

The logo features the letters 'CCN' in a white, sans-serif font, stacked vertically within a white square on the left. To the right of this square, the word 'NEWSFLASH' is written in a large, bold, white, sans-serif font. The background of the top section is a dark blue gradient with a faint image of hands typing on a keyboard.

CCN NEWSFLASH

Mexico Now Requires Disclosure of Aggressive Tax Planning Transactions


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The Mexican Omnibus tax bill for 2020 was published in the Official Journal of the Federation on December 9, 2019. Among other changes, a new Section, “Regarding the Disclosure of Reportable Transactions,” was added to the Mexican Federal Tax Code (“CFF” for its acronym in Spanish), which sets forth a mandatory disclosure or reporting requirement for certain transactions including or involving tax planning structures (“Reportable Transaction”). Depending on the date of implementation of the tax planning transaction and other factors, the tax planning transactions must be disclosed or reported by either the tax advisor involved or the corresponding taxpayer.

The primary objective of the new reporting requirement is to prevent transactions that involve aggressive tax planning. As a practical matter, the reporting obligations are triggered by routine and common transactions conducted by most taxpayers, such as the application of international treaty benefits provided by treaties to which Mexico is a party, and accounting and tax differences of more than 20%, which, among other reasons, may arise as a result of a series of interconnected payments, transfer prices or the use of certain tax attributes.

Tax advisors bear the primary responsibility for reporting transactions in which the advisor was involved during or after fiscal year 2020. However, there are also situations in which the taxpayer bears the reporting obligation, including, but not limited to, the following cases: by mutual agreement of the taxpayer and the advisor with respect to the reporting of transactions conducted in fiscal year 2020 and subsequent years; transactions that occurred prior to fiscal year 2020; or, when the tax advisor failed to report a Reportable Transaction.

It is important to consider that unlike other reforms, which typically become effective upon their publication, in the case of Reportable Transactions, taxpayers are required to review such transactions retrospectively for as many years as necessary and as long as the tax benefits of the tax planning transaction continue in force in 2020 and/or subsequent years. The taxpayer is then required to report the transaction, regardless of whether a tax advisor participated in the transaction.



Reportable Transactions must be disclosed within 30 calendar days following tax benefits having been made available to the taxpayer, or the first legal act in such transaction taking place, whichever occurs first. Notwithstanding the foregoing, transactions that occurred prior to or during 2020, must be reported by February 15, 2021.

The information that must be reported is primarily: (a) the name or corporate name of the person reporting and the corresponding tax identification number; (b) the names of the advisor and taxpayer's legal representatives; (c) a description of the tax planning transaction and the tax benefits obtained or expected; and (d) the fiscal year in which the transaction was carried out. Because the deadline to report Reportable Transactions is fast approaching, the timely identification and evaluation of transactions that were implemented in the past, or those that will be implemented in the future, is key to ensuring adequate compliance with this obligation. Failure to comply or deficient compliance could lead to substantial financial penalties for taxpayers, which can range from 50% to 75% of the tax benefit obtained, as well as the loss of said benefit. In addition, advisors may be subject to a fine of up to 20 million pesos for each Reportable Transaction that is not reported. Mexican tax authorities are expected to issue general rules that clarify numerous aspects that were pending definition prior to the application of these new provisions.

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