



TAX

AUTOMATIC EXCHANGE OF INFORMATION

TRANSFER PRICING AND REQUESTS FOR TAX INFORMATION

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The recently published Law 98/2017 of 24 August is part of a broader package of measures to increase international tax cooperation, particularly within the European Union. The new law introduces changes to the automatic exchange of information in relation to (i) cross-border advance decisions on tax matters (requests for binding information) taken in each Member State, (ii) advance pricing agreements and (iii) the country-by-country reporting or CbCR on tax matters between Member States of the European Union. In making these changes, the new law amends the following legislation:

- Decree-Law 61/2013 of 10 May, on administrative cooperation in the field of taxation
- The General Rules on Tax Infringements
- The Rules on Communication of Financial Information
- The Corporate Income Tax Code
- The General Tax Law
- Decree-Law 64/2016 of 11 October, which governs the mandatory exchange of information in the field of taxation and which establishes communication rules and duties of diligence to be observed by financial institutions in relation financial accounts.

Law 98/2017 enacts Council Directive (EU) 2015/2376 of 8 December 2015, which amends Directive 2011/16/EU, on mandatory automatic exchange of information in the field of taxation, and Council Directive (EU) 2016/881 of the Council of 25 May 2016, which amends Directive 2011/16/EU, on the same issue.

These changes are designed to achieve more effective administrative cooperation between the Member States in conditions compatible with the proper functioning of the internal market. The principal objective is to facilitate the exchange of information and avoid the need for each Member State to make similar adaptations to their systems of storing information. This will thus improve efficiency in the use of public resources and reduce the administrative burdens on multinational groups of companies. This set of legislative changes is also intended to change the way the CbCR system functions, and to increase the penalties applicable to infringements in respect of these matters.

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The main change is a new obligation on the Tax and Customs Authority to communicate specific tax information, with cross-border effect.

Therefore, on an institutional level, the main change is the establishment of a communication obligation on the Tax and Customs Authority. This is a reciprocal and automatic obligation to exchange information on cross-border advance decisions on tax matters and advance pricing agreements made with the tax authorities of each Member State, when they address international groups.

As a result, the responses to requests for binding information provided by the Tax and Customs Authority addressing matters that could involve other Member States (for example, the classification of a certain type of income earned from, or paid to, another Member State) will now be communicated automatically to these Member States.

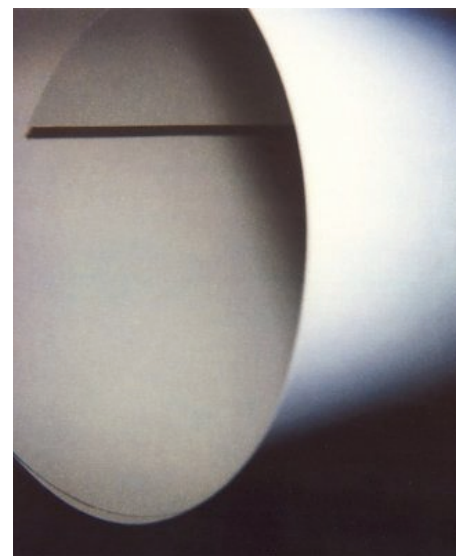
In the same way, advance pricing agreements that involve transactions between Portuguese companies and related companies that are resident in another Member States must also be subject to automatic communication.

The new law also makes changes that affect some companies in respect of the country-by-country reporting declaration to other Member States of the European Union ("CbCR") these changes affect companies. The law establishes that the ultimate parent entity or the surrogate parent entity - of a group of multinational companies whose total consolidated revenue, as reflected in their consolidated financial statements, in the immediately preceding period, is EUR 750 million or more - is subject to the obligation to present a financial and tax information statement by country or tax jurisdiction on the entities that make up the group.

That obligation also applies to the constituent entity resident in Portugal that is not the ultimate parent entity of a multinational group of companies, if:

- the constituent entity is held or controlled, directly or indirectly by a non-resident entity that is not obliged to file a country-by-country report in its jurisdiction of tax residence;
- the jurisdiction in which the ultimate parent entity is resident for tax purposes has a current international agreement to which the Member State is a party, but does not have a qualifying competent authority agreement in effect to which the Member State is a party by the deadline specified for filing the country-by-country report for the reporting fiscal year; or
- there has been a systemic failure of the jurisdiction of tax residence of the ultimate parent entity that has been notified by the Tax and Customs Authority to the constituent entity.

Additionally, the reporting entity must present a declaration by country with respect to its annual accounting period within 12 months of the last day of the reporting period of the multinational group of companies.



ANDRÉ GOMES


O Círculo das Formas, 1999 (detail)
Prova de branqueamento de corante
93 x 75 cm

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Finally, Law 98/2017 of 24 August increases the fine applicable in the event of failure to present the documentation relating to the policy adopted on transfer pricing. The new law also increases the fine for failure to meet the deadlines and to present the financial and tax declaration by country in relation to the entities of a multinational group. Any fines applied increase by 5% per day of delay in complying with these obligations.

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