

Mexican tax authorities host base erosion and profit shifting seminar

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On 14 January 2014, the Mexican tax authorities organised in Mexico City the seminar "The fight against base erosion and profit shifting". The seminar was attended by more than 100 participants including public officials, academics, judges and tax advisors.

Opening speech

The opening speech was given by Aristoteles Nuñez Sanchez, Chief of the Tax Administration Service. He mentioned that recently Mexico has carried out structural tax reforms, including a new Income Tax Law and tax reforms to the Federal Tax Code with the main purpose of ending preferential tax regimes and broadening the tax base. Nuñez also mentioned that the BEPS report had been used as a base to include provisions in the tax law to deal with activities that are carried out in Mexico generating income which ends paying taxes in other countries.

One of the measures adopted by the Tax Administration Service (SAT), as from 1 January 2014, was the publication on its website of a list of taxpayers who have not fulfilled their tax obligations, Nuñez said. This is a practice that other 22 countries like Costa Rica, Denmark, Ecuador, Finland, Greece and Paraguay, have been incorporating in their tax legislation.

Finally, Nuñez launched a warning to all the taxpayers who are using aggressive tax planning structures. He pointed out that those taxpayers are challenging Mexico and the SAT will do anything to fight against them.

The seminar was divided in three different panels:

Panel 1: International Tax Issues – BEPS report and action plan

This panel analysed the international tax issues that detonate the Base Erosion and Profit Shifting Report, as well as the main points and challenges of the BEPS report and its Action Plan and the future of this project.

Raffaella Russo, Tax Advisor in the OECD who leads the work on Aggressive Tax Planning in such organisation presented each of the 15 points included in the Action Plan on BEPS. He mentioned that due to the lack of coordination of the domestic tax laws, there is a problem. The Action Plan on BEPS is fighting against tax planning structures that are structured according to the law. Every day, more and more often investments are made to reduce the income in the source country, the gross income is reduced through risks, intangibles and deductible payments (interest, royalties, technical fees), companies are incorporated in countries with a large DTA network to get treaty benefits, conduit companies and hybrid mismatch arrangements are used, the application of CFC rules is avoided and all according to the law, he said. Russo pointed out that it is not possible to amend the tax law of one country to solve the problem because this is a situation that requires a closer international cooperation, greater transparency, data and reporting requirements.

Manuel Tron, member of IFA Mexico mentioned that the general perception is that multinational companies avoid taxes. However, those companies are acting according to the law, Tron said. He pointed out the importance of having an impartial arbitrator because the taxpayer must fulfil what the law states but if the outcome is not the one expected by the tax authorities, it is not the taxpayer's fault since the taxpayer acted according to the law. Legal certainty and respect for taxpayers are required, he said. Finally, he concluded his participation indicating that the dialogue with the tax authorities to agree on a GAAR will be welcome.

Armando Lara, General Director of International Treaties of the Ministry of Finance of Mexico mentioned that the world is spinning around aggressive tax planning because it is a problem that many countries have faced. He presented a brief summary on how the tax provisions had to be amended in Mexico to fight against aggressive tax planning. He indicated that it is not possible to increase the taxes even more, so it is time to look for the "gaps" in the law.

Panel 2: BEPS in Spain and the point of view of Mexico

This panel presented the actions that the Spanish Tax Agency had to take to fight against tax planning mainly for manufacturing and distribution activities: cases Borax, Roche, Dell and Zimmer.

Nestor Carmona from the Tax Agency of Spain presented several cases in which the Spanish Tax Agency has fought against aggressive tax planning. At the end of his presentation, Carmona pointed out the need of having new standards to determine "substantial presence".

Oscar Molina Chie, Head of the Large Taxpayers Unit of the SAT indicated that the objective of the seminar was to send a clear message on how the tax authorities are going to fight against base erosion and profit shifting. He pointed out that in those cases where there is clear aggressiveness, the SAT will be there. In addition, Molina mentioned that the BEPS report made Mexico to reconsider what is needed to be done. The SAT detected tax planning structures which erode the tax base and some companies have been informed and are being reviewed by the tax authorities in an informal way. If derived from such informal review the tax authorities determine the existence of an aggressive structure, the tax effects must be reversed by the taxpayer and the tax must be paid accordingly, Molina said.

Panel 3: Courts' response

One of the countries which has already solved aggressive tax planning cases in Court is Spain, so this panel presented the experience of the Spanish Court in this regard. On the other hand, members of the Court in Mexico shared their experience in respect of these cases and commented on the possibility that similar cases were solved in Mexico.

Juan Gonzalo Martinez Mico, Judge of the Supreme Court of Spain, presented different cases on aggressive tax planning using dependent agents and the conclusions reached by the Court in Spain.

Carlos Ronzon, Magistrate of Mexico, indicated that the international environment is not a problem of legality, because the legislation allows aggressive tax planning, but a problem of legitimacy.

Emmanuelle Rosales, Magistrate of Mexico, mentioned that judges must interpret the law according to the principle of legality. The latest rules are based on open concepts so the laws in Mexico have started to adopt indeterminate juridical concepts, he said.

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