

# Issuance of rules applicable to the disclosure of reportable schemes

Tax – November 25, 2020

On November 18 and 23, 2020, the Third Amending Resolution to the Tax Miscellaneous Resolution for 2020 (the "Resolution") and its Annexes 1, 1-A, 3, 11, 14 and 23, respectively, were published on the Federal Official Gazette. The Resolution includes the addition of Chapter 2.22, applicable to the disclosure of reportable schemes established in Title Sixth of the Federal Fiscal Code ("FFC"), while Annex 1-A contains the official forms establishing the procedure to comply with the related obligations.

It is unfortunate that the Resolution has been issued in the referred date considering that it does not clarify certain aspects which are relevant to duly comply with the obligations related to the disclosure of reportable schemes, obligations which must be complied with by taxpayers and tax advisors as of January 2021.

The rules included in the afore mentioned Chapter establish, among others, the following:

- I. The disclosure of reportable schemes and the filing of supplementary informative returns will be carried out according to the instructions set forth in the procedure guidelines 298/CFF, 299/CFF and 300/CFF of Annex 1-A of the Tax Miscellaneous Resolution for 2020 ("TMR"), respectively.
- II. The information and documentation that must be included for purposes of disclosing the reportable schemes referred to in each of sections I to XIV of the first paragraph of article 199 of the FFC.
- III. The information that must be included in the certificates to be issued by tax advisors disclosing reportable schemes on behalf of other tax advisors.
- IV. The definition of "mechanisms that prevent the application of article 199 of the FFC", mentioned in the last paragraph of said article, which are also reportable according to Title Sixth of the FFC.
- V. The issuance of certificates regarding non-reportable schemes or of the existence of a legal impediment to disclose a reportable scheme shall be carried out according to the instructions set forth in the procedure guideline 301/CFF of Annex 1-A of the TMR.

VI. The tax advisor or taxpayer who is required by the Mexican tax authorities to submit additional information and documentation after the disclosure of a reportable scheme must do so in accordance with the instructions set forth in the procedure guideline 302/CFF of Annex 1-A of the TMR.

VII. Tax advisors must submit the informative return disclosing the list of taxpayers to whom a reportable scheme has been commercialized in accordance with the instructions set forth in the procedure guideline 303/CFF of Annex 1-A of the TMR

The aforementioned procedure guidelines were published as part of the amendments to Annex 1-A of the TMR and specify that the disclosure of reportable schemes shall be carried out according to further procedures indicated on the website <http://omawww.sat.gob.mx/EsquemasReportables/> and in compliance with the provisions established in the guidelines that may be consulted on the aforementioned website.

However, as of today, both the procedures for disclosing reportable schemes and the corresponding guidelines are not available on the website.

Additionally, it is important to mention that with the issuance of the rules under consideration there is still question as to the following aspects that we consider relevant:

- The Ministry of Finance has not issued yet the secretarial agreement establishing the parameters on the minimum amounts to which the disclosure of reportable schemes will not result applicable, pursuant to the penultimate paragraph of article 199 of the FFC.
- The rules applicable to the request of additional information by the tax authorities with respect to a reportable scheme previously disclosed by tax advisors and taxpayers remain undefined, particularly in connection with the timeframe and procedure that the tax authorities would have to abide by in order to request such additional information.
- It is not clarified if the informative return to be submitted by tax advisors during February of the subsequent fiscal year must be submitted with respect to reportable schemes disclosed by the taxpayer.
- It is not clarified in which cases there could be a legal impediment for the tax advisor to disclose a reportable scheme.
- No requirements or parameters have been established regarding the agreement to be entered into between the tax advisor and the taxpayer by means of which the latter would be the disclosing party of a reportable scheme, pursuant to section VI of article 198 of the FFC, nor is it clarified which would be, if any, the remaining obligations of the tax advisor when the taxpayer is the disclosing party.

- No parameters are established for assessing the monetary value of the tax benefit obtained or intended to be obtained derived from the implementation of a reportable scheme.

We would expect that prior to having to comply with the obligation to disclose reportable schemes, the tax authorities issue additional rules to clarify the afore mentioned aspects.

We remain at your disposal for any questions or comments in connection with the information contained herein.

**For any additional information, do not hesitate to contact our expert team on tax issues, who can be of assistance: [fiscal@macf.com.mx](mailto:fiscal@macf.com.mx)**

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