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The Mexican tax authorities take action on the BEPS initiative

Recently, the OECD published the BEPS (Base Erosion and Profit Shifting) initiative, which analyzes business structures used by multinationals that have the objective of eroding the tax base.

Mexico, as an OECD member, is seeking to implement measures through the *Servicio de Administración Tributaria* (SAT) to comply with the commitments made within such organization. Among others, the Mexican tax authorities intend to audit taxpayers who have conducted business restructurings with related parties, where the authorities consider that the purpose sought was that of eroding the tax base in Mexico.

In this sense, on August 12th, 2013 the SAT published through its website (www.sat.gob.mx) a statement announcing that they will put in place a special audit program, with the purpose of verifying the due compliance of the applicable tax provisions in the case of business structures whereby non-residents carry out business cycles in Mexico through related parties who act as economic agents, without considering the creation of a permanent establishment in Mexico and, thus, do not pay the taxes derived from such business cycles (supply chain).

Specifically, multinationals that have restructured their operations in Mexico under the supply chain model and as a result are transferring profits to foreign-based related parties, would be audited by the Mexican tax authorities, who would seek to attribute taxable profits in Mexico by trying to impute a permanent establishment, on the grounds that residents in Mexico are carrying out activities on behalf of the foreign-based related parties.

In this regard, it should be borne in mind that the Jurisprudence 528/2012, recently released by the Second Chamber of the Mexican Supreme Court of Justice, states that the information not submitted by the taxpayer to the Mexican tax authorities during the audit process would not be accepted in the litigation process.

Accordingly, it is strongly recommended for taxpayers who use this kind of structures to carry out their business in Mexico, to review in great detail their current standing in respect of tax and transfer pricing obligations, both from a formal and economic substance perspective and having a detailed functional analysis for the companies involved in the business restructuring, in order to anticipate a possible tax audit by the Mexican tax authorities and, if necessary, be in a position to timely provide the corresponding supporting documentation.

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