



International Tax

Brazil Tax Alert

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New FATCA-compliant financial reporting requirements enacted

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The Brazilian government enacted Normative Ruling 1,571/15 on 3 July 2015, which establishes a new financial information return (*e-financeira*) for reporting financial information on entities and individuals, including information necessary to comply with the US FATCA (Foreign Account Tax Compliance Act). The new return must be completed by financial institutions for periods starting on 1 December 2015 and it will replace the existing "DIMOF" return as from January 2016; however, financial institutions required to report information under FATCA will have to file their first returns by 15 August 2015.

The *e-financeira* is consistent with the current digital filing requirements for returns in Brazil. It must be prepared and submitted electronically, following the same procedures that apply to the SPED system (Brazilian public digital bookkeeping system).

General reporting requirements

The *e-financeira* must be prepared by institutions regulated by the Brazilian central bank, the Brazilian Securities Commission Exchange (CVM), the Superintendence of Private Insurance (Susep) and the Superintendence of Private Pension (Previc), comprising the following:

- Legal entities that manage and distribute from private pension plans;
- Legal entities that manage dedicated private pension investment funds;
- Legal entities that, as their main activities, raise and invest their own funds or funds of third parties, including consortium operations;
- Legal entities that act as custodians, as defined by the Brazilian central bank and the CVM; and
- Insurance companies that are authorized to sell life insurance plans.

The reporting requirements in the normative ruling cover various types of investments, the information that must be reported (including periods and balances) and the party responsible for reporting the information, as summarized below:

Type of investment	Information	Responsibility
Deposit accounts	Year-end balance, including any activity from payments, credit orders or withdrawals, and the monthly gross income for each month	Financial institution holding the account
Portfolio investments (fixed or variable income investments, including swap transactions and investments in fund quotas, except funds dedicated to private pension plans)	Year-end balance and monthly gross income of each financial investment, segregated by type of income and including any activity, such as an increase of the investment or realization	Custodian/manager of investment funds or investment clubs/distributor of investment fund quotas/broker of listed investments, such as derivatives and listed shares
Private pension and life insurance plans (including dedicated investment funds)	Year-end or period-end balance of pensions and life insurance plans for each plan, including any activity during the year	Private pension and life insurance companies
Forex transactions	Each transaction	Financial institution authorized to operate in the forex market
Consortiums	Total investments and payments during the year, including additional funding that resulted in withdrawal of quotas, deducted from payments made to quota holders with monthly activity	Consortium administrator

Reporting on deposit accounts, portfolio investments, forex transactions and consortiums is required only for monthly activity or month-end balances exceeding BRL 6,000 for entities and BRL 2,000 for individuals. Private pension plans, as well as life insurance and dedicated investment funds, must be reported only when the monthly pension or insurance balance exceeds BRL 50,000 or when the monthly activity is higher than BRL 5,000.

In general, the information that must be reported relating to legal entities or individuals with reportable investments includes the name, nationality, tax residence, address, number of the account or equivalent, Brazilian taxpayer identification number (CPF for individuals and CNPJ for entities) and foreign taxpayer identification number, if available. The normative ruling also requires the identification of the ultimate beneficiary, as defined by CVM regulations. Clients with different types of investment within the same financial institution should be reported by type of investment.

The *e-financeira* is mandatory as from 1 December 2015 (both this return and the DIMOF should cover information relating to December 2015), and must be submitted on a semi-annual basis:

- By the last business day of February of the year following the reporting year, regarding transactions from the second half of the year; and
- By the last business day of August, regarding transactions from the first half of the year.

However, under a transition rule, information relating to the month of December 2015 (i.e. 1-31 December) must be filed by the last business day of May 2016.

The reporting party may amend the *e-financeira* within five years from the date it was delivered, provided the relevant deadlines were met.

FATCA-specific reporting requirements

Although the general information reporting requirements begin on 1 December 2015, financial institutions with US account holders may be subject to an earlier reporting deadline. For information required to be reported under the intergovernmental agreement (IGA) signed between Brazil and US on 29 September 2014, the *e-financeira* must be submitted by 15 August 2015 for information from the period between 1 July and 31 December 2014. Information from the period between 1 January and 30 November 2015 must be reported by the last business day of May 2016.

Further guidance from the Brazilian tax authorities regarding the format of the information return will be released within 15 days from the enactment of Normative Ruling 1,571/15. An additional manual with further instructions is expected to be released within 30 days. Considering this timeframe, financial institutions with reportable information in relation to the IGA will have a tight deadline to provide information regarding 2014.

Normative Ruling 1,571 provides that the compliance responsibility for verifying if individual or entity clients are subject to the FATCA rules is exclusive to the reporting party, suggesting that financial institutions will need to reinforce “know your client” scrutiny.

Comments

Normative Ruling 1,571 represents a new standard of financial data reporting to the Brazilian authorities, as well as Brazil’s implementation of the FATCA reporting requirements. Enforcement of this compliance obligation includes severe penalties for late filing or for filing incorrect information or omitting information; penalties may be up to 3% of the value of the transaction reported incorrectly.

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