

GMS Flash Alert

2017-066 | April 11, 2017



Mexico – Obligation to File Informative Returns and Preferential Tax Regimes

Individuals qualifying as tax residents of Mexico will be required to file an “informative return” (“declaración informativa”) in 2017 related to fiscal year 2016 when:

- receiving any kind of income from territories listed in the Transitory Provisions of the Mexican Income Tax Law (hereinafter, “Tax Havens”¹);
- performing operations through pass-through foreign figures (defined below) and entities.

For Mexican tax purposes, foreign figures or entities are considered to be pass-through when:

- they are not income tax taxpayers in the country in which they were established or in which they have their main administration; and
- their income is attributed to their members, partners, shareholders, or beneficiaries.

In addition, Mexican tax law considers the following to be “foreign figures”: trusts, associations, investment funds, and any other similar legal vehicle established under foreign law that does not have “legal capacity.”

WHY THIS MATTERS

Some rules eliminated on August 15, 2016, from the Miscellaneous Regulations² had granted an exception for individuals to file an informative return if they were complying with certain requirements. Since the rule’s abolition, the obligation to submit informative returns has become applicable to more taxpayers.

The informative return should be filed in February regarding income generated in the previous fiscal year. However, there is a rule within the Miscellaneous Regulations that allows filing it until May.

Not filing this informative return will presume that the individual has income from a preferential tax regime³ and, in addition, is considered by the tax authorities as a tax offense punishable by a prison sentence of between three months and three years.

Considerations on Filing the Informative Return

Although each case should be examined individually, generally speaking individuals who qualify as tax residents will be obligated to file this informative return if they:

- receive any income from Tax Havens, such as, but not limited to, interest, rental, dividends, sale of shares, etc., regardless that Mexico has in place a broad information exchange agreement;
- perform operations through a pass-through foreign entity (e.g., a Limited Liability Partnership in the U.S. where a K-1 form is provided) or a pass-through foreign figure (e.g., a trust);
- have foreign investments funds in their portfolio.

KPMG NOTE

It is not expected that the Mexican tax authorities will again issue rules providing for an exception to file the informative return; as such, this return should be filed no later than May 31, 2017, to mitigate any risks.

FOOTNOTES:

1 Tax haven territories listed in the Transitory Provisions of the Mexican tax law (*las disposiciones transitorias de la Ley del Impuesto Sobre la Renta*) are noted in the table below:

American Samoa	Hashemite Kingdom of Jordan	Republic of Guyana
Anguilla	Hong Kong	Republic of Honduras
Antigua and Barbuda	Independent State of Western Samoa	Republic of Liberia
Archipelago of Svalbard	Island of Qeshm	Republic of Maldives
Aruba	Islands of Guernsey, Jersey, Alderney, Great Sark, Herm, Little Sark, Brecqhou, Jethou, Lihou (Channel Islands)	Republic of Mauritius
Ascension		Republic of Nauru
Azores Islands		Republic of Panama
Barbados	Isle of Man	Republic of San Marino
Belize	Kingdom of Swaziland	Republic of Seychelles
Bermuda	Kingdom of Tonga	Republic of the Marshall Islands
British Virgins Islands	Kiribati	Republic of Trinidad and Tobago

Brunei Darussalam	Labuan	Republic of Tunisia
Campione d'Italia	Macao	Republic of Vanuatu
Canary Islands	Madeira	Republic of Yemen
Canary Islands Special Zone	Malta	Saint Helena
Cayman Islands	Montserrat	Saint Kitts and Nevis
Christmas Island	Netherlands Antilles	Saint Lucia
Cocos or Keeling Islands	Niue	Saint Pierre and Miquelon
Commonwealth of Dominica	Norfolk Island	Saint Vincent and the Grenadines
Commonwealth of Puerto Rico	Pacific Islands	Salomon Islands
Commonwealth of the Bahamas	Patau	State of Bahrain
Cook Islands	Pitcairn	State of Kuwait
Democratic Socialist Republic of Sri Lanka	Principality of Andorra	State of Qatar
Eastern Republic of Uruguay	Principality of Liechtenstein	Sultanate of Oman
Falkland Islands	Principality of Monaco	Tokelau
Free Zone of Ostrava	Republic of Albania	Trieste
French Polynesia	Republic of Angola	Tristan da Cunha
Gibraltar	Republic of Cape Verde	Turks and Caicos Islands
Greenland	Republic of Costa Rica	Tuvalu
Grenada	Republic of Cyprus	United Arab Emirates
Guam	Republic of Djibouti	United States Virgin Islands

Source: http://www.sat.gob.mx/informacion_fiscal/normatividad/Documents/Ley_ISR_2014.doc

2 Resolución Miscelánea Fiscal .

3 Having preferential tax regime income means that the taxable income will be what is generated by the foreign entity/figure, although such income may not have been distributed/paid to the individual.

* * * * *

Contact us

For additional information or assistance, please contact your local GMS or People Services professional or one of the following professionals with the KPMG International member firm in Mexico:

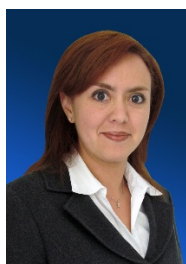


Nora Solano

Partner

Tel. +52 55 5246 8355

solano.nora@kpmg.com.mx



Azucena Cortes

Director

Tel. +52 55 5246 8522

azucenacortes@kpmg.com.mx

The information contained in this newsletter was submitted by the KPMG International member firm in Mexico.

© 2017 KPMG Cardenas Dosal, S.C. the Mexican member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

www.kpmg.com

kpmg.com/socialmedia



The KPMG name and logo are registered trademarks or trademarks of KPMG International.

The KPMG logo and name are trademarks of KPMG International. KPMG International is a Swiss cooperative that serves as a coordinating entity for a network of independent member firms. KPMG International provides no audit or other client services. Such services are provided solely by member firms in their respective geographic areas. KPMG International and its member firms are legally distinct and separate entities. They are not and nothing contained herein shall be construed to place these entities in the relationship of parents, subsidiaries, agents, partners, or joint venturers. No member firm has any authority (actual, apparent, implied or otherwise) to obligate or bind KPMG International or any member firm in any manner whatsoever. The information contained in herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

Flash Alert is a GMS publication of KPMG LLP's Washington National Tax practice. To view this publication or recent prior issues online, please click [here](#). To learn more about our GMS practice, please visit us on the Internet: click [here](#) or go to <http://www.kpmg.com>.

© 2017 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved. Printed in the U.S.A. NDPPS 530159