

FINAL REPORT

OUTCOMES OF THE PUBLIC CONSULTATION ON THE DRAFT RULES PREPARED BY THE TAX ADMINISTRATION SERVICE (SAT) TO SUBMIT THE ANNUAL REPORTS OF RELATED PARTIES ESTABLISHED IN ARTICLE 76-A OF THE INCOME TAX LAW: MASTER FILE, LOCAL FILE AND COUNTRY BY COUNTRY REPORT.

As an exercise of transparency and institutional collaboration, The **Mexican Taxpayers' Ombudsman, Procuraduría de la Defensa del Contribuyente (PRODECON)** published on October 17, 2016, the draft administrative rules prepared by the Tax Administration Service (SAT) which aims to establish the basis to submit Annual Informative Tax Returns of Related Parties provided in Article 76-A of the Mexican Income Tax Law (ITL).

PRODECON posted a public preliminary version of these rules, prior to its official publication by SAT, with the intention of receiving proposals, opinions or comments from any interested person or group, to allow direct involvement in the design in a framework of sound cooperation.

Given the complexity of these guidelines, while seeking to adapt the Mexican normative framework to Action 13 of OECD BEPS Action Plan, a close, transparent and institutional interaction between tax authorities and taxpayers was crucial through **PRODECON**, a public and autonomous body that by its prestige and specialization in tax matters, served like a valid intermediary in this unparalleled exercise of openness.

PRODECON through this Consultation sought to create a neutral environment of great technical stature to obtain public feedback in the design of the mentioned rules; in this scenario, one of the fundamental objectives of this Ombudsman was to place **the rights of taxpayers as a fundamental part of this discussion.**

In the opinion of this Organism, it is not appropriate to dissociate the design, scope and effects of a rule that regulates the fulfillment of a formal obligation -the informative tax returns of Article 76-A of the Income Tax Law - of the taxpayers' rights provided by Law in Mexico. The above, especially since taxpayers' rights are not mentioned in any direct way in the OECD BEPS Action Plan.

Start of the Public Consultation

The initiation of the Consultation was informed to the public by a joint press bulletin issued by **PRODECON and SAT**, informing the publication of the referred **draft administrative rules** inviting any interested person to send proposals, opinions and comments.

It is important to mention that both institutions considered appropriate to open the discussion to the public so as not to be selective with a certain industry, sector, academy, chamber or college. Any person could directly express its opinion and participate in the normative design of these rules.

The **press bulletin**¹ mentioned the email address to which the opinions and comments could be sent: **consultapublica@prodecon.gob.mx**, the period to receive information, which was from **October 17 to November 18, 2016** and it also informed that the Office of the Deputy Chair of **PRODECON** was the unit in charge of coordinating the Consultation.

In addition to the joint press bulletin, both institutions published the opening of the Consultation in a privileged area of their respective websites with the aim of achieving greater dissemination.

It is to be noted that in the joint press bulletin was replicated by various national news agencies and media, both print and digital, such as Thomson Reuters², as well as specialized firms in tax matters with international practice, such as EY³ and PWC⁴.

Reception of Comments

34 e-mails were received from diverse sectors. Multinational companies, tax specialists, tax-consulting firms with domestic and international practice, as well as representatives of chambers, colleges and academic associations forwarded their comments and proposals.

PRODECON undertook the task of concentrating, analyzing and classifying the information through a **compilation**⁵ that was published on its website for free consultation on **January 6, 2017**. As it can be seen in the compilation, main comments were divided into 6 specific categories:

a) Forms and Technological Platform for the Reception of Tax Returns

The commentators reflected the need to have the forms and technological platform that will be used to submit the tax returns.

b) Master File exceeds OECD Statements

Several commentators stated that the information requested for the Master File exceeded Action 13 of OECD BEPS Action Plan.

c) Language of the Master File

Because the contents of the Master File refer to information that the parent company usually has, several commentators suggested the possibility to deliver the Master File in a language other than Spanish.

¹ <http://www.prodecon.gob.mx/Documentos/BoletinesPrensa/2016/Nacional/BoletinPrensa-13-oficinascentralescdmx-2016/>

² <http://www.thomsonreutersmexico.com/index.php/newsletters/news-tax-accounting/138-no-25-10-de-octubre-del-2016/1530-proyecto-de-reglas-para-la-presentacion-de-declaraciones-informativas-de-partes-relacionadas>.

³ <http://taxinsights.ey.com/archive/archive-news/mexican-tax-authorities-issue-proposed-regulations-regarding.aspx>

⁴ <http://www.pwc.com/gx/en/services/tax/newsletters/pricing-knowledge-network/pwc-tp-mexico-prodecon-proposes-cbc-reporting.html>

⁵ [You can consult the compilation here.](#)

d) Business Groups with Exclusively National Operations

Some commentators expressed concern as to whether or not corporate groups with presence exclusively in national territory should submit these informative tax returns.

e) Materiality of the Information required in the Local File

Several commentators expressed the possibility that only the main contracts concerning to transactions with related parties, and not all of them, could be attached. They also requested to analyze the feasibility of establishing a threshold or percentage of materiality for the transactions with related parties reported in the file.

f) Definitions of Concepts / Terms of Reference

Several commentators expressed the need for definitions or terms of reference for certain concepts used in the draft rules, such as: business restructuring, multinational business group and intangible assets.

Public Hearing: A transparency issue.

Thus, once the comments were received and systematized, **PRODECON** not only published the compilation, but also informed through its website **that the next step of the Consultation was a public meeting** between tax authorities and taxpayers.

The purpose of the meeting was to allow the taxpayers representatives selected by **PRODECON**, to present their comments in the presence of **SAT** Authorities, in order to achieve a close interaction and a closer approximation to the definitive text of the rules.

The meeting was announced as "public" given that anyone had the opportunity to attend and witness the development of it; it was only required for the interested party to confirm assistance by telephone in a line that **PRODECON** had for this purpose. The meeting was called for January 31, 2017 in the central building of PRODECON, in Mexico City.

It is worth mentioning that even though no press release was issued to announce this public meeting, some media followed closely the progress of the Consultation and decided to give an account of it. **This exercise was interesting, since it is not common for tax authorities to show this degree of openness to a public and open dialogue with taxpayers in the design of administrative regulations.**

Through this Report, **PRODECON** would like to thank **SAT** and especially the Large Taxpayers Unit for the trust they had in this Ombudsman to organize and moderate this open meeting, unprecedented in our country.

Public meeting organized by PRODECON

The meeting was led by the Deputy Chair of **PRODECON** and the SAT's Head of the Large Taxpayers Unit

After welcoming more than 100 attendants to the meeting -among the participants important leaders in the practice of Transfer Pricing in Mexico were identified- the Deputy Chair announced that everything expressed during the meeting would be recorded in a stenographic version in order to provide absolute transparency to the discussion of the rules.

The agenda contemplated the release of 7 points; the first six corresponded in essence to the recurrent themes that **PRODECON** reported in the compilation document of the comments received during the Consultation, and one in which **SAT** would present the progress already considered to modify the original terms of the Consultation. Rules drafted precisely in response to the comments received through the Consultation.

Each topic was developed in an average of 25 minutes. The representatives of the taxpayers were asked to take a seat at the central table of the meeting and to present the topic that **PRODECON** assigned to them, to afterwards, in each topic, hear the posture of the tax authority.

In item 7 of the agenda, **SAT**, through the Head of Transfer Pricing Department -key official to carry out the Public Consultation - showed the progress already contemplated for the final version of the rules.

Finally, to open the discussion even more, the floor was opened to the attendees who gathered to witness the meeting; the authorities answered some questions from the public and with this the meeting was ended⁶.

Private Meetings of PRODECON with Taxpayers and Authorities, respectively.

A few days later, **SAT** sent **PRODECON** a modified version of the rules, incorporating many aspects expressed in both the Consultation and the Public Meeting.

With the aim of commenting on this new draft and knowing the final position of the taxpayers, **PRODECON** convened and held a private meeting at its premises with the representatives of the entities that participated as speakers at the Public Meeting. After 5 hours of work, it was possible to agree a document with the final comments to the rules, whose presentation to the authorities of the **SAT** was in charge of **PRODECON**, as public and official interlocutor of taxpayers.

SAT, in a meeting with this Ombudsman was receptive in the analysis of the final document of comments, took a few days to make the last adjustments and returned to **PRODECON** with the **definitive version of the rules**⁷, whose presentation is made through this Final Report.

⁶ [You can consult the photo gallery of the Public Meeting here.](#)

⁷ [You can consult the final version of the draft administrative rules for Article 76-A of Income Tax Law here.](#)

Results of the Public Consultation.

The Public Consultation shows positive results. With the normative design resulting from the final version of the administrative rules it is easier for taxpayers to submit the Master File, the Local File and the Country-by-Country Report established in Article 76-A of the Income Tax Law.

If you compare the original–draft project with the final version, result of this exercise of cooperation and openness, you can identify **13 essential achievements**:

1) Local File: SAT desisted from requesting different information to the referred to in Article 76-A of the ITL.

2) Local File: the requirement to present the financial statements and the tax returns of foreign related parties was eliminated. *Rule 3.9.16., Letter c), Number 2.*

3) Country-by-Country Report: Mexican multinational business groups will not have to submit several tax returns of this type, but only one by the ultimate Mexican parent entity. *Rule 3.9.13., First Paragraph.*

4) Master File: this File made by a foreign parent with a subsidiary in Mexico it is recognized as valid for Mexican tax purposes of, when the requirements established in Action 13 of the BEPS Action Plan are met. *Rule 3.9.15., Fourth Paragraph.*

5) Master File: it is possible to restrict the number of products or services in the group's supply chain to the 5 main types of products or services, or to the ones that represent more than 5% of the total group income. *Rule 3.9.15., Letter b), Number 3.*

6) Master File: the meaning of concepts such as Multinational Business Group, Business Restructuring, Intangible Assets and Transfer Pricing Policies were clarified. *Rule 3.9.15., First Paragraph. Rule 3.9.15., Letter b), Number 7. Rule 3.9.15., Letter c), Number 1. Rule 3.9.15., Second Paragraph.*

7) Master and Local: it was possible to recognize the validity of the English language for the Master File, for the contracts of the Local File and for the description of the business of comparables. *Rule 3.9.15., Fourth Paragraph. Rule 3.9.16., Letter b), Number 4.*

8) Local File: it was possible to get operations between related parties to be described by typology instead of being described in their entirety. *Rule 3.9.16., Letter b), Number 1.*

9) Master File and Country by Country Report: it was obtained that the information reported in them can be presented in a foreign currency. *Rule 3.9.15., Fourth Paragraph. Rule 3.9.14., Third Paragraph.*

10) Local File: a clarification was obtained stating the information contained in the same evidences the compliance with the Arm's Length Principle, taking into account the New Transfer Pricing Guidelines and articles 179 and 180 of the ITL. *Rule 3.9.16., First Paragraph.*

11) Local File: it was established that only the list of Advanced Pricing Agreements of the group was requested, but that the taxpayer would only need to provide a copy of the ones in its possession. *Rule 3.9.16., Letter b), Number 11.*

12) Master File: it is possible to enable the delivery of the file by business line. *Rule 3.9.15., First Paragraph.*

13) Master File: it is possible for the State-owned entities of the federal public administration to submit a single file, in a joint manner. *Rule 3.9.13., First Paragraph.*

PRODECON, in the developing of its legal attributions, will always strive to improve the relationship between tax authorities and taxpayers through open, transparent, institutional and avant-garde procedures. The balance between state power and the respect for the rights of taxpayers will always result in better tax administration procedures for the benefit of all; the design of rules at the administrative level, as we have seen, is no exception. Mexico, its taxpayers and institutions have taken an important step to demonstrate that joint work pays off.

Mexico City, April 3, 2017