



Tax and Legal

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Transfer pricing compliance options for maquiladoras amid the APA program transition

In recent weeks, Deloitte partners have held meetings with tax authorities from both the United States (U.S.) and Mexico to discuss the status of Advance Pricing Agreements (APAs) for maquiladora companies for fiscal year 2025 and beyond. While the information outlined below has not yet been officially confirmed by the competent authorities, we believe it provides timely and relevant insights to assess the available compliance options. Should any official updates be released, we will share them accordingly.

Currently, most maquiladoras have not yet received their APA resolution for the 2020–2024

period. Under the applicable Mexican tax regulations, once this process concludes, companies will no longer be able to renew their APA and must instead comply with the maquiladora tax regime through the safe harbor rules. Therefore, for fiscal year 2025, safe harbor will be the only framework available for maquiladoras to comply with transfer pricing requirements and maintain the permanent establishment exemption, thereby preserving the benefits of this operating structure under the Mexican Income Tax Law (MITL).

Separately, based on discussions in public forums led by the Service Tax Administration

(SAT), there is mention of potential legislative actions to reinstate the APA program. However, the terms and timing of such reinstatement remain undefined. Although the SAT has referenced the possibility of implementing an APA as a transfer pricing compliance alternative for maquiladoras after 2024, the details and likelihood of implementation have not yet been disclosed. As a result, many companies are taking a conservative approach by recording a preliminary provision under safe harbor (e.g., FIN 48 reserves), in anticipation of the APA being reinstated before the 2025 annual income tax return, and thus applying the APA framework for the fiscal year ending that year.

Recent developments involving maquiladora taxpayers with U.S. based parent companies suggest the possibility of converting the current APA into a Bilateral Advance Pricing Agreement (BAPA), which would allow for an extension of the original 2020–2024 coverage period. Although the formal process of this conversion is not yet fully defined, Article 34-A of the Mexican Federal Tax Code states that the validity of an APA ruling may be extended when it results from a mutual agreement procedure between two contracting states, in accordance with the terms of an international tax treaty to which Mexico is a party.

Under this scenario, maquiladoras with U.S. parent companies could request the conversion of their unilateral 2020-2024 APA in Mexico and submit a BAPA request in the U.S., potentially covering fiscal years 2020 through 2029. It is expected that the Qualified Maquiladora Approach (QMA) 3.0 will be used to resolve BAPAs for the 2020–2024 period, and for

fiscal years 2025 onwards, a newly mutually agreed QMA between competent authorities. Additionally, under this BAPA alternative, maquiladoras with parent companies in countries other than the U.S. may also be eligible, subject to case-by-case evaluation.

Additional considerations

Converting an APA into a BAPA would likely grant permanent establishment protection for the covered period, in accordance with the vested rights outlined in transitory article 1 of the MITL Decree for fiscal year 2022. To request this conversion, the maquiladora must have an open APA program for the 2020–2024 period. Companies that have already received APA rulings for that period will likely not be eligible to request the conversion. Likewise, maquiladoras without an open APA program for 2020-2024, those operating under the safe harbor regime, and newly established maquiladoras would not be eligible to request a BAPA, as this option is no

longer included in the MITL.

Maquiladoras opting for this conversion must request a pre-filing meeting with the competent authorities to assess the feasibility and potential acceptance of their BAPA case. In Mexico, a BAPA request is expected to be accepted, provided there are no pending APA rulings through fiscal year 2019 and no ongoing litigation procedures related to an APA request.

It is important to note that the BAPA request must be submitted in both the U.S. and Mexico, preferably before the end of fiscal year 2025, to avoid the calculation and application of the safe harbor regime.

Given this alternative and the limited timeframe, we strongly recommend reviewing and evaluating the BAPA option for your Mexican maquiladoras as soon as possible, considering the specific requirements necessary for its implementation.

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