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## Provisional Measure 478 - Significant Tax Changes in Brazil January, 2010

Provisional Measure 478/09 (*Medida Provisória 478 – MP 478*) provides changes to Brazil's transfer pricing rules, effective for transactions involving related parties in 2010.

### Summary of Changes

With Provisional Measure 478 (MP 478), the following changes will affect import transactions with related parties beginning in January 2010:

(i) The rules on the fixed margin required for the resale price method (PRL 20) and resale price method II (PRL 60) are changed and unified. Thus, regardless of the destination of goods or services in Brazil (whether resale or manufacturing), the margin is set at 35%. This change could negatively affect distributors operating in Brazil once the required minimum margin is increased. For companies whose activities in Brazil involve manufacturing, the implications of the new rules must be analyzed on a case-by-case basis once the value added locally is included as part of the calculation.

(ii) The option to use one or more methods in the annual tax return is fixed, and offers no opportunity of change, after the tax authority initiates its review.

### KPMG Observation

In Brazil, a Provisional Measure is an "act" issued by the President, with the authority of law until later approved by Congress. The Provisions Measure is effective as from its date of publication for 60 days, and may be extended for an additional 60-day period. Therefore, Congress must approve PM 478 by, at most, 120 days.

If Congress does not approve the Provisional Measure within the 120-day period – which does not commonly happen – the provision is no longer effective, but Congress must address the effects of the Provisional Measure during the period of its effectiveness. Also, it is possible that some of the provisions in PM 478 could be changed if and when it is converted into a law, on approval by Congress.

For more information, contact a tax professional with KPMG in Brazil:

#### São Paulo

Sergio Schuindt, +55 11 2183-3124,  
[sschuindt@kpmg.com.br](mailto:sschuindt@kpmg.com.br)

Eliete Ribeiro, +55 11 2183-3288,  
[eribeiro@kpmg.com.br](mailto:eribeiro@kpmg.com.br)

Marienne M. S. Coutinho, +55 11 2183-3182,  
[mmcoutinho@kpmg.com.br](mailto:mmcoutinho@kpmg.com.br)

Ericson Amaral, +55 11 2183-3375,  
[eamaral@kpmg.com.br](mailto:eamaral@kpmg.com.br)

Murilo Mello, +55 11 2183-3261,  
[murilomello@kpmg.com.br](mailto:murilomello@kpmg.com.br)

#### **Rio de Janeiro**

Roberto Haddad, +55 21 3515-9469,  
[roberthaddad@kpmg.com.br](mailto:roberthaddad@kpmg.com.br)

Julio Chamarelli de Cepeda, +55 21 3515-9133,  
[jcepeda@kpmg.com.br](mailto:jcepeda@kpmg.com.br)

Mauro Ostwald, +55 21 3515-9417,  
[mfostwald@kpmg.com.br](mailto:mfostwald@kpmg.com.br)

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