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Transfer Pricing in Post-BEPS Era and Brazil's Approach

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What is the **major International Tax Issue** in the Post-BEPS World?

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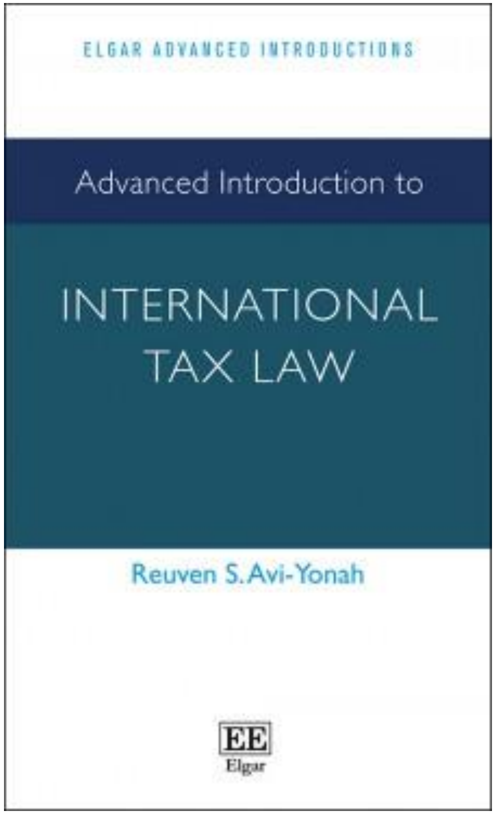
Transparency


TAX

Allocation of taxing rights!

The So-Called International Tax Regime



- Source country has the right to tax **active income**, as long as the minimal activity threshold is met (presence of a **permanent establishment** or similar requirement).

- The residence country has the right to tax **passive income**.

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The So-Called International Tax Regime

- In both cases there is a core element that is blatantly disregarded: the **consumer market**.
- Developing countries should have the right to tax active income – regardless of a PE – as well as passive income.

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The proposals of the European Union to tax the digital economy: **beginning of the end** of the International Tax Regime?

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What does it all have to do with **Brazilian transfer pricing**?

Main Drivers of Brazil's Transfer Pricing Rules

- Simplicity with the application of **fixed profit margins**.
- Original focus on the **prevention of aggressive tax planning** – secondary concern with the allocation of taxing rights.
- Unilateral approach: **secondary adjustments are not allowed**.
- No experience with **Advanced Pricing Agreements**.

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Brazil's TP in the 2015 Actions 8-10 BEPS Report

"Brazil provides for an approach in its domestic legislation that makes use of fixed margins derived from industry practices and considers this in line with the arm's length principle. **Brazil will continue to apply this approach and will use the guidance in this report in this context**. When Brazil's Tax Treaties contain Article 9, paragraph 1 of the OECD and UN Model Tax Conventions and **a case of double taxation arises that is captured by this Treaty provision, Brazil will provide access to MAP in line with the minimum standard of Action 14**."

OECD. *Aligning Transfer Pricing Outcomes with Value Creation*. Paris, OECD, 2015. p. 185.

Brazil's TP in the 2015 Actions 8-10 BEPS Report

- Brazil's position in 2015:
  - To continue using its TP methods.
  - Commitment with the use the **Mutual Agreement Procedure** to resolve disputes regarding double taxation.
    - No indication that Brazil will sign the MLI: bilateral approach.
    - No indication that Brazil will include arbitration as a dispute resolution mechanism.
    - MAP cannot be used to request change of the fixed margins.

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Brazil’s Accession Discussions with the OECD

- In **2017** Brazil started the accession process.
- Major **blocker** in the tax area: transfer pricing.
- Last March Brazil’s Tax Office, the OECD, and Brazil’s Industry Confederation organized a workshop to discuss the **approximation between Brazil’s and OECD transfer pricing methodologies**.
- Brazilian authorities are opened to discuss some form of **integration between the country’s rules and OECD standards**.

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Brazil’s Accession Discussions with the OECD

- The initial idea is not to eliminate Brazil’s fixed margins’ system, but to establish some sort of **opt-in methodology** for the use of OECD standards.

- Last month a few Brazilian media vehicles reported that **President Trump had vetoed Brazil’s accession** to the OECD. The Organization did not confirm this information officially.

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Final Comments

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Thank you!

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