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# Brazilian tax authorities issue regulation on disclosure of ultimate beneficial owners

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## In brief

The Brazilian tax authorities on December 28, 2018, published Normative Instruction (NI) 1,863. The NI provides guidance about disclosing the foreign beneficiaries of certain Brazilian and foreign corporations registered before the Brazilian corporate taxpayer identification registry ('Cadastro Nacional das Pessoas Jurídicas' in Portuguese, or CNPJ).

This NI revokes prior regulations on the matter, provides detailed rules on the disclosure of ultimate foreign beneficial owners, and extends the deadline to report such information to the Brazilian tax authorities.

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## In detail

### Background

NI 1,634/2016 (amended by NI 1,684/2016) introduced the obligation for Brazilian entities — as well as foreign entities required to be registered with the Brazilian CNPJ — to disclose information about their ultimate beneficial owners (UBOs) resident abroad. This NI provided that UBOs include individuals and certain entities that, directly or indirectly, hold, control, or 'significantly influence' an entity, as well as individuals and certain entities on whose behalf a transaction is undertaken. All required information had to be filed by December 31, 2018.

This regulation was the result of the Brazilian government's

commitment to implement transparency standards in line with the OECD's BEPS initiative.

Subsequently, the tax authorities issued NI 1,729/2017, which was intended to provide further guidance. However, this NI created much controversy due to the lack of a specific definition of UBO, as well as the level of detail required in the information to be filed with the Brazilian tax authorities.

### Normative Instruction 1,863

The newly published NI revokes all previously referenced regulations, and clarifies the definition of UBO and the disclosure information that must be provided to the tax authorities.

Specifically, the new NI provides that, among other items, the full chain of corporate shareholders up to the level of individuals characterized as final beneficiaries must be disclosed. According to such rules, a UBO is:

- an individual that ultimately controls or has significant influence over an entity or
- an individual that performs certain activities in Brazil (such as leasing and chartering) that require registration with the CNPJ.

Under the NI, 'significant influence' is deemed to exist when the individual, directly or indirectly, holds 25% or more of the entity's stock or

has exercised or exercises 'preponderance' — that is, power over decisions, or power to elect the majority of the entity's executives — despite not controlling the entity.

Certain entities are not required to report information with respect to UBOs, as they are already required to file specific information due to their regulatory classification. These include:

- corporations with shares regularly traded on a public stock market
- non-profitable organizations not located in tax havens or in jurisdictions with privileged tax regimes
- multilateral entities
- central banks
- governmental bodies
- certain foreign investment and pension funds (regulated and supervised in their home country)
- investment funds regulated by the Brazilian securities exchange commission (CVM).

Further, certain foreign investors — such as commercial and investment

banks, insurance and investment companies duly regulated and supervised in their home country which do not have significant influence over a Brazilian entity are required only to disclose UBOs upon — request from the Brazilian tax authorities.

In addition, foreign entities not included in the UBO definition mentioned above — such as entities that own real estate, vehicles, vessels and aircraft and bank accounts in Brazil — are also required to disclose UBO information. The regulation's annex also provides other specific cases of foreign entities registered with the Brazilian Central Bank and the CVM, which may be required to present UBO information.

The UBO disclosure information, along with the relevant documentation (such as corporate acts, national IDs, passports, shareholders and management board) must be filed within 90 days of the registration date. An additional 90-day term may be granted in some cases, upon request. A specific UBO record must be filed in an online application named 'Coletor Nacional' (or 'national collector'), which is made available by the Brazilian government at

<http://www.redesim.gov.br/>.

Documentation also may be presented via an electronic binder to be filed within the Brazilian IRS system — 'e-CAC.'

The December 31, 2018, deadline is extended for entities that registered in the CNPJ database prior to the issuance of NI 1,863 and are required to file UBO information. They have 180 days from December 28, 2018 to file the relevant information.

Entities that fail to file UBO information within the required time frame or that do not present the documentation required by the NI will have their CNPJ registration suspended and be precluded from performing transactions with commercial banks in Brazil, including the handling of bank accounts, financial applications, and borrowing funds.

### The takeaway

Multinational enterprises currently investing in Brazil should review their existing structures to determine whether they must comply with the new regulations requiring ultimate beneficiary disclosure by June 2019.

## Let's talk

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

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