



# Tax Information Exchange Agreement – Brazil and USA

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# Agenda

- Tax Information Exchange – Models
- Brazil new trends for information exchange
- FATCA and Brazilian Financial Institutions
- Main aspects in Brazil and USA TIEA
- What comes next?



# Tax Information Exchange - Models

- Conventions to avoid double taxation
  - OECD model – Article 26.
  - UN Model – Article 26.
  - EUA Model – Article 26.
  - TDT Andes Pact – Article 19 and 20.
- OECD Tax Information Exchange Agreement
  - Bilateral or Multilateral



# OECD model

- The Agreement was developed by the OECD Global Forum Working Group on Effective Exchange of Information (“the Working Group”), with the mandate to develop a legal instrument that could be used to establish effective exchange of information.
- The Working Group consisted of representatives from OECD Member countries as well as delegates from Aruba, Bermuda, Bahrain, Cayman Islands, Cyprus, Isle of Man, Malta, Mauritius, the Netherlands Antilles, the Seychelles and San Marino .



# OCDE model

- The 1998 OECD Report “Harmful Tax Competition: An Emerging Global Issue” (the “1998 Report”) identified “the lack of effective exchange of information” as one of the key criteria in determining harmful tax practices.
- The Agreement represents the standard of effective exchange of information for the purposes of the OECD’s initiative on harmful tax practices.



## Brazil new trends for information exchange – domestic environment

- Brazil signed several DTT without include the paragraph 5, of Article 26, considering that the provision would be incompatible to Brazilian bank secrecy rules.
- In 2001, amendment to Brazilian Tax Code brought a new provision, Article 199, in the sense that tax authorities could exchange information with foreign authorities in accordance with the provision of international treaties.



## Brazil new trends for information exchange – 1<sup>st</sup> TIEA


- In 2007 the Tax Information Exchange Agreement was signed between Brazil and USA but a strong domestic resistance has prevailed it from being effective till now.
- The Tax Information Exchange Agreement with USA was the first one signed by Brazil.



## Brazil new trends for information exchange – What changed?


- Brazil is joining the international initiative to combat organized crime, money laundering, tax evasion and, specially after September 11 attacks, the terrorism.
- Recent cases: Banestado, Maluf, Nicolau and “Mensaleiros”.






## Brazil new trends for information exchange

- Argument were presented to keep the TIEA non effective:
  - It wasn't signed by Brazilian President.
  - It would give more power to international authorities than to Brazilian prosecutors.
  - Against bank and tax secrecy principles that are protected in Brazilian Constitution



## Brazil new trends for information exchange

- The TIEA was signed in March, 2007 and it has completed the approval process in Congress last March, 2013.
- It is still necessary the exchange of ratification documents and the issuance of a Decree to turn it completely effective.



# Brazil new trends for information exchange

- Brazil is part of the globalized world where capital, people and services can be hidden anywhere, therefore modern instruments must be given to tax authorities to keep up with this modern time.
- But how to preserve Brazilian Constitutional rights in this scenario?



# FATCA and Brazilian Financial Institutions

- Foreign Account Tax Compliance Act – financial institutions in Brazil are in a trap situation because of bank secrecy rules in Brazil.
- The best solution for them is to have Brazil entering in an agreement with USA for exchange of information under FATCA provisions. Then, they could give to Brazilian authorities their client's information and comply with secrecy rules. The first step to this bilateral agreement for FATCA is the TIEA.



# Main aspects in Brazil and USA

## TIEA

- USA taxes : (i) federal income taxes; (ii) federal taxes on self-employment income; (iii) federal estate and gift taxes; and (iv) federal excise taxes;
- Brazilian Taxes: (i) individual and corporate income tax (IRPF and IRPJ, respectively); (ii) industrialized products tax (IPI); (iii) financial transactions tax (IOF); (iv) rural property tax (ITR); (v) contribution for the program of social integration (PIS); (vi) social contribution for the financing of the social security (COFINS); and (vii) social contribution on net profits (CSLL)



# Main aspects in Brazil and USA TIEA

- Difficult provisions for Brazilian domestic environment:
  - Brazil should permit representatives of USA to be present in the offices of Brazilian tax administration during the pertinent part of a tax examination and to verify documents, registers and other relevant data with respect to such examination.



# Main aspects in Brazil and USA TIEA

- Difficult provisions for Brazilian domestic environment:
  - If requested, Brazilian authorities should obtain original and unedited books, papers, and records, and other tangible property, including, but not limited to, information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity.



## What comes next?

- Besides the TIEA with USA, Brazil is part of the Multilateral Convention in Exchange of Information.
- Brazil has also signed TIEA with UK, Uruguay, Guernsey and Jersey.
- It is expected also a TIEA with Cayman Islands.
- Now DTT in negotiation will include the exchange of information clause including bank information.





## For tax advisors...

- Although Brazil must face internal resistance and some problems with domestic law, exchange of information will come sooner or later.
- Other countries will be include in the list of jurisdictions with an exchange of information agreement.



Many Thanks! Gracias! Obrigada!

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