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EY TAX Flash

Mexico Mandatory Disclosure Rules (MDR) - Issuance of general tax rules

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The Mexican tax administration publishes regulations related to the information and reporting instructions to be followed under the new mandatory reporting requirements

On November 18, 2020 amendments to the Mexican general tax rules ("GTR") for 2020 were published in the Mexican Official Gazette which included, among others, a new Chapter 2.22 related to the mandatory reporting requirements ("MDR") for certain transactions as established in the Mexican Federal Tax Code as part of the 2020 tax reform. In addition, the electronic formats to be used for the reporting were published as annexes to the GTR in a publication issued on November 23, 2020.

As reported in prior alerts, Mexico established its MDR rules effective January 1, 2020. Tax advisors and, in some instances, taxpayers are required under these rules to report certain transactions that provide a tax benefit in Mexico and meet one of fourteen hallmarks as listed in the law. The initial reporting is due in 2021 for transactions that occurred in 2020, as defined, as well as for transactions that may have occurred prior to 2020 that have a tax effect in 2020 and subsequent years. This latter obligation is solely the responsibility of the taxpayer.

The GTR rules issued so far are related to the actual reporting to be made and the detail of information that each reportable transaction must include when the filing is performed. Absent from the GTR is a de *minimis* amount for transactions that would not have to be reported as well as any guidance in interpreting the hallmarks.

The GTR is structured by (i) providing guidance on general reporting requirements such as rules for transactions which involve more than one advisor, information to be provided to taxpayers by advisors to support the reported transaction as well as the information to be provided to support that advice is not reportable. The main focus of the GTR in this case, however, is (ii) the information to be provided when reporting the transaction and a separate rule listing the required information is provided for each of the hallmarks (as well as for a transaction that is reportable because it avoids reporting under Mexico's MDR rules).

The general MDR rules classify reportable transactions as generic or personalized to take into consideration transactions that are designed for general marketing (generic) versus those designed for a specific taxpayer (personalized). The MDR addresses this by segregating each list of information into two parts, the first applicable to all reporting under the relevant hallmark and the second part only applicable to generic transactions.

Key highlights for Reporting Reportable Transactions

The GTR provides that for each reportable transaction, an electronic filing is required. Attached to the official tax form that is filed, a PDF document must be attached which includes specific information for the particular transaction being reported. Each of the hallmarks has a list of required information. Certain of this information is common to all hallmarks and some is unique.

Some of the more significant information generally being requested is as follows:

Information in general common to all of the hallmarks:

- ▶ Detailed description of the reportable transaction;
- ▶ Diagram of the steps (legal acts) that are part of the reportable transaction, identifying the jurisdictions of the parties involved in the transaction and the applicable legislation under which the operations are being performed;
- ▶ Background and conclusions as well as the assumptions, legal arguments and interpretations that are made in the context of the reportable transaction;
- ▶ Sequence of the legal acts that comprise the reportable transaction;
- ▶ Information about the specific hallmark and the steps taken to meet that hallmark, such as how losses were transferred or how the transaction led to the depreciation of assets by another party.

The GTR establish that in the case of customized reportable transactions, in addition to the information described above, the following information should be disclosed:

- ▶ The exact date or estimated date in which the operations comprising the reportable transaction were performed or will be performed;
- ▶ In certain cases, the value or price of the arrangement has to be disclosed;
- ▶ Indicate if related parties participate or will participate in the transaction;
- ▶ Mention the business reasons for performing the transaction that results in a tax benefit in Mexico;

As mentioned above and depending on each particular hallmark that has been triggered, more information and documentation must be disclosed. For example for the hallmark related to the transfer of net operating losses ("NOLs") is met, an explanation on how the NOLs triggered were transferred by each person, include data of the NOL such as in which tax year and how it was generated, if the transfer occurs through a merger or spin-off, and in such case, provide the notarial number of the deed that supports such transaction and even provide the financial statements that were used by the shareholders for executing the step. This hallmark requires disclosure of the taxpayer that generated and received the NOL, including legal names, Tax IDs, country of incorporation and tax residency, core business and domicile.

As it can be seen, the information to be included as part of the reportable filing can be very detailed and extensive depending each reportable transaction resulting in additional compliance and resources either for tax advisors or taxpayers, as the case may be, and involving foreign legislation applicable in the jurisdictions involved in the reportable transaction.

If all of the required information is not available, the tax advisors and taxpayers must sign under oath the reasons on why they do not have available all the corresponding information requested.

The abovementioned GTR reinforce the importance for taxpayers performing a proper assessment of their transactions and collecting the relevant information needed for reporting purposes. It is key that there be coordination between taxpayers and tax advisors for ensuring that the MDR reporting is consistent and complete based on the requested information that needs to be included in the filing. This, also taking into account the significant penalties that may arise in the case of non-compliance, reporting with missing information or reporting with mistakes.

Other Reporting

The rules primarily focus on the information that needs to be disclosed for reportable transactions but also includes additional rules such as the certificate that shall be provided in case there is more than one tax advisor involved in the transaction.

In addition, Mexico also requires that taxpayers receive a certificate from their advisor to the extent advice is provided which results in a tax benefit and the advice does not meet the criteria for reporting under the MDR rules. The GTR provides the format required to meet this requirement which would be an electronic filing.

Additional formats are established for making changes to the information reporting and other specific circumstances.

As can be observed from the above, significant and detailed information must be disclosed to the Mexican tax authorities compared the information to be filed as required in other jurisdictions such as Europe under DAC6. Unfortunately, the rules do not provide guidance as to the substantive rules of the MDR obligations, such as the description of certain of the hallmarks (most of which are quite broad) as well as definitions of key concepts such as “arrangements”, “tax benefit”, “tax adviser” and “tax payer”.

Taxpayers and tax advisors are obliged to report certain transactions by no later than February 15, 2020, based on the transitory rules included in the Mexican MDR regime. As such, taxpayers should be reviewing transactions to identify reporting requirements and should be reviewing to ensure all information is available to meet the obligation.

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