

## Mexican Supreme Court of Justice supports the execution of Action 13 of the BEPS Plan by resolving amparo lawsuits

Action 13 of the BEPS Plan, published by the OECD (Organization for Economic Cooperation and Development) that has the goal to avoid strategies that diminish the income tax base or the revenues through an artificial profit transfer among companies of the same group, proposed to re-examine the requested documentation for the multinational enterprises (MNE) to demonstrate the fulfillment of transfer pricing obligations in order to increase transparency towards

tax administration.

On this regard, the OECD established that the member countries shall develop an internal legal framework so that MNEs be able to provide information regarding their global revenues, economic activity and the taxes paid among the countries, proposing for those effects a standard model.

The above as from three levels named as

follows:

01. The "Master File", that gathers standardized information from all the multinational group members.
02. The "Local File" that refers specifically to the significant transactions of the local taxpayer.
03. The "Country by Country Report" that has certain information regarding the

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global distribution of the benefits and the payment of taxes, as well as other indicators that allow the localization of the economic activity among the multinational group.

In order to comply with Action 13, Mexico modified its Federal Tax Code and included within its article 76-A of the Income Tax Law (ITL), the obligation to submit said three reports, while the Federal Congress suggested an enabling clause in the law that allows the State Administration of Taxation (SAT) to point out additional information other than the one established in the aforementioned provision.

When such obligations entered into force, several groups of MNEs filed, in Mexico, amparo lawsuits challenging that such provisions were against the Federal Constitution under several arguments. Among them, we can highlight the following:

- The measure imposed is not reasonable and has a lack of proportionality regarding the chased purpose.
- The lack of an official requirement issued by a competent authority in order to audit such information.
- Tax secret violation by not foreseeing measures that guarantee the safety of the information and limit the use and disposition of the inter-companies information.
- The extraterritoriality of the legal provisions by demanding information whose audit falls into other jurisdictions.
- Violation to the law reserve principle by allowing the SAT to request additional information other than the one provided by law without establishing a limit in such attribution.

All of the previous arguments were dismissed in the first instance before the District Judges, and on February 8th, they were matter of review by the Second Chamber of the Mexican Supreme Court of Justice by resolving the "Amparo under Review" 781/2016, in charge of the

Ministry Margarita Luna Ramos, as well as the "Amparo under Review" 1000/2016 in charge of the Ministry Alberto Pérez Dayán.

Nevertheless, all of the arguments were classified as ineffective in order to declare that article 76-A of the ITL is against the Federal Constitution. On this regard, the obligations established in such article shall be considered constitutional and in force, and therefore, they can be completely enforceable.

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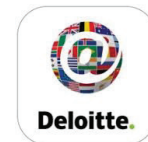
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