delayed exchanges		
		Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority	Reasons for the delays	Any other comments
	8	0	N/A	N/A
<b>Total</b>	<b>8</b>	<b>0</b>		

Follow up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	0	N/A	N/A

### **Conclusion on section B**

Brazil has the necessary legal basis for spontaneous exchange of information, a process for completing the templates in a timely way. Brazil has met all of the ToR for the exchange of information process and no recommendations are made.

## **C. Statistics (ToR IV)**

The statistics for the year in review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Ruling related to a preferential regime	1	<i>De minimis</i> rule applies
Cross-border unilateral advance pricing agreements (APAs) and any other cross-border unilateral tax rulings (such as an advance tax ruling) covering transfer pricing or the application of transfer pricing principles	7	Belgium, China (People’s Republic of), Finland, Germany, Netherlands, United States
Cross-border rulings providing for a unilateral downward adjustment to the taxpayer’s taxable profits that is not directly reflected in the taxpayer’s financial / commercial accounts	N/A	N/A

Permanent establishment rulings	N/A	N/A
Related party conduit rulings	N/A	N/A
<i>De minimis</i> rule	N/A	N/A
IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption	N/A	N/A
<b>Total</b>	<b>8</b>	

#### D. Matters related to intellectual property regimes (ToR I.4.1.3)

Brazil does not offer an intellectual property regime for which transparency requirements under the Action 5 Report (OECD, 2015<sup>[5]</sup>) were imposed.

#### Summary of recommendations on implementation of the transparency framework

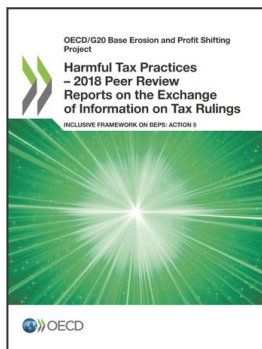
Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
	No recommendations are made.

#### Notes

<sup>1</sup> Available at: <https://idg.receita.fazenda.gov.br/aceso-rapido/legislacao>

<sup>2</sup> With respect to the following preferential regime: PADIS – Semiconductors Industry.

<sup>3</sup> Parties to the Convention are available here: [www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm](http://www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm). Brazil also has bilateral agreements in force with Argentina, Austria, Belgium, Canada, Chile, China (People's Republic of), Czech Republic, Denmark, Equator, Finland, France, Hungary, India, Israel, Italy, Japan, Korea, Luxembourg, Mexico, Norway, Netherlands, Peru, Portugal, Philippines, Slovak Republic, Russia, South Africa, Spain, Sweden, Trinidad and Tobago, Turkey, Ukraine and Venezuela.



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