



## Base erosion and profit shifting: Brazil proposes CbC reporting for multinationals – top points

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The Brazilian Federal Revenue (RFB) has released the draft of a proposed Normative Rule (Public Consultation RFB No. 11/2016) regulating the implementation of country-by-country reporting via a CbC Report. The proposed draft is in accordance with the OECD's BEPS<sup>[1]</sup> Action 13 - Transfer Pricing Documentation and Country-by-Country (CbC) Reporting

RFB indicated that the CbC Report is an important instrument for gathering information from multinational groups (MNG)<sup>[2]</sup> in order to proceed with the analysis and identification of tax risks related to international taxation and to create a statistical database, enabling the RFB to assess abusive structures.

The proposed draft **requires the following entities in Brazil** to provide such information:

- a) The final controlling party<sup>[3]</sup> of an MNG which is tax resident in Brazil or
- b) The surrogated legal entity in Brazil of an MNG, in case the final controlling party is a tax resident abroad and if at least one of the following requirements are met:
  - i. The final foreign controlling party tax domiciled abroad is not required to file the CbC Report in its jurisdiction
  - ii. The jurisdiction of the final foreign controlling party tax domiciled abroad has an international treaty<sup>[4]</sup> with Brazil, but does not have a specific treaty with Brazil regarding the CbC Report<sup>[5]</sup> by the filing due date of the CbC Report in Brazil or
  - iii. A systemic failure<sup>[6]</sup> occurred in the jurisdiction of the foreign controlling party.
- c) Even if a legal entity in Brazil of the MNG is not covered by item "b" herein above, such Brazilian legal entity may be required to file the CbC Report if<sup>[7]</sup>:
  - i. Its MNG did not indicate the surrogated legal entity or
  - ii. A systemic failure occurred in the jurisdiction of the surrogated legal entity.

**Any legal entity in Brazil of an MNG** shall disclose to RFB:

- a) If it is the final controlling party tax domiciled in Brazil of an MNG
- b) If it is the surrogated legal entity tax domiciled in Brazil of an MNG or
- c) If the previous items are not applicable to the legal entity in Brazil, the reporting legal entity and its jurisdiction, which may be:
  - i. Another Brazilian legal entity of the MNG or
  - ii. A foreign legal entity of the MNG if its jurisdiction requires the CbC Report (has a treaty with Brazil; was not notified for systemic failure; and was notified by such legal entity (as the controlling or substitutive party).

The following **Brazilian legal entities which are part of an MNG are not required to file** a CbC Report when:

- a) The MNG's total consolidated revenue are less than R\$2,260 billion, if the final controlling party is a tax resident in

Brazil or

- b) The MNG's total consolidated revenue is less than €750 million or equivalent to the jurisdiction local currency (converted to Brazilian reais on January 31, 2015), if the final controlling party is a foreign legal entity.

The first CbC Report refers to calendar year 2016 and shall be filed via ECF (Tax Accounting Bookkeeping/Income Tax Returns) using SPED (Public System of Digital Bookkeeping) *by July 31, 2017*.

The CbC Report **requires the MNG to disclose** the following information:

- a) In an aggregate manner per jurisdiction where the MNG operates:
  - i. Total revenue and the revenue received from related and non-related parties
  - ii. Profit or loss before income tax
  - iii. Income tax paid
  - iv. Income tax due
  - v. Capital stock
  - vi. Accumulated profits
  - vii. Number of employees and
  - viii. Tangible assets other than cash and cash equivalent.
- b) Identification of each legal entity of the MNG, by informing:
  - i. Its residence jurisdiction for tax purposes and, if different from that, the jurisdiction according to the laws the legal entity is established and
  - ii. The nature of its main economic activities.
- c) Any other information provided voluntarily by reporting entity.

**All documents** supporting the information provided in the CbC Report shall be kept by the legal entities and do not need to be forwarded to RFB.

The following **penalties** may be levied in cases of:

- a) Late filing: R\$500 (newly incorporated or deemed profit system) or R\$1,500 (other type of tax regimes, including actual profit system)
- b) Lack of filing or non-presentation of documentation requested by RFB: R\$500 per month
- c) Omission or wrong information provided: 3 percent of the value of the commercial or financial transaction of such omitted or incorrect information (not less than R\$100).

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[1] Acronym for Base Erosion and Profit Shifting.

[2] Defined in the draft as two or more legal entities through direct or indirect control or one legal entity with permanent establishment in other jurisdiction.

[3] Defined in the draft as an equity holder.

[4] Defined in the draft as a treaty where Brazil is one of the signatories and which authorizes the exchange of tax information, including automatic exchange. Such treaty may be the OECD Convention on Mutual Administrative Assistance in Tax Matters, tax treaties with an exchange-of-tax-information provision, or a treaty to exchange tax information.

[5] Defined in the draft as a treaty regarding the automatic exchange of CbC Report.

[6] Defined in the draft as when the jurisdiction suspends the automatic exchange of information or fails to provide the CbC Report to Brazil.

[7] If there is more than one, it must be indicated which is responsible for the CbC Report.