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COMMENTS TO THE CHAPTERS I TO III OF THE TRANSFER PRICING GUIDELINES

Brazilian transfer pricing rules were set in 1996. From that moment on, Brazil has not fully conformed to OECD's standards. Two particular differences should be noted in this matter: (i) Brazil only adopts methods similar to the traditional transaction methods (Comparable Uncontrolled Prices, Resale Price Method and Cost Plus Method) and (ii) Brazilian rules accept the use of any of these methods to calculate transfer pricing adjustment, regardless of its capacity to accurately gauge the fair price in a given transaction.

Despite these differences, the Brazilian background provides valuable examples to analyze, by comparison, the changes carried out in the OECD's transfer pricing guidelines in 2009.

Firstly, Brazilian experience has shown the inability of traditional transaction methods to accurately assess a fair price in all scenarios. Information is often scarce and comparability adjustments may be controversial. This is particularly true in the case of intangible assets, where the item is seldom resold, comparable transactions are rare and the cost often does not reflect the fair value of such item.

Secondly, Brazilian transfer pricing calculations sometimes arrive at unreasonable results, as the methods may be used regardless of being the most adequate to the case at hand.

In light of these two factors, granting a more equal status to the traditional transaction methods and the transactional profit methods, while determining the use of the "most appropriate method" is praiseworthy. These changes manage to ensure a more practical approach to transfer pricing calculations, reducing compliance costs, and maintain a reasonable analysis, preventing excessive distortions.