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EY TAX Flash

New Transfer Pricing Informative Returns: applicable sanctions in case of non-compliance (partial or total)



As part of the 2016 Tax Reform, Mexico incorporated in article 76-A of the Mexican Income Tax Law (hereinafter "MITL") the obligation for certain Mexican taxpayers to submit three new annual Transfer Pricing Informative Returns before December 31st of the subsequent year. These new transfer pricing informative returns are the: i) Master File, ii) Local File, and iii) Country by Country (CbC) Report.

On October 17th, 2016, as an effort of transparency and institutional collaboration, the Mexican Tax Ombudsman (hereinafter "PRODECON") released a project including administrative rules prepared by the Mexican Tax Authority (hereinafter "SAT") (acronym in Spanish for "Servicio de Administracion Tributaria"), which purpose was to set the basis for the submission of the annual Informative Returns, whose were in turn subject to public consultation, analyzed and discussed jointly with the SAT and any taxpayer interested in the subject.

As a result, on April 3rd, 2017, the PRODECON released the final draft of the transfer pricing regulations related to the filing of the Master File, Local File and CbC report. Subsequently, on May 15th 2017, the SAT published into the Mexican Official Gazette of the Federation (hereinafter "DOF") the guidelines of the new Transfer Pricing regulations, which establish the information requirements that Mexican taxpayers must consider in order to comply with the provisions set forth in article 76-A of the MITL. It is worth mentioning that at that time, the SAT had not published the technological platform, nor issued the formats, ways and means, for filling the informative returns of related parties.

On October 31st, 2017, the SAT announced that as of November 1, 2017, taxpayers required to submit the new informative returns may access the new technological platform, as well as the digital formats for filling such informative returns, which as of that date are available on the SAT website for consultation and filling.

The main changes published by the SAT in the formats for the filing of the Local File and Master File, compared to the drafts published by PRODECON in September 2017, lie within the size (up to 30 MB per file) and format (PDF and/or excel) of the electronic files that will be attached at the time of submitting such informative returns.

It is important to mention that although the minimum requirements established by law for the filing of the Local File and Master File informative returns in Mexico exceed the minimum requirements established in Action Plan 13 published by the Organization for Economic Co-operation and Development (hereinafter "OECD") against Base Erosion and Profit Shifting (hereinafter "BEPS"), its compliance is of utmost importance for the subject taxpayers, as in case of total or partial non-compliance, the SAT has set the following penalties:

- a) Economic sanctions ranging from \$140,540 to \$200,900 Mexican pesos,
- b) Limit the taxpayer to enter into contracts with the government,
- c) Cancellation of import and export registration.

Taxpayers required to file the Master and Local informative returns are all those who have taxable income equal to or greater than \$686,252,580¹ Mexican pesos, those who at the end of the immediately preceding fiscal year, have shares placed amongst the large investing public in the stock exchange, commercial companies that belong to the optional tax regime for groups of companies under the terms of Chapter VI, Title II of the MITL, state-owned entities of the federal public administration and legal entities resident abroad that have a permanent establishment

in the country, solely for the activities that they develop in said establishments, in terms of article 32-H of the Mexican Federal Fiscal Code.

In this regard, in case of being a taxpayer required to submit these informative returns for the fiscal year 2016, the deadline to comply is December 31st, 2017.

In practice, taxpayers obliged to submit such informative returns must keep track of the information they are able to gather and deliver immediately to the SAT, and for those requirements that are difficult to disclose, they should evaluate the existing legal alternatives given the aforementioned penalties for non-compliance.

Finally, it is worth mentioning that the rest of the tax obligations related to Transfer Pricing in Mexico remain unchanged, such as: the preparation of the Transfer Pricing report (not necessarily with the elements required in the Local File at the time the annual declaration is filed), filing of the Transfer Pricing Information Return of related parties, the obligation to demonstrate that both domestic and foreign transactions with related parties are at arm's length, among others.

¹ Amount updated as of January 2016, according to Article 6 of the second Tax Miscellaneous

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.pena@mx.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

Ricardo Barbieri
ricardo.barbieri@mx.ey.com

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

Ricardo González
ricardo.gonzalezmtz@mx.ey.com

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