

Tax Insights Newsletter May 13, 2024

In specific

Information return of non-Mexican entities subject to preferential tax regimes (REFIPRE) and tax transparent vehicles

In detail

Information return of non-Mexican entities subject to preferential tax regimes (REFIPRE per its acronym in Spanish, or tax havens) and tax transparent vehicles (article 4-B of the Mexican income tax law). May 2024 is the last month to file on time this information return regarding the information for fiscal year 2023. Failing to file this return may represent a tax crime.

Key Points

Obligation to submit information returns

According to the Mexican income tax law, Mexican tax residents, including individuals and legal entities, are required to disclose information regarding their investments when they own a participation (e.g., stock participation) in non-Mexican entities, contracts, trusts, or any other juridical figure, considering the following:

- In general terms, if the non-Mexican entity or vehicle is considered as tax transparent, the revenues generated abroad should be recognized as a taxable revenue in Mexico (even if no distribution was made to Mexico) in accordance with the rules included in article 4-B of the Mexican income tax law. The methodology provided by said article 4-B can be different for each taxpayer, depending on the characteristics of the transparent vehicle. For that reason, it is important the analysis to determine the applicable tax rules for the Mexican tax resident derived from the investment abroad.
- If the non-Mexican vehicle or entity is considered as a REFIPRE or tax haven, it will be necessary to conduct an analysis to determine if the profits generated abroad should be recognized as a taxable revenue in Mexico (even if no distribution has been made).
- In both cases, in general, Mexican taxpayers are required to file the information return of non-Mexican entities subject to REFIPRE/tax haven and tax transparent vehicles. This obligation should also arise when Mexican taxpayers own investments in specific countries and jurisdictions listed in the Mexican income tax law. This information return is filed in February, and failing to comply with this obligation may be considered as a tax crime subject to prison penalty. In addition, if this information return is not timely filed, taxpayers may lose the opportunity to deduct expenses from the investment abroad when determining the taxable income in Mexico.
- For fiscal year 2023, there is a chance to file the information return on time to the extent it is filed at the latest in May 2024.

Our Recommendations

We strongly recommend evaluating cases where a Mexican tax resident, including individuals and legal entities, owns stock participation in non-Mexican entities or any other type of participation in non-Mexican trusts, associations, contracts or in any type of entity or legal figure to determine the specific rules applicable and determine if there is an obligation to file the information return previously described, bearing in mind that the last chance provided by the tax authorities to consider a timely filing is May 2024, and prevent adverse tax consequences.

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