The Brazilian Federal Revenue Agency (Receita Federal do Brasil or RFB), on 4 November 2016, issued a proposed Normative Instruction (the proposed NI; an administrative legislation) to introduce country-by-country reporting (CbCR) rules in Brazil. The introduction of CbCR forms part of Brazil’s participation in the Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) project endorsed by the G20.

Taxpayers and other interested parties were allowed to suggest modifications to the proposed wording of the NI. The deadline for submitting comments was 21 November 2016, and the issuance of the final version of this regulation is expected before January 2017.

According to comments issued by the RFB, CbCR will aid in analyzing and identifying risks derived from the application of international tax rules by multinational enterprises (MNEs). The RFB also declared that the information received will serve as an instrument to prevent tax evasion.

Proposed Normative Instruction

The proposed NI would broadly follow the OECD Model Legislation for CbCR, with some changes to accommodate the Brazilian standards and tax regime. For example, the proposed NI follows the OECD Model Legislation by requiring CbCR in the following cases:
1) The ultimate parent entity (UPE) of an MNE Group is resident for tax purposes in Brazil.

2) The MNE Group has a “Constituent Entity,” that is not the UPE, if the Constituent Entity is resident for tax purposes in Brazil and one of the following conditions applies:

a) The UPE of the MNE Group is not obligated to file a CbC report in its jurisdiction of tax residence.

b) The jurisdiction in which the UPE is resident for tax purposes has a current International Agreement to which Brazil is a party but does not have a Qualifying Competent Authority Agreement for filing the CbC report for the reporting fiscal year.

c) There has been a “systemic failure” of the jurisdiction of tax residence of the UPE and the Brazilian Administration notified the Constituent Entity resident for tax purposes in Brazil that there has been a “systemic failure” of the jurisdiction of the UPE’s tax residence.

Brazil also plans to follow the Model Legislation for the filing of a CbC report by a “Surrogate Parent Entity.”

The proposed NI would differ somewhat from the OECD Model Legislation when determining the scope of the relevant group that is subject to the CbCR. The OECD model defines the term “Group” as follows:

The term “Group” means a collection of enterprises related through ownership or control such that it is either required to prepare Consolidated Financial Statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange.

Instead of using this definition, the proposed NI would refer to entities that are related to one another through direct or indirect “control.” The proposed NI would then define the concept of control along the lines of Brazilian corporate law.

As in the OECD Model Legislation, the proposed NI would not require CbCR for groups with total consolidated group revenue of less than €750 million during the fiscal year immediately preceding the relevant fiscal year. The proposed NI also would establish a similar threshold in local currency of (rounded) BRL2.26 billion if the UPE is located in Brazil.

The NI would require any Constituent Entity of an MNE Group that is resident for tax purposes in Brazil to notify the local tax administration about the identity and residence of the reporting entity, which could be a UPE, Surrogate Parent Entity or Constituent Entity. The Constituent Entity generally would notify the local tax administration about the reporting entity when it files its corporate tax return, typically by the end of June of the year following the relevant fiscal year. The proposed NI also would require entities to certify that they are not part of an MNE Group, if applicable.

The CbC report will be embedded in the Brazilian electronic corporate tax return (ECF), which uses the calendar year. The relevant period for CbCR would not, however, necessarily be the calendar year as the reporting period used by the group may be a different 12-month period. The proposed NI would refer to the manual of the ECF for further information and definitions.

The RFB recently updated its manual with instructions to prepare the corporate tax return, including the CbC report. CbCR will be included in the so-called Block W-part of the ECF. The updated manual is based on the proposed NI.

At this stage, Brazil indicated that it will not impose an obligation to prepare and file a master file, as required in Action 13.

By embedding the CbC report in the corporate tax return, the proposed NI would impose a deadline in Brazil that is earlier than in other countries. Typically, the corporate tax return must be filed by the end of June of the subsequent year. The proposed NI would require CbCR to be filed for 2016, which means the likely deadline would be June 2017 for the first CbCR. Moreover, failure to provide the CbCR would mean the ECF cannot be filed.

The proposed NI would impose heavy penalties for non-compliance with the CbCR rules. Under the proposed NI, transactions and financial operations that are not fully reported in the CbC report would give rise to a penalty of up to 3% of the underlying value of the transactions.

In addition, the proposed NI would not include the clause suggested by the OECD on the use and confidentiality of CbC report information. As to the exchange of information, on 21 October 2016, Brazil signed the Multilateral Competent Authority Agreement for the automatic exchange of CbC reports; therefore, the reports that Brazil receives will be exchanged beginning in June 2018.
For additional information with respect to this Alert, please contact the following:

Ernst & Young Serviços Tributários S.S., Business Tax Services, São Paulo
- Frederico H God +55 11 2573 3232 frederico.h.god@br.ey.com
- Washington Coelho +55 11 2573 3446 washington.coelho@br.ey.com

Ernst & Young Serviços Tributários S.S., Global Compliance and Reporting, São Paulo
- Andrea Weichert +55 11 2753 3438 andrea.weichert@br.ey.com

Ernst & Young Serviços Tributários S.S., International Tax Services, São Paulo
- Gil F Mendes +55 11 2573 3466 gil.f.mendes@br.ey.com
- Audrei Okada +55 11 2573 4359 audrei.okada@br.ey.com

Ernst & Young LLP (United Kingdom), Brazilian Tax Desk, London
- Felipe Bastos Fortes +44 20 7980 0534 ffortes@uk.ey.com

Ernst & Young LLP, Brazilian Tax Desk, New York
- Erlan Valverde +1 212 773 7829 erlan.valverde@ey.com
- Francine B. Rosalem +1 212 773 9755 francine.rosalem@ey.com

Ernst & Young LLP, Latin American Business Center, New York
- Ana Mingramm +1 212 773 9190 ana.mingramm@ey.com
- Pablo Wejcman +1 212 773 5129 pablo.wejcman@ey.com
- Enrique Perez Grovas +1 212 773 1594 enrique.perezgrovas@ey.com

Ernst & Young LLP (United Kingdom), Latin American Business Center, London
- Jose Padilla +44 20 7760 9253 jpadilla@uk.ey.com
About EY
EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients.

For more information about our organization, please visit ey.com.

Americas Tax Center

© 2016 EYGM Limited.
All Rights Reserved.

EYG no. 04188-161Gbl
1508-1600216 NY
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.