TAX COMPLIANCE GUIDE

THE DISCLOSURE OF REPORTABLE SCHEMES

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S C O PE

The following Guide was drafted by Ritch, Mueller, Heather y Nicolau, S.C. This document is based on the current provisions in force on the date of its issuance, unless otherwise specified.

If after the delivery of this Guide, the applicable and current tax laws in Mexico are modified or repealed, the effects of such amendments should be evaluated with respect to our comments. This document is not a legal opinion nor does it analyze the particular case of any transaction or scheme.

Our comments should not be considered binding to tax authorities, courts, or any other governmental bodies or entities, therefore, there is no assurance that the Mexican tax authorities share our comments expressed herein.

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SECTION I

DISCLOSURE OF REPORTABLE SCHEMES BACKGROUND

In 2013, the Organization for Economic Cooperation and Development ("OECD") issued the Action Plans on Base Erosion and Profit Shifting ("BEPS Actions"), which recognize that one of the key challenges faced by tax authorities is the lack of timely, comprehensive and relevant information on potentially aggressive or abusive tax planning strategies.

Action 12 BEPS, titled “Mandatory Disclosure Rules” proposes recommendations for the design of mandatory disclosure rules imposed on taxpayers and advisors regarding aggressive or abusive transactions, arrangements, or structures.

Following the recommendations of the OECD, on December 9, 2019, a Decree was published in the Federal Official Gazette ("FOG") amending, adding and repealing various provisions of the Income Tax Law, the Value Added Tax Law, the Excise Tax Law and the Federal Fiscal Code, by means of which Title VI "The disclosure of reportable schemes" was added to the Federal Fiscal Code ("FFC").

The new obligation to disclosed reportable schemes came into force on January 1, 2020; however, in accordance with section II of the eighth transitory article of the FFC, the deadlines for complying with the obligations related to the disclosure of reportable schemes will begin to be computed as of January 1, 2021.

SECTION II

GENERAL MATTERS OF REPORTABLE SCHEMES

Tax consequences for the disclosure of a reportable scheme

The disclosure of a reportable scheme pursuant to Title VI of the FFC, will not imply the acceptance or rejection of its tax consequences by the tax authorities, therefore it does not imply whether it is considered as legal or illegal.

The disclosure of reportable schemes, is merely an informative obligation that by itself does not generate adverse tax consequences for taxpayers or tax advisors; however, it is important to emphasize that failing with its compliance, partially or totally, may give rise to relevant penalties for both taxpayers and advisors. Tax advisors may be fined up to $20 million pesos and taxpayers could lose the tax benefit derived from a scheme that has not been disclosed, even if it is legal, and also be fined with a penalty between 50% and 75% of the amount of the tax benefit that was obtained or was expected to be obtained in all the fiscal years that involve or would involve the application of the scheme.

The information that is disclosed to the tax authorities in accordance with Title VI of the FFC and that is strictly indispensable for the operation of the scheme, shall not be used as a precedent of the investigation of the possible commission of felonies regulated in the FFC, except if these are related to the issuance or acquisition of tax invoices that support non-existent operations or simulated legal acts or in cases of alteration or destruction of control devices, seals or cash registers, among others.

This means that taxpayers cannot be criminally accused for the disclosure of a reportable scheme; however, it could lead to the commencement of an audit by the tax authorities that may end with a tax assessment, or criminal consequences, if the conduct is classified as a felony.

- *"Scheme"*

In terms of article 199 of the FFC, a scheme is understood as “any plan, project, proposal, advice, instruction, or recommendation expressly or tacitly made in order to materialize a series of legal acts". Any other kind of activities that is not included in the abovementioned definition, is not regulated by Title VI of the FFC, precisely because it should not be considered a scheme.

The definition of scheme is so extensive, that it covers any kind of interaction by and between a tax advisor and its client; however, it is important to highlight that it only comprises the advice “in order to materialize a series of legal acts", and therefore excludes, in principle, any type of advice that is related to legal acts that have already been executed..

Additionally, the above refers to "a series of legal acts"; therefore it could be interpreted that an advice related to a single legal act does not fall within the definition of scheme provided in the tax legislation. However, given the serious consequences that could arise by failing to comply with the obligations related to reportable schemes, and taking in consideration that there are very few transactions that actually involve a single legal act, we advise not applying a criterion involving literal interpretation of the tax provisions and to consider schemes for purposes of the FFC, also those that are related to the execution of a single legal act.

- *"Reportable schemes to be disclosed"*

A reportable scheme shall be disclosed whenever:

i) generates or may generate, directly or indirectly, a tax benefit in Mexico, and
ii) complies with any of the hallmarks set forth in Article 199 of the CFF.

It is important to bear in mind that reportable schemes cover all those which generate or may generate a tax benefit in Mexico, regardless of whether the benefit is obtained by a taxpayer resident in Mexico or by a foreign resident; however, as explained further on, only taxpayers with residence in Mexico and foreign residents with a permanent establishment in Mexico have obligations related to the disclosure of reportable schemes.

- *"Tax benefit"*

For purposes of Title VI, a tax benefit is considered “the monetary value derived from any of the assumptions provided in the fifth paragraph of Article 5-A of the FFC", which in turn refers to "any reduction, elimination or temporary deferral of a contribution [generic term for taxes under Mexican law], including those achieved through deductions, exemptions, non taxation,, non-recognition of a gain or income, adjustments or absence of adjustments to the tax basis of the contribution, the crediting of contributions, the recharacterization of a payment or activity, a change of tax regime, among others".

The reference to article 5-A of the FFC, which provides the faculty of the tax authorities to recharacterize transactions that lack a business reason, which is the Mexican general anti-avoidance rules, has caused that in practice, the concept of "business reason" is associated with reportable schemes; however, it is important to emphasize that such appreciation is incorrect, since reportable schemes must be disclosed regardless of whether or not they have a business reason, given that the reference to Article 5-A was only included to provide a definition of what should be understood as a tax benefit in the context of Title VI of the FFC.

Notwithstanding the foregoing, it is important to mention that for purposes of certain reportable schemes, the recently published tax administrative rules provide that the tax authorities must be informed of the business reasons that motivated the respective legal acts and the implementation of the reportable scheme. In such cases, it is not clear whether the justification of such business reason would be limited to a general and conceptual explanation. Beyond the description provided when disclosing a scheme, we advise analyzing in detail all the elements to be considered under Article 5-A of the FFC, based on which the tax authorities may presume the inexistence of a business reason.

It is also important to remember that although some of the hallmarks set forth in Article 199 of the FFC refer to the Mexican Income Tax Law ("MITL"), the concept of tax benefit covers any contribution at a federal level (e.g., value added tax ("VAT"), excise tax, social security contributions, duties, etc.), therefore the obligations of reportable schemes are not limited to income tax.

- *"General reportable scheme"*

General reportable schemes are those that seek to be commercialized to a mass market to all types of taxpayers or to a specific group of them, and that, although they require minimal or no amendments at all to suit the specific circumstances of the taxpayer, the way to obtain the tax benefit is the same.

- *"Customized reportable scheme"*

Customized reportable schemes are those that are designed, marketed, organized, implemented or managed to fit the particular circumstances of a specific taxpayer.

» *Characteristics of a reportable scheme*

In general terms, and before going into detail on each of the sections of Article 199 of the FFC, it is important to note that the verbs and words used in the description of the hallmarks to consider a scheme reportable are not the most appropriate, given that using conjugated verbs in the present tense, such as "avoid" or "apply", might imply that the effects described in the specific hallmark must necessarily to occur, and that the scheme described should not be revealed until its materialized. Additionally, accounting and tax terms are mixed in the description of the hallmarks, which generates confusion as to their scope.

Although the ideal situation would have been prioritizing the legal certainty of the taxpayer, given the serious consequences that could arise due to the failure of complying with the obligations related to the disclosure of reportable schemes, our recommendation is not to apply a criterion based on a literal interpretation of the tax provisions and try to unravel the broadest sense of the words used therein, to avoid involuntary omissions.

Below is a list of the hallmarks provided in each of the sections of Article 199 of the FFC, together with some comments, examples and problems that we have identified, and that we consider necessary to take into account when analyzing whether a scheme that generates tax benefits should be treated as a reportable scheme and should be disclosed to the tax authorities.

I. It avoids that foreign authorities exchange tax or financial information with Mexican tax authorities, including the application of the Standard for Automatic Exchange of Financial Accounts Information in Tax Matters, referred to by the recommendation *adopted by the Council of the Organization for Economic Cooperation and Development on July 15, 2014, as well as other similar forms of information exchange. In the case of such Standard, this section shall not be applicable to the extent that taxpayers receive documentation from an intermediary proving that the information has been disclosed by such intermediary to the relevant foreign tax authority.*

The scope of this section includes the use of an account, financial product or investment that is not a financial account for purposes of such Standard, or when returns or capital are reclassified into products not subject to exchange of information.

This section is aimed at schemes that prevent foreign authorities from exchanging tax or financial information with Mexican tax authorities. In particular, attention should be paid to: those structures that, through the use of foreign corporations, trusts or other vehicles, prevent foreign governments (e.g., the United States of America) from reporting information to the Mexican government; the use of vehicles incorporated in jurisdictions which Mexico does not have a broad information exchange agreement; and the use of insurance policies that were excluded from the rules of the Standard implemented by the OECD.

II. It avoids the application of article 4-B or Chapter I of Title VI of the MITL.

By means of this provision the tax authorities seek to know the planning that Mexican taxpayers intend to carry out to avoid the application of the new income recognition regime, obtained through transparent entities or foreign legal entities, pursuant to Article 4-B of the MITL, or those schemes that seek to avoid the application of the rules that regulate income through controlled foreign entities subject to a preferential tax regime ("REFIPRE") provided in Title VI of the same Law.

It is important to note that both regimes had relevant changes as of 2020, consequently it would be necessary to analyze all of those structures that are being implemented to adjust to the new provisions, particularly, in case of wealth planning which seek to avoid having control or ownership over investments held abroad (e.g., discretionary trusts, SMART funds, unit and split trusts, insurance policies, among others), or of schemes implemented by multinational groups to consider that their income is not subject to a preferential tax regime (e.g., use of active income branches, captive re-insurers, among others).

III. It consists of one or more legal acts that permit the transfer of tax losses pending to be carried forward in order to reduce the tax profits of a person other than the one that generated them.

The scope of the term "transfer of tax losses" is not entirely clear, given that tax losses cannot be transferred for tax purposes, except in the case of spin-offs.

However, Rule 2.22.7 of the Tax Administrative Rules ("TAR") covers other cases, such as a merger or a change of shareholders. Therefore, given the serious consequences that may arise from the failure to comply with obligations related to the mentioned schemes, we advise that the term transfer of tax losses should be considered in a broad sense and not restricted to the case of spin-offs.

Additionally, it is important to highlight that according to article 69-B Bis of the FFC, tax authorities may assume that an “undue transmission of tax losses” exists in certain cases of business restructurings, spin-offs, mergers or changes of control.

IV. It consists of a series of interconnected payments or transactions that return the totality or part of the first payment that is part of such series to the person that made it or one of its shareholders, partners or related parties.

This provision seeks to identify the schemes that derive in a circularity of transactions with the taxpayer itself or its related parties, and that are traditionally identified with companies that issue invoices that support sham transactions, known as EDOS (for its acronym in Spanish).

It is important to bear in mind that the term “payment” for tax purposes is not exclusively limited to payments that are made in cash, but it is a term that must be understood in a wide sense and that covers in general terms the settlement of obligations. Particular attention should be paid to transactions involving payments in kind, such as the delivery of a promissory note.

V. It involves a foreign resident applying the provisions of a treaty to avoid double taxation entered by Mexico, regarding income not subject to tax in the country or jurisdiction of the taxpayer’s residence. The provisions of this section shall also be applicable whenever such income is subject to tax at a reduced rate vis-à-vis the corporate rate of the country or jurisdiction of the taxpayer’s residence.

This section imposes the obligation to Mexican tax advisors to know the tax regime applicable in other countries, which in itself is questionable, since even though there are widely known foreign tax regimes, the first sentence covers all those legal systems that: eliminate double taxation via the exemption method, which is one of the options recommended by the OECD; have territorial regimes; or apply entity classifications other than the Mexican regime, such as the commonly known regime of the check-the-box election in the United States of America.

As for the second sentence, it refers to those schemes in which for some particular case provided in the legislation of the country of residence of a foreign taxpayer, a tax rate lower than the general corporate rate in such country is applicable, such as the capital gains regime of the United States of America.

An important point to consider is that this section also covers the so-called "participation exemption regimes" on income derived from the transfer of shares or dividends, such as those existing in the Netherlands, Luxembourg, United Kingdom, Switzerland, Spain, Singapore, among others, which may require the reporting of many of the investment structures in Mexican companies, even though every year the Mexican companies report the tax residence of their investors.

Conversely, this section practically requires reporting of all transactions in which a taxpayer deemed exempt in its country of residence, such as pension funds or sovereign wealth funds, applies or intends to apply a double taxation treaty.

Also, it is highly questionable that Rule 2.22.9 of the TAR requires the tax advisor to state under oath whether the foreign resident who will apply the treaty is the actual beneficial owner of the income with respect to which the treaty will be applied, a statement that, in addition to losing sight of the fact that the taxpayer is the only one who can make such statement, it is clearly a requirement that is not established in the FFC.

Finally, it is important to note that in Mexican tax legislation there are vehicles, such as trusts and *asociaciones en participación* ("AenPs" for its acronym in Spanish), which are used to create investment funds or joint ventures structures, which benefit of tax transparency or lack of personality for tax purposes, allowing their beneficiaries or partners to apply the double taxation treaties corresponding to them, so the question that arises, is whether these structures should also be reported, since it could be understood that they do not represent a direct tax benefit, but an indirect one, which in many cases is unknown by the tax advisor.

VI. It involves transactions between related parties where:

a) Hard-to-value intangible assets are transferred, in accordance with the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, approved by the Council of the Organization for Economic Cooperation and Development in 1995 or those that replace them.

An intangible difficult to value is understood as that when at the time of the transactions, there are no reliable comparable or the projections of future flows *or revenues that are expected to be obtained from the intangible, or the assumptions for its valuation, are uncertain, so it is difficult to predict the final success of the intangible at the time it is transferred;*

b) Corporate restructures take place, were there is no consideration for the transfer of assets, operations and risks; or where as a result of such reorganization, taxpayers subject to taxes under Title II of the MITL, reduce operating profits in more than 20%. Corporate restructures are those described in the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, approved by the Council of the Organization for Economic Cooperation and Development in 1995 or those that replace them;

c) goods and rights are transferred, or the temporary use and enjoyment thereof, is granted for no consideration, or unremunerated services are rendered or operations are performed;

d) there are no reliable comparable as the transactions involve unique and valuable operations or assets; or

e) a unilateral protection regime granted by foreign law is used, in accordance with the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, approved by the Council of the Organization for Economic Cooperation and Development in 1995 or those that replace them.

These assumptions are mostly based on the provisions of the OECD Transfer Pricing Guidelines, so it will be very relevant for tax advisors to analyze in detail the transactions between related parties to conclude whether any of these assumptions are met. Examples could be: the transfer of a brand of a new product for which it is difficult to estimate its market value; the transfer of various operations from one entity to another without any consideration; or the conversion of a full-fledged manufacturer to a *maquila* or contract manufacturer.

VII. It avoids the creation of a permanent establishment in Mexico, pursuant to the provisions of the MITL and the treaties to avoid double taxation entered in by Mexico.

The term permanent establishment is perhaps one of the most subjective and hard to evaluate within the international tax framework, so defining the schemes that avoid its application can also generate many questions and lack of clarity. To quote some examples, there are: secondment agreements that are concluded based on the recommendations of the OECD to avoid creating a permanent establishment for personnel who will be assigned to a temporary job in Mexico; or the split of Engineering, Construction and Procurement contracts, known as EPCs, to segregate the activities that are carried out in Mexico from those that are carried out from abroad.

VIII. It involves the transmission of an asset totally or partially depreciated that permits its depreciation by another related party.

From a literal understanding of this provision, the concept of "asset" would only apply to fixed assets, since it is the type of assets subject to depreciation for tax purposes. However, based on the provisions of Rule 2.22.17 of the TAR, it seems that the intention is to consider all assets for accounting purposes defined as investments in accordance with the MITL (not only fixed assets). Furthermore, although the provision refers to "depreciated assets", which would apply to fixed assets, we believe that the interpretation of this provision also covers assets subject to amortization such as intangible assets.

Additionally, the scope of this provision is extremely broad, since it covers any transfer of assets, tangible or intangible, carried out between related parties, given that to a greater or lesser extent, all investments are totally or partially depreciated for tax purposes.

IX. Whenever it involves a hybrid mechanism provided in section XXIII of article 28 of the MITL.

This direct reference to what should be understood as a hybrid mechanism, in terms of Section XXIII of Article 28 of the MITL may generate confusion, given that no reference was made to the exclusions contained in such article of the MITL, which regulate hybrid schemes and whose deductibility is expressly permitted, but in principle will end up being reportable schemes.

X. It avoids the identification of the effective beneficiary of income or assets, including through the use of foreign entities or vehicles, whose beneficiaries are not designated or identified at the moment of their creation or at any time thereafter.

In connection with the provisions of section II of article 199, estate and wealth planning structures that could complicate the identification of the owners of the assets should be analyzed, as well as those structures that may complicate the identification of a beneficial owner of income derived from Mexico.

It is important to note that Rule 2.22.18 of the TAR, requires expressly, stating whether a financial institution is involved in the reportable scheme, therefore such institutions must be very diligent in not participating in structures that could damage their reputation.

XI. Whenever there are tax losses which term for being carried forward to offset tax profits is about to expire under the provisions of the MITL; and transactions to earn tax profits *that may be reduced by such tax losses are executed; and such transactions generate an authorized deduction to the taxpayer that generated such losses or to a related party.*

This section is clearly focused on what is commonly known as a “refresh of tax losses”; nevertheless, it is not clear when the term to carry out its reduction "is about to end” is applicable, given that no specific and objective parameter were established for this purpose.

The difference with the assumption provided in section III of article 199, referring to the transmission of losses, consists mainly in the fact that this type of scheme does not require any transmission, but can be verified merely with the merely participation of the taxpayer that generated the losses; however, it is possible that there are schemes that can fit in both sections.

XII. Avoids the application of the additional 10% rate provided in articles 140, second paragraph, 142, second paragraph of section V; and 164 of the MITL.

The above-mentioned provisions regulate the additional income tax that individuals considered as tax resident in Mexico must pay for the dividends they receive from Mexican or foreign companies, as well as the income tax that residents abroad must pay for the dividends they receive from Mexican companies.

This means that the incorporation of a holding company that avoids the 10% payment for Mexican or foreign shareholders, must be reported, regardless of the fact that the tax authorities receive every year the information from the shareholders of the Mexican companies. Particular attention should be paid to all structures in which the elimination of the tax derives from the application of treaties to avoid double taxation.

Furthermore, there is a doubt regarding the reporting of those transactions that are carried out to prevent a taxpayer from falling into the cases of interest recharacterization as dividends, provided in Article 11 of the MITL, or of income assimilated to interest, and that have as an indirect consequence that the 10% tax on dividends is not paid.

XIII. In which the temporary use or enjoyment of a good is granted and the lessee in turn grants the temporary use or enjoyment of the same good to the lessor or a related party of the latter.

This section refers to any sublease executed between related parties or circular lease operations, which seem to be relatively simple to identify. However, it is important to note the fact that there are transactions were the temporary use or enjoyment of an asset is legally granted, but which are treated differently for tax purposes, as could be the case of a financial lease, which for tax purposes constitutes a transfer of property.

XIV. Involves operations whose accounting and tax records show differences greater than 20%, except for those arising from differences of the depreciation calculation.

This section is based on the wrong assumption that tax advisors know their clients' accounting and that they are aware of the *Normas de Información Financiera* (NIFS for its acronym in Spanish or Mexican IFRS) applicable to a transaction, which is an erroneous concept and whose logic is against to many of the independence rules that prevent companies' financial auditors from providing tax advice to their clients and vice versa.

It also failed to consider that in the annual income tax return an accounting-tax reconciliation is included, which precisely allows the Mexican tax authorities to identify accounting and tax differences. In this regard, Action 12 BEPS expressly describes that in the United States of America a similar rule was included some years ago, but was eliminated as a result of the obligation to report an accounting-taxation reconciliation with respect of transactions exceeding US$10 million.

In Mexico, 100% of the operations are conciliated and electronic accounting is filed, so having this section as reportable does not seem necessary.

Beyond the basic problems of this assumption, the problem with this section is the large number of operations that will end up being reportable, given that on a day-to-day basis the accounting and tax differences are related to various concepts that go beyond depreciation rates. To give an example, all transactions that for accounting purposes are characterized as financial leases under IFRS 16 must be reported, such as pure leases, gas pipeline transport agreements, oil storage contracts, and power purchase agreements, among others.

It is very unfortunate that the parameter was a 20% difference between accounting and tax records (which could include items that are not relevant), rather than an objective parameter with a specific amount, as is the case in other jurisdictions. It is also unclear the extent of the "accounting and tax records", considering if it refers only to items that have a direct effect on the determination of the income statement and the tax basis, or if it could include other items (e.g., some that only are included in the balance sheet and that could have their equivalent item in some other account or tax record).

- *Last paragraph. Any mechanism that avoids the application of the previous paragraphs.*

The last paragraph of article 199 of the FFC provides that any mechanism, even if it does not fit as a scheme, that avoids the application of Article 199, will also be reportable.

It is important to note that Article 199 of the FFC does not exclusively regulate the characteristics that a scheme must meet in order to be reportable, but also contains definitions of the terms "scheme", "generalized and customized reportable schemes," and "tax benefit," taking this in consideration, planning for an operation to not fall under these definitions will also be reportable.

- *Minimum amounts*

Article 199 of the FFC establishes that the Ministry of Finance and Public Credit, through a secretarial agreement, will issue the parameters on minimum amounts for which Title VI of the FFC will not be applied, which to date have not occur.

- *Non-reportable scheme*

Pursuant to Article 197, seventh paragraph of the FFC, rule 2.22.26 of the TAR and Guideline 301/FFC "Evidence of non-reportable scheme or existence of a legal restriction to disclose a reportable scheme" contained in Exhibit 1-A of the TAR, tax advisors are required to issue a certificate with respect to all schemes that generate tax benefits in Mexico but are not reportable or for which there is a legal restriction to disclose them.

This means that tax advisors must issue a certificate of non-reportable scheme whenever they provide advice regarding a scheme that generates tax benefits, if it does not meet any of the characteristics described in Article 199 of the FFC.

This certificate must also be issued in those cases where there is a legal restriction to disclose the scheme, by virtue of law or an agreement entered into with the taxpayer or the parties involved in the scheme, including confidentiality agreements.

SECTION III

SUBJECTS REQUIRED TO REPORT A SCHEME

Who is obliged to disclose a reportable scheme?

As a general rule, tax advisors are required to disclose reportable schemes in accordance with Rule 2.22.1 of the TAR, as well as with Guideline 298/FFC "Informative return to disclose generalized and customized reportable schemes" contained in Exhibit 1-A of the TAR; however, as explained below, taxpayers may also be required to disclose reportable schemes under certain assumptions provided in the FFC.

In addition, it is very important to emphasize that taxpayers are obliged to disclose all reportable schemes that have been designed, commercialized, organized, implemented or managed before January 1, 2020, when any of their tax effects are reflected in the tax years comprised as of 2020.

"Tax advisor"

A tax advisor is "any individual or legal entity who, in the ordinary course of his activities, gives tax advisory, and is responsible for or involved in the design, marketing, organization, implementation or management of the totality of a reportable scheme or who makes available the totality of a reportable scheme on behalf of a third party for its implementation ".

Individuals that are tax advisors, who provide services through a legal entity, are not obligated to disclose reportable schemes, provided that such legal entity discloses the reportable scheme, given that it is also considered a tax advisor. If several tax advisors are obliged to disclose the same reportable scheme, the obligation to disclose such scheme will be deemed to be fulfilled if only one of them discloses the scheme on behalf of all of them.

In these cases, the tax advisors must issue a certificate to the other tax advisors releasing them from the obligation to disclose the reportable scheme. Such certificate must be issued in terms of Rule 2.22.23 of the TAR.

If the tax advisors released from the obligation to disclose the reportable scheme do not agree with the content of the information return through which a reportable scheme was disclosed, or if they consider it necessary to provide additional information, they may file a supplementary informative return by means of Guideline 300/FFC "Complementary informative return for the disclosure of generalized and customized reportable schemes, filed by the tax advisors released from the obligation to disclose the reportable scheme" contained in Exhibit 1-A of the TAR. This supplemental disclosure statement shall be effective only for the tax advisor filing it.

During the legislative process that gave rise to the provisions regarding reportable schemes, the Chamber of Deputies made several changes to the definition of tax advisor, to clarify that advisors will have such character, only when they perform such activities in relation to the entire scheme and not when their intervention is in a single step of such scheme, implying that they could recognize all the effects of the scheme.

Notwithstanding the above clarification, there are still several doubts regarding the participation of legal entities or firms that provide tax advice jointly with other services, and that may participate in the design, organization, implementation or management of the totality of the scheme, but provide audit, financial consulting, project management and/or legal services, without involving tax advisory activities in their participation in such transaction.

Although it is included the need for a tax advisor to be a person who in the ordinary course of its business it performs tax advisory services, the Mexican tax definition omitted to expressly consider the recommendation made in Action 12 BEPS to link the mentioned activities to obtaining a tax benefit or to the tax considerations of the transaction.

Mexican and foreign tax advisor

The tax advisors bound by Title VI of the FFC are those considered to be a tax resident in Mexico or residents abroad who have a permanent establishment in national territory in accordance with the MITL, provided that the activities attributable to such permanent establishment are those carried out by a tax advisor.

When a foreign resident tax advisor has a permanent establishment in Mexico or a related party, it is assumed, unless proven otherwise, that the tax advice was provided by the latter.

This presumption also applies when a third party that is a tax resident in Mexico or a permanent establishment of a foreign resident performs tax advisory activities under the same trademark or trade name as the foreign resident tax advisor. In this case, the party obliged to disclose the reportable scheme will be the permanent establishment, the related party or the third party.

- *Service providers of a corporate group, tax advisors?*

In the cases of corporate groups that have service providers that collect the administrative activities of the group, it should be analyzed whether they qualify as tax advisors, since there is no exclusion that rules them out, if in the ordinary course of their activities they provide tax advisory services (for which it will be necessary to review the service agreements and the type of activities they normally provide to the other companies of the group) and if they participated in the design, organization, implementation or management of the entire scheme (mainly, when no external advisors were hired).

- *Shareholders and officers of a company, tax advisors?*

Reportable schemes that have been designed, organized, implemented and managed by the taxpayers must be disclosed directly by them. In this particular case, when the taxpayer is a legal entity, the individuals who are the tax advisors responsible for the reportable scheme and who have shares or participations in such taxpayer, or if it maintains a labor subordination relationship, shall be excluded from the obligation to disclose as long as the name and the Mexican Tax ID number of the individuals who are being released from the obligation to disclose are included as part of the information of the reportable scheme.

In this regard, it may be supposed that shareholders, partners, managers, directors or any employee of a legal entity that participates in the design, organization, implementation and management of a reportable scheme, may be obligated to disclose the scheme, for which an external tax advisor was not hired, to the extent that they qualify as tax advisors, that is, that in the ordinary framework of their activities they provide tax advisory services. The above is extremely relevant for the Directors or Tax Managers of the companies.

Taxpayer Disclosure Assumptions

Taxpayers liable under the provisions of Title VI of the FFC are tax residents in Mexico and residents abroad with a permanent establishment in Mexico, when (i) their tax returns reflect the tax benefits of the reportable scheme, or (ii) they carry out transactions with related parties resident abroad and the schemes generate tax benefits in Mexico to the latter derived from such transactions.

It is important to note that a foreign resident without a permanent establishment in Mexico has no obligations under Title VI of the FFC. Their advisors or their related parties residing in Mexico may have such obligations for the schemes that benefit them, but never them directly.

SECTION IV

REPORTABLE SCHEMES DISCLOSURE DATE AND CERTIFICATE ISSUANCE

- *Tax advisors*

With respect to the disclosure of generalized reportable schemes, tax advisors will be required to disclose the scheme within 30 days from the day the first contact for its commercialization is made, being understood that the first contact for commercialization is made when the necessary measures are taken so that third parties are aware of the existence of the scheme.

In the case of customized reportable schemes, tax advisors shall be obliged to disclose the scheme within 30 days following the day the scheme is available to the taxpayer for its implementation, or the first event or legal act which is part of the scheme is performed, whichever occurs first.

The certificate that should be issued by the tax advisor to the taxpayer, when he considers that the scheme is not reportable or there is a restriction to disclose the scheme, must be delivered within 5 days after the day in which the reportable scheme is made available to the taxpayer or the first event or legal act which is part of the scheme is performed, whichever occurs first.

Finally, in February of each year, tax advisors must file an informative return containing a list of the names or corporate names of the taxpayers, as well as their Mexican Tax ID number, to whom they provided tax advice with respect to the reportable schemes. In order to comply with such obligation, a return must be filed under the terms of Guideline 303/FFC "Informative return to provide information of taxpayers to whom a generalized or customized reportable scheme was commercialized" of Exhibit 1-A of the TAR.

‣ *Taxpayers*

Taxpayers must disclose reportable schemes as soon as they file their returns in which the tax benefits are reflected. As of today, neither the FFC nor the rules and guidelines of the TAR indicate a specific period of time for taxpayers to report the schemes; Guideline 298/FFC "Informative return to disclose generalized and customized reportable schemes" only refers to the assumptions that are applicable to tax advisors, so we will have to wait until the new return forms come out, to verify if they contain an assumption in this sense.

‣ *Reportable Schemes 2020*

As mentioned above, the reportable scheme regime came into effect as of January 1, 2020; however, in accordance with section II of the transitory article eight of the FFC, the terms included to comply with obligations related to reportable schemes, will begin to be computed as of January 1, 2021, which means that any transaction that is considered to generate a tax benefit in the year 2020 and that complies with any of the characteristics indicated in article 199 of the FFC, will have to be declared by the tax advisors 30 days later as of such date, a term that in principle would expire on February 11, 2021.

However, the 5-day period to deliver the non-reportable certificates would expire on January 8, being highly reprehensible that as of today there are many rules pending to be issued, which are necessary in order to understand the way in which such certificates must be prepared, as well, the form is not yet available on the Tax Administration Service (“TAS”) website.

Additionally, in those cases in which taxpayers must disclose schemes considered reportable from previous years, and whose effects are reflected in any fiscal year as of 2020, the date in which they must be disclosed is also unclear, since as previously stated, such obligation arises from the time the return in which the benefit is reflected is filed, which in principle would be March 31, 2021, in connection with corporations’ annual income tax return. However, there are other returns that are filed on a monthly basis, for which the obligation to report seems to be the first business day of the year, which would be January 4, 2021, being also highly reprehensible given that there is no certainty as of today about these dates.

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Reportable schemes prior to 2020

Reportable schemes designed, commercialized, organized, implemented or managed prior to 2020, when any of their tax effects are reflected in fiscal years starting from 2020, will have to be filed as of January 1, 2021. This obligation is exclusive to taxpayers, and it also arises as of the filing of the return in which the tax benefit is reflected. That is, if it is a benefit reflected in the annual return for the 2020 tax year, March 31st would be the date to report the scheme. However, if the benefit was applied in any advanced payment return, in any monthly withholding return or in any monthly VAT return, it would seem that the filing obligation is due on the first business day of the year, which in principle would be January 4.

SECTION V

WHAT SHOULD BE INCLUDED IN THE INFORMATIVE RETURN IN ORDER TO DISCLOSE GENERAL AND CUSTOMIZED REPORTABLE SCHEMES?

The disclosure of a reportable scheme should include the information mentioned in article 200 of the FFC and rules 2.22.4 to 2.22.22 and 2.22.25 of the TAR, published on November 18, 2020, in the FOG.

Additionally, on November 23, 2020, Exhibits 1, 1-A, 3, 11, 14 and 24 of the Third Resolution Amendment to the TAR for 2020 were published. As part of Exhibit 1-A, the guidelines for the proper compliance of tax obligations regarding reportable schemes were published, which are included in Section VI “Other obligations regarding reportable schemes” of this document.

In this regard, such guidelines refer to the content included in the relevant website http://omawww.sat.gob.mx/EsquemasReportables/, which as of today does not have the information mentioned by the guidelines, and also refer to the “Fulfillment guide of the informative return to disclose general and customized schemes”, which has neither been published.

The disclosure of the reportable scheme, in terms of article 200 of the FFC, shall include at least:

- Name or corporate name and the Mexican Tax ID number of the tax advisor or taxpayer which is disclosing the reportable scheme. Such information is applicable to tax advisors and taxpayers. When a tax advisor discloses a reportable scheme on behalf of other tax advisors, the tax advisor shall also provide the relevant information regarding such other tax advisors.

- The tax advisors or taxpayers which are legal entities and are obliged to disclose, shall provide the name and Mexican Tax ID number of the taxpayer individuals which are being exempted of disclosing obligations.

- Name of the legal representatives of the tax advisors and taxpayers for purposes of the procedure regulated in Title VI of the FFC.

- Regarding customized reportable schemes, which should be disclosed by tax advisors, the name or corporate name of the potentially benefited taxpayer by the scheme and its Mexican Tax ID number must be provided. With respect to a foreign resident taxpayer which does not have a Mexican Tax ID number, the country or jurisdiction of its tax residence and of its incorporation must be provided, as wells as its Tax ID number, tax domicile and any other location information.

- Reportable schemes which should be disclosed by taxpayers, shall include the name or corporate name of the of the tax advisors (if any). If the tax advisors are residents in Mexico or constitute permanent establishments of a foreign resident, its Mexican Tax ID number shall be provided and in the event of not having such information, any information regarding its location.

- Detailed description of the reportable scheme, in the understanding that it shall include each of the phases of the scheme, project, proposal, advise, instruction or recommendation in order to materialize the series of legal acts that give birth to the tax benefit, as well as the national or foreign applicable legal provisions.

- Rules 2.22.4 to 2.22.22 and 2.22.25 of the TAR, include a list of the information and documents that shall be delivered for each of the cases mentioned in article 199 of the FFC. Such list is exhaustive and difficult to include in this Document, but it is important to note that in some cases it exceeds the information required by the FFC and in other cases it results very uncertain, as you may appreciate in the following cases:

    - *In some cases, it is requested to provide the business reason and the motives that originated the implementation of the reportable scheme. We recommend to pay special attention in the way the information is disclosed, given the relation it could have with article 5-A of the FFC in the terms mentioned before.*

    - *Practically, all of the rules require to mention the people which “support or will support” with the implementation of the scheme, without distinguishing if it refers to lawyers, tax advisors, bankers, managers, the taxpayers’ personnel or of its branches, etc.*

    - *In the same regard for tax treaty application, the obligation to state under oath if the foreign resident which applies or will apply a treaty to avoid double taxation entered in by Mexico is the effective beneficiary is included. Such case, as mentioned before, is out of the reach of a tax advisor, given that such representation is carried out on behalf of a third party.*

- *Additionally, in many cases, it is requested to provide the accounting treatment and the IFRS applied, being highly probable that tax advisors are not aware of such treatment, given that it is related to a different profession, henceforth, such topics have been treated independently at a global scale, excluding one from the other.*

- *In the same regard, we consider it will be difficult to provide the applicable foreign legal provisions, given that the taxpayers or tax advisors in Mexico will not always have such knowledge*

» Detailed description of the tax benefit obtained or expected.

» Name or corporate name, Mexican Tax ID number and any other tax information of the entities or vehicles which are part of the disclosed reportable scheme, detailing which of them was incorporated during the last 2 years, or which shares or equity participations were acquired or transferred during the same period.

» Fiscal years in which the reportable scheme is expected to be implemented or has been implemented.

» Any other relevant information for reviewing purposes.

Taxpayers are not obliged to disclose in all of the cases a reportable scheme, given that, as mentioned before, the primary responsible party are tax advisors. Nevertheless, taxpayers are obliged to disclose reportable schemes pursuant to article 200 of the FFC, rule 2.22.1 of the TAR and the guideline 298/FFC "Informative return in order to disclose a general and a customized reportable scheme" included in Exhibit 1-A of the TAR, in the following cases:

» When the tax advisors do not provide the ID number of the reportable scheme issued by the TAS, nor provide a non-reportable scheme certificate.

The taxpayer shall only be released of the obligation to report a scheme, when its tax advisor had already reported it, which is reasonable, or when such advisor provides a certificate explaining why the implemented scheme is non-reportable, given that, it is very relevant that taxpayers obtain their certificates regarding all the non-reportable schemes.

There are certain interpretations that could lead to the conclusion that in the event of not having a non-reportable scheme certificate, a scheme that in principle is not reportable pursuant to the assumptions included in the FFC, could be considered as reportable due to such event.

- When the reportable scheme was designed, implemented and managed by the taxpayer.

- When the taxpayer obtains tax benefits in Mexico derived from a reportable scheme that has been designed, commercialized, organized, implemented or managed by a person that is not considered a tax advisor.

- When the tax advisor is a foreign resident without a permanent establishment in Mexico, or when having such establishment, the activities connected to such permanent establishment are not the ones carried out by a tax advisor.

- The existence of a legal restriction that does not permit the tax advisor to disclose the reportable scheme.

  Tax advisors may not invoke as a restriction to the disclosure of a reportable scheme, professional secrecy provided in Article 36 of the Secondary Law of Article 5 of the Mexican Constitution, given that although there are judicial precedents that indicate that this principle is implicitly regulated by the protection of the human rights of intimacy and privacy, such article of the Constitution establishes that professional secrecy will not be applicable in those cases where the law establishes the obligation to disclose information and Article 197 of the FFC expressly establishes that the disclosure of reportable schemes "shall not constitute a violation of the obligation to keep a known secret under the protection of any profession."

  It is important to note that there may be advisors who may be regulated by the legislation of another country, which could impose obligations on them to report the schemes, as well as that there may also be restrictions derived from the execution of confidentiality contracts or that are protected under the laws of intellectual or industrial property. However, it is very important that confidentiality agreements have substance and materiality, otherwise they can be seen as a mechanism to avoid revealing a reportable scheme.

  In addition, please bear in mind that tax advisors must provide the certificate explaining the legal restriction to report, and that the tax provisions do not relieve them of including the information of the taxpayer they provided services in connection with a reportable scheme, in the annual return that must be filed in February of each year.

- When there is an agreement between the tax advisor and the taxpayer for the taxpayer to be the one obliged to disclose the reportable scheme, which would legally create a restriction for the advisor to reveal the scheme and instead would simply have to deliver the certificate explaining the reasons for this legal restriction in terms of article 197, seventh paragraph of the FFC and to include the corresponding information in its annual return.

In order to achieve a better understanding regarding the requirements established under article 200 of the FFC and the TAR issued for these means, it is recommended to review the document called "Esquemas Reportables de información requerida" of extension .xlsx, in which the necessary requirements for each of the assumptions under article 199 of the FFC can be fully appreciated.

SECTION VI

ADDITIONAL REPORTABLE SCHEMES OBLIGATIONS

- *Tax Advisors obligations*

Tax advisors are required to provide the id number of the reportable scheme issued by the TAS to each one of the taxpayers that intend to implement such scheme.

- *Taxpayers obligations*

Taxpayers that implement a reportable scheme are obliged to include its ID number in their annual return corresponding to the fiscal year in which the first legal act was carried out for the implementation of the reportable scheme and in subsequent fiscal years when the scheme continues to have tax effects.

- *Additional obligations for tax advisors and tax payers*

The tax advisor and the taxpayer must inform the TAS of any modification to the information reported in accordance with article 200 of the FFC, or of any modification made after the disclosure of the reportable scheme, within 20 days following such modification.

Tax advisors and taxpayers will be obliged to submit additional information, within a maximum period of 30 days, when required by the tax authorities, or they will have the right to file, within that same period, a statement under oath that indicates that they are not in possession of it, which must be filed in terms of the provisions of Guideline 302/FFC "Request for additional information to tax advisors and taxpayers" of Exhibit 1-A of the TAR.

Informative return, Article 31-A of the FFC

It is important to note that during the legislative process that included the obligation to disclose reportable schemes, several assumptions of article 199 of the FFC were eliminated, given that they were included in the information that must be reported quarterly in terms of article 31-A of the FFC, pursuant to the following:

- Derivative financial operations and those indexed to an underlying asset that is not listed in a recognized financial market
- Operations with related parties.
- Those related to the participation in the equity of entities and changes in tax residence.
- Corporate restructures and reorganizations.
- Transfers and contributions of goods and financial assets; operations with countries with a territorial tax system; financing operations and interest; tax losses; capital reimbursements; and dividend payments.

Audits

Pursuant to the last paragraph of article 202 and section XI of article 42 of the FFC, tax authorities may carry out field audits to tax advisors in order to verify the proper compliance of the obligations established in articles 197 to 202 of the FFC.

It is important to mention that the resolution issued by the tax authorities may be challenged by the taxpayer or tax advisor.

SECTION VII

PENALTIES

In the event of not complying with the legal provisions regarding the disclosure of reportable schemes, new penalties shall be applied to tax advisors and tax payers derived from wrongful conducts pursuant to the following:

Tax advisors	
Wrongful conduct	**Penalty**
Failure to report a reportable scheme or to do so with errors or in an incomplete manner, except when reported spontaneously.	From $50,000.00 to $20,000,000.00 MXN
Failure to disclose a generalized, reportable scheme that has not been implemented.	From $15,000.00 to $20,000.00 MXN
Failure to provide the identification number of a reportable scheme to taxpayers, pursuant to article 202 of the FFC.	From $20,000.00 to $25,000.00 MXN
Failure to answer requests for further information, issued by the tax authority; or to misrepresent that they do not have the requested information about a reportable scheme, pursuant to article 201 of the FFC.	From $100,000.00 to $300,000.00 MXN
Failure to issue any of the certificates set forth in paragraph seven of article 197 of the FFC.	From $25,000.00 to $30,000.00 MXN
Failure to report to the TAS any change taking place after the disclosure of a reportable scheme under the provisions of the second to last paragraph of article 202 of the FFC. Likewise to file late the information described in article 200(VI), (VII) and (VIII) of the FFC, unless it is filed spontaneously.	From $100,000.00 to $500,000.00 MXN
Failure to file informative returns containing a list of the names or corporate names as well as the Mexican Tax ID number of taxpayers receiving tax advisory services with respect to reportable schemes, described in article 197 of the FFC.	From $50,000.00 to $70,000.00 MXN

Taxpayers

Wrongful conduct	Penalty
Failure to report a reportable scheme or to do so with errors or in an incomplete manner.	For this case, the tax benefit afforded by a reportable scheme shall not be available; and an economic penalty equivalent to an amount ranging between 50% and 75% of the total amount of the tax benefit afforded by or expected from such reportable scheme throughout the fiscal years involving or that would involve the execution thereof shall be imposed.
Failure to include the identification number of a reportable scheme obtained directly from the TAS or through a tax advisor in a tax return, pursuant to article 202 of the FFC.	From $50,000.00 to $100,000.00 MXN
Failure to answer requests for further information, issued by the tax authority; or to misrepresent that they do not have the requested information about a reportable scheme, pursuant to article 201 of the FFC.	From $100,000.00 to $350,000.00 MXN
Failure to report to the TAS any change taking place after the disclosure of a reportable scheme under the provisions of the second to last paragraph of article 202 of the FFC. Likewise to file late the information described in article 200(VI), (VII) and (VIII) of the FFC.	From $200,000.00 to $2,000,000.00 MXN

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