

Punto de Vista

RULES FOR PREPARING 2009 STATUTORY TAX AUDIT REPORTS

I. BACKGROUND

The current tax provisions establish rules for preparing statutory tax audit reports. Specifically, article 32-A of the Federal Tax Code (FTC) establishes that certain business entities must have their financial statements audited by a Registered Public Accountant (RPA) for tax purposes, and it establishes the option for some taxpayers to voluntarily have a RPA issue this report. On March 10, 2010, the Tax Administration Service (SAT from Spanish) published Exhibit 16 and 16A of the Miscellaneous Tax Resolution (MTR) on its internet page, which describes the instructions for compiling information, the features and the guide forms for submitting statutory tax audit reports on financial statements for tax purposes. The Tax Authorities intend to officially publish said Exhibit in the Official Gazette as soon as possible. The publication contains the following forms for submitting tax reports:

1. General
2. Taxpayers authorized to receive donations
3. Simplified tax regime
4. Controlling and controlled entities filing consolidated income tax returns
5. Credit institutions and limited purpose financial entities
6. Insurance and bonding companies

7. Multiple purpose financial entities and other non-bank financial intermediaries
8. Currency exchange firms Stock and securities Brokerage firms
9. Controlling companies of financial groups
10. Capital investment entities
11. Variable income and debt instrument investment companies
12. Permanent establishments resident abroad

Note that at the date of this publication, the tax authorities have not disseminated the software used to prepare and submit statutory tax audit reports for 2009, known as "Sistema para la Presentación del Dictamen 2009" (Sipred 2009).

II. MAIN AMENDMENTS TO THE 2009 TAX REPORT

The general format of the tax report includes 40 exhibits and two questionnaires, shown below with our comments on the changes or additions for 2009 with respect to the format used in 2008. The salient features of the form are:

EXHIBIT	COMMENTS
Data on the taxpayer, the legal representative and the RPA	No changes.
General data	<p>Information requirements are modified for certain exhibit with respect to the type of answers provided in said exhibit; for example, questions regarding cost of sales and tax on cash deposits (IDE in Spanish), dividend distributions, etc.</p> <p>The report must include the Taxpayer Identification Number (RFC in Spanish) of the taxpayer's tax advisors.</p>
Statement of financial position	Adjustments are made to certain details regarding federal taxes receivable and payable including Value Added Tax (VAT), Income Tax (IT), Flat Tax (IETU in Spanish), and IDE.
Statement of income	<p>Amendment to the format for the presentation of Employees' Statutory Profit Sharing (ESPS) and incorporation thereof in "Comparative analysis of other expense sub accounts".</p> <p>In order to prepare this exhibit, taxpayers must first fill out the exhibits containing analytical information on income, cost and expense accounts.</p>
Statement of changes in stockholders' equity	No significant changes.
Statement of cash flows	Adjustments to the form for using the direct or indirect method, for which purpose the method to be used must be specified in the exhibit for general data.
Notes to the financial statements	No significant changes.
Segmented statement of income (applies to taxpayers who carried out transactions with related parties)	This statement is optional; taxpayers must specify the amount of Transactions carried out with related parties and with independent domestic and foreign parties.
Analytical breakdown of sales and net income	<p>Taxpayers must specify operating and non operating income qualifying as other income, for which purpose the instructions establish the information that must be captured in the columns "OPERATING INCOME OR INCOME RELATED TO OPERATIONS" OR "NON OPERATING (OTHER INCOME)".</p> <p>Elimination of the requirement to break out the information between domestic and foreign related parties.</p>
Determination of the cost of sales for accounting and IT purposes	<p>Elimination of the requirement to separately classify deductible and non-deductible items for IETU purposes. Explanations provided for certain items to facilitate preparation of the exhibit.</p> <p>Only required when taxpayer has a category for "cost of sales" as per the specifications of the exhibit on general data.</p>
Comparative analysis of expense sub-accounts	<p>Refers to manufacturing, administrative and general expenses.</p> <p>Elimination of the requirement to classify items as deductible or non-deductible for IETU purposes.</p>

Comparative analysis of other expense sub-accounts	Corrections to the presentation of ESPS are incorporated into this exhibit . Elimination of the requirement to classify items as deductible and non-deductible for ESPS purposes.
Comparative analysis of comprehensive financing result sub-accounts	Elimination of the requirement to classify items as “Taxable or Deductible for Flat Tax purposes”, “Exempt or Non-Taxable for Flat Tax purposes (Income)” and “Non- deductible (expenses) for Flat Tax purposes”.
List of taxes payable by: Taxpayer as direct taxpayer or as tax withholder or tax collector	Part of the information is transferred to the exhibits for informative data and the tax debt exhibit.
Formal statement	The taxpayer or its legal representative must file this statement under oath, establishing that it includes all federal taxes to which the taxpayer is subject, as well as its obligations as tax withholder or tax collector, and whether or not the rulings, authorizations, subsidies, incentives or exemptions applied went into effect in the year under review.
List of estimated and final monthly tax payments	Elimination of the requirement of disclosing VAT payable to customs authorities on imports. It is advisable to review estimated and final monthly payments made in the year under review in the SAT web page, using the taxpayer’s password.
Determination of estimated and final monthly payments	No significant changes.
Basis for determining tax withheld on fees, leases, and interest	No significant changes.
Operations carried out with parties Resident abroad	This exhibit is required when taxpayers specify in the general data exhibit that they carried out transactions with parties resident abroad from whom IT is withheld; said data is grouped per resident.
Joint liability for operations carried out parties resident abroad (exclusively for The sale of shares)	Elimination of information on “Scope of Joint Liability”. Only required when taxpayer specifies in the general data exhibit that it was jointly liable for IT as a result of a sale of shares; said data is grouped per resident.
Monthly determination of tax on cash deposits	Data must be grouped per month and per each entity of the financial system. When taxpayers pay IDE directly, the term “direct payment” must be used and the data must be grouped in the respective month.
List of tax on cash deposits collected and not yet collected (applicable to the entities of the Financial System to Which the IDE Law refers)	This data is required when taxpayers are collectors of this tax. The data must be grouped per month.
List of contributions payable	No significant changes.
Reconciliation of accounting and taxable income for IT purposes	No significant changes.
Detail of taxable inventories from 2004	This data is required when the general data exhibit specifies that the effect of taxable inventories at December 31, 2004 was recognized.
Detail of prior years’ tax losses	Except in the case of large taxpayers, mergers or spin-offs, this data is required when tax losses are applied in the year.

After-tax earnings account (CUFIN)	Except in the case of large taxpayers, this data is required when dividends are distributed from the CUFIN balance
Reinvested after-tax earnings account (CUFINRE)	Except in the case of large taxpayers, this data is required when dividends are distributed from the CUFINRE balance
Derivative financial operations contracted with parties resident abroad	Taxpayers are required to submit the exhibit containing the information for FY 2009 and 2008. This data is required when the general data exhibit specifies that taxpayers carried out derivative financial instrument operations with tax effects on IT over the year.
Accounts and notes receivable and payable in foreign currency	Taxpayers are required to submit the exhibit containing the information for 2009 and 2008. This data is required when the general data exhibit specifies that taxpayers had balances receivable or payable in foreign currency in the aforementioned years.
Loans made abroad	Taxpayers are required to submit the exhibit containing the information for FY 2009 and 2008. This data is required when the general data exhibit specifies that taxpayers signed loan agreements with tax effects on IT during the year.
Permanent investments in subsidiaries, associated companies and affiliates resident abroad	Taxpayers are required to submit the exhibit containing the information for FY 2009 and 2008 This data is required when the general data exhibit specifies that taxpayers had permanent investments in subsidiaries, associated companies and affiliates resident abroad.
Partners or shareholders who held shares or share participation units	Taxpayers are required to submit the exhibit containing the information for FY 2009 and 2008 This exhibit must include information grouped per partner or shareholder of the taxpayer in the fiscal year subject to review. It is not necessary to submit the breakdown of shares placed among the investing public.
Income subject to preferential tax rates	Taxpayers are required to submit the exhibit containing the information for FY 2009 and 2008 This data is required when the general data exhibit specifies that taxpayers earned this type of income.
Reconciliation of the accounting study and the result determined for IETU purposes	Unlike last year, taxpayers are required to submit information for the entire exhibit. Included are detailed instructions specifying the sources of information, located mainly in other tax report exhibits. Taxpayers are required to reconcile the items included in this exhibit individually.
Crediting of tax debts determined for IETU purposes	No significant changes.
Reconciliation of audited income, as per statement of income, taxable income for IT purposes, income earned for IETU purposes and total acts or operations for VAT purposes	Unlike last year, taxpayers are required to submit information for the entire exhibit. Included are detailed instructions specifying the sources of information.
Operations carried out with related parties	This exhibit is restated by eliminating different requirements in effect until the immediately preceding year; additionally, information on the IETU specified in this exhibit is no longer necessary. Instructions are provided on the information that must be included in this exhibit.

Taxpayers' information on operations carried out with related parties	This basically refers to a series of questions used by the tax authorities to assess the risk involved in the taxpayer's operations with related parties This exhibit is reformulated by eliminating different requirements in effect until the immediately preceding year.
Investments in property and land	Unlike last year, information for the entire exhibit is required.
Determination of taxable income for ESPS purposes, as required by article 16 of the IT Law	Data only required when taxpayer determines ESPS of companies in the terms of article 16 of the IT Law.
Informative data	Taxpayers are required to include part of the information not previously included in the exhibit for compensation payable by taxpayers as direct taxpayers or as tax withholders or collectors. Certain IETU data must be provided.
Foreign trade operations	No significant changes.
Details of restated figures	No significant changes.
Operations carried out through trusts	No significant changes.
Tax diagnosis questionnaire	Requires information on compliance with tax obligations and payment of federal taxes, such as IT, IETU, VAT, excise tax and IDE. Establishes specific questions for taxpayers in connection with compliance of their tax obligations and the follow up that the RPA must provide. Establishes specific questions in regard to the RPA. The tax authorities intend to use the above questionnaires to concentrate taxpayer contributions, which means that it is important to answer the questions set forth therein
Transfer pricing questionnaires	Request for information on compliance of the tax obligations set forth in the IT Law. It establishes specific questionnaires for taxpayers to answer in relation to compliance with their tax obligations and the follow up that the RPA must provide in that regard. Establishes specific questions in regard to the RPA. The tax authorities intend to use the above questionnaires to concentrate taxpayer Contributions which means that it is important to answer the questions set forth therein.

III. CONCLUSION

The volume of financial and tax information requested by the tax authorities through the tax exhibits and questionnaires requires professional diligence and a much higher investment of time and resources; therefore, It is highly advisable to prepare a concrete, specific and coordinated work plan to immediately start preparing the information required to submit the tax exhibits in question.

At the date of this publication, the tax authorities have established June 2010 as the month to submit tax reports, based on the specific characteristics of the taxpayer for that purpose. Please note that at the date of the annual IT return for 2009, the Company must have a proper transfer pricing study and the necessary information to fill out the respective questionnaire, since it cannot be in progress when we issue the respective financial statements.

With best regards from,

Carlos Méndez

Audit Lead Partner

Mariano Escobedo 573 | Col. Rincón del Bosque | 11580 | México, D.F. | (55) 5263 6000

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