

LAW NO. 15,079/24

GLOBE – PILLAR 2 IN BRAZIL

GENERAL ASPECTS



In December 2024, the Provisional Measure (“MP”) No. 1,262/24 was signed into Law No. 15,079/24, incorporating certain aspects of the Organization for Economic Cooperation and Development (“OECD”)’s GloBE Rules into Brazilian tax legislation. The Federal Revenue Office had previously regulated the new rules in October through IN RFB No. 2,228/24.

Our Tax Team has created a guide summarizing key tax topics under discussion. This should not be considered tax advice but rather a general overview of current hot issues.

Clients should carefully evaluate the implications of Law No. 15,079/24 and its regulations to understand the potential effects on their tax burden and compliance with additional obligations, especially since the new rules will come into effect in the fiscal year 2025.

MAIN DIFFERENCES BETWEEN MP NO. 1,262/24 AND LAW NO. 15,079/24

- ✓ **Reduction in penalties cap;**
- ✓ Inclusion of provision addressing **temporary differences** when calculating adjusted covered taxes;
- ✓ Inclusion of specific provisions on **using financial credits from SUDAM/SUDENE;**
- ✓ Provision for the submission of a bill to introduce **Income Inclusion Rules (“IIR”)** following the OECD GloBE guidelines and new **Controlled Foreign Corporations (“CFC”)** rules with specific guidelines;
- ✓ Extension of consolidation rules under existing CFC rules to **2029.**

EFFECTS

Law No. 15,079/24 will come into effect on January 1, 2025, except for the amendments to the existing CFC rules and those that provide for low-tax jurisdictions and preferential tax regimes (Laws No. 9,430/96 and 12,973/14), which came into force on the date of publication.



GLOBE RULES AND LAW 15,079/24



WHAT ARE GLOBE RULES?

The OECD's Global Anti-Base Erosion ("**GloBE**") Rules, also known as **Pillar 2 Rules**, aim at ensuring that large multinational enterprises ("**MNEs**") pay a minimum level of tax.

Broadly, MNEs within the GloBE Rules' scope calculate their effective tax rate for each country where they operate and pay top-up tax for the difference between their effective tax rate per country and the GloBE minimum rate (**15%**).



WHO CHARGES THE TOP-UP TAX?

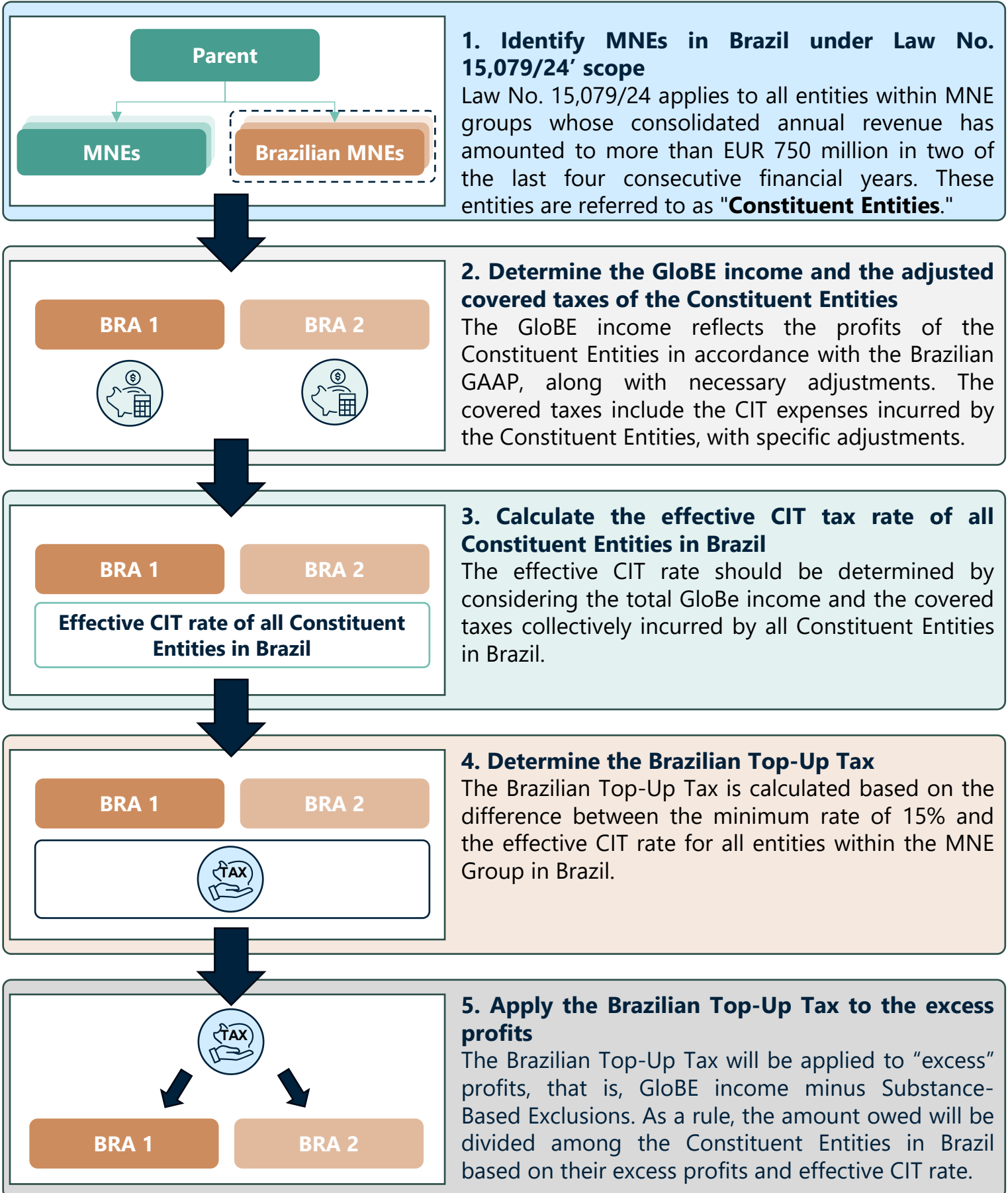
GloBE Rules generally provide for any top-up tax to be charged in the ultimate parent company's country, where the profits are consolidated.

However, the GloBE Rules also contemplate the possibility that countries introduce their own **Qualified Domestic Minimum Top-Up Tax** ("**QDMTT**") based on the GloBE mechanics.

LAW NO. 15,079/24 PROVIDES FOR A TYPE OF BRAZILIAN TOP-UP TAX

The Brazilian Top-Up Tax or QDMTT will be imposed as a surtax in the Social Contribution on Net Profit ("CSLL"), one of the two Brazilian Corporate Income Taxes ("CIT"), together with the IRPJ.

HOW IS THE BRAZILIAN TOP-UP TAX APPLIED?



ESSENTIAL FACTORS TO KEEP IN MIND



DEFINITION OF ENTITIES

Includes legal entities and arrangements required to prepare financial statements. The definition covers investment funds, though those classified as investment entities are subject to a specific treatment.



SUBSTANCE-BASED EXCLUSIONS

Substance-Based Exclusions may be deducted when calculating the "excess" profits. These exclusions are a percentage markup on payroll costs and tangible assets. The starting rates of 9.6% and 7.6% will be reduced yearly to 5% as of 2033.



SEPARATE CALCULATION SYSTEM

Investment entities, joint ventures and Constituent Entities in which MNE Groups have a minority interest may be subject to a segregated calculation system.



ENTITIES WITH LOSSES

Entities with losses should consider specific rules provided in Law No. 15,079/24 .



ENTITY PAYING THE BRAZILIAN TOP-UP TAX

If apportionment based on excess profits and effective CIT rate is not feasible, the Top-Up Tax may be allocated based on the entity's net assets. Alternatively, the Group may opt to allocate the liability to one entity, with the others as jointly liable, in accordance with the procedures to be established by the tax authorities.



SAFE HARBORS AND SIMPLIFIED REGIMES

There are specific safe harbors and simplified regimes that taxpayers may choose to apply.



DEADLINE FOR PAYING THE BRAZILIAN TOP-UP TAX

Constituent Entities must calculate and pay the Brazilian Top-Up Tax by the seventh month after the end of the fiscal year (i.e., July 2026 for fiscal year 2025).



RECOVERY OF BRAZILIAN TOP-UP TAX

The Brazilian Top-Up Tax will be considered "unpaid" if it is subject to litigation.

OTHER IMPORTANT ASPECTS TO CONSIDER

TAX REGIMES, ALLOWANCES AND BENEFITS

Reduced effective CIT taxation may result from different reasons, including presumed profit regime, R&D incentives, goodwill tax amortization, and tax losses carried forward, which may impact the calculation of the effective taxation.



SUDAM/SUDENE

Law No. 15,079/24 authorizes the Government to convert the SUDAM/SUDENE incentives into a financial credit, which may impact the calculation of the effective rate, and provides for how to use such financial credit.



BRAZILIAN CONTROLLED FOREIGN CORPORATION ("CFC") RULES

There are ongoing discussions about how the new rules will interact with current Brazilian CFC Rules, which are all-inclusive.



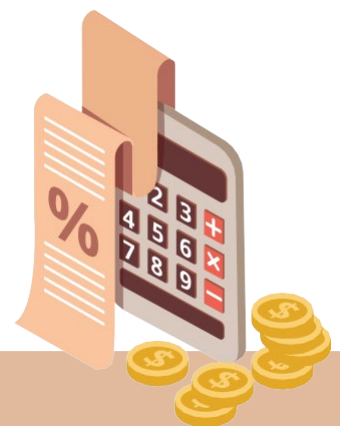
REGULATIONS ENACTED BY THE TAX AUTHORITIES

The tax authorities published IN No. 2,228/24, regulating several aspects, including:

- ✓ **GloBE income**
- ✓ **Covered taxes**
- ✓ **Effective CIT rate and the Brazilian Top-Up Tax**
- ✓ **Corporate reorganizations and changes in control**
- ✓ **Neutrality tax regimes and investment entities**
- ✓ **Safe Harbors**

ANCILLARY OBLIGATIONS:

Constituent Entities are required to fulfill additional obligations related to the information necessary for calculating the Brazilian Top-Up Tax. Regulations to clarify these obligations are still pending from Brazilian tax authorities.



PENALTIES

If taxpayers do not comply with the ancillary obligations, Law No. 15,079/24 imposes penalties for delays, errors, and inaccuracies. Fines can reach up to 10% of the company's annual revenue, capped at BRL 5 million, for late submission of information.

LAW NO. 15,079/24 ALSO...

- ❑ **UNDER-TAXATION REGIMES:** Law No. 15,079/24 revokes the concept used to restrict certain differentiated rules under the Brazilian CFC Rules.
- ❑ **EXTENSION OF CONSOLIDATION UNDER CFC RULES:** Law No. 15,079/24 extended the consolidation rule provided in the existing CFC rules to 2029.
- ❑ **LOW-TAX JURISDICTIONS AND PREFERENTIAL TAX REGIMES:** Law No. 15,079/24 changes the definitions to allow for excluding jurisdictions that promote development through substantial investments in Brazil. This exception was recently regulated by the government (Decree No. 12,226/24 and Ordinance MF No. 2,029/24).

THESE CHANGES ENTER INTO EFFECT IN 2024

CONTACT

Demarest's Tax team is monitoring the subject and remain available to provide further clarifications.

