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Tax alert

U.S. TAX TREATMENT OF MEXICAN ENTITIES

I. Introduction

US citizens and residents must understand the tax treatment of their foreign entities to properly disclose and determine the tax implications of each entity. In this Alert we provide general information on how Mexican legal entities are treated under U.S. federal tax law, including the classification of sociedad anónima (S.A.), sociedad civil (S.C.), sociedad de responsabilidad limitada (S. de R.L.), and other common forms, with reference to the entity classification rules under the U.S. “check-the-box” regulations (Treas. Reg. §§ 301.7701-1 through 301.7701-3).

II. Entity-by-Entity Treatment

US Persons that are shareholders or partners in Mexican entities must understand the tax treatment of the entity in order to determine the tax effect in the USA. Some entities are treated as separate taxable entities, and some are treated as transparent or flow thru entities that affect the owners directly. In addition, a US owner must understand the CFC and GILTI rules to determine how they are taxed in the USA. It should be noted that the US tax law and regulations provide a “per se list” of entities and their tax classification for federal income tax purposes.

A. Sociedad Anónima (S.A. and S.A. de C.V.)

- Per se corporation under Treas. Reg. § 301.7701-2(b)(8)(i).
- Always taxed as a foreign corporation; cannot elect flow-through treatment.
- Reporting required on Form 5471 if U.S. ownership thresholds met.

B. Sociedad Civil (S.C.)

- Not on per se list; eligible entity.
- Default: Partnership (multi-member) or Disregarded entity (single-member).
- Reporting generally on Form 8865.

C. Sociedad de Responsabilidad Limitada (S. de R.L. and S. de R.L. de C.V.)

- Not per se; eligible entity.
- Default: Partnership (multi-member).
- Reporting generally on Form 8865.
- Election possible to be treated as a corporation (Form 8832).
- Similar to U.S. LLC with restrictions on transfer of interests.

D. Sociedad en Nombre Colectivo (S. en N.C.)

- Mexican general partnership.
- Default: Partnership unless single member (disregarded).
- Reporting generally on Form 8865.

E. Sociedad en Comandita Simple (S. en C.S.)

- Mexican limited partnership with general and limited partners.
- Default: Partnership.
- Reporting generally on Form 8865.

F. Sociedad en Comandita por Acciones (S. en C. por A.)

- Partnership limited by shares.
- Not on per se list; default: Partnership, but may elect corporation treatment.
- Reporting generally on Form 8865.

G. Asociación en Participación (A en P)

- Mexican joint venture / silent partnership.
- Default: Partnership (two or more participants).
- Reporting generally on Form 8865.
- Single participant may be treated as disregarded entity/branch.

H. Fideicomiso (Mexican Trust)

- Classification depends on control retained by grantor.
- If grantor retains control → Grantor trust (IRC §§ 671–679).
- Otherwise treated as a foreign trust; reporting via Forms 3520 and 3520-A.

Conclusion

US citizens and residents must disclose their ownership in foreign entities and there could be significant tax implications in the USA. In general, Sociedades Anónimas (S.A. and S.A. de C.V.) are always treated as corporations under U.S. tax law, while entities such as S.C., S. de R.L., and various partnership forms are eligible for classification elections and often default to partnership or disregarded treatment. Fideicomisos are analyzed under U.S. trust rules. These classifications determine not only U.S. income tax treatment but also filing and disclosure requirements, including Forms 5471, 8865, and 3520.

We are Business and Tax Attorneys and we strive to provide our clients the highest quality of legal and tax representation in the complex area of tax law.

This alert has provided only general information and specific factual scenarios may change any conclusions that would apply.

We strongly recommend you consult a corporate and tax attorney regarding your particular case. Should you need additional information it will be our pleasure to assist you.

Sincerely,

Ruben Flores, Attorney & CPA