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Mexico Tax Alert

2022 Tax Reforms

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On November 12, 2021, the Decree that reforms, adds, and revokes various provisions of the Income Tax Law, Value Added Tax Law, and the Federal Tax Code, among others, ("The Decree"), was published in the Official Gazette of the Federation ("DOF"). The Decree becomes effective on January 1, 2022.

Below you will find a summary of the most relevant aspects.

Income Tax Law

I. LEGAL ENTITIES

Foreign Exchange Gain.

A new parameter has been established to determine gains from foreign exchange obtained from fluctuation, determining that the exchange rate to be used for considering foreign exchange gains is the one set by the Bank of Mexico to settle foreign currency obligations payable in the Mexican Republic, as is currently set to establish foreign exchange loss.

Supported credits.

A legal assumption that configures the existence of backed credits is introduced, being of this nature the financing operations in which interest is derived in favor of legal entities or permanent establishments when there is no business reason¹.

Business Reasons in Corporate Restructurings.

The tax authorities shall authorize the transfer of stock at their cost for tax purposes provided that said transfer is made between companies that reside in Mexico (it used to mention those constituted in Mexico) and belong to the same group.

Likewise, certain requirements are added to be able to perform corporate restructuring, in addition to the tax authorities being able to render void an authorization (while exercising their verification powers) if they detect that the restructuring lacks a business reason or was carried out without complying with all the legal requirements.

Finally, to prevent corporate restructuring from becoming a means to avoid the payment of taxes owed by taxpayers on the sale of shares, certain requirements are added to those already established to ensure that corporate restructuring and relevant prior and subsequent transactions do not have the purpose of avoiding taxes.

¹ "Business reason" is understood to mean when in an act or transaction the reasonably expected economic benefit is less than the tax benefit obtained in that operation.

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Thin capitalization.

A new calculation mechanism was introduced to determine the presence of thin capitalization and, consequently, establish the non-deductible amount of interest paid to related parties abroad. Likewise, the exception related to not including within debts that earn interest paid by taxpayers, those debts assumed by the members of the financial system for the calculation of the amount in excess thereof, at three times their stockholders' equity, will not be applicable in the case of non-regulated multiple-purpose financial institutions ("SOFOM NR") that chiefly carry out activities with their related parties for the procurement of their corporate purpose.

Deductions for technical assistance, technology transfer or royalties.

As an exception, deductions are currently allowed for payments for technical assistance, technology transfer or royalties made to residents in Mexico, and where it has been agreed in the contract that the service will be provided by an authorized third party.

However, this exception is eliminated, and such payments can only be deductible when they are made to residents in Mexico, and the contract has agreed that they are specialized services or execution of specialized works.

Amortization of tax losses in the spin-off of companies.

It is clarified that taxpayers that carry out spin-offs must divide the losses only between the spin-off and spun-off companies engaged in the same line of business.

Change of partners or stockholders in companies suffering losses.

The assumptions in which it is deemed that there is a change of partners or stockholders who control the company have been expanded and is it necessary to establish the moment at which it shall be considered that the change of partners or shareholders is effected.

In addition, it is established that there shall be no change of partners or stockholders when such change occurs due to a bequest, a donation or because of the corporate restructuring, merger or split of companies that is not deemed to be a transfer in the terms of the Tax Code of the Federation, provided that, in the case of a restructuring, merger or split, the direct or indirect partners or stockholders who used to hold control still maintain it after such actions.

Obligations in the case of related parties.

The reference to foreign residents is eliminated from the definition of related parties.

Also, it is established that it must be more clearly stated what the supporting documentation must contain to prove the amount of income and deductions.

Notice of transfer of stock made between foreign residents.

The obligation for the person issuing the stock to present an informative notice to the SAT (Tax Administration Service) with regard to the transfer of stock or securities that represent the ownership of property carried out by foreign residents who have no permanent establishment in the country is established.

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Collection procedures for uncollectible credits.

It is established that there is a notorious impossibility to collect the credits until the taxpayer has exhausted the legal means to obtain the collection and that even having the right to such collection it was not possible to recover it, and it must be demonstrated through a definitive resolution. This measure is intended to encourage taxpayers not only to sue before the courts or initiate arbitration proceedings before the competent authority, but also to seek to obtain a favorable result for their interests.

It establishes that credit institutions will be obliged to submit the information they provide to the credit information companies when the authority exercises its verification powers.

This is due to the detection of an excessive abuse in the deduction of uncollectible credits by taxpayers, under the argument that it is not possible to recover the amount of the credit.

Acquisition of the right of usufruct of real estate.

It is specified that, since it is constituted on real estate, the usufruct constitutes a fixed asset to which the 5% rate is applicable.

It is important to point out that, in the case of the bare owner, he/she will be able to make the corresponding deduction once he/she is able to use the real estate upon consolidation of the attributes of the property.

Accumulation of income from bare ownership and usufruct.

In cases where the bare ownership of a property is sold and the usufruct is reserved, it is specified that the value of the usufruct rights determined in the appraisal at the time the bare ownership and usufruct are consolidated must be considered as accumulated income.

Likewise, persons performing notarial functions must inform the tax authorities of the transaction's characteristics.

Gain from the alienation of the bare ownership and usufruct of an asset.

It is clarified that in order to determine the gain on the disposal of the bare ownership of an asset (with the exception of certain assets²) the original amount of the investment ("MOI") must be subtracted from the price obtained in the proportion of the price that corresponds to such transferred tax.

Investments in the mining sector and right of usufruct of real estate.

In order to avoid abuses by taxpayers who intend to classify constructions and usufruct of real estate as expenses for the year, it is specified that the constructions referred to in this legal assumption also include permanent installations or improvements in a mining lot in accordance with the Mining Law, as well as the usufruct of real estate for which the applicable depreciation percentage must be established.

² Exempt goods are all those merchandise, raw materials, semi-finished or finished products, as well as other securities whose yields are not considered interest under the terms of Article 8 of the Income Tax Law, as well as gold or silver pieces that would have had the character of national or foreign currency and pieces denominated in troy ounces.

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II. INDIVIDUALS

Simplified Trust Regime.

There exists the addition of a new system for natural persons who perform business or professional activities or who grant the use or enjoyment of property, in which minimum tax rates shall be applied and increase as a function of the income received by the taxpayer that range from 1%, when the annual income is lower than \$300,000.00 MXN; to a maximum rate of 2.5% for those who receive income surpassing \$2,500,000.00 MXN and up to \$3,500,000.00 MXN.

The new regime will not be applicable to: (i) people who are partners, stockholders or members of legal entities or when they are related parties; (ii) foreign residents who have a permanent establishment in the country; (iii) those with income subject to a preferential tax system ("REFIPRES"); and (iv) those who receive income other than mentioned above, except for income pertaining to salary or interest.

III. FOREIGN RESIDENTS

Income from the transfer of real property.

It is established that, if when exercising their verification empowers the tax authorities perform an appraisal and find a difference larger than 10% of the consideration agreed, for the Mexican resident transferor or permanent establishment in the country to be obligated to the entire tax, thus substituting the resident taxpayer abroad in that obligation.

Income from the transfer of stock.

For purposes of applying the option to determine the tax on profits, the obligation for the public accountant issuing an opinion to append the documentation that proves that the transaction was carried out at market prices is established.

It is established, that for purposes of deferral of the tax payment on the restructuring of companies, it shall be understood that shares are left outside the group when the issuing company and the acquiring company stop consolidating their financial statements in agreement with the provisions that govern the taxpayer as to accounting and financial matters.

It is established that the authorization for tax deferral shall be void when, while exercising its verification powers, the tax authority detects that the transactions related to such restructuring in the five previous years and the five years following the authorization lacked a business reason or the exchange of stock produced income subject to a preferential tax system ("REFIPRES").

Withholding rate on interest.

For the purpose of preventing taxpayers from making undue interpretations to apply the limitations on rate reductions for paying interest, the term "arising from the securities in question," is removed thus clarifying that said limitation applies to any transaction that gives rise to interest payment. It is also considered appropriate to replace the word issuer with debtor, in order to include the related parties of those who pay the interest.

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Authorized representation of foreign residents.

It is established that the authorized representative must voluntarily assume the joint and several liability for tax payments caused by the foreign resident, in addition to including the requirement that the representative be solvent, that is, that they have sufficient assets to ensure compliance with the substantive tax obligation.

IV. MULTINATIONAL COMPANIES AND TRANSACTIONS BETWEEN RELATED PARTIES.

Transactions between related parties.

Natural person taxpayers are expressly included as being obligated to carry out transactions with related parties at market prices; it is further established as part of the powers to determine the accruable income and the authorized deductions, the possibility to use “profit margins” in transactions between independent parties.

For purposes of applying the maquiladoras’ benefit to determine the taxable income known as “Safe Harbor,” in order to consider that the foreign residents for whom they act have no permanent establishment in the country, it shall be necessary for them to present a full and correct informative return of their maquila operations. Otherwise, they may not apply said benefit.

The possibility is removed of filing an application for a specific resolution for the purpose that the tax authority can confirm that the maquiladora fulfills all the transfer pricing obligations, thus leaving to the companies the responsibility to calculate the taxable income in agreement with the “Safe Harbor” provision.

Value Added Tax Law

VAT crediting.

It is established as a requirement to credit VAT on the importation of goods, that the customs declaration must be in the name of the taxpayer.

VAT for activities not subject to VAT will not be creditable, specifying that in no case will VAT transferred to the taxpayer for expenses incurred to carry out activities that are not subject to the tax be creditable.

In accordance with the previous paragraph, a definition of acts or activities not subject to VAT is included, meaning those through which the taxpayer obtains an income or consideration, for which it makes expenses and investments for which VAT is transferred or VAT has been paid on importation, as long as such activities are not carried out in Mexican territory or are different from those that constitute the subject matter of VAT.

For the VAT adjustment for expenses and investments in the pre-operating period, in order to identify the month in which the adjustment must be made, the taxpayer must inform the authority the month in which its activities begin, in accordance with the rules published by the authorities for such purpose.

Temporary use or enjoyment of tangible assets.

It is established that the temporary use or enjoyment of tangible goods in Mexican territory will be subject to the payment of VAT, regardless of whether the material delivery is in Mexico or abroad.

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Digital services by residents abroad.

Regarding the obligation to provide information on the number of services or operations performed in each month with the receivers located in Mexican territory that receive its services, as well as the number of the aforementioned receivers, and to maintain the base records of the information presented, instead of being filed on a quarterly basis, it will be filed on a monthly basis through an electronic declaration, no later than the 17th day of the month immediately following the month in which the information corresponds.

Failure to comply with such obligation will result in the temporary blocking of access to the digital service of the provider of such service, through the concessionaires of a public telecommunications network.

Federal Tax Code

Residence for tax purposes.

Regarding the residence of natural persons and legal entities for tax purposes, they will not lose the status of Mexican residency for tax purposes if they fail to prove their new residence or prove it, even in a country with income subject to a Preferential Tax System. The above will apply in the fiscal year in which the notice to be given to the tax authorities is filed and during the five subsequent fiscal years; however, it will not be applicable when there is in place a broad agreement with that country to exchange tax information and an international treaty that makes mutual reciprocal assistance possible as to the notification, raising and collection of taxes.

In the event that the notice referred to in the preceding paragraph is not filed, the status of resident in Mexico will not be lost, even if the other legal requirements are met. Previously, the presentation of the notice was a formal procedure that did not condition the change of residence.

Homologation of the right to the image with the tax treatment of royalties.

A third paragraph is added to Article 15-B of the CFF to consider the right to the image as included within the concept of use or concession of use of a copyright on a literary, artistic or scientific work.

This amendment would also have the benefit of granting the tax treatment of royalties to taxable income resulting from the exploitation of the copyright inherent to the image itself.

Merger or split of companies.

The provision is made that, while exercising their powers of supervision, the tax authorities can establish a tax credit for the concretion of a transfer arising from a merger or a split if they consider that such transfer lacks a business reason, or do not comply with any of the requirements of Article 14-B of the CFF, based on the relevant transactions related to the merger or split, carried out within the five years immediately preceding and following the time they are carried out.

For this purpose, a list of "relevant transactions" is provided for, as well as the obligation to present a notice if they are carried out.

New verification powers.

The tax authorities may exercise their verification powers with financial, fiduciary, institutions, trustors or trustees (in the case of trusts), and contracting or member parties (in the case of any other legal entity type), to verify

HAYNES BOONE

compliance with their tax obligations as well as to require such institutions and related third parties to submit the necessary information to verify compliance with the OECD's Common Reporting Standard for Automatic Exchange of Financial Account Information in Tax Matters ("CRS").

In addition, a new power of review is established for the purpose of reviewing obligations regarding the controlling beneficiary and automatic exchange of financial information, including the subjects. Consequently, the procedure to carry out such reviews is determined and regulated.

Tax crimes.

The crime of tax fraud shall be deemed committed when it arises from simulating the rendering of independent professional services with regard to employees, as well as for deducting, crediting, applying any other tax incentive or benefit, or otherwise getting a tax benefit with regard to expenses made in violation of anti-corruption legislation, among them expenses consisting in giving, either themselves or through an intermediary, money, goods or services, to public servants or third parties, domestic or foreign, in contravention of the legal provisions.

Measures to combat the unlawful marketing of hydrocarbons and oil products.

Many amendments are proposed with regard to hydrocarbons and oil products, among which the following stand out:

- i. The removal of the figure of authorizations for being the supplier of equipment and programs to carry out volumetric controls; to provide services to verify the proper operation and functioning of the aforementioned computer equipment and software; and to issue opinions that establish the type of hydrocarbon or oil product in question.
- ii. Parameters shall be included for the obligation to keep volumetric controls; the parameters consist of: (i) the obligation to generate and keep reports of every volume that is the object of the taxpayer's operations; (ii) the records of volume must be obtained from measuring systems; (iii) specifying what the points of measurement are; and (iv) the obligation to associate to the records of volume the information of the CFDI (Internet Digital Tax Vouchers) or orders.
- iii. Presumption of the transfer of hydrocarbons or oil products; this proposal consists of establishing a specific presumption of transfer in the case of inventory shortages of hydrocarbons or oil products when there is a difference between the record of reception of volumetric controls with regard to the record of delivery of volumetric controls, in a calendar month.
- iv. Infractions and fines related to volumetric controls, as well as a criminal penalty for taxpayers who do not have hydrocarbon or oil product volumetric controls, or who tamper with them.

In this regard, many violations are described, and fines provided for in relation to volumetric controls, as well as penalties of imprisonment with regard to violations of volumetric controls.

Simulation of legal acts for tax purposes.

The tax authorities may, as a result of the exercise of their verification powers, determine the simulation of legal acts, exclusively for tax purposes. Such determination must be duly grounded and motivated within the verification procedure, as long as the transactions are between related parties.

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The taxable event to be taxed will be the one effectively carried out by the parties and the resolution must include the following: (i) identify the simulated act and the one actually executed, (ii) quantify the tax benefit obtained by virtue of the simulation and (iii) indicate the elements by which the existence of such simulation was determined, including the intention of the parties to simulate the act.

For such purpose, the authority may rely, among others, on presumptions.

Abbreviations

ITL	Income Tax Law
IT	Income Tax
VAT	Value Added Tax
VATL	Value Added Tax Law
ERC	Energy Regulatory Commission
SE	Secretariat of Energy
REFIPRES	Preferred Tax System
FTC	Federal Tax Code
SAT	Tax Administration Service
CFDI	Electronic Invoice
OECD	Organisation for Economic Co-operation and Development
DOF	Official Gazette of the Federation

For more information, please contact any of the lawyers listed below.

To read en español, [click here](#).

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