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Taxation of Multinational Enterprises and Brazil's Top-up Tax (Pillar II)

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Authors

Hermano A. C. Notaroberto Barbosa

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Provisional Measure 1.262/2024 (PM 1262) has introduced a top-up of the Social Contribution on Net Profit (CSLL, Contribuição Social sobre o Lucro Líquido, one of Brazil's corporate income taxes, along with the Corporate Income Tax, IRPJ – Imposto de Renda da Pessoa Jurídica), which will apply to the Brazilian subsidiaries of multinational groups with annual consolidated revenue of more than EUR 750 million. The CSLL top-up is one step in bringing Brazilian law into alignment with the global rules against tax base erosion proposed by the OECD and the G20, which have already been adopted in other countries.

In 2023, the OECD launched a two-pillar package to standardize anti-tax avoidance rules in member countries. Pillar I deals with the taxation of the digital economy, while Pillar II establishes a global minimum taxation for multinational groups.

More specifically, Pillar II is a set of recommendations (the GloBE rules) that member countries should follow in revising their legislation to ensure that: (i) a controlling entity is taxed on the profits of its foreign-controlled companies if those companies are not taxed locally at an effective minimum rate of 15%, (ii) a controlled company is taxed on the profits of its foreign-controlling entity if those profits are not taxed locally at the same effective minimum rate; and (iii) the country where a controlled company is domiciled has an effective minimum tax rate of 15%.

PM 1262 has implemented this third recommendation in the form of a CSLL top-up equal to the difference, if any, between 15% and the effective tax on the profits of an entity or group of entities located in Brazil ("Constituent Entities").

Under PM 1262, adjustments are made to the Constituent Entities' consolidated financial statements to determine their "Adjusted Covered Tax" (the numerator) and their "GloBE Net Income or Loss" (the denominator), and so arrive at the "Effective Tax Rate" (ETR). If the ETR is less than 15%, the CSLL top-up will apply.

Implementing this international standard involves adapting many features of our tax rules. For example, (i) GloBE Net Income or Loss is not the same as the "actual profit" (lucro real) used to calculate IRPJ and CSLL; (ii) the Adjusted Covered Taxes may differ from the IRPJ and CSLL paid in the year; (iii) the Effective Tax Rate is not the same as the nominal 34% rate for IPRJ and CSLL. PM 1262 also provides for cases of tax exemptions, deferrals, credits and benefits to adapt Brazilian rules to the Pillar II standard.

The CSLL top-up will be payable by each Constituent Entity that has excess profit. Its multinational group can opt to allocate the CSLL top-up to a single Constituent Entity, but all entities within the group will be jointly liable for payment.

If PM 1262 is converted into ordinary legislation, the new rules will apply starting 2025, and the top-up will be payable starting in 2026.

Brazil's CSLL top-up rules will affect all multinational groups doing business in Brazil, and should be examined with attention, since they involve a number of controversial issues and concepts that are new to Brazilian tax law.

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Hermano A. C. Notaroberto Barbosa