

IFA Mexico international taxation webinars: a brief review

By IFA WIN Mexico

During September, IFA Mexico organized a five-session event for discussing cutting-edge topics related to international tax implications within Mexican taxation. During every meeting, a panel integrated by senior practitioners gave their views and concerns about these issues.

In order to highlight and share the principal ideas shared in the webinars, please find as follows a brief summary of each one:

1. Views from the Federal tax attorney regarding aggressive tax planning (August 25, 2020). The first webinar was dedicated to the criminal effects on tax transactions derived from the latest criminal reform where several tax illegal conducts were given the criminal implications as for organized crime.

With a panel chaired by Arturo Pérez Robles and Enrique Ramírez, Carlos Romero Aranda, Federal tax attorney, and Victor Manuel Contreras, as deputy Federal tax attorney, the discussion was focused on what taxpayers should expect from the amendments to articles 107, 108 and 113 Bis from the Federal Tax Code (“FTC”), specifically targeted to people dedicated to sell tax invoices –which support non-existing transactions-. They discussed that some of these behaviors could be considered as felonies and their participants shall face criminal prosecution.

2. Limitation on deductible payments (September 1st, 2020). As for the second webinar, a panel sited by Jorge Correa, Laura Rodríguez Berrón and Roberto Romo discussed sections XXIII and XXXII of article 28 of the Mexican Income Tax Law (“MITL”), regarding the restrictions to deduct payments made to related parties and interest payments. These sections were result of last year tax reform and are enforceable from January 1st, 2020.

As it was discussed in the panel, these new provision derived from BEPS Action 2 and Action 4 and seeks to limit abuses that may arise from the deductibility of certain payments. However, throughout several examples shown in the presentation, the panel discussed that the interpretation and application of these rules could be unclear or questionable. This uncertainty is also increased by the lack of administrative rules for taxpayers to advise them how these restrictions are planned to function.

3. The new general anti-abuse rule and reportable schemes (September 8th, 2020). Regarding the third webinar, Reginaldo Montaña, Marco Antonio Elizalde and Francisco Matus, presented the novel article 5-A of the FTC, the new Mexican GAAR and its new chapter regarding reportable schemes. As discussed during their two-hour panel, the recently adopted Mexican GAAR seeks the re-characterization of tax effects for those transactions that lack a “business reason”. While this concept is not included within the

Mexican tax laws, it has become a common argument for tax authorities to start audits against taxpayers.

Similarly to other jurisdictions, the application of the Mexican GAAR is followed by two tests: (i) the expected economic benefit shall be greater than the tax benefit in the given transaction, and, (ii) the same transaction could be achieved throughout less steps and resulted on greater taxation. While these “tests” have common elements with GAARs from other jurisdictions, it was pointed out that the administrative rules issued by the tax authorities are still pending, so several important inquiries about the application of these rules are still pending.

As for the reportable schemes, the panel members highlighted that this was an effort inspired in BEPS Action 12, as well as the European DAC 6, which both instruments seek a deeper involvement from the tax practitioners to disclose those arrangements –whether they design or have knowledge of- that are considered abusive behaviors. Similarly to the Mexican GAAR, the application rules for reportable schemes are still pending.

4. Digital taxation, updates from domestic and international tax law (September 17, 2020). With the participation of Edgar Anaya, Nora Morales and Guillermo Narvaez, the fourth panel sustained a very in-depth conversation about the OECD Pillar 1 and Pillar 2 blueprints, which are proposals to modify the current basic standards for international taxation.

Followed by an intensive growth of economic business and tech giants, the OECD deemed necessary to go beyond BEPS Action 1 and to start working on two new pillars to redefine international taxation criteria specifically targeted to multinational enterprises (“MNEs”) with considerable worldwide revenue.

For so, Pillar 1 is a proposal to include new elements for allocating taxation rights, such as it would be the “market jurisdiction” and novel “nexus” rules. By setting different thresholds and amounts for the MNEs worldwide taxable income, this Pillar aims to increase the overall global taxable revenue. As for Pillar 2, or *GloBE*, pretends to be a minimum tax applied against income that has not been taxed, by the enforced of several rules to subject taxation- a proposal very similar to the U.S. GILTI.

While Pillar 1 and Pillar 2 are proposals announced since 2019, the 2020 blueprints represent a considerable progress from their initial announcement. The OECD expects to have a significant development for these pillars by mid-2021.

(To read more about this topic, please consult this newsletter section of “Taxation of Digital Economy. General overview of the OECD project”, written by Nora Morales)

5. Foreign entities and vehicles and payments to REFIPRE (September 22, 2020). For the last webinar, Manuel Tron, Armando Lara, Raúl Navarro and Martha Ruelas offered their

views regarding the new transparency tax regime for the foreign entities and figures in terms of the new article 4-A, 4-B and 205 of the MITL, as well as the modifications to the REFIPRE chapter (Mexican CFC rules).

Also as a result of the 2020 tax reform, the MITL was amended in order to establish these three additional provisions to substantially modify how payments to and income received from foreign transparent entities and figures shall be treated and how they are different from the rules applicable to REFIPRES. Throughout the session, several hypothetical cases were discussed in order to understand more clearly the material results of these changes. It was also noted that administrative rules for articles 4-A and 205 of the MITL are still pending, even though they will be enforceable as from January 1st, 2021.

(To read more about this topic, please consult our previous newsletter, section of “Transparent or opaque? Some considerations to Mexico’s new tax transparency regime”, written by Marcela Fonseca and Ximena García)