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LEGAL LETTER / JANUARY 2017

COUNTRY-BY-COUNTRY REPORT

Cristiane M. S. Magalhães and Stephanie Makin¹

1. Normative Instruction of the Brazilian Federal Revenue Service 1681 (“IN RFB 1681”), published on December 29, 2016, establishes the obligation for certain Brazilian companies to submit information in a Country-by-Country Report (“CbC”) on an annual basis, in line with Action Plan 13 (Transfer Pricing Documentation and CbC) of the Base Erosion and Profit Shifting project (“BEPS”) developed by the Organization for Economic Cooperation and Development (“OECD”) with G-20.
2. According to IN RFB 1681, which final wording received few changes in comparison with the draft wording subject to public consultation, ultimate parent entities of multinational groups (“MNE groups”) residing for tax purposes in Brazil must file the CbC, which shall be included in the Tax Bookkeeping (“ECF”).
3. Legal entities residing for tax purposes in Brazil that are not the ultimate parent entities of MNE groups must also file the CbC if²:
 - (i) The ultimate parent entity of the MNE group is not required to submit the CbC in its jurisdiction of residence for tax purposes;
 - (ii) The ultimate parent entity’s jurisdiction of residence for tax purposes does not have an agreement in force requiring the automatic exchange of the CbC (Competent Authority Agreement) until the deadline to submit the CbC in Brazil, even if there is an agreement with Brazil in place regulating the exchange of tax information; or

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² In case the obligation has not been fulfilled by another entity belonging to the MNE group not residing in Brazil (reporting entity) in compliance with the conditions provided for by IN RFB 1681.

- (iii)** A failure to exchange the information by the jurisdiction of residence of the ultimate parent entity is notified by the RFB to the Brazilian legal entity. This failure occurs when said jurisdiction has a Competent Authority Agreement with Brazil, but suspends the automatic exchange of information or fails persistently to automatically provide the CbC of MNE groups with entities in Brazil.
- 4.** Brazilian legal entities belonging to MNE groups with total consolidated group revenues of less than BRL 2,26 billion (if the tax jurisdiction of the ultimate parent entity is Brazil) or € 750 million during the fiscal year preceding the filing of the CbC are not obliged to submit the CbC.
- 5.** In accordance with IN RFB 1681 and the Handbook of the ECF Layout 3, approved by Executive Declaratory Act COFIS 101, of December 29, 2016, the legal entity obliged to submit the CbC shall provide the following information in Registry W of the ECF, among others:

 - (i)** Identification of the MNE group, the ultimate parent entity, the entity responsible for the filing of the CbC (or indication of the exemption of filing it), period and currency of the CbC;
 - (ii)** Information (aggregated by jurisdiction in which the MNE group operates) on the total revenue, revenue accrued in transactions with related and non-related parties, profit or loss before the corporate income tax, corporate income tax due and paid, corporate capital, accumulated profits, number of employees and tangible assets (other than cash and equivalents of cash); and
 - (iii)** Identification of each member of the MNE group, including information about the main activities performed.
- 6.** The first CbC shall be filed until the last business day of July, 2017, relating to information on the fiscal year that started in January 2016.
- 7.** The Brazilian legal entity that submits the CbC **(i)** after the deadline shall be subject to a fine of up to BRL 1,500 per month (which may be reduced in half if the CbC is filed before any procedure by the tax administration); or **(ii)** with omissions or with inaccurate or incomplete information shall be subject to a fine of 3% of the omitted value, inaccurate or incomplete (without any limit).

São Paulo, January 2017
