IMMEX companies that carry out maquila operations or operate under an IMMEX shelter program must file the DIEMSE to secure the application of income tax benefits. IMMEX companies must file the DIEMSE for year 2014 by 15 March 2016.

On 19 February 2016, the Mexican Tax Authorities (SAT for its acronym in Spanish) published on their website, the format for filing the Informative Return for Manufacturing and Export Services Entities (DIEMSE for its acronym in Spanish), which, according to the transitory provisions to the Miscellaneous Tax Resolution (RMF) for 2016, must be submitted for tax year 2014 from 15 February 2016 to 15 March 2016.

Background

The Income Tax Law (ITL), in force since January 2014, establishes several requirements that companies operating under a program issued by the Ministry of Economy must meet, pursuant to the Decree for the promotion of the manufacturing, maquiladora and export services industry (IMMEX), in order for these companies to be considered as carrying out maquila operations under Article 181 of the ITL. The requirements also must be met for such companies to benefit from the statutory permanent establishment exemption applicable to foreign residents that have entered into maquiladora arrangements, among other benefits.
A company will be a maquiladora for income tax purposes if the latter complies with the transfer pricing obligations by determining its taxable profit as the higher of: (1) a 6.9% rate applied to the total value of the assets used in the maquila operation, or (2) 6.5% of the total amount of costs and expenses incurred in the maquila operation during the tax year (Safe Harbor method). Alternatively, a maquiladora company may comply with the transfer pricing obligations by filing a request for an advance transfer pricing agreement (APA). Additionally, to qualify as a maquiladora company, the company must show that its income is derived exclusively from its maquila operations, except for income that is permitted under the RMF. Other requirements also may apply.

Maquiladora companies must file the DIEMSE for 2014 and future tax years to inform the SAT, in accordance with Article 182 of the ITL, of the calculation of the taxable profit, through the Safe Harbor methodology and the income related to its maquila operations, pursuant to the RMF. The filing of the DIEMSE also satisfies the requirement to submit the informative return, contemplated in Section X of Article 76 of the ITL with regard to a company's maquila operations and the filing of the report required to determine the tax credit on non-deductible exempt compensation paid to employees. The tax credit is included in Section II of Article 1 of the Decree that grants tax benefits to the manufacturing, maquiladora and export services industry, published in the Official Gazette, on 26 December 2013 (also known as, Peña Decree).

Furthermore, companies with an IMMEX shelter program, whereby a foreign third party, directly or indirectly, provides the shelter company, with raw materials, as well as, machinery and equipment, are also required to file the DIEMSE to show that the foreign third party is not a permanent establishment in Mexico.

Software for the filing of the DIEMSE for 2014

The application or software for the filing of the DIEMSE for 2014 is available on the SAT’s webpage.

To access the application:

- Go to the SAT’s webpage, www.sat.gob.mx, through any web browser
- Click on “Manufacturing, Maquiladora, and Export Services (DIEMSE),” and select tax year 2014 in the “Declarations” section
- Enter the federal tax identification number (RFC), and electronic confidential identification (CIEC), or the advanced electronic signature (FIEL)

The DIEMSE includes the following exhibits:

- Compliance with transfer pricing provisions for maquiladoras. In this exhibit, the company will indicate if it carries out maquila operations in terms of the ITL or if it operates under the shelter modality.
- Form of authorized IMMEX program. In this exhibit, the company will provide information regarding: (1) the form or modality of the authorized IMMEX program, (2) whether it holds any certification in terms of value added tax (VAT), excise tax or the applicable foreign trade provisions, (3) general information about its foreign related parties, and (4) information with regards to the APA requested, as applicable.
- Financial and tax information. The financial information section of the exhibit will include information regarding maquila income, as well as income derived from non-maquila operations, plus information on certain expense items. The income tax section of the exhibit will include information related to the determination of the taxable profit and the income tax paid, segmented per maquila and non-maquila operations. The VAT section of the exhibit will include monthly information on the total amounts of VAT, whether creditable, withheld, charged, compensated, or requested as a refund.
- Calculation of the percentage of machinery and equipment used in maquila operations. This exhibit will include the sum of the original investment amount, as well as the undepreciated balance, calculated in accordance with the applicable RMF, for machinery and equipment (M&E) owned by:
  - A foreign resident with whom the maquila agreement has been entered, provided that the M&E has not been owned by the maquiladora or by another Mexican related party
  - The foreign resident with whom the maquila agreement has been entered, excluding the information indicated in the previous item
- A third-party resident abroad with a commercial manufacturing relationship with the foreign entity that has a maquila agreement with the maquiladora
- The maquiladora
- A third party and leased by the maquiladora
- A related party and leased by the maquiladora

» Safe Harbor information. This exhibit will include detailed information in reference to the Safe Harbor calculation.

» Additional deduction for maquiladoras. This exhibit will contain detailed information on the determination of the additional deduction for exempt compensation paid to employees, which is available for maquiladoras.

» Manufacturing companies under the shelter modality. This exhibit will provide detailed information in connection with transactions between companies under the IMMEX shelter program and foreign residents.

» Foreign trade operations module. This exhibit will only be completed by companies with an IMMEX program under the shelter modality. The information should include the temporary importation values, definitive importations, returns, and definitive exportations (per type of customs declaration or pedimento), carried out in the respective reporting period.

Implications

The filing of the DIEMSE by IMMEX companies that carry out maquila operations or operate under an IMMEX shelter program, is required to confirm the fulfillment by the respective company, of the applicable income tax requirements, as described above, and should provide foreign residents that have entered into maquiladora or shelter arrangements, with an exemption from constituting a permanent establishment in Mexico.
For additional information with respect to this Alert, please contact the following:

**Mancera, S.C., Mexico City**
- Rocio Mejia +52 55 5283 8672 rocio.mejia@mx.ey.com
- Hector Gamma +52 55 1101 6436 hector.gama@mx.ey.com
- Koen van’t Hek +52 55 1101 6439 koen.van-t-hek@mx.ey.com

**Ernst & Young LLP, Latin American Business Center, New York**
- Ana Mingramm +1 212 773 9190 ana.mingramm@ey.com
- Pablo Wejcman +1 212 773 5129 pablo.wejcman@ey.com
- Enrique Perez Grovas +1 212 773 1594 enrique.perezgrovas@ey.com
- Calafia Franco Jaramillo +1 212 773 2779 calafia.francojaramillo@ey.com

**Ernst & Young LLP, Latin American Business Center, Chicago**
- Michael Becka +1 312 879 3370 michael.becka@ey.com

**Ernst & Young LLP, Latin American Business Center, Houston**
- Oscar Lopez-Velarde Perez +1 713 750 4810 oscar.lopezvelardeperez@ey.com

**Ernst & Young LLP, Latin American Business Center, Miami**
- Terri Grosselin +1 305 415 1344 terri.grosselin@ey.com
- Jesus H. Castilla +1 305 415 1416 jesus.castilla@ey.com

**Ernst & Young LLP, Latin American Business Center, San Diego**
- Ernesto Ocampo +1 858 535 7383 ernesto.ocampo@ey.com
- Edwin Solano +1 858 535 4429 edwin.solanoleiva@ey.com

**Ernst & Young LLP, Latin American Business Center, London**
- Jose Padilla +44 20 7760 9253 jpadilla@uk.ey.com
About EY
EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

Americas Tax Center

© 2016 EYGM Limited.
All Rights Reserved.
EYG no. CM6279
1508-1600216 NY
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

ey.com