

# Global Tax Alert

News from EY Americas Tax

## Mexico's Tax Administration publishes regulations on reporting under mandatory disclosure rules

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On 18 November 2020, the Mexican Tax Administration published amendments to the Mexican general tax rules (GTRs) for 2020 in the Mexican *Official Gazette*, which included new Chapter 2.22 on the mandatory disclosure rules (MDRs) for certain transactions, as established in the Mexican Federal Tax Code as part of the 2020 tax reform. In addition, the Mexican Tax Administration published the electronic formats taxpayers must use to report certain transactions as annexes to the GTRs in a publication issued on 23 November 2020. For more information on the MDRs, see EY Global Tax Alerts, [Mexico: Taxpayers should be aware of Mexico's new reportable transaction obligation](#), dated 23 March 2020 and [Mexico's initial reporting due date for MDR obligations is fast approaching](#), dated 2 November 2020.

### Background

As reported in prior Tax Alerts, Mexico's MDRs are effective 1 January 2020. Tax advisors and, in some instances, taxpayers are required under these rules to report certain transactions that provide a tax benefit in Mexico and meet 1 of 14 hallmarks as listed in the law. The initial reporting is due in 2021 for transactions that occurred in 2020, as defined in the law, as well as for transactions that may have occurred before 2020 and have a tax effect in 2020 and subsequent years. For transactions that occurred before 2020, the taxpayer must report the transactions, regardless of whether a tax advisor participated in the transactions.

The GTRs issued so far relate to the actual reporting to be made and the information that tax advisors and taxpayers must include for each reportable transaction. The GTRs, however, do not include provisions on the *de minimis* amount for transactions that would not have to be reported and guidance in interpreting the hallmarks.

The GTRs provide guidance on general reporting requirements, such as: (i) rules for transactions involving more than one advisor; and (ii) information to be provided to taxpayers by advisors to support the reported transaction. The GTRs also include rules on the information to be provided to support that advice is not reportable.

The general MDRs classify reportable transactions as generic or customized to take into consideration transactions that are designed for general marketing (generic) versus those designed for a specific taxpayer (customized). The MDRs address the two types of transaction classifications by segregating each list of information required for reporting into two parts. The first part applies to all reporting under the relevant hallmark, and the second part only applies to customized transactions.

### Key highlights for reporting reportable transactions

The GTRs require an electronic filing for each reportable transaction. Tax advisors and taxpayers must attach a PDF document with information for the particular transaction being reported to the tax form that is filed. Each of the hallmarks has a list of required information. Some of the information is common to all hallmarks and some is unique.

Significant information that is being requested from tax advisors and taxpayers and is common to all of the hallmarks includes:

- ▶ A detailed description of the reportable transaction
- ▶ A diagram of the steps (legal acts) that are part of the reportable transaction, identifying the jurisdictions of the parties involved in the transaction and the applicable legislation under which the operations are being performed
- ▶ Background and conclusions, as well as the assumptions, legal arguments and interpretations that are made in the context of the reportable transaction

- ▶ The sequence of the legal acts comprising the reportable transaction
- ▶ Information about the specific hallmark and the steps taken to meet that hallmark, such as how losses were transferred or how the transaction led to the depreciation of assets by another party

For customized reportable transactions, the GTRs establish that, in addition to the information previously described, the following information should be disclosed:

- ▶ The exact date or estimated date on which the operations comprising the reportable transaction were performed or will be performed
- ▶ The value or price of the arrangement (in certain cases)
- ▶ Whether related parties participated or will participate in the transaction
- ▶ The business reasons for performing the transaction that results in a tax benefit in Mexico

Depending on the particular hallmark triggered, more information and documentation may be required. For example, if the hallmark for the transfer of net operating losses (NOLs) is triggered, taxpayers and tax advisors must explain how each person transferred the NOLs, including data about the NOL, such as when and how it was generated. If the NOL transfer occurs through a merger or spin-off, taxpayers and tax advisors must provide the notarial number of the deed supporting the transaction and the financial statements that shareholders used to execute the transfer. This hallmark also requires disclosure of the taxpayer that generated and received the NOL, including legal names, tax IDs, country of incorporation and tax residency, core business and domicile.

The information to be included as part of the reportable filing can be very detailed and extensive, depending on each reportable transaction, resulting in additional compliance and resources either for tax advisors or taxpayers. Because other jurisdictions may be involved in the reportable transaction, tax advisors and taxpayers also will have to follow any applicable foreign legislation.

If all of the required information is not available, the tax advisors and taxpayers must sign a statement under oath indicating the reasons they do not have the requested information available.

The GTRs reinforce the importance of taxpayers performing a proper assessment of their transactions and collecting the relevant information needed for reporting purposes. Coordination between taxpayers and tax advisors is key for ensuring that the MDR reporting is consistent and complete based on the requested information that needs to be included in the filing. Significant penalties may apply for noncompliance with the reporting requirements, including reporting with missing information or reporting with mistakes.

### **Other reporting rules**

The GTRs primarily focus on the information that taxpayers and tax advisors must disclose for reportable transactions but also include additional rules, such as provisions on the certificate that must be provided if there is more than one tax advisor involved in the transaction.

In addition, Mexico also requires that taxpayers receive a certificate from their tax advisor to the extent: (i) advice is provided that results in a tax benefit; and (ii) advice does not meet the criteria for reporting under the MDRs. The GTRs

provide the format required to meet this requirement, which would be an electronic filing. The GTRs also establish additional formats for making changes to the information reported and other specific circumstances.

As can be seen from the prior discussion, significant and detailed information must be disclosed to the Mexican tax authorities compared with information to be filed with other jurisdictions, such as Europe under DAC6. Unfortunately, the GTRs do not provide guidance on the substantive rules of the MDR obligations, such as the hallmarks (most of which are quite broad) and definitions of key concepts, including “arrangements,” “tax benefit,” “tax advisor” and “taxpayer.”

Taxpayers and tax advisors must report certain transactions no later than 15 February 2021, based on the transitory rules included in the Mexican MDR regime. As such, taxpayers should be reviewing transactions to identify reporting requirements and the information required to meet the reporting obligation.

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