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MEXICO:
International Tax Update

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Agenda

- Change in Tax Residence
- New RFC (ITIN) Requirements
- Controlling Beneficiary
- Back to Back Loans
- Usufruct Operations
- Legal Representatives for Tax Purposes
- CFC Rules / Inflation Adjustments
- Transfer Pricing

Change in Tax Residence

- Old rule, when a tax resident individual moved out of Mexico and established tax residence in a low-tax jurisdiction, such individual was considered to maintain Mexican tax residence for the following three tax years. This is now increased to five years.

- The old rules also provided for an exception where, if the low-tax jurisdiction in question maintained a comprehensive TIEA, the three-year penalty period would not apply. Now, in order for the exception to apply, the existence of a comprehensive TIEA is not sufficient. An Agreement on Mutual Administrative Assistance for Tax Collections must also be in place now.

- In addition, the migrant individual that wishes to change their tax residence must now first establish tax residence elsewhere, and then sever the Mexican tax residence.

New RFC (ITIN) Requirements

- Every person over 18 yo must register and obtain an RFC even if not economically active and not subject to file tax returns.

- No sanction for now, but practical consequences.

- Applicability to expats?

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Controlling Beneficiary

- A new rule for all
  - legal entities
  - trust settlors, beneficiaries, and trustees
  - parties to a contract or any other legal arrangement
  - public notaries, brokers, and financial institutions

- Requires them to obtain and maintain information related to the controlling beneficiary, and to provide such information upon request by the tax authority.

- A controlling beneficiary is defined as the person who, directly or indirectly, controls the administration, or shareholder meeting decisions within an entity or legal arrangement.

- This information may be used by the tax authority in TIEs.

- Substantial penalties may apply.

Back to Back Loans

- A new rule is added providing that loans granted outside of Mexico to Mexican business entities that are deemed by the tax authority to lack a legitimate business reason shall be treated as back-to-back loans.

- Interest paid on such loans will be recharacterized as dividends.

Usufruct Operations

- The consolidation of usufruct and property rights of an asset shall be considered a taxable event, whereas the previous holder of the property rights is considered to receive the appraised value of the usufruct as taxable income.

- Notaries, brokers, and judges must provide information to the tax authority upon participation in any legal act that results in the segregation of property rights and usufruct.

Legal Representatives

- Generally, nonresidents are subject to tax in Mexico by way of withholding when receiving income that is sourced in Mexico.

- The withholding tax applies on gross income.

- In several cases, the nonresidents are given the opportunity to appoint a representative in Mexico in order to opt-in to a net-basis tax.

- Under a new rule, the legal representatives must have assets sufficient to comply with the tax liability of the nonresident.

CFC Rules / Inflation Adjustments

- Mexican tax law generally allows for inflation accounting.

- Interest income may be offset by the inflation that occurs in the same time period.

- Income that is subject to so-called Preferential Tax Regime (ie CFC structures) is subject to an anti-deferral rule and is reported currently.

- Under the new rules for 2022, the calculations for such income may not include an inflation adjustment.

Transfer Pricing

- A new rule establishes an obligation to have a transfer pricing study to support any transactions between related parties, including transactions between residents in Mexico.

- Previously a transfer pricing study was only required for transactions between a resident in Mexico and a nonresident.

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