

December 10, 2012

## **MEXICAN FISCAL UPDATE 2012**

### FATCA Agreement Mexico-USA Exchange of Financial Account Information

On November 19, 2012, the Governments of Mexico and the USA signed the "Agreement between the Department of the Treasury of the United States of America and the Ministry of Finance and Public Credit of the United Mexican States to Improve International Tax Compliance Including with respect to FATCA (the "Agreement").

The purpose of the Agreement is improving international tax compliance based on domestic reporting and reciprocal automatic exchange of tax and financial information. This, based on the framework of different international conventions entered into by both countries such as the Convention on Mutual Administrative Assistance in Tax Matters recently adopted by Mexico.

From our perspective, the Agreement removes procedural obstacles derived from the trustee and bank secrecy that were faced by the tax authority while obtaining and using taxpayers' financial information.

Until the entry into force of the Agreement, the tax authorities should request specific financial information of taxpayers complying with various formal requirements. With the Agreement, information exchange will take place on automatic basis, making it easier for tax authorities of both countries to obtain such information.

In general matters, the Agreement provides the following:

- It will enter into force on January 1st, 2013 and shall continue in force until terminated.
- Mexico and USA will obtain information foreseen in the Agreement regarding all reportable accounts referred below and will automatically exchange it on annual basis.
- In this context, USA will provide information to Mexico regarding the following financial accounts maintained by a US Financial Institution held by a Mexican resident (reportable accounts to Mexico):
  - (i)* Depository Account held by an individual resident in Mexico when more than ten (\$10) dollars of interest are paid to such account in any given calendar year.
  - (ii)* Financial Account other than a Depository Account, whose accountholder is a resident of Mexico (individual or entity), with respect to which income with source of wealth in the USA that is subject to reporting under certain chapters of the USA Internal Revenue Code is paid or credited (Chapter 3 or Chapter 61 of subtitle A).
- The USA tax authority will provide the following information to its Mexican counterpart:
  - Name, address, and Mexican TIN of the accountholder resident in Mexico.
  - Account number.
  - Name and identifying number of the USA Financial Institution subject to reporting.

- Gross amount of interest paid on a Depository Account.
- Gross amount of dividends with source of wealth in the USA paid or credited to the account.
- Gross amount of other income with source of wealth in the USA paid or credited to the account, to the extent subject to reporting under certain provisions of the USA Internal Revenue Code.
- Presently, there is no such automatic exchange, which will be a constant source of information for the tax authorities to verify that their correspondent taxpayers are complying with their tax obligations.
- The referred information will be obtained and exchanged with respect to 2013 and subsequent years.
- The information shall be exchanged within nine (9) months after the end of the calendar year to which the information relates. Nevertheless, the information relating to 2013 shall be exchanged no later than September 30, 2015.
- With respect to Preexisting Accounts, both governments are not required to obtain and include in the exchanged information the TIN if such data is not in the records of the reporting Financial Institution. In such cases, both countries shall obtain and include in the exchanged information the date of birth of the relevant person, if the reporting Financial Institution has it.
- As of January 1 of 2017, there shall be provisions obliging the financial institutions to obtain and report the tax identification number of Preexisting Accounts.
- The automatic exchange will be made pursuant to the international treaties providing it.
- In case of accounts which holders do not provide the required information for exchange, they shall be deemed as recalcitrant, and may be subject to their cancelation by the Financial Institution in which they were opened.
- The USA and Mexico will enter into a mutual agreement procedure as established by the Tax Information Exchange Agreement of 1989 establishing the procedures for performing the automatic exchange of information in accordance with the Agreement.
- The USA commits to enhance the transparency and to increase the exchange relationship with Mexico to equalize the level of information exchange. Likewise, both countries agree to other tax treaty partners and with OECD to adapt the content of the Agreement in a common model for exchange of automatic information.

### **Acronyms and Defined Terms**

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| *Custodial Account. | Means an account (other than an Insurance Contract or Annuity Contract) for the benefit of another person that holds any financial instrument or contract held for investment.   |
| *Deposit Account.   | Includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a Financial Institution in the ordinary course of a banking or similar business. It also includes an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon. |

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| *Financial Accounts.    | Account maintained in a Financial Institution, unless those excepted under Annex II of the Agreement, which generally are those account of personal retiring plans, insurance premiums for retirement and certain pension funds. |
| *Preexisting Account.   | Financial Account maintained by a Reporting Financial Institution as of December 31, 2013.   |
| *USA.                   | United States of America.  |
| *Financial Institution. | Custody Institution, Deposit Institutions, Investment Entities of Specific Insurance Companies, as each of these concepts are defined under the Agreement.   |
| *OECD.                  | Organization for Economic Cooperation and Development.   |
| *TIN.                   | Tax identification number.   |

Should you have any comment or doubt related with the content of this preliminary analysis, please contact us in the e-mail address [info@turanzas.com.mx](mailto:info@turanzas.com.mx)

Sincerely,

**Turanzas, Bravo & Ambrosi**  
Abogados Tributarios

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