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EY TAX Flash

New Regulations Applicable to Digital Tax Receipts as of January 1, 2022

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On November 12, 2021, the decree that modifies, adds and amends various provisions of the Mexican Income Tax Law, Value Added Tax Law, Special Tax on Production and Services Law, Federal Law for the Tax on New Automobiles and Federal Tax Code was published in the Official Gazette.

The changes resulting from the reform include amendments to articles 29 and 29-A of the Federal Tax Code in relation to the management of digital tax receipts ("CFDIs"). Among others, the decree establishes new guidelines for: (i) cancelling income CFDIs and (ii) issuing expense CFDIs for rebates, discounts and returns.

With regard to **income CFDIs**, the term for cancelling any income CFDI will now be limited to the period in which they are issued. Meaning that, if for any reason, the taxpayer does not cancel an income CFDI prior to December 31, the taxpayer would be obligated to recognize the respective amount as taxable income, regardless of whether such income was actually earned. What is more, the scope of the new provision could be extended to cover periods prior to the effective date of the 2022 Reform.

In addition, as of January 1, 2022, taxpayers will be required to **justify and provide evidence to support** the reason for the **cancellation of the income CFDI** or the **issuance of an expense CFDI for rebates, discounts and returns**, which represents a new administrative burden for taxpayers.

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It is important to note that the 2022 Tax Reform does not provide specific details on how such reasons should be justified, nor does it indicate what kind of supporting evidence will be required to substantiate the cancellation of an income CFDI or the issuance of an expense CFDI for rebates, discounts and returns. Therefore, each taxpayer will be responsible for obtaining and/or generating the supporting documentation for the transactions in question.

The aforementioned changes pose a significant tax risk for taxpayers who regularly cancel income CFDIs and/or issue expense CFDIs for rebates, discounts and returns, since, if the taxpayer does not have an appropriate internal control or the necessary mechanisms to manage and supervise the issuance and cancellation of CFDIs in real time, they may be obligated to recognize taxable income that was not actually earned. Consequently, should the taxpayer fail to produce support documentation or justify the transactions, the income tax base would be affected by their inability to cancel the income in question and by the non-deductibility of the rebates, discounts or returns, in addition to the potential value added tax effects that could be generated.

Finally, it is important to analyze whether there are potential arguments to establish a defense strategy against these new guidelines, in which case, it will be necessary to determine the best time to file the corresponding means of defense.

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

Jesús Montaño del Bosque
jesus.montano@mx.ey.com

Manuel Pérez Rico
manuel.perez.r@mx.ey.com

Paola Salvador López
paola.salvador@mx.ey.com

David Pradillo Lunagomez
david.pradillo@mx.ey.com

Manuel González López
manuel.gonzalezlpz@mx.ey.com

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