OFFICIAL GAZETTE OF THE UNION

Published: 29/12/2022 | Edition: 245 | Section: 1 | Page: 1

Body: Acts of the Executive Branch

PROVISIONAL MEASURE NO. 1.152, OF 28 DECEMBER 2022

Amends the legislation of the Corporate Income Tax - IRPJ and of the Social Contribution on Net Profits - CSLL to provide for transfer pricing rules.

THE PRESIDENT OF THE REPUBLIC , in the use of the attributions conferred upon him by art. 62 of the Constitution, adopts the following Provisional Measure, with force of law:

CHAPTER I

SUBJECT MATTER AND SCOPE

Art. 1 This Provisional Measure amends the legislation on Corporate Income Tax - IRPJ and Social Contribution on the Net Profit - CSLL to provide for transfer pricing rules.

Sole Paragraph. The provisions of this Provisional Measure apply when determining the tax basis of the IRPJ and CSLL of legal entities domiciled in Brazil that carry out controlled transactions with related parties abroad.

CHAPTER II GENERAL

PROVISIONS

Section I

From the Arm's Length Principle

Art. 2 For the purposes of determining the tax base of the taxes referred to in the sole paragraph of art. 1, the terms and conditions of a controlled transaction will be established in accordance with those that would be established between unrelated parties in comparable transactions.

Section II

Controlled transactions

Art. 3 For the purposes of the provisions of this Provisional Measure, controlled transaction comprises any commercial or financial relationship between two or more related parties, established or carried out directly or indirectly, including contracts or arrangements in any form and series of transactions.

Section III

Related parties

Art. 4 Parties are considered to be related when at least one of them is subject to influence, exercised directly or indirectly by another party, which may lead to the establishment of terms and conditions in their transactions that diverge from those that would be established between unrelated parties in comparable transactions.

§ Paragraph 1 The following are considered related parties, without prejudice to other cases that fall under the provisions in the **caption sentence**

I - the controller and its subsidiaries;

II - the entity and its business unit, when the latter is treated as a separate taxpayer for fi purposes of income tax assessment, including the parent and its filiais;

III - the affiliated companies;

IV - the entities included in the consolidated financial statements, or that would be included if the final controller of the multinational group of which they form part prepared such statements if their capital were traded on the securities markets in their home jurisdiction;

V - the entities, when one of them has the right to receive, directly or indirectly, at least twenty-five per cent of the profits of the other or its assets in case of liquidation;

VI - the entities that are, directly or indirectly, under common control or in which the same partner, shareholder or holder holds twenty per cent or more of the capital stock of each one;

VII - the entities in which the same partners or shareholders, or their spouses, companions, relatives, consanguineous or afins, up to the third degree, hold at least twenty per cent of the share capital of each one; and

VIII - the entity and the natural person who is the spouse, companion or relative, consanguineous or afim, up to the third degree, of a director, officer or controller of that entity.

§ 2 For fins of the provisions of this article, the term entity comprises any person, natural or legal, and any contractual or legal arrangements devoid of legal personality.

§ For fins of the provisions in § 1, a control relationship is characterized when an entity:

I - holds, directly or indirectly, alone or together with other entities, including by virtue of the existence of voting agreements, rights that assure it preponderance in corporate resolutions or the power to elect or dismiss the majority of the administrators of another entity;

II - holds, directly or indirectly, more than fifty per cent of the share capital of another entity; or

III - holding or exercising the power to administer or manage, directly or indirectly, the activities of another entity.

§ For the fins of the provisions in clause III of § 1, an affiliated company is considered to be the entity that holds significant influence over another entity, as provided for in § 1, § 4 and § 5 of art. 243 of Law No. 6404 of 15 December 1976.

Section IV

Of comparable transactions

Art. 5 A transaction between unrelated parties will be considered comparable to a controlled transaction when:

I - there are no differences that could materially affect the financial indicators examined by the most appropriate method referred to in article 11; or

II - adjustments can be made to eliminate the material effects of differences, if existing.

§ 1 For the purposes of the caption **sentence**, the existence of differences between the economically relevant characteristics of the transactions, including their terms and conditions and economically relevant circumstances.

§ 2 The financial indicators examined under the most appropriate method referred to in art. 11 include prices, profit margins, indexes, division of profits between the parties or other data deemed relevant.

Section V

Application of the Arm's Length Principle

Subsection I

General provisions

Art. 6 In order to determine whether the terms and conditions established in the controlled transaction are in accordance with the principle provided for in Art. 2, the following should be carried out

I - the delineation of the controlled transaction; and

II - the comparability analysis of the controlled transaction.

Subsection II

Outline of the controlled transaction

Art. 7 The delineation of the controlled transaction referred to in subitem I of the **main** section of Art. 6 will be carried out based on the analysis of the facts and circumstances of the transaction and evidence of the effective conduct of the parties, with a view to identifying the commercial and financial relations between the related parties and the economically relevant characteristics associated with these relations, also considering:

I - the contractual terms of the transaction, which derive from both formalised documents and contracts and evidence of the actual conduct of the parties;

II - the functions performed by the parties to the transaction, taking into account the assets used and the economically significant risks assumed;

III - the specific characteristics of the goods, rights or services that are the subject of the controlled transaction;

IV - the economic circumstances of the parties and the market in which they operate; and

V - business strategies and other characteristics considered economically relevant.

§ 1 In outlining the controlled transaction, the options realistically available to each of the parties to the controlled transaction shall be considered, in order to assess the existence of other options that could have generated more advantageous conditions for any of the parties and that would have been adopted if the transaction had been carried out between unrelated parties, including not carrying out the transaction.

§ In the event that the economically relevant characteristics of the controlled transaction identified in the formal agreements and in the documents presented, including the documentation referred to in article 35, diverge from those verified on the basis of an analysis of the facts, circumstances and evidence of the actual conduct of the parties, the controlled transaction shall be delineated, for the purposes of the provisions of this Provisional Measure, based on the facts, circumstances and evidence of the actual conduct of the parties.

§ Paragraph 3 The economically significant risks referred to in item II of the **preamble** consist of those risks that significantly influence the economic results of the transaction.

§ 4. Economically significant risks shall be deemed to be assumed by the party in the controlled transaction that exercises the functions relating to its control and has the financial capacity to assume them.

Art. 8 For the fins of the provisions of this Provisional Measure, where it is concluded that unrelated parties, acting in comparable circumstances and behaving in a commercially rational manner, considering the options realistically available to each party, would not have carried out the controlled transaction as had been outlined, in view of the transaction in its entirety, the transaction or series of controlled transactions may be disregarded or replaced by an alternative transaction for the purpose of determining the terms and conditions that would be established by unrelated parties in comparable circumstances and acting in a commercially rational manner.

Sole Paragraph. The controlled transaction referred to in the **caput** cannot be disregarded or substituted exclusively on the grounds that comparable transactions between unrelated parties have not been identified.

Subsection III

Comparability analysis

Art. 9 The comparability analysis shall be performed with the objective of comparing the terms and conditions of the controlled transaction, outlined in accordance with the provisions of art. 7, with the terms and conditions that would be established between unrelated parties in comparable transactions, and shall also consider:

I - the economically relevant characteristics of the controlled transaction and of transactions between unrelated parties;

II - the date on which the controlled transaction and the transactions between unrelated parties were entered into, so as to ensure that the economic circumstances of the transactions being compared are comparable;

III - the availability of information of transactions between unrelated parties, allowing a comparison of their economically relevant characteristics, with a view to identifiing the most confitable comparable transactions carried out between unrelated parties;

IV - the selection of the most appropriate method and the financial indicator to be examined;

V - the existence of pricing or valuation uncertainties existing at the time of the controlled transaction and whether these uncertainties have been addressed in the same way as unrelated parties would have done in comparable circumstances, including the adoption of appropriate mechanisms to ensure compliance with the principle established in article 2; and

VI - the existence and relevance of group synergy effects, under the terms of the provisions of art. 10.

Art. 10 The benefits or losses obtained as a result of the effects of group synergy resulting from a deliberate action in the form of functions performed, assets used or risks assumed that produce an identificable advantage or disadvantage in relation to other market participants will be allocated among the parties to the controlled transaction in proportion to their contributions to the creation of the synergy effect and fill be subject to compensation.

Sole Paragraph. Group synergy effects that do not arise from a deliberate action under the provisions of the **caput** and that merely result from the entity's participation in the multinational group will be considered incidental benefits and will not ficar subject to compensation.

Subsection IV

Selecting the most appropriate method

Art. 11 For the fins of the provisions of this Provisional Measure, the most appropriate method will be selected from among the following:

I - Comparable Uncontrolled Price - CUP, which consists of comparing the price or value of the consideration of the controlled transaction with the prices or values of the consideration of comparable transactions carried out between unrelated parties;

II - Resale Price Minus - RPM, which consists of comparing the gross margin that an acquirer of a controlled transaction obtains on the subsequent resale made to unrelated parties with the gross margins obtained in comparable transactions made between unrelated parties;

III - Cost plus Method - CPM, which consists of comparing the gross profit margin obtained on the supplier's costs in a controlled transaction with the gross profit margins obtained on the costs in comparable transactions carried out between unrelated parties;

IV - Transactional Net Margin Method - TNMM, which consists of comparing the net margin of the controlled transaction with the net margins of comparable transactions carried out between unrelated parties, both calculated based on an appropriate profitability indicator;

V - Profit Split Method - PSM, which consists of the division of profits or losses, or part thereof, in a controlled transaction according to what would be established between unrelated parties in a comparable transaction, considering the relevant contributions provided in the form of functions performed, assets used and risks assumed by the parties involved in the transaction; and

VI - other methods, provided that the alternative methodology adopted produces a result consistent with that which would be achieved in comparable transactions performed between unrelated parties.

§ 1 The most appropriate method is considered to be that which provides the most confitable determination of the terms and conditions that would be established between unrelated parties in a comparable transaction, including considering the following aspects:

I - the facts and circumstances of the controlled transaction and the appropriateness of the method in relation to the nature of the transaction, determined particularly from an analysis of the functions performed, the risks assumed and the assets used by the parties involved in the controlled transaction as provided for in sub II of the **main section of** Art. 7;

II - the availability of confible information from comparable transactions entered into between unrelated parties necessary for the consistent application of the method; and

III - the degree of comparability between the controlled transaction and transactions between unrelated parties, including the need and confidibility of making adjustments to eliminate the effects of any differences between the transactions compared.

§ 2 The CUP method shall be considered the most appropriate when there is confible information on prices or values of consideration arising from comparable transactions carried out between unrelated parties, unless it can be established that another method provided for in the **caput** is more appropriately applicable with a view to observing the principle provided for in art. 2.

§ 3º When the taxpayer selects other methods referred to in item VI of the **caput** for application in hypothesis other than those provided by the Special Secretary of the Federal Revenue of Brazil of the Ministry of Economy, it must be demonstrated by the transfer pricing documentation referred to in art. 35 that the methods provided in items I to V of the **caput** are not applicable to the controlled transaction, or that they do not produce confitable results, and that the other selected method is considered more appropriate, under the terms of the provisions in § 1.

§ 4. The Brazilian IRS Special Secretariat of the Ministry of Economy will regulate the provisions of this article, including the possibility of combining methods, with a view to ensuring the correct application of the principle provided for in art. 2.

Subsection V

Commodities

Art. 12. For the fins of the provisions of art. 13, it is considered:

I **- commodity** - the physical product, regardless of its stage of production, and derivative products, for which quoted prices are used as a reference by unrelated parties to establish prices in comparable transactions; and

II - quoted price - the quotations or indices obtained from recognised and confirable commodity and futures exchanges, research agencies or government agencies that are used as a reference by unrelated parties to establish prices in comparable transactions.

Art. 13 Where there is reliable comparable independent price information for the **commodity** transacted, including quotation prices, the CUP method will be considered the most appropriate method for determining the value of the **commodity** transferred in the controlled transaction, unless it can be established, according to the facts and circumstances of the transaction, that another method is more appropriately applicable in order to comply with the principle provided for in Art. 2.

§ 1 When there are differences between the conditions of the controlled transaction and the conditions of transactions between unrelated parties or the conditions that determine the quotation price that materially affect the price of the **commodity** , adjustments shall be made to ensure that the economically relevant characteristics of the transactions are comparable.

§ 2 In cases where the CUP method is applied on the basis of the quotation price, the value of the **commodity** will be determined on the basis of the date or period of dates agreed by the parties to precificate the transaction when:

I - the taxpayer provides timely and confinable documentation that proves the date or date period agreed upon by the parties to the transaction, including information on the determination of the date or date period used by related parties in transactions carried out with final clients, non-related parties, and performs the transaction registration, as set forth in art. 14; and

II - the date or period of dates specified in the documentation submitted is consistent with the actual conduct of the parties and with the facts and circumstances of the case, subject to the provisions of Article 7 and the principle provided for in Article 2.

§ 3 In the event of non-compliance with the provisions of § 2, the fiscal authority may determine the value of the **commodity** on the basis of the referenced quotation price:

I - the date or the period of dates that is consistent with the facts and circumstances of the case and with what would be established between unrelated parties in comparable circumstances; or

II - to the average of the quotation price on the date of shipment or registration of the import declaration, when it is not possible to apply the provisions in item I.

§ 4. The Special Secretariat of Federal Revenue of Brazil of the Ministry of Economy shall regulate the provisions in this article, including as to the guidelines for the election of commodities and futures exchanges, research agencies or governmental agencies referred to in item II of the **caption sentence of** art. 12.

§ 5º For fins of the provisions of § 4, the Special Secretariat of the Federal Revenue of Brazil of the Ministry of Economy may provide for the use of other sources of price information, recognized and confitable, when their quotations or their indices are used as reference by unrelated parties to establish prices in comparable transactions.

Art. 14 - The taxpayer shall carry out the registration of controlled transactions of export and import of **commodities** declaring its information in the form and within the period established by the Special Secretariat of the Federal Revenue of Brazil of the Ministry of Economy.

Subsection VI

From the tested part

In cases in which the application of the method requires the selection of one of the parties to the controlled transaction as the tested party, the party in relation to which the method can be applied in the most appropriate manner and for which there is the availability of more confitable data of comparable transactions carried out between unrelated parties will be selected.

§ 1 The taxpayer shall provide the necessary information for the correct determination of the functions performed, the risks assumed and the assets used by the parties to the controlled transaction, in order to demonstrate the appropriate selection of the tested party, and shall document the reasons and justifications for the selection made.

§ If there is non-compliance with the provisions of § 1 and the information available regarding the functions, risks and assets of the other party to the transaction is limited, only the functions, risks and assets that can be confidently determined as effectively performed, assumed or used will be allocated to this party to the transaction, and the remaining functions, risks and assets identified in the controlled transaction will be allocated to the related party in Brazil.

Subsection VII

From the comparable range

Art. 16 Where the application of the most appropriate method leads to a range of observations of financial indicators of comparable transactions carried out between unrelated parties, the appropriate range shall be used to determine whether the terms and conditions of the controlled transaction are in accordance with the principle provided for in Art. 2.

§ 1 The determination of the appropriate interval shall be made so as to consider the financial indicators of transactions between unrelated parties that have the highest degree of comparability in relation to the controlled transaction, excluding those arising from transactions of a lower degree.

§ If the interval obtained after the application of the provisions in § 1 is made up of observations of transactions between unrelated parties that meet the comparability criterion provided for in art. 5, it shall be considered as an appropriate interval:

I - the interquartile range, when there are uncertainties regarding the degree of comparability between comparable transactions that cannot be precisely identified or quantified and adjusted; or

II - the full range, when transactions between unrelated parties have an equivalent degree of comparability in relation to the controlled transaction and there are no comparability uncertainties under the provisions of item I.

§ Paragraph 3 When the financial indicator of the controlled transaction examined under the most appropriate method falls within the appropriate range, the terms and conditions of the controlled transaction shall be deemed to be in accordance with the principle provided for in art. 2, in which case the adjustments referred to in art. 17 shall not be required.

§ Paragraph 4 For fins of determining the adjustments referred to in art. 17, when the financial indicator of the controlled transaction examined under the most appropriate method is not comprised in the appropriate range, the median value shall be attributed to the controlled transaction.

§ 5º Statistical measures other than those foreseen in this article may be used in the cases of implementation of results agreed in solutions to disputes carried out within the scope of international agreements or conventions to eliminate double taxation of which Brazil is a signatory, and in those disciplined by the Special Secretariat of the Federal Revenue of Brazil of the Ministry of Economy with a view to ensuring the correct application of the principle foreseen in art. 2.

Section VI

Adjustments to the calculation basis

Art. 17 For the fins of the provisions of this Provisional Measure, the following are considered:

I - spontaneous adjustment - that made by the legal entity domiciled in Brazil directly in the computation of the tax calculation basis of the taxes referred to in the sole paragraph of art. 1 with a view to adding the result that would be obtained if the terms and conditions of the controlled transaction had been established according to the principle provided for in art. 2;

II - compensatory adjustment - that made by the parties to the controlled transaction until the end of the calendar year in which the transaction is carried out with a view to adjusting its value so that the result obtained is equivalent to that which would have been obtained if the terms and conditions of the controlled transaction had been established in accordance with the principle provided for in art. 2;

III - primary adjustment - that made by the fiscal authority with a view to adding to the tax calculation basis of the taxes referred to in the sole paragraph of art. 1 the results that would be obtained by the legal entity domiciled in Brazil, if the terms and conditions of the controlled transaction had been established in accordance with the principle provided for in art. 2; and

IV - secondary adjustment - that made as a result of the adjustments set forth in items I or III of the **caput** .

Art. 18 Where the terms and conditions established in the controlled transaction differ of those that would be established between non-related parties in comparable transactions, the tax calculation basis referred to in art. 1 shall be adjusted so as to compute the results that would be obtained if the terms and conditions of the controlled transaction had been established in accordance with the principle provided for in art. 2.

§ 1 The legal entity domiciled in Brazil will make the spontaneous or compensatory adjustment when the non-compliance with the provisions in art. 2 results in the calculation of a calculation base inferior to that which would be calculated if the terms and conditions of the controlled transaction had been established according to those that would be established between non-related parties in comparable transactions.

§ 2 The Special Secretariat of Federal Revenue of Brazil of the Ministry of Economy will establish the form and conditions for the realization of compensatory adjustments.

§ In the event of non-compliance with the provisions of this article, the fiscal authority shall make the primary adjustment.

§ 4 Adjustments will not be allowed with a view to:

I - reduce the tax base of the taxes referred to in the sole paragraph of art. 1; or

II - increase the amount of the IRPJ tax loss or the CSLL negative tax base.

§ 5 The prohibition provided for in § 4 will not apply in the cases of compensatory adjustments made in the manner and time period established by the Special Secretariat of the Federal Revenue of Brazil of the Ministry of Economy or of results agreed upon in a dispute resolution mechanism provided for in international agreements or conventions to eliminate double taxation of which Brazil is a signatory.

Art. 19 - In the cases in which the spontaneous adjustment or primary adjustment mentioned in items I and III of the caption **sentence** of art. 17 is made, the secondary adjustment shall also be made, which shall be determined based on the following criteria:

I - the adjusted amount will be considered as credit granted to the related parties involved in the controlled transaction, bearing interest at a rate of twelve percent per annum;

II - the interest set forth in item I shall be deemed due as from January 1st of the year subsequent to the ascertainment period until the date on which the amount considered as credit is fully reimbursed to the legal entity domiciled in Brazil and shall be subject to taxation by the IRPJ and CSLL;

III - the interest rate will be reduced to zero if the amount taken as credit is fully repaid to the taxpayer in Brazil within ninety days from:

a) from 1 January of the year subsequent to the calculation period that provoked the spontaneous adjustment; or

b) the date of the science of the launching of the

primary adjustment. CHAPTER III

SPECIFIC PROVISIONS

Section I

Transactions with intangibles

Art. 20 For the purposes of the provisions of this Provisional Measure, the following are considered:

I - intangible - the asset that, not being a tangible or financial asset, is susceptible to being held or controlled for use in business activities and whose use or transfer would be remunerated if the transaction occurred between unrelated parties, regardless of being subject to registration, legal protection or being characterized and recognized as an asset or intangible asset for accounting fins;

II - intangible assets that are difficult to value - intangible assets for which it is not possible to identify confible comparables at the time of their transfer between related parties and the projections of future income or cash flows or the assumptions used for their valuation are highly uncertain; and

III - relevant functions performed in relation to the intangible - activities related to the development, improvement, maintenance, protection and exploitation of the intangible.

Art. 21 The terms and conditions of a controlled transaction involving intangible assets shall be established in accordance with the principle provided for in Art. 2.

§ 1 The delineation of the transactions referred to in the **caput** will be made in accordance with the provisions of art. 7 and will also consider

I - identification of the intangibles involved in the controlled transaction;

II - determining the ownership of the intangible asset;

III - determination of the parties that perform the functions, use assets and assume the economically significant risks associated with the relevant functions performed in relation to the intangible asset, with emphasis on determining the parties that exercise control and have the financial capacity to assume them; and

IV - determination of the parties responsible for providing financing or other contributions in relation to the intangible asset, who assume the associated economically significant risks, with emphasis on determining the parties that exercise control and have the financial capacity to assume them.

§ 2 For the fins of the provisions of this Provisional Measure, the party will be considered the holder of the intangible: I - identified as the holder in the contracts, registrations or applicable legal provisions; or

II - that exercises control over decisions related to the exploitation of the intangible and has the ability to restrict its use, in cases where ownership cannot be identified in the manner set out in clause I.

Art. 22 The allocation of the results of controlled transactions involving intangibles shall be determined on the basis of the contributions provided by the parties and, in particular, the relevant functions performed in relation to the intangible and the economically significant risks associated with these functions.

§ Mere legal ownership of the intangible asset will not give rise to the awarding of any remuneration resulting from its exploitation.

§ 2 The remuneration of the related party involved in the controlled transaction, including the holder of the intangible, who is responsible for providing financing, shall not exceed the amount of remuneration determined on the basis of:

I - risk-free interest rate, in case the related party does not have the financial capacity or does not exercise control over the economically significant risks associated with the financing granted and neither assumes nor controls any other economically significant risk related to the transaction; or

II - interest rate adjusted to the risk assumed, if the related party has the financial capacity and exercises control over the economically significant risks associated with the financing, but without assuming and controlling any other economically significant risk related to the transaction.

Section II

Intangibles that are difficult to value

Art. 23 In controlled transactions involving intangibles difficult to value, the following shall be considered

I - the uncertainties in pricing or valuation existing at the time of the transaction; and

II - whether such uncertainties were duly addressed on how the unrelated parties would have done so in comparable circumstances, including through the adoption of short-term contracts, the inclusion of price adjustment clauses or the establishment of contingent payments.

§ 1 The information available in periods after the controlled transaction was carried out may be used by the fiscal authority as evidence, subject to proof to the contrary under the terms of § 3, as to the existence of uncertainties at the time of the transaction and especially to assess whether the taxpayer has complied with the provisions in the **caput** .

§ 2 In the event of non-compliance with the provisions in the **caput** , the transaction value will be adjusted for fins of ascertainment of the tax base referred to in art. 1 and, unless it is possible to determine the appropriate remuneration in the form of a single payment for the moment of the transaction, the adjustment will be made by determining annual contingent payments that reflect the uncertainties arising from the pricing or valuation of the intangible involved in the controlled transaction.

§ 3 The adjustment mentioned in § 2 will not be made in the following hypotheses: I - when the taxpayer:

a) provide detailed information on the projections used at the time of the transaction, including those demonstrating how risks were considered in the pricing calculations, and on the consideration of events and other reasonably foreseeable uncertainties and the likelihood of their occurrence; and

b) demonstrate that any significant difference between the financial projections and the results effectively obtained arises from events or facts occurring after the pricing, which could not have been foreseen by the related parties or that the likelihood of their occurrence was not significantly overestimated or underestimated at the time of the transaction; or

II - when any difference between the financial projections and the results effectively obtained does not result in a reduction or an increase in the remuneration for the hard-to-value intangible greater than twenty per cent of the remuneration determined at the time of the transaction.

Section III

Intra-group services

The terms and conditions of a controlled transaction involving the provision of services between related parties shall be established in accordance with the principle provided for in Article 2.

§ For the purposes of the provisions of this Provisional Measure, a service is considered to be any activity developed by a party, including the use or provision by the service provider of tangible or intangible assets or other resources, which results in benefits to one or more parties.

§ 2 The activity undertaken results in benefits when it provides reasonable expectation of economic or commercial value to the other party to the controlled transaction, so as to improve or maintain its business position, such that unrelated parties in comparable circumstances would be willing to pay for the activity or undertake it themselves.

§ Without prejudice to other hypotheses, it will be considered that the activity performed does not result in benefits under the terms of § 2 when:

I - the activity is characterized as a partner activity; or

II - the activity represents the duplication of a service already rendered to the taxpayer or which he has the capacity to perform, except in cases where it is demonstrated that the duplicate activity results in additional benefits to the taxpayer as provided in § 2.

§ 4 Activities of partners are characterised as those performed in the capacity of a partner or shareholder, direct or indirect, in their own interest, including those whose sole objective or effect is to protect the provider's capital investment in the borrower or to promote or facilitate compliance with legal, regulatory or reporting obligations of the provider, such as:

I - activities related to the corporate structure of the partner or shareholder, including those related to the holding of meetings of its investors, board meetings, issue of shares and listing on stock exchanges;

II - preparation of reports related to the partner or shareholder, including financial reports, consolidated statements and audit reports;

III - raising of funds for acquisition, by the partner or shareholder, of equity interests and activities related to the performance of investor relations; and

IV - activities performed for compliance by the partner with obligations imposed by the tax legislation.

§ 5 When the activity performed to the taxpayer by another related party does not result in a benefit under the provisions of § 2 to § 4, the tax basis of the IRPJ and CSLL will be adjusted.

§ Paragraph 6 For the purposes of the provisions of this Provisional Measure, the incidental benefits obtained by the taxpayer as provided for in the sole paragraph of art. 10 shall not be considered services and shall not give rise to any compensation.

Art. 25 In applying the Cost Plus Method, all costs related to service provision shall be considered.

§ Whenever it is possible to individualise the costs of service provision in relation to the respective service taker, the determination of the cost base used for fins of application of the method referred to in the **caput** shall be carried out by the direct method.

§ In cases where the service is provided to more than one party and it is not reasonably possible to individualise the costs of the service in relation to each taker, as provided for in § 1, the use of indirect methods will be admitted for determining the cost base used for fins of application of the method referred to in the **caput** .

§ 3 In indirect methods, the determination of the cost base shall be made by apportioning costs by using one or more allocation criteria that achieve a cost similar to that which unrelated parties in comparable circumstances would be willing to accept, which shall:

I - reflect the nature and use of the services provided; and

II - be capable of producing a remuneration for the controlled transaction that is compatible with the actual or reasonably expected benefits for the service taker.

§ In determining the remuneration for the services referred to in the **caput**, it will not be permitted to charge a profit margin on the provider's costs that constitute a transfer of amounts referring to activities performed or acquisitions made from other related or unrelated parties, in relation to which the provider does not perform significant functions, also taking into account the assets used and the economically significant risks assumed.

§ 5º In the hypothesis foreseen in § 4, it will be allowed to charge a profit margin determined according to the principle foreseen in art. 2, only on the costs incurred by the service provider to perform the referred functions.

§ 6 The provisions of the **caput** apply to cases in which the TNM method is adopted as the most appropriate for determining the transfer prices of the services dealt with in art. 24 and a cost-based profitability indicator is used.

Section IV

Cost-sharing agreements

Art. 26 - Cost sharing contracts are those in which two or more related parties agree to share contributions and risks relative to the joint acquisition, production or development of services, intangibles or tangible assets based on the proportion of the benefits that each party expects to obtain from the contract.

§ 1 Participants in the cost-sharing agreement are considered to be those who, in relation to it, exercise control over the economically significant risks and have the financial capacity to assume them, and who have the reasonable expectation of obtaining the benefits:

I - of the services developed or obtained, as set forth in art. 24, in the case of contracts whose object is the development or obtaining of services; or

II - of intangible or tangible assets, by means of the attribution of a stake or right over such assets, in the case of contracts whose object is the development, production or obtaining of intangible or tangible assets, and which are capable of exploring them in their activities.

§ The contributions referred to in the **caption sentence** comprise any kind of contribution provided by the participant that has value, including the provision of services, the performance of activities related to the development of intangibles or tangible assets, and the making available of existing intangibles or tangible assets.

§ 3. The contributions of the participants shall be determined in accordance with the principle pursuant to Art. 2; and proportional to their shares in the total expected benefit, which shall be evaluated by means of estimates of the increase in revenues, reduction of costs, or any other benefit expected to be obtained from the contract.

§ 4 In hypotheses in which the participant's contribution is not proportional to its share in the total benefit expected, adequate compensation shall be made between the participants of the contract, in order to reestablish its balance.

§ 5. In the cases in which there is any change in the participants of the contract, including the entry or withdrawal of a participant, or in those in which there is a transfer among the participants of the rights in the benefits of the contract, compensation will be required in favour of those who cede their share by those who obtain or increase their share in the results obtained in the contract.

§ 6 In the event of termination of the contract, the results obtained shall be allocated among the participants in a manner proportional to the contributions made.

Section V

Business restructuring

Art. 27. modifications in commercial or financial relations between related parties that result in the transfer of potential profit or in benefits or losses for any of the parties and which would be remunerated if they were made between unrelated parties in accordance with the principle provided for in Art. 2 are considered business restructurings.

§ 1 The potential profit referred to in the **caput** comprises the expected profits or losses associated with the transfer of functions, assets, risks or business opportunities.

§ 2 The restructurings referred to in the **caput** include hypotheses in which the potential profit is transferred to a related party as a result of the renegotiation or termination of commercial or financial relations with unrelated parties.

§ 3 In determining compensation for the benefit obtained or the loss suffered by any of the parties to the transaction, the following shall be considered:

I - the costs incurred by the transferring entity as a consequence of the restructuring; and

II - the transfer of the potential profit.

§ 4 The compensation for the transfer of the potential profit will consider the value that the transferred items have together.

Section VI

Financial operations Subsection I

Debt operations

Art. 28 When the controlled transaction involves the supply of financial resources and is formalized as a debt operation, the provisions of this Provisional Measure shall be applied to determine whether the transaction will be delineated, in whole or in part, as a debt or equity operation, taking into account the economically relevant characteristics of the transaction, the prospects of the parties and the realistically available options.

Sole Paragraph. Interest and other expenses related to the transaction delineated as a capital operation will not be deductible for fins of calculation of the IRPJ and CSLL.

Art. 29 The terms and conditions of a controlled transaction delineated as a debt transaction, as provided for in article 28, shall be established in accordance with the principle provided for in article 2.

§ 1 For the purposes of the provisions in the **caput** , the economically relevant characteristics of the controlled transaction, as provided for in art. 7, shall be taken into account, including the debtor's credit risk in relation to the transaction.

§ 2 In order to determine the debtor's credit risk in relation to the transaction, the effects arising from other controlled transactions shall be considered and adjusted when they are not in accordance with the principle provided for in Article 2.

§ 3 The determination of the debtor's credit risk in relation to the transaction shall consider, if any, the effects of implicit group support.

§ 4 The benefits obtained by the debtor arising from the implicit support of the group shall be considered incidental benefits, pursuant to the provisions of the Sole Paragraph of Article 10, and shall not give rise to any remuneration.

Art. 30 In the event of a controlled transaction delineated as a debt operation, when it is verified that the related party, creditor of the debt operation:

I - it does not have the financial capacity or does not exercise control over the economically significant risks associated with the transaction, its remuneration may not exceed the value of the remuneration determined on the basis of a risk-free rate of return;

II - it has the financial capacity and exercises control over the economically significant risks associated with the transaction, its remuneration may not exceed the value of the remuneration determined based on a risk-adjusted rate of return; or

III - exercises only intermediation functions, so that the resources of the debt operation come from another party, its remuneration will be determined based on the principle provided for in art. 2, in order to consider the functions performed, the risks assumed and the assets used.

Sole Paragraph. For the purposes of the provisions in the **caput**, it is considered that:

I - risk-free rate of return - that which represents the return that would be expected from an investment with lower risk of loss, in particular investments made in public securities, issued by governments in the same functional currency as the creditor of the operation and which present the lowest rates of return; and

II - risk-adjusted rate of return - that rate determined from the rate referred to in item I of this paragraph, adjusted by a premium that reflects the risk assumed by the creditor.

Subsection II

Intra-group guarantees

Art. 31. Where the controlled transaction involves the provision of guarantee in the form of a legally binding commitment by the related party to assume a specific obligation in the event of default by the debtor, the provisions of this Provisional Measure shall be applied to determine whether the provision of the guarantee shall be delineated, in whole or in part, as:

I - service, in which case the guarantor will be due remuneration, as set forth in Art. 24; or

II - the activity of partner or capital contribution, in which case no remuneration shall be paid due.

Sole paragraph. For the purposes of the provisions of this Provisional Measure, the additional amount obtained in a debt transaction with an unrelated party due to the existence of the guarantee provided by a related party shall be delineated as a capital contribution and no payment by way of guarantee shall be due in respect of this amount, except where it is configuably demonstrated that, in accordance with the principle provided in Article 2, another approach would be considered more appropriate.

Art. 32 The terms and conditions of a controlled transaction involving the provision of guarantee outlined as a service shall be established in accordance with the principle provided for in Art. 2.

Sole Paragraph. For the purposes of the provisions in the **caput** , the amount of the compensation due to the related party guaranteeing the obligation shall be determined based on the benefit obtained by the debtor that exceeds the incidental benefit arising from the implicit support of the group referred to in Paragraphs 3 and 4 of Article 29, and may not exceed fifty percent of such amount, except when it is confidently demonstrated that, pursuant to the principle provided for in Article 2, another approach would be deemed more appropriate.

Subsection III

Centralised cash management agreements

Art. 33 The terms and conditions of a controlled transaction delineated as a centralisation operation, in any form, of the cash balances of related parties arising from an agreement aimed at the management of short-term liquidity shall be established in accordance with the principle provided for in Art. 2.

§ 1. In drawing up the transaction referred to in the **caput** :

I - the options realistically available to each of the parties to the transaction will be considered; and

II - it will be ascertained whether the taxpayer party to the agreement obtains benefits proportional to the contributions it makes or whether its participation is restricted to providing financing to the other parties to the transaction.

§ For the purposes of the provisions in the **caput**, the synergy benefits obtained as a result of the agreement shall be allocated among its participants, with due regard for the provisions in art. 10.

§ 3 When the taxpayer or other related party performs the coordination function of the mentioned agreement, its remuneration will be determined according to the principle provided for in art. 2, considering the functions performed, the risks assumed and the assets used to perform the said function.

Subsection IV

Insurance contracts

Art. 34 - The terms and conditions of a controlled transaction involving an insurance transaction between related parties, in which one party assumes the responsibility of guaranteeing the interest of the other party against predetermined risks through the payment of a premium, and which is delineated as a service pursuant to the provisions of Art. 24, shall be established in accordance with the principle provided for in Art. 2.

§ 1 For fins of the provisions in the **caput** , the arrangements involving insurance operations carried out with unrelated parties, in which part or all of the insured risks are transferred from the unrelated party to related parties of the insured party shall be considered as controlled transactions, shall be subject to the principle provided for in art. 2 and shall be analyzed in their entirety.

§ 2 In the cases in which the insurance concluded with a related party is related to an insurance transaction concluded with a non-related party, the related insurer that performs the intermediation functions between the insured bound and the non-related party shall be remunerated in accordance with the principle provided for in art. 2, taking into account the functions performed, the risks assumed and the assets used, and the synergy benefits obtained as a result of the arrangement shall be allocated among its participants in accordance with their contributions, subject to the provisions of art. 10.

§ 3 When it is verified that the insurance contract referred to in the **caput** is part of an arrangement in which related parties pool a set of risks subject to insurance concluded with a non-bound insurer, the synergy benefits obtained as a result of the arrangement shall be allocated among its participants in accordance with their contributions, subject to the provisions of Art. 10.

§ 4 In the event the taxpayer or other related party performs the function of coordination of the arrangement referred to in § 3, its remuneration will be determined according to the principle provided for in art. 2, considering the functions performed, the risks assumed and the assets used.

CHAPTER IV

DOCUMENTATION AND PENALTIES

Art. 35 - The taxpayer will present the documentation and provide the information to demonstrate that the tax calculation basis of the taxes referred to in the sole paragraph of art. 1, relative to his controlled transactions is in conformity with the principle provided for in art. 2, including those necessary for the delineation of the transaction and the analysis of comparability, and those relative to

I - to controlled transactions;

II - to related parties involved in controlled transactions;

III - the structure and activities of the multinational group to which the taxpayer belongs and its other member entities; and

IV - the global allocation of revenues and assets and the income tax paid by the group to which the taxpayer belongs, together with indicators related to its overall economic activity.

§ 1 In the event that the taxpayer fails to provide the information required for the precise delineation of the controlled transaction or the performance of the comparability analysis, the fiscal authority shall be entitled to adopt the following measures:

I - allocate to the Brazilian entity the functions, risks and assets attributed to another party in the controlled transaction that do not have reliable evidence of having been effectively performed, assumed or used by it; and

II - adopt reasonable estimates and assumptions to perform the transaction delineation and comparability analysis.

§ 2 The Special Secretariat of the Federal Revenue of Brazil of the Ministry of the Economy shall regulate the manner in which information is to be provided, on the delivery or availability of documents, without prejudice to additional proof to be required by the fiscal authority, including as to the submission of the documentation provided for in this Provisional Measure relating to the first calendar year of its application, in order to grant additional time for compliance with the accessory obligations arising from the change in legislation.

Art. 36 Non-compliance with the provisions of art. 35 shall result in the imposition of the following penalties, without prejudice to the application of other sanctions provided for in this Provisional Measure:

I - as to the submission of the statement or of another specific accessory obligation established by the Special Secretariat of Federal Revenue of Brazil of the Ministry of the Economy for the purposes of the provisions of art. 35, regardless of the form of its transmission:

a) a fine equivalent to two tenths of a percent, per calendar month or fraction, on the value of the gross revenue of the period to which the obligation refers, in the event of failure to file in due time;

b) a fine equivalent to five per cent of the value of the corresponding transaction or two-tenths of the value of the consolidated revenue of the multinational group in the previous year to which the information refers, in the case of an accessory obligation instituted to declare the information referred to in sub-clauses III and IV of the **head of** article 35, in the event of submission with inaccurate, incomplete or omitted information; or

c) a fine equal to three per cent of the gross revenue of the period to which the obligation refers, in the event of submission without meeting the requirements for submitting an accessory obligation; and

II - for failure to submit, in a timely manner, information or documentation required by the fiscal authority during fiscal proceedings or other prior fiscalatory measure, or for other conduct that entails hindrance to fiscalization during fiscal proceedings, a fine equivalent to five per cent of the value of the corresponding transaction.

§ 1. The fines referred to in the **caput** shall have a minimum value of R$ 20,000.00 (twenty thousand Reais) and a maximum value of R$ 5,000,000.00 (five million Reais).

§ 2 In order to establish the value of the fine provided for in line "c" of the **caption sentence**, the maximum value provided for in § 1 will be used:

I - where the taxpayer fails to report the value of the multinational group's consolidated revenues in the previous year; or

II - when the information provided has not been duly substantiated.

§ 3 For the purposes of imposing the fine provided for in paragraph "a" of Clause I of the **main Section** , the initial term will be the day following the end of the term originally established for compliance with the obligation and the final term will be the date of compliance or, in the event of non-compliance, the date of issuance of the tax assessment notice or of the notice of assessment.

§ 4. The fine provided for in subparagraph "b" of clause I of the **caput** shall not apply in cases of duly proven formal errors or immaterial information, under the conditions set out in regulations issued by the Special Secretariat of the Federal Revenue of Brazil of the Ministry of the Economy.

Art. 37. Should the fiscal authority disagree, during the fiscal procedure, with the determination of the tax basis of the IRPJ and CSLL made by the legal entity in the manner provided for in this Provisional Measure, the taxpayer may be authorized to withdraw the fiscal statement or bookkeeping exclusively in relation to the transfer price adjustments for its regularization, respecting the following premises:

I - not having acted contrary to a binding normative or interpretative act of the administration tax;

II - to have been cooperative with the Special Secretariat of the Federal Revenue of Brazil of the Ministry of Economy, including during the fiscal procedure;

III - have undertaken reasonable efforts to comply with the provisions of this Provisional Measure; and

IV - the criteria adopted by the taxable person for determining the tax base are consistent and reasonably justificable.

§ 1 In the event provided for in the **caput**, no penalties directly related to the information withdrawn will be applied, provided that the bookkeeping for the calculation of the IRPJ and CSLL and the other statements or bookkeeping arising therefrom are withdrawn, including for the constitution of a tax credit, which is extinguished upon payment of the corresponding taxes, with the increases in arrears referred to in Article 61 of Law 9430 of 27 December 1996.

§ 2. The withdrawal accepted by the fiscal authority will imply the homologation of the assessment in relation to the matter that has been regularized by the taxpayer, and subsequent withdrawals of statements and bookkeeping by the taxpayer without the authorization of the Special Federal Revenue Office of Brazil of the Ministry of the Economy will be rendered null and void.

§ 3 The Special Secretariat of Federal Revenue of Brazil of the Ministry of Economy will regulate the provisions of this article, including the conditions, requirements and parameters to be observed in its application.

CHAPTER V

SPECIAL MEASURES AND THE INSTRUMENT FOR LEGAL CERTAINTY

Section I

Simplification measures and other measures

Art. 38 The Special Secretariat of the Federal Revenue of Brazil of the Ministry of Economy may establish specific regulations to discipline the application of the principle provided for in art. 2 to certain situations, especially for:

I - simplificate the application of the stages of the comparability analysis provided for in art. 9, including to dispense with or simplificate the submission of the documentation referred to in art. 35;

II - providing additional guidance in relation to specific transactions, including transactions with intangibles, cost-sharing agreements, business restructuring, centralised treasury management agreements and other financial transactions; and

III - provide for the treatment of situations in which the information available regarding the controlled transaction, the related party or comparable parties is limited, so as to ensure the adequate application of the provisions of this Provisional Measure.

Section II

specific transfer pricing consultation procedures

Art. 39 - The Special Secretariat of the Federal Revenue of Brazil of the Ministry of the Economy may institute a specific consultation process with respect to the methodology to be used by the taxpayer for compliance with the principle provided for in art. 2 in relation to future controlled transactions and establish the requirements necessary for requesting and complying with the consultation.

§ 1 The methodology referred to in the **caput** includes the criteria established in this Provisional Measure for the determination of the terms and conditions that would be established between unrelated parties in comparable transactions carried out, including those related to:

I - the selection and application of the most appropriate method and the financial indicator examined;

II - the selection of comparable transactions and the appropriate comparability adjustments;

III - the determination of the comparability factors deemed significant for the circumstances of the case; and

IV - the determination of critical assumptions regarding future transactions.

§ 2 In case the consultation request is accepted by the competent authority, the taxpayer will have a period of fifteen working days, as from the date of the decision, to pay the fee mentioned in § 8, under penalty of defection.

§ 3 The solution of the consultation will be valid for up to four years and may be extended for two years at the request of the taxpayer and approval by the competent authority.

§ 4 The solution to the consultation may be rendered ineffective at any time, with retroactive effect from the date it is issued, when it is based on:

I - erroneous, false, misleading information; or

II - omission by the taxpayer.

§ 5 - The Special Secretariat of the Federal Revenue of Brazil of the Ministry of Economy is authorized to review the solution of consultation, ex officio or at the request of the taxpayer, in cases of change:

I - the critical assumptions that served as the basis for issuing the solution; or

II - of legislation that modifies any matter disciplined by the consultation.

§ 6º If there is a change in the critical premises that served as grounds for the solution to the consultation, this will become invalid as from the date on which the change occurs, except if there is a provision to the contrary by the Special Secretary of the Federal Revenue of Brazil of the Ministry of Economy.

§ 7 The Special Secretariat of the Federal Revenue of Brazil of the Ministry of the Economy may authorize the application of the methodology resulting from the consultation to previous ascertainment periods, provided that it is verified that the relevant facts and circumstances relating to these periods are the same as those considered for issuing the solution to the consultation.

§ 8 The submission of a consultation request, in the manner set out in the **caput** , accepted by the competent authority ficará subject to the charging of a fee in the amounts of:

I - R$ 80,000.00 (eighty thousand reais); or

II - R$ 20,000 (twenty thousand reais), in the event of a request for extension of the period of validity of the response to the consultation.

§ 9 The fee referred to in § 8:

I - will be managed by the Special Secretariat of the Federal Revenue of Brazil of the Ministry of Economy, which may issue complementary acts to regulate the matter;

II - will be due by the interested party in the consultation process, from the date of acceptance of the request;

III - will not be refunded if the taxpayer withdraws the application after its acceptance by the Special Secretariat of the Federal Revenue of Brazil of the Ministry of Economy;

IV - shall be subject to the same conditions, time limits, penalties and privileges set out in the general rules applicable to the other taxes administered by the Special Federal Revenue Office of Brazil of the Ministry of the Economy, with due regard for the specific rules set out in this article; and

V - may have their values updated annually, by the National Consumer Price Index (INPC), or by the index that replaces it, by act of the Minister of State for the Economy, who will establish the initial and final update terms.

§10 The proceeds from the collection of the fee referred to in § 8 shall be allocated to the Special Fund for the Development and Improvement of Inspection Activities - FUNDAF, established by Decree-Law 1.437, of 17 December 1975.

Section III

The mutual agreement procedure

Art. 40 In cases of results agreed upon in dispute resolution mechanisms provided for under international agreements or conventions to eliminate double taxation to which Brazil is a signatory, including those dealing with matters not governed by this Provisional Measure, the

The fiscal authority must review, ex officio, the entry made, in order to implement the agreed result in accordance with the provisions, purpose and finality of the international agreement or convention, with due regard for the regulations issued by the Special Federal Revenue Secretariat of Brazil of the Ministry of the Economy.

CHAPTER VI FINAL

PROVISIONS

Art. 41 - Law No. 9430 of 1996 shall come into force with the following amendments:

"Art. 24 The provisions set forth in articles 1 to 38 of Provisional Measure no. 1,152, of December 28, 2022, also apply to transactions carried out by an individual or legal entity resident or domiciled in Brazil with any entity, even if an unrelated party, resident or domiciled in a country that does not tax income or taxes it at a maximum rate lower than 17% (seventeen percent).

....." (NR)

"Art. 24-A. The provisions set out in articles 1 to 38 of Provisional Measure no. 1,152, of 2022, also apply to transactions carried out by an individual or legal entity resident or domiciled in Brazil with any entity resident or domiciled abroad that is a beneficiary of a privileged fiscal regime, including in the case of an unrelated party.

Sole Paragraph. For the purposes of the provisions of this article, a privileged fiscal regime is deemed to be that which presents at least one of the following characteristics:

I - does not tax income or does so at a maximum rate lower than 17% (seventeen per cent);

.....

III - does not tax income earned outside its territory or does so at a maximum rate lower than 17% (seventeen per cent);

....." (NR)

Art. 42 Law No. 12,973, of May 13, 2014, shall come into force with the following amendments:

"Art. 86 - The amounts referring to additions, spontaneously made, resulting from the application of the transfer pricing rules provided for in articles 1 to 38 of Provisional Measure no. 152, of December 28, 2022, and of the rules provided for in articles 24 to 26 of Law no. 12.249, of June 11, 2010, provided that the profits earned abroad have been considered in the respective calculation basis of the IRPJ and CSLL of the controlling legal entity domiciled in Brazil or equivalent, pursuant to the provisions in article 83, and whose corresponding income tax and social contribution, in any of the cases, have been paid.

....." (NR)

Art. 43 - Law No. 12249 of 11 June 2010 shall come into force with the following amendments:

"Art. 24. Without prejudice to the provisions of articles 1 to 38 of Provisional Measure no. 1,152, of December 2022, the interest paid or credited by a source located in Brazil to the related party under the provisions of art. 4 of Provisional Measure no. 1.152 of 2022, resident or domiciled abroad, not incorporated in a country or dependency with favored taxation or under a privileged fiscal regime, will only be deductible, for purposes of determining the taxable income and the tax basis of the Social Contribution on the Net Income - CSLL, when they are verified as constituting a necessary expense for the activity, as set forth in article 47 of Law no. 4,506, of November 30, 1964, during the ascertainment period, in compliance with the following requirements:

I - in case of indebtedness with a related party abroad that holds a corporate interest in the legal entity resident in Brazil, the amount of the indebtedness with the related party abroad, verified at the time of interest appropriation, is not higher than two (2) times the amount of the interest of the related party in the net equity of the legal entity resident in Brazil;

II - in case of indebtedness with a related party abroad that does not have a corporate interest in the legal entity resident in Brazil, the amount of the indebtedness with the related party abroad, verified at the time of interest appropriation, is not higher than two (2) times the amount of the net equity of the legal entity resident in Brazil; and

III - in the cases provided for in items I and II, the value of the sum of the indebtedness with related parties abroad, verified at the time of the appropriation of interest, does not exceed two (2) times the value of the sum of the interest of all related parties in the net equity of the legal entity resident in Brazil.

.....

§ 2 The provisions of this article apply to debt transactions of legal entities resident or domiciled in Brazil in which the guarantor, fiador, attorney-in-fact or any intervening party is a related party.

.....

§ 4The indebtedness and the interest of the related party in the net equity to which this article refers shall be calculated by the monthly weighted average.

§ 5 The provisions in item III of the **caput do** not apply in the case of indebtedness exclusively with related parties abroad that do not have a corporate interest in the legal entity resident in Brazil.

§ 6º In the hypothesis provided for in § 5º, the sum of the indebtedness amounts with all related parties without interest in the capital of the entity in Brazil, verified at the time of interest appropriation, cannot exceed 2 (two) times the value of the net equity of the legal entity resident in Brazil.

....." (NR)

"Art. 25. Without prejudice to the provisions in articles 1 to 38 of Provisional Measure no. 1,152, of 2022, interest paid or credited by a source located in Brazil to an entity domiciled or incorporated abroad, in a country or dependency with favored taxation or under a privileged fiscal regime, pursuant to the provisions in art. 24 and art. 24-A of Law no. 9,430, of 1996, shall only be deductible, for purposes of determining the taxable income and the CSLL tax base, when they can be verified as constituting a necessary expense for the activity, as established in art. 47 of Law nº 4,506, of 1964, during the ascertainment period, cumulatively complying with the requirement that the total value of the sum of the debts with all entities located in a country or dependency with favored taxation or under a privileged fiscal regime does not exceed 30% (thirty percent) of the value of the net equity of the legal entity resident in Brazil.

....." (NR)

Art. 44 The provisions of art. 24 of Law No. 11457 of 16 March 2007 do not apply to the consultation provided for in art. 39 and to the dispute resolution mechanisms provided for in international agreements or conventions to eliminate double taxation to which Brazil is a signatory.

Art. 45 In determining the taxable income and the tax base of the CSLL, the amounts paid, credited, delivered, employed or remitted as **royalties** and technical, scientific, administrative or similar assistance to:

I - entities resident or domiciled in a country or dependency with favored taxation or which are beneficiaries of a privileged fiscal regime, as per the provisions of art. 24 and art. 24-A of Law No. 9430, of 1996; or

II - related parties under the provisions of art. 4, when the deduction of the amounts results in double non-taxation in any of the following hypotheses:

a) the same amount is treated as a deductible expense for another related party;

b) the amount deducted in Brazil is not treated as taxable income of the beneficiary according to the legislation of his/her jurisdiction; or

c) the amounts are intended to finance, directly or indirectly, deductible expenses of related parties, which give rise to the events referred to in sub-paragraph "a" or "b".

Sole Paragraph. The Special Secretariat of Federal Revenue of Brazil of the Ministry of Economy shall regulate the provisions of this article.

Art. 46. The taxpayer may opt to apply the provisions of articles 1 to 45 of this Provisional Measure for the calendar year 2023.

§ 1 The option shall be irrevocable and shall entail compliance with the amendments set forth in Art. 1 to Art. 45 and the effects of the provisions of art. 47 from January 1, 2023.

§ 2 The Special Secretariat of the Federal Revenue of Brazil of the Ministry of Economy will establish the form, term and conditions of the option referred to in the **caput**.

Art. 47 - The following are hereby revoked as from January 1, 2024

I - Article 74 of Law 3470 of 28 November 1958;

II - the following provisions of Law No. 4131 of 3 September 1962:

a) Article 12; and

b) Article 13;

III - the following provisions of Law No. 4.506, of 30 November 1964:

a) Article 52; and

b) sub-paragraphs "d" to "g" of the Sole Paragraph of art. 71

IV - Article 6 of Decree-Law No. 1.730, of 17 December 1979;

V - Article 50 of Law No. 8.383 of 30 December 1991;

VI - the following provisions of Law No. 9430 of 1996:

a) Articles 18 to 23; and

b) Paragraph 2 of art. 24;

VII - Art. 45 of Law nº 10.637, of 30 December 2002;

VIII - Art. 45 of Law nº 10.833, of 29 December 2003;

IX - Article 5 of Law No. 12,766 of 27 December 2012;

X - the following provisions of Law No. 12,715 of 17 September 2012:

a) Art. 49, in the part that alters Art. 20 of Law No. 9430 of 1996; and

b) Articles 50 and 51; and

XI - Art. 24 of Law nº 14.286, of 29 December 2021, in the part that modifies Art. 50 of Law nº 8.383, of 1991.

Art. 48 This Provisional Measure shall come into force on 1 January 2024.

Sole Paragraph. To taxpayers that make the option provided for in art. 46, the following will apply as of January 1, 2023:

I - Articles 1 to 45; and

II - the revocations provided for in Art. 47.

Brasília, 28 December 2022; 201st of Independence and 134th of the Republic.

JAIR MESSIAS BOLSONARO

Marcelo Pacheco dos Guaranys

President of the Federative Republic of Brazil