

# First Swiss-Brazilian DTA to become reality in 2022

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## Economic importance

### Key features of new DTA

### Outlook

The first double taxation agreement (DTA) between Switzerland and Brazil will apply as of 1 January 2022. Both Swiss and Brazilian taxpayers will benefit from an enhanced tax environment which will boost cross-border investments and open interesting structuring opportunities.

### Economic importance

The low Brazilian real and the huge potential of the biggest Latin American country open great investment opportunities. Besides offering a domestic market with more than 210 million inhabitants, Brazil is also a major producer and exporter of commodities and agricultural products. Switzerland, on the other hand, is not only a prime commodity trading hub, but also one of the world's largest investor countries. Moreover, Switzerland is a leader in innovation and technology.

Brazil is already Switzerland's most important trading partner in Latin America, while Switzerland is the sixth largest investor in Brazil (Swiss direct investments reached a volume of Sfr10.5 billion in 2018 alone). The DTA will further enhance Switzerland's attractiveness for Latin American investments and provide investors with legal certainty in tax matters.

### Key features of new DTA

The DTA has been drafted in line with the Organisation for Economic Cooperation and Development (OECD) recommendations and is aligned with the Base Erosion and Profit Shifting actions. Specifically, it provides for:

- anti-abuse provisions;
- a mutual agreement clause (without containing an arbitration clause); and
- an exchange of tax information on request in accordance with the existing international standard.

The DTA includes the following provisions to facilitate international cross-border investments and financial transactions:

- The residual withholding tax on dividends will be limited to 10% given an interest of at least 10% held directly in the company for at least one year and 15% in all other cases (profits and dividends distributed to resident or non-resident beneficiaries – individuals and legal entities – are not typically subject to income tax withholding in Brazil).
- Generally, the residual withholding tax will be:
  - 15% for interest payments;
  - 10% for specific bank loans; and
  - 0% for certain pension funds and government agencies.
- As regards royalties, the residual withholding tax will be 15% on trademarks and 10% in all other cases.
- There will be an exemption from capital gains tax on the sale of shares (unless real estate companies are involved) in the country where the company is located.

In addition to and deviating from other double taxation agreements entered into by Brazil, the Swiss-Brazil DTA includes the following provisions:

- The DTA will explicitly apply to the Brazilian net profit social contribution.
- A residual 10% Brazilian withholding tax could be applied to fees paid out of Brazil for technical services rendered from Switzerland.

## AUTHORS

**Maurus Winzap**



**Fabienne Limacher**



Under Article 23 of the DTA, Brazil eliminates any relevant double taxation by applying the credit method, whereas Switzerland applies either the credit or the exemption method, depending on the source of income. In line with the OECD recommendations, the DTA contains no tax-sparing or tax-matching clauses.

## **Outlook**

Companies and corporate groups in Switzerland should start to review their structuring opportunities under the DTA in relation to both their existing structures and international expansions. This may also apply to corporate groups whose headquarters are in third countries that substantially operate or plan to substantially operate in both Switzerland and Brazil.

*For further information on this topic please contact [Maurus Winzap](#) or [Fabienna Limacher](#) at Walder Wyss by telephone (+41 58 658 58 58) or email ([maurus.winzap@walderwyss.com](mailto:maurus.winzap@walderwyss.com) or [fabienne.limacher@walderwyss.com](mailto:fabienne.limacher@walderwyss.com)). The Walder Wyss website can be accessed at [www.walderwyss.com](http://www.walderwyss.com).*

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