

2023 – 5 Tax Consulting

Decree Promoting Investment by Taxpayers Engaging in Productive Economic Activities within the Development Poles for the Welfare of the Isthmus of Tehuantepec

On June 5, 2023, the “Decree Promoting Investment by Taxpayers Engaging in Productive Economic Activities within the Development Poles for the Welfare of the Isthmus of Tehuantepec” (hereinafter the “Decree”) was published in the Official Gazette of the Federation. The Decree contains reductions in both income tax and value-added tax for taxpayers engaged in productive economic activities within the Development Poles for the Welfare of the Isthmus of Tehuantepec designated by the Interoceanic Corridor of the Isthmus of Tehuantepec. The tax incentives provided in the Decree enter into force on June 6, 2023.

Below we describe the matters that we consider most relevant from the Decree; however, we recommend that its content is reviewed individually to identify other matters that may be of interest and that are not discussed in this News Flash.

For purposes of the Decree, productive economic activities within the Development Poles for Welfare are understood to be those carried out in relation to the following sectors: electric and electronic, semiconductors, automotive (e-mobility), auto parts and transportation equipment, medical devices, pharmaceutical, agroindustry, electricity generation and distribution equipment (clean energy), machinery and equipment, information and communication technologies, metals and petrochemicals, as well as any other activity determined by the Board of Directors of the Interoceanic Corridor of the Isthmus of Tehuantepec for the Development Poles for Welfare.

CDMX

+52 (55) 5257 7000

Monterrey

+52 (81) 8478 9200

Queretaro

+52 (44) 2229 1797

New York

+1 (212) 223 4434

Houston

+1 (832) 240-3759

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Taxpayers interested in obtaining the tax benefits established in the Decree must fulfill certain requirements, such as being up to date in their tax obligations, having a valid concession title or being a property-owner within a Development Pole for Welfare, filing the investment project for which the concession title was granted, and having their tax domicile in the Development Pole for Welfare where they carry out their productive economic activities, among other requirements. The above, in accordance with the guidelines issued by the Ministry of Finance and Public Credit (“SHCP” per its acronym in Spanish).

It is also provided that, to maintain the tax benefits, taxpayers must show progress in their investment project and comply with the minimum employment levels determined by SHCP, which will issue a certificate attesting that the taxpayer complies with the applicable requirements or, on the other hand, a non-compliance certificate once the managing director of the Interoceanic Corridor of the Isthmus of Tehuantepec has issued his opinion. This opinion must be shared in advance with the head of the Ministry of the Navy. The SHCP must publish semi-annually, in January and July of each year, the list of taxpayers to whom it has issued the certificates.

The income tax incentive will be granted to Mexican-resident individuals under the business and professional activities regime and Mexican entities under either the general regime or the simplified tax regime for entities (*régimen simplificado de confianza*), as well as to foreign residents with a permanent establishment in the Country.

The incentive consists of a tax credit equivalent to 100% of the income tax due in the corresponding fiscal year and its advanced payments, considering only the income attributable to the productive economic activities carried out within the Development Poles for Welfare, as well as the deductions that are strictly necessary for earning said income, for a three-year period computed as of the year in which the taxpayers obtain the certificate. The incentive will be equivalent to 50% of the income tax of the three subsequent years; however, if certain minimum employment levels determined by SHCP are achieved, the tax credit may be equivalent to 90% of said tax.

When, for any reason, the aforementioned income tax incentive is not applied by the taxpayer in a fiscal year, such period will continue to be considered in the computation of the three-year period, and if the taxpayer restarts applying the incentive, the percentage corresponding to the fiscal year in which it is restarted will be applicable. Taxpayers who, being able to do so, do not apply the income tax credit in a fiscal year, will lose the right to apply it afterwards.



When the amount of deductions that are strictly necessary for earning the income attributable to the productive economic activities carried out within the Development Poles for Welfare is greater than the income earned by a taxpayer, the difference will be a tax loss, which should only be deducted from the tax profit arising from the aforementioned economic activities.

Also, when taxpayers earn income different from that mentioned in the previous paragraphs, they must determine the income tax arising from such income separately and without applying the tax credit established in the Decree.

The application of the income tax incentive will not give rise to tax refunds or offset. The right to apply such tax incentive is personal and cannot be transferred, even as a result of a merger or a spin-off.

In addition, the aforementioned taxpayers, for six fiscal years as of the one in which they obtain the certificate, can benefit from an immediate deduction of the 100% of the investments undertaken in new fixed assets that they use in the Development Poles for Welfare to carry out their productive economic activities. Taxpayers can apply the immediate deduction in the fiscal year in which they start using the relevant assets or in the following year. This option may not be applied when it arises from the acquisition of office furniture and equipment, automobiles, automobile armoring equipment, or any fixed asset not individually identifiable.

The Decree also establishes that taxpayers who apply the income tax benefits already mentioned in this Flash cannot simultaneously apply the other benefits or tax incentives listed in the Decree.

On the other hand, a tax incentive is also granted regarding the value-added tax, for a four-year period as of the entry into force of the Decree, equivalent to 100% of the value-added tax that taxpayers must pay for undertaking productive economic activities within the Development Poles for Welfare, arising from the sale of goods, providing independent services or granting the use or temporary enjoyment of goods to persons who also carry out productive economic activities in a Development Pole.

The value-added tax incentive will only be valid as long as no amount is shifted to the purchaser of the goods or services for such tax and, as long as, the goods, services, or the use or temporary enjoyment of goods are used by the purchasers in carrying out their productive economic activities within the Development Poles for Welfare.

For purposes of crediting the value-added tax arising from goods, services, or the use or temporary enjoyment of goods, strictly necessary for carrying out the productive economic



activities for which the tax incentive is applicable, the Decree provides that such activities will be considered as activities for which the credit is allowed without prejudice to the other requirements established in the Value Added Tax Law.

It is specified that when taxpayers do not apply the value added tax credit in the corresponding monthly tax return in which they carry out the activities subject to the incentive, they will lose the right to apply it afterwards.

SHCP will publish in the Official Gazette of the Federation the guidelines regarding the requirements that taxpayers must comply in order to obtain the tax benefits established in the Decree, no later than ninety natural days from its entry into force. The Tax Administration Service must issue the required general rules for the correct and proper application of these tax incentives.

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Mexico City
June 2023

This News 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.

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