

TAX FLASH 2011-02

Bill of tax amendments for 2012

On September 8, 2011, the Executive Branch sent a tax Bill to the Mexican Congress for year 2012, which does not include significant amendments to the tax laws currently in effect. Such Bill includes the projects of Federal Government Revenue Law for tax year 2012 and of the Federal Government Expense Budget for tax year 2012, as well as certain minor amendments to the Federal Fiscal Code.

This Tax Flash includes a general description of the main changes that are included in the tax Bill that we consider relevant for non-Mexican residents investing or otherwise operating in Mexico. The objective of this summary is to provide our clients with general information to assist them in timely identifying whether these amendments may require any specific course of action in connection with their operations in Mexico, prior to the enactment of the proposed modifications.

The proposed Bill for tax year 2012 will be subject to discussion and approval by the Mexican Congress and thus, the information contained herein may be modified over time. We will keep you informed of any substantial changes to these proposals.

Federal Government Revenue Law for 2012

4.9% interest withholding tax rate

It is proposed to include in the Federal Government Revenue Law for year 2012, the application of the 4.9% income tax withholding rate for Mexican-sourced interest payments made to banks resident in a treaty country, provided the usual registration requirements are met.

Foreign pension and retirement funds

It is proposed that Mexican resident entities with non-Mexican pension and retirement funds as shareholders may exclude, for purposes of the computation of the 90% test to qualify for the exemption contained in the Income Tax Law, the taxable annual inflation adjustment and the foreign exchange gains arising exclusively from debts contracted for the acquisition, or to receive leasing income, of land and buildings located in Mexico.

Maquila companies

It is proposed for tax year 2012, that non-Mexican residents would not be deemed to have a permanent establishment in Mexico as a consequence of their relationship with Mexican companies operating under the Maquiladora program approved by the Mexican Ministry of Economy, to the extent such companies are not considered related parties and certain formal requirements contained in the Federal Government Revenue Law are fulfilled, including the filing of certain information no later than June 2013.

Debt-related financial derivative transactions

Through the proposed project of the Federal Government Revenue Law for year 2012 it is clarified that the tax-exemption contained in the Income Tax Law for non-Mexican residents entering into debt-related financial derivative transactions, will also be applicable to Swap transactions deemed debt-related financial derivative transactions which are referred to the Mexican Interbank Interest Rate (TIIE, per its acronym in Spanish) or to securities issued by the Federal Government or by the Bank of Mexico or any other determined by the Mexican Revenue Service, even if they are also referred to other interest rates or other underlying assets that in turn refer to the TIIE, to any of the aforementioned securities or other interest rates. This exemption will be applicable to the extent the Swap is carried out through a stock exchange or recognized market and the non-resident is the beneficial owner of the income.

Interest income regime for Mexican individuals

A new regime for interest income earned by Mexican resident individuals was proposed to be enforced for year 2011, but it was deferred until January 1st, 2012. According with the Federal Government Revenue Law, it is proposed to again defer the enforcement of such new regime to January 1st, 2013. For this purpose, during tax year 2012 the current income tax regime provisions will continue to apply.

Faculty for local "sales tax"

The Bill for tax year 2012 empowers the Mexican States to impose a local "sales tax" on the sale of goods, rendering of independent services and granting of the temporary use or enjoyment of movable property, applying a maximum tax rate of 5% upon the consideration agreed, without considering the value added tax and the local tax as part of the taxable basis.

It is established that individuals and legal entities that carry out the referred activities within a state territory would be subject to such tax. The tax will be triggered on a cash flow basis.

It is expressly provided that, among others, the activities deemed as exempt under the Value Added Tax Law, as well as the rendering of public services concessioned by the Federal Government and the electric energy, will not trigger this local tax.

Business flat tax

It is proposed to maintain for tax year 2012, the restriction under which Mexican taxpayers will not be able to offset the tax credit established in the Business Flat Tax Law for determining a negative basis (where authorized deductions exceed taxable income), against the income tax determined for the same year, as it is currently allowed by the Business Flat Tax Law. Such tax credit would only be allowed to be credited against business flat tax generated within the subsequent ten years.

Also, it is proposed to continue with the obligation for Mexican taxpayers to file, on an annual basis, information with the breakdown of the computation of the business flat tax.

Penalty and fines reduction

It is proposed to grant again to taxpayers who failed to comply with federal tax obligations, other than payment obligations, a 50% reduction on the amount of the penalty charges and fines arising thereof, to the extent the penalty charges and fines are submitted before the final tax audit act or the observations ruling derived from the tax audit performed by the tax authorities, is notified.

In case the taxpayer decides to pay the omitted taxes and the relevant accessories once the tax authorities have issued the final tax audit act or the observation ruling, but before the ruling through which the tax credit assessed is notified, a 40% reduction on the penalty charge would apply.

Tax incentives

Regarding the special tax on production and services, it is proposed to maintain the tax incentive for taxpayers belonging to certain particular industries, such as forestry, agriculture, livestock and public and private transport for individuals and freight that acquire diesel for its ultimate consumption.

Also, it is proposed to maintain as a tax incentive, the credit of a portion of the expenses for the use of toll-roads, for those taxpayers engaged on public and private land transportation activities for individuals and freight.

In addition to the above, and in order to improve the preservation of the environment, it is proposed to support the sale of electric and hybrid cars, through a tax-exemption for those individuals and legal entities that sell among the public or import this kind of ecological vehicles.

It is also proposed to maintain the tax-exemption for taxpayers importing natural gas.

Federal Fiscal Code

Tax invoices

Through the proposed amendments, it is intended to consolidate in the Federal Fiscal Code all of the provisions that regulate the formal requirements that tax invoices have to comply with. Additionally, it is intended to simplify certain formal requirements applicable to digital and simplified tax invoices.

Statute of limitation for criminal actions

It is proposed to establish a general statute of limitation for the Mexican tax authorities to pursue criminal actions of eight years, in order for the tax authority to be able to exercise their faculty of carrying out tax audits and conclude them, in order to prove the existence of criminal acts performed by taxpayers.

For other offenses provided by the Federal Fiscal Code, whose characteristics of the behavior from which they derive are not related to the exercise of tax audits, a statute of limitation of three years is proposed.

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Mexico City
September 2011

This Tax Flash contains information of a general nature, and thus it does not address any particular case or facts. The information contained herein is accurate as of the date of issuance; however, we make no representation as to the fact that such information be accurate in the future. Accordingly, we recommend that specific advice addressing your particular circumstances be requested.