A Roadmap to a U.S.-Brazil Tax Treaty

Brazil-U.S. Business Council of the U.S. Chamber of Commerce
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A Message from the Brazil-U.S. Business Council

For decades the U.S. and Brazil, the two largest economies and democracies in the Western Hemisphere, have attempted to lay the groundwork for a bilateral tax treaty (BTT). During this time, the business community has consistently expressed its view that that a BTT would be a key instrument for strengthening bilateral relations.

Recent economic, social, and political changes in both countries signal that consensus on a BTT is achievable. Brazil and the U.S. are both led by pro-business governments whose ideas and intentions are aligned. The singularity of that alignment and the momentum behind the Brazil-U.S. alliance are the main factors in favor of reopening negotiations for a BTT. Technical, legal and constitutional divergences persist, but as articulated in the following document, there is a clear path to overcoming them.

From Brazil's side, the government seeks prominence in the international community, particularly among developed economies, and accession to the Organization for Economic Cooperation and Development (OECD). Many of the domestic reforms necessary for compliance with OECD standards are also fundamental to BTT negotiations. From the U.S. perspective, the administration needs a driving force, a motivation to provide legal clarity around its tax treaty policy and to resolve the Senate hold on signed tax treaties. This may be the impulse necessary to do so.

The signing of a BTT would be an important milestone for the economic bilateral relationship and would bring undeniable positive consequences for the business communities and citizens of Brazil and the U.S. The Brazil Council offers this report to both governments and business communities.

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About the Brazil-U.S. Business Council

The Brazil-U.S. Business Council, of the U.S. Chamber of Commerce, based in Washington, D.C., is the premier business advocacy organization for Brazilian and U.S. companies with interest in the economic relationship and in conducting business in both markets. The Council represents a variety of industries, including defense, energy, healthcare, infrastructure, logistics, security, technology and tourism. We aim to advance and promote investment through free trade, free market, and free enterprise.

Executive Summary

Given the comprehensive economic ties between the U.S. and Brazil, a BTT between the two countries would promote cross-border investment by relieving double taxation and increasing certainty. Despite the obvious benefits a BTT would entail for both countries, negotiations between the two countries appear stalled. Prior negotiations were unsuccessful because of disagreement regarding tax sparing and transfer pricing issues. The U.S. position on these issues has likely not changed. However, Brazil's own treaty policy and domestic law is evolving in a way that increases flexibility and therefore the chance for consensus.

At the same time, the U.S.' tax treaty policy is in flux. Following enactment of the Tax Cuts and Jobs Act of 2017, there have been questions about whether certain new provisions are consistent with the U.S. treaty obligations. Concurrently, the OECD, of which the U.S. is a member and Brazil has applied for accession, is also leading a global effort to re-evaluate certain longstanding principles of international taxation. However, the U.S. Senate must approve all U.S. tax treaties and Senator Rand Paul (R-KY) currently has a legislative "hold" placed on signed tax treaties, thereby preventing their implementation.

The new Brazilian administration has stated its intention to adopt strong pro-business policies and make Brazil more attractive to investors. This could suggest greater flexibility on the part of the Brazilian administration in removing prior impediments to a successful conclusion of a BTT with the U.S. Accordingly, with a re-invigoration of the treaty negotiation process, there may be a resolution to Brazilian legal impediments to agreement. In particular, the U.S. is likely to ask for assurances that Brazil does not intend to press for a tax sparing provision, a point that previously halted negotiations, and that Brazilian domestic law may be interpreted so as to permit transfer pricing and mutual agreement provisions. Brazil will likely ask the U.S. to provide special rules for taxation of services, which the U.S. has agreed to in certain prior BTTs.

Introduction

This document provides a roadmap to re-launching tax treaty negotiations between the U.S. and Brazil. Section I provides a glimpse into the significance of the bilateral relationship. Section II offers an overview of bilateral tax treaties. Section III describes several recent developments in U.S. tax treaty policy. Section IV describes key substantive issues that would need to be resolved by U.S. and Brazil negotiators.[1] Section V outlines an approach to driving the re-opening of negotiation process, taking into account likely sticking points.

I. The Significance of the U.S. Brazil Relationship

The U.S. and Brazil enjoy deep and long-standing economic ties in both trade and investment.

Brazil is the eighth largest importer of U.S. goods, and the seventh largest importer of U.S. services. The U.S. is Brazil's second-largest export market for goods, and the largest market for services exports, accounting for more than 55% of Brazil's total services exports. In terms of investment[2], Brazil is the largest destination for foreign direct investment (FDI) by U.S. companies in South America. U.S. companies hold 21% of the total FDI inventory in Brazil.[3] Further, the U.S. is increasingly a recipient of FDI by Brazilian companies. The U.S. is currently the main destination for Brazilian outward direct investment, representing more than 20% of total Brazilian FDI abroad.

Consistent with the countries' economic ties, the bilateral tax relationship between the U.S. and Brazil has strengthened in recent years. In 2013, a Tax Information Exchange Agreement (TIEA) between the countries went into effect. In 2014, the countries signed an Intergovernmental Agreement (IGA) to improve international tax compliance and implement the U.S. Foreign Account Tax Compliance Act (FATCA). Re-launching bilateral tax treaty negotiations would continue the countries' progress on cooperation on tax matters while promoting continued investment.

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[1] Descriptions of U.S. tax treaty policy in this memorandum take into account the U.S. Model Treaty (2006 and 2016).

[2] More information on bilateral investment can be found in the APEX, BUSBC and AmCham publication: Bilateral Investment Map Brazil/U.S.A. (March 2019).

3 Bureau of Economic Analysis – US Department of Commerce *available at* https://www.bea.gov/data/intl-trade-investment/direct-investment-country-and-industry

II. Overview of Tax Treaties

The primary advantage of a tax treaty is to ameliorate double taxation on cross-border investment between two countries. Double taxation occurs when an item of income is taxed twice: one country taxes the income because it is earned by a resident in that country, while another country taxes the income because it views the activity as generating the income occurring within its jurisdiction.

Several features of tax treaties serve to minimize double taxation. First, they contain provisions allocating taxing rights between the residence and source countries. Tax treaties generally provide that active business income earned by a resident of one country may be taxed by the source country only if the business activities conducted by the resident are considered to create a "permanent establishment" in the source country. The right to tax investment income, such as interest and dividends, is generally allocated to the residence country, although limited source country taxation is permitted with respect to certain items of income.

Countries also enter into tax treaties to facilitate enforcement of their tax laws. For example, tax treaties provide for the exchange of tax information and contain mechanisms for resolving disputes or questions about treaty interpretation in order to prevent double taxation.

In the U.S., the Department of Treasury Office of International Tax Counsel has the primary responsibility for tax treaty negotiation. A tax treaty must also be approved by the U.S. Senate before it can enter into force.

The U.S. has over 50 in-force bilateral tax treaties.[4] Brazil has 33 in-force tax treaties.[5] Both countries generally have BTTs with their top trading partners. As a result, a treaty between the United States and Brazil would be logical given the countries' significant trading relationship.

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[4] The United States currently has in-force tax treaties with the following countries: Australia; Austria; Bangladesh; Barbados; Belgium; Bermuda (limited to the taxation of insurance enterprises); Canada; China; Cyprus; Czech Republic; Denmark; Egypt; Estonia; Finland; France; Germany; Greece; Hungary; Iceland; India; Indonesia; Ireland; Israel; Italy; Jamaica; Japan; Kazakhstan; Korea; Latvia; Lithuania; Luxembourg; Malta; Mexico; Morocco; Netherlands; New Zealand; Norway; Pakistan; Philippines; Poland; Portugal; Romania; Russia; Slovakia; Slovenia; South Africa; Spain; Sri Lanka; Sweden; Switzerland; Thailand; Trinidad and Tobago; Tunisia; Turkey; Ukraine; United Kingdom; the U.S.S.R.; and Venezuela. The United States views the U.S.–U.S.S.R. income tax treaty as remaining in effect for Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan until new treaties with these individual countries are negotiated and ratified, although not all of those countries reciprocate in continued application of the treaty.

[5] Brazil currently has in-force tax treaties with the following countries: Austria, Argentina, Belgium, Canada, Chile, China, Czech Republic, Denmark, Ecuador, Finland, France, Hungary, India, Israel, Italy, Japan, Luxembourg, Mexico, Netherlands, Norway, Peru, Philippines, Portugal, Russia, Slovakia, South Africa, South Korea, Spain, Sweden, Trinidad & Tobago, Turkey, Ukraine, and Venezuela.

III. Recent Tax Treaty Developments in Brazil and in the U.S.

The U.S. tax treaty policy is in flux. Following enactment of the 2017 U.S. tax reform (commonly referred to as the Tax Cuts and Jobs Act), there have been questions about whether certain new tax provisions, such as the Base Erosion and Anti-Abuse Tax ("BEAT"), are consistent with the U.S.'s treaty obligations.

In 2016, at the end of the Obama Administration, the Treasury Department released a new U.S. model tax treaty. The U.S. model treaty is typically a starting point for U.S. treaty negotiations and is sometimes described as the U.S.' "opening offer." While tax treaties have typically been focused on relieving double taxation, the 2016 model contained several novel provisions to address potential double non-taxation, i.e., where an item of income is not taxed by either the residence country or the source country. The U.S. business community has criticized these provisions as overly broad and complicated. The Trump administration may be re-examining the 2016 model in light of this criticism.

In addition, a global process of re-evaluating longstanding principles of international taxation is underway and may have implications for future treaties. In the last several years, the OECD has joined over 125 countries and jurisdictions in an effort to address base erosion and profit shifting ("BEPS"). On February 13, 2019, the OECD released a consultation document that describes and requests comment on various options for implementing a two-pillared approach to addressing the tax challenges of digitalization and remaining BEPS issues. The document includes options covering: (1) changes to the profit allocation and nexus rules and expanding the taxing rights of user and market jurisdictions; and (2) a global anti-base erosion proposal consisting of an income inclusion rule, or minimum tax, and a fallback proposal aimed at certain related party, base eroding payments.

Further, the required approval of all U.S. tax treaties by the Senate allows a single senator to effectively block consideration of any completed treaty. Senator Rand Paul (R-KY) is currently using these procedures to place a legislative "hold" on all tax treaties, preventing Senate consideration.[6] As a result, no U.S. tax treaties have been ratified since 2010, even though seven treaties are awaiting approval.

We understand that the Department of Treasury Office of International Tax Counsel, which has primary responsibility for negotiating U.S. tax treaties, is currently re-examining U.S. treaty policy in light of all of these issues. At the same time, Treasury is currently devoting

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[6] Senator Paul's holds amount to a statement of intention to object to any unanimous consent requests to consider any action with respect to the treaties. In the absence of a hold, the Senate is able to use a procedural mechanism called "unanimous consent," which allows for a quick vote. As long as the hold remains, the Senate would be required to spend "floor time" (i.e., hours in the limited windows that the Senate is officially in session) to hold a debate on the treaties one by one. Sixty votes (of the 100-person Senate) would be required to cut off debate and proceed to the treaty itself. Senate leadership has thus far determined that legislative time should be devoted to other matters.

significant resources to finalize critical tax-reform related administrative guidance. As a result, U.S. treaty negotiation in general has slowed or even stalled.

Brazil has lacked a clear and consistent tax treaty policy for over a decade. However, previous Brazilian governments have worked on the expansion of Brazil's international tax cooperation to combat tax evasion and promote transparency and exchange of information with foreign tax authorities. Accordingly, the Ministry of Foreign Affairs and the former Ministry of Finance (current Ministry of Economy), represented by the Brazilian Federal Revenue Service, engaged in a series of joint actions to further this position. Those actions involved the signature of new tax treaties (such as with Singapore, Switzerland and the United Arab Emirates), the renegotiation of previously signed tax treaties to include new provisions focused on the information exchange and tax evasion (such as with Argentina and South Korea), and the signature of tax information exchange agreements (including the FATCA Intergovernmental Agreement with the U.S.).

Brazil has also worked to comply with key BEPS policies, as enumerated by the OECD. Those efforts are in line with Brazil's goal of acceding to the OECD as well as with Brazil's current international and economic policies.

With the inauguration of a new Brazilian government with a public business-oriented leaning, Brazil is expected to expand its international tax cooperation efforts, leading to the pursuit of new tax treaties. In this regard, the Brazilian business community anticipates that the Brazilian government may concentrate on negotiations with strategic international partners such as Colombia, Germany, Iran, Saudi Arabia, the United Kingdom, Uruguay and--a key focus for the administration--the U.S.

IV. Key Negotiation Points

A. Tax sparing/matching credit

Brazil has historically sought "tax sparing" provisions in its tax treaties. A tax sparing provision requires the residence country to provide a tax credit in the amount of the tax that would have been due in the source country had the source country not provided a special tax reduction or exemption. Thus, tax sparing provisions allow a foreign "investor to obtain a foreign tax credit for the taxes that have been 'spared' (i.e., not actually paid) under the incentive regime of the source country."[7] The U.S. does not adopt tax sparing provisions in its tax treaties.

Brazil has typically included tax sparing provisions in its tax treaties with "developed" countries. However, in 2018, Brazil signed two tax treaties with developed countries, Switzerland and Singapore that did not include a tax sparing provision. While it is too early to determine if pursuing tax treaties without a tax sparing clause constitutes an official policy of the

[7] OECD, Tax Sparing: A reconsideration (1998).

Brazilian government, this change in course is an effort to align its tax treaties' practices with the OECD guidelines. Accordingly, Brazil may not only to continue to sign tax treaties without tax sparing clauses, but may potentially renegotiate previously signed tax treaties to exclude such clauses.

B. Transfer Pricing

The U.S.' tax treaties and domestic law adopt the arm's-length standard for transfer pricing, meaning that transactions between commonly-controlled parties must be priced as if the parties were unrelated (i.e., acting at arm's-length). The arm's-length standard is often described as an international norm, has been adopted by many other countries, and is endorsed by the OECD.

U.S. and fellow OECD member country tax treaties also contain a provision stating that, where one treaty country makes an adjustment to conform pricing to the arm's length standard, and the other country agrees that the adjustment was appropriate to reflect arm's length conditions, the other country is obligated to make a corresponding adjustment (also referred to as a "correlative adjustment") to the tax liability of the related person in that country. This is intended to prevent an adjustment made by the authorities in one country from resulting in double taxation.

However, the Brazilian transfer pricing system does not strictly adopt the arms' length standard and instead uses certain statutory profit margins. Brazilian law does not permit the administrative settlement of tax disputes after an assessment is made, and Brazil's tax treaties typically do not permit the Brazilian tax authorities to compromise transfer pricing positions and make corresponding adjustments.

However, the new Brazilian government has been consistently touting the need for a major domestic tax reform. Although the exact terms of the reform are still unclear, the pro-business posture of the government means that it may include provisions more closely aligned with international practices and OECD standards, such as dispute resolution.

It is unlikely that the U.S. would be willing to sign a tax treaty that does not require the other country to follow the arm's-length standard and to make correlative adjustments. As a result, before negotiations could be completed, the U.S. would likely insist that Brazil modify its domestic law to address these issues.

It appears that there is at least some movement to do so. In February 2018, in connection with Brazil's potential accession to the OECD, Brazil and the OECD launched a 15-month joint project to "examine the similarities and gaps between the Brazilian and OECD approaches to valuing cross-border transactions between associated firms for tax purposes. The project will also assess the potential for Brazil to move closer to the OECD's transfer pricing rules, which are a critical benchmark for OECD member countries and followed by countries around the world."[8]

C. Mutual Agreement Procedure

Tax treaties generally contain "Mutual Agreement Procedure" ("MAP") provisions under which a taxpayer facing double taxation arising under a treaty may request that the residence country's "competent authority," i.e., the tax authority charged with carrying out the tax treaty, endeavor to resolve the case by mutual agreement with the competent authority of the other country. MAP provisions are included in both Brazil and the U.S.' tax treaties. However, in order for MAP provisions to function, the competent authorities of both countries must have the ability to compromise tax disputes after an assessment is made. If Brazilian tax authorities lack such ability, the U.S. may doubt Brazil's ability to carry out its obligations under a MAP provision.

D. Permanent Establishment and Taxation of Services

Under U.S. domestic law, business income earned by a non-U.S. corporation or individual is taxable in the U.S. if the income is effectively connected to a U.S. trade or business. U.S. tax treaties apply a higher standard for taxable nexus—business profits earned by a resident of one country are not taxable in the other country (the source country) unless they are attributable to a "permanent establishment." A permanent establishment generally requires an enterprise to have some regular physical presence in the U.S., such as through an office or agents. U.S. treaty policy is that services should be taxed in the source country only if they are carried out through a permanent establishment.

Because it is likely that more U.S. firms will be performing services in Brazil than Brazilian firms performing services in the U.S., Brazil may prefer a tax treaty with some exception to this rule. If Brazil does believe that exceptions are appropriate in the case of a U.S. treaty, the U.S. has occasionally agreed to such exceptions, particularly to accommodate more developing economies, and may be willing to compromise on this issue. There are two main potential provisions to which the U.S. might agree. First, some U.S. tax treaties provide that the performance of services for a certain number of days creates a permanent establishment. Second, some U.S. tax treaties permit source-country taxation, and thus the imposition of a withholding tax, with respect to "technical services."

Some of the U.S.' tax treaties provide that the provision of services in a contracting state by an enterprise resident in the other contracting state may give rise to a permanent establishment in the first state if the services are provided for a certain specified period of time, even if the enterprise providing the services does not have a permanent establishment in the other

[8] OECD and Brazil launch project to examine differences in cross-border tax rules, *available at* http://www.oecd.org/tax/oecd-and-brazil-launch-project-to-examine-differences-in-cross-border-tax-rules.htm

contracting state under the general rule. These provisions are exceptions to the U.S.' normal treaty policy and usually only appear in the U.S.' tax treaties with developing countries. One notable exception is the U.S.' 2007 protocol with Canada, which provides that a permanent establishment may arise through the performance of services if such services are carried out for more than 183 days in a year.[9] A "services permanent establishment" provision is included in Brazil's recently signed treaty with Singapore.

Some of the U.S.' tax treaties have a special rule for "technical services," permitting withholding tax to be imposed on payments for technical services arising in one country even in the absence of a permanent establishment in that country. For example, under the U.S.-India tax treaty, payments for "fees for included services" may be subject to a 10% or 15% withholding tax rate, depending on the type of service provided. A "fee for included services" includes "payments of any kind to any person in consideration for the rendering of any technical or consultancy services (including through the provision of services of technical or other personnel)" if such services are "ancillary and subsidiary to the application or enjoyment of the right, property or information" for which a royalty payment is made, or "make available technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design." Brazil's recent tax treaties with Singapore and Switzerland contain provisions permitting source-country withholding tax on fees for technical services, which is broadly defined as consideration for any service of a managerial, technical or consultancy nature, with certain exceptions.

E. Taxation on interest, royalties, and dividends

A key priority for the U.S. in treaty negotiations is likely to reduce the statutory withholding taxes that Brazil imposes on payments to foreign persons. Current Brazilian domestic law withholding tax rates on such payments are 0% in the case of dividends, 15% in the case of interest, 15% in the case of royalties, and 15% in the case of services. The U.S. statutory withholding tax rate on all of these categories of payments made to foreign persons is 30%, with certain exceptions.

With respect to dividends, the U.S. typically seeks to adopt a 5% rate on dividends to companies owning at least 10% of the payor and 15% in other cases. In certain cases, the U.S. will agree to a 0% withholding tax rate in the case of dividends from 80% owned subsidiaries meeting certain requirements. Brazilian tax treaties typically adopt a 10% or 15% dividend withholding tax rate (paid at the source of the signatory country), although dividends are generally not subject to withholding tax under Brazilian domestic law. In line with the Brazilian government's effort to implement a major tax reform in Brazil, the Minister of the Economy Paulo Guedes has indicated the possibility of taxing dividends in the context of a broader corporate tax reformulation strategy.

[9] "Services permanent establishment" provisions are included in U.S. tax treaties with India, Jamaica, Thailand, Bulgaria, and Canada.

With respect to interest and royalties, the U.S. typically seeks to adopt a 0% rate on both types of payments. It will sometimes accept higher withholding tax rates. For example, a tax treaty signed (but not yet ratified) in 2015 by the U.S. and Vietnam provides for a 10% withholding tax rate on interest and 5% and 10% rates on royalties. We understand that Brazilian tax treaties typically adopt a 10% or 15% withholding tax rates on these types of payments.

F. Limitation on Benefits

The U.S. now requires its tax treaties to contain a comprehensive limitation on benefits article. These articles use objective tests to determine whether a resident of one of the treaty countries has a nexus with that country sufficient to permit the granting of treaty benefits. Brazil has recently agreed to tax treaties with limitation on benefits articles, such as in the signed Brazil-Singapore treaty, relatively close to what the U.S. would require.

V. The Path Forward

In light of the topics described above, efforts to re-invigorate and advance the treaty negotiation process should focus on the following issues:

(1) Emphasizing the need for a U.S.-Brazil treaty to ameliorate double taxation and promote cross-border investment;

(2) Modifying Brazilian law to address certain likely U.S. requirements or communicating to U.S. officials that such requirements can be met under existing Brazilian law;

(3) Contributing to efforts to find political will to surmount Senator Paul's hold on tax treaties; and

(4) Providing business input to support the Treasury Department's re-examination of U.S. treaty policy as well as the U.S.-Brazil tax treaty negotiation process.

Re-invigorating the treaty negotiations will require a concerted effort by both governments, as well as U.S. and Brazilian businesses. In the U.S., the highest levels of the governments, including the White House, Cabinet secretaries, and potentially members of Congress, should be advised on why treaty negotiation should be a U.S. priority in light of the gains that such treaties may bring to the U.S. economy.

As part of this process, business should be prepared with examples of why the treaty would relieve double taxation and increase cross-border investment. When negotiating a tax treaty, the U.S. interest will primarily be on relieving double taxation on U.S. companies. As a result, it will be necessary to provide examples of why existing domestic law mechanisms (e.g., foreign tax credits in the case of both countries and a new dividends-received deduction for certain foreign income in the U.S.) are insufficient. Because the U.S. also has an interest in making the U.S. a more attractive place for investment by Brazilian companies, it will be helpful to stress current significant cross-border investment levels and reasons why a tax treaty would promote increased investment.

As the treaty negotiation process is the subject of renewed attention, any Brazilian law impediments to agreeing to non-negotiable U.S. terms should be resolved (or there should be communication to U.S. officials that such requirements can be met under existing Brazilian law). In particular, the U.S. is likely to ask for assurances that Brazil does not intend to press for a tax sparing provision, which previously led negotiations to cease, and that Brazilian domestic law would permit certain transfer pricing and mutual agreement provisions required by the U.S. If these issues can be addressed, the U.S. is likely to agree to compromise on other issues important to Brazil, such as with respect to issues concerning the taxation of services.

In addition, for a treaty to be ratified, there must be a resolution of Senator Rand Paul's hold on tax treaties in the Senate. Treaty negotiations can begin before a solution is found, but the U.S. may be hesitant about investing significant resources in the negotiation process. If Senator Paul cannot be convinced to remove his hold, then it would be necessary to convince Senate leadership to spend "floor time," which is limited, to hold a debate on the treaties. Specifically, the Senate Majority Leader (currently Senator Mitch McConnell (R-KY)) could move to proceed to the treaties one by one. Sixty votes (of the 100-person Senate) would be required to cut off debate and proceed to the treaty itself.

Finally, it is essential that the business community provide input to the Treasury Department as it re-examines U.S. treaty policy. Currently, there are questions about whether certain tax reform provisions are inconsistent with U.S. tax treaties and whether ratifying new tax treaties would essentially override any U.S. domestic law provisions. Further, assuming the U.S.-Brazil tax treaty re-negotiation process is re-opened, there will be opportunities for the business community to provide input on key issues under negotiation.

Appendix – Chart of Key Treaty Provisions, Country Positions, and Potential Solutions

Issue	Likely U.S. Starting Position[10]	Likely Brazil Starting Position[11]	Potential Solution
Tax sparing/matching credit	Provision is not acceptable	Provision should be included (though recently signed treaties suggest some flexibility)	Recent flexibility on the Brazil side is a positive indication
Transfer pricing	Brazil must adhere to arm's-length standard and must agree to make correlative adjustments	Existing Brazilian transfer pricing approach should be accepted; no correlative adjustments	U.S. more likely to agree to treaty if Brazilian tax authorities accept correlative adjustments
Mutual agreement procedure	MAP provision should be included, but Brazil tax authorities must have ability to compromise tax disputes	MAP provision acceptable	MAP provision should be included; U.S. and Brazil should compromise on tax disputes.
Permanent establishment and taxation of services	Services should be taxed in the source country only if they are carried out through a permanent establishment	Expanded source country taxation of services should be permitted	U.S. may be willing to compromise and include services permanent establishment or withholding on technical services
Taxation of interest and royalties	0% rate	10% to 15% rates	Rate compromise possible depending on balance of resolution of country interests
Taxation of dividends	5% to 15% rates	0% rate (or higher with domestic law change)	Rate compromise possible depending on balance of resolution of country interests -
Limitation on benefits	Comprehensive, objective limitation on benefits article based on recent U.S. treaties/U.S. model	Some limitation on benefits provision acceptable	Compromise on specific terms taking into account recent U.S. and Brazilian treaties and U.S. model

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[10] The likely U.S. starting position takes into account the United States' most recently signed tax treaties and the 2006 and 2016 U.S. model treaties.

[11] The likely Brazilian starting position takes into account recently signed tax treaties and our understanding of Brazilian law.