

ABDF 2019

**IV CONGRESSO
INTERNACIONAL
DE DIREITO TRIBUTÁRIO
DO RIO DE JANEIRO**

Em homenagem ao Professor
Ricardo Lobo Torres

Brazilian approach on transfer pricing

Brazil's integration to the international tax
arena and its accession to the OECD

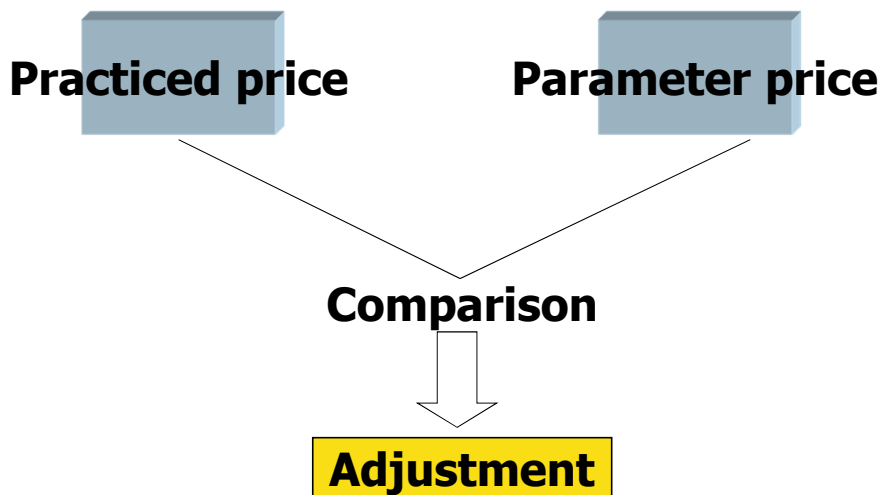
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ABDF
ASSOCIAÇÃO BRASILEIRA
DE DIREITO FINANCEIRO

Brazilian transfer pricing rules

Current state and required improvements

The arm's length principle



The arm's length principle

UNRELATED PARTIES



Distrust



RELATED PARTIES



Synergy



COMPARISON?



Predetermined Margins

•The Brazilian solution

PRL	CPL	CAP	PVA	PVV
20% (general rule) 30% 40%	20%	15%	15%	30%



Law no. 12,715: new PRL margins

Sector	Profit margin
General rule	20%
Chemicals	30%
Glasses and glass products	
Cellulose, paper and paper products	
Metallurgy	
Pharmaceutical products and chemicals	40%
Tobacco products	
Optical, photographic and cinematographic equipment and instruments	
Machinery, apparatus and equipment for dental medical and hospital uses	
Extraction of oil and natural gas	
Petroleum-derived products	



Brazil vs. OECD

**MINISTER OF FINANCE
FEDERAL REVENUE OFFICE**

DECISION N. 20, from October 31, 2000

(...) There is **no contradiction between article 9 of the OECD Model Tax Convention on Income and on Capital – which deals with transfer pricing within the conventions – and articles 18 to 24 of Law n. 9,430/96, which provide for transfer pricing within the Brazilian tax law.**



Brazil vs. OECD

Main differences between OECD standards and Brazilian transfer pricing legislation:

- ▶ Predetermined margins
- ▶ Product-to-product approach
- ▶ Royalties are not comprehended
- ▶ No room for functional analysis
 - ▶ No APAs



Brazil vs. OECD

Main differences between OECD standards and Brazilian transfer pricing legislation:

- ▶ Basket approach is prohibited
 - ▶ "Related parties" concept is too broad
- ▶ Documentation requirements are complex and burdensome (CPL)
- ▶ Some methods have no practical applicability (PVA/PVV)
- ▶ Services related to "toll manufacturing" cannot be valued



Required improvements

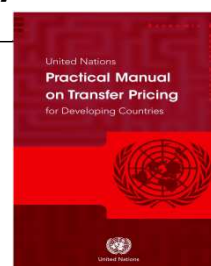
Main challenges

- Margins: practicability vs. equity
- Transparency
- Presumptions vs. arm's length
- MAP



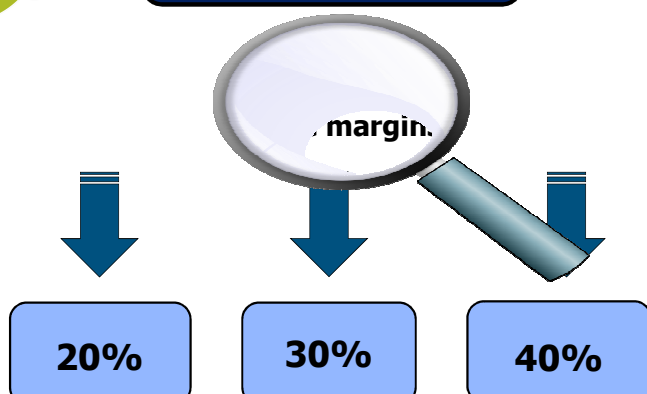
Margins: practicability vs. equity

"Countries may establish **different profit margins** per economic sector, line of business or even more specifically according to the kind of goods or services dealt with, to calculate the parameter price (deemed arm's length price). **The more accurately** these are computed and **the more margins are established**, **the more likely** it is that the use of the margins will **neither distort the system nor the decisions of the players involved**".

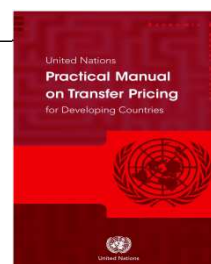


Margins: transparency

Law no. 12,715



"In order to determine such fixed margins, the tax authorities will need to do **pricing research or purchase such information from existing (public) databases**, in order to find appropriate prices that could be used as a comparable"

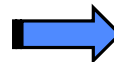


Presumptions vs. arm's length

Rebuttable
presumption



Arm's length



"I – statement of the production costs of the goods, services or rights, issued by the supplier legal entity, domiciled abroad (...)

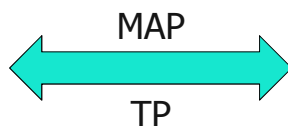
§1º The statements shall be supplied with the following papers: (...)

III – copy of sale fiscal documents issued in the last calendar year, in the operations between the related legal entity, domiciled abroad, and the unrelated wholesaler legal entities (...)

IV – copy of sale fiscal documents to customers, issued by retail legal entities, located in the destination countries of the goods, services or rights"

Article 47 of the Normative Ruling no. 1,312

MAP on TP

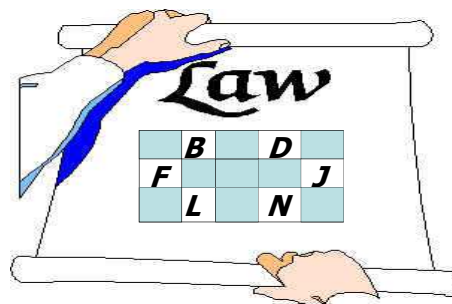


Should States apply the DTC according their domestic law?



MAP on TP

- Klaus Vogel's Model: the double tax treaty as a mask



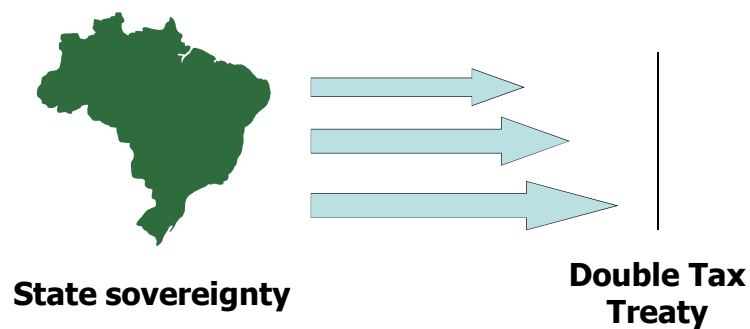
Double Tax
Conventions and
Domestic Law



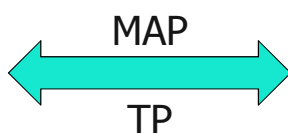
MAP on TP

- My view

State jurisdiction is limited by International Law rules



MAP on TP

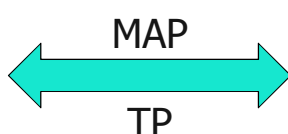


Should States apply the DTC according their domestic law?

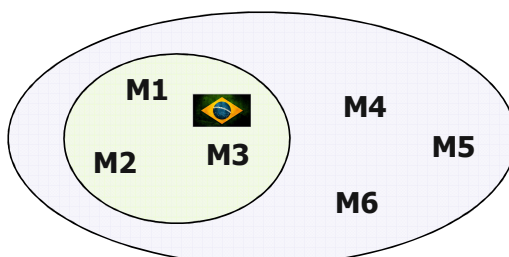
What are the consequences to apply an arm's length concept of the DTC different from each domestic law?



MAP on TP



Arm's length



Thank you!

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