

International tax cooperation: taking stock after five years

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International tax transparency rules adopted by Brazil has opened up a new front in relations between tax authorities and taxpayers

The last decade saw enormous growth in mechanisms for international tax cooperation. A striking example is the automatic exchange of banking information between tax authorities, which occurs without any prior request by the receiving nation, under the CRS (worldwide) Fatca (limited to the USA) models. According to official data published by the Organization for Economic Cooperation and Development (OECD), in 10 years the exchange of information has allowed member countries to collect additional tax revenues of approximately €7.5 billion. In 2019 alone (the latest data available), member countries exchanged information on 84 million bank accounts, representing a total of €10 trillion in assets.

Brazil is a full participant in international tax cooperation. In this country, the watershed moment occurred in 2016, when (a) our constitutional court, the Supreme Federal Court (STF – *Supremo Tribunal Federal*) reversed its earlier position and allowed banking information to be sent to the tax authorities without prior judicial authorization, (b) the Asset Repatriation Program (RERCT – *Regime Especial de Regularização Cambial e Tributária*) was launched, (c) Country-by-Country reporting (CbC reporting, known in Brazil as *Declaração País a País*) was created to share tax information on multinationals

on an international scale, (d) disclosure was required of the ultimate beneficiary of legal entities registered in Brazil's CNPJ (*Cadastro Nacional de Pessoas Jurídicas*), and (e) Brazil adhered to the OECD's Convention on Mutual Assistance in Tax Matters. With more than 120 members, the Convention is now the most complete and modern multilateral instrument for cooperation between tax authorities. In addition to exchanges of information, either on request or automatic, according to the CRS, the Convention also allows joint requests for information, sector investigations, and investigations abroad.

Five years have passed, and it's now possible to take stock. The cut-off date for auditing taxpayers that joined RERCT is approaching, CbC reporting and disclosure of ultimate beneficiaries has become routine and, above all, international tax cooperation has become a reality. According to official information, in 2019 alone (most recent data available), Brazil's Federal Revenue Service (RFB – *Receita Federal do Brasil*) received information on 60,000 bank accounts in the USA and another 860,000 in 96 other countries. Switzerland alone reported on 47,000 accounts. This information is included in the RFB's database and used for crosschecking and audits. Before automatic exchanges, Brazil made little use of international tax cooperation:

in the 10 years prior to 2016, Brazil responded to only 390 requests for cooperation.

This large step was driven largely by the need for tax revenues, and has already translated into increased efficiency in taxation of assets located outside Brazil. On the other hand, many of the cooperation measures were inspired by practices in other countries, to the detriment of traditional guarantees enjoyed by Brazilian taxpayers. Concerns arise principally in cases where taxpayers are not assured the formal and substantive rights typical of tax audits in Brazil, and a new front in disputes with the tax authorities has opened up for taxpayers that disagree with the application of the new rules. Examples include recent litigation over illegal demands by the tax authorities for disclosure of the ultimate beneficiary of foreign investments, or improper attempts to use the multilateral convention to gain access to protected information, in Brazil and in other countries. Brazil's new General Data Protection Law may add new issues to some of these debates. Even in the STF, since the emblematic decision in 2016 over banking secrecy, more recent decisions have begun to show a greater concern over the limits on the sharing of private information with government authorities, both in general cases (e.g. Constitutional Challenge ADI no. 6387, filed in 2020) and in tax cases (e.g. Appeal RE no. 5729, filed in 2021, over the confidentiality of information provided in the RERCT).

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***The questions discussed in this article were examined by the author in his book [Les échanges internationaux de renseignements fiscaux: recherches sur la coopération administrative fiscale à l'ère de la transparence](#), published in May of this year in Paris by L'Harmattan.*

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