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Mexico Tax News
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A. In the case of both generalized and personalized reportable schemes

B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 2, A. above, the following information and documentation must be disclosed and provided

3. Rule 2.22.6 of the Administrative Guidelines (AG 2.22.6)

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A. In the case of both generalized and personalized reportable schemes

B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 3, A. above, the following information and documentation must be disclosed and provided

4. Section III, Article 199 of the FTC (AG 2.22.7)

Consists of a transaction or a series of transactions allowing the transfer of tax losses to an entity different to the one that generated them.

A. In the case of both generalized and personalized reportable schemes

B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 4, A. above, the following information and documentation must be disclosed and provided

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A. In the case of both generalized and personalized reportable schemes

B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 5, A. above, the following information and documentation must be disclosed and provided

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A. In the case of both generalized and personalized reportable schemes

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B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 6, A. above, the following information and documentation must be disclosed and provided

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A. In the case of both generalized and personalized reportable schemes
B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 7, A. above, the following information and documentation must be disclosed and provided

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A. In the case of both generalized and personalized reportable schemes
B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 8, A. above, the following information and documentation must be disclosed and provided

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A. In the case of both generalized and personalized reportable schemes
B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 9, A. above, the following information and documentation must be disclosed and provided

10. Section VI, d. of Article 199 of the FTC (AG 2.22.13)

In cases where no proper comparables exist for the specific transaction because of the unique or high value functions and assets.

A. In the case of both generalized and personalized reportable schemes
B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 10, A. above, the following information and documentation must be disclosed and provided

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In cases where unilateral protective regimes granted within the context of foreign legislation as per the OECD Transfer Pricing Guidelines are used.

A. In the case of both generalized and personalized reportable schemes
B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 11, A. above, the following information and documentation must be disclosed and provided

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12. Section VII of Article 199 of the FTC (AG 2.22.15).

In cases where it is prevented the creation of a permanent establishment in Mexico.

A. In the case of both generalized and personalized reportable schemes
B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 12, A. above, the following information and documentation must be disclosed and provided

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In cases where depreciated asses (partially or in full) are transferred and the acquirer is allowed to depreciate them.

A. In the case of both generalized and personalized reportable schemes
B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 13, A. above, the following information and documentation must be disclosed and provided

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A. In the case of both generalized and personalized reportable schemes
B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 14, A. above, the following information and documentation must be disclosed and provided

15. Section X of Article 199 of the FTC (AG 2.22.18)

In cases where the identity of the beneficial owner of the income and assets is hidden, even through the use of foreign legal entities or legal figures which beneficiaries are not designated or identified at the moment of their formation or later on.

A. In the case of both generalized and personalized reportable schemes
B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 15, A. above, the following information and documentation must be disclosed and provided

16. Section XI of Article 199 of the FTC (AG 2.22.19)

In cases where income producing activities are perfomed within the context of the existence of tax losses about to expire, provided that such transactions generate an authorized deduction to the taxpayer that generated the losses or to a related party.

A. In the case of both generalized and personalized reportable schemes
B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 16, A. above, the following information and documentation must be disclosed and provided

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In cases where the application of the additional 10% tax rate on dividends is avoided.

A. In the case of both generalized and personalized reportable schemes

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B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 17, A. above, the following information and documentation must be disclosed and provided

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In cases where the temporary use or enjoyment of an asset is granted and the lessee grants the temporary use or enjoyment of the same asset to the lessor or to a related party of the lessor.

A. In the case of both generalized and personalized reportable schemes
B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 18, A. above, the following information and documentation must be disclosed and provided

19. Section XIV of Article 199 of the FTC (AG 2.22.22)

Transactions which accounting and tax records show discrepancies in more than 20%, except when the discrepancies resulted in the computation of depreciations.

A. In the case of both generalized and personalized reportable schemes
B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 19, A. above, the following information and documentation must be disclosed and provided

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VII. Potential Labor/Tax Subcontracting (Outsourcing) Reform

I. A dive into the 2021 Mexican Tax Reform

Just very recently, both, the lower and upper chambers of the Mexican Congress, approved the 2021 Tax Bill. The tax reform 2021 has been officially published on December 8, 2020 and will enter into force as of January 1, 2021. The main amendments relate to the Income Tax Law ("ITL"), the Value Added Tax Law ("VATL") and the Federal Tax Code ("FTC").

In addition to the foregoing, it is important to remember that certain amendments made to the ITL back in January 2020 will enter into effect as of January 1, 2021; some of them pose a special challenge for taxpayers and advisors because of the lack of administrative guidelines that were supposed to be issued early in 2020. In particular, taxpayers need to be ready to apply Articles 4-A and 205 of the ITL as of January 2021 and recognize the Mexican tax effects given to income received by foreign legal figures and fiscally transparent entities or legal figures.

Taxpayers should be mindful of the tax effects triggered by maintaining after December 31, 2020 tax transparency foreign vehicles used in private wealth and private equity funds structures resorted to by residents of Mexico to invest abroad. What will be the applicable tax treatment to the Canadian Limited Partnerships, a vehicle widely used by residents of Mexico as they will lose their tax transparency treatment? Finally, what will happen with the reportable schemes planned and/or

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implemented that need to be disclosed to the tax authorities by taxpayers in 2021 for tax years prior to 2020 or by their tax advisors as of 2020 (the "Mexican DAC 6") taking into account that the rules were just published few days ago, instead of in early 2020?

II. The 2021 Economic Indicators and Fiscal Policy

The pandemic declared by the World Health Organization has substantially disrupted the performance of the economic activity in Mexico as many activities have been interrupted to prevent the SARS-CoV2 virus (COVID-19) from spreading. The Mexican President will direct the government efforts and policies to support the most vulnerable population in this crisis. The Mexican President goes on to say that the economic and social panorama of Mexico is encouraging and thus, the Mexican government is committed to continue investing in projects that generate employment, like among others, the Mayan Train, the Felipe Ángeles International Airport, the New Dos Bocas Refinery and the Interoceanic Corridor of the Isthmus of Tehuantepec.

In furtherance to the above, the Mexican President submitted to Congress the 2021 Revenue Bill which along with the 2020 Economic Package is looking to:

i. expand and strengthen the capacities of the health system, particularly the services oriented towards the care of the most vulnerable,
ii. promote a rapid and sustained reactivation of employment and economic activity,
iii. continue reducing the inequality, and
iv. lay down the foundations for a balanced and vigorous development in the long term.

It is estimated that the reactivation started in the second semester of 2020 will continue during 2021 as economic units adapt to the new environment and the containment of the disease will allow a gradual removal of the measures of confinement and, therefore, a greater utilization of the productive capacity installed. Finally, emphasis will be made on administrative simplification, legal certainty, and efficiency in the tax collection activity and on tackling tax evasion and avoidance behaviors.

Below are the public finance projections upon which the foregoing objectives are intended to be achieved

- A 4.6% growth in the Mexican economy (a figure that could be adjusted if the availability of a vaccine against disease generated by COVID-19, allows a reopening wide early in the year).
- Exchange rate of $ 22.1 pesos per dollar.
- Average nominal interest rate of Cetes at 28 days of 4%.
- Price of the Mexican mix of $ 42.1 dollars per barrel.
- Expected annual inflation of 3%.
- Tax collection for $ 3.5 billion pesos.
- Total income for $ 6.2 billion pesos.

One may wonder if the forgoing is realistic within the current environment. In my view, a much more robust tax reform incentivizing and protecting investments accompanied by a broad stimulus programs to face the current economic crises would secure a proper fiscal sustainability and a more redistributive public finances where everybody, including the most vulnerable, would benefit from. Notwithstanding this view, it appears that the current tax policies are more inclined to increase collections through a more aggressive audit activity.

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III. Relevant Provisions/Regimes Contained in the Statute as of January 1, 2020, which application starts as of January 1, 2021

1. Article 4-A - Payments made to Foreign Fiscally Transparent Entities and Foreign Legal Figures

Until today, there are no provisions regulating the tax treatment applicable to payments made to foreign entities* or legal figures** considered transparent for tax purposes*** in terms of the legislation where those entities and figures have been incorporated or formed. This lack of regulation has allowed several interpretations and created legal uncertainty. The addition of Article 4-A to the ITL is aimed at regulating the effects of the income generated by these types of entities and legal figures. This Article will enter into force as of January 1, 2021.

* A foreign entity is defined as any corporation or entity formed or incorporated under foreign legislation with legal personality of its own, and any entity incorporated in Mexico but resident abroad.

** A foreign legal figure is defined as that not having legal personality of its own, like trusts, partnerships (for instance, the Canadian Limited Partnerships), investment funds and any other similar legal figure.

*** A fiscally transparent entity or legal figure is not considered resident for income tax purposes in the jurisdiction in which it has been incorporated, formed or has its place of management and provided its income is attributable to its members, shareholders or beneficiaries.

Unless otherwise stated in a tax treaty, Mexico would not recognize the tax transparency nature of foreign entities and legal figures, which under their domestic jurisdictions are considered fiscally transparent. If these entities and legal figures are considered tax residents for Mexican purposes in terms of the FTC (mind and management in Mexico), they will be subject to Mexican income taxation the same way Mexican entities are according to Titles II, III, or VI of the ITL. In all other cases, these foreign legal entities and legal figures will pay income tax according to Title V of the ITL on any Mexican source income - *i.e.* via withholding.

It is confirmed that a fiscally transparent entity in any given jurisdiction cannot be considered as resident in that jurisdiction and thus, cannot claim treaty benefits. The international tax policy adopted by Mexico is not to recognize the tax transparency, except in cases where the specific tax treaty provides for such recognition. Thus, the reform eliminates the tax transparency attribute of foreign entities and legal figures, regardless of whether all or part of their members, shareholders or beneficiaries recognize the income attributable to them in their country of residence.

A three-fold argument from a tax policy perspective supports this addition, namely:

- ***Simplification***

  Considering these entities and figures as Mexican taxpayers simplifies the application of the ITL, because it is only the tax situation of the entity or legal figure the one that has to be analyzed instead of the tax situation of each of its members.

- ***Enhanced Control***

  The tax administration would be able to analyze the characteristics of one single taxpayer instead of that of the several members behind the foreign entity or legal figure.

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- ***Treaty Entitlement***

Confirms that a fiscally transparent entity in any given jurisdiction cannot be considered as resident in that jurisdiction and thus, cannot claim treaty benefits. As mentioned before, the international tax policy adopted by Mexico is not to recognize the tax transparency, except in cases where the specific tax treaty provides for such recognition.

As such, in terms of Article 4-A if these entities and legal figures are considered tax residents for Mexican purposes in terms of the FTC - mind and management in Mexico - they will be subject to Mexican income taxation the same way Mexican entities are according to Tittles II, III, or VI of the ITL and the administrative guidelines yet to be issued.

- ***Effective Management in Mexico***

In terms of the FTC a legal entity is considered to be a resident of Mexico for tax purposes (and thus, liable for tax in Mexico) in cases where such entity has established within Mexico the main administration of its business or its place of "effective management". A legal entity is deemed to have the main administration of its business or its place of effective management in Mexico in those cases where the person(s) taking or executing the day-to-day decisions of control, direction, operation or administration of the legal entity and the activities performed by it, is (are) located in a place situated within Mexican territory.

Additionally, in general terms the various tax treaties executed by Mexico – *e.g,* the US-Mexico Treaty- provide that a “resident of a Contracting State" means any person who, under the laws of that State – *i.e*., the FTC -, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature.

In this regard, considering the FTC definition above, the Tax Administration has taken the position that if board meetings (without specifying the frequency or number of the meetings) of non-resident entities are taken place in Mexico, those meetings could trigger the Mexican tax hypotheses of tax residency upon the grounds that the operation is being managed in Mexico.

There is no express rule defining what actions should be considered so as to conclude that the "effective management" of foreign entities or foreign legal figures (like trusts) is located in Mexico, in cases where such foreign entities/trusts are established by Mexican tax residents for purposes of holding and managing investments outside of Mexico. However, in our view, the same definition established in the FTC should be referred to when determining whether or not a foreign entity or trust holding passive investments would be considered as having its place of effective management in Mexico.

In this regard, it would appear that if the investment advisor (in lieu of a board meeting) acts in Mexico on a quite isolated basis, there may be arguments to challenge whatever questioning by the tax authorities on this matter provided that the decisions taken or instructions made do not have cascade effects across the fiscal year. One single and isolated decision by the investment advisor should not be regarded as constituting a place of management or a place where the day-to-day operations are conducted. However, if the investments discussions and decisions taken by the investment advisor relate to the day-to-day business decisions, decisions of control, direction, operation or administration of the foreign entity, and all of these activities take place in Mexico, the line in between considering the foreign entity or trust as being tax resident of Mexico becomes

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thinner. If the investment advisor is more inclined to report on the financial statements and investments results, we are of the view that no questioning should arise. On the contrary, if the meetings are related, as mentioned above, to more specific actions and managerial activities, such as defining the general investment strategy and taking the main investment decisions, the risk would certainly surface.

2. Mandatory Disclosure Rules in Mexico - "Reportable Schemes"

A. Key Considerations

Mexico has introduced new provisions into its domestic tax law that may be considered as the Latin American version of the Council Directive (EU) 2018/288 of 25 May 2018 (DAC 6). This derived from the Mandatory Disclosure Rules under Action 12 of the OECD BEPS Project in an attempt by the Mexican Treasury to know what taxpayers are doing in terms of tax planning and tackle aggressive transactions having a tax avoidance or abuse component.

Consequently, the FTC now sets forth the obligation starting January 1, 2021, for tax advisors or, alternatively, taxpayers to disclose information about "reportable schemes" in cases where such schemes, when entered into by taxpayers, directly or indirectly, result in a tax benefit in Mexico.

These new reporting rules are embodied in Articles 197 through 202 of the FTC, and will become effective as of January 1, 2021 and apply to either tax advisors (as defined in the FTC - see Relevant Definitions below) or to taxpayers, regardless of the taxpayers' tax residency.

The obligation to report will lie solely on taxpayers in the case of transactions and/or structures entered into and/or implemented by the taxpayer before 2020, provided that they represent a continuous tax benefit during 2020 and onwards.

For the avoidance of doubt, the FTC expressly defines the concept of "tax advisor" and the concept of the term "scheme", and distinguishes generic schemes from personalized schemes. However, unlike DAC 6 (which clearly establishes references to elements of transactions that present a strong indication of tax avoidance or abuse, referred to as "hallmarks", from which exceptions for reporting may apply) the FTC contains a list referring to specific schemes that, upon meeting certain characteristics, will be deemed reportable, with no exceptions.

The Tax Administration has just very recently issued the corresponding administrative guidelines for tax advisors and taxpayers to carry out the reporting - reference to these administrative guidelines is found in *Section V. Disclosure Obligations - Administrative Guidelines* of this report.

B. Relevant Definitions

For purposes of this reporting obligation, the FTC expressly defines the following basic terms:

"***Tax Advisor***": any legal entity or individual who:

- is engaged in tax consulting in the ordinary course of business and is responsible or is involved in the design, commercialization, organization, implementation or management of the totality of a reportable tax scheme; or

- is involved in the totality of tax advice for a reportable tax scheme that would be implemented by a third party.

Tax advisors include residents and non-residents with a permanent establishment (PE) in Mexico, provided that the services rendered are attributable to such PE. A rebuttable presumption applies with regard to a non-resident tax advisor with a PE or a related party in Mexico, in terms of which, the advice will be deemed provided by the Mexican presence. The same will apply when the advisor, being a resident of Mexico, performs tax consultancy services under the same commercial name of tax advisors residing abroad. In those cases where the non-resident renders the service, it will be the PE, the related party or the third party the one required to report the scheme.

"***Tax Benefit***": the monetary value of any reduction, avoidance, or temporary deferral of taxes, including, by way of deductions, tax-exempt treatments, no-recognition of gain or taxable income, adjustments or lack thereof in the taxable base, tax credits, the reclassification of certain payment or activity, a change in tax regime, etc.

"***Taxpayer***": Any legal entity or person subject to tax in Mexico, regardless of that entity/person's tax residency.

As noted, reportable schemes must be disclosed regardless of the tax residence of the taxpayer, if the latter obtains a tax benefit in Mexico.

"***Scheme***": any plan, project, proposal, advice, instruction or recommendation made tacitly or expressly with the aim of implementing a number of transactions. Formal filings before the tax authorities or the defense of taxpayers within the context of tax disputes are not considered schemes.

"***Generic scheme***": a scheme intended to be commercialized massively to any kind of taxpayers or a specific group thereof, where the manner in which the tax benefit is obtained is the same, even if the scheme must be customized to the specific circumstances of a given taxpayer.

"***Personalized scheme***": a scheme designed, commercialized, organized, implemented or managed for the special circumstances of a given taxpayer.

"***Reportable Scheme***": a scheme expressly listed in Article 199 of the FTC, which triggers or may trigger, directly or indirectly, a tax benefit in Mexico and if they have any of the following characteristics (to name a few):

- Avoid the exchange of tax information under the Foreign Account Tax Compliant Act (FATCA) and the Common Reporting Standard (CRS).
- Avoid the application of the new rules regarding fiscally transparent entities under Article 4-B of the ITL.
- Avoid the application of Mexico's CFC rules established under Chapter I, Title VI of the ITL.
- Avoid the identification of the beneficial owner of the income or assets. Including the use of foreign entities or legal figures to avoid the identification or designation of the beneficiaries at the time of their incorporation.
- Consists of a transaction or a series of transactions allowing the transfer of tax losses to an entity different to the one that generated them.

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- Consists of a transaction or a series of interconnected transactions that refund the totality or part of the initial payment part of these series of transactions to the person that made it or to its partners or related parties.
- Involves a non-resident to apply a DTC executed with Mexico regarding income not subject to taxation in the country of tax residence of the taxpayer; the same would apply when the income is subject to a rate lower than the corporate rate applicable in the country of residence of the taxpayer.
- Involves related-party transactions, in certain specific cases.
- Etc.

A "catch-all" provision is also included to consider any mechanism avoiding the application of the expressly listed schemes as reportable.

C. Informative Return - Responsible Party, Timing, Legal Effects

a. *Responsible Party*

As a general rule, this obligation applies to tax advisors, however, exceptionally, this obligation will apply to taxpayers, who must report directly a given scheme when:

- The tax advisor does not provide the identification number - see Legal Effects below - corresponding to the reportable scheme.
- They have designed, organized, implemented and managed the reportable scheme.
- They obtain tax benefits in Mexico from a scheme that has been designed, commercialized, organized, implemented or managed by a person that is not considered a tax advisor or does not have a presence or a PE in Mexico.
- The tax advisor has a legal obstacle to disclose the scheme.
- They agree with the tax advisor that they would report the corresponding scheme.
- The scheme was designed, commercialized, organized, implemented or managed before 2020 if the tax effects of such scheme are reflected in 2020 onwards, case in which (as noted above) the obligation to report relies solely on the taxpayer.

b. *Timing*

Generalized reportable schemes must be disclosed within 30 days following the first contact made for their commercialization, that is, the first action for third parties to know the existence of the scheme.

Personalized reportable schemes must be disclosed within 30 days following the date the scheme is available to the taxpayer for its implementation or the date the first transaction related to the scheme is performed.

The tax advisors and taxpayers required to disclose the reportable scheme may disclose it once they have completed their design.

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c. *Legal Effects*

The disclosure of a reportable scheme must be made through the filing of an informative return. However, this does not imply the acceptance or rejection of the corresponding tax effects by the SAT.

The information provided through the disclosure of a reportable scheme cannot be used to initiate a criminal action, except in those cases regulated by Articles 113 and 113 Bis of the FTC - *i.e*., tax crimes related to the issuance or acquisition of false invoices, destruction of accounting records, etc.

The information gathered through the reportable scheme mechanism should be treated as reserved and confidential in terms of Article 69 of the FTC, which provides the obligation for the tax authorities to keep the information under their possession or control confidential.

i. *Reportable Scheme Identification Number*

Upon filing the informative return, an identification number for each reportable scheme will be given by the SAT to the tax advisor or taxpayer. Also, the SAT will provide them with a copy of the informative return used to disclose the reportable scheme as well as the corresponding certificate assigning the identification number of the specific reportable scheme.

A request for additional information may be made by SAT, in which case, tax advisors or taxpayers would be required to provide such additional information or provide a statement under oath stating that they do not have it. This response should be made within 30 days following the specific request of information.

ii. *Taxpayers and the information needed in their annual tax return*

In terms of Article 202 of the Tax Code, taxpayers disclosing a reportable scheme are required to provide the identification number of the scheme in their annual tax return corresponding to the year in which the scheme was implemented and in the tax returns of the years during which the scheme is in effect.

D. Final Remarks

By now, tax advisors and taxpayers should be aware that any transaction or structure being currently designed, marketed, organized, implemented, or managed in favor of a taxpayer must be analyzed in light of the corresponding tax treatment applicable in terms of Mexican tax law to determine (i) if it may yield a tax benefit in Mexico, and (ii) whether or not it should be reported in fiscal year 2021.

Therefore, to consider if a given transaction/structure is subject to these new mandatory disclosure rules in Mexico, a conservative approach as of the enactment of these rules (December 9, 2019), would require tax advisors and taxpayers alike to begin the analysis of, either:

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a. a structure implemented in the past (*i.e*. before 2020) and currently in place granting tax benefits in Mexico, or

b. any tax advice (in and of itself) provided to/received by taxpayers with respect to certain transaction or structure granting a tax benefit, in order to:

- First, determine whether or not such transaction/structure qualifies as a "scheme";
- Secondly, determine whether the person who advised on such transaction falls under the definition of "tax advisor";
- Then, determine whether or not the tax advisor is "involved in the totality" of the design, marketing, organization, implementation, or management of said scheme so as to allow the taxpayer to obtain a tax benefit in Mexico, and
- Finally, to conclude which party may be deemed responsible for filing the corresponding informative return.

IV. The most relevant tax amendments for FY 2021

1. Income Tax Law

A. Entities considered non-taxpayers for income tax purposes

The following entities are included in the list set forth by Article 79 of the ITL as non-taxpayers for income tax purposes:

a. The non-profit civil associations authorized to receive deductible donations, dedicated to scientific or technological research and registered in the National Registry of Scientific and Technological Institutions - effective as of July 2021.

b. The non-profit associations authorized to receive deductible donations granting scholarships in terms of Article 83 of the ITL - *i.e.*, the scholarships must be used to perform studies in recognized institutions, must be granted through open contest and its assignment must be based on objective data related to the economic capacity of the candidate - effective as of July 2021.

c. The non-profit associations authorized to receive deductible donations that are incorporated and function exclusively for carrying out research activities related to the preservation of wild, terrestrial or aquatic flora or fauna within the geographic areas designated by SAT. The same goes for those that are incorporated and function exclusively to promote among the population the prevention and control of water, air and soil pollution, the protection of the environment and ecological balance - effective as of July 2021.

d. The non-profit associations authorized to receive deductible donations that prove that they are dedicated exclusively to the reproduction of species in danger of extinction and to the conservation of their habitat, provided that the opinion of the Ministry of Environment and Natural Resources is obtained - effective as of July 2021.

B. Authorized Donees

a. ***The 50% Threshold***

In terms of the last paragraph of Article 80 of the ITL, in cases authorized donees derive income from activities other than those for which they were authorized to receive donations in a percentage greater than 50% of their fiscal year's total income, they will lose their authorization to receive non-

taxable donations. The authorization will be revoked through a resolution issued and notified by SAT. If within the 12-month period following the cancellation of the authorization, the authorization is not once again secured, the authorized donee which authorization was revoked must transfer all its patrimony to another authorized donee legally entitled to receive tax-deductible donations.

b. ***Destiny of the Assets owned by Authorized Donees and Effects of the Revocation, Cancellation and Un-renewed Authorization to Receive Non-taxable Donations***

Section IV and V of Article 82 of the ITL were amended to stress that authorized donees should use their assets only to fulfill the corporate purpose for which they have been authorized to receive deductible donations for income tax purposes. The remaining payable cannot be distributed to their members, individuals or entities, except in the cases where they are entities or trusts authorized to receive tax-deductible donations or the distribution of the remaining payable is made as payment for services actually received.

In cases where the authorization is revoked or the effective period elapsed and no new authorization or renewal is secured within the 12-month period following to such events, the total patrimony of such authorized donees should be transferred to other authorized donees. The recipient of the assets would be required to issue the corresponding fiscal receipt being the transfer not deductible for income tax purposes. Going forward, the donee which authorization was revoked or was not renewed, will pay taxes in terms of Title II of the ITL (Corporations) and will be required to transfer their assets and resources to other authorized donees within the 6 months following the date the 12-month period referred above elapsed. The same would apply in case an authorized done request the cancellation of its authorization to receive non-taxable donations.

c. ***Public Information***

The authorized donees are required to keep available to the general public the information regarding the authorization to receive donations, the use and destiny that has been given to the donations received and their patrimony. In cases where the authorization to receive non-taxable donations is revoked or not renewed because of a breach of the obligation to make the information available to the public, the interested party must comply with such obligation within the following month to the one in which the revocation is notified or the non-renewal was published.

d. ***Revocation of the authorization to receive non-taxable donations***

In order to provide more legal certainty, Article 82-Quáter is added to include within the ITL the grounds upon which the revocation of the authorization will proceed and the procedure that must be followed to such effect. Although these rules are currently contained in the Administrative Guidelines, it was considered relevant to include them in the tax statute to enhance legal certainty.

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In general, the authorization will be revoked if:

- **i.** the assets are destined to activities other than those set forth in the corporate purpose of the authorized donees,
- **ii.** the authorized donees fail to issue the corresponding tax receipts supporting the donations received or issue donation receipts in connection with transaction other that the authorized donations,
- **iii.** upon an audit it is known the failure to comply with the obligations set forth to authorized donees,
- **iv.** the authorized donee is included in the list set forth in Article 69-B of the FTC - false invoices,
- **v.** the legal representatives, partners or associates or any member of the managing board of an authorized donee that has been listed as per Article 69-B at any time during the preceding five years are part of authorized donees, and,
- **vi.** the authorized donees fall within the hypothesis established in the last paragraph of Article 80 of the ITL, *i.e*., if they obtain non-deductible income in excess of 10% their total annual income. The possibility to secure a new authorization would be available in connection with the hypotheses referred to in items i to v above once the irregularities have been cured, whereas no possibility to obtain a new authorization would be available in cases where the hypothesis contained in item vi takes place.

The revocation procedure will be initiated by SAT upon the issuance of an official letter informing the authorized donee the grounds under which the revocation is triggered; the authorized donee will be given a 10-business day term to provide its response to SAT and to support it with whatever information and documentation is relevant. Once this response is filed before SAT, the tax authority would be required to issue a resolution within the following three months.

C. *Salary Income*

One last paragraph is added to Article 94 of the ITL to consider that income in excess of $75 million pesos would not be treated as assimilated to salary income. This limitation is referred to the type of income regulated by Sections IV, V and VI of such Article - *i.e*, independent personal services fees, business activities fees and stock options income; instead, such income would be treated in terms of the applicable provisions contained in Title IV if the ITL - *i.e*., Individuals Income Taxation.

D. *Income Derived from the Sale of Goods or the Rendering of Services through Internet, Technological Platforms or Apps - New Withholding Rates*

As of 2020, in terms of Article 113-A of the ITL, income derived by individuals with business activities selling goods or rendering services in terms of Section II of Article 18-B of the VATL, through Internet, via digital platforms, or the like, is subject to tax withholding. As such, entities allowing the use of or access to digital platforms have the obligation to withhold income tax in transactions where the seller or service provider is an individual and the sale of goods or the rendering of services is performed through a digital platform (VAT is excluded from the withholding). It does not matter whether the digital platform is a Mexican resident or a foreign resident (either with or without a PE in Mexico). In essence, any digital

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platform that acts as an intermediary in the sale of goods or rendering of services will have the withholding obligation. Tax collections would be considered estimated or provisional payments. However, individuals meeting certain requirements may consider the tax withheld as definitive payment.

Sections I, II and III of paragraph third of Article 113-A of the ITL are amended to change the withholding percentages applicable to land transportation services and delivery of goods, lodging services and all other sales of goods and rendering of services. The withholding rates would be 2.1, 4 and 1%, respectively.

- ***The Kill Switch***

  In terms of the new Article 113-D of the ITL, the temporary blockade to Internet or digital services as referred in Article 18-H BIS of the VATL, would be triggered in cases where the non-resident entities without a PE in Mexico fail to withhold and remit the tax triggered in terms of Article 113-A, that is, the income tax withholding applicable to transactions where the seller or service provider is an individual for three consecutive months. This sanction is applicable in addition to those sanctions and penalties established by the FTC.

2. The Value Added Tax Law

A. Medical Services

Section XIV of article 15 of the VATL is amended to also consider exempted from VAT the medical professional services rendered through private assistance or charitable institutions authorized by law.

B. Digital Services

In terms of Articles 16 of the VATL, "digital services" are considered rendered within the Mexican territory when the recipient of the services is located in the Mexican territory. As per Article 18-B of the VAT Law, only the following would qualify as "digital services":

a. Downloading or access to images, movies, texts, information, video, audio, music, games, including gambling games, as well as other multimedia contents, multi-gaming experiences, purchasing or otherwise procuring mobile ringtones, streaming news online, traffic information, forecasts, weather forecasts and statistics. This will not apply to the download of electronic books, newspapers, or magazines.
b. Intermediation services between third parties that offer goods or services and the recipients of these goods or services.
c. Online clubs and dating websites.
d. E-Learning, electronic tests, or electronic exercises.

The second paragraph of Section II of the Article 18-B of the VATL is derogated and with this it is clarified that the digital intermediation services aimed at the sale of used goods would be subject to VAT. Other type of digital services referred to in Article 18-B, Sections I, III and IV where goods and services are offered, will continue be subject to VAT - downloads and access to images and information, online clubs and dating sites and E-learning, electronic tests or electronic exercises.

A third paragraph is added to article 18-D of the VATL. As such, non-residents without a PE in Mexico rendering the type of digital services referred to in Sections

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I, III and IV of Article 18-B of the VATL to recipients located within the Mexican territory through the intermediaries referred to in Section II of Article 18-B of the VATL, would not be required to comply with the obligations set forth in this Article 18-D, provided that the intermediaries withhold the 100% of the VAT charged as described in Section II, second paragraph of subsection (a) of Article 18-J of the VATL. Furthermore, in cases where the recipient of the services so requests, the withholding agent shall issue the corresponding tax receipt reflecting the transaction price plus the VAT withheld.

Finally, in terms of an addition to Section I of Article 18-J of the VATL, the non-residents without a PE in Mexico rendering the intermediation services referred to in Section II of Article 18-B would be entitled to opt to publish in their corresponding digital platform the price at which the sellers or service providers for which they operate as intermediaries offer goods and services or the temporary use and enjoyment of goods without expressly breaking down the VAT, provided such prices include the VAT and the prices are published along with the legend "VAT included".

C. The Kill Switch

Articles 18-H BIS, 18-H TER, 18-QUÁTER and 18-H QUINTUS are added to the VATL to penalize, with the temporary blockade/suspension of internet/digital services, all those non-residents without a PE in Mexico providing digital services to recipients located within the Mexican territory failing to comply with the obligations set forth in Sections I, IV, VI and VII of 18-D and Section II (b) and II of Article 18-J of the VATL as described below:

a. Failure to comply within the following 30 days as of the date on which the digital services were rendered for the first time with the obligation to register before the Federal Taxpayers Registry (Article 18-D, Section I).

b. Failure to have a legal representative and a domicile in Mexico (Article 18-D, Section VI).

c. Failure to secure their advance electronic tax signature (Article 18-S, Section VII).

d. Failure to compute and pay the corresponding VAT and to remit the taxes withheld, as well as to file the corresponding tax returns and informative returns referred to in Articles 18-D, Section IV and 18-J, Sections II, subsection b) and Section III in three consecutive months or two consecutive quarterly periods in the case of informative return referred to in Article 18-D, Section III.

In addition to the blockade of the digital services, the cancellation of their taxpayer's id number and their removal from SAT's list may take place. The foregoing is independent from the application of other provisions of the tax statute penalizing the failure to pay taxes, remitting withheld taxes and the filing of regular and informative returns.

In terms of Article 18-H TER of the VATL, prior to the blocking of the digital services the taxpayer will be informed by SAT about the grounds upon which this sanction will apply. In cases where the obligations set forth in Sections I, VI and VII of Article 18-D are not met, that is to say, (i) failure to secure registration before the Federal Taxpayers Registry, (ii) the lack of the appointment of a legal representative and of a tax domicile for purposes of receiving notifications, and the (iii) failure to secure the advance electronic signature, the resolution indicating the omissions would be published at the Official Gazette, whereas in case of the infractions set forth in Sections III, and IV of Article 18-D and Sections II (b) and III of Article 18-J of the

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VATL, that is to say, (i) the informative returns indicating the number of transactions performed each month, (ii) the payment of the 16% VAT collected on the consideration received, and (iii) the remittance of the taxes withheld on intermediation services, the resolution will be notified to the legal representative of the non-resident without a PE in Mexico.

The foregoing notifications are made to allow the taxpayers to present evidence and arguments challenging the position taken by the tax authorities within the ensuing 15 days counted as of the day following the one the notification was made. For one time only, taxpayers may request SAT an extension of five days to provide the supporting information and documentation, provided the extension request is filed within the fifteen-day period. The extension would be deemed granted without the need for the tax authority to specifically agree to that and will be computed as of the day following the one the fifteen-day term elapses.

Within the fifteen days following the elapsing of the aforementioned terms, the tax authority will notify its response to the taxpayer at the tax domicile or electronic mail provided; in lieu of the foregoing, the notification will be published at the Official Gazette. The tax authority, within the first five days of the fifteen day-term is required to address the taxpayer's position and may request additional information from the taxpayer, which shall be provided within the following five days computed as of the day following the one the notification is effective. In this case, the fifteen day period will be suspended as of the day following the notification is effective and will resumed once the five day term elapses.

Once the foregoing term has elapsed without any evidence or information supporting the taxpayer challenge, the blocking of the digital services will be ordered by the tax authorities. The suspension or blocking will be lifted once the taxpayer shows that it has complied with the obligations for which the sanction was imposed.

As such, the Tax Administration would be entitled to instruct the public telecommunications network concessionaires to temporarily block the access to the digital service to those digital service providers that do not comply with their tax obligations in Mexico. The concessionaire receiving the instructions from SAT to block the access to digital services will be required to comply with this instruction within the following five working days computed as of the day following to that on which the notification was legally effective. The concessionaire will notify the Tax Administration within the following five days as of that in which the digital service was suspended that the instruction was duly and timely met. (Article 18-H QUÁRTER).

Also, a MXN$500,000 to MXN1,000,000 (approximately USD$22,000 to USD$44,000) fine is included in Article 90-A of the FTC for the telecommunication carriers that do not comply with the order to block the access to the internet connection.

Finally, in terms of Article 18-H QUINTUS, SAT will publish the name of the digital service provider in default and the effective date of the blockade of the digital services so that the recipients of the digital services within the Mexican territory do not contract future services with such digital service provider. Once the taxpayer complies with the obligations set forth in the VATL, the Tax Administration will instruct the public telecommunications network concessionaires to lift the blockade, which shall be lifted within the following five days.

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3. Federal Tax Code

A. Criminal investigations within the context of the recently enacted General Anti-avoidance Rule

The seventh paragraph of article 5-A of the FTC is amended to expressly include the possibility of giving criminal effects to the conclusions reached through the application of the general anti-avoidance clause in those cases where the tax authorities do not agree with the strength of the business reasons argued by the taxpayer.

We need to remember that through the application of this provision, the effects taxpayers are giving to their operations may be ignored for tax purposes only, but now, without prejudice of the criminal investigations that may arise in relation to the commission of criminal offenses. In our view, this amended was not necessary because in terms of a holistic interpretation of the statute, criminal investigations could have been initiated when the facts under analysis, either under the scope of the general anti-avoidance rule or otherwise, give rise to such a criminal actions.

As such, in terms of Article 5-A of the FTC, legal transactions lacking business reasons and generating direct or indirect tax benefits to the taxpayer will have the same tax effects as those corresponding to the transactions that otherwise would have been carried out to obtain the economic benefit reasonably expected by the taxpayer.

a. *Presumption of "lack of business reasons"*

i. *Economic Benefit vs Tax Benefit*

The tax authority would be entitled to presume that there is no business reason, when the reasonably expected economic benefit is lower that the tax benefit. A reasonably expected economic benefit exists, among other cases, where the transactions of the taxpayer pursue the generation of income, reduction of costs, increase in the value of its goods, its property or an improvement on its market position. In order to quantify the reasonably expected economic benefit all contemporaneous available information related to the transaction under analysis should be analyzed, including the projected economic benefit, to whatever extent the information is supported and reasonable. For purposes of this Article, the tax benefit shall not be considered as part of the economic benefit reasonably expected.

ii. *Step-Transaction*

Also, the tax authority would be entitled to presume that a series of transactions lack business reasons when the reasonably expected economic benefit could have been obtained through the performance of fewer transactions and the tax effects thereon would have been greater.

iii. *Reduction / Deferral of Taxes*

A tax benefit exists also in cases where taxation is reduced, eliminated or temporarily deferred.

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b. *The GAAR approach is applicable only upon the performance of a formal audit*

Upon audit, the tax authority may presume that no economic or business reasons exist in the structure or transaction(s) and that the structures or transactions were implemented mainly for tax purposes. In this case, the tax authorities would be entitled to ignore, for tax purposes only, the transactions observed; however, in all cases, the tax authorities would be required first to inform the taxpayer about this situation and grant the taxpayer the opportunity to comment on such observation within the timing established in Articles 46, Section IV, 48, Section IV and 53-B, Section II of the FTC.

c. *The Collegiate Committee*

In order to apply this article, the tax authority, prior to the issuance of the last partial minutes, the letter of observations or the provisional resolution referred to in the articles mentioned in the prior section, shall submit the case for consideration to a collegiate committee. Treasury and tax administration officials will integrate the committee. If the committee does not respond within the following two months, the response should be considered as being negative, that is, that no avoidance or elusion was detected.

Coming back to the specific reform effective as of January 1, 2021, the relevant part of the amended section stands as follows:

.."*The expression business reason will be applicable regardless of the laws that regulate the economic benefit reasonably expected by the taxpayer. The effects that the tax authorities grant to the legal acts of the taxpayers due to the application of this article, will be limited to the determination of the contributions, their accessories and corresponding fines, without prejudice to the investigations and the criminal liability that may arise, in relation to the commission of the crimes foreseen in the FTC*."

B. Sale on Installments

The second paragraph of Article 14 of the FTC is amended to state that it is understood that a sale on installments deferring the payment of the price exists when tax receipts are issued in terms of Article 29-A, Section IV, second paragraph, that is to say, with the corresponding taxpayer id number or the so called "*clave genérica*". For this to be considered a sale on installments is needed that the payment of at least 35% of the price is deferred up to the sixth month and the total price is paid beyond twelve months.

C. Spin-offs

In terms of an amendment to Article 14-B, no tax free spin-offs would be deemed to exist when upon the transfer of all or part of assets, liabilities and capital, a new concept or item arises in the accounting records of either the spin off or the spun-off companies. The foregoing, regardless the name that may be given to it and provided an amount not previously registered in any of the accounts part of the financial statements drafted, filed and approved at the general shareholders meeting authorizing the corresponding spin-off is included thereof.

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D. Authorized Stock Markets

In terms of an amendment to Article 16-C of the FTC, recognized stock markets for purposes of the regulation of derivative financial transactions are all those corporations ("*sociedades anónimas*") authorized by the Mexican Treasury Department to act as stock markets in terms of the Stock Markets Laws.

E. Cancellation of SAT's Certifications

In terms of Sections XI and XII of Article 17-H of the FTC, the certifications issued by SAT on the standing of the advance electronic signature/digital signature would become null in cases where:

i. Taxpayers do not successfully rebut the presumption posed by the tax authorities in the sense that the taxpayers issued tax receipts supporting fictitious transactions (Article 69-B of the FTC - apocryphal tax receipts), or

ii. Taxpayers were not able to rebut the presumption of having illegally transferred tax losses (taxpayers included in Article 69-B Bis list).

Finally, taxpayers whose digital signature had been cancelled are allowed to file a remedy before SAT to mend the deficiencies; SAT would need to address the remedy filed by the taxpayer and notify the corresponding resolution at the taxpayer's electronic mail box within the following 10 days to that on which the remedy was filed. Previously, the term was of 3 days.

Sections IV and X of Article 17-H Bis are derogated. Before the cancellation of the digital signature is resolved, a temporary suspension is in order except in cases related to the presumptions referred in the paragraph above when dealing with Articles 68-B and 69-B Bis of the FTC.

Finally, in dealing with the temporary suspension of the digital signature, taxpayers would be entitled to challenge it by submitting a request of clarification along the corresponding evidence and information before the Tax Administration within the following forty working days as of the date the suspension was notified. The suspension would be lifted the day following the filing of the clarification and the authority would have 10 days to respond. During this period, taxpayers would keep their digital signature operational and will continue being able to issue digital electronic invoices via Internet (CFDIs). If in any evet, the forty-day period elapses without any filing by the taxpayer aimed at challenging the suspension, the digital signature will be cancelled.

F. Tax Refund Requests

A quite relevant amended to Article 22 of the FTC in detriment to taxpayers states that tax refund requests would be deemed as not filed in cases where taxpayers or their tax addresses are not located at the Federal Taxpayers Registry. In these cases, the resolution having the tax refund request as not filed, would not be considered as an act of collection that interrupts the statutory period of limitation applicable to the tax authorities obligation to refund the taxes.

G. Joint and Severally Responsibility

Section X, (h) I of Article 26 of the FTC is amended to consider shareholders to be joint and severally liable in connection with the taxes triggered by their Company during their shareholding period when the assets of the Company are not enough to secure such liabilities. In those cases, their responsibility cannot exceed the

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value of their participation in the Company's capital during the relevant period, provided the Company is included in the list referred to in Article 69-B Bis of the FTC (taxpayers considered as having illegally transferred tax losses).

Also, the same type of liability would exist for the shareholders of a Company acquiring and using tax losses when the illegal transfer of losses is carried out within the context of a company:

- **i.** reducing in more than 50% its material capacity to carry on with its preponderant activity in the fiscal years following the one in which the tax losses were declared, and provided
- **ii.** that upon the transfer of all or part of its assets through a restructuring, spin-off, or a merger, leaves the corporate group it belonged to.

Section XII of Article 26 of the FTC is likewise amended to state that the companies participating in a spin-off will be jointly liable for the taxes triggered before the spin-off up to the value of their capital at the moment of the spin-off. This limitation would not apply in cases where as a consequence of the spin-off, a new concept or account arises, regardless the name given to it, which value was not registered or acknowledge in any of the capital accounts of the financial statements prepared, file and approved by a general shareholders meeting that approved the spin-off.

Section XIX of Article 26 of the FTC is added to consider resident entities or non-residents with a PE in Mexico carrying on related party transactions with residents abroad as joint and severally liable with the non-residents creating a PE in Mexico upon the transactions performed up to the amount of taxes triggered in connection with such transactions. Control needs to exist among these related parties in terms of Article 176 of the ITL (preferential tax regimes) which contains a broad definition of the concept of control. In short, these Mexican tax presences, will be joint and severally liable for Mexican taxes owed by foreign related parties with a PE in Mexico.

H. Change of Shareholders, Suspension/reduction of Activities and Cancellation of the Taxpayers Id Number

Section VI of Article 27 of the FTC is amended to require a notification to the Taxpayers Federal Registry of any change in connection with the shareholders or any other person that in terms of the corresponding by-laws is part of a company.

In terms of Section XII of Article 27 of the ITL, when taxpayers stop performing activities during the last three years, the tax authorities will suspend or reduce their tax obligations accordingly.

Finally, Section IX (D) of Article 27 of the FTC is added to state that taxpayers requesting the cancellation of their taxpayer id numbers either upon the transfer of all of their assets, the total definitive suspension of their operations or a merger need:

- **i.** not to be subject to an audit,
- **ii.** not to be included in the lists referred in Article 69, 69-B and 69-B Bis of the FTC, and
- **iii.** to show that the income declared and the taxes withheld reflected in their estimated payments, provisional and final withholdings concur with the CFDIs, and data in possession of the tax authorities.

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I. Digital Tax Receipts via Internet

The first paragraph of Article 29 of the FTC is amended to expressly set forth the obligation to all individuals acquiring goods, enjoying their temporary use and enjoyment, receiving services or making partial or deferred payments of current balances of digital tax receipts via Internet, and exporting goods not subject to sale or whose transfer is for free, to request the digital tax receipt via Internet.

J. Documentation Supporting Economic Substance

Article 30 of the FTC is amended to request additional information to support the economic substance of a number of transactions. As such, in cases of capital increases in cash, the corresponding baking statements must be kept, whereas in cases of capital increases in kind or as a consequence of a surplus triggered upon the steeping up of the basis of the fixed assets, the corresponding appraisal in terms of the General Mercantile Companies Law must be secured and kept. In dealing with capital increases through the capitalization of reserves or dividends, in addition to the foregoing, the corresponding shareholders meetings minutes reflecting such increases must be kept along with the corresponding accounting entries and records reflecting the increase. In cases of capital increases upon the capitalization of debts, the corresponding shareholders meeting minutes reflecting such decision must be kept, along with the accounting certification of the existence of the debt and its value in terms of the administrative guidelines to be issued by SAT.

In cases of shareholders meetings minutes reflecting a reduction of capital through a capital reimbursement, the corresponding banking statements must be kept. In dealing with shareholders meetings minutes reflecting a merger or spin-off, the financial statements, the accounting capital variation statements and the net-after tax profit and capital contribution accounts working papers corresponding to the prior and subsequent fiscal years to that in which the merger or spin-off was effected must be kept.

Likewise, the tax receipts issued or received by companies upon distributing dividends must be kept along the banking statements reflecting such payments.

Finally, in cases of an audit of fiscal years during which tax losses were utilized, dividends paid, capital reduced or reimbursed, or amounts received upon a loan, regardless of the type of agreement implemented, taxpayers are required to provide the documentation supporting the origin of the tax losses, the supporting documentation of the loan, the documentation supporting the movements of the net-after tax profit account and the capital contribution account or of any other account involved with these transactions, regardless the fiscal year in which the loss was originated, the loan or the movements in the aforementioned accounting and tax accounts. The taxpayer would not be required to provide these information and documentation when prior to the ongoing audit, the tax administration has already audited the years in which the tax losses were originated.

K. Spotting Tax Risks based Upon Certain General Parameters

Article 33 of the FTC is amended to specify that the consultancy and orientation services rendered by SAT are not to be rendered only to the taxpayers but to the public at large as well.

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Item (i) of Section I of Article 33 is added to inform on a periodical basis income taxpayers about the parameters regarding profits, deductions and effective tax rates of entities deriving income, considerations or profit margins upon the performance of their activities within the context of the economic or industry sector to which they belong. This information will be published with the objective to measure potential tax risks. As such, the Tax Administration, through voluntary compliance programs will inform taxpayers and/or their legal representatives about the potential existence of a tax risk if the information gathered falls outside the parameters referred above. In our view, this will be most likely carried out through the issuance of invitation letters to taxpayers and although this will not be considered the beginning of a forma audit, it is likely that if the response given by the taxpayers to those invitation letters will not satisfy the tax authorities, a formal audit may be triggered.

Finally, in order to promote tax compliance regarding the filing of tax returns, Sections IV is added to Article 33 of the FTC whereby the Tax Administration will promote the rectification of the tax situations of taxpayers through the issuance of (a) pre-filled tax returns: (b) communications to promote compliance with tax obligations, and (c) communications informing about discrepancies found and atypical behaviors.

L. Preventive Attachment of Assets

In terms of Section III of Article 40 of the FTC, the tax Administration is empowered to instruct the preventive attachment of assets or the business of the relevant taxpayers, the jointly and severally responsible parties, and third parties related to the taxpayers, in connection with information and documentation requests addressed to them as described in Article 40-A of the FTC.

The most relevant amendments to Article 40-A of the FTC stand for:

a. The assets and/or negotiation of the taxpayer, the jointly and liable responsible parties, and third-related parties will be secured as of the moment in which the preventive attachment of assets is effected even if it is subsequently ordered or registered with other institutions, this, in order to avoid malicious actions by taxpayers to avoid the precautionary attachment of their assets (Article 40-A, Section V);
b. The preventive attachment of assets would be made up to the amount of the provisional determination of the taxes presumptively owed, however, when dealing with assets owned by the third parties related to the taxpayer, the attachment of assets will be made up to one third of the amounts of the transactions such third party carried out with the taxpayer; and
c. the preventive attachment of assets will need to follow a specific order, being the first one bank deposits, investment components adhered to life insurances or any other investment or saving instrument in local or foreign currency, except for those deposits in the individual saving retirement account up to 20 minimum wages per 365.

LL. Tax Inspectors Powers

In terms of the amended Section IV of Article 46 of the FTC, tax inspectors are empowered to render an opinion on the documents and information obtained from third parties during the tax audit, as well as on the documentation and information provided by the taxpayer to challenge facts and omission stated in the last partial minute of the audit. The opinion will encompass the suitability, adequacy and reach of the documentation and information provided. This amendment strengthens the

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framework under which the audit faculties of the tax inspector's visitors must be exercised in tax domicile audits.

M. Tax inspections

Section I of Article 49 of the FTC is amended to include offices and warehouses as places where tax visits can be carried out.

N. Extension of Terms

Article 53 of the FTC is amended to extend the terms granted to taxpayers in this Article to provide information for ten more days when it comes to reports whose content is difficult to provide or obtain.

O. Transfer of Tax Losses and Business Reasons

Article 69-B Bis is amended with the aim to stress that what is presumed is not the illegal transfer of the tax losses but the illegal transfer of the right to transfer the tax losses when based upon the available information it is identified that the taxpayer having this right was part of a restructuring, a merger or a spin-off or part of a change of shareholders upon which the taxpayer left the relevant group. Likewise, in terms of the amendments of this Article 69-B Bis, the tax authorities are required to notify the foregoing presumption to the taxpayer that obtained the tax losses so that the latter is able to challenge such a presumption within the following 20 working days. The taxpayer challenging this presumption should indicate the underlying purpose of the transactions that triggered the transfer of the right to use the tax losses so as to permit the tax authorities to determine whether or not the preponderant objective of such transfer was the conduction of its commercial activities as oppose to securing a tax benefit. Taxpayers would be allowed to request for one time only a 10-day extension to provide the information refereed above.

The tax authorities will analyze the arguments, information and documentation provided by the taxpayer within a period not exceeding six months and will be empowered to request additional information within the first 10 days of the six-month period. The information so requested must be provided by the taxpayer within the following 10 days computed as of the following day in which the notification was legally effective.

One last paragraph is added to Article 69-Bis B to consider that when the tax situation is not rectified by the taxpayer, the tax authorities would be entitled to initiate a formal audit without prejudice of the sanctions applicable in terms of the FTC and of the application of the FTC provisions regarding simulated transactions.

P. Alternative Dispute Resolution Mechanism (*Acuerdos Conclusivos* - Conclusive Agreements)

Article 69-C is amended to regulate further the *Acuerdo Conclusivo* procedure filed before the Mexican Tax Ombudsman ("Prodecon") by stating that taxpayers are entitled to file for the adoption of a conclusive agreement at any moment during an audit and up to within the 20 days following that in which the (i) final audit minute is concluded, (ii) the letter of observations is notified, or (iii) the provisional resolution is notified, provided that in all cases the tax inspector has already made a qualification of the corresponding facts and omissions.

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The filing for the adoption of a conclusive agreement would not be processed in the following cases:

a. Regarding verification activities carried out to determine the validity of favorable tax balance refund requests or of the tax payments not due in terms of Sections 22 and 22-D of the FTC.
b. Regarding verification activities carried out through requests addressed to third parties in terms of Sections II, III, or IX of Article 42 of the FTC.
c. Regarding acts performed upon the fulfillment of administrative resolutions or court decisions.
d. Once the 20-day period referred above has elapsed.
e. In connection with taxpayers falling within the hypotheses referred to in the second and fourth paragraphs (this in its last part) of Article 69-B of the FTC.

The foregoing new limitations are triggered because of the abuse some taxpayers have made of this *acuerdo conclusivo* procedure when using it for purposes of delaying audit procedures and tax assessments and collection actions to the extent possible, in many cases without the intention to settle.

The amendments limit the hypotheses under which taxpayers are entitled to file the *acuerdo conclusivo*, being the most worrisome limitation the one relating to the timing taxpayers have to file the *acuerdo conclusivo* request to 20 days as described above. The current timing for filing is up to six months, which is the time SAT has to issue a tax assessment, after the 12-month inspection stage. The amendment reduces the filing period to 20 days, which among other effects may temper the opportunity to settle in connection with the alternative of reaching a comprehensive agreement for all open years. This would force to expedite the audit procedures within a very short time periods.

Article 69-F of the FTC is amended to make reference to the new order of paragraphs of Article 67. As such, in terms of this Article 69-F, the terms referred to by Articles 46-A, first paragraph, 50, first paragraph, 53-B, and 67, sixth paragraph, will be suspended as of the moment the filing for the adoption of the conclusive agreement is made and up to the moment the conclusion of the conclusive agreement is notified to the tax authorities.

Article 69-H of the FTC is amended to state that the conclusive agreements reached and subscribed by the taxpayer and the tax authorities cannot be challenged either through the filing of any remedy or through the filing of a mutual agreement procedure in terms of the corresponding double tax convention.

Q. The Kill Switch Penalty

Article 90-A is added to establish that public telecommunications network concessionaires that do not comply with the instruction to block the access to digital services within the following five days upon receiving the instruction, will be penalized with a fine that may fluctuate from $500,000 (approx. US$25,000) to $1,000,000 pesos (approx. US$50,000). The same penalty would apply in cases where the public telecommunications network concessionaires do not comply with the instructions to lift the blockade to the access of digital services within the five days as of the one receiving the instruction. This sanction will be imposed for each calendar month that elapses without complying with the instruction given by the tax authorities.

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R. The Administrative Appeal ("*recurso de revocación*")

Article 123 of the FTC is amended to state that in cases where documents are filed in a language different from Spanish, they must be accompanied by their corresponding translation into Spanish.

S. Terms during which resolutions must be complied by the tax authorities

Article 133-A of the FTC is amended to state that the timing given to the tax authorities to comply with the corresponding resolutions will be computed as of the day in which the 30-day term given to challenge the resolutions elapses. Before this, the term was of 15 days.

V. Reportable Schemes/Disclosure Obligations - Administrative Guidelines

On November 18, 2020, the Tax Administration published the Administrative Guidelines ("AG") 2.22.1 to 2.22.28 setting forth the specific reporting obligations for taxpayers and tax advisors in connection with the reportable schemes they have participated on in any of the manners described by the FTC.

The AGs although quite extensive, for the time being, have not set forth the long expected economic thresholds per scheme that would trigger the report. As such, since there is no threshold, all reportable schemes need to be disclosed, regardless of the amount involved in the scheme.

These Guidelines are intended to provide an itemized description of requirements that the corresponding report needs to comply with. Also, a number of Annexes were published for the filing of the information requested in the AGs.

Below, you will find the general (not exhaustive) lines of the information reportable by taxpayers and advisors as well as the information and reports taxpayers are bound to provide in cases where sharing responsibility to report exists.

Note that the AGs specify the reportable information to be disclosed by taxpayers and tax advisors in connection with each of the reportable schemes described in Sections I through XIV of Article 199 of the FTC. In most cases, the requested information to be provided across the list of reportable schemes is the same, but supplemented by the specific information requests depending on the type and nature of the reportable scheme.

Here is a general description of the information that needs to be provided in connection with all reportable schemes described in Article 199 of the FTC as per the AGs 2.22.1, 2.22.2, and 2.22.3. Keep in mind that a reportable scheme is the one that generates, directly or indirectly, a tax benefit in Mexico and has any of the following characteristics:

1. Section I, Article 199 of the FTC (AG 2.22.4)

Avoid the exchange of tax information under the Foreign Account Tax Compliant Act ("FATCA") and the Common Reporting Standard ("CRS"). Regarding CRS this Section would not apply as long as the taxpayer had received information and documentation from an intermediary showing that the information has already been revealed to foreign tax authorities.

A. In the case of both generalized and personalized reportable schemes:

a. A diagram that permits to observe:

i. All the legal transactions and facts that form part of the plan, project, proposal, advice, instruction and/or recommendation conforming the reportable scheme;

ii. The country or jurisdictions where the parties involved in the reportable scheme are or will be located; and

iii. The legislation under which the legal transactions or facts integrating the reportable scheme will be carried out.

b. The background and conclusions that integrate the context of the reportable scheme, as well as the legal argumentation supporting the corresponding interpretation.

c. State in detail by means of which legal transaction or facts, financial products, instruments or investments, the exchange of tax or financial information with the Mexican tax authorities is or will be prevented.

d. State if upon the implementation of the reportable scheme, taxpayers beneficiaries or whomever is to obtain the tax benefit, are assisted by individuals, entities or legal figures abroad or in Mexico, to prevent foreign tax authorities from exchanging tax or financial information with the Mexican tax authorities.

e. State the sequence in which the transactions integrating the reportable scheme are carried out or will be carried out.

f. State whether the taxpayers who obtain or will obtain the tax benefit upon the implementation of the reportable scheme, enter or will enter transactions with individuals or financial institutions residing in a country or jurisdiction with which Mexico does not have an exchange of tax information agreement or a treaty to avoid double taxation.

g. Indicate the country or jurisdiction in connection with the exchange of information is prevented or will be prevented.

B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 1, A. above, the following information and documentation must be disclosed and provided:

a. The exact or approximate date on which the legal transactions were carried out or will be carried out to integrate the reportable scheme and, if applicable, the value of such transactions.

b. If the benefited taxpayers are assisted by individuals, entities or legal figures abroad or in Mexico, provide their identification data, as well their taxpayers id number, country or jurisdiction of residence and/or incorporation, the type of business activity performed and their tax domicile. In case of legal figures, the country or jurisdiction of formation and, if applicable, their registration, must be stated.

c. State the business reasons and motives for which beneficiary taxpayer or the potential beneficiary prevents or will prevent the exchange of tax and financial information between the foreign and Mexican tax authorities.

d. Data of the financial institution that would be subject to report, such as the name, country of residence and the taxpayer id number, if applicable, and the business address.

In case the tax advisor or taxpayer does not have the information and documentation referred in items A and B above, they must state under oath the reason why they do not have such information.

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2. Section II, Article 199 of the FTC (AG 2.22.5)

Avoid the application of Article 4-B of the ITL.

A. In the case of both generalized and personalized reportable schemes:

- **a.** Same as in Section V, 1, A, a. above.
- **b.** Same as in Section V, 1, B, b. above.
- **c.** State in detail by means of which legal transaction or facts, financial products, instruments or investments, the application of Article 4-B of the ITL is or will be prevented.
- **d.** State if upon the implementation of the reportable scheme, taxpayers beneficiaries or whomever is to obtain the tax benefit, are assisted by individuals, entities or legal figures abroad or in Mexico, to prevent the application of Article 4-B of the ITL.
- **e.** Same as in Section V, 1, A, e. above.

B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 2, A. above, the following information and documentation must be disclosed and provided:

- **a.** Same as in Section V, 1, B, a. above.
- **b.** Same as in Section V, 1, B, b. above.
- **c.** In case the parties participating in the reportable scheme are related parties, this situation should be informed.

In case the tax advisor or taxpayer does not have the information and documentation referred in items A and B above, they must state under oath the reason why they do not have such information.

3. Rule 2.22.6 of the Administrative Guidelines (AG 2.22.6)

Avoid the application of Mexico's CFC rules established under Chapter I, Title VI of the ITL.

A. In the case of both generalized and personalized reportable schemes:

- **a.** Same as in Section V, 1, A, a. above.
- **b.** Same as in Section V, 1, B, b. above.
- **c.** State a detailed description of the legal transactions and facts that prevent or will prevent the application of Chapter I, Title VI of the ITL.
- **d.** State if upon the implementation of the reportable scheme, taxpayers beneficiaries or whomever is to obtain the tax benefit, are assisted by individuals, entities or legal figures abroad or in Mexico, to prevent or will prevent the application of Chapter I, Title VI of the ITL.
- **e.** Same as in Section V, 1, A, e. above.

B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 3, A. above, the following information and documentation must be disclosed and provided:

- **a.** Same as in Section V, 1, B, a. above.
- **b.** Same as in Section V, 1, B, b. above.

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c. Same as in Section V, 2, B, c. above.

d. State in detail the reasons upon which the taxpayer is not located or will not be located in any of the hypotheses set forth in Article 176, eleventh paragraph, Sections I, II, III, IV or V of the ITL.

In case the tax advisor or taxpayer does not have the information and documentation referred in items A and B above, they must state under oath the reason why they do not have such information.

4. Section III, Article 199 of the FTC (AG 2.22.7)

Consists of a transaction or a series of transactions allowing the transfer of tax losses to an entity different to the one that generated them.

A. In the case of both generalized and personalized reportable schemes:

a. Same as in Section V, 1, A, a. above.

b. Same as in Section V, 1, B, b. above.

c. State in detail by which legal transactions or facts the tax losses pending amortization against profits are transferred to taxpayers other than those who generated the losses.

d. State if upon the implementation of the reportable scheme, taxpayers beneficiaries or whomever is to obtain the tax benefit, are assisted by individuals, entities or legal figures abroad or in Mexico, to transfer tax losses to taxpayers other than the one generated the losses.

e. Same as in Section V, 2, A, e. above.

B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 4, A. above, the following information and documentation must be disclosed and provided:

a. Same as in Section V, 1, B, a. above.

b. Same as in Section V, 1, B, b. above.

c. Same as in Section V, 2, B, c. above.

d. Explain how the parties generating the tax losses pending amortization transfer or will transfer the tax losses to the benefited taxpayer.

e. State the business reasons upon which the party generating the tax losses pending amortization transfer or will transfer the losses to the beneficiary taxpayer.

f. State whether upon the transfer of tax losses because of a merger, spin-off or a change of shareholders the taxpayer leaves the corporate group it belonged to.

g. State whether the transfer of the tax losses is carried out or will be carried out upon a spin-off or a merger and, if applicable, identify the corresponding notarial deed reflecting the event.

h. Provide the financial statements used in the shareholding meeting where the decision is taken.

i. Information about the tax losses:

- The fiscal year in which the tax loss was generated and the amount thereof,
- The tax losses triggering event.
- The type of tax losses - *i.e.*, operating, etc.

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j. Information of the taxpayer generating the tax losses, such as name, country of incorporation and tax residence, taxpayer id number, business activity and address.

k. Information of the taxpayer to whom the tax loss is or will be transferred, such as, name, country of incorporation and tax residence, taxpayer id number, business activity and address.

In case the tax advisor or taxpayer does not have the information and documentation referred in items A and B above, they must state under oath the reason why they do not have such information.

5. Section IV of Article 199 of the FTC (AG 2.22.8)

Consists of a transaction or a series of interconnected transactions that refund the totality or part of the initial payment part of these series of transactions to the person that made it or to its partners or related parties.

A. In the case of both generalized and personalized reportable schemes:

a. Same as in Section V, 1, B, a. above.

b. Same as in Section V, 1, B, b. above.

c. State in detail through what series of interconnected payments or legal transactions or facts all or part of the first payment that is part of said series of payments or transactions is retuned or will be returned to the person who made or will make it or to any of its partners, shareholders or related parties.

d. State if upon the implementation of the reportable scheme, taxpayers beneficiaries are assisted by individuals, entities or legal figures abroad or in Mexico to perform interconnected payments or transactions where all or part of the first payment being part of said series of payments or transactions is retuned or will be returned to the person who made or will make it or to any of its partners, shareholders or related parties.

e. Same as in Section V, 1, A, e. above.

B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 5, A. above, the following information and documentation must be disclosed and provided:

a. Same as in Section V, 1, B, a. above.

b. If the benefited taxpayers are assisted by an individual, legal entities or legal figures abroad or in Mexico regarding the payments or interconnected transactions, the name, taxpayer id number, country of incorporation and residence, type of business activity and address of those helpers will need to be revealed.

c. Same as in V, 2, B. c. above.

d. State the business reason upon which it is decided to implement the series of interconnected payments or transactions where all or part of the first payment that is part of said series of payments or transactions is retuned or will be returned to the person who made or will make it or to any of its partners, shareholders or related parties.

e. State the concept of all payments that are made or will be made, the country in which they are made or will be made, the amount of each of them, the date on which they are made or will be made, as well as the means through which they are or will be made.

f. Indicate in detail all the legal transactions that are carried out or will be carried out, the country in which they are carried out or will be carried out,

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the amount of each of them and the date on which they are performed or will be performed.

g. Information of the parties that make or will be making payments or performing transactions, as well as the parties that receive or will be receiving the payments, such as, name, country of residence, country of incorporation, taxpayer id number, and if applicable, the type of business activity and address.

h. Information of the partners, shareholders or related parties of the parties carrying out or that will be performing payments or transactions and of the parties that receive or will receive the payments, such as, name, country of residence, country of incorporation, taxpayers id numbers, and if applicable, the type of business activity and address.

i. State if the parties participating or that will be participating in the scheme are part of a group.

j. Indicate the details of the back payments:

- Name, country of residence, country of incorporation, taxpayer id numbers, and as appropriate, the type of business activity as appropriate, activity or business and the address of the parties to whom the back payments are or will be made.
- Amount of each of the back payments that are or will be returned.
- Dates on which the back payments are or will be made.
- Means through which the back payments are or will be made.
- The business reasons why the back payments are or will be made.
- Accounting records generated for each payment and transaction carried out.

In case the tax advisor or taxpayer does not have the information and documentation referred in items A and B above, they must state under oath the reason why they do not have such information.

6. Section V of Article 199 of the FTC (AG 2.22.9)

Involves a non-resident applying a double tax convention signed by Mexico regarding income not subject to taxation in the country of tax residence of the taxpayer; the same would apply when the income is subject to a rate lower than the corporate rate applicable in the country of residence of the taxpayer.

A. In the case of both generalized and personalized reportable schemes:

a. Same as in Section V, 1, B, a. above.

b. Same as in Section V, 1, B, b. above.

c. State in detail through which legal transactions the resident abroad applies or will apply a double tax convention Mexico is part of, regarding income not taxed in the country of tax residence of the taxpayer, or taxed at a reduced rate compared to the corporate rate in the taxpayer's country of tax residence.

d. State whether upon the implementation of the reportable scheme, taxpayers beneficiaries are assisted by individuals, legal entities or legal figures abroad or in Mexico so that a resident abroad applies a double tax convention Mexico is part of, regarding income not taxed in the country of tax residence of the taxpayer, or taxed at a reduced rate compared to the corporate rate applicable in the country of tax residence of the taxpayer.

e. Same as in V, 1, A, e. above.

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B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 6, A. above, the following information and documentation must be disclosed and provided:

a. Same as in Section V, 1, A, a. above.
b. Same as in Section V, 1, B, b. above.
c. Same as in Section V, 2, B, c. above.
d. State under oath if the resident abroad applies or will apply a double tax convention regarding income not taxed in its country of tax residence, or taxed with a reduced rate compared to the corporate rate in the country its tax residence, being the beneficial owner of the income for which it applies the convention.
e. State the applicable provisions of the double tax convention Mexico is part of.
f. State the business reason upon which the resident abroad carries or will carry out the transaction to which the double tax convention Mexico applies or will apply to avoid double taxation, with respect to income not taxed in the country of tax residence of the taxpayer, or taxed with a reduced rate compared to the corporate rate in the country of tax residence of the taxpayer.
g. State the type of income that is generated or that will be generated, dividends, technical assistance, interest, royalties, among others. In the case of technical assistance, the country or jurisdiction where it is provided or will be provided.
h. Information of the resident abroad who applies or will apply the double tax convention Mexico is part of, regarding income not taxed or taxed at a rate reduced in the country or jurisdiction of tax residence of the taxpayer, such as, name, country of residence and incorporation, taxpayer id number, type of business activity and address.
i. Information regarding the activity or activities for which the income is derived or will be derived:

- Activities that are carried out or will be carried out and describe what they consist of.
- Date on which they are or will be carried out.
- Country in which they are carried out or will be carried out.
- Activities that are not taxed in the country of tax residence of the resident abroad.
- Activities that are taxed at a reduced rate compared to the rate applicable in the country or jurisdiction of tax residence of the taxpayer.

In case the tax advisor or taxpayer does not have the information and documentation referred in items A and B above, they must state under oath the reason why they do not have such information.

7. Section VI, a. of Article 199 of the FTC (AG 2.22.10)

A related party transaction where intangibles which value is difficult to determine are transferred.

A. In the case of both generalized and personalized reportable schemes:

a. Same as in Section V, 1, B, a. above.
b. Same as in Section V, 1, B, b. above.

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c. State in detail the related party transactions whereby difficult to value intangibles ("DVI") are or will be transferred.

d. State the beneficial owners of the implementation of the scheme: the taxpayer residing in Mexico, the non-resident with a PE in Mexico or the non-resident related party.

e. State whether upon the implementation of the reportable scheme, the taxpayers beneficiaries are assisted by individuals, legal entities or legal figures abroad or in Mexico to transfer the DVI referred above.

f. Same as in Section V, 1, A. e. above.

B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 7, A. above, the following information and documentation must be disclosed and provided:

a. Same as in Section V, 1, A, a. above.

b. Same as in Section V, 1, B, b. above.

c. State the business reasons upon which the DVI are or will be transferred.

d. Information of the party transferring the DVI, such as name, address, tax residence, place of incorporation and taxpayer id number.

e. Information of the party acquiring the DVI, such as name, address, tax residence, place of incorporation and taxpayer id number.

f. Information regarding the DVI that are transferred or that will be transferred:

- The DVI transferred or to be transferred.
- The value assigned to the DVI transferred or to be transferred.
- The date of the transfer of the DVI. If the transfer has not taken place yet, its estimated date.
- The amount of the consideration for the transfer of the DVI as well as to the manner in which such payment will be made, whether through a cash or in-kind payment or any other form extinguishing the payment obligation.
- State whether if in the corresponding transactions transferring the DVI, a clause is established stating that in the event that the economic benefit that is generated by the intangibles transferred is significantly different from the estimated benefits, a future adjustment of the consideration or a possible renegotiation of the consideration would be made.
- The methodology used to determine the value of the DVI assets transferred or that will be transferred as well as the justification to apply such methodology.
- State whether the methodology used to determine the value of the DVI transferred or to be transferred reflects the arm's length nature of the transaction.
- Provide details of the calculations performed or to be performed to apply the methodology used to determine the value of the DVI that will be transferred, and where appropriate, indicate whether it was or will be prepared by a third party or by the taxpayer.

g. In the event that the acquirer is a resident in Mexico or a resident abroad with PE in Mexico, the following information must be provided:

- The parties involved in the transaction and the name of the party that will register the intangible assets.

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- The heading/line under which the transaction will be recorded in the financial statement of the taxpayer, as well as the amount of such transaction.
- The accounting entries corresponding to the acquisition of intangible assets.
- The rules applied or to be applied by the taxpayer to define the accounting framework: Financial Reporting Standards, International Accounting Standards, among others.

In case the tax advisor or taxpayer does not have the information and documentation referred in items A and B above, they must state under oath the reason why they do not have such information.

8. Section VI, b. of Article 199 of the FTC (AG 2.22.11)

Corporate reorganizations where no consideration is paid for the transfer of assets, risks and functions or when upon the reorganization corporate taxpayers reduce their profits in more than 20%.

A. In the case of both generalized and personalized reportable schemes:

a. Same as in Section V, 1, B, a. above.
b. Same as in Section V, 1, B, b. above.
c. State a detail description of the transactions performed or to be performed for the reorganizations to be implemented.
d. State the beneficial owners of the implementation of the scheme: the taxpayer residing in Mexico, the non-resident with a PE in Mexico or the non-resident related party.
e. State whether upon the implementation of the reportable scheme, taxpayers beneficiaries are assisted by individuals, legal entities or legal figures abroad or in Mexico to perform related party transaction within the context of the implementation of the reorganization.
f. Same as in Section V, 1, A. e. above.
g. State if the reorganizations involving a Mexican resident or a non-resident with a PE in Mexico entails or will entail the conversion of the distribution model; the conversion of the manufacturing model; the transfer of intangibles to another entity belonging to the same corporate group or the assignment of risks to one or more entities of the same corporate group; the adjustment of operations, including the reduction of the size of the business or economic activity and the change or shut down of operations in Mexico.
h. In the event that the reorganization implies the conversion of the manufacturing model in Mexico the adopted model must be stated: consignment manufacturing, contract manufacturing; limited risk manufacturing; full-fledged manufacturing, assembler or some other type.
i. In the event the reorganization involves or is expected to involve the conversion of the distribution model in Mexico, the adopted model must be stated: distributor; limited risk distributor; full risk distributor; commission agent, or some other kind.

B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 8, A. above, the following information and documentation must be disclosed and provided:

a. Same as in Section V, 1, A, a. above.
b. Same as in Section V, 1, B, b. above.

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c. Information of all the entities forming the corporate group involved or that will be involved in the reorganization, such as, the name, country of residence, country of incorporation, taxpayers id number, type of business activity and address.

d. Name of the corporate group to which the related parties participating in the corporate reorganization belong, as well as the country where the headquarters of the corporate group are located.

e. Information of the corporate reorganization:

- State the identification registry number of the notarial deed reflecting the reorganization
- Provide the financial statements used in the shareholders' meeting to carry out such reorganization, as well as the financial statements derived from the spin-offs and the mergers.
- State whether the tax authority authorized the tax deferral in terms of Article 161 of the ITL. If applicable, state the number and date of the official letter authorizing the deferral.
- State if the tax authority authorized the sale of shares at tax cost in terms of Article 24 of the ITL. If applicable, state the number and date of the official letter authorizing the sale at tax cost.
- State whether the reorganization applies or will apply the provisions of article 13 of the double tax conventions executed by Mexico, as well as the benefits derived from shareholding restructurings set forth in some of these conventions.
- State whether due to the transfer of assets, functions or risks, a consideration is paid or will be paid, as well as the amount of the payment thereof. In case where no consideration is payable, state the business reasons for it.
- State if any taxpayer who benefits or plans to benefit pays income tax in terms of Title II of the ITL.
- State in what percentage the taxpayer's tax profit is reduced or will be reduced upon the corporate reorganization. For such purposes, the tax profit determined for the last three years prior to the reorganization, as well as the estimated tax profits for the three years following the reorganization must be stated.
- State the business reason upon which, as a result of the corporate reorganization, the taxpayer paying taxes in terms of Title II of the ITL involved in the reorganization reduce or will reduce its operating profit by more than 20%.

f. The business reasons for carrying out the business reorganization, including the detail description of the changes in the taxpayer's business and operating models.

g. State if upon the corporate reorganization the non-resident creates a PE in Mexico.

h. State if upon the corporate reorganization and the related party transactions thereon, Mexican income tax is intended to be paid. If so, state the amount of such tax. If not, state the reasons or motives that justify not paying income tax in Mexico.

i. State if upon the corporate reorganization the assets, functions and risks of the entities integrating the corporate group are or will be relocated. If so, state in which country they are or will be relocated.

j. The amount of net financial and tax savings derived or that will derive from the corporate reorganization.

k. State if in addition to the net savings generated in the country in which the assets, functions and risks are relocated, any other economic benefit is

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generated or will be generated in the country where they were located. If yes, state what these benefits are.

l. The amount of production or services costs incurred in Mexico, as well as the amounts of the costs incurred in the country where the assets, functions and risks are or will be relocated.

m. State how the reasons for the transfer of assets, functions and risks within the context of the corporate reorganization are documented.

n. State if the resident or residents in Mexico or residents abroad with a PE in Mexico, which are part of the corporate reorganization, evaluated alternative options to restructuring. If so, indicate how this situation has been documented.

o. State if upon the corporate reorganization current agreements are terminated or substantially renegotiated. If so, provide details of such contractual modifications.

p. State the reasons why it is considered that the legal form established in the relevant contracts does not differ from the economic substance of the related party transactions of the entities involved in the corporate reorganization, as well as from the nature of the activities carried out by each of the parties involved.

In case the tax advisor or taxpayer does not have the information and documentation referred in items A and B above, they must state under oath the reason why they do not have such information.

9. Section VI, c. of Article 199 of the FTC (AG 2.22.12).

The transfer of the temporary use and enjoyment of goods and rights without the payment of any consideration or services are rendered or functions performed for no remuneration.

A. In the case of both generalized and personalized reportable schemes:

a. Same as in Section V, 1, B, a. above.

b. Same as in Section V, 1, B, b. above.

c. Detailed description of the transactions upon which the temporary use and enjoyment of goods is transferred for no consideration. The same would apply to services provided or that will be provided or functions performed for no consideration.

d. State who are or will be the beneficial owner or taxpayer beneficiary of the implementation of the reportable scheme: the taxpayer residing in Mexico, the non-resident with PE in Mexico or a related party residing abroad.

e. State whether upon the implementation of the reportable scheme, taxpayers beneficiaries are assisted or will be assisted by individuals, legal entities or legal figures abroad or in Mexico to carry out the related party transactions whereby the transfer of the temporary use and enjoyment of goods and rights is effected without any consideration, or services or functions rendered or performed for free.

f. State which transactions of the reportable scheme are executed or will be executed between related parties in which the temporary use or enjoyment is transferred for no consideration, or services provided or functions perform for free.

g. Same as in Section V, 1, A. e. above.

B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 9, A. above, the following information and documentation must be disclosed and provided:

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a. Same as in Section V, 1, A, a. above.

b. Same as in Section V, 1, B, b. above.

c. Information of the parties that transfer or grant the temporary use and enjoyment of goods for no considerations, such as name, country of residence and incorporation, taxpayer id number, type of business activity and address.

d. Information of the parties receiving or that will receive or benefit from the temporary use and enjoyment of such rights for no consideration, such as name, country of residence and incorporation, taxpayer id number, type of business activity and address.

e. Information of the parties providing services or performing functions for no consideration such as name, country of residence and incorporation, taxpayer id number, type of business activity and address.

f. Information of the parties receiving or that will receive or benefit from the provision of services or the performance of functions for free, such as name, country of residence and incorporation, taxpayers id number, type of business activities and address.

g. Information on the goods or rights with respect to which the temporary use and enjoyment is transferred or granted.

- State the goods and rights involved. In the case of goods, it should be noted whether they are tangible or intangible.
- Country or jurisdiction where the property is located.
- Estimated value of the temporary use or enjoyment of the goods or rights.
- Date of the transfer or granting of the goods and rights, or the approximate date the transfer is expected to be carried out.
- State the business reason why there is no consideration for the foregoing transactions.

h. Information on the services that are provided or will be provided, or the functions that are performed or will be performed:

- State services and functions involved.
- The country or jurisdiction in which the services are or will be provided or where the functions will be performed.
- Describe the type of services and functions and the manner in which they will be rendered or performed.
- Estimated value of remuneration for services or functions.
- Date of the provision of the service or of the performance of the functions, or the approximate date they are expected to performed.
- State the business reason upon which no consideration is payable for the provision of services or the performance of functions.

i. State whether the transfer of the temporary use or enjoyment of the goods or rights, or the provision of services or the performance of functions, implies the transfer of contractual rights as a consequence that a resident in Mexico voluntarily terminated a contract in advance with the objective that one of its related parties enter into a similar contract and obtain the benefits originally established in the first contract. The same would be applicable within the context of a contract terminated prematurely by a PE in Mexico of a resident abroad with the objective that a related party of that PE enjoys the benefits embedded in the original contract.

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In case the tax advisor or taxpayer does not have the information and documentation referred in items A and B above, they must state under oath the reason why they do not have such information.

10. Section VI, d. of Article 199 of the FTC (AG 2.22.13).

In cases where no proper comparables exist for the specific transaction because of the unique or high value functions and assets.

A. In the case of both generalized and personalized reportable schemes:

- **a.** Same as in Section V, 1, B, a. above.
- **b.** Same as in Section V, 1, B, b. above.
- **c.** State in detail the transactions that do not have reliable comparables for which the unique and high value type of assets and functions were into play.
- **d.** State who are or will be the beneficial owners of the implementation of the scheme: the taxpayer residing in Mexico, the non-resident with PE in Mexico or related party residing abroad.
- **e.** State whether upon the implementation of the reportable scheme, taxpayers beneficiaries are assisted by individuals, legal entities or legal figures abroad or in Mexico to carry out related party transactions in connection with no reliable comparables exist because of the unique and high value of the assets and functions.
- **f.** State which transactions of the reportable scheme are executed or will be executed between related parties in which the temporary use or enjoyment of goods is transferred for no consideration, or services provided or functions perform for free.
- **g.** Same as in Section V, 1, A. e. above.

B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 10, A. above, the following information and documentation must be disclosed and provided:

- **a.** Same as in Section V, 1, A, a. above.
- **b.** Same as in Section V, 1, B, b. above.
- **c.** State the business reasons upon which related party transactions involve unique and high value assets and functions of which no reliable comparables exist.
- **d.** Information of the parties participating in the related party transactions in connection with no reliable comparables exist because of the unique and high value of the assets and functions, such as the name, country of residence and incorporation, taxpayer id number and address.
- **e.** Information of the related party transactions performed in connection with or involving unique and high value assets and functions:
  - The transactions that will be performed.
  - The unique and high value assets and functions related to the transactions that will be performed along with their description.
  - The value of the unique and high value assets and functions, indicating the gain percentage.
  - State, within the context of the related party transactions where no reliable comparables exist because of the unique and high value assets and functions, the amount of the consideration payable.
  - State, if in the related party transactions where no reliable comparables exist because of the unique and high value assets and functions a clause is or will be included stating that in case the

economic benefits generated by the unique and high value assets and functions are significantly different from those originally estimated, a post transaction adjustment would be made to the consideration or the possibility for a re-negotiation would exist.

- The methodology used to determine the arm's length consideration applicable to the related party transactions involving unique and high value assets and functions along with the justification for the implementation of such methodology.

f. In cases where the acquirer of the unique and high value assets and functions is a resident of Mexico, or a non-resident with a PE in Mexico, the following information must be provided:

- The parties involved in the transaction and the name of the party that will register the corresponding assets in the financial statements.
- The heading/line under which the transaction will be recorded in the financial statement of the taxpayer, as well as the amount of such transaction.
- The accounting entries corresponding to these transactions.
- The rules applied or to be applied by the taxpayer to define the accounting framework: Financial Reporting Standards, International Accounting Standards, among others.

In case the tax advisor or taxpayer does not have the information and documentation referred in items A and B above, they must state under oath the reason why they do not have such information.

11. Section VI, e. of Article 199 of the FTC (AG 2.22.14).

In cases where unilateral protective regimes granted within the context of foreign legislation as per the OECD Transfer Pricing Guidelines (we may assume it refers to APAs and safe harbors) are used.

A. In the case of both generalized and personalized reportable schemes:

a. Same as in Section V, 1, B, a. above.
b. Same as in Section V, 1, B, b. above.
c. State the transaction within the context where unilateral protective regimes are applied.
d. State if upon the implementation of a reportable scheme, the taxpayers beneficiaries are assisted or will be assisted by individuals, legal entities or legal figures abroad or in Mexico to carry out related party transactions where unilateral protective regimes are used.
e. Same as in Section V, 1, A. e. above.

B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 11, A. above, the following information and documentation must be disclosed and provided:

a. Same as in Section V, 1, A, a. above.
b. Same as in Section V, 1, B, b. above.

c. State the beneficial owners of the implementation of the scheme: the taxpayer residing in Mexico, the non-resident with a PE in Mexico or the non-resident related party.

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d. State the business reasons upon which the taxpayer beneficiary performs related party transactions within the context of the utilization of unilateral protective regimes.

e. Information of the related parties participating in the corresponding transactions, such as name, country of residence or incorporation, taxpayer id number, type of business activity and address.

f. Information about the unilateral protective regimes used.

- State the country granting the unilateral protection.
- State the benefits granted by the unilateral protection regime.
- State the transactions to which the unilateral protection regime is applicable.
- State the business reasons upon which the unilateral protection regime will be used.

g. State the specifics of the transaction to which the unilateral protective regime will be applicable and what transactions will not be subject to the unilateral protective regime.

h. The transfer pricing methodology to determine the arm's length consideration applicable to the transactions performed under the scope of the unilateral preventive regime.

i. Within the context of the transfer pricing methodology used, state the description of the characteristics of the transactions performed under the unilateral protective regime as well as the manner in which the identified comparables will be used.

j. State the profit level indicator used or to be used upon applying the corresponding transfer pricing methodology.

k. State the transactions that will be performed under the umbrella of unilateral protective regimes and specify to what type of economic segment the transactions are related to - manufacturing, sale and distribution, or services, industries.

l. State if the taxpayer with which the transaction will be performed operates under unilateral protective regimes under the Mexican legislation.

In case the tax advisor or taxpayer does not have the information and documentation referred in items A and B above, they must state under oath the reason why they do not have such information.

12. Section VII of Article 199 of the FTC (AG 2.22.15).

In cases where it is prevented the creation of a permanent establishment in Mexico.

A. In the case of both generalized and personalized reportable schemes:

a. Same as in Section V, 1, B, a. above.

b. Same as in Section V, 1, B, b. above.

c. Describe in detail the transactions that would prevent the creation of a PE in Mexico in terms of the ITL and the double tax conventions signed by Mexico.

e. Described whether upon the implementation of the reportable scheme, taxpayers beneficiaries are assisted by individuals, legal entities or legal figures abroad or in Mexico to prevent the creation of a PE in Mexico in terms of the ITL and the double tax conventions signed by Mexico.

d. Indicate the transactions forming part of the reportable scheme that prevent the creation of a PE in Mexico in terms of the ITL and double tax conventions signed by Mexico.

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f. Same as in Section V, 1, A. e. above.

B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 12, A. above, the following information and documentation must be disclosed and provided:

a. Same as in Section V, 1, A, a. above.
b. Same as in Section V, 1, B, b. above.
c. State if the parties (individuals) participating in the reportable scheme are related.
d. State the business reasons the taxpayers beneficiaries have to prevent the creation of a PE in Mexico.
e. State if the non-resident prevents or will prevent the creation of a PE in Mexico upon the fact that the non-resident does not fall within any of the hypotheses set forth in Articles 2 of the ITL and 64 of the Hydrocarbons Revenue Law or in any of the hypotheses set forth in Article 3 of the ITL. The foregoing would need to be supported by the corresponding reasoning.
f. State whether the resident abroad prevents or will prevent the creation of a PE in Mexico in terms of the double tax conventions signed by Mexico. If so, this would need to be supported by the corresponding reasoning.
g. In case the business activities perform or to be performed by the non-resident imply the manufacturing of good in Mexico, describe the business model used or to be used: consignment manufacturing, limited risk manufacturing, full-fledged manufacturing, etc.
h. In case the business activities perform or to be performed by the non-resident imply the distribution of goods in Mexico, describe the business model used or to be used: distributor, limited risk distributor, commissionaire, etc.
i. In case the business activities perform or to be performed by the non-resident imply transportation services, warehousing, manufacturing, distribution, or any other activity that is needed to carry on its business activities, state if such activities are performed or will be performed with related parties.
j. The transfer pricing methodology used to support the arm's length standard.
k. The name, country or residence, country of incorporation, taxpayer id number, type of business activities and address of the taxpayer preventing the creation of a PE in Mexico.
l. State if the parties (entities) participating in the reportable schemes are related.
m. State if a double tax convention executed between Mexico and the country of residence of the non-resident is in force.
n. State if the taxpayer implementing the reportable scheme has in place an agreement, business or any other legal figure and if so, provide the name, country of residence, country of incorporation, taxpayer id number, type of business and address of such other person or entity.

o. State if the non-resident preventing the creation of a PE in Mexico carries out activities of a preparatory and/or ancillary nature *vis-a-vis* itself or related parties.
p. In case of provision of services, state the duration of the services that will be rendered within the Mexican territory. In dealing with

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construction services, state the time during which the services will be rendered within the Mexican territory.

In case the tax advisor or taxpayer does not have the information and documentation referred in items A and B above, they must state under oath the reason why they do not have such information.

13. Section VIII of Article 199 of the FTC (AG 2.22.16).

In cases where depreciated asses (partially or in full) are transferred and the acquirer is allowed to depreciate them.

A. In the case of both generalized and personalized reportable schemes:

a. Same as in Section V, 1, B, a. above.
b. Same as in Section V, 1, B, b. above.
c. Described in detail through which transactions, fully or partially depreciated assets are transferred and further depreciated by a related party.
d. State whether upon the implementation of the reportable scheme, taxpayers beneficiaries are assisted by individuals, legal entities or legal figures abroad or in Mexico to transfer assets fully or partially depreciated to another related party for the latter to depreciate it as well.
e. State in which transactions of the reportable scheme the fully or partially depreciated asset is transferred to another related party for the latter to depreciate it as well.
f. Same as in Section V, 1, A. e. above.
g. Characteristics of the assets that are or will be totally or partially depreciated.

B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 13, A. above, the following information and documentation must be disclosed and provided:

a. Same as in Section V, 1, A, a. above.
b. Same as in Section V, 1, B, b. above.
c. State the business reason upon which a fully or partially depreciated asset is transferred to a related party for the latter to depreciate it as well.
d. State the name, country of residence and the country of incorporation, taxpayer id number, type of business activity and address of the party transferring the fully or partially depreciated assets.
e. State the name, country of residence, country of its incorporation, taxpayer id number, type of business activity, and address of the related party of the person transferring the fully or partially depreciated assets.
f. State the country or jurisdiction where the full or partial depreciation of the transferred asset is or will be carried out.
g. State the assets original investment amount as per Article 31 of the ITL.
h. State whether the assets transferred will be imported or exported and their customs value.
i. State if asset will be fully or partially depreciated by the transferor.
j. State the type of fully or partially depreciated asset through which a tax benefit will be obtained.
k. State the original value of the fully or partially depreciated asset through which a tax benefit will be obtained.
l. State the depreciation rate at which the asset being transferred will be depreciated.

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m. The description of the fully or partially depreciated asset, through which a tax benefit will be obtained as well as its original cost of acquisition in terms of Article 31 of the ITL.

n. State the fiscal year in which the asset is transferred or will be transferred, as well as the fiscal year in which it is acquired or will be acquired by a resident in Mexico or a non-resident with a permanent establishment in Mexico.

o. State the year in which the asset has begun or will begin depreciation.

p. State if the asset is partially deductible in terms of the ITL.

q. State the total amount of depreciation that is considered or will be considered deductible.

r. In the event that the acquirer of the depreciated asset is a resident of Mexico or a non-resident with a PE in Mexico, the following information would need to be provided:

- Information of the parties involved in the transaction, such as the name of the person that will perform the asset registration in the corresponding financial statements.
- The heading/line under which the transaction will be recorded in the financial statement of the taxpayer, as well as the amount of such transaction
- The accounting entries corresponding to the specific transactions.
- The rules applied or to be applied by the taxpayer to define the accounting framework: Financial Reporting Standards, International Accounting Standards, among others.

In the event that the tax advisor or the taxpayer do not have the information and documentation indicated in the previous sections, must manifest it under protest of telling the truth, stating the motives and reasons of it.

14. Section IX of Article 199 of the FTC (AG 2.22.17).

In cases where the transactions involve the utilization of hybrid instruments as per Article 28, Section XXIII of the ITL.

A. In the case of both generalized and personalized reportable schemes:

a. Same as in Section V, 1, B, a. above.

b. Same as in Section V, 1, B, b. above.

c. State in detail if the transactions conforming the reportable scheme involve or will involve a hybrid instrument as per Article 28, Section XXIII of the ITL. For this purpose, a statement must be made on the reasons why the hybrid instrument is generated, that is, why the national and foreign tax legislation characterizes a legal entity, a legal status, the income or the owner of the assets or a payment differently.

d. Indicate whether due to the implementation of the reportable scheme, taxpayers beneficiaries are assisted by individuals, legal entities or legal figures abroad or in Mexico to obtain a tax benefit by using hybrid instruments as described in Article 28, Section XXIII of the ITL.

e. State in which transactions of the reportable scheme hybrid instruments are involved.

f. Same as in V, 1, A, e. above.

g. State if within the context of the reportable scheme a structured agreement has been or will be executed.

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B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 14, A. above, the following information and documentation must be disclosed and provided:

a. Same as in Section V, 1, B, b. above.
b. If the benefited taxpayers are assisted by individuals, legal entities or legal figures abroad or in Mexico, the name of the helpers, country of residence or incorporation, taxpayer id number, type of business activity and address, must be stated.
c. In the event that the parties involved in the reportable scheme are related, the same must be mentioned.
d. State the business reason why the beneficiary taxpayer performs or will perform a transaction involving a hybrid instrument in terms of Section XXIII of Article 28 of the ITL.
e. In the event that a structured agreement has been implemented or is expected to be implemented in the reportable scheme, state the names, country of residence and incorporation and the taxpayer id numbers of the parties participating in the structured agreement as well as the tax regime applicable to such parties in accordance with their domestic legislations.
f. State the name, country of residence and incorporation, taxpayer id numbers, type of business activity and addresses of the parties involved or that will be involved in the utilization of the hybrid instrument mechanism.
g. State if derived from the performance of a transaction involving a hybrid instrument or a structured agreement, the income derive or that will be derived is subject to a preferential tax regime. If so, state the concept under which those payments are or will be made, the amount of such payments, and if the payments are indirectly taxed upon the application of article 4-B or Title VI, Chapter I of the ITL, or similar provisions contained in the foreign tax legislation.
h. State the deductible amount of the payments for Mexican tax purposes or if the deduction is somehow limited in terms of Section XXIII of Article 28 of the ITL.
i. If applicable, state the deduction percentages abroad, as well as the amounts to be deducted or will be deducted abroad with respect to the assets kept and payments made abroad.
j. State the effective income tax rate triggered or that will be triggered and paid by the party receiving the payment abroad.

In the event that the tax advisor or the taxpayer do not have the information and documentation indicated in the previous sections, must manifest it under protest of telling the truth, stating the motives and reasons of it.

15. Section X of Article 199 of the FTC (AG 2.22.18).

In cases where the identity of the beneficial owner of the income and assets is hidden, even through the use of foreign legal entities or legal figures which beneficiaries are not designated or identified at the moment of their formation or later on.

A. In the case of both generalized and personalized reportable schemes:

a. Same as in Section V, 1, B, a. above.
b. Same as in Section V, 1, B, b. above.
c. State in detail the transactions through which the identity of the beneficial owner of the income and assets is hidden.

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d. State whether upon the implementation of the reportable scheme, taxpayers beneficiaries are assisted by individuals, legal entities and legal figures abroad or in Mexico, to avoid the identification of the beneficial owner of the income or assets.

e. State in which transactions of the reportable scheme the identification of the beneficial owner of the income or assets is avoided.

f. Same as in V, 1, A. e. above.

g. State in which way the identification of the beneficial owner of the income or assets is avoided.

h. State if financial institutions are involved in the reportable scheme.

i. A diagram showing the flow of the consideration received by the beneficial owner.

B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 15, A. above, the following information and documentation must be disclosed and provided:

a. Same as in Section V, 1, A, a. above.

b. If the benefited taxpayers are assisted by an individual, legal entities or legal figures abroad or in Mexico, indicate the name of the individual or the company, the taxpayer id number, country or jurisdiction of residence and incorporation; year of incorporation or formation, the type of business activity and address of the helpers. Likewise, state the way in which each of the aforementioned individuals or entities participates or will participate, as well as whether they do have effective control over the beneficial owner. For this, the participation percentage of each of the intervening parties shall be disclosed.

c. In case the parties participating in the reportable scheme are related the same must be stated.

d. The information of the individuals, legal entities or legal figures abroad or in Mexico involved in the payments flow must be stated; the name of the individuals or entities integrating the entity or legal figure, as well as their taxpayer id number, country of residence, incorporation or formation.

e. Information of the party avoiding identification as beneficial owner of income or assets, such as, name, country of residence, country of incorporation, taxpayer id number, type of business activity and address.

f. Information of the party making payments and hiding the identity of the beneficial owner of the income or assets, such as the name, country of residence and incorporation, taxpayer id number, type of business activity and address.

g. States the type and the amount of the income that is received or will be received in Mexico.

h. Description of the assets involved in the reportable scheme, as well as the assigned value of the assets. If applicable, indicate if the assets are or will be located in Mexico.

i. Description of the income involved in the reportable scheme, as well as the amount of said income.

j. In the event that the party generating the income or assets is a resident of Mexico or a non-resident with a PE in Mexico, the following information is needed:

- The parties involved in the transaction and the name of the party that will register the corresponding assets in the financial statements.

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- The heading/line under which the transaction will be recorded in the financial statement of the taxpayer, as well as the amount of such transaction
- The accounting entries corresponding to these transactions.
- The rules applied or to be applied by the taxpayer to define the accounting framework: Financial Reporting Standards, International Accounting Standards, among others.

k. State the business reason upon which it has been decided to hide the beneficial owner of the income or assets, including the use of foreign entities or legal figures whose beneficiaries are not designated or identified at the time of their incorporation or formation or at some later time.

In the event that the tax advisor or the taxpayer do not have the information and documentation indicated in the previous sections, must manifest it under protest of telling the truth, stating the motives and reasons of it.

16. Section XI of Article 199 of the FTC (AG 2.22.19).

In cases where income producing activities are perfomed within the context of the existence of tax losses about to expire, provided that such transactions generate an authorized deduction to the taxpayer that generated the losses or to a related party.

A. In the case of both generalized and personalized reportable schemes:

a. Same as in Section V, 1, B, a. above.
b. Same as in Section V, 1, B, b. above.
c. State in detail the transactions through which tax profits are obtained or will be obtained to offset tax losses about to expire.
d. State whether upon the implementation of the reportable scheme, taxpayers beneficiaries are assisted by individuals, legal entities or legal figures abroad or in Mexico, to carry out income producing transactions to offset the tax losses about to expire, in order to generate an authorized deduction to the taxpayer that generated the losses or to a related party thereof.
e. State which transactions integrating the reportable scheme are performed to generate tax profits to be offset with tax losses about to expire in order to generate an authorized deduction to the taxpayer who generated the losses or to a related party.
f. Same as in Section V, A, 1, e. above

B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 16, A. above, the following information and documentation must be disclosed and provided:

a. Same as in Section V, 1, A, a. above.
b. Same as in Section V, 1, B, b. above.
c. In the event that the parties participating in the reportable scheme are related parties, this situation must be disclose.
d. State the fiscal year in which the tax losses that are intended to be used expire.
e. Indicate the business reasons upon which the transactions generating profits to which the tax losses about to expire will apply are performed.
f. Information of the parties generating the tax losses about to expire, such as the name, country of incorporation, taxpayer if number and the type of business activity and address.

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g. Information of the related parties to whom a deduction is generated upon the performance of transactions such as the name, country of residence, taxpayer id number, type of business activities and address.
h. Amount of tax losses whose term is about to expire.
i. The country in which the tax losses are originated.
j. Amount of the activities or transactions performed to obtain tax profits.
k. Type of tax profits that are generated to reduce the tax losses.
l. Source of wealth where the income comes from: Mexico or abroad.
m. Amount of the deduction that is generated or will be generated by the transactions performed, indicating whether said deduction will be taken in Mexico or abroad.
n. State the reasons for which the tax losses whose term is about to expire were generated. For this purposes, state if in terms of the income statement of the legal entity that generated the tax losses, the losses are generated after subtracting from revenue the cost of sales, operating expenses, financing, depreciation or amortization, transfer of shares and extraordinary items, or before taxes, as appropriate.

In the event that the tax advisor or the taxpayer do not have the information and documentation indicated in the previous sections, must declare it under protest of telling the truth, stating the reasons of it.

17. Section XII of Article 199 of the FTC (AG 2.22.20).

In cases where the application of the additional 10% tax rate on dividends is avoided.

A. In the case of both generalized and personalized reportable schemes:

a. Same as in Section V, 1, B, a. above.
b. Same as in Section V, 1, B, b. above.
c. Indicate in detail through which transactions the application of the additional rate of 10% on dividends is avoided or will be avoided.
d. State whether upon the implementation of the reportable scheme, taxpayers beneficiaries are assisted by individuals, legal entities or legal figures abroad or in Mexico to avoid the application of the additional rate of 10% provided for in articles 140 and 142 of the ITL.
e. Same as in V, 1, A. e. above.

B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 17, A. above, the following information and documentation must be disclosed and provided:

a. Same as in Section V, 1, A, a. above.
b. Same as in Section V, 1, B, b. above.
c. In the event that the persons who participate or will participate in the reportable scheme are related parties must state this situation.
d. Indicate the business reasons upon which the beneficiary taxpayer avoids or will avoid the application of the additional rate of 10% provided for in Articles 140, 142, and 164 of the ITL.
e. Information of the legal entity making the payment of the profits with respect to which taxpayers avoid the application of the additional rate of 10% provided for in the Articles 140, 142, and 164 of the ITL, such as the name, the country of residence, the country of incorporation, the taxpayer id number, the type of business activity and address.

f. Data of the taxpayers avoiding the additional 10% rate, such as the name, country of residence, country of incorporation, taxpayer id number, type of business activity and address.

In the event that the tax advisor or the taxpayer do not have the information and documentation indicated in the previous sections, must manifest it under protest of telling the truth, stating the motives and reasons of it.

18. Section XIII of Article 199 of the FTC (AG 2.22.21).

In cases where the temporary use or enjoyment of an asset is granted and the lessee grants the temporary use or enjoyment of the same asset to the lessor or to a related party of the lessor.

A. In the case of both generalized and personalized reportable schemes:

a. Same as in Section V, 1, B, a. above.
b. Same as in Section V, 1, B, b. above.
c. State in detail the transactions through which the temporary use or enjoyment of an asset is granted and the lessee grants the use or the temporary enjoyment of the same asset to the lessor or to a related party.
d. State whether upon the implementation of the reportable scheme, taxpayers beneficiaries are assisted by individuals, legal entities or legal figures abroad or in Mexico to grant the temporary use or enjoyment temporary of an asset and the lessee in turn grants the temporary use or enjoyment of the same asset to the lessor or a related party of the latter.
e. State the type of property for which the temporary use or enjoyment is granted to the lessor or to a related party of the latter.
f. In the case of leases, indicate, in accordance with the Financial Information Standards, if it is a financial or a pure lease.
g. Same as in V, 1, A. e. above.
h. Additional actions performed to grant the temporary use or enjoyment of an asset to the lessor or a related party of the latter.

B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 18, A. above, the following information and documentation must be disclosed and provided:

a. Same as in Section V, 1, A, a. above.
b. If the benefited taxpayers are assisted by an individual, legal entities or legal figures abroad or in Mexico, indicate the name of the individual, or the legal entity, the taxpayer id number, the country or jurisdiction of incorporation and residence; the type of business activity and address. In the case of legal figures, indicate the country or jurisdiction of formation and, where appropriate, the registration information.
c. In the event that the persons participating in the reportable scheme are related parties, the same must be stated.
d. State the business reason upon which the beneficiary taxpayer grants the temporary use and enjoyment of an asset and the lessee in turn grants the temporary use or enjoyment of the same property to the lessor or to a related party of the latter.
e. Lessee information such as, name, country of residence, country of incorporation, taxpayer id number, type of business activities and address.
f. Lessor data, such as, name, country of residence, country of incorporation, taxpayer id number, type of business activity and address.

g. Where appropriate, information of the lessor's related party to which the lessee grants the temporary use or enjoyment of the same asset whose temporary use or enjoyment was granted by the same lessor, such as, the name, country of residence, country of incorporation, taxpayer id number, type of business activity and address.

h. Amount of the income obtained by the lessor and lessee upon granting the temporary use and enjoyment of the asset.

i. Amount of deductions obtained by the lessee and lessor upon the granting of the temporary use and enjoyment of the assets.

j. State the timing during which the transaction upon which the temporary use or enjoyment of assets will be in effect.

k. The accounting treatment considered for the transaction by the lessee and the lessor upon granting the temporary use and enjoyment of the same property.

l. In the event that the person obtaining the tax benefit is a resident of Mexico or resident abroad with a PE in Mexico, the following information must be provided:

- The parties involved in the transaction and the name of the party that will register the corresponding transaction in the financial statements.
- The heading/line under which the transaction will be recorded in the financial statement of the taxpayer, as well as the amount of such transaction
- The accounting entries corresponding to these transactions.
- The rules applied or to be applied by the taxpayer to define the accounting framework: Financial Reporting Standards, International Accounting Standards, among others.

m. In the case of tangible assets, indicate the physical location of the assets which temporary use or enjoyments is granted. In case of intangibles, state the country in which they will be exploited.

In the event that the tax advisor or the taxpayer do not have the information and documentation indicated in the previous sections, must manifest it under protest of telling the truth, stating the motives and reasons of it.

19. Section XIV of Article 199 of the FTC (AG 2.22.22).

Transactions which accounting and tax records show discrepancies in more than 20%, except when the discrepancies resulted in the computation of depreciations.

A. In the case of both generalized and personalized reportable schemes:

a. Same as in Section V, 1, B, a. above.

b. Same as in Section V, 1, B, b. above.

c. Indicate in detail which transactions are carried out whose accounting and tax records present discrepancies greater than 20%.

d. Indicate whether upon the implementation of the reportable scheme, taxpayers beneficiaries are assisted by individuals, legal entities or legal figures abroad or in Mexico to carry out transactions whose accounting and tax records present differences greater than 20%.

e. State which transactions or facts of the reportable scheme caused the accounting and tax records to show discrepancies in more than 20%.

f. Same as in V, 1, A. e. above.

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B. In the case of personalized reportable schemes, in addition to the provisions set forth in Section V, 19, A. above, the following information and documentation must be disclosed and provided:

a. Same as in Section V, 1, A, a. above.
b. Same as in Section V, 1, A, b. above.
c. In the event that the persons who participate or will participate in the reportable scheme are related parties, the same must be stated.
d. State the business reason upon which the beneficiary taxpayer carries out the transactions whose accounting and tax records show discrepancies in more than 20%.
e. The following information will be provided:

- The parties involved in the transaction and the name of the party that will register the corresponding transaction in the financial statements whose accounting and tax records show a discrepancy in more than 20%.
- The heading/line under which the transaction will be recorded in the financial statement of the taxpayer, as well as the amount of such transaction.
- The accounting entries corresponding to these transactions whose accounting and tax records show discrepancies in more than 20%.
- The rules applied or to be applied by the taxpayer to define the accounting framework: Financial Reporting Standards, International Accounting Standards, among others.

In the event that the tax advisor or the taxpayer do not have the information and documentation indicated in the previous sections, must manifest it under protest of telling the truth, stating the motives and reasons of it.

VI. Reportable Schemes/Certificate release from the obligation to disclose reportable schemes - Administrative Guidelines.

1. Filing the informative return disclosing generalized and personalized reportable schemes.

In terms of Rule 2.22.1, for the purposes of Articles 197 (general framework), 198 (taxpayers required to report), 200 (information to be revealed) and 201 (effects triggered upon revealing the schemes) of the FTC, tax advisors or taxpayers, must file the "Informative return to disclose generalized and personalized reportable schemes".

2. Certificate evidencing the release from the obligation to disclose reportable schemes.

For purposes of Article 197, sixth and last paragraphs or the FTC, tax advisers disclosing reportable schemes in the name and for the account of other tax advisors, shall issue to each one of those other tax advisors a certificate releasing them from the obligation to disclose the reportable schemes. In terms of the AG that the nature of the certificate is that of private agreement, being the content of such a certificate the sole responsibility of the tax advisor issuing the certificate and the ones receiving it (AG 2.22.23).

The certificates must state, among other information, the date its issuance, the name and the taxpayer id number of the tax advisor disclosing the reportable scheme; if the advisor is a legal entity, the name of the legal representative and the document where such

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representation is granted. The name of the tax advisor relieved from the obligation to disclose the reportable scheme will need to be stated as well and must be the same name reported in the informative return referred to in the AG 2.22.3 "Supplemental Informative Return submitted by Tax Advisers Released from the Obligation to Disclose Reportable Schemes".

Also, the identification number of the reportable scheme must be included, which must be the same number as the one assigned in the certificate issued by the SAT. The tax advisor would be required to state under oath that the certificate is being issued pursuant Article 197, sixth paragraph of the CFF and this Rule. Finally, a statement from the tax advisor disclosing the reportable scheme indicating that the released tax advisor has been provided with a copy of corresponding certificate.

3. Circumventing the application of Article 199 of the FTC.

Any plan, project, proposal, advice, instruction, recommendation or whatever the name given to it, either expressly or tacitly expressed, with the purpose of performing whatever legal transactions to avoid or circumvent the hypotheses set forth in Sections I to XIV of Article 199 of the FTC are mechanisms that need to be reported by the tax advisor and taxpayers in terms of the corresponding filings.

This reporting either by tax advisors or taxpayers must include a description of the corresponding mechanisms in terms of:

- The statement to disclose generalized and personalized reportable schemes,
- The supplemented informative return filed to reveal modifications to generalized and personalized reportable schemes, and
- The supplemented informative statement submitted by tax advisors released from the obligation to disclose the reportable scheme.

A detailed description of the mechanism used to circumvent or avoid the application of Article 199 of the FTC, must contain, at least:

- The Section or paragraph of Article 199 that is circumvented or avoided,
- A statement confirming if the mechanism used to circumvent the application of Article 199 of the FTC is a generalized or personalized reportable scheme.
- A diagram depicting all transactions integrating the mechanism must be filed as well along with information of the country where the parties involved are located and the legislations under which the transactions will be implemented and their sequence.
- This will be accompanied by the background and conclusions of the context and the legal arguments upon which the corresponding interpretations were reached.
- If applicable, the information of the taxpayer that will be benefited upon the implementation of the mechanisms to circumvent the application of Article 199 of the FTC and the approximate date in which the transactions will be implemented and the value thereon must be reported.
- If the taxpayers obtaining a tax benefit in Mexico are assisted by other parties, their name, taxpayer id numbers, country or jurisdiction of incorporation and residence, the type of business activity and address must be stated.

In the event that the tax advisor or the taxpayer do not have the information and documentation indicated in the previous sections, must manifest it under protest of telling the truth, stating the motives and reasons of it.

4. Certificate of non-reportable schemes or of the existence of a legal impediment to reveal a reportable scheme.

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In terms of the AG 2.22.26, and for purposes of Article 197, seventh and last paragraphs of the FTC, tax advisors considering that a scheme generating tax benefits in Mexico is not reportable either because of the plan, project, proposal or advice does not have any of the features set forth in Article 199 of the FTC or because there is a legal impediment to disclose a reportable scheme.

In terms of Rule 2.22.2, tax advisors or taxpayers that filed the corresponding informative returns will be required to inform SAT of any change to the information and documentation filed if taking place after the time the reportable scheme was disclosed. This filing will be made in terms of the technical note 299/CFF "Complementary informative declaration filed to reveal modifications to schemes generalized and personalized reportable ", contained in Annex 1-A. "Declaración informativa complementaria presentada para revelar modificaciones a esquemas reportables generalizados y personalizados".

Tax advisors filing informative returns disclosing reportable schemes that have issued the corresponding release certificate to other tax advisors must deliver it to the tax advisors to whom they issued the release certificate referred to in Rule 2.22.23 "Proof of release from the obligation to disclose reportable schemes" "Constancia de liberación de la obligación de revelar esquemas reportables".

VII. Potential Labor/Tax Subcontracting (Outsourcing) Reform.

On November 12, 2020, the President of Mexico, Andrés Manuel Lopez Obrador, submitted a draft bill to Congress that would prohibit the subcontracting of personnel and regulate the performance of specialized services and works. The draft bill, if passed, would reform the Federal Labor Law ("FLL"), the Social Security Law, the Law of the Institute of the National Workers' Housing Fund ("INFONAVIT"), the FTC, the ITL and the VATL.

The main features of this bill are:

i. Subcontracting of personnel would be prohibited.

ii. The provision of specialized services and execution of works would be limited and the activities of placement agencies would also be regulated.

iii. The ability to provide specialized services would require an authorization from the Ministry of Labor and Social Welfare ("STPS") and will be subject to additional requirements.

iv. Compliance with obligations regarding subcontracting and the provision of specialized services and works would be required to be verified by the STPS and the Mexican Social Security Institute, which could impose higher penalties and also report to the tax authorities when companies fail to comply.

v. The deduction of service fees for income tax purposes would not be allowed and the VAT credit would disallowed when personnel are subcontracted.

vi. The beneficiary of the services provided under a subcontracting of personnel would be jointly and severally liable for the required contributions to outsourced employees. If contributions are omitted, tax penalties would increase.

vii. Tax fraud resulting from subcontracting of personnel would be considered as a criminal offense.

Taking the foregoing into account, companies that subcontract personnel services, as well as those that provide and benefit from specialized services and works, should closely follow any developments, and should review their structures and operations in Mexico in light of the draft bill. Finally, although this bill was intended to become effective on January 1, 2021, the importance of this matter, the reduced window of time to discuss it at Congress and the willingness of all parties to reach a consensus, its discussion has been postponed until February, 2021. We understand that one of the main topics under analysis is the petition made by the employers' sector to negotiate a cap to profit sharing - *i.e*. three or four months of salary. We will keep you informed of any news.

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