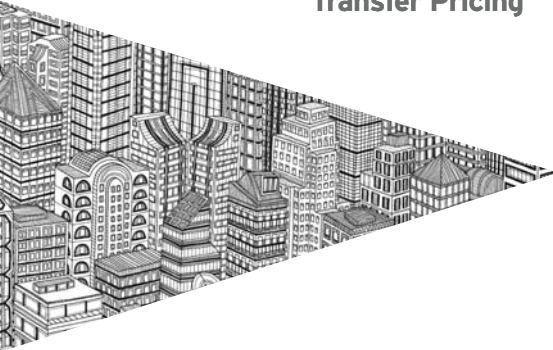


International Tax Alert

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Transfer Pricing



Brazil: Transfer Pricing – relief provided for export transactions for FY2011

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Brazilian federal tax authority issued *Portaria 563/2011* on 28 December 2011 and *Normative Instruction 1.233/2012* on 3 January 2012, which allows the application of an adjustment mechanism on the transfer prices on export transactions to related parties. Therefore, exporting companies are allowed to increase their export prices by 11% for transactions performed during FY2011. The rule is aimed at reducing the effect of appreciation of the Brazilian Real in relation to foreign currencies.

In practical terms, by considering such relief, taxpayers will decrease their corporate income taxes (IRPJ and CSLL) for 2011 in Brazil. It is important to mention that the aforementioned tax relief can only be applied by exporting companies that use the "Profitability safe harbor," or test their transfer prices through "Domestic market 90%" or "CAP Method" as follows.

Profitability safe harbor

A Brazilian legal entity which realized precorporate income (IRPJ/CSLL) taxes net profits deriving from revenues from export sales to related companies, in an amount equivalent to a minimum of 5% of the total revenue from said exports, considering current and two precedent years, may demonstrate the adequacy of prices charged in referred exports, during the same period, exclusively with the documents relating to the operation itself.

Therefore, revenues related to FY2011 should be increased by 11%; percentage to be considered for 2009 and 2010 should be 0% and 9%, respectively. Additionally, exporting companies are allowed to perform profitability safe harbor analysis based only on FY under analysis.

Domestic market 90%

The general rule for exports establishes that a taxpayer is compliant with Brazil's transfer pricing regulations for export transactions to related parties whenever the average price of the taxpayer's exports exceeds 90% of the average price for the same products sold in the domestic market during the calendar year.

CAP method

The CAP comparable is defined as the arithmetic average cost of acquisition or production of goods, services or rights exported, increased by Brazilian taxes and contributions and a statutory 15% profit margin.

For better understanding of the effects of the new rule, we refer to the examples in the next column.

Description	Regular TP	Applying Portaria 563 (11%)
Export price	100	111
Comparable price (Domestic market or CAP)	110	110
Transfer pricing adjustment	10	0

In the example above, according to the regular transfer pricing rule, the operation would result in a tax adjustment given that the comparable price is higher than the export price. By applying the export price increase set by *Portaria 563*, the comparable price becomes lower than the new export price. Therefore, no adjustment is warranted.

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EYG no. CM2654

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