



Mexico: transfer pricing adjustment rules adopted

February 2017

In an important advance, Mexico has added new provisions allowing for transfer pricing adjustments as of January 1.

The rules provide helpful clarity to multinational enterprises, though further work is needed by the Mexican Tax authorities to resolve outstanding issues, such as how the new rules interact with other tax rules.

Mexico transfer pricing adjustment

The new rules, included in the Miscellaneous Tax Resolution (“MTR”) issued December 23, 2016, define a transfer pricing adjustment as any change in price, consideration, or profit margin in a transaction carried out between a taxpayer and its related parties that is performed because the taxable income or authorized deductions of such transactions were determined to not be at arm’s length.

New Rule 3.9.1.2 establishes the tax implications of a transfer pricing adjustment on the taxable income and allowed deductions of a taxpayer. The guidance provides that this adjustment may be recognized exclusively for tax purposes, that is, on a cash-less basis.

In general terms, if the transfer pricing adjustment increases the taxpayers' taxable profit either by an increase in the taxable income or a decrease in authorized deductions, the taxpayer is obliged to recognize the adjustment.

On the other hand, if by means of the transfer pricing adjustment, the taxpayer's taxable profit is reduced, the taxpayer may recognize an increase in its tax deductions, provided the taxpayer complies with requirements set forth in rule 3.9.1.3. To qualify, a taxpayer must:

- Timely submit the tax returns (normal or amended, as applicable) showing that a transfer pricing adjustment was performed.
- Have documentation and information to demonstrate that the transaction was not originally carried out at arm's length, which required the transfer pricing adjustment, and that the transaction is adjusted to comply with the arm's length principle.
- Demonstrate that the related party with which the adjusted transaction was carried out increased its taxable income or decreased its tax deductions, as applicable, in the same tax year that the Mexican taxpayer intends to increase its tax deductions.
- Demonstrate that the transfer pricing adjustment does not correspond to income subject to a preferential tax regime.

Furthermore, rule 3.9.1.3. establishes that transfer pricing adjustments which increase authorized deductions should be applied no later than:

- The date of the filing of the annual tax return, namely, March 31, or
- June 30 or July 15, for taxpayers that are obliged to file the tax situation informative return or that opted to file the annual tax report (dictamen fiscal), respectively.

Finally, rule 3.9.1.4. establishes that a transfer pricing adjustment that increases authorized deductions carried out after the dates established in abovementioned rule 3.9.1.3., may be considered deductible provided that it is derived from a transfer pricing resolution under an advanced pricing agreement (APA).

Some thoughts

One issue with new guidance is that it may create asymmetry between adjustments for income and deductions. Any adjustment to increase the taxable income must be performed regardless the fiscal year of the transaction, unlike adjustments to increase authorized deductions, which have a defined timeframe for application.

In case of adjustments for domestic transactions, taxpayers will have this asymmetric situation whenever the adjustment is performed after the mentioned due dates, unless they request an APA.

Certainly, the issuance of rules regarding the application of transfer pricing adjustments represents an important advance, creating a more robust transfer pricing system in Mexico.

Notwithstanding, the effects on other taxes or guidelines related to secondary adjustments are not considered in these rules. It would be desirable that in the near future the Mexican tax authorities issue a complementary set of rules, thus granting a higher level of certainty for taxpayers.

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