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EY TAX Flash

Mexico's initial reporting due date for MDR obligations is fast approaching

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Taxpayers will have to disclose reportable transactions under the mandatory disclosure regime (MDR) enacted as part of the Mexican tax reform on 9 December 2019, in early 2021. The MDR went into effect on 1 January 2020.

Scope

Although the Organisation for Economic Co-operation and Development's Base Erosion and Profit Shifting (BEPS) Actions are focused on international transactions, each country may incorporate internal mechanisms under which MDR reporting also covers domestic arrangements. A reportable transaction is a transaction in which a Mexican tax benefit is provided, and 1 of 14 stated hallmarks in the Mexican Federal Fiscal Code (MFFC) is met.

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Unlike MDRs in other countries, Mexico does not limit "tax benefits" to income tax, but rather subjects any type of Mexican tax benefit to the MDR rules. Mexico's MDR rules also require tax advisors to issue a reportable transaction certificate to taxpayers for advice on a transaction that provides a tax benefit in Mexico but does not meet any of the 14 hallmarks, and as such is not reportable. Tax advisors must deliver the certificate within five business days of the date on which the transaction plan is available for the taxpayer to implement or the first legal act of the transaction plan is performed, whichever occurs first.

Routine transactions

Even though the main objective of the regime is to prevent aggressive tax planning, the reality is that the reporting obligation may apply to routine and common transactions for most businesses. For example, one of the 14 hallmarks of a reportable transaction relates to applying a tax treaty when the nonresident is not subject to tax on the item of income or subject to tax at a rate lower than the general rate, as provided in section V of Article 199 of the MFFC. Another hallmark in section XIV of Article 199 of the MFFC relates to transactions with more than a 20% difference between the book and tax treatment, which may capture various common transactions performed by taxpayers.

Who has to report?

Although the primary obligation to report falls on the tax advisors for transaction plans made available/entered from 1 January 2020, the burden to ensure proper reporting and, in some cases, to actually report lies with the taxpayers. Based on certain rules, taxpayers must report in certain cases, including: (1) by mutual agreement with the tax advisor for transaction plans made available/entered into after 1 January 2020; (2) for transactions performed before 2020 but with Mexican tax benefits available in 2020 and onwards; or (3) due to the tax advisor's failure to report.

Period subject to review

Unlike other tax reforms in Mexico that usually apply from the publication date, the MDR requires taxpayers to analyze the transactions performed in the past (before 2020), to the extent that a transaction still generates a tax effect in Mexico in 2020 or thereafter. In those cases, the taxpayer must report the transactions, regardless of whether a tax advisor participated in the transaction.

When?

Transaction plans must be disclosed no later than 30 business days after they have been made available to the taxpayers or when the first step or legal act of the transaction plan is performed, whichever comes first.

Transition period

The tax reform included a transition period under which reportable transactions performed before 2020 and during 2020 must be reported within 30 business days of 1 January 2021, which means taxpayers and tax advisors must report those transactions on or before 15 February 2021.

What?

Taxpayers and tax advisors must report the following information for reportable transactions under the MDR rules:

- Complete legal name of the person reporting and its Tax ID number
- Complete name of the legal representative of the tax advisor and the taxpayer
- Description of the reportable transaction and tax benefit obtained or expected
- Tax year in which the reportable transaction was implemented

Taxpayers and tax advisors may be required to report additional information about the reportable transactions.

Considerations

Because the first reporting due date is quickly approaching, taxpayers should consider actively assessing transactions performed in the past that may affect the 2020 tax position and determining whether a reporting obligation exists.

Similar determinations should be considered for transactions that are expected to be performed by year end. Proper evaluation of whether a transaction or advice gives rise to a reportable transaction in Mexico will be key to adequately complying with this new reporting obligation. Not complying with the reporting obligation could be costly; failing to report or incorrectly reporting may lead to: (1) the loss of the tax benefits; and (2) economic penalties for taxpayers ranging from 50% to 75% of the tax benefit. Tax advisors may be subject to a penalty of MXN$20 million (approx. US$1 million) per reportable transaction not disclosed to the Mexican tax authorities. Additionally, in accordance with the tax provisions, the Mexican tax authorities have to draft additional rules to clarify the scope of the MDR and certain provisions for applying the regime, including general rules on the format and guidelines for reporting those transactions. As of the date of this Tax Alert, the issuance of those rules is pending.

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