



# Tax Management International Forum

Comparative Tax Law for the International Practitioner

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International Forum, 37 FORUM 47, 12/15/16. Copyright ©  
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DECEMBER 2016

**Bloomberg**  
**BNA**

# MEXICO

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## I. Updates on BEPS-Related (or BEPS-Inspired) Measures or Proposed Measures

No amendment to the Mexican tax provisions has been enacted or proposed in response to the OECD's discussion draft on Branch Mismatch Structures, which was published on August 22, 2016.<sup>1</sup> More generally, Mexico has expressed its wish to continue adopting the BEPS Action Plan in a large number of forums. It is therefore expected that, over time, Mexico will implement measures based on BEPS Action Plan recommendations in areas where Mexican tax law is not already BEPS-compliant.

It should be noted in this context that, in accordance with the usual legislative practice in Mexico, amendments to the tax provisions are enacted annually. However, as noted in previous editions of the Tax Management International Forum,<sup>2</sup> in 2014, the Mexican Government issued a document titled "The Certainty Agreement" ("*Acuerdo de Certidumbre Tributaria*") relating to tax matters. Under The Certainty Agreement, the Executive Branch has made a public commitment not to propose any change to the tax structure in Mexico from 2014 to 2018. Specifically, this comprises a commitment not to increase tax rates, not to propose any new taxes and not to eliminate any tax benefits or exemptions, unless any of these measures are warranted by the macroeconomic conditions in Mexico.

In this respect, the Executive Branch recently sent to the Congress a bill that proposes amendments to a number of tax laws for 2017. However, the bill does not propose the adoption of any BEPS-related or BEPS-inspired measure. At the time of this writing the bill had been approved by Congress and was expected to be published in the official daily shortly.

## II. Going Beyond BEPS, Key Measures Recently Adopted, Applied or Proposed

A number of measures designed to protect the tax base in the context of cross-border activities have been adopted in recent years. These measures remain in force and are outlined below.

Since 2014, the Mexican Income Tax Law has contained a restriction on the deductibility of interest payments, royalties and payments for technical assistance in certain circumstances (i.e., BEPS Action 2: hybrids — transactions and structures). Also, in order to prevent the abuse of Mexico's tax treaties (i.e., BEPS Action 6: treaty abuse), since 2014, in the case of transactions among related parties, the Mexican

tax authorities have been able to require a nonresident wishing to claim benefits under a tax treaty to which Mexico is a party to demonstrate, via a sworn declaration from its legal representative, that double juridical taxation would arise if the treaty concerned were not to apply. These measures are described in more detail in Bloomberg BNA's BEPS Tracker and the Tax Management International Forum of September 2015.<sup>3</sup>

Mexico has also addressed BEPS Action 13 by including in the Income Tax Law an obligation, with effect from 2016, to file on an annual basis and no later than December 31 of the year following the relevant tax year a master file, a local file and a country-by-country ("CbC") report. Penalties are imposed for failure to file these reports or filing them with errors and omissions. In this context, a large number of companies have filed "*amparo*" law suits challenging the constitutionality of Mexican Income Tax Law provisions that impose the obligation to file such information returns. These companies have argued, among other things, that the provisions violate their right not to have their documents subject to constant and indefinite examination without a warrant having been obtained, and the right to legal certainty and legal security, which are guarantees protected by the Mexican Constitution. Again, this measure is described in greater detail in Bloomberg BNA's BEPS Tracker and the Tax Management International Forum of September 2015.<sup>4</sup>

In this respect, it is worth noting that on October 17, 2016, the Attorney General's Office for the Taxpayer's Defense ("*Procuraduría de la Defensa del Contribuyente*" or "PRODECON") made available for public comment a draft of administrative rules prepared by the Mexican Tax Authorities regarding the obligation to file the information returns referred to above. PRODECON will accept comments, opinions and proposals from any party interested in the drafting of such rules until November 18, 2016. After this period ends, PRODECON will hold joint technical sessions with the Mexican tax authorities to discuss the comments, etc. received. After that, the final version of the rules will be published by the Mexican tax authorities.

Finally, in July 2016 the Executive Branch repealed two administrative rules, with the repeal entering into force one month later. These rules concerned information provided to the Mexican tax authorities with respect to transactions or activities carried out abroad. Under these rules it was possible for taxpayers that earned income of any kind deemed subject to a Prefer-

ential Tax Regime in accordance with the Mexican tax legislation not to file information returns with the Mexican tax authorities, or to file such returns providing only the minimum information, with no figures whatsoever.

Specifically, under these administrative rules, taxpayers generating income of any kind: (1) from any of the territories indicated in the Transitional Provisions of the Mexican Income Tax Law (“black list jurisdictions”); (2) through entities or structures incorporated in other countries or jurisdictions; or (3) conducting transactions through fiscally transparent foreign legal vehicles or entities incorporated in countries with which Mexico has in force a Tax Information Exchange Agreement (“TIEA”) were not required to file such information returns. Additionally, individuals required to file information returns could elect to provide only very limited information in such returns. As a consequence of the amendment, the scope of tax-

payers that must report transactions or activities carried out abroad has been broadened.

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#### NOTES

<sup>1</sup> OECD discussion draft, *BEPS Action 2 — branch mismatch structures*, published on Aug. 22, 2016. See also the Comments of IFA Grupo Mexicano, A.C. (Mexican branch of the International Fiscal Association) in the Compilation of comments: BEPS Action 2 Branch Mismatch Structures, published by the OECD on Sept. 23, 2016, at p. 69.

<sup>2</sup> See, in particular, José Carlos Silva, Enrique Perez Colorado and Elias Kamhagi, *Unilateral Anti-BEPS Measures Promulgated or Proposed by Host Country Since July 2013*, Mexico response, Tax Mgmt. Int’l Forum (Sept. 2015); and José Carlos Silva, *Current Status and Practical Considerations in the Implementation of BEPS Measures*, Mexico response, Tax Mgmt. Int’l Forum (Sept. 2016).

<sup>3</sup> See n. 2, above.

<sup>4</sup> See n. 2, above.