



TAX FLASH 2009-E3

Amendments to Tax Laws for 2010 approved by the Mexican Congress

On October 31, 2009, the Mexican Congress passed a modified version of the Tax Reform Initiative submitted by the Executive Branch, which we described in our previous Tax Flash 2009-E2.

This Tax Flash includes a general description of the tax amendments that we consider most relevant for non-Mexican persons investing in Mexico. The objective of this summary is to provide our clients with information to assist them in timely identifying whether these amendments require any specific course of action in connection with their investments in Mexico, prior to the enactment of the changes on January 1st, 2010.

Income tax

- Tax rate

A temporary increase to the individual's progressive income tax tariff and to the fixed corporate tax rate was approved. A maximum rate of 30% shall apply from 2010 to 2012 instead of the current 28% rate. The maximum rate will be reduced to 29% for 2013 and to 28% for 2014.

The rate increase will also be applicable to income obtained by non-residents from a Mexican source, to the extent that such income is not subject to a specific lower rate either by Mexican law or by a Double Taxation Avoidance Treaty.

- Consolidation regime

In general terms, the Executive Branch's proposal to pay the deferred tax due to consolidation rules once a five-year period has elapsed was passed without significant changes. Congress only made some technical adjustments and modified the percentages in which the deferred tax must be paid. For tax deferred prior to 2005, it must be paid as follows: 25% in 2010, 25% in 2012, 20% in 2013 and 15% in each of 2014 and 2015. These percentages will also apply to income tax that has been deferred in groups after 2005, but such tax would have to be paid in subsequent years in similar terms.

We would like to remind our readers that as a result of this tax reform the benefits of the consolidation regime such as offsetting net operating losses incurred by one entity against profits of another entity, as well as the tax-free dividend payment between entities of the group, remain in place. However, the tax-deferral benefits resulting from the consolidation regime are now limited to five-year periods.

- 4.9% income tax rate for non-Mexican banks

The application of the reduced 4.9% income tax withholding rate on interest income paid to foreign banks that are registered with the Mexican tax authorities and that are resident in Tax Treaty jurisdictions was renewed for 2010.

Business flat tax

No changes were made to the Business Flat Tax Law for 2010. However, the Mexican Congress approved the Executive Branch's proposal to disallow the application against the income tax determined in a given year, of the tax credit established in the Business Flat Tax Law when authorized deductions were greater than the taxable income of such year. Therefore, the tax credit generated in 2010 will only be applicable against the business flat tax generated in the subsequent ten years.

Proposed tax for the fight against poverty

The new 2% consumption tax for the fight against poverty proposed by the Executive Branch was not passed by Congress. Instead, Congress approved an increase of the general value added tax rate from 15% to 16%. The value added tax rate applicable in the border regions was also increased from 10% to 11%. There are some transitional rules for operations carried out in 2009 which are paid in 2010, in order to adjust for the change in rates mentioned before. However, these transitional rules may be insufficient because some problems may arise for supporting deductions and credits related to such operations, as a result of the very limited period of time provided for such transition (ten first days of 2010).

Special tax on production and services

In general terms, increases and new excise taxes proposed by the Executive Branch were approved by the Congress; however, the rates applicable were slightly adjusted. For activities such as the sale and importation of alcoholic beverages, an increase in the rate was approved to 53% (the rate will be reduced to 52% for 2013 and 50% starting on 2014), instead of the \$3 MXN on each liter of alcoholic beverages with more than 20° GL; for the sale of cigarettes the fee will be determined on the number of cigarettes sold or imported instead on the grams of tobacco contained; for the sale of beer the transitory increase will be to 26.5% instead of the increase to a rate of 28%; and in the case of telecommunication services the additional rate will be 3% instead of the proposed 4%, with certain exemptions as in the case of Internet services.

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