

TAX FLASH 2011-01

Highlights of Amendments to several Tax Laws for 2011

On November 15, 2010, the Federal Government Revenue Law for tax year 2011 was published in the Official Gazette. Additionally, on November 18 and 19, as well as on December 31, 2010 other amendments to the Income Tax Law, the Special Tax on Production and Services Law and the Federal Rights Law, to be effective for year 2011, were published.

Below you will find some relevant aspects of the aforementioned tax reforms for year 2011; however, as always, we recommend that a detailed review be made of the amended laws in order to identify any specific issues that may be of interest.

Federal Government Revenue Law for 2011

Interest income tax regime for individuals

Under the tax reform approved for tax year 2010, several provisions were included establishing a new procedure for Mexican individuals to determine and pay income tax on interest income. Such amendments would have an impact in the manner in which Mexican resident individuals determine the income tax payable in respect of interest income, whether sourced in Mexico or abroad, as in general terms they imply the need to determine an amount of “positive, net of inflation, accrued interest” by considering all accounts and financial assets maintained by such taxpayers in all financial institutions, including accounts held in Mexican investment companies and those maintained by individuals with non-resident financial institutions.

The amendments also included a specific methodology for the calculation of interest income accrued by non-residents through their participation in some of such investment companies (investments in shares of debt instrument investment companies and investments in shares of variable income investment companies whereby gains realized on the sale of these shares are determined after considering only the proportion of the investment portfolio consisting of taxable debt instruments).

This new regime was expected to become effective starting January 2011; however, based on the amendments for year 2011, the entry into force of such regime has been postponed and the new effective date for such regime to be enforced will be January 1st, 2012. Consistently, the 2010 regime will continue to be applicable for year 2011, and therefore the applicable income tax withholding rate for interest income paid by Mexican financial entities will be 0.60%, the same rate that applied during 2010.

4.9% rate for Mexican-sourced interest

As it was expected, the 4.9% income tax withholding rate for Mexican-sourced interest payments made to banks residents in a treaty country will continue to be applicable, provided that the usual registration requirements are met.

Business flat tax

The restriction included in the Revenue Law for tax year 2010 consisting on precluding taxpayers from applying the business flat tax credit resulting when a loss position was determined, against the income tax determined by such taxpayer for the same year, remains applicable in tax year 2011, and therefore, such credit may only be used against subsequent business flat tax liabilities.

Relief on accessories to social security contributions

Employers and other persons subject to social security contributions are granted the possibility of requesting the full or partial debt relief of surcharges and fines derived from unpaid social security contributions. This relief comprises outstanding debts as of June 31, 2010, to the extent such debts are spontaneously paid through a lump sum payment and additional requirements are complied with.

Income Tax

First-time employees tax incentive

A tax incentive consisting in an additional income tax deduction to employers that engage first-time employees for new positions is granted through an amendment to the income tax law. Such deduction is applicable for both monthly and annual income tax payments. However, this incentive only applies for positions that have a salary of no more than eight times the official minimum wage (around approximately USD \$1,100 a month).

The additional deduction will be the result of applying a formula provided by the law to such salaries, which results in all cases in a deduction of 93.3% of the salary considered.

The tax incentive will be applicable only to employees that (i) have not been previously registered before the Mexican Social Security Institute, (ii) are engaged for a newly created position and (iii) receive up to eight times the official minimum wage applicable to the region in which their services are rendered.

This tax incentive is expected to remain in force for 3 years following the date on which the amendment becomes effective. However, the benefit of the additional deduction will remain valid for a 36-month period following the date on which the new positions are created. Several requirements will have to be met in order to be entitled to apply the additional deduction referred to above.

Special Tax on Production and Services

Cigarettes

The applicable rate to the sale or import of cigarettes, depending on their tobacco content, has been increased from MXP \$0.10 to MXP \$0.35 per cigarette.

A transitory regime is provided for considerations collected within a 10-day period following the effective date on which this change becomes effective, to the extent that the goods identified with such transactions are delivered prior to January 1st, 2011 and the transactions thereof are not carried out between related parties.

Energy drinks

A new regime has been approved so that the sale and import of energy drinks, as well as concentrates, powder and syrups for preparing such beverages will be taxed with a 25% rate.

As this is an indirect tax, the tax passed-on to taxpayers as a consequence of the acquisition and import of such goods will be creditable against the special tax on production and services triggered on their activities.

Notwithstanding the above, the sale of such goods to the general public at large is included as an exempt activity, unless the selling party is the manufacturer, bottler, distributor or importing agent of such products, and also when sales are carried out by retailers whose main source of income derives from sales not carried out with the general public.

Additionally, several formal obligations are included in the law, such as the issuance of tax receipts and filing of informative returns, which must be complied with by taxpayers that carry out the sale and import of such drinks, including concentrates, powder and syrups for preparing such beverages.

* * * * *

Mexico City
January 2011