

January 4th, 2024

New Rules for IP Agreements in Brazil

As from **January 1st, 2024**, agreements between related companies involving the license of industrial property rights, as well as technology transfer and technical assistance services (“IP Agreements”), will be subject to transfer pricing rules. Actually, Brazilian laws involving remittance of royalties abroad (for the license of trademarks, patents, industrial designs, know-how, franchise rights, as well as the provision of technical assistance services) significantly changed.

The referred changes were mainly implemented by Law no. 14,596/23, of June 15, 2023, in line with international guidelines followed by member countries of Organization for Economic Cooperation and Development (“OECD”), with express inclusion of the arm’s length principle in our legislation, according to which the terms and conditions of a transaction between related companies should be established on the same basis as normally agreed between independent companies, in similar trading circumstances. In fact, the new legislation is the result of a joint project between the Brazilian Federal Revenue Services and the OECD.

This means that IP Agreements need to establish royalty rates that meet the arm’s length principle and, consequently, payments should be the same as if intangibles had been licensed and/or transferred to an unrelated company. Thus, as a general rule, intercompany IP Agreements can no longer be executed on a royalty-free basis.

In order to comply with new applicable laws in Brazil, IP Agreements should be revisited and possibly amended, in order to adequate royalty payments. We are at your entire service to (i) review the agreement and its payment provisions and/or prepare/analyze a new agreement; (ii) involve our tax team to assist you with the confirmation of the applicable transfer pricing rules; and (iii) evaluate possible alternatives, if any.