



October 31, 2024

Ministry of Finance
Special Secretariat of the Federal Revenue of Brazil
Esplanade of Ministries, Block P
Brasilia, Federal District
Brazil
Via email: cotin.df.cosit@rfb.gov.br

Re: NFTC Comments Concerning Brazil’s Normative Instruction RFB No. 2.228 on the Calculation and Collection of the Social Contribution on Net Income Additional

Thank you for the opportunity to submit comments on the Federative Republic of Brazil’s (“Brazil’s”) Normative Instruction RFB No. 2.228 (the “Draft Law”) regulating the Additional of the Social Contribution on Net Income - (“CSLL”) outlined in Provisional Measure 1.262 of October 2024.

The National Foreign Trade Council (“NFTC”), organized in 1914, is an association of U.S. business enterprises engaged in all aspects of international trade and investment. Our membership covers the full spectrum of industrial, commercial, financial, and service activities. Our members value the work of the Organization for Economic Cooperation and Development (“OECD”) and the Inclusive Framework in establishing and maintaining international tax and transfer pricing norms that provide certainty to enterprises conducting cross-border operations.

The Draft Law seeks to amend the CSLL to establish an additional tax, maintaining the destination, with the purpose of establishing a minimum effective taxation of 15% (fifteen percent) in the process of adapting Brazilian legislation to the Global Rules Against Base Erosion (“GloBE Rules”) prepared by the OECD and Group of Twenty (“G20”) Inclusive Framework. NFTC welcomes the efforts by Brazil to implement the Draft Law in a timely manner with an effective date of January 1, 2025 in order to fulfill Brazil’s commitment to introduce national legislation and to fulfill the requirements for minimum effective taxation of multinationals and large national groups of enterprises. Our comments relate specifically to the Qualified Domestic Minimum Top-up Tax rule (“QDMTT”), an element of Pillar Two of the OECD’s Inclusive Framework. We are grateful to have the opportunity to provide our consultation response and to share our views on the Draft Law.

We greatly appreciate Brazil’s commitment to periodically update the domestic regulation to reflect the new OECD Administrative Guidance published after December 31, 2023 so that Brazil’s Domestic Minimum Top-up Tax remains “Qualified.” The Draft Law is based on the OECD model rules in the provisional law and includes the Substance Based Income Exclusion. We strongly encourage Brazil to



ensure its national law implementing Pillar Two incorporates all current guidance and commentary in a legally binding manner. We recognize that the OECD has recently issued additional Pillar Two guidance and will continue to do so in the coming months. From our perspective, Brazil's Draft Law contains the necessary elements to be considered a QDMTT.

We strongly recommend that Brazil includes the Safe Harbors provided by the Administrative Guidance as part of the proposed QDMTT. The Draft Law includes transitional safe harbors, but it fails to include the additional language from the December 2023 Administrative Guidance, which is essential to ensure the Draft Law provides for outcomes that are consistent with the GloBE Rules and Commentary as it is a guiding principle for evaluating QDMTTs. These additional provisions are crucial to ensuring there is no double taxation and that the compliance burden is mitigated should the MNE demonstrate that a 15% rate is met. The compliance burden of the GloBE return is very high and taxpayers need time to adjust systems to complete these returns. Utilizing the safe harbors helps to mitigate these burdens.

We note the reference to a future normative act to be issued with regard to the administration of the Draft Law. To be "Qualified" a QDMTT must use equivalent datapoints to those provided in the GloBE Information Return, and we recommend the administration of the Draft Law relies on the information for Brazil included in the GloBE Information Return as is provided for in the July 2023 Administrative Guidance. Compliance deadlines consistent with those for filing the GloBE Information Return would ensure taxpayers are able to coordinate their determination of GloBE Rules for all jurisdictions. Furthermore, establishing that payments are not due before 60 days after the GloBE Information Return filing would ensure taxpayers have sufficient time to process the funds.

Conclusion

We urge the consideration of these comments and appreciate the opportunity to provide business community input. We welcome continued dialogue and are happy to answer any questions or clarify any of the comments raised.

Sincerely,

A handwritten signature in black ink, appearing to read "Anne Gordon", is positioned above the typed name.

Anne Gordon
Vice President, International Tax Policy