



Mexican Transfer Pricing Environment

November 2016

For fiscal year 2016, Mexico adopted the documentation standards proposed by the OECD, in addition to the transfer pricing contemporaneous documentation requirements established by the Mexican Income Tax Law (“MITL”) already in place. In general, the MITL establishes that large taxpayers¹ which carry out transactions with related parties are obliged to file before the Mexican tax authorities no later than 31 December 2017 the following informative returns:

- i) informative return (master file) of related party members of a multinational enterprise,
- ii) informative return (local file) of related-party members of a multinational enterprise, and
- iii) country-by-country (CBC report) informative return of the multinational enterprise.

The MITL establishes that Mexican Tax authorities should issue administrative rules for filing these informative returns. For such purposes, recently the Mexican tax authorities through the Mexican Tax ombudsman² issued a proposal of administrative rules for public consultation. The comments submitted by taxpayers and interested parties have not been released neither any comments from the tax ombudsman.

Although, based on the tax provisions, Mexican subsidiaries of MNEs are obliged to file the master file which in many cases would certainly represent a rule of impossible compliance since it requires information that may not be available for the subsidiary in Mexico (i.e. the holding company is not obliged to prepare a master file, or the Mexican subsidiary could be a joint venture of independent MNEs).

¹ Revenues of approximately US \$32 million in the preceding fiscal year.

² Procuraduría de la Defensa del Contribuyente (PRODECON).

Regarding the master file, neither the MITL or the proposed rules recognize that the elaboration or filing this return is an obligation for the ultimate holding, and therefore as of this date, there is no option for the Mexican subsidiary to submit the master file prepared abroad.

On the other hand, regarding the CBC report the MITL establishes that if the Mexican tax authorities do not obtain this report by means of information exchange mechanisms, it may be requested to the Mexican resident for which it will have a 120-day period to file it in Mexico.

These new informative returns in connection with all the transfer pricing documentation requirements

would be used by the Mexican tax authorities to conduct their risk assessment programs. This certainly may derive in an increase of the number of audits conducted by the Mexican tax authorities as well as in its thoroughness.

Currently, the Mexican Tax Authorities are auditing subsidiaries of MNEs focusing in reviewing supply chain structures with a foreign principal and local manufacturing and distribution entities, advertising and promotion expenses incurred by a Mexican resident which is not the owner of the intangible property being licensed, sales of shares and transfer pricing in general, among others.

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