2022 Tax Amendments

HIGHLIGHTS

The Decrees that modify the Income Tax Law, the Value Added Tax Law, the Special Production and Services Tax Law, the Federal Tax Code, among other Laws, have been published in the Federal Official Gazette on November 11, 2021. All amendments hereinafter collectively referred to as “the Tax Reform”.

In this document we summarize what we consider are the most relevant amendments contained in the 2022 Tax Reform, with special focus on those that have an important impact on both cross-border transactions and foreign investors doing business in Mexico.

In general terms, the amendments analyzed herein will enter into force on January 1st, 2022, but there are some specific amendments that will enter into force in a different date.

The amendments neither include additional taxes nor direct modifications to current tax rates, this is in line with the commitment assumed by the Mexican Federal Government in such regard; however, several of the proposed modifications for 2022 seek to strengthen the capabilities of verification of the Mexican tax authorities through the granting regulatory authority that will allow them to regulate different matters.

Some of the amendments incorporate the obligation to prove the existence of business reasons supporting the transactions entered by and between taxpayers to gain access to a neutral regime (i.e., mergers and spin-offs) or a tax benefit.

In the following pages we provide a description and certain general comments on the main aspects of the Tax Reform.

FEDERAL REVENUE LAW

Domestic Interest Withholding Rate

[Art. 21 FRL]

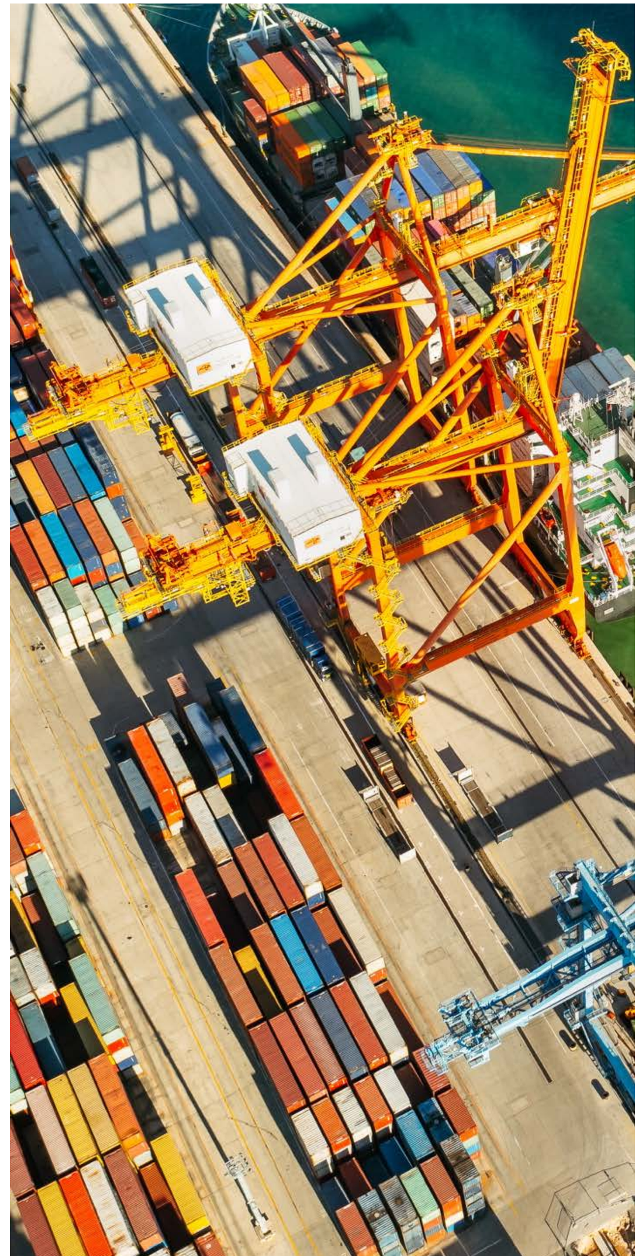
The domestic income tax withholding rate on interest paid by the Mexican financial system is reduced from 0.97% in 2021 to 0.08% in 2022; such withholding is determined over the capital (principal) bearing the interest. This is made to better recognize the low interest rates in the markets, although continues to be a little high for the small yields on investments. It only affects domestic recipients of interest payments.

INCOME TAX LAW

Double Tax Treaties' Benefits

[Art. 4 MITL]

Due to the fact that under this Tax Reform, certain Mexican entities would be obliged to file a statutory tax report ("Dictamen fiscal") before the Mexican tax authorities, the fulfillment of such obligation would be somehow required to apply the benefits provided in the Double Tax Treaties entered by Mexico. This obligation to file a statutory audit report is only applicable to Mexican residents, so we are not sure how this obligation will be required for nonresidents claiming treaty benefits, but the reference in the new provision is clearly referred to the new obligation for certain Mexican residents to file an annual audit tax report.



Members of the Financial System

[Art. 7 MITL]

The Mexican tax authorities would be authorized to issue administrative rules to include the parameters for an entity, institution or person to be considered as part of the financial system for income tax purposes. The application of this definition is relevant for determining the tax treatment of Mexican entities that are part of the financial system mainly regarding withholding rates and to have access to the value added tax special regimes.

Exchange Gains

[Art. 8 MITL]

A reference is included in the law in order to determine a minimum amount of taxable exchange gains by taxpayers. Such procedure is currently included in the Income Tax Law to determine the maximum amount of deductible exchange losses, and now it will set a minimum for exchange gains so that they are always determined, at least, by considering the official exchange rate published by the Mexican central bank.

Back-to-back loans

[Art. 11 MITL]

Financing transactions deriving interest due by Mexican entities or permanent establishments of nonresidents located in Mexico that lack a business reason (from the tax authorities' perspective) may now be qualified as back-to-back loans, which would result in the non-deductibility of interest payments and other negative tax implications.

This amendment is one of the provisions in which the term "business reason" has been introduced as an essential element to determine the tax implications of a given transaction, without providing clarity as to the scope of such term. This will generate uncertainty in several transactions, such as ordinary financing transactions, due to the broadness of the concept, and the subjectivity that may be applied by the tax authorities when challenging transactions to make them qualify under this concept.

Bare Ownership and Usufruct

[Art. 18 Fr. XII MITL]

In Mexico it is possible to break down the ownership of assets in two different rights, one referred to as bare ownership, and the second one as the usufruct. The latter allows the holder to exploit the asset, while the first concept would only allow the holder to hold title without being allowed to generate benefits from the asset, such as rental income. This is a very common structure of ownership when yields of an asset are wished to be segregated for some reason.

Amendments are incorporated to address the tax effects that Mexican entities segregating the bare ownership and usufruct of a determined asset must recognize as from 2022. In accordance with the statement of legislative intent, the avoidance of certain tax effects deriving from inappropriate interpretations of the applicable tax provisions that have been identified by the Mexican tax authorities was the main driver for the incorporation of these changes to the tax system.

In general terms, such rules consist in the following:

(i) The value of the right of the usufruct determined on an appraisal made by a person authorized by the Mexican tax authorities, would be considered as part of the taxable income of the Mexican entity, in the moment in which the consolidation of both attributes takes place (Bare ownership and usufruct).

(ii) To ensure the payment of the corresponding income tax, Public Notaries would be obliged to inform the Mexican tax authorities about the terms of the transaction and the data of the taxpayer acquiring the bare ownership in accordance with administrative rules to be issued for the referred purposes.

(iii) For the determination of gains upon the sale of the bare ownership or usufruct, taxpayers would need to subtract from the sales price, the proportional original investment amount of the attribute being transferred (bare ownership or usufruct), determined on an appraisal prepared by an authorized person by the Mexican tax authorities, this procedure would avoid the generation of tax losses by taxpayers.

Tax free reorganizations of shares

[Art. 24 MITL]

New requirements are incorporated for domestic reorganizations that require authorizations from the tax authorities to transfer shares at their tax cost basis, in case of restructuring processes that form part of the same Group.

It is now established that such authorizations would only be granted when the selling and acquiring entities are both tax residents of Mexico. Until December 2021, the requirement only consists of participating entities incorporated in Mexico. This change is intended to ensure that when the reorganized shares are transferred- out of the Group, the transaction would be taxed in the hands of the Mexican tax-resident seller.

As a new requirement, taxpayers would be obliged to report all the Relevant Transactions related to the restructuring process that took place in the five-year period prior to the submission of the authorization request, as well as those that take place during the five-year period following to that in which the restructuring process was made and authorized.

The Mexican tax authorities would have the ability to revoke these authorizations when they consider that the restructuring processes lacked a business purpose, in which case the taxpayer would be required to pay the tax deriving from the transfer of shares.

Technical assistance, transfer of technology and royalties

[Art. 27 Fr. X MITL]

As from 2022, taxpayers can only deduct expenses for technical assistance, transfer of technology or royalties, if they directly receive the services and not through third parties, except in the case of specialized services or the execution of specialized works as defined in the Mexican Labor Law.

Losses from bad debts

[Art. 27 Fr. XV MITL]

Relevant modifications are incorporated to the rules that relate to the tax deduction of losses resulting from bad debts that are uncollectable by taxpayers.

In general terms, it will no longer suffice to start an arbitration process or file a lawsuit against the debtor to demonstrate that the account receivable is considered uncollectable and therefore deductible. Starting 2022, taxpayers would need to obtain a definitive resolution issued by a court to demonstrate that they used all efforts and means to try to collect the receivable, and that it was impossible for them to collect the account. This will delay the possibility of claiming these deductions for the litigation period on this matter (which may result in one or two additional years).

Thin-capitalization regime

[Art. 28 Fr. XXVII MITL]

Thin Capitalization is commonly measured based on the ratio of stockholders' equity and debt, measured as an average for each year. There is an alternative procedure to consider the balance of certain tax accounts (paid-in capital account and retained earnings account) rather than the information on the financial statements. For purposes of this alternative procedure to determine the stockholders' equity, it is now required that Net operating losses (NOL) are also considered to reduce the stockholders' equity so determined, apparently to further adjust to the actual financial situation of the company.

Until now, the referred optional stockholders' equity includes the sum of the average of the balances of the Capital Contribution Account (CUCA per its acronym in Spanish), the Net-after-tax profit account (CUFIN per its acronym in Spanish) and the Reinvested net-after-tax profit account (CUFINRE per its acronym in Spanish).

This alternative procedure will only be allowed when the result of the abovementioned computation (CUCA + CUFIN + CUFINRE – NOL) does not exceed 20% of the stockholders' equity of the year; if exceeded, it would be necessary to prove before the Mexican tax authorities that there is a business reason supporting such difference, as well as to demonstrate that the balances of CUCA, CUFIN, CUNFINRE and NOL are duly supported.

It is also established that the exception for the thin-capitalization regime to apply on debts that were contracted for the construction, operation or maintenance of infrastructure related to strategic areas for the country or for the generation of electric energy, will only be applicable to taxpayers that demonstrate the document or permit issued by the competent authority that proves that they can carry out such activities directly and not through third parties.

Regarding financial entities known as "SOFOMs" in Mexico that were considered as "non-regulated", they were generally excluded from the application of the thin-capitalization regime. However, starting 2022, non-regulated SOFOMs will no longer be allowed to exclude debts contracted in the performance of their business when such entities are considered as mainly carrying out activities with their domestic or foreign related parties. This change may result in a very negative impact for those Groups where this type of entities have been used to finance intragroup transactions.

Tax losses in spin-offs

[Art. 57 MITL]

Losses are normally segregated through a spin-off based on the rules of the Mexican income tax law. A new rule is incorporated to establish that tax losses pending to be reduced at the time of a spin-off may only be divided among the splitting company and the spun-off companies to the extent these last companies carry out the same business that generated the losses, which must be proved to the tax authorities when they carry out an audit on the companies.

This new requirement is contrary to what is normally the purpose of a spin-off (which involves segregating businesses to reorganize the operation of a company), and the fact that this will need to be proved until the tax authorities carry out an audit will generate uncertainty on this type of transactions.

Tax losses in mergers

[Art. 58 MITL]

With respect to the rules already existing to limit the utilization of tax losses for companies participating in mergers, the following cases were incorporated to consider that there is a change of control, which may also affect the way the losses are utilized. The law establishes that any of these events carried out within a three-year term after the merger took effect could be considered a change of control:

a) The direct or indirect holders of more than fifty percent of the company's voting shares or ownership interest changed.

b) The direct or indirect holders of (i) the rights that allow the imposition of decisions in meetings of shareholders, partners or equivalent, or appoint or dismiss the majority of directors, administrators or their equivalents of the company or (ii) of the rights that allow directing the administration, strategy or main policies of the company, either through the ownership of securities, contracts, or in any other form, changed.

c) After the merger was carried out, the company and its parent company cease to consolidate their financial statements.

Additionally, it is clarified that these new rules will not apply in case of inheritance, donation, corporate reorganization or tax-free mergers or spin-offs, and subject that in case of corporate reorganizations, mergers or spin-offs, the partners who had control in the company before such corporate restructuring process continue to maintain it afterwards.

Transfer pricing obligations for transactions with domestic related parties

[Art. 76, Fr. IX and X MITL]

The obligation to obtain and maintain the supporting documentation regarding transactions carried out with related parties will no longer apply only to transactions with foreign resident related parties, but rather, this obligation is extended for transactions carried out with any related party regardless of their tax residency. This is explained as a mere clarification of the existing tax provisions rather than an actual change.

To demonstrate that the income and deductions were negotiated at fair market value, the concept of "profit margins" is incorporated in addition to the concepts that were used to test market prices such as prices or consideration amounts.

Finally, the term for submitting the informative return concerning transactions

carried out with related parties was modified to May 15 of the year subsequent to the reported tax year.

Informative statement for transfer of Mexican shares

[Art. 76, Fr. XX MITL]

A new obligation is incorporated to the law for Mexican companies to inform the tax authorities about any transfer of shares (or securities representing the ownership of shares) when such transfer is made between non-Mexican tax residents (without a permanent establishment in Mexico).

This informative return must contain at least: i) the date of the transfer of shares, ii) the information related to the non-Mexican tax residents selling and acquiring the shares, iii) the date of payment, and iv) the corresponding income tax amount derived from the transfer of shares of the Mexican entity.

The information must be filed by the Mexican company during the month following the sale. What becomes relevant is that Mexican companies that fail to submit this information before the tax authorities on time will become jointly liable with respect to any income tax due by the nonresident selling the shares.

Local file and master file Informative returns

[Art. 76-A MITL]

The deadline to file the local informative tax return of transactions carried out with related parties changes to May 15 of the year following the year reported. The deadline for filing the master informative return of transactions carried out with related parties and the country-by-country informative return is December 31.

Nonresidents earning Mexican source income

[Art. 153 MITL]

It is now established that nonresidents earning income from Mexican sources must comply with transfer pricing parameters when operating with related parties. For this purpose, it is established that nonresidents earing income from Mexican source, that are generally subject to income tax, must determine any income, gain, profit, and, if applicable, deductions associated with the transactions carried out with related parties considering the prices, amounts, or profit margins that they would have considered or obtained if the transactions were negotiated with or between independent parties in comparable transactions.

Acquisition income when purchasing immovable property in Mexico

[Art. 160 MITL]

In the case of sale of real estate located in Mexico where the tax authorities perform an appraisal to determine the market value of the transfer, it is already provided that in the event the appraisal value exceeds by more than 10% the price agreed on the sale, the difference will be considered as taxable income for the non-Mexican tax resident acquirer ("acquisition income").

In this case, it is now provided that the Mexican tax resident (or non-Mexican tax resident with a permanent establishment in Mexico) selling the real estate property becomes jointly liable with respect to the tax due by the nonresident acquirer and would be obliged to pay it within the 15 days subsequent to the tax authorities notifying the value obtained through the appraisal.

Capital gains from Mexican shares

[Art. 161 MITL]

A new rule is included so that the tax authorities may determine through administrative rules, the cases where the 10% tax rate applicable to capital gains resulting from the sale of Mexican shares through stock exchanges may not apply.

In the case of international reorganizations of companies belonging to the same group that benefited from a deferral on the tax resulting from any capital gain, a new statutory presumption is added that causes the shares of the Mexican company participating in the reorganization to be considered as having been transferred outside of the group (triggering the end of the deferral period). This will occur when the issuing company and the acquiring foreign company cease to consolidate their financial statements according to the corresponding accounting and financial standards.

In addition, the tax authorities are now empowered to cancel the deferral authorization granted for international reorganizations when, in the exercise of their powers of verification: i) they detect that the restructuring, or the relevant transactions related to the restructuring carried out within the preceding five-year period as well with those carried out within the five-year subsequent to the authorization, lacked of business reasons or; ii) the exchange of shares generated income subject to a preferential tax regime.

For these purposes, a new obligation is incorporated to the law to establish that certain "relevant transactions" carried out within five years after a reorganization is carried out must be reported to the tax authorities periodically by the foreign entity that acquired the Mexican shares or its legal representative in Mexico.

A transitory provision determines that taxpayers that have been authorized to defer taxes on capital gains up to December 31, 2021, even if granted under the Income Tax Law in effect as of December 2013 must report to the tax authorities any "relevant transaction" carried out after January 1st, 2022, in the terms previously described. The five-year period will begin to be computed as of January 1st, 2022.

Withholding on interest payments

[Art. 166 MITL]

The cases where nonresidents earning interest income from Mexican source may benefit from the income tax withholding rate of 4.9% and 10% are restricted for situations where the beneficial owner, individually or together with other related parties, hold (either directly or indirectly) at least 10% of the stock of the payor of the interest, or in the event the lender is owned by the payor in at least 20%, if such person receives more than 5% of the Mexican sourced interest deriving from such debt. The tax authorities are also empowered to issue administrative rules for the application of this new limitation.

Through this change, the reference made to the securities from which the interest derives is eliminated and replaced with the general concept of "debtor". Purportedly, this change was incorporated to combat an incorrect interpretation made by several transnational groups, considering that in the tax authorities' view, the limitation as being applied to any operation that gives rise to an interest payment that is subject to such reduced rates of withholding.

Other taxable income

[Art. 172, section III MITL]

It is provided that whenever a court ruling or arbitral award orders the payment of a compensation to a foreign resident, irrespective of whether the payment corresponds to damages, the person making the payment must withhold income tax over the total amount of the compensation. The foreign resident may request a refund for any income tax withheld in excess, in the case of compensation for damages, provided that such foreign resident is able to prove the portion corresponding to such concept.

Legal representatives for nonresidents

[Art. 174 MITL]

Regarding the possibility to appoint legal representatives in Mexico to benefit from certain net treatments or pay taxes, a new obligation is included for the legal representative to voluntarily assume joint tax liability with the nonresident, and to prove that it has sufficient assets to act as joint obligor with the nonresident, for up to the amount of taxes determined in the specific case by the nonresident. For this

purpose, it is provided that the tax authorities may issue general regulations for these new obligations and parameters to be complied with. The legal representative's joint liability shall not exceed the amount of taxes owed by the foreign resident.

Income subject to Preferential Tax Regimes

[Arts. 176 y 177 MITL]

Certain changes are incorporated to the law to determine when certain types of income shall be considered as subject to a preferential tax regime (low tax). For purposes of defining whether income obtained by Mexican residents through foreign entities is subject to a preferential tax regime, it is provided that the annual inflation adjustment and the foreign exchange gains and losses determined with respect to the Mexican peso shall not be considered. It is further provided that such effects shall also be excluded from the computation of the taxable base when determining the income tax burden.

Transfer pricing obligations

[Arts. 179 and 180 MITL]

An amendment is included whereby taxpayer individuals who enter into transactions with related parties shall determine their taxable income for income tax purposes and their authorized deductions in terms of such provision, considering prices, amounts or profit margins obtained in independent transactions. It is also provided that the comparable data shall correspond to the tax year subject to analysis, with the exception of business or product acceptance cycles in which more than one tax year is covered.

For purposes of the adjustment to the amounts of considerations agreed or profit margins whenever two or more comparable transactions exist, such adjustment shall be carried out by applying the interquartile method, the method agreed under a mutual agreement procedure, or the method authorized in terms of the general administrative rules in connection thereto.

Maquiladoras

[Art. 182 MITL]

The option to request an Advance Pricing Agreement (APA) for maquiladoras to comply with regulations concerning transfer pricing and for the foreign residents not having a permanent establishment is repealed, and now the only option would be to apply the "safe harbor" provided by the Law.

Furthermore, it is provided that in the informative return of maquila transactions it shall be stated that the taxable income of the tax year represented at least the higher amount resulting from applying the "safe harbor" provided by the law. Likewise, the possibility for shelter maquiladoras to obtain a particular judgement (APA) by the tax authorities is repealed.

VALUE ADDED TAX LAW

Importation VAT crediting

[Art. 5 VATL]

With regard to value added tax (VAT), for purposes of crediting VAT paid on the importation of tangible goods, a requirement is included whereby the corresponding import declaration ("*pedimento*") shall be issued in the name of the taxpayer. It was common practice to use third parties to benefit from their importation registration for importing goods into Mexico, case in which the *pedimento* was issued in the name of such third party. This will no longer be possible if it the Mexican resident intends to claim a VAT credit for the VAT paid when importing the goods.

Digital services by foreign residents

[Art. 18-D y 18-H BIS VATL]

Regarding the quarterly informative return which the platforms rendering digital services in Mexico are obliged to file, it is provided that such informative return shall be filed on a monthly basis through electronic returns at the latest on the 17th of the following immediate month to that of the corresponding information. In line with the above, the sanction consisting of the temporary blockage of access to the digital services of the provider will be materialized with the omission to file such informative return during three consecutive months.

Temporary use or enjoyment of tangible goods in Mexico

[Art. 21 VATL]

The provision regulating the cases where the temporary use or enjoyment of tangible goods is considered to qualify as subject to tax in the hands of the lessor is amended, in order to establish that the use or enjoyment is deemed to be carried out in Mexico (and therefore is subject to VAT), whenever the use or enjoyment is performed within Mexican territory, regardless of the place where the physical delivery of the goods was carried out.

It is important to mention that the acts or activities related to granting the temporary use or enjoyment of tangible goods which have been physically delivered outside Mexico was already regulated as an "importation" for the Mexican resident using the asset, which could create potential conflicts or distortions in the application of these provisions to determine the VAT associated with these transactions.

SPECIAL TAX ON PRODUCTION AND SERVICES LAW

Import of automotive fuels

[Arts. 2 y 5 STPSL]

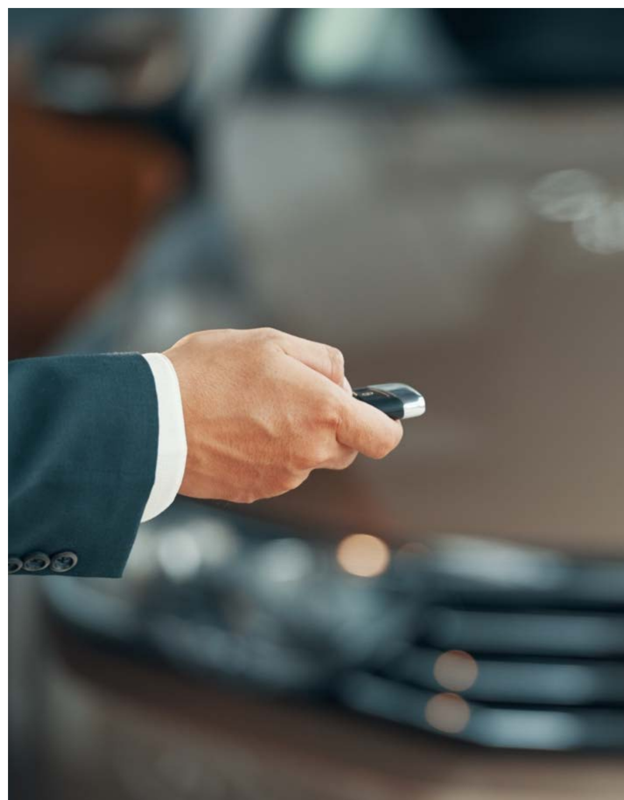
A new authority is incorporated for the tax authorities so that in the exercise of their reviewing procedures, whenever they find that the import of automotive fuels is made under a different tariff code and by doing so the taxpayers fail to pay partially or fully the corresponding tax, the applicable tariff will be applied without prejudice to administrative and penal sanctions as appropriate. Consistent with the aforesaid amendment, it is provided that the applicable tariff code shall be applied without any reduction for purposes of the computation of the omitted tax in the import of automotive fuels.

CUSTOMS LAW

Expert opinion on weight, volume, and characteristics of merchandise

[Art. 36 LA]

Regarding the import of automotive fuels, a rule enabling the tax authorities to establish through administrative rules the guidelines that the expert opinions on weight, volume, and other characteristics of such merchandise shall contain is included.



FEDERAL TAX CODE

Residents of Mexico

[Art. 9 FTC]

It is provided that the Mexican resident status will not be lost if the Mexican resident individual or legal entity fails to prove its new residence in a different country, or when proven, its relocation is made to a country or jurisdiction in which its income is subject to a preferential tax regime, establishing a period of five tax years subsequent to the filing of the notice of change of residence, where the person will continue to be treated as Mexican resident. This provision as remains in effect until December 2021 establishes a three-year period.

It is also established that in case of a tax migration to a country where income is generally subject to a preferential tax regime, in order for the change of residence to be effective without the extended-residency period kicks-in, in addition to the currently existing requirement for such jurisdiction to have a broad-information exchange agreement in force, a treaty which enables mutual administrative assistance regarding the notification, collection and recovery of taxes must be in effect.

Also, it is clarified that in case the individuals or legal entities fail to file the notice to change their tax before the tax authorities within the 15 days prior to that in which such change of residency takes place, they shall continue to be considered as Mexican residents.

Due to these changes, it is important to analyze certain cases where individuals or legal entities may qualify as dual residents under Mexican rules and foreign legislations, as well as the cases where the corresponding tax treaties may provide certain relief.

Merger and spin-offs lacking business reasons

[Art. 14-B FTC]

In the Explanatory Memorandum of the reform, it is stated that the tax authorities have identified abusive practices as a result of spin-offs that are carried out with the sole purpose of transferring tax losses without transferring a minimum paid-in capital balance to the spun-off companies.

In this line of thought, it is specified that in case of a spin-off, the paid-in capital that the partners or shareholders of the spun-off entity (holding at least 51% of the equity interests or shares with voting rights) shall maintain in the same proportions in order for such spin-off not to be considered as a taxable event, specifically refers to the paid-

in capital for all entities participating in the spin-off (as opposed to stockholders' equity).

In connection with mergers, it is provided that a merger should not be respected as a tax-free event when as a result of the merger a new concept or item is created in the stockholders' equity of the merging entity or the merged entity, which was not previously recognized in the financial statements prepared, presented, and approved in the shareholders' meeting for the merger.

A similar rule is only included in the Fiscal Code in effect up to December 2021 for spin-offs, but it is now extended for mergers that take place starting January 2022. In accordance with the Explanatory Memorandum of the reform, the intention of this amendment is to avoid that a merger is used to elude taxes.

As in the case of other sections of the reform, the tax authorities are empowered with discretion to determine when a merger or a spin-off shall be treated as a taxable event (regardless of all the requirements provided by the tax code being complied with), if they determine that the merger or spin-off lacked a business reason when implemented. Also, it is clarified that they will also consider such transactions as taxable if they detect failure to comply with any of the requirements set in the respective provision, being one of them, the new obligation explained below for the parties to file informative returns on "relevant transactions" prior and after the event.

In this respect, it provided that in order for the tax authorities to be able to verify whether a business reason exists when carrying out a merger or a spin-off, the authorities may take into consideration the "relevant transactions" carried out within a ten-year period (five prior and five subsequent to the event). For this purpose, a list of transactions is included so that the companies involved in the merger or the spin-off file information on any relevant transaction carried out during such period.

Moreover, it is provided that the financial statements used to carry out the merger or the spin-off, as well as those prepared as a result of such acts, shall be audited by an authorized public accountant in terms of the general provisions that for such purposes shall be issued by the Tax Administration Service.

Royalties definition – rights to personal image

An "image rights" concept is included in the definition of royalties, specifying that for such purposes said right implies the use or the concession of use of author's rights over literary, artistic, or scientific works.

According to the Explanatory Memorandum of the reform, such amendments would give the advantage of granting the tax treatment of royalties to taxable income arising from the exploitation of the author's rights inherent to the image itself.

Joint liability

[Art. 26 FTC]

The assumptions under which a person is considered to be jointly liable with the taxpayer for taxes due have been amended and extended in certain cases as described below.

Regarding the acquisition of business operations (going concern), new conditions under which the acquirer is deemed to be jointly liable have been included, as well as a limit for such liability. As of December 2021, there was no definition as to whether an acquisition of assets and liabilities may give rise to the acquisition of a "going concern", and therefore, the cases where the purchaser may be jointly liable with the seller were not specified. However, now this new definition provides for a broad series of cases that may qualify as such, which will need to be carefully reviewed in the case of standard mergers and acquisitions.

Also, it is provided that legal representatives appointed in Mexico by nonresident taxpayers will be jointly liable for any tax due in connection with the activities carried out by the nonresident in which the attorney acts on behalf of the nonresident. Such joint liability will also apply in the case of legal representatives appointed by taxpayers to comply with specific tax provisions to benefit from special tax regimes, limited to the tax due by the nonresident.

Automatic exchange of information

[Art. 32-B Bis FTC]

In connection with the Standard for Automatic Exchange of Financial Account Information (also known as Common Reporting Standard – CRS), several amendments were made to allow the financial institutions to comply with their obligation to identify foreign and reportable accounts, as provided by the CRS, in all the transactions they enter with their clients.

Beneficial owners identification

[Arts. 32-B Ter, 32-B Quater y 32-B Quinquies FTC]

Seeking to comply with international transparency standards, a new obligation has been included for entities and parties of a Mexican trust or of any kind of legal figure, to obtain and keep updated certain information regarding their beneficial owners, providing it to the tax authorities when required.

Such obligation also applies to any person involved in the formation of the entities or celebration of any kind of agreement under

which a trust (*fideicomiso)* or legal figure is created, such as public notaries, as well as to financial institutions, regarding the financial accounts held by entities and legal figures.

For these purposes, a formal definition of "beneficial owner" has been included, as well as a list of factors that should be considered when determining who the beneficial owner is.

Failure to obtain, update or timely deliver to the tax authorities the information regarding the beneficial owners, could derive in penalties that range from $500,000 to $2,000,000 pesos.

Tax Audit procedures

[Art. 42 FTC]

The tax authority's power to practice or order appraisals on goods, is extended to any kind of goods (either tangible or intangible), as well as to all types of services. Such power should always be executed in accordance with the Federal Fiscal Code provisions that regulate appraisals for tax purposes.

Also, new audit procedures have been included to allow tax authorities to verify the compliance with the new beneficial owner identification obligations, either by auditing the direct obliged party or any obliged third party.

Simulation for tax purposes

[Art. 42-B FTC]

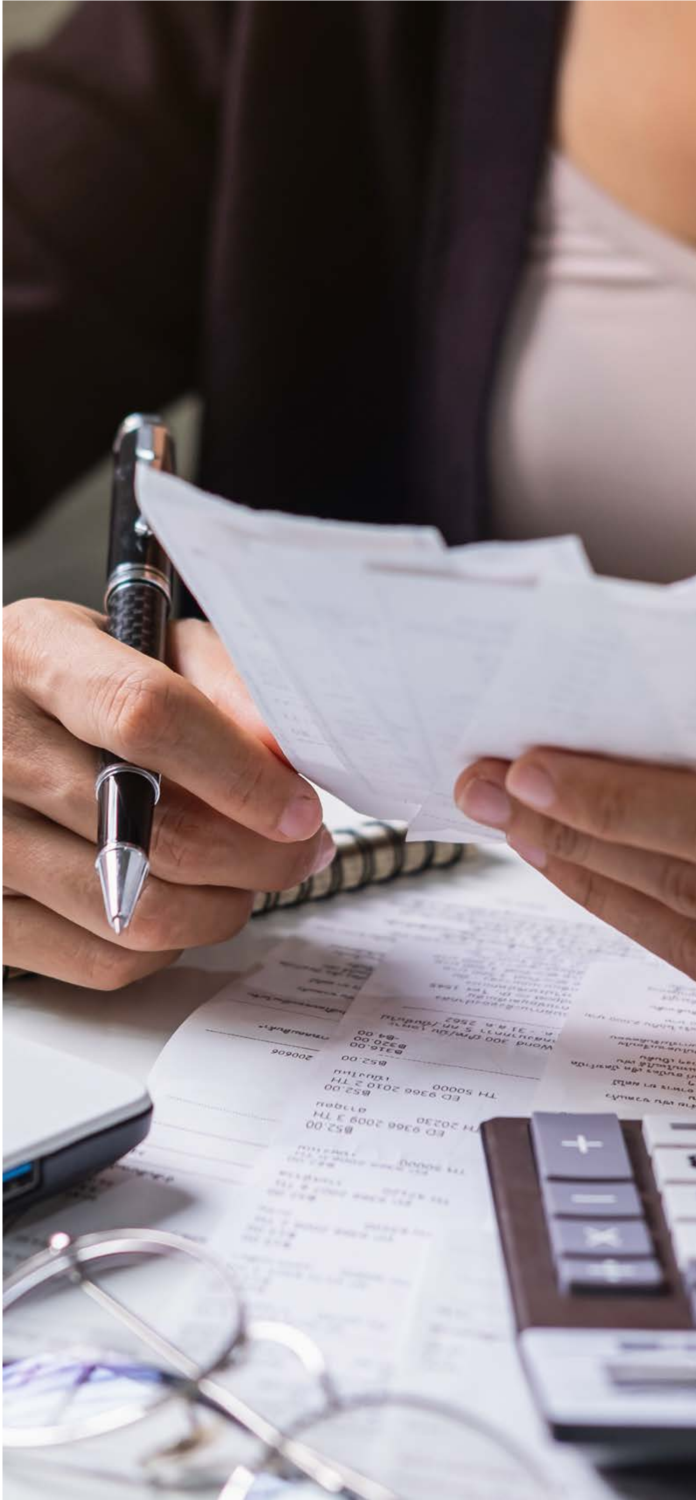
Tax authorities would now be entitled to, as part of an audit procedure and based on presumptive elements, determine the existence of a "simulation" of legal acts for tax purposes on transactions between related parties. This will allow the tax authorities to determine the tax consequences of transactions that are deemed simulated, by determining what were the transactions that should have been originally recognized.

For these purposes, a particular definition of related parties has been included, with specific elements for joint ventures and permanent establishments.

Transfer pricing audit procedures and penalties

[Arts. 48, Sec. VII and Art. 77 FTC]

A procedure is included for taxpayers that are being subject to a transfer pricing review, to have access to the confidential information obtained by the tax authorities from third parties regarding the comparable transactions used during the analysis. This procedure was already provided for domiciliary visits and is subject to the designation of a legal representative and entering into a non-disclosure agreement with the tax authorities. Further time restrictions and requirements should be met to have access to such information.



Regarding the penalties for not delivering to the tax authorities any tax withheld, it is stated that a 50% to 75% increase on the penalty will also apply when the taxpayer fails to comply with its transfer pricing obligations.

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