

## Tax Flash 07/2009

# New obligations regarding information on transactions between related parties for the 2008 tax report

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Exhibits 16 and 16-A of the 2008 Omnibus Tax Ruling published on February 20, and March 2, 2009, respectively, include the new Statutory Tax Report Filing System (SIPRED) for the 2008 tax report. These new forms include unexpected and excessive information requests that the Registered Public Accountant (hereinafter, RPA) and/or the taxpayer must disclose in detail using Exhibits 5, 34, and 34.1, and the completion of a new Transfer Pricing Questionnaire on transactions entered into by the taxpayers with domestic or foreign related parties to determine compliance with the transfer pricing provisions of income tax (ISR) and business flat tax (IETU). The information requested will clearly result in a significant additional administrative burden within a very short time frame for both taxpayers and RPAs.

The detail and structure of this information is intended to facilitate the exercise of the authority's inspection powers regarding specific aspects or transactions with related parties and establishes the tax authority's new expectations regarding the work of the RPA in reviewing compliance with transfer pricing obligations. It would have definitely been better to be aware

of this situation during the audit planning process in the second half of fiscal 2008.

The information required by SIPRED applicable to ISR and IETU obligations of transactions with related parties includes the following:

### Compliance with the arm's length principle

- RPA declaration about whether the taxpayer has a transfer pricing study on transactions with foreign related parties or complies with the arm's length principle by applying one of the methods established in the Income Tax Law (LISR) for transactions with related parties resident in Mexico. Similarly, the RPA must state whether the taxpayer complies with this principle pursuant to the provisions of the Business Flat Tax Law (LIETU). Note that the RPA may only answer "YES" or "NO" regarding compliance with these obligations and, if a "YES" answer is included, the RPA must have the information to prove compliance with the documentation obligations and the arm's length principle.

- RPA declaration about whether each of the transactions with related parties was agreed in accordance with the arm's length principle and whether tax adjustments were made to comply with this principle. It also requires disclosure of the transfer pricing method used.
- For purposes of the above declaration, a list of transactions in addition to those previously reported in the informative return on transactions with foreign related parties is included. The list includes the gain or loss resulting from a merger or division, the gain or loss resulting from a capital reduction or liquidation of foreign resident companies, dividend income, tax depreciation, immediate deduction, application of tax losses, tax costs on the sale of tangible and intangible goods, and the annual accruable or deductible adjustment for inflation on loans and debts with related parties.

#### Financial and tax information

- The year in which the transactions with related parties were accrued or deducted for ISR purposes and that in which they were recorded in accounting for IETU purposes must be indicated.
- A confirmation is included whereby the RPA must give his opinion on several aspects related to the filing of the information return on transactions with nonresident related parties. Its filing date and whether the figures included are the same as those filed in Exhibit 34 of the report and in the transfer pricing support documentation (study) must also be included.
- It inquires as to the consistency of the information, and whether the amounts and transactions in the informative return, the tax report, and the study are the same. In the event of discrepancies, an explanation is requested.
- The RPA must indicate whether the segmented financial information used in the study was audited. He should also explain the reasonableness of that segmentation and confirm whether the Company's information system allows reasonable segmentation of the profit and loss statement. It also requests a segmented profit and loss statement regarding domestic and foreign

transactions, separating those with related and independent parties and including information at the net profit or loss level.

- A description of the cost of goods sold derived from sales to related parties is required, as well as the transfer pricing method used to support this transaction (limited to the first three methods shown in Article 216 of the LISR).
- The RPA is also required to confirm whether all the intercompany transactions are recorded in the taxpayer's accounting records and, if there is an adjustment, whether it is recorded in the taxpayer's accounting and in the accounting-tax reconciliation.

#### Specific transactions

- In the case of back-to-back loans, the amount of interest accrued as dividends is required, as well as the interest amount considered as dividends.
- For prorated expenses, expenses incurred abroad and whether they were deducted by the taxpayer must be indicated.
- For financial derivative transactions, information regarding losses, revenues and payments that come from derivative transactions is required.
- Regarding thin capitalization rules, all the information used to prepare the respective calculation and the nondeductible interest amount should be provided.
- For maquiladoras, indicate whether the Company carried out maquila transactions; the option within Article 216-Bis selected for compliance; information on costs, expenses, sales, cash flows, operating profit and profitability factors specific to the selected option; calculation of the tax incentives for ISR and IETU purposes in accordance with the decrees published on October 30, 2003 and November 5, 2007, respectively. If the maquiladora did not choose any of the options established in Article 216-Bis, the RPA must provide information on the nonresident that constituted a

permanent establishment in Mexico and the revenues attributable to this permanent establishment.

#### Other

- Indicate whether the taxpayer obtained a favorable transfer pricing ruling (APA) from the Tax Administration Service or if it has support documentation for the transactions with foreign and domestic related parties.
- Information (including Federal Taxpayer Identification Number) of the individuals who prepared or advised on the preparation of the transfer pricing documentation.

#### Transfer Pricing Questionnaire

Note that this questionnaire requires the RPA to confirm, among others, whether the taxpayer included in his transfer pricing documentation information on functions performed, assets used and risks assumed by each type of transaction and, if applicable, by the related party, as well as the method applied to each transaction type and the classification of the methodologies. It also requires confirmation on whether transactions with related parties were carried out at arm's length. If they were not carried out at arm's length, the RPA must confirm the note or disclosure included in the tax situation or in the tax report.

Also note that the 2008 annual tax return form includes new reporting requirements for transactions with related parties.

Deloitte's transfer pricing specialists will be pleased to help you with any doubts or questions regarding the above obligations.

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