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# ***Brazil provides relief from 2016 country-by-country reporting for US-headquartered companies***

June 6, 2017

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## ***In brief***

On May 23, 2017, the Brazilian Federal Revenue Office (RFB) issued Normative Instruction RFB 1709/2017 (IN 1709), providing additional guidance regarding the Brazilian country-by-country (CbC) reporting requirements. In particular, IN 1709 modified a rule that might have required Brazilian affiliates of multinational groups headquartered outside Brazil to file a 2016 CbC Report in Brazil by July 31, 2017.

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## ***In detail***

### ***Background***

According to Normative Instruction RFB 1681/2016 (IN 1681), a Brazilian affiliate (a so-called ‘constituent entity’) of a non-Brazilian multinational enterprise (MNE) meeting certain revenue thresholds would have been required to file with its 2016 Brazilian income tax return (ECF) a 2016 CbC Report for the entire MNE if, by July 31, 2017, a competent authority agreement (CAA) authorizing the automatic exchange of CbC Reports were not in place between Brazil and the jurisdiction where the MNE’s 2016 CbC Report is to be filed. This was particularly worrying for US-based MNEs because, although it appears the United States and Brazil are working to complete the required CAA, there are

concerns that the July 31 deadline might not be met.

### ***New transition rule***

IN 1709 provides a new transition rule allowing a Brazilian constituent entity to indicate when filing its 2016 ECF that its 2016 CbC Report will be filed in the jurisdiction of its headquarters, even if that jurisdiction does not have a CAA in place with Brazil by July 31, 2017. Under the new rule, however, if the required CAA is not in place by December 31, 2017, the Brazilian constituent entity will have 60 days to amend its 2016 ECF to either (i) submit to the RFB the MNE’s 2016 CbC Report or (ii) identify another jurisdiction where the required CAA already is in place with Brazil and where the MNE’s 2016 CbC Report was filed by a so-called ‘surrogate entity.’

Alternatively, under IN 1681, the constituent entity can indicate when filing its 2016 ECF on or before July 31 that its 2016 CbC Report will be filed by a surrogate entity in a jurisdiction where the required CAA is in place as of July 31, 2017.

### ***Additional clarification***

On May 15, 2017, the RFB also published an official document entitled “Questions and Answers – CbC Report” (the Q&A) that clarifies the Brazilian CbC filing requirements related to non-Brazilian headquartered MNEs with fiscal years that do not coincide with the calendar year. According to the Q&A, a 2016 CbC Report is due in 2017 only if the non-Brazilian headquartered MNE’s fiscal year both begins and ends in 2016. That is, if the MNE’s fiscal year begins before

January 1, 2016, no CbC Report will be due for that period. In addition, if the MNE's fiscal year ends after December 31, 2016, then the CbC Report for that period will not be due until the Brazilian constituent entity's ECF is due for that same period, that is, on or before the last business day of July 2018.

### **The takeaway**

IN 1709 and the Q&A provide important CbC reporting guidance with respect to the Brazilian ECF filing deadline on July 31, 2017. Any Brazilian affiliate of a non-Brazilian MNE with a fiscal year both beginning and ending in 2016 and meeting certain revenue thresholds may indicate when it files its 2016 ECF that the 2016 CbC Report for its MNE will be filed in the jurisdiction of its

headquarters, regardless of whether that jurisdiction has the required CAA in place with Brazil by July 31, 2017. If the required CAA is not in place with Brazil by December 31, 2017, however, the Brazilian constituent entity will have 60 days to amend the ECF either to include the MNE's 2016 CbC Report or to identify another jurisdiction where the required CAA already is in place with Brazil and where the MNE's 2016 CbC Report was filed by a surrogate entity.

### **Let's talk**

For a deeper discussion of how this issue might affect your business, please contact:

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