



Mexico publishes final master file, local file, and CbC report rules

After five months of negotiations between the Mexican tax authorities (Servicio de Administración Tributaria, or SAT) and PRODECON (Mexico's tax ombudsman) that included a public consultation and input from transfer pricing specialists, the SAT on April 12 published the final rules for implementing the BEPS Action 13 principles in Mexico.

On April 3, PRODECON had published on its website the final rules regarding the contents of Mexico's master file, local file, and country-by-country (CbC) report, as well as a report on the public consultation, thus concluding a process that began on

October 17, 2016.

On April 12, the SAT published on its website – in advance of publication in the Official Gazette -- the same final rules for the filing of the master file, local file, and CbC report. These rules are considered official under the terms of Rule 1.8 of the Fiscal Miscellaneous Resolution.

Article 76-A of the Mexican Income Tax Law (MITL) requires that for fiscal year 2016, companies that enter into transactions with related parties (in Mexico or abroad) and receive income equivalent to or greater than MXN

686,252,580 must file a master file and a local file. In addition, multinational enterprise (MNE) groups that receive income equal to or higher than MXN 12 billion also must file a country-by-country (CbC) report.

The rules published by PRODECON refer to compliance with Fractions I, II, and III of Article 76-A of the MITL, and impose an additional obligation to those established in Fractions IX and XII of Article 76 of the MITL. All other transfer pricing obligations are left intact, and taxpayers must continue to comply with them.

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The published rules simplify the fulfillment of the filing obligations by concluding that taxpayers are not obligated to provide certain documentation, and in some specific cases by allowing the filing of the information in English or Spanish, rather than just Spanish.

Master file

Under the final rules, if a master file is completed outside of Mexico in accordance with the guidance in the BEPS Action 13 final report, it will be accepted in Mexico in English or Spanish.

The SAT has accepted the BEPS guidance regarding the inclusion in the CbC report of information on the taxpayer's five principal products or services, as well as products or services representing 5 percent of the total MNE's revenues.

The information required in the master file may be presented in foreign currencies, and if the taxpayer so wishes, by line of business.

A single master file may be filed for one MNE group, listing the names and taxpayer ID numbers of the companies resident in Mexico that are part of the group and are obligated to file a master file.

Local file

Under the final rules, the SAT does not require the submission of the electronic file containing the information referred to in Fractions IX and XII of Article 76 of the MITL, by means of the electronic form of the local file. In other words, taxpayers need not attach the electronic file containing the Evidence Support Documentation (Transfer Pricing Study) for transactions with related parties resident in Mexico and abroad.

The final rules regarding the Mexican local file also provide as follows:

- The requirement for filing financial statements and tax returns of foreign related parties was eliminated.
- Contracts with related parties may be filed

submitted in English or Spanish.

- Business descriptions of comparables may be submitted in English or Spanish.
- Information on transactions with related parties resident in Mexico and abroad must be submitted grouped by type of transaction.
- The rules clarify that the information contained in the local file is evidence of compliance with the arm's length principle in accordance with Articles 179 and 180 of the MITL.
- A list of the advance pricing agreements the Mexican taxpayer has in its possession must be submitted with the local file.

Country-by-Country Report

Under the final rules, Mexican multinational business groups do not have to file several CbC reports; rather, only one is filed per Mexican ultimate parent entity.

The final rules also provide that the CbC report may be filed using foreign currencies.

Definitions for the following terms were included in the final rules:

- Business restructuring
- Multinational business group
- Intangible assets
- Transfer pricing policies

Comments

The original draft rules published in October 2016 by the SAT through PRODECON required information that exceeded what Action 13 of the BEPS Action Plan contemplated.

After a five-month process that involved technical analysis by PRODECON and several transfer pricing specialists, as well as technical opinions from the public in general and discussions with the SAT, the new master file and CbC report requirements finally are very similar to the principles in BEPS Action 13.

As to the local file, the final rules include some items that differ from the BEPS Action 13 format:

- The wording in Article 76-A of the MITL refers to a "group of companies" that are not multinationals, that is, groups of Mexican companies that have no foreign related parties, but that have income equal to or greater than MXN 686,252,580 pesos and that by virtue of the fact that they have no foreign related parties, they cannot engage in base erosion and profit shifting (BEPS) activities.
- The Mexican local file form includes all transactions with domestic related parties, whereas the OECD's form under Action 13 relates only to transactions with related parties resident abroad.
- In the case of intangibles, the Mexican local file form calls for a description of the strategy concepts for the development, improvement, maintenance, protection, and exploitation of intangibles of the MNE group to which the Mexican taxpayer belongs.
- Financial and tax information of related parties resident abroad with which the Mexican taxpayer enters into related transactions is required, including information regarding current assets, fixed assets, sales, costs, operating expenses, net income, taxable base, and tax payments, specifying which currency was used.
- The preparation date, as well as the tax ID number of the preparer of the transfer pricing study (and that of the transfer pricing advisor, if different) must be included.
- The local file requires confirmation that transactions with related parties were entered into at market values.

Now that the final rules have been published, the tax authorities still must release the electronic platform for the filing of the master file, local file, and CbC report. Time is of the essence in this regard, given the December 31, 2017, filing deadline.

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