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# Mexico implements new transfer pricing rules for Advanced Pricing Agreements

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## *In brief*

The Mexican government recently enacted a new regulation enabling the Mexican Tax Authorities to perform on-site visits to carry out their own functional analysis as a part of the Advanced Pricing Agreement (APA) process. Rule 2.12.8 of Miscellaneous Rules published on July 14, 2016, states that if the Mexican Tax Authorities consider the information provided by the taxpayer to be insufficient, they may perform a site visit to obtain and verify information regarding assets, functions, and risks of the Mexican taxpayer requesting an APA in order to validate the selection of method as well as the comparable companies.

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## *In detail*

The new regulation establishes that as a part of the APA process, the Mexican Tax Authorities may perform on-site visits to perform a functional analysis if: i) the information provided by the taxpayer requesting the APA is inconsistent or insufficient to understand the functions or activities carried out by the Mexican or related foreign taxpayers; or ii) the Mexican Tax Authorities want to corroborate information, data, and documentation provided by the taxpayer to understand assets and risks assumed by the Mexican or related foreign taxpayer; or iii) the Mexican Tax Authorities disagree with the proposed method to test the

intercompany transactions subject to the APA; or iv) the Mexican Tax Authorities want to corroborate the application of the transfer pricing method proposed by the taxpayer.

The visit may also be to confirm the business purpose for the intercompany transactions, as well as reconcile comparability criteria utilized by each related party in order to conclude the APA process.

The functional analysis may be carried out at the taxpayers' facilities as well as its establishments, warehouses, storage rooms, ships, platforms, or in any area in which functions are carried out in order to obtain additional qualitative and quantitative

data, information, and documents that may not have been provided by the taxpayer.

The inspection must be carried out under the following terms:

- The Mexican Tax Authorities must inform the taxpayer of the objective, time, and location of the visit.
- The Mexican Tax Authorities must record details of each session, with formalized minutes.
- If in any case the taxpayer denies the Mexican Tax Authorities the ability to perform any of the procedures described above, the tax authorities will formalize a complaint

documenting the limitation and will proceed with the APA process.

### ***The takeaway***

New APA rules regarding functional analysis require the placement of

additional resources to ensure that a functional analysis to be performed by the Mexican Tax Authorities is carried out by indicated personnel, and necessary information can be gathered during interviews. The primary challenge for Mexican

taxpayers as a result of the new regulation is to be in a position to deliver the necessary information and minimize potential risks for the multinational group.

### ***Let's talk***

For a deeper discussion of how this issue might affect your business, please contact:

#### ***Transfer Pricing***

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