



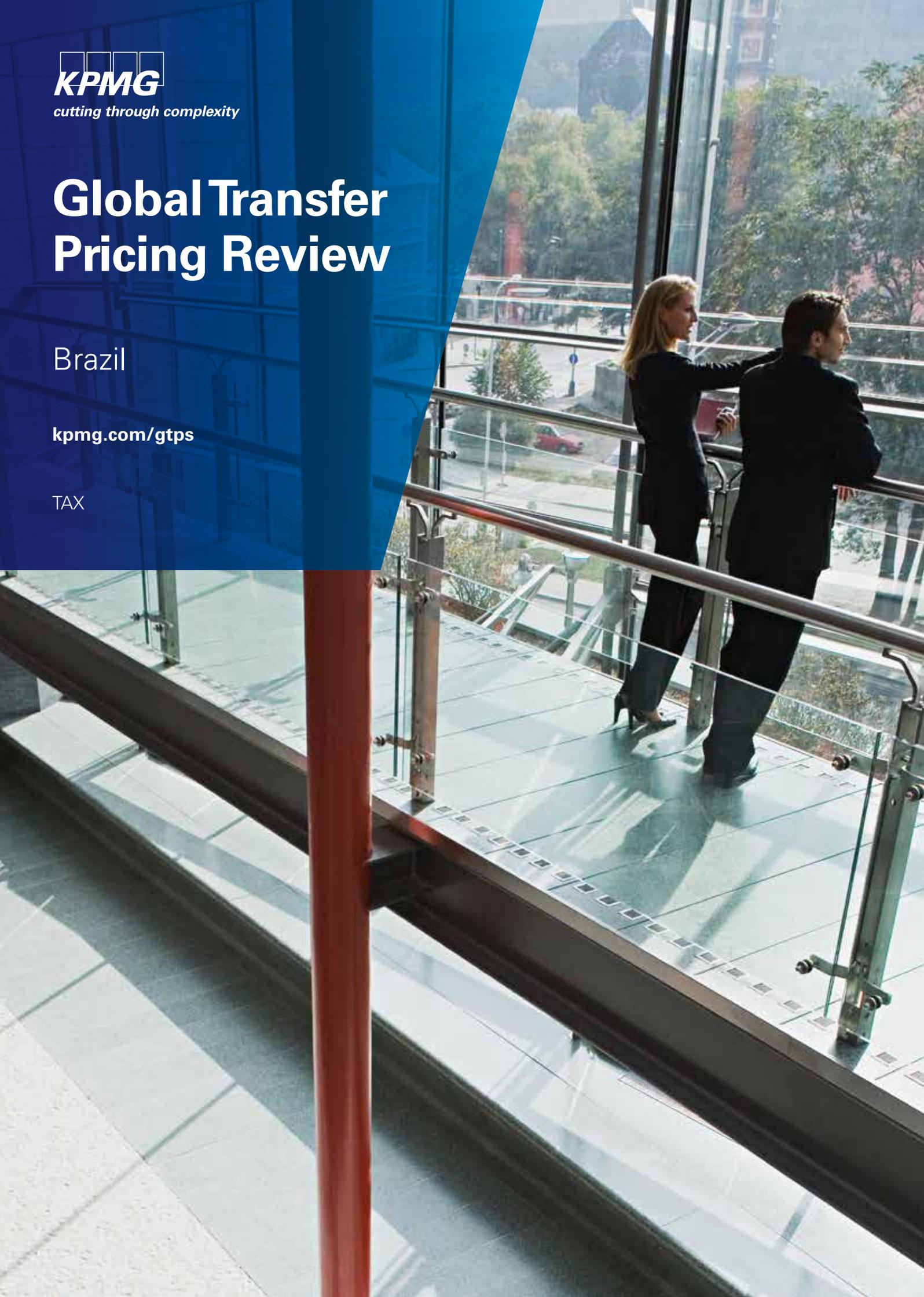
*cutting through complexity*

# Global Transfer Pricing Review

Brazil

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TAX



# Brazil



## KPMG observation

As member of the G20, Brazil has been part of the discussions in the Base Erosion and Profit Shifting (BEPS) action plan. Even though no actions have been taken to incorporate BEPS into Brazilian legislation yet, adoption is expected eventually. Among the BEPS actions, the country-by-country (CbyC) report will likely be adopted first, as it will not require changes to the Brazilian transfer pricing rules.

Brazilian audits have recently been focusing on the biggest multinational industrial companies, although an increase in audits on services activities and commodities traders is expected for the following years.

## Transfer pricing study snapshot

### The purpose of a transfer pricing study

	Applicable	Submission to tax authority required
Legal requirements	●	●
Protection from penalties	●	
Reduce risk of adjustment	●	
Shifts burden of proof	●	

## Basic information

### Tax authority name

Receita Federal do Brasil.

### Citation for transfer pricing rules

Law n. 12.715/12, Normative Instructions RFB 1.037/10, 1.312/12 and 1.322/12.

### Effective date of transfer pricing rules

January 1997.

### What is the relationship threshold for transfer pricing rules to apply between parties?

Companies are deemed to be related when they are under common control or one of them is located in a low- tax jurisdiction or privileged tax regime.

### What is the statute of limitations on assessment of transfer pricing adjustments?

Five years from the tax return filing date.

## Transfer pricing disclosure overview

### Are disclosures related to transfer pricing required to be submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes, taxpayers must provide intercompany transaction amounts and demonstrate the methodology applied for each imported/exported part number.

### What types of transfer pricing information must be disclosed?

A summary of related party transactions and transfer pricing calculations must be disclosed in the annual tax return. This includes identification of the related parties, the amount involved per transaction (goods, services and rights), and if any, the methodologies used for testing and the adjustments made.

### What are the consequences of failure to submit disclosures?

There are no specific penalties for not preparing or submitting transfer pricing information within the tax return. However, the submission of the complete tax return is mandatory and a penalty is applied for not presenting it.

## Transfer pricing study overview

Can documentation be filed in a language other than the local language? If yes, which ones?

No.

When a transfer pricing study is prepared, should its content follow Chapter V of the Organisation for Economic Co-operation and Development (OECD) Guidelines?

No.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

## Transfer pricing methods

Does your country follow the transfer pricing methods outlined in Chapter II of the OECD Guidelines? If exceptions apply, please describe.

No. Although the ratios used are similar, (i.e. Comparable Uncontrolled Price (CUP) method, resale price, and cost plus) their application often deviates from the OECD Guidelines because some methods require the application of a fixed margin, as set out by law.

## Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? And if so, how many days?

Yes, 20 days.

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? Please explain.

Within 20 days of request, after which an extension may be negotiated with the tax authority, depending on the complexity of documentation required.

If an adjustment is proposed by the tax authority, what dispute resolution options are available?

Tax court and administrative disputes.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

No specific penalties for not presenting the transfer pricing documentation. General tax penalty is applied on corporate tax due.

To what extent are transfer pricing penalties enforced?

Only when the adjustment made by tax authority triggers corporate tax.

What defenses are available with respect to penalties?

The following defenses are available:

- adjustment miscalculated by the tax authority; and
- misinterpretation of law or facts by the tax authority.

What trends are being observed currently?

Given the changes brought by Law 12,715, the tax authorities will be focusing the audits on commodities traders. Now, any import/export transactions of commodities with related parties must be compared with quotations of internationally recognized futures and commodities exchanges. Before the new regulation, commodities were subject to the general rules.

## Special considerations

Are secret comparables used by tax authorities?

Yes, in a few cases.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No. Public comparables are not available in Brazil. Fixed margins/safe harbors are used; therefore comparables are not really relevant.

Do tax authorities have requirements or preferences regarding databases for comparables?

No.

Does the tax authority generally focus on the interquartile range in a TNMM analysis?

Not applicable.

Does the tax authority have other preferences in benchmarking? If so, please describe.

Not applicable.

What level of interaction do tax authorities have with customs authorities?

Low.

Are there limitations on deductibility of management fees beyond the arm's length principle?

Not applicable. Management fees should follow general deductibility and transfer pricing rules.

Are management fees subject to withholding?

Yes.

Are there limitations on the deductibility of royalties beyond the arm's length principle?

Yes. Royalties are subject of specific regulations, and its deductibility is basically an application of specific percentage over the revenue.

Are royalties subject to withholding?

Yes.

Are taxpayers allowed to file tax return numbers that differ from book numbers?

No. Year-end adjustments are not regulated. In some cases, debit/credit notes may be issued to adjust import/export prices. Impacts on indirect taxes and deductibility for corporate tax purposes should be analyzed on a case-by-case basis.

### Other unique attributes?

The rules allow for some flexibility on the application of methods and in the ability to change the method used on a yearly basis. Safe harbors and materiality thresholds are available only for exporters.

### Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?

No experience.

When may a taxpayer submit an adjustment to competent authority?

No formal rules exist in this area.

May a taxpayer go to competent authority before paying tax?

No formal rules exist in this area.

### Advance pricing agreements

What APA options are available, if any?

None.

Is there a filing fee for APAs?

Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

Not applicable.

Are there any difficulties or limitations on the availability or effectiveness of APAs?

Not applicable.

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