



Revisiting Transfer Pricing Strategies: Addressing Brazil's new 10% Dividend Withholding Tax for MNEs

On Nov 5, 2025, the Brazilian Federal Senate passed the bill 1,087/2025, allowing inter alia the withholding taxation (WHT) of dividends paid to foreign parties at a 10% tax rate, materializing a major shift of the Brazilian corporate income tax (CIT) system.

This disposition applies to fiscal years **starting after Jan 1st, 2026**, so that **profits calculated until 2025 remain excluded** from this scope, along with dividends paid to (i) foreign governments that reciprocally exempt such type of income perceived by the Brazilian government, (ii) sovereign funds as per art. 3(5) of Federal Law No. 11,312/2006, and (iii) foreign entities whose main activity concerns the administration of retirement and pension benefits.

Additionally, the bill allows under certain circumstances the taxpayer to apply for a tax credit for this WHT. In this case, the sum of the **effective tax rates** of the CIT and the WHT paid by the Brazilian entity distributing the dividends **must be greater** than the applicable **nominal CIT rate**, e.g., 34% in most of the cases, 40% for insurers¹ and 45% for financial institutions.² Consequently, the mentioned tax credit relates to the **positive difference** between the calculated effective tax rate and the nominal CIT rate. The procedure for such credit will still be regulated by the administrative and the taxpayer **must apply for it within 360 days** after the fiscal year concerning the withholding taxation.

Currently, the bill awaits to be enacted by the President ("presidential sanction") and should enter into force very soon.

In practice, this new dividend WHT **raises issues for MNEs operating in Brazil** that are subject to **transfer pricing rules**. In this context, such additional levy directly **enhances their cost** of doing business **in Brazil**, thereby raising questions about their tax structure and whether the **profitability of such entities** remain aligned with the **arm's length principle** recently introduced in the Brazilian legislation in 2023.

In fact, it seems that **most cases would not** give rise to the mentioned **tax credit** and the yet-to-be enacted regulation brings uncertainty about the procedure along with cash flow issues. Finally, the current **limited Brazilian tax treaty network** cannot solve the double taxation situations arising from this new dividend WHT.

As a result, MNEs carrying out activities in Brazil **should revisit their transfer pricing position** and re-consider their transfer pricing set-up for the upcoming financial year.

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¹ And entities listed by art. 1(1), items II, III, IV, V, VI, VII, IX and X of Supplementary Law No. 105/2001.

² These are the entities listed by art. 1(1), item I of Supplementary Law No. 105/2001.