

Legal update

Brazil ratifies the OECD convention that allows for automatic exchange of tax information

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Tax

Soon the Brazilian IRS will be able to receive and review information from over 96 jurisdictions regarding Brazilian taxpayers under the OECD's Common Reporting Standard (CRS).

On June 1, 2016, the Minister of Foreign Relations deposited Brazil's instrument of ratification of the Amended Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Convention). This act sets the effective date for the implementation of CRS in the country for October 1, 2016¹.

The Convention is the result of various efforts to combat tax avoidance and tax evasion on an international level. The instrument allows its signatories to exchange information regarding bank accounts, investments, stocks, interest and rental income earned or maintained by their nationals.

As of June 1, 2016, over 90 jurisdictions have ratified the Convention, including the UK, China, France, Germany, Portugal, the Netherlands, Japan, Korea, Luxembourg, the Cayman Islands, the British Virgin Islands, Bermuda and the Channel Islands. This makes the Convention a truly global instrument of international tax cooperation, although certain jurisdictions have not yet executed the amended Convention to implement CRS, including the United States.

The co-operation promoted by the Convention includes automatic exchange of information, simultaneous tax examinations and international assistance in the collection of tax debts. This ultimately means that a person who owes taxes in one signatory country may be subject to enforcement procedures in another participating country.

The exchange of information between the countries may be made on request, automatically or spontaneously.

At any time a participating country may request another signatory to provide information regarding a particular person or a transaction. In addition, a party to the Convention that has grounds to believe there is a loss of tax in another participating country² may, without prior request, forward information to such country. Two or more participating countries may also agree to engage in a simultaneous tax examination to examine the tax affairs of a person or persons in which such countries have a common or related interest.

While the exchange on request can be the most appropriate form of exchange of information with respect to recovery of relevant documents (especially since it will involve the active participation of officials from each tax authority), the automatic exchange of information is the principal and most anticipated mechanism created by the Convention.

Article 6 of the Convention provides that "with respect to categories of cases and in accordance with procedures which they shall determine by mutual agreement, two or more parties shall automatically exchange³" any information that is relevant for the enforcement of taxes in their jurisdictions.

It is important to note that information exchanged automatically is typically bulk information comprising many individuals. It may, however, allow the tax authorities to identify preliminary evidence of fraud and tax evasion. The other instruments available in the Convention (such as exchange on request or simultaneous tax examination) can then be used to build a case and prosecute offenders.

The CRS, approved by the OECD Council on July 15, 2014, sets out the financial account information to be exchanged, the financial institutions required to report, the different types of accounts and taxpayers covered, as well as common due diligence procedures to be followed by financial institutions⁴.

As noted above, the United States has not ratified the Convention. However, Brazil has its own tax information exchange agreement (TIEA) with the United States, which was enacted on May 16, 2013. Under the TIEA, the United States government will provide information to the Brazilian authorities with respect to corporate income tax (IRPJ), withholding tax (IRRF), social contribution on net profits (CSLL), federal VAT (IPI), financial tax (IOF), rural land tax (ITR) and turnover taxes (PIS/COFINS)⁵.

Brazil will begin to apply the automatic exchange of information in 2018, using data from the 2017 fiscal year. This may well be the beginning of a new era for Brazilian tax planning. The Brazilian IRS will receive information from the foreign banks in the same way it now receives such information from Brazilian banks and will be able to cross-reference such information with its own data.

Before the automatic exchange of information is implemented, the Brazilian IRS may take advantage of the exchange of information on request, which will be immediately available after the entry into force of the Convention on October 1, 2016. This will allow the Brazilian tax authorities to seek information from other participating countries if there are indications of offshore tax structures and/or exchange control violations regarding a particular person or entity.

The ratification of the Convention may present an incentive for Brazilian taxpayers to take advantage of the current tax amnesty program in effect and review existing tax structures. Since the text of the Convention also provides that the cooperation shall extend to the assistance in the recovery of tax credits, it can potentially be used to reduce double taxation and allow taxpayers from the signatory countries, including Brazil, to implement an optimal global tax plan.

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Footnotes

- ¹ Paragraph 3 of Article 28 of the Convention provides that for "a member country of the OECD which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval." The full text of the Convention can be found at http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/the-multilateral-convention-on-mutual-administrative-assistance-in-tax-matters_9789264115606-en#page27.
- ² Please see Article 7 of the Convention, which can be found at http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/the-multilateral-convention-on-mutual-administrative-assistance-in-tax-matters_9789264115606-en#page17.
- ³ [://www.keepeek.com/Digital-Asset-Management/oecd/taxation/the-multilateral-convention-on-mutual-administrative-assistance-in-tax-matters_9789264115606-en#page17](http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/the-multilateral-convention-on-mutual-administrative-assistance-in-tax-matters_9789264115606-en#page17).
- ⁴ The full text of the CRS can be found at <https://www.oecd.org/ctp/exchange-of-tax-information/automatic-exchange-financial-account-information-common-reporting-standard.pdf>.
- ⁵ Please see <https://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Agreement-Brazil-9-23-2014.pdf>.

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