



Brazil's CbC reporting requirements for exchange relationships activated after 2017

Global Transfer Pricing Alert 2018-002

A Brazilian constituent entity (BCE) that designated its foreign ultimate parent entity (UPE) as the country-by-country (CbC) reporting entity when filing its 2016 income tax return may be required to amend the return to file a CbC report within 60 days of 31 December 2017, if the relevant bilateral exchange relationship with the UPE's country of residence was not activated by 31 December 2017 (or is not effective for taxable periods beginning on or after 1 January 2016).

Background

The Brazilian tax authorities introduced CbC reporting obligations in Brazil effective for FY 2016 (the 2016 calendar year) through Normative Ruling (NR) 1,681/2016, issued on 29 December 2016. The rules provided that a BCE would be required to file a CbC report with its 2016 corporate income tax return (as a surrogate entity) if a competent authority agreement (CAA) for the exchange of CbC reports had not been concluded between Brazil and the country where the UPE is resident by the due date for the 2016 tax return (31 July 2017).

NR 1,681/2016 was amended on 25 May 2017 to allow a BCE to designate its foreign UPE as the reporting entity for FY 2016 on a conditional basis in cases where, for FY 2016, the UPE jurisdiction does not have a CAA in force with Brazil but the UPE jurisdiction allows for the voluntary filing of CbC reports.

Brazil's tax authorities issued additional guidance on 26 July 2017, providing that if a foreign UPE is designated as the

reporting entity for FY 16, but the relevant CAA is not signed between the UPE jurisdiction and Brazil by 31 December 2017, the BCE is required to amend its 2016 corporate income tax return (which would have been due by 31 July 2017) within 60 days of 31 December 2017, to file the CbC report on behalf of the entire group (or designate an adequate surrogate entity).

The July 2017 guidance introduced an additional requirement that, for a designated UPE to be considered the reporting entity for FY 2016, the CAA between the UPE jurisdiction and Brazil that must be activated by 31 December 2017 also must be effective from 1 January 2016. CAAs in force that applied to fiscal periods beginning in 2017 would have had to be made retroactive to 1 January 2016 by 31 December 2017 to meet this requirement.

The BCE could be required to file the CbC report within 60 days of 31 December 2017 if the CAA that was activated by 31 December 2017 is not retroactive to 1 January 2016 and the UPE jurisdiction applies a “reciprocal” rule, that is, the UPE jurisdiction requires a local constituent entity that is part of a multinational group controlled by a Brazilian UPE to file a CbC report in that jurisdiction for FY 2016 if no CAA is in force with Brazil for 2016 by 31 December 2017.

Current status of exchange relationships

Of the 67 jurisdictions (in addition to Brazil) that had signed the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports as of 19 December 2017, 50 jurisdictions appear on the OECD’s list of CbC exchange relationships as having activated exchange relationships with Brazil as of December 2017.

Brazil and the United States entered into a bilateral CAA on the automatic exchange of CbC reports on 20 July 2017, which is effective 1 January 2016.

Summary of reporting rules

The rules for determining whether a BCE that designated a foreign UPE as the CbC reporting entity when filing its 2016 income tax return may be required to amend its return to file a CbC report within 60 days of 31 December 2017 can be summarized as follows:

Did the UPE country sign a CAA with Brazil by 31 December 2017? (68 jurisdictions)	Was the CAA in force/activated by 31 December 2017? (51 jurisdictions)	Was the CAA effective for taxable periods beginning on or after 1 January 2016 by 31 December 2017?	CbC reporting outcome
Yes	Yes	Yes	BCE that designated

			UPE as reporting entity with return is not required to file CbC report
Yes	Yes	No	BCE that designated UPE as reporting entity with return may be required to file CbC report within 60 days of 31 December 2017 if UPE jurisdiction applies reciprocal rule
Yes	No	N/A	BCE that designated UPE as reporting entity with return is required to file CbC report within 60 days of 31 December 2017
No	N/A	N/A	BCE that designated UPE as reporting entity with return is required to file CbC report within 60 days of 31 December 2017

Comments

Multinational groups with BCEs should review the FY 16 CbC reporting requirements in Brazil, bearing in mind that the BCE may be required to file a CbC report within 60 days of 31 December 2017 (by amending the FY 16 income tax return

filed) if the UPE jurisdiction applies a reciprocal rule (when the CAA was active by 31 December 2017, but not effective for taxable periods beginning on or after 1 January 2016). In cases when no CAA was in force/activated by 31 December 2017, the FY 16 income tax return must be amended accordingly.

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