Transfer pricing: early adoption of new rules

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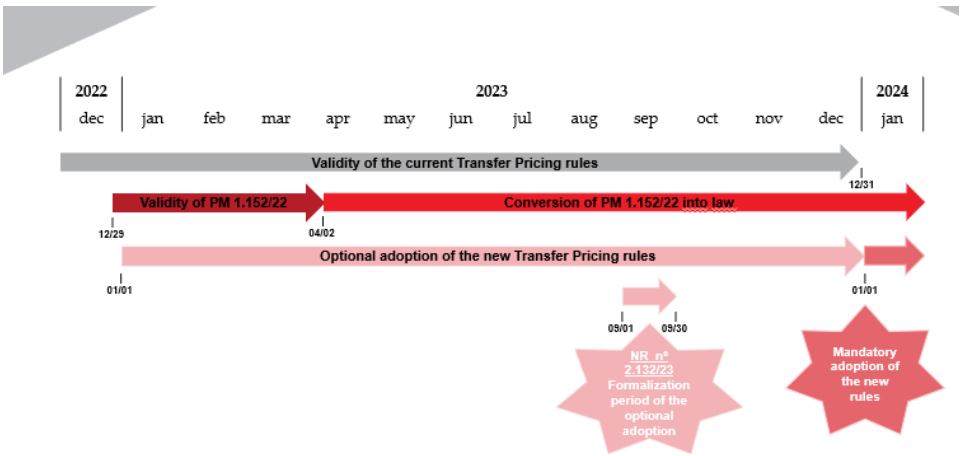
On December 29, 2022, the Provisional Measure n° 1.152 **("PM")** was published providing for the new transfer pricing rules in Brazil, which seek to align Brazilian legislation with the rules adopted by several countries. The new rules are inspired by the guidelines of the Organization for Economic Cooperation and Development **("OECD")** and they are part of a package of measures - not only related to fiscal policy - taken by Brazil aiming at becoming a member country of the OECD.

Despite of the ongoing legislative process that shall convert the PM into law (until April 2, 2023), the PM foresees the optional adoption of the new rules for 2023 and mandatory adoption as of 2024.

In this context, the Federal Revenue published the Normative Ruling RFB n° 2.132 on February 17, 2023 **("NR RFB N° 2.132/23")**, regulating formal aspects of the optional adoption and opening a period from September 1 to September 30, 2023 for taxpayers to opt for the new rules this year - *except in cases of start of activities, merger, spin-off, and extinction, which must observe the month of the event to formalize the option.*

WHAT ARE THE DEADLINES?

Scenario for the conversion of PM 1.152/22 into law



SHOULD MY COMPANY OPT IN FOR 2023?

Adhesion is optional, irrevocable, and should be well evaluated, especially given the lack of specific regulation over the new law and the PM's pending conversion into law.

The option may be a good choice in some cases. For example, companies make book-to-tax adjustments to determine the taxable income could benefit from the early adoption due to transfer pricing adjustments. The adoption of the arm's length standard may also be recommended for alignment of international transfer pricing policies in multinational groups.

HOW TO ADHERE?

The taxpayer must formalize the opening of the digital process, through the Portal of the Virtual Service Center (Portal e-CAC), attaching the option term foreseen in the Sole Annex of IN RFB no. 2132/23.

FURTHER PROVISIONS

NR RFB no. 2132/23 also provides definitions on the arm's length principle and ways of transfer pricing adjustment (spontaneous, compensatory, and primary) to determine the taxable income in Brazil. It also foresees the non-deductibility of expenses with royalties and technical, scientific, administrative, or similar assistance and clarifies that the performance of spontaneous or compensatory adjustments dealt with in this NR will not automatically imply the performance of adjustments to the tax base of taxes that are not income tax.