

# BEPS – ACTION 4

LIMIT BASE EROSION VIA  
INTEREST DEDUCTION AND  
OTHER FINANCIAL PAYMENTS



# **BRAZILIAN GENERAL LAW**

**L 4506/64 art. 47 – DL 1598/17 art. 17**

- **DEDUCTION OF INTEREST INCURRED TO MAINTAIN SOURCE OF INCOME or RELATED TO THE ENTERPRISE'S ACTIVITIES**

# TRANSFER PRICING

L 9430/96 art. 22 – 12715/12 –  
12766/12

- RE. FINANCIAL TRANSACTIONS WITH RELATED PARTIES ABROAD or RELATED OR NON RELATED RESIDENTS IN TAX HAVENS (taxation less than 20%, or beneficiary of privileged tax regime or ownership confidentiality)

# TRANSFER PRICING

- DEDUCTIBILITY OF INTERESTS LIMITED TO:
  - - MARKET (\*) PLUS 3.5% SPREAD AT DATE OF TRANSACTION
  - (\*) BRAZIL SOVEREIGN or LIBOR

# THIN CAPITALIZATION

L 12249 art. 24 to 26

- DEDUCTIBILITY OF INTEREST LIMITED TO THE FOLLOWING BASIS OF INDEBTEDNESS (PROPORTIONAL) AT DATE THE EXPENSE IS INCURRED:

# THIN CAPITALIZATION

- (1) RELATED PARTY WITH STAKE IN BRAZILIAN ENTITY – TWO TIMES PARTICIPATION OF RELATED PARTY IN NET EQUITY

# THIN CAPITALIZATION

- (2) RELATED PARTY WITHOUT STAKE IN BRAZILIAN ENTITY – TWO TIMES NET EQUITY

# THIN CAPITALIZATION

- (3) IN EITHER CASES ABOVE – SUM OF ALL INDEBTEDNESS UP TO TWO TIMES STAKES OF RELATED PARTIES IN NET EQUITY or, IN CASE INDEBTEDNESS ONLY WITH PARTIES WITHOUT STAKES, ALL DEBTS UP TO TWO TIMES NET EQUITY



# THIN CAPITALIZATION

- (4) PARTIES RESIDENT IN TAX HAVENS
- - TOTAL INDEBTEDNESS UP TO 30% OF NET EQUITY

# THIN CAPITALIZATION

- LIMITATIONS APPLY ALSO TO TRANSACTIONS WITH RELATED UNDERWRITERS, GUARANTORS, AGENTS OR INTERVENING PARTIES
- LIMITATIONS DO NOT APPLY TO FINANCIAL INSTITUTIONS PASSING RESOURCES TO CLIENTS

# IN ALL CASES

- DEDUCTION OF INTEREST OR ANY OTHER EXPENSE DUE DO RESIDENTS IN TAX HAVENS SUBJECT TO THE FOLLOWING CONDITIONS:

# IN ALL CASES

- (1) PAYMENT DUE TO EFFECTIVE BENEFICIARY ABROAD (not constituted only for tax saving and receiving on its own behalf not acting for a third person)

# IN ALL CASES

- (2) PAYMENT DUE TO PERSON WITH OPERATIONAL CAPACITY TO CARRY OUT THE RELEVANT TRANSACTION (SAVE IF IT IS NOT CONSTITUTED ONLY FOR TAX SAVINGS OR IS A ENTITY SUBJECT TO “BRAZILIAN CFC RULE”)

# IN ALL CASES

- (3) PROOF OF PAYMENT AND PROOF OF DELIVERY OF GOODS OR RENDERING OF SERVICES

# TRANSFER PRINCIPAL AND THIN CAPITALIZATION

L 12973/14 art. 86

- ALLOWED CORRESPONDING  
ADJUSTMENT IN TAXABLE INCOME IN  
REGARD OF NON DEDUCTIBLE  
INTERESTS PAID TO DIRECT OR  
INDIRECT CONTROLLED COMPANIES  
SUBJECT TO “BRAZILIAN CFC RULE”

# TRANSFER PRINCIPLES AND THIN CAPITALIZATION

- ALL RULES ARE SIMULTANEOUSLY APPLICABLE
- NON-DEDUCTIBILITY OF THE GREATEST VALUE