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BRAZIL TO ENTER THE COMMON REPORTING STANDARD IN 2018

BY AMIT RAMNANI



The OECD has taken major steps to reduce tax evasion by implementing the Common Reporting Standard (CRS), which employs the automatic exchange of account information of financial institutions between 100+ participating countries. The aim is to identify inconsistencies in tax declarations and move towards global tax transparency. During 2017, exchanges commenced between 49 “early-adopter” countries.

Brazil, as a “late adopter”, will join the CRS in September 2018 and has all the necessary laws in place to implement the automatic exchange of information with data relating to 2017. Over 60 other late-adopter countries – including Chile, Panama and Uruguay – will also join the CRS in 2018.

From this year, the Brazilian tax authorities (Receita Federal do Brasil – RFB) will have access to information on overseas accounts held by Brazilian residents, including overseas

citizens and expatriates who are resident in Brazil. All Brazilian residents are required to declare overseas asset holdings in their annual tax returns.

From September we expect the RFB to start notifying individuals identified as having undeclared bank accounts, financial assets, real estate and shareholdings in private companies. Inevitably this will be followed by legal procedures, the frequency of which is likely to increase as the CRS evolves in terms of scope and efficiency.

Brazil has existing bilateral agreements in place which run parallel to the CRS. Brazil and the US signed an agreement in 2015 to automatically exchange information. In 2017 Brazil agreed with Argentina to share information dating back to 2012.

Individuals, who believe they are in an irregular fiscal position are advised to seek professional tax advice immediately instead of procrastinating or merely hoping that they will be not be identified via the information exchanges. Inaction is only more likely to result in more severe penalties being imposed in the future, with many tax lawyers believing that the RFB will impose fines ranging from 80% to 225% on the total value of an individual’s undeclared overseas assets. Certain individuals will be fully or partially exempt depending on whether overseas assets were held prior to acquiring residency status in Brazil.

In 2016 the estimated value of undeclared overseas assets held by Brazilian residents was a staggering R\$ 400bn. The RFB has one of the most technologically advanced cross-referencing systems in the world – and so the government, suffering from a severe budget deficit, can depend on the sheer might of the RFB machinery

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to identify tax evaders and pull in additional revenue.

Camilla Arno Sant’Anna, an international lawyer at Norton Rose Fulbright, reinforces the point regarding RFB’s technology: “While we are not certain how quickly and effectively the RFB will be able to take advantage of the information exchanged, they have a

great set of tools in hand. Taxpayers who are non-compliant in any jurisdiction need to adapt to this new reality.”

Since 2016 the Brazilian government has offered two voluntary disclosure schemes, known as the Special Regimes for Monetary and Tax Regulation (RERCT 1 & 2). These were not available to politically exposed persons and their relatives, nor those involved in serious crimes such as drugs and money laundering.

The first amnesty (2016) imposed a penalty of 30% of the total value of undeclared overseas held on 31/12/2014. RERCT 1 resulted in the total declaration of almost R\$160bn and receipts of R\$ 46.8bn, involving approximately 25,000 declarants.

In the second amnesty (2017), RERCT 2, the penalty was increased to 35.25% based on the value of assets held on 30/6/2016, with a less favourable exchange rate to the dollar than during RERCT 1. Total receipts were a disappointing R\$1.6bn, with approximately 2,000 declarants – way below the initial target of R\$13bn.

In our opinion the number of declarants and the total receipts would have been much greater if the voluntary disclosure schemes had conveyed a more definitive message regard-

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ing the application of the penalties. Many potential declarants decided not to participate given the ambiguity regarding “photo or film”, i.e. whether RFB would impose further fines based on historic account data or simply impose the one-off penalty based on the specified balance dates. Furthermore, the penalty rates were higher than in other Latin American tax amnesties, which discouraged many individuals from entering the Brazilian amnesty. This reluctance was exacerbated by a widespread feeling of resentment due to the prolonged recession and widespread corruption in the government and several large companies.

Argentina, in contrast, managed to get a high level of participation in its 2016 amnesty and collected about US\$10bn in penalties, even at an extremely generous rate of only 10% of undeclared assets. The tax amnesty in Mexico, meanwhile, provided the incentive of an even lower penalty rate (8%) for those who repatriated their undeclared assets and invested the amount for a two-year minimum term in specific domestic assets.

In Brazil, many declarants chose to retain their funds overseas and pay the RFB from domestic accounts, which resulted in the reduction of deposits

across many private banks. Many declarants raised concerns about the direction of the Brazilian economy and potential currency volatility prior to the presidential elections in 2018. In our opinion Brazil should have offered an incentivized penalty rate for repatriated funds, invested into sustainable projects like clean energy or start-up funds. This could have provided a welcome stimulus during a challenging economic scenario.

There are mixed predictions as to whether there will be a “last chance” amnesty before Brazil joins the CRS. To have any credibility the penalty would have to be greater than 40%, which may act as a further disincentive given the low participation rate in RERCT 2.

Individuals who are thinking about closing an undeclared account should be aware that the RFB will have access to historical account information from the beginning of 2017. In any case the vast majority of global financial institutions require a proof of residency and a Tax Identification Number (CPF in Brazil) in order to open a new account and conform to the CRS. ●

Disclaimer: This article does not constitute tax advice and we recommend that individuals should seek bespoke and qualified tax advice in their relevant jurisdictions.

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