

INFORMATION EXCHANGE BETWEEN THE TAX ADMINISTRATIONS

Paulo Cirilo Santos Mendes

General Coordinator of Programming and Studies
Federal Revenue
(Brazil)

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SUMMARY

This paper shares the general guidelines of the Secretariat of Federal Revenues of Brazil's (RFB) treatment of the exchange of information with other tax administrations. The structure available at the RFB is discussed, considering the assumptions that are adopted as well as the challenges perceived, mainly following the increasing exchange anticipated after the entry into force of the Multilateral Convention (MLC). Also shown are data that prove the importance of the automatic exchange as well as the relevance of an exhaustive analysis, including the use of public data prior to sending a request for assistance to a foreign tax administration. Lastly, CIAT is recognized for promoting the exchange of experiences between the countries in relation to this issue and it is noted that Brazil is not only interested in learning the best practices, but is also willing to collaborate with its partners.

1. INTRODUCTION: ACTION AND REACTION

Cooperation between tax administrations is not a new issue, as we all know; nevertheless, the recent past has brought innovations that improve this cooperation process at levels never imagined before. The benefits shown are within everybody's reach, whether it be countries that did not have a broad network of treaties that supported those exchanges, as well as those that already had a larger network.

As it often happens, humanity extracts teachings from tragedies and seeks mechanisms to evolve. In the first year of the XXI century, the two towers of the *World Trade Center* were knocked down, an event which momentarily paralyzed our contemporary society. However, it was not only the buildings that fell, but also barriers and limitations between the countries started to fall, thus pointing out the need for greater integration, even in the sphere of tax information exchange.

This process gave way to new frameworks and more recently, of great importance is the broad multilateral cooperation agreement for speeding up collaboration between the tax administrations. The Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which shall hereinafter be referred to as Multilateral Convention (MLC), is an important framework for everyone's action. If the purpose of the exchange is the search for adequate taxation, knowing the assets of its taxpayers in other countries, especially the financial assets, allows for identifying indications of tax evasion whose resources may serve several purposes. Thus, there is the possibility of a more effective management of the tax risks. We are all aware of the effectiveness of the *follow the money* strategy.

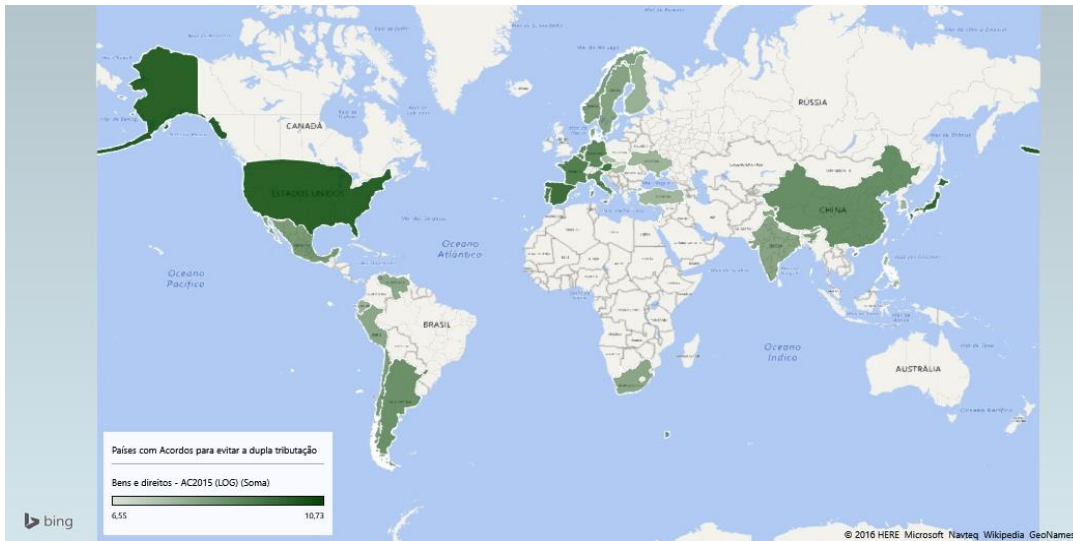
2. SECRETARIAT OF FEDERAL REVENUES OF BRAZIL (RFB) BEFORE AND AFTER THE MULTILATERAL CONVENTION (MLC)

Brazil has entered into agreements for avoiding double taxation (*Double Taxation Agreement* - DTA) with 33 countries, which list appears in the annex. In these agreements, specific provisions for the exchange of information support the exchange between Brazil and the other contracting State. In general the method used is the exchange upon request, given a specific previously identified situation. In addition to the DTAs, there is in force since 2013, an agreement for the exchange of tax information (*Tax Information Exchange Agreement* – TIEA) with the United States of America.

The 2015 data of the Brazilian tax administration (RFB) de 2015, which were compiled in August 2016, indicate that Brazilian individuals declared having assets in these 34 countries of some R\$ 136.3 billion, or approximately US\$ 34.9 billion dollars, according to the rate of exchange at the end of 2015. Graph 1 summarizes

the distribution of the net worth in those countries. A logarithmic scale was used to indicate, in the shade of the same color, the representation of each jurisdiction.

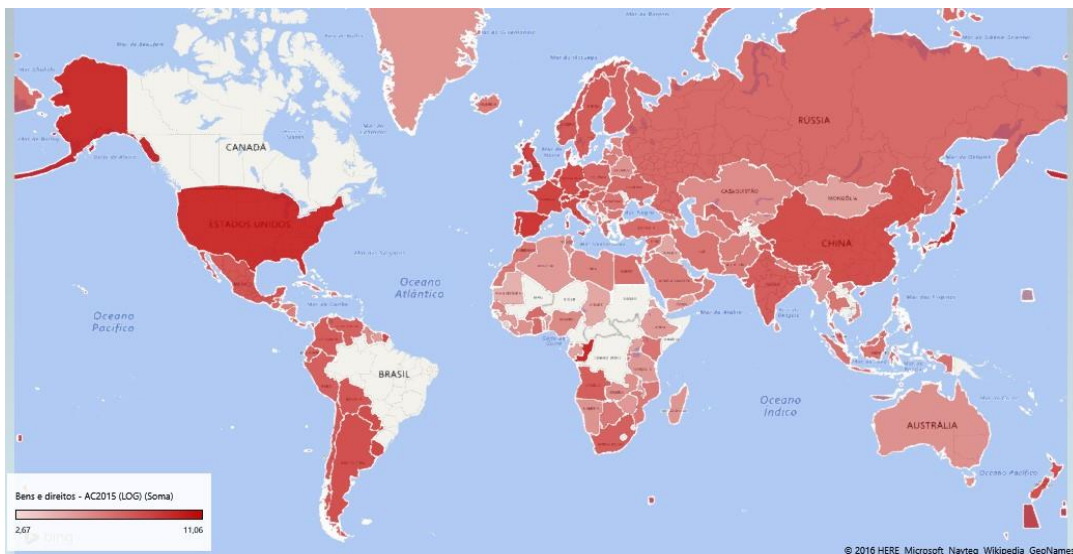
Graph 1: Net worth declared by individuals in the countries with agreement



On analyzing the total net worth abroad declared by Brazilian individuals in the same period the amount determined was R\$ 265.9 billion, or approximately US\$ 68.1 billion. Net worth was declared in 205 countries or jurisdictions and 20.1% of the total was in the United States of America. Another 35. 4% was in three places: British Virgin Islands, Bahamas and Cayman Islands.

Graph 2 shows, also in a logarithmic scale, the distribution of this net worth abroad.

Graph 2: Net worth declared by individuals abroad



As of the entry into force of the MLC, the network of countries and jurisdictions which rendered possible the exchange of information increased significantly, with the subsequent increase in the tax administration's efficiency and the greater risk for delinquent taxpayers.

3. REGULARIZATION OF ASSETS ABROAD: A PRACTICAL EFFECT

It is important to point out that the consolidated studies shown in graphs 1 and 2 did not consider the values regularized by the Brazilians based on Law N° 13.254 of January 13, 2016. The individuals and corporations with tax domicile in Brazil at 31/12/2014, based on the provision of said legal regulations, could regularize assets abroad which had not been declared before the control bodies – the tax administration and the central bank -, through the specific filing and payment of the tax and fine for a total amount of 30% of the assets which had not been declared to the authorities abroad.

The program was open until October 31, 2016 and at the end of said period, almost 25,000 individuals and some hundred corporations actually filed the respective return and paid the corresponding amounts of tax and fine, thereby complying with the requisites for adhering to the special exchange and tax regularization system, by virtue of the provision in the first paragraph of article 5 of Law 13.254 of 2016. The total amount of regularized assets exceeded R\$ 150 billion, or approximately US\$ 57 billion, taking into account the rate of exchange determined by law at 12/31/2014.

There is a new opportunity underway for regularizing assets maintained abroad, as determined by the Brazilian parliament, for which reason the updating of data filed will take place further on.

It is important to note that the Brazilian press highlighted in particular the expansion of the tax information exchange based on the MLC. The Brazilian tax administration recalled that the anticipated mechanisms under development for the automatic exchange between countries afford more information for tax management, something which undoubtedly influenced the decision of each of the taxpayers to take the legal opportunity to regularize his assets abroad.

Although it may not be possible to measure the exclusive effect of this new cooperation system in each taxpayer's final decision, undoubtedly it is possible to consider that the regularization of assets by the Brazilians, is a specific example of a benefit arising from the new established order.

4. DATA BASE OF THE BRAZILIAN TAX ADMINISTRATION

The Brazilian tax administration has been investing for a long time in the massive capture of data for adequate risk management. In 2017, it will be ten years since Brazil established the Digital Public Accounting System – (SPED) thereby migrating accounting records from paper to the digital sphere. There are several related programs, such as Accounting, Tax Accounting and Electronic Invoices. The Secretariat of Federal Revenues receives those various documents and allows the tax authority, the fiscal auditor, to work with them directly from his work station, which results in productivity benefits in various working processes, going through the strategic follow-up of large taxpayers (in Brazil approximately 10,000 corporate taxpayers represent almost 70% of spontaneous collection), the selection of taxpayers to be examined and thereafter the auditing.

The financial data are also being captured by the Secretariat of Federal Revenues directly from the financial institutions during the past two decades. The data of all the customers of a bank are periodically sent (twice a year) to the tax administration for a risk management action which is based on the total amount of debits and credits transacted monthly. To be aware of the flow of transactions is relevant and better than working solely with the balance at the end of the fiscal year.

In relation to events starting in 2016, Dimof¹, the accessory obligation until then in force was discontinued and substituted with another, e-Financiera², following the SPED pattern. The purpose of this change was to satisfy the needs of the Secretariat of Federal Revenues, as well as the search for simplification sought by the tax administration, since the new obligation must in the future be focused on capturing the greater part of the data provided by the financial institutions.

In addition to the financial and accounting data, many others are systematically provided by the Secretariat of Federal Revenues, which allows the Brazilian tax administration to have a wider view of the economic and fiscal situation of the Brazilian taxpayers.

5. AUTOMATIC EXCHANGE OF FINANCIAL AND OTHER TYPES OF INFORMATION: BRAZILIAN RULES

The evolution of the obligation in force also allowed for adjusting the capture of data by the Secretariat of Federal Revenues with a view to the automatic

¹ Dimof: Information Return on Financial Transactions, established through Normative Instruction RFB Nº 811, of January 28, 2008.

² E-Financiera: Accessory obligation established through Normative Instruction Nº 1.571, of July 2, 2015, to provide information on financial transactions of interest to the Secretariat of Federal Revenues of Brazil (RFB)

exchange of financial accounts based on the agreement between Brazil and the United States of America, under FATCA, as well as to allow Brazil to capture the necessary data for complying with the commitment assumed with other countries, through the *Common Reporting Standard - CRS*.

The MLC, regulatory support of the CRS, entered into force in Brazil on 01/10/2016, and became effective in 2017. In order to comply with the automatic exchange of banking information based on the CRS, the Secretariat of Federal Revenues amended the regulatory standard³, basically with the guidelines so that the filing institutions could adequately provide the information of the e-Financiera obligation.

It is important to be aware of the Brazilian reality, which differs from other countries due to specific reasons. In 1996, the Brazilian legislator introduced a tax on the movement or transmission of values and credits and rights of a financial nature (CPMF)⁴, which led the tax administration to establish an accessory obligation to capture data from all the customers of the financial entities. This tax ceased to be collected in 2008. In any case, risk management based on the financial flow of resources managed by the banks had already been consolidated and the regulation supporting the data capture continues in force.

Following the establishment of commitments for the automatic exchange under the FATCA and CRS rules, the Secretariat of Federal Revenues only adjusted its capture, while maintaining the equal treatment provided in the Brazilian Federal Constitution, since the obligation to provide the data cover all the users of its services.

This system used by Brazil allows for prompt attention to foreign demands, with the data already available in the internal systems of the Secretariat of Federal Revenues. It is not necessary to request detailed banking data to the financial institutions. Generally, it is enough to confirm that a taxpayer of interest to the foreign State operates in the institution and it is now possible to report on the financial flow, by bank, in a quick internal consultation. This is exactly the management process applied to all individuals and corporations that move resources in Brazilian banks.

The Brazilian system of periodic financial data capture affords another advantage of interest to the Secretariat of Federal Revenues and also to the foreign administrations. If a taxpayer moves his tax domicile abroad without giving immediate notice to the filing financial institution, the latter simply does not identify its customer's data as reportable in the automatic exchange process, but rather the tax administration will normally receive these data. Thus, when the relationship abroad is subsequently identified, the respective financial movement will have

³ Normative Instruction RFB N° 1.680, of December 28, 2016.

⁴ CPMF, provided by Law N° 9.311, of October 24, 1996.

been already reported to the Secretariat of Federal Revenues, which may quickly share this information, without the need to notify the bank.

In all cases, risk management based on financial flow data appears to be insufficient for auditing purposes, either in Brazil or abroad. Then there are normative provisions for requesting detailed returns.

Specifically, to respond to requests based on international cooperation agreements, Brazil adjusted its internal regulation in 2014, expressly anticipating that the foreign need is a motivation for the Secretariat of Federal Revenues to make administrative requests to financial institutions according to paragraph XII of article 3 of Decree N° 3724, of January 10, 2001⁵.

The automatic exchange with the support of the MLC, as it is known, is not limited to financial data. Other rules are established in the general sphere, as is the case of the country-by-country report (CbC). Bearing in mind the commitment acquired by several States, Brazil has already issued regulations for carrying out this automatic exchange⁶, thereby establishing the obligation for the Brazilian taxpayers.

6. BRAZILIAN STRUCTURE FOR THE EXCHANGE OF INFORMATION

The Secretariat of Federal Revenues of Brazil deals with internal taxes as well as with the customs area, for which reason the General Coordination of International Relations (Corin) acts in response to the demands of these two areas. However, in this paper, the processes of the internal tax area will be specifically discussed.

Corin manages the Exchange of information, the intermediation of requests received from abroad and those made by Brazil to its partners. The General Coordination evaluates the regulatory aspects that govern the agreements and guides the technical areas in the treatment of specific cases.

The Secretariat of Federal Revenues is organized according to centralized structures, responsible for the guidelines in each area, and in decentralized structures that have their operational directions. Corin is part of the centralized structure of the Secretariat of Federal Revenues.

6.1. Evolution in the assistance process

The assistance process by Brazil, of the requests from the foreign tax administrations, has evolved in recent years. Given the large internal data base

⁵ Amended through Decree N° 8303 of September 4, 2014.

⁶ Normative Instruction RFB N° 1681, of December 28, 2016.

available for prompt Access by the fiscal auditor, with a view to a faster analysis and bearing in mind the specialization of a team, the pertinent requests began to be addressed to an area of the central unit linked to examination of the Secretariat of Federal Revenues, that is, the General Coordination of Programming and Studies (Copes).

For a significant part of the items included in a specific request, the experience showed that it was possible for the Copes fiscal auditor to undertake a technical analysis and with it, simplify the assistance to be provided to the petitioner. Copes does not carry out external auditing procedures. In any case, the tax authority may have internal access even to the taxpayer's fiscal accounting, which allows for producing responses with useful elements for the case being examined.

It is known that a response exclusively based on internal data may not be sufficient to respond to all the elements of a given external request. Therefore, the process cannot be conclusive in this central unit linked to examination, and thus, it is necessary to send the case for complementary evidence to the operational team of the Secretariat of Federal Revenues.

In any case, whenever it may be considered useful, Corin will provide the petitioner partial evidence, since the information may support the actions of the foreign tax authorities by directing their efforts.

6.2. Partial results

This new system has resulted in considerable benefits in the response time of the foreign requests. The Corin studies indicate that the average time went down from 204 days in 2014, to 49 days in 2016.

In addition, the Brazilian Secretariat of Federal Revenues has received information from other countries regarding the usefulness of the information provided through this new system.

In fact, the specialization of a team tends to provide quality gains. The quick approach with fiscal data extracted from the systems, especially in the case of Brazil, which has a considerable base, ends up allowing an effective action by the foreign country, with benefits for all.

7. AUTOMATIC EXCHANGE: AN OPPORTUNITY

Even though the automatic Exchange of tax information was already a practical reality among some states, Brazil was not using this form of cooperation. With the new method agreed at the world level, this modality is incorporated in the risk management routine, thereby providing significant benefits.

A specific example is derived from the automatic exchange with the U.S., under FATCA, already in force since September 2015. The data received allow for identifying specific situations of omission of assets abroad, and the ax procedures are underway in order to confirm the tax irregularities. Most certainly the same information will be obtained from other countries, on the basis of the CRS.

In addition to the automatic exchange of financial data and of the also already mentioned exchange base don the CbC, other automatic rules based on the MLC may be established, either at the multilateral or even bilateral level. The bases for a greater integration among the tax administrations have been defined.

It is worth recalling that the MLC is not limited to support the automatic exchange, but rather allows, if agreed between two States and there is no regulatory obstacle in the respective internal legislations, for establishing mutual assistance to obtain data prior to the entry into force of the MLC for the contracting States.

Brazil has expressed its interest in extending this mutual assistance to prior events, and is prepared to sign the corresponding memorandums of understanding with the interested States.

8. TIN: KEY ELEMENT FOR GREATER EFFECTIVENESS OF THE EXCHANGE

Said opportunity for expanding risk management explains why it is important that the data be correctly associated with the tax identificación number (TIN) of the individual or corporation whose information is being provided. Since the TIN was not necessary in the first exchanges within the framework of the FATCA, the Brazilian tax administration required additional efforts for correctly identifying the taxpayers of interest. In any case, this data becomes obligatory in the future, thereby allowing faster action by each tax administration.

The TIN is obligatory in Brazil for practically all tax purposes. This number is still widely used in daily life and beyond the limits of the specific tax interest, thus becoming an element defined by economic agents as data requested in the great majority of private registries. In contributing to its widespread use, the Brazilian tax administration has signed agreements with various public agents, thereby allowing for real time consultation of its registry base for specific purposes.

As a result of these associations, agreements with the civil registry offices already allow that a TIN be assigned to a newborn when issuing the birth certificate and that number will accompany him throughout his life, since a single TIN number is allowed for a person in Brazil. Although it is not obligatory to register the TIN at birth time, this system, which was voluntarily established since December 1, 2015, has reached in 2016, over a million certificates issued with TIN. By February 28, 2017 there were 1,496,302 certificates issued with the participation of 51% of the

registry offices throughout the country. Rio de Janeiro was the first State of the Federation which had all of the registry offices participating in this process.

As another specific example of its use for tax deduction purposes in the pension plans of a dependent, the individual income tax required the TIN of said dependent if the latter was at least 12 years old. Previously, the obligatory minimum age was 14 years.

Undoubtedly, the massive use of the TIN is of interest to every tax administration and an essential element for greater effectiveness in the exchange of tax information between countries, thus requiring that attention be paid to the regulations for determining the obligatoriness of capturing said data; not only the TIN of a resident in a specific country, but also the TIN of a foreigner.

In Brazil, some obligations already require that filers capture the TIN data of foreigners carrying out specific transactions with Brazilian counterparts. As example, there is the obligation of identifying the foreign counterpart involved in service or intangible transactions, as provided in Siscoserv⁷.

Attention should be given to initiatives for tending toward the establishment of a TIN regional, or even world pattern. Within the financial sector, the LEI (*Legal Entity Identifier*), is known by all.

These initiatives will imply adjustments in the systems with a greater or lesser costo to all those involved, which suggests significant difficulties of a practical nature. They are valid initiatives, although their massive adoption within short ter is not anticipated.

Thus, the internal definition in every State, becomes ever more important in order that the TIN of foreigners be duly reported in the transactions they carry out and subsequently sent to the respective tax administrations.

9. CASES TO BE CONSIDERED IN GREATER DEPTH: A NEW (OLD) CHALLENGE

The automatic exchange is established as a first (and for many, new) source of data. Each tax administration now has an indicator, currently massive, which will allow a better selection of taxpayers. The data must be analyzed from the perspective of indicating a reasonable interest, to then, if appropriate, seek the assistance of another tax administration in the additional investigation.

⁷ Siscoserv: Integrated Service of Foreign Trade of Services, Intangibles and Other Transactions that may bring about Changes in the Net Worth.

It is essential to act with good judgment in this request for assistance. Since each tax administration will have a larger amount of data, the principles and rules that govern the exchange of information should be observed with the usual rigour, to thus identify the cases of real interest, with unquestionable fiscal relevance.

The Brazilian tax administration is aware of the need to observe these parameters, since it deems it disproportionate to request the support of its partners abroad to consider cases of little interest from the fiscal standpoint. The incorporation of a foreign administration calls for exhausting the possible verifications in the requesting country and likewise that the events investigated may be of significant tax relevance.

10. USE OF PUBLIC DATA: CIAT'S DIP SYSTEM

A very useful analysis in the process of selecting cases to be investigated consists of the verification of the public information that is available, either in the bases of the public or private entities, or even in news that may be recovered in Internet.

In this sense, in collaboration with CIAT, Brazil developed the platform for facilitating access to public data in a specific country, which may probably be of interest to its partners. It is known as the DIP Project, whose technology was shared with CIAT experts in 2016. A network of facilitators is being developed and once the transfer is formalized, the platform will allow for making inquiries from the interested party's work station.

Such inquiries, undoubtedly, will assess the selection process and may optimize the internal work, in addition to avoid unnecessary requests to other countries. For example, it will be possible to determine whether there are real estate registries of an individual in Brazil, or consult the list of debtors of the National Treasury, including the amount of the debt.

At times, a search through Internet will suffice to verify, for example, that an individual has passed away and the tax interest ceases to exist, depending on each country's internal legislation and the event being investigated.

11. AUTOMATIC EXCHANGE: RESULTING RISKS

If the automatic exchange, as already mentioned, affords an opportunity, it may also represent a risk for the tax administrations involved, if additional requests go beyond the current working capacity.

Brazil, on becoming aware of the possible increase of requests received, has tried to structure itself to successfully respond to the foreign requests.

Copes, as examination area in the central unit responsible for the initial evaluation of the requests received at Corin, specialized itself in the search for data in its own internal systems and seeks to provide fiscal information of interest.

In addition, the teams of the decentralized units are being oriented to give priority to the requests they may receive.

It is deemed timely to consider the need that each tax administration undertake a reevaluation of its structure, since the trend is that there will be an increase in the requests they will be receiving.

In any case, it is evident that each tax administration has limits in its capacity for providing assistance and, therefore, if there is a significant increase in the number of requests, there is the risk that the average response time may increase significantly, thereby affecting the action of the petitioner.

These perspectives simply reinforce the attention which each competent authority should give to the analysis of cases for which it requests external cooperation. It is thus ratified that it is ever more essential for the petitioner to evaluate the tax relevance of each request in order to avoid requests that may involve cases of less interest which may affect the appropriate management of requests related to cases of greater tax potential.

Even in this process of cooperation between tax administrations Brazil has been careful in focusing its requests on data for auditing by the Brazilian authority, and not in requests that could demand auditing by the foreign partner whose cooperation is requested. This is another important aspect to be taken into account to avoid transferring to the foreign administration a significant part of the audit that corresponds to the petitioner. The principle of cooperation is the exchange of data, with possible technical demonstration of aspects of the regulation of the country where the transaction under analysis takes place, but it should not represent a heavy burden for the partner administration.

12. CONCLUSION

The new world order, with the significant expansion of the exchange between tax administrations, should be constantly discussed, since it offers opportunities and challenges to each participating State. The convergence toward the rational and balanced use of these international agreements will allow significant advances in each country's risk management, with greater quality, as a result of the international assistance.

CIAT, on allowing these discussions, plays an important role in the collective development of this new order, which will not only be based on the written rules, but will also be promoted by the best practices developed, with each tax

administration endeavoring to respond to the requests from their partners and at the same time, understanding the evidence received to assist them in the audit work carried out internally.

Brazil is willing to continue contributing to this debate in multilateral forums and bilateral associations, by sharing its experiences, its reality and the challenges that must yet be overcome, since there is a constant evolution. The Secretariat of Federal Revenues of Brazil seeks to know the reality of its partners and expects to constantly learn with them. The future is built in the present and the partnership is the key to success.