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**Brazil:
BEPS Action Plan 13
Country-by-Country
Reporting**

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BEPS – Base Erosion and Profit Shifting

The Base Erosion and Profit Shifting (BEPS) Action Plan introduced by the OECD and G20 countries in 2013 recognized that **enhancing transparency for tax administrations by providing them with adequate information** to assess high-level transfer pricing and other BEPS-related risks is a **crucial aspect for tackling the BEPS problem**.

Brazil and BEPS

As a **G20 country**, Brazil has been engaged in the OECD's work and the **Brazilian Tax Authorities** have already expressed their intention to at least partially **adopt BEPS recommendations**.

Nevertheless, Brazil has a long history of **ignoring or interpreting international tax standards in an unorthodox way**. Therefore, it is likely that Brazil will choose to adopt only those aspects of the proposals that suit the Country's domestic purposes.

BEPS Action Plan 13

On 5 October 2015, the OECD released its final report on Action 13 (Transfer Pricing Documentation and Country-by-Country Reporting), under its Action Plan on BEPS. The Final Report contains a template for country-by-country (CbC) reporting of income, taxes paid and certain measures of economic activity.

The CbC reporting template includes information on revenue, profits, income taxes, employees, stated capital, retained earnings, and tangible assets for each tax jurisdiction in which the MNE (Multinational Enterprise) does business. In addition, the template includes information identifying each entity within the MNE group doing business in a particular tax jurisdiction and the business activities each entity conducts.

BEPS Action Plan 13

The CbC reporting requirements are **to be implemented for fiscal years beginning on or after 1 January 2016.**

The OECD mandates that countries participating in the BEPS project **carefully monitor the implementation of these new standards** and reassess no later than the end of 2020 whether modifications should be made to the content of these reports to require reporting of additional data.

Multilateral Competent Authority Agreement (CbC MCAA)

A Multilateral Agreement (CbC MCAA) is being implemented to **set forth the procedures necessary for the tax authorities of the jurisdiction of tax residence of the reporting entity** with the tax authorities of all jurisdictions in which the MNE Group operates.

In **March 2016**, the OECD released its **standardized electronic format** for the exchange of CbC Reports between jurisdictions, as well as the related User Guide.

Country-by-Country Reporting in Brazil: Background

On November 4, 2016, the Brazilian Tax Authorities issued **Public Consultation** N. 11/2016, presenting a **Normative Instruction draft** to implement CbC Reporting in Brazil.

According to the Brazilian Tax Authorities, the reasons behind the implementation of CbC Reporting are the **necessity of implementation of BEPS actions in Brazil**, which are an important tool for **transparency** in the operations of multinational groups.

Country-by-Country Reporting in Brazil: Background

With the CbC Reporting, Brazilian Tax Authorities will count with an important **source of information on multinational groups**, of great utility for the **analysis and identification of tax risks related to international taxation**, as well as for the **formation of a database** for statistical purposes.

In this sense, CbC Reporting will be another **instrument to combat tax evasion**, since the data received will facilitate the identification of where the entities have carried out operations that aim at artificially moving revenues and profits to low-tax jurisdictions.

Normative Instruction Draft – What is the CbC Report?

According to the Normative Instruction draft, **the CbC Report will contain:**

I – Information, by jurisdiction in which the multinational group operates, concerning:

- **total revenue and revenue from related and unrelated parties;**
- **profit or loss before income tax;**
- **income tax paid and income tax due;**
- **share capital;**
- **retained earnings;**
- **number of employees; and**
- **tangible assets other than cash and cash equivalents.**

Normative Instruction Draft – What is the CbC Report?

II - Identification of each entity that is part of the multinational group, indicated by:

- **its jurisdiction of residence for tax purposes** and, if different from that, the jurisdiction under whose laws the entity is established; and
- **the nature of its main economic activities.**

III – Other written information in order to provide additional clarifications, at the discretion of the multinational group.

Normative Instruction Draft – Who must file the CbC Report?

The Cbc Report must be filed by **entities that are resident for tax purposes in Brazil and are the ultimate parent of a multinational group, or the substitute entity**, in the event that the **final controller of the multinational group is resident abroad** and:

- **The final controller of the multinational group is not obliged to deliver the CbC Report in its own jurisdiction of residence; or**
- **The jurisdiction of residence of the final controller does not have an Agreement of Competent Authorities with Brazil; or**
- **There was a systemic failure of the jurisdiction of residence for tax purposes of the final controller of the multinational group.**

Normative Instruction Draft – Who must file the CbC Report?

- **Substitute entity**: refers to the single entity designated by the multinational group, **in substitution of the final controller**, for compliance with the obligation to deliver the CbC Report in its jurisdiction of residence for tax purposes.
- **Systemic failure**: situation in which a certain jurisdiction has an Agreement of Competent Authorities with Brazil, **but suspended the automatic exchange for reasons other than those provided for under that agreement; or persistently failed to automatically provide Brazil with CbC Statements of multinational groups** that have at least one member entity in Brazil.

Normative Instruction Draft – Who is exempted?

Entities are **exempted** from filing the CbC Report to the Brazilian Tax Authorities if the total consolidated revenue of the corresponding multinational group during the fiscal year prior to the year of the report is less than:

- **R\$ 2,260,000,000.00**, if the final controller is resident in Brazil for tax purposes; or
- **€ 750,000,000.00** if the final controller is resident abroad.

Normative Instruction Draft – How to file the CbC Report?

The CbC Report will be filed annually in relation to the previous fiscal year, upon completion and transmission of the Tax Accounting Bookkeeping (**ECF**) to the Public Digital Bookkeeping System (**SPED**).

The first CbC Report shall encompass the **fiscal year of 2016**.

Taxpayers must **keep all supporting documents** which gave rise to the information contained therein.

The **deadline** for filing CbC Report will be the one established for **completion and transmission of the ECF to SPED**.

Normative Instruction Draft - Penalties

Entities that **fail to comply** with the CbC Reporting **or that comply with inaccuracies or omissions** shall be summoned to comply with them or to provide clarifications and will be subject to the following fines:

- For extemporaneous presentation: **R\$ 1,500.00 or R\$ 500.00** per calendar month, depending on the circumstances;
- For failure to comply with RFB's injunctions: **R\$ 500.00** per calendar month; and
- For inaccurate, incomplete or omitted information: **3%, but not less than R\$ 100.00**, of the value of the corresponding commercial transactions or financial operations.

Normative Instruction Draft – Important Definitions

- **Multinational group**: refers to **2 or more related entities** through direct or indirect control that have a residence for tax purposes in different jurisdictions **or to 1 entity that is resident for tax purposes in a jurisdiction and is subject to taxation in another jurisdiction with respect to economic activities performed through a permanent establishment.**

Normative Instruction Draft

- **Entity that is part of a multinational group** is:
 - **Any independent business unit included in the consolidated financial statements of the multinational group** for the purpose of disclosing the accounting-financial report, **or excluded** from the consolidated financial statements of the multinational group **solely because of its size or materiality**; or
 - **Any permanent establishment** of any business unit of the multinational group, provided it prepares a separate financial statement for that permanent establishment for regulatory, tax, financial disclosure or internal control purpose.

Normative Instruction Draft

- **Permanent establishment** means a **fixed place of business through which an entity engages in all or part of its business in another jurisdiction** and includes, in particular:
 - a **seat of management**, a **subsidiary** or a **branch**;
 - an **office**, a **factory** or a **workshop**;
 - a **mine, oil or gas well**, quarry or any other extraction site;
 - a **construction site** or a **construction or installation project**.

Final Remarks

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Thank You!

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