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Understanding the Mexican Mandatory Reporting Regime (MDR)

A Guide to Compliance

Background

What is the Mexican Mandatory Reporting Regime (MDR)?

The OECD's BEPS Action Plan recognises that one of the key challenges faced by tax authorities is a lack of timely, comprehensive and relevant information on potentially aggressive or abusive tax planning strategies.

BEPS Action 12 provides recommendations for the design of rules to require taxpayers and advisors to disclose aggressive tax planning arrangements. These recommendations seek a balance between the need for early information on aggressive tax planning schemes with a requirement that disclosure is appropriately targeted, enforceable and avoids placing undue compliance burden on taxpayers.

As part of the tax reform enacted on December 9, 2019, Mexico established a new reportable transaction obligation in Articles 197 to 202 of the Federal Fiscal Code (FFC).

When did Mexican MDR come into force?

The Mexican Tax Code (CFF), has been in force since 1 January 2020. The tax reform includes a transition period under which reportable transactions performed before 2020 and during 2020 must be reported within 30 business days of 1 January 2021, which means taxpayers and tax advisors must report those transactions on or before 15 February 2021.

Which authority is in charge of MDR in Mexico?

The Tax Administration Service (SAT) will issue the regulations applicable to the disclosures. The Ministry of Treasury and Public Credit (SHCP) will issue the thresholds regarding the minimum amounts needed to trigger the applicability of this new regime.

Where can I find the Mexican legislation?

The Mexican MDR legislation can be found in Articles 197 to 202 of the Mexican Federal Fiscal Code.

Reporting Entities

Who is considered to be a tax adviser?

Any individual or entity that within the ordinary course of their activity:

(i) is responsible for or involved in the design, marketing, organisation, implementation or management of a complete reportable scheme;

or,

(ii) makes available a complete reportable scheme for implementation by a third party.

Which tax advisers are required to make MDR reports in Mexico?

- A tax adviser that is a resident in Mexico
- A tax adviser that is a resident abroad with a permanent establishment in Mexico
- A tax adviser that is a foreign resident who has a related party or permanent establishment in Mexico
- A third-party who provides tax advice under the same brand or trade name in Mexico as the tax adviser residing abroad

What happens if there are multiple tax advisers involved in a transaction?

Where there are several tax advisers required to disclose the same reportable scheme, in order to comply with this obligation, it is sufficient for one of the tax advisers to disclose the reportable scheme and inform the rest of the tax advisers that they did so, however all advisors' names need to be completed.

What happens if one tax adviser doesn't agree with the information that has been reported by another tax adviser?

In this situation, the tax-adviser that did not make the initial report, will have an obligation to provide an informative supplementary statement containing the missing information

When does a taxpayer (not a tax adviser) need to report?

1. by mutual agreement with the tax advisor for transaction plans made available/entered into after 1 January 2020;
2. for transactions performed before 2020 but with Mexican tax benefits available in 2020 and onwards;
3. in cases where the tax adviser does not report.

Reportable Transactions

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What is considered to be a tax scheme?

A 'tax scheme' under Mexican MDR could be any plan, project, proposal, advice, instruction or recommendation, expressly or tacitly externalised in order to materialise a series of legal acts. A tax scheme should be reported when it generates or could generate, directly or indirectly, a tax benefit in Mexico and fulfills any of the characteristics provided for in the Mexican legislation. For these purposes, the monetary value derived from any reduction, elimination, or temporary deferral of a contribution is considered a tax benefit. This includes, among others, the effects achieved through deductions, exemptions, non-taxation, non-recognition of a cumulative gain or income, adjustments or absence of adjustments to the tax base of the contribution, the crediting of contributions, the re-characterisation of a payment or activity, or a change of tax regime.

What is not considered to be a tax scheme?

Proceedings before tax authorities or a taxpayer's defense within a tax dispute will not be deemed to constitute a scheme.

What characteristics make a transaction reportable?

For a transaction to be considered reportable, it must meet at least one of the following characteristics:

1. The transaction avoids the exchange of tax or financial information between foreign and Mexican tax authorities, as defined.
2. The transaction avoids the application of Mexican tax rules for investments in transparent tax entities or preferential tax regimes.
3. The transaction consists of one or more legal acts that allow for the transfer of tax losses to a party that did not generate the loss.
4. The transaction consists of a series of interconnected payments or transactions that return all or a portion of the initial payment to the original payer, its shareholders or related parties.
5. The transaction involves a non-resident applying a tax treaty with Mexico with respect to income that is not subject to tax or is subject to tax at a beneficial rate compared to the general corporate rate in the country or jurisdiction of the non-resident's residence.
6. The transaction involves certain intercompany transactions such as the transfer of hard to value intangible assets; business restructuring with no consideration for the transfer of assets, functions or risks and resulting in a reduction of more than 20% of the Mexican operating income; the transfer, or the granting of, the temporary use of assets or rights without consideration; performing services or functions that are not compensated; the use of non-reliable comparables for benchmarking unique and high-value transactions; and the use of a unilateral protection regime pursuant to the laws of a foreign country.

7. The transaction avoids generating a permanent establishment in Mexico under income tax laws and tax treaties.

8. The transaction involves the transfer of a fully or partially depreciated asset and allows the related party to depreciate the asset.

9. The transaction involves a hybrid mechanism.

10. The transaction avoids identifying the beneficiary of income or assets.

11. The transaction generates income for a taxpayer to avoid carrying forward expired tax losses that create a future deduction for the taxpayer or a related party.

12. The transaction avoids the application of dividend withholding tax on individuals or foreign residents.

13. The transaction provides for the leasing of assets that are then leased back to the original party or a related party.

14. The transaction has accounting and tax values that differ by more than 20%.

Are there different reporting categories?

Reports are divided into two categories:

Generalized reports

Customized reports

What is a "generalized" reporting scheme?

Generalised reporting schemes are those transactions seeking to be marketed massively to all types of taxpayers or to a specific group of them (even if they require minimal or no adjustments to suit the specific circumstances of each taxpayer, provided that the way in which the tax benefit is obtained is the same).

What is a "customized" reporting scheme?

Customized reportable schemes are those transactions that are designed, marketed, organised, implemented or managed to suit the particular circumstances of a specific taxpayer.

Making a Report

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What is the current status of reporting in Mexico?

The Mexican tax authorities have provided additional guidance clarifying the scope of MDR and the provisions for applying the regime, including general rules on the format and guidelines for reporting those transactions. The reports will be made via pdf.

When does reporting need to take place?

The trigger for the reporting deadlines differ slightly depending on if a transaction is considered to be a “customized” or a “general” transaction. However reporting must take place 30 business days after they have been “made available” to the taxpayers or when the “first step or legal act” of the transaction plan is performed, whichever comes first.

What needs to be reported for “generalized” transactions?

- Name and tax ID number of the tax adviser or taxpayer disclosing the reportable structure;
- Name and tax ID number of the persons released from the disclosure obligation;
- Names of the tax advisers’ and taxpayers’ legal representatives.

What needs to be reported for “customized” transactions?

- Name and tax ID number of the tax adviser or taxpayer disclosing the reportable structure;
- Name and tax ID number of the persons released from the disclosure obligation;
- Names of the tax advisers’ and taxpayers’ legal representatives;
- General tax information of the taxpayer who will benefit from the corresponding transaction (if the beneficiary is a foreign tax resident, the country or jurisdictions in which it resides, as well as its tax ID number and tax domicile, should be provided);
- Detailed description of the reportable transaction (by steps if applicable) and the domestic or foreign applicable provisions in which it is based;
- Detailed description of the (obtained or expected) tax benefit;
- The fiscal years in which a structure is expected to be implemented or the years in which it has been in place;

- Name, tax ID and any other relevant information of the entities or legal figures involved in the reportable transaction (for such purposes, it should be indicated which of them have been created or incorporated within the last two years, or whose shares or interests have been acquired or transferred within the same term); and
- Any other information deemed relevant by the tax adviser or taxpayer or requested by the tax authorities pursuant to the applicable provisions.

Is there any additional reporting required by tax advisers?

Tax advisers must file an informative statement in February of each year, including the taxpayer ID number and legal and/or business name of each of the taxpayers to which they provided tax advisory services in connection with reportable schemes

How is a report evidenced?

The tax adviser will get an identification number for each reportable scheme they are involved with and they will need to issue proof of reporting to the taxpayer.

The tax adviser must also inform the other tax advisers who participated in the related reportable scheme; failure to do so will result in the other tax advisers continuing to be under the obligation to disclose the reportable scheme.

Additional Information

Is there a historical backlog period for tax advisers?

Yes, tax advisors must report all transactions that took place between 1 January 2020 and 31 December 2021 30 business days after 1 January 2021. Any transaction that was triggered for reporting before 1 January 2020 does not need to be reported by the tax adviser.

What extra features does Mexican MDR have?

Mexico's MDR rules also require that in some cases where a transaction is not covered by the 14 defining characteristics, the tax advisor must issue a reportable transaction certificate to taxpayers for advice on those transactions, even though they do not need to be reported to the tax authority.

Tax advisors must deliver the certificate within five business days of the date on which the transaction plan is available for the taxpayer to implement or the first legal act of the transaction plan is performed, whichever occurs first.

The notice to the taxpayer must include the justification and reasoning behind why it is deemed not to be a reportable scheme.

Is there LPP?

No. It is expressly stated that fulfilling obligations under the reportable schemes' regime shall not constitute a breach of confidentiality that tax advisers might be under by virtue of any profession.

When is a taxpayer required to report an MDR transaction?

When the tax adviser does not provide them with the identification number of the reportable scheme issued by the tax authorities (SAT) or give them a notice that the scheme is not reportable;

1. The reportable scheme was implemented prior to January 1 2020;
2. The reportable scheme has been designed, organised, implemented and managed by the taxpayer or by a person that does not qualify as a tax adviser; and
3. There is a legal impediment for the tax adviser to disclose the reportable scheme
4. There is an agreement between the tax adviser and the taxpayer in which the taxpayer agrees to be the one subject to the obligation to disclose.

Additional Information

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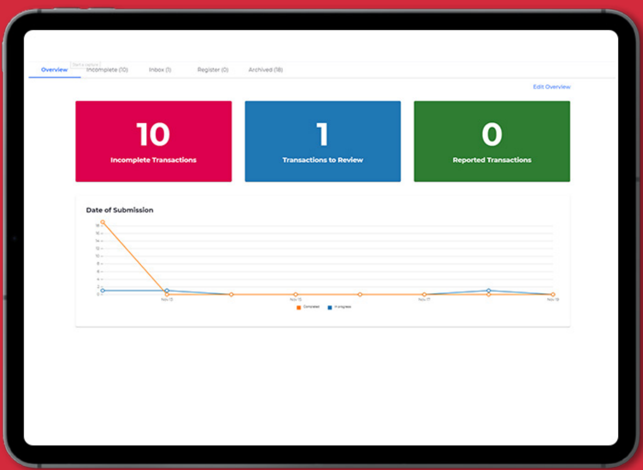
What are the penalties in Mexico?

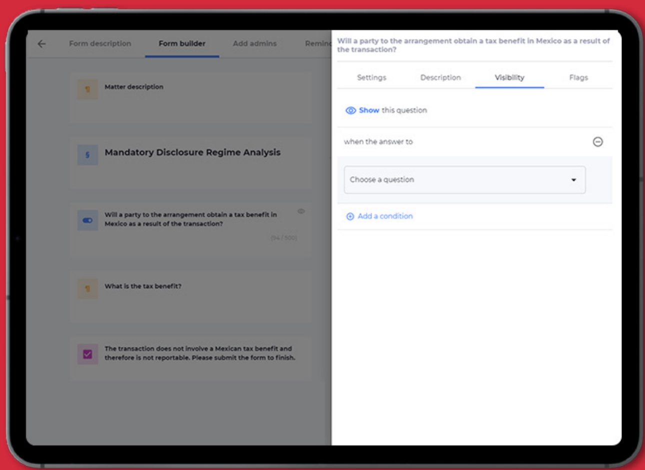
Tax advisers face penalties ranging from around MXN15,000 to MXN20,000,000 (US$680 to US$900,000.

Taxpayers face penalties ranging from around MXN 50,000 (US$2000) to being prohibited to apply a tax benefit to the reported transactions. In cases where the taxpayer doesn't report or provides an inaccurate report, the tax authorities may also impose an economic penalty equivalent to an amount between 50% and 75% of the tax benefit's value obtained.

VinciWorks' MDR Reporting Tool

VinciWorks' MDR reporting solution provides firms and multinational businesses with the expertise, knowledge and technical infrastructure to comply with the Mexican MDR regulations. The tool uses a built-in knowledge engine to guide users through the MDR process and recommends which transactions should be reported. It features workflows designed and updated for the intricacies of Mexico's implementation of MDR.





Core features

- Built-in guidance on whether a transaction is reportable
- Reminders for reporting deadlines and reviewing ongoing transactions
- Customizable dashboard to make it easier to stay on top of deadlines
- Customizable workflow to easily collect all pertinent data
- Choose from a number of hosting options, including cloud hosting and on-premises hosting

Learn More: www.vinciworks.com/mdr/mexico

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