

April 12, 2019

EY TAX Flash

MTR Rule 2.8.5.7. "Option of not filing the annex of the tax audit report on their financial statements or the section of the information on their tax situation corresponding to transactions with related parties"

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April 10, 2019, the Tenth Resolution of Amendments to the Miscellaneous Tax Resolutions for 2018 was published in the Official Gazette. Rule 2.8.5.7 of this Resolution grants taxpayers the option of not filing the annex of the tax audit report on their financial statements or the section of the information on their tax situation (ISSIF) corresponding to transactions with related parties.

This publication is translated below for reference:

"For purposes of articles 32-A and 32-H of the Federal Tax Code, taxpayers who have carried out transactions with related parties may elect to not file the annex of the tax audit report on their financial statements or the section of the information on their tax situation for such transactions provided they file Annex 9 to the Multiple Information Return (DIM) with information on their transactions with Mexican and foreign related parties. With respect to transactions with foreign related parties, the following shall be considered:

I. References to "ADDRESS OF THE FOREIGN RESIDENT" in the aforementioned Annex 9 shall be understood to refer to the tax address of the Mexican-resident taxpayer with which the transaction in question was carried out.

II. Similarly, references to "TAX ID NUMBER" shall be understood to refer to the taxpayer registration number (RFC) of the Mexican-resident taxpayer with which the transaction in question was carried out."

The option of not filing annex 16 of the tax audit report or section 15 of the ISSIF shall apply solely to companies that provide information on their transactions with related parties resident abroad and in Mexico through annex 9 to the Multiple Information Return (DIM).

Please note that the information requested in Annex 9 of the DIM includes the information requested in annex 16 of Tax Audit Report or section 15 of ISSIF, as well as the following additional information:

- ▶ Type of related party
- ▶ Entity subject to analysis
- ▶ Whether comparable information was used for the entity subject to analysis
- ▶ Percentage obtained on the transaction. Gain / Loss
- ▶ Agreed rate or percentage
- ▶ Amount considered taxable / deductible for the transaction
- ▶ Transaction amounts accrued, due, paid and exempt
- ▶ Whether a tax rate or exemption set forth in any treaty to avoid double taxation entered into by Mexico was applied
- ▶ Withholding rate
- ▶ Income tax paid through withholding
- ▶ If the CP, TNMM, RPM, PS or RPS method was used, state:
 - o Net income or sales
 - o Cost of sales
 - o Gross Income / Loss
 - o Operating expenses
 - o Operating Profit / Loss
 - o Average of assets
- ▶ The range type
- ▶ Lower limit / Median / Upper limit
- ▶ Number of items in the sample
- ▶ SIC codes for items in the sample
- ▶ Whether any adjustment was made in order for the transaction to be considered to be at arm's length
- ▶ The amount of the increase or decrease to the transaction
- ▶ Type of profit or loss margin obtained
- ▶ Description of the taxpayer's activity in accordance with the code in Annex 6 to the Miscellaneous Tax Resolutions
- ▶ Whether the taxpayer has a transfer pricing study for its transactions

It is important to evaluate with your Transfer Pricing advisors to take this option, since currently in the case of operations with Mexican related parties it has only been necessary to mention in the annexes of the ISSIF and Tax Audit Report the type of transaction: legal name of the related party, tax identification number, country of residence, transaction amount, transfer pricing method applied, mention if the operation is agreed at market value and the amount of the tax adjustment of the taxpayer so that the transaction consider as if it had been agreed with independent parties in comparable transactions.

For further information about this bulletin, please contact any of the following professionals:

Enrique González
enrique.cruz@ey.com

Alma Gutiérrez
alma.gutierrez@mx.ey.com

Alberto Peña
alberto.penacostales@ey.com

Andrés Olvera
andres.olvera@mx.ey.com

Gabriel Lambarri
gabriel.lambarri@mx.ey.com

Marco Molina
marco.molina@mx.ey.com

Mauricio Fuentes
mauricio.fuentes@mx.ey.com

Mónica Cerda
monica.cerda@mx.ey.com

Olga Ponomareva
Olga.S.Ponomareva@mx.ey.com

Ricardo Barbieri
ricardo.barbieri@mx.ey.com

Ricardo Cruz
ricardo-manuel.cruz@mx.ey.com

Ricardo González
ricardo.gonzalezmtz@mx.ey.com

Violeta Valerio
violeta.valerio@mx.ey.com

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