Substantial Changes in the area of Transfer Pricing Resulting from the 2022 Tax Reform

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- As a result of the amendments to the Income Tax Law (ITL) and the Federal Fiscal Code (FFC), approved on October 26, 2021, there were changes to the transfer pricing obligations in Mexico that will be fully effective as of fiscal year 2022.

- In this context, it is important to identify the main changes in the transfer pricing regulation that have an impact on the preparation of supporting documentation such as Transfer Pricing Studies for the year immediately following 2022 and that will be in force for subsequent fiscal years. The following are the main points to be considered for a good development of the analysis and preparation of the supporting documentation.

- The controversy of national studies is over, they must be studies with all the requirements of the law (article 76 ITL, first paragraph, section IX). With the change in the wording of the article, the distinction between domestic and foreign related parties was eliminated, so the interpretation is clear regarding the obligation to have a Transfer Pricing Study for all taxpayers that enter transactions with related parties, regardless of the place of residence of the related party.

- Regarding the completion of Annex 9 of the DIM, with the information of all transactions between related parties resident abroad and in Mexican territory (article 76 ITL, first paragraph, section X), information of all transactions with related parties, both domestic and foreign, must now be submitted, if not included, incomplete, or with errors; The taxpayer may be subject to penalties of between MXN $86,050 to MXN $172,100, but the most worrisome is the risk that the authority may reject the deductibility of the amount of the transaction, if the taxpayer does not comply with the obligation in time and form with this formal obligation.

- The dates of delivery corresponding to Annex 9 of the DIM and the presentation of the local file are homologated, both documents must be submitted by May 15 of the immediately following year (article 76 ITL, first paragraph, section X and article 76-A).

- Regarding the SIPRED and ISSIF Annexes, in order to fill them out correctly, the Transfer Pricing Study must be completed, and Annex 9 must have been submitted prior to sending the SIPRED or ISSIF, as well as having filed Annex 9 of the DIM on time, as required by the obligation.

- In the case of fines for non-compliance with Transfer Pricing obligations, articles 81 section VXII and 83, section XV of the FFC were updated to provide for omissions and errors in the presentation of information on obligations with local related parties.

- The capital adjustments used and formulas applied must be clearly specified, which implies a risk in the application of formulas with the Tax Authority (Article 76, first paragraph, section IX, paragraph d) of the Income Tax Law), and emphasis is placed on including in the Transfer Pricing study the details of the adjustments that have been applied to eliminate differences in comparability for each transaction and each related party.

- The Tax Authority clarifies that the financial information of comparable companies must be exclusively that of the fiscal year subject to analysis and exceptionally of two or more previous fiscal years, provided that the exception is duly justified (article 179, fourth paragraph of the ITL); considering the reporting dates, we anticipate that this will generate conflicts for the comparability analysis.

- The application of the interquartile range established in the Income Tax Law Regulations (article 180 ITL, second paragraph) is consolidated by removing the concept of "Statistical Methods" and establishing the Interquartile Method as the only method to define a range of market values.

- Financing transactions between related parties that derive interest and lack a business reason are considered as supported credits. Therefore, the interest will be considered as a dividend with the corresponding disallowance of the deduction.

- The possibility of requesting an Advance Pricing Agreement (APA) for maquiladoras, permanent establishment and any particular transaction is eliminated. However, Article 34-A of the FFC is not repealed (Article 182, third paragraph and for Article 183- Bis, first paragraph, section I); therefore, the only option for compliance with Transfer Pricing is to apply the Safe Harbor rule under which maquiladora companies must calculate their tax profit as the greater amount resulting from applying 6.9% on the value of the assets used in the maquila operation and 6.5% on the total amount of the costs and expenses of such operation. It should be noted that this rule is contrary to the arm's length principle.

We are at your service to provide the highest quality in tax and Transfer Pricing matters.

José Luis Velasco Verduzco
Transfer Pricing Partner

Contact:

Gil A. Lara Morales
Email: gil.lara@taxpertise.mx
Phone: +52 (55) 2121.1555
Mobile: +52 (55) 5434.8624

Oswaldo Méndez Álvarez
Email: oswaldo.mendez@taxpertise.mx
Phone: +52 (55) 2121.1555
Mobile: +52 (55) 5434.6173

Verónica Luis Mojíca
Email: veronica.luis@taxpertise.mx
Phone: +52 (55) 2121.1555
Mobile: +52 (55) 1068.0491

José Antonio Reynoso Rodríguez
Email: antonio.reynoso@taxpertise.mx
Phone: +52 (55) 2121.1555
Mobile: +52 (55) 4061.6896

Rafael Torres Raba
Email: rafael.torres@taxpertise.mx
Phone: +52 (55) 2121.1555
Mobile: +52 (55) 3223.5603

Ricardo Ortega Quintanar
Email: ricardo.ortega@taxpertise.mx
Phone: +52 (55) 2121.1555
Mobile: +52 (55) 5434.8624

José Luis Velasco Verdugo
Email: joseluis.velasco@taxpertise.mx
Phone: +52 (55) 2121.1555
Mobile: +52 (55) 6111.5635