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## EY TAX Flash

# Resolutions for companies that provide *maquila* services – Microsite

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On March 1, 2021, the Tax Administration Service portal launched a microsite called "Resolutions for Companies that Provide *Maquila* Services".

This microsite contains, among other information, a section referring to the *Qualified Maquiladora Approach* (QMA) agreement, which culminated from lengthy collaborations between the Mexican and U.S. governments. According to the microsite, the QMA allows U.S. taxpayers to avoid double taxation on *maquila* operations in Mexico and *maquiladoras* in Mexico to ensure correct tax compliance by entering into a unilateral advance pricing agreement (APA) with the Large Taxpayer Division of the Tax Administration Service (SAT) under terms negotiated in advance between the competent authorities.

The microsite also clarifies that in 2020, the Tax Administration Service, through its Large Taxpayer Division, and the U.S. Internal Revenue Service (IRS) renewed the QMA, which maintains the core elements of the 2016 QMA's transfer pricing framework, which the competent authorities have agreed continues to produce arm's length results.

As established in the microsite, the renewal agreement includes a mechanism for addressing situations in which the *maquiladora* has an outstanding accounts receivable balance that the competent authorities agree is inconsistent with the transfer pricing profile of the Mexican entity.

Through the microsite, *maquiladoras* can download an Excel file for fiscal years 2016-2019, which maintains the QMA's Fast Track methodology negotiated in 2016 and used to resolve APA applications by *maquiladoras* since 2014. However, this update to the QMA is considered a mechanism for adjusting the revenue of *maquiladoras* with a turnover of accounts receivable of more than 60 days.

It is important to note that in the *Update to the Qualified Maquiladora Approach* section of the microsite, it is specified that the Tax Administration Service will directly notify qualifying Mexican taxpayers and notifications will include details on the steps a taxpayer must take with their pending unilateral APA requests.

The microsite also confirms the statement included in the bulletin issued by SAT on November 16, 2020 regarding the agreement reached between the Mexican tax authority and the IRS to issue APAs for *maquiladoras*, which would remain in force through 2019. The agreement also commits the competent authorities to commence work on another renewal of the QMA to cover fiscal year 2020 and beyond and to take into account in those discussions the impacts of current economic, commercial, and public health conditions affecting taxpayers and workstreams within OECD's Working Party 6 and FTA MAP Forum regarding the same.

With respect to the resolutions for fiscal year 2020 and beyond, the microsite explains that the competent authorities in Mexico and the U.S. have agreed that the following factors will be essential in determining the reasonableness of *maquiladoras'* results for fiscal year 2020:

- ▶ An amount that is inconsistent with the taxable profit that would be reported if the *maquiladora* had applied the renewed QMA in 2020

- ▶ The information supporting the taxpayer's tax position for 2020 under the principles of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (2017) and any supplementary guidelines issued by the OECD regarding the economic conditions caused by the COVID-19 pandemic
- ▶ The information and documentation supporting the taxpayer's tax position for 2020, including the thorough identification of each extraordinary financial and accounting condition resulting from the COVID-19 pandemic and the accounting recognition thereof

Considering that the QMA only covers up to fiscal year 2019, the microsite clarifies that it is not necessary for *maquiladoras* to provide detailed information related to their tax position for 2020, and that, in the following months, the competent Mexican and U.S. authorities will announce the mechanisms that will be implemented to obtain such information, for purposes of conducting the analyses related to the negotiation of the renewal of the QMA applicable for fiscal year 2020 and beyond.

Finally, it is important to mention that the aforementioned microsite also includes two subsections containing an exhaustive definition of the terms *maquila* operation and merchandise transformation in accordance with article 181 of the Mexican Income Tax Law.

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