

Legal Alert



May 2016
Number 39

Visit our site:
www.bakermckenzie.com/mexico



LinkedIn



Facebook



Twitter

Guadalajara

Av. Paseo Royal Country #4596
Piso 16, Edificio Torre Cube 2,
Fracc. Puerta de Hierro
45116, Zapopan, Jalisco
Tel: +52 33 3848 5300
Fax: +52 33 3848 5399

Juarez

P.T. de la Republica 3304, Piso 1
32330 Juárez, Chihuahua, Mexico
P.O. Box 9338 El Paso, TX 79995
Tel. +52 656 629 1300
Fax +52 656 629 1399

Mexico City

Edificio Virreyes
Pedregal 24, piso 12
Lomas Virreyes / Col. Molino del Rey
11040 Mexico, D.F., Mexico
Tel: +52 (55) 5279 2900
Fax: +52 (55) 5279 2999

Monterrey

Oficinas en el Parque,
Torre Baker & McKenzie - Piso 10
Blvd. Antonio L. Rodriguez
1884 Pte.
64650 Monterrey, Nuevo Leon, México
Tel. +52 81 8399 1300
Fax +52 81 8399 1399

Tijuana

Blvd. Agua Caliente 10611, Piso 1
22420 Tijuana, B.C., Mexico
P.O. Box 1205 Chula Vista,
CA 91912
Tel +52 664 633 4300
Fax +52 664 633 4399

SAT Intensifies Transfer Pricing Revisions Through Invitation Letter

Recently, the Central Administration of Transfer Pricing Revision ("Tax Authority") of the SAT, the organization responsible for the transfer pricing revisions in Mexico, has intensified the delivery of letters called "Invitation Letter", through which requires information to the taxpayers.

In words of the Tax Authority itself, this program represents a "permanent supervision campaign, prior to use of abilities to initiate a tax audit" and is intended to "facilitate and encourage the voluntary and timely compliance with tax provisions" in transfer pricing matters.

In particular, the main intention of these Invitation Letters is to request taxpayers to "spontaneously correct their tax situation, or prove they have properly fulfilled with their tax obligations".

Is important to mention that the Invitation Letter does not represent the initiation of a tax audit by the Authority, it is only an invitation. Before sending any documentation or having communication with the Tax Authority, is recommendable to review the particular case to take a better decision.

Information required by the Tax Authority

At this "spontaneous and voluntary compliance" stage, the Tax Authority is requiring, among others, and depending on the nature of the taxpayer's transactions, the following documentation:

- i) Supporting documentation that demonstrate the compliance of transfer pricing obligations of the taxpayer, not only those related to operations carried out with related parties abroad, but also those held with residents in Mexico (i.e., transfer pricing study);
- ii) Trial balance to subaccount level, preferably in electronic format or Excel;
- iii) Copy of Annex 9 of the multiple informative return, i.e., copy of the informative return of operations carried out with related parties abroad;
- iv) Working papers with the detail of the main transaction(s) held with related parties (e.g., the amount, price, name of the related

party, tax residence, etc.), according to the type or nature of the operation concerned; and

v) Other documentation or information that in the opinion of the Authority would be relevant to verify the compliance of taxpayer's obligations, for example, working papers and tax receipts or invoices, associated to the operations celebrated with both, related parties and independent third parties, which are comparable to the operations held with related entities.

At the moment, the request of documentation by the Tax Authority is limited to the revision of a single tax period.

Procedures, means and submission date

The taxpayers are invited to provide the information and/or documents requested by the Tax Authority, considering the formalities established by the Federal Tax Code for any promotion, i.e. through a writ (an original and two copies) signed by the legal representative, accompanied by the documentation and information requested in the Invitation Letter, in Spanish or in its original language but including the translation to Spanish. The term foreseen by the Tax Authority to submit this information is up to 25 business days, counted from the next day the Invitation Letter is received, the taxpayer must present the requested information in Tax Authority's offices located in Mexico City.

Compliance recommendations

While the Tax Authority clarifies that the Invitation Letter is a preventive program that does not imply the beginning of a tax audit, we believe that this is a program of pre-taxation or facts validation, including omissions, irregularities or inconsistencies previously detected by the Tax Authority. The above based on the documentation held by the Authority itself, such as: statutory tax returns; multiple informative returns, specially the exhibits relating to transactions and payments to related parties; transfer pricing audits previously made to taxpayers in the same industry or with the same type of transactions; in addition to the various analyzes and reports prepared by SAT's audit programming department.

Regardless of analyzing in greater depth and case by case the scope and legal implications of this compliance program, in case the taxpayer receives an Invitation Letter from the Tax Authority it is convenient to address the following recommendations:

- a) If the taxpayer decides to address the Invitation Letter, however the information requested is not available, he should evaluate the possibility of requesting an extension. As part of the evaluation, it is important to take into consideration the sequential revision that the authority is obligated to make, if the taxpayer chose to present the statutory tax return;
- b) If the taxpayer decides to address the Invitation Letter, it is

important to file the procedure with due care and monitoring, in order to timely comply;

- c) Analyze and previously validate the information that would be submitted before the Tax Authority, since the documents that will be provided will constitute the initial basis for the legal defense in case the Tax Authority decides to initiate a formal revision process or a transfer pricing audit;
- d) Review, revise and make the corresponding information crosschecks, in order to confirm the consistency of the information reported in the different supporting documentation (this consistency analysis it is necessary not only for the analyzed fiscal year, but to the whole fiscal period susceptible to a tax audit) or, if necessary, perform the corresponding clarifications; and
- e) Provide in time and manner the writ and the information requested by the Tax Authority previously validated by the taxpayer.

We reiterate that when is not possible to submit all the information and documentation requested within the term foreseen in the Invitation Letter, we suggest to request an extension to the Tax Authority explaining the reasons that prevent the submission of the requested documentation in the stated term.

Otherwise, there is a risk that the Tax Authority assumes the non response as a "voluntary" incompliance and, in consequence, it might formally initiate a tax audit.

It is worth adding that the involvement of all people or departments responsible to prepare or document the information regarding the transactions with related parties for legal, accounting, tax and/or foreign trade, is indispensable to guarantee the consistency of the information and to demonstrate the compliance with the tax obligations in this stage.

In Baker & McKenzie we have a multidisciplinary team of lawyers, economists and accountants, experts in transfer pricing, who can assist your company in issues related to this matter.

Authors

Armando Cabrera Nolasco
armando.cabrera-nolasco@bakermckenzie.com

Moisés Curiel García
moises.curiel-garcia@bakermckenzie.com

Carlos Linares García
carlos.linares-garcia@bakermckenzie.com

Katia Huevo Ponce
katia.Huevo-Ponce@bakermckenzie.com

Brenda Garcilita Romero
brenda.garcilita-romero@bakermckenzie.com

Contacts

Luis C. Carbajo-Martínez – Juárez
luis.carbajo-martinez@bakermckenzie.com

Moisés Curiel-García – Mexico City
moises.curriel@bakermckenzie.com

Luis Adrián Jiménez-Robles – Mexico City
luis.jimenez-robles@bakermckenzie.com

Carlos Alberto Linares-García – Monterrey
carlos.linares-garcia@bakermckenzie.com

Jorge Narváez-Hasfura – Mexico City
jorge.narvaez-hasfura@bakermckenzie.com

Héctor Reyes-Freaner – Mexico City
hector.reyes-freaner@bakermckenzie.com

Jesús Alvarado-Nieto – Mexico City
jesus.alvarado-nieto@bakermckenzie.com

Armando Cabrera-Nolasco – Guadalajara
armando.cabrera-nolasco@bakermckenzie.com

Roberto Cardona-Zapata – Mexico City
roberto.cardona-zapata@bakermckenzie.com

Ulises Castilla-Flores – Mexico City
ulises.castilla@bakermckenzie.com

Roxana Gómez-Orta – Monterrey
roxana.gomez-orta@bakermckenzie.com

Eduardo Méndez-Ojeda – Monterrey
eduardo.mendez-ojeda@bakermckenzie.com

Ronaldo Moya-Alessio Robles – Mexico City
ronaldo.moya-alessio@bakermckenzie.com

Alberto Polanco-Inzunza – Monterrey
alberto.polanco-inzunza@bakermckenzie.com

Juan Carlos Valles-Zavala – Juárez
juan.valles-zavala@bakermckenzie.com

Baker & McKenzie International is a Swiss Verein with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm.

This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

Before you send e-mail to Baker & McKenzie, please be aware that your communications with us through this message will not create a lawyer-client relationship with us. Do not send us any information that you or anyone else considers to be confidential or secret unless we have first agreed to be your lawyers in that matter. Any information you send us before we agree to be your lawyers cannot be protected from disclosure.