

Brazil's position on BEPS Action 13 **The introduction of the CbC report** **October, 2019**

BEPS Action 13 seeks to facilitate the implementation of the *Country-by-Country Reporting* standard. The action plan includes a package that consists of (i) model legislation for countries to require the ultimate parent entity of a MNC group to file the CbC Report in its jurisdiction of residence plus, (ii) backup filing requirements, and (iii) three models of Competent Authority Agreements (CAA) for exchange of CbC Reports based on (a) Multilateral Convention on Administrative Assistance in Tax Matters (MCAA); (b) Bilateral tax conventions (BTC); and (c) Tax Information Exchange Agreements (TIEAs). The purpose of this article is to provide an overview of the CbC rules from a Brazilian tax perspective.

On 12/28/2016, the Brazilian Federal Revenue enacted Regulation # 1.681 introducing the rules on CbC reporting. This Regulation introduced BEPS Action 13 into the Brazilian tax system. Accordingly, Brazilian resident entities have to indicate CbC information in the ECF - the tax accounting bookkeeping program transmitted through SPED, Brazil's public digital bookkeeping system.¹ The Brazilian resident entity must check the option to inform whether it is the final controlling entity or the substitute entity. If not one of these two, the Brazilian resident entity must identify the company and jurisdiction of the CbC filing entity.

The CbC report consists of (i) data indicated according to the jurisdiction in which the MNC group does business - the data to be disclosed is related to: (a) amounts of total revenues whether from related or unrelated parties, (b) profit or loss before corporate income taxes, (c) corporate income taxes paid and due, (d) share capital, (e) accumulated profit, (f) number of employees, and (g) tangible assets other than cash and equivalent ones; (ii) identification of each member of the MNC group by indicating the tax jurisdiction of residence or any other jurisdiction if differently from this one, and the nature of main economic activities; and (iii) information with additional clarification if the MNC group deems necessary.

¹ SPED unifies the activities of reception, validation, storage and authentication of electronic documents that integrate tax, accounting, financial and labor & social security corporate data.

Information must be disclosed in one currency, the one adopted by the jurisdiction of the final controlling entity of the MNC group. This must take into account the totality of entities regardless of the proportion of the participation of the final controlling entity in its controlled entities. For entities of the same jurisdiction the sum of all amounts must be presented. The rules below indicate those required to file CbC in Brazil:

Rule #1: the CbC reporting is an annual compliance obligation for Brazilian resident companies provided that they are the final controlling entities of the MNC group.

Rule #2 (the exception): If not the final controlling entity, the Brazilian resident company will only be required to file the CbC reporting if one of the following situations take place: (i) the final controlling entity of the MNC group of which the Brazil is part is not required to deliver the CbC report in its own jurisdiction; (ii) the foreign jurisdiction of the final controlling entity enters into an international accord on exchange of tax information (MCAA, BTC and TIEAs) with Brazil, but the CAA is not valid until the deadline for the filing of the CbC

report (which is the last working day of June of the fiscal year); or (iii) there is a systemic failure of the residence jurisdiction of the controlling entity of the MNC group notified by the Federal Revenue to the Brazilian entity – systemic failure refers to a situation where a given jurisdiction has a CCA with Brazil but it suspended the automatic exchange of information for reasons not provided in the agreement or failed consistently to automatically provide to Brazil the CbC reports of MNC groups with at least one Brazilian resident company.

In the event of system failure in the jurisdiction of resident of the final controlling entity, the Federal Revenue will notify the Brazilian resident company to upload CbC in its ECF within 30 days as of the date of notification. Alternatively, the Brazilian resident company may indicate a substitute entity for fiscal years in which the filing deadline has been closed. In the subsequent fiscal years upon the systemic failure, the Brazilian resident company will not be able to indicate an entity from that jurisdiction if the situation persists.

Rule #3: If there is more than one Brazilian non-final controlling entities in the MNC group, they will decide which one will be the preparer and inform the Brazilian Federal Revenue.

Rule #4: If one or more of the three situations described in Rule #2 takes place, the Brazilian non-final controlling entity will not be required to deliver the CbC report if the following conditions are met on a cumulative basis: (i) the MNC group indicates a substitute entity to file CbC, (ii) the substitute entity notifies its tax jurisdiction that is responsible for the CbC report, (iii) the Brazilian Federal Revenue must be notified of the item ii information, (iv) the tax jurisdiction of the substitute requires the filing of CbC, (v) the substitute entity delivers CbC to its tax jurisdiction until the 12th month of the date of the last fiscal year of the return of MNC group – the return refers to the fiscal year in which the financial and operating results of the group are disclosed in the CbC report, and (vi) there is no formal notification of systemic failure.

Rule #5: For FY2016, even if Brazilian resident entity is not the final controlling entity of the MNC group and there is no indication of a substitute entity, the Brazilian Federal Revenue will accept the indication of the final controlling entity of the group from a non-CAA (for automatic exchange of information with Brazil) jurisdiction. This exception comes from Federal Revenue Regulation #1709 of May 23, 2017.

Rule #6: If until December 31, 2017 no CAA between Brazil and the jurisdiction of the CbC filing entity has been concluded, the Brazilian resident entity will have 60 days upon the filing of the digital tax accounting bookkeeping ECF corporate income return to have it amended. The purpose of the amendment is for the filing of the CbC report or the indication of a substitute entity for the FY2016 CbC filing in the name of the entire group. This exception comes from Federal Revenue Regulation #1709 of May 23, 2017.

Rule #7: Brazilian companies part of MNC groups may be exempt from filing CbC. If they qualify as such, they must inform the Federal Revenue by checking the option in the ECF digital tax return. The exemption condition is based on an annual revenue threshold. If the MNC group's consolidated revenue for the fiscal year preceding the CbC filing (as indicated in the consolidated financial statements of the final controlling entity) is not greater than (i) BRL2.260.000.000,00 if the final controlling entity is a Brazilian resident company, or (ii) EUR750.000.000,00 (or equivalent amount converted to the currency of the jurisdiction of the final controlling entity based on the spot FX rate of January 31, 2015) – although the language is not as precise as in item (i), we understand the foreign currency amount is applicable to the case of the final controlling entity is nonresident.
