

# CFC RULES AND DOUBLE TAX TREATIES – A BRAZILIAN PERSPECTIVE

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## CONCEPTUAL FRAMEWORK

**CFC RULES** { Domestic legislation  
International element  
Presumptive Taxation\*

**WHY?** Avoid abusive tax deferral and profit shifting

**OECD VIEW :** Focus on BEPS arrangements

**SPECIFIC ANTI-AVOIDANCE RULE (SAAR)**

➔ Compatibility between a typical CFC legislation and DTT: The OECD MC cannot be used as an instrument to facilitate tax avoidance

**BRAZILIAN BACKGROUND**

- ➔ BRICS country
- ➔ Not an EU or OECD Member
- ➔ “Light” member in tax matter – takes part in the discussion and adopts the OECD MC
- ➔ Bound by the DTTs
- ➔ Brazil adopts worldwide taxation + credit method



### The new Brazilian CFC-rule

### Major implications to tax treaties

- ➔ **Affiliated companies** (significant influence - 20%) – tax deferral if:
  - ➔ Not subject to low taxation
- ➔ **Parent companies** (50% of control) – presumptive taxation:
  - ➔ Catch all foreign investments, wherever they are located;
  - ➔ Full inclusion system;
  - ➔ Taxation of direct and indirect subsidiaries and branches in an isolated way;
  - ➔ Income is treated as profits of the Brazilian company

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*\*Special rules for consolidation, payment in installments, deemed credit and exemptions for certain activities.*

-> Very much deviates from international standards

Art. 7 OECD MC: “The profits of an enterprise of a Contracting State shall be taxable only in that State (...)”



### Brazilian tax treaties network

|   |                      |   |
|---|----------------------|---|
| Article 7 and 10 of the OECD MC without any particularity   | Affiliated companies | ✓ |
|   | Parent companies     | ? |
| Agreements that exempt non-distributed profits from CFC taxation (Slovakia and Czech Republic)            | Affiliated companies | ✗ |
|   | Parent companies     | ✗ |
| Agreements that exempt distributed dividends from taxation (Spain, Austria, Argentina, Equator and India) | Affiliated companies | ✓ |
|   | Parent companies     | ? |
| Agreements that explicitly admit CFC legislation (Mexico, Peru, Turkey, Venezuela etc)                    | Affiliated companies | ✓ |
|   | Parent companies     | ✓ |

**Conclusion: Brazil should revoke the current CFC legislation and enact a new one in accordance with international standards.**