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EY TAX Flash

Tax Opinion - Relevant aspects for 2022

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On November 12, 2021 the Mexican Tax Reform for 2022 was published. As part of such reform, changes have been made to Federal Fiscal Code articles related to audit of financial statements for tax purposes (Tax Opinion); as a result, audit is now mandatory for certain taxpayers and additional obligations have been established for public accountants auditing financial statements.

For these purposes, audit may be either optional or mandatory based on the following:

Optional

Individuals with business activities and legal entities that meet any of the following may elect to have their financial statements audited:

- a) In the immediately preceding year had gross income exceeding \$140,315,940.00
- b) Had assets the value of which exceeds \$110,849,600.00.
- c) Had at least three hundred employees, who rendered services to them in each of the months of the preceding year.

Taxpayers electing to have their financial statements audited, shall state so when filing the annual income tax return for the year for which the election is made. This election shall be exercised within the term set forth in legal provisions for filing annual income tax returns (March 31st at the latest). Elections made from such term shall have no legal effect.

Mandatory

Starting in 2022, Mexican taxpayers that meet the following criteria are required to have their financial statements audited:

- a) Legal entities subject to tax under Title II of the Income Tax Law, declaring in their normal re-turns for the last year, gross income for income tax purposes in an amount equal to or in excess of \$1,650,490,600.00
- b) Legal entities subject to tax under Title II of the Income Tax Law with stocks placed among the large investing public in stock exchanges through the closing of the last fiscal year.

Information about tax status in the Annual Tax Return

Regarding tax obligation to submit the Informative Return on their Tax Situation (ISSIF for its acronym in Spanish) referred to in article 32-H of the Federal Fiscal Code, taxpayers required to have their financial statements audited as well as those making the election to do so, will considered such tax requirement as fulfilled.

Deadline

As per Tax Reform for 2022, deadline for submitting Tax Opinion is no later than May 15 immediately following the year subject to audit. Until December 31st, 2021 deadline for submitting Tax Opinion was no later than July 15 of immediately following the year subject to audit.

Fines and other consequences

Fine for not submitting or submitting the Tax Opinion after the deadline is MXN 15,410 up to MXN 154,050.

If a taxpayer that has chosen or is required to submit Tax Opinion fail to do so, it will not be allowed to apply the benefits of the treaties to avoid double taxation.

New obligations and responsibilities for Public Accountant issuing the Tax Opinion As of January 1, 2022, certain provisions related to obligations of the registered Public Accountant entered into force, among others, the following:

Obligation to report to the Tax Authority conduct that may constitute a tax offence

If the Public Accountant issuing the Tax Opinion becomes aware that taxpayer has failed to comply with tax and customs regulations, or that has carried out any conduct that may constitute the commission of a tax crime, he must inform the tax authority. (Article 52, section III of the Federal Fiscal Code). General rules to comply with this obligation have not yet been published at the date of this Tax Alert.

Liability for the cover-up of tax crimes

Failure to comply with the afore mentioned reporting obligation may lead the Public Accountant to be responsible for concealment in tax crimes. (Section III of article 96 of the Federal Fiscal Code). The concealment of tax crimes by the registered Public Accountant shall be punishable by imprisonment from three months up to six years.

Failure to observe omission of own, retained or transferred contributions

Pursuant reform of article 91-A of the Federal Fiscal Code, in case that the Tax Authority identify and determine omission of contributions during exercise of their powers of verification, it will be considered as an infringement related to the Tax Opinion if such omission has not been informed by the Public Accountant in the report on the fiscal situation of the taxpayer. Infringement will also be considered whenever Public Accountant fail to inform that taxpayer has failed to comply with tax and customs regulations, or that has carried out any conduct that may constitute the commission of a tax crime; it will not be considered infringement the omission of notice by the Public Accountant related to the tariff classification of goods.

Final Comments

Based 2022 Tax Reform, it is important for mexican taxpayers to analyze whether they are required (or will choose) to have their financial statements audited for tax purposes; whichever is the case, a workplan should be timely prepared jointly with the Public Accountant considering that Tax Opinion should be developed based on applicable Audit Standards. For these purposes, it becomes crucial that the Tax Authority issue rules of a general nature as per article 52 of the Federal Fiscal Code.

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