On 7 May 2018, Brazil and Singapore signed a treaty for the elimination of double taxation with respect to income taxes and the prevention of tax evasion and avoidance (the Treaty). Once ratified by both jurisdictions, the Treaty will come into force.

Brazil is the largest economy in Latin America and, over 50 Singapore companies currently operate in Brazil, in sectors such as education, food products, oil and gas, logistics commodities trading, infrastructure and environmental services, and info-communications technology. Singapore is the fourth-largest Asian investor in Brazil and, in 2017, Singapore was also the main destination for Brazilian exports in the Association of Southeast Asian Nations (ASEAN). The Treaty stipulates the taxing rights of both countries on all forms of income flows arising from cross-border business activities and minimizes the double taxation of that income. This will lower barriers to cross-border investment and potentially boost trade and economic flows between the two countries.

While Singapore has signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the Multilateral Instrument or MLI), Brazil has not yet signed the instrument.

The Treaty provisions partially align with the standards of the Organisation for Economic Co-operation and Development (OECD) and its Base Erosion and Profit Shifting (BEPS) action plans.

This Alert summarizes the key provisions of the Treaty.
Detailed discussion

Preamble
The Treaty’s preamble states that the governments of both Contracting States desire to further develop their economic relationship and to enhance their cooperation in tax matters. The Treaty adopts the language recommended under Action 6 of the BEPS project describing the intent of the Contracting Jurisdictions to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance.

Persons covered (Article 1)
The scope of the Treaty is limited to residents of Singapore and Brazil. Nonresidents do not qualify for the treatment provided under the Treaty. Following Action 2 of the BEPS project (Neutralize the effects of hybrid mismatch arrangements) recommendation, the Treaty includes a provision aimed at ensuring that transparent entities are not used to obtain the benefits of treaties unduly.

Taxes covered (Article 2)
The Treaty covers taxes on income in Singapore and Brazil. Similar to the Brazil and Switzerland treaty recently signed (also not yet in force), the Brazilian Social Contribution on Net Profit (CSLL) is expressly mentioned as covered by the Treaty.

Residence (Article 4)
Notwithstanding the BEPS concerns addressed in Action 2 related to the use of the place of effective management as a tie-breaker rule, the Treaty adopts the place-of-effective-management rule for persons other than individuals.

Permanent establishment (Article 5)
In line with the United Nations model, the definition of a permanent establishment (PE) includes a construction-site PE if such site, project or activities last more than six months. The PE definition also includes a service PE, but only if the furnishing of the services through employees or other personnel engaged by the enterprise for such purpose continue (for the same or a connected project) within the other Contracting State for a period or periods aggregating more than 183 days in any 12-month period commencing or ending in the fiscal year concerned.

The Treaty does not incorporate some texts in accordance with the suggestions of BEPS Action 7 regarding PEs. For example, the specific activity exemptions from PE are based on the earlier versions of the OECD Model Tax Convention.

Also, although all tax treaties signed by both Brazil and Singapore include PE provisions, Brazilian domestic legislation does not expressly cover the PE definition or its taxation. In the case of Singapore, notwithstanding that the domestic tax legislation does include a PE definition, it does not expressly provide for the taxation of a PE.

Associated enterprises (Article 9)
The Treaty does not include a corresponding adjustment clause for transactions between associated enterprises, which is similar to all treaties concluded by Brazil. In other words, any transfer pricing disputes should be resolved by the Mutual Agreement Procedure (MAP).

Dividends (Article 10)
Dividends are taxed at the following rates:

- 10% of the gross amount if the beneficial owner is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends throughout a 365-day period that includes the day of the dividend payment
- 15% of the gross amount in all other cases

Currently, as the Brazilian and Singapore domestic rules are more beneficial than the provisions of the Treaty (no withholding tax), the application of this article of the Treaty would not be relevant for dividends from Brazil to Singapore or from Singapore to Brazil.

Interest (Article 11)
Interest may be taxed in the source country up to the following thresholds:

- 15% of the gross amount (general rule)
  or
- 10% of the gross amount, if the beneficial owner is a bank and the loan has been granted for at least five years, for the financing of the purchase of equipment or of investment projects

Taxation at source is not imposed when the recipient is the Government, political subdivision, or any agency (including a financial institution) wholly owned by that Government or political subdivision of a Contracting State, but in the case of the latter, only if the interest is received by the agency in connection with its functions of a public nature.

Interest paid as “interest on the company’s equity” (JCP) in accordance with Brazilian law is included in the definition of interest in the protocol.
Most Favored Nation clause (protocol with reference to Article 11)
According to the protocol, if after signing the Treaty, Brazil agrees with another country (excluding any State in Latin America) on rates that are lower (including exemptions) than the ones provided for interest, then such rates shall be automatically extended to this Treaty.

Royalties (Article 12)
Royalties (which include the use of or the right to use industrial, commercial or scientific equipment, as well as payments for the rendering of technical assistance based on the protocol) may be taxed in the source country up to the following limits:
- 10% of the gross amount (general rule)
- 15% of the gross amount of the royalties arising from the use or the right to use trademarks

While payments for the rendering of technical assistance are included as royalties under Article 12, fees for technical services are specifically dealt with under Article 13. Nevertheless, the withholding tax rate is the same in both cases (10%)

Technical services (Article 13)
Fees for technical services, similar to the Brazil and Switzerland treaty, are addressed in a separate article, under which they may be taxed in both Contracting States.
Fees for technical services paid to the beneficial owner may be subject to a withholding tax of up to 10% in the source country, subject to the provisions of certain other articles in the Treaty. This article, however, does not apply to: (i) fees paid to an employee of the payer; (ii) fees for teaching in an educational institution or for teaching by an educational institution; and (iii) fees paid by an individual for services for his personal use. This 10% rate is lower than the 15% rate provided by Brazilian domestic law.

Some of the other tax treaties Singapore has signed include a similar technical services article, such as the tax treaties with Malaysia and India and the treaty signed with Ghana on 31 March 2017, which has yet to be ratified. However, the specific clauses in the technical services article differ from treaty to treaty.

Capital gains (Article 14)
The Treaty does not provide a capital gains tax exemption for gains derived from the disposal of shares of a company’s capital stock.

Elimination of double taxation (Article 24)
The Treaty provides for the elimination of double taxation by way of a deduction from the tax in Brazil and a tax credit in Singapore.
For dividend income derived by a Singapore resident company that directly or indirectly owns at least 10% of the share capital of the Brazilian resident company paying the dividends, the credit will take into account the underlying Brazilian tax paid by that company on the portion of its profits out of which dividends are paid.

Mutual Agreement Procedure (Article 26)
Taxpayers will have three years to seek the competent authorities’ assistance for the resolution of tax disputes arising as to the interpretation or application of the Treaty.

Exchange of information (Article 27)
The Treaty contains the legal basis for the exchange of taxpayer information between tax officials upon request.

Entitlement to benefits (Article 28)
The Treaty adopts a combined approach consisting of a simplified US-style limitation on benefits (LOB) rule and a principal purpose test (PPT) rule as a means to prevent treaty shopping. At the time of signing the MLI, Singapore had chosen to apply the PPT rule as part of its commitment to the minimum standard under BEPS Action 6 and this would be the first treaty Singapore has signed incorporating the LOB rule.
The Treaty also includes an anti-abuse rule for PEs situated in other countries, the language of which aligns with Article 10 in the text of the MLI.

Brazilian controlled foreign corporation (CFC) rules and tax treaties (protocol with reference to Article 28)
Similar to other recent treaties signed by Brazil, the Treaty expressly mentions that the Contracting States should not use its provisions to avoid application of CFC and thin capitalization rules.
Entry into force (Article 30)
For the Treaty to enter into force, each Contracting State must notify the other that the domestic law requirements and procedures for ratifying the Treaty have been completed.

Once each Contracting State fulfills the notification requirements, the Treaty will enter into force and its provisions will become effective as follows:

In Brazil

<table>
<thead>
<tr>
<th>Nature of taxes</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Taxes withheld at source</td>
<td>Amounts paid, remitted or credited on or after the first day of January following the date upon which the Agreement enters into force</td>
</tr>
<tr>
<td>Other taxes on income</td>
<td>In respect of income in tax years beginning on or after the first day of January following the date upon which the Agreement enters into force</td>
</tr>
</tbody>
</table>

In Singapore

<table>
<thead>
<tr>
<th>Nature of taxes</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Taxes withheld at source</td>
<td>Amounts paid, deemed to be paid or liable to be paid (whichever is the earliest) on or after 1 January of the calendar year following the year in which the Treaty enters into force</td>
</tr>
<tr>
<td>Other taxes on income</td>
<td>In respect of income for any year of assessment beginning on or after 1 January of the second calendar year following the year in which the Treaty enters into force</td>
</tr>
</tbody>
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Endnotes
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