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**Mexico: Tax Amendments in 2021**

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Below you will find a brief summary of the tax modifications that will enter into force on January 1st, 2021.

**Income Tax Law****Tax regime for companies authorized to receive donations.**

- **Non-profitable activities that require authorization to receive donations.** Partnerships that perform certain activities in order to continue paying taxes according to Title III of ITL (non-profitable companies) will have to obtain the authorization to receive deductible donations from the tax authorities. The activities included in the new provision are the following: (i) granting scholarships, (ii) scientific and technological research; (iii) research or preservation of wild flora or fauna, institutions dedicated to the promotion and prevention of water control, environmental protection, and preservation and restoration of ecological balance; and, (iv) reproduction of protected species and the conservation of their habitats.

Taxpayers under Title III of ITL will have to consider as deemed distributable income all expenses that even are necessary for the activities that are not supported by the CFDI. Previously, the law provided the possibility to consider such expenses as deductible items even if they were not supported by the CFDI.

These amendments will enter into force until July 1st, 2021 (Art. 79, sections VIII, XI, XVII, XIX and XX; and the second paragraph).

- **Income derived from activities different than their corporate purpose.** The regime has been modified to provide that taxpayers will lose its authorization when they obtain more than 50% of their income from activities not related to their corporate purpose expressly authorized by the tax authorities (Art. 80, eighth paragraph).
- **Income destination.** In order to avoid modifications to the corporate purpose of these kinds of taxpayers after the authorization to receive donations is granted, all income received must be used for the activities for which they were expressly authorized by the tax authorities (Art. 82, section IV).
- **Assets transfer.** When an authorization is cancelled, expires or is not renewed, all assets will have to be transferred to another company authorized to receive donations, which will have to issue the CFDI. Such transfer will not be considered as a deductible item for IT purposes. In this case, the entities will have to pay taxes under the regular tax regime for corporations provided in Title II of ITL (Art. 82, section V).
- **Compliance certification process.** The option has been eliminated for companies authorized to receive deductible donations to be subject to a tax compliance certification process (Art. 82 Ter).
- **Cancellation of the authorization.** New scenarios for cancellation are included as such: (i) using income or assets of different activities for which authorization was issued; (ii) not issuing the CFDIs for donations received or any other operations; (iii) during a tax audit procedure when the tax authorities determine a lack of compliance with any obligation or requirement; (iv) inclusion in the definitive listing provided in Article 69-B of FTC (issue CFDIs regarding simulated operations); (v) when any of the entity's legal representatives,

partners or associates, or members of the board of directors have served in another organization whose authorization was cancelled for scenario (iv) in the last five years; and (vi) when more than 50% of the entity's income in the last fiscal year is obtained from activities other than those for which it was authorized to receive donations (Art. 82 QUÁTER).

## Tax regime for individuals.

- Withholding digital services. The withholding rates for digital services are simplified according to the following rates: (i) ground and passenger transportation – 2.8% rate (previous rate of 2% to 8%); (ii) hosting services – 5% rate (previous rate of 2% to 10%); and (iii) sale of goods and services – 2.4% rate (previous rate of .4% to 5.4%). (Art. 113-A, sections I, II and III).
- Penalties related to digital services. The provision provides a penalty consisting of blocking Internet access for services rendered to foreign residents without a PE in Mexico, as well as any entity or foreign legal figures that during three consecutive months do not comply with their withholding and payment IT obligations for such digital services (Art. 113-D).

## **Value Added Tax Law**

- Disposal of used goods through digital platforms. Previously, digital intermediation services aimed at the sale of used goods were not subject to VAT; however, this exception is eliminated so that the platform that provides such services must pay the VAT established by law. (Art.18-B, section II).
- Digital intermediary platforms. Before the amendment, foreign residents without PE in Mexico who provide digital services to receivers located in the country must comply with, among others, the following: (i) be enrolled in the FTR; (ii) separate the VAT from the price of their services; (iii) provide quarterly information on the number of services or operations performed each month; (iv) calculate and pay the VAT monthly; (v) designate before the tax authorities a legal representative and an address in Mexico; and (vi) process an advanced electronic signature. Such obligations are eliminated for foreign residents without a PE who present digital services through intermediaries if they make the corresponding tax withholding. (Art. 18-D).
- Exception to manifest VAT in an express and separate way. Foreign residents who provide digital services of intermediation between third parties may choose to publish on their page, application, platform, etc., the price at which the goods or services are offered by the sellers or service providers, without expressly and separately manifesting the VAT. For this, prices must include VAT and must be published with the legend "VAT included". (Art. 18-J, section I).
- VAT withholding obligation. Intermediary digital platforms that process payments will be obliged to withhold 100% of the VAT charged to foreign residents without a PE in Mexico (individuals and/or companies), who provide digital services to people located in the national territory.

In case the recipient of the service requests it, the corresponding receipts must be issued and sent in accordance with the previously established specifications and characteristics. (Art. 18-J, section II, paragraph a).

On the other hand, the obligation of intermediation digital platforms that process payments to provide the SAT with diverse information on foreign residents without an establishment in Mexico that provide digital services is eliminated. (Art. 18-J, section III).

- Penalties related to non-compliance. When foreign residents without a PE in Mexico who provide digital services to users located in the national territory incur in serious tax omissions such as (i) failure to register in the FTR, (ii) failure to designate a legal representative and address in Mexico, among others, the concessionaires of the public telecommunications network will be obliged to block Internet access to their services.

To this end, a procedure is established to be followed so that foreign residents comply with their tax obligations or clarify their tax situation and thus avoid the corresponding blockade.

In case of not undermining the facts or fulfilling the tax obligations in their charge, the concessionaires will be obliged to block Internet access of their services in the terms and manner set in the VATL. (Art. 18-H BIS, 18-H TER, 18-H QUATER and 18-H QUINTUS).

## **Federal Tax Code**

- General anti-abuse rule. As to the anti-abuse rule, it is clarified that regardless of the tax consequences that may be granted to the legal acts of the taxpayers, the investigations and the criminal liability that may arise in relation to the commission of the crimes set forth in the CFF will be pursued. (Art. 5.-A).
- Sale with deferred payment. It is deemed a sale with deferred payment or in installments the issuance of CFDI with a generic FTR, even though if they are carried out with customers considered general public, and the price is deferred by more than 35% after the sixth month and the agreed term exceeds twelve months. (Art. 14).
- Sale in a spin-off. It is considered that there is a sale in a spin-off when, as a consequence of the total or partial transfer of assets, liabilities and capital, arises in the stockholders' equity of a company an amount that was not registered or recognized in any of the accounts of the stockholders' equity of the financial statement prepared, filed and approved in the general meeting that agreed the spin-off. (Art, 14-B).

When the foregoing occurs, the limit of the joint and several liability for the taxes triggered by the transfer of assets, liabilities and capital will not be applicable, nor for the taxes triggered before the spin-off. (Art. 26, section XII).

- Suspension / cancellation of digital seal certificates. Digital seal certificates are suspended when a taxpayer does not disprove the presumption of (i) being an issuer of tax receipts considered apocryphal and, (ii) improperly transmitting tax losses (Art. 17-H).
- Reimbursements. The application will be considered as not submitted when the taxpayer or domicile is not located and such situation will not be considered as a collection process that interrupts the prescription of the obligation to reimburse. (Art. 22)
- FTP data update. Before the amendment, taxpayers were required to provide information regarding identity, address and, in general, their tax status, as well as to provide an e-mail and a telephone number. The amendment specifies that such information must be provided in the FTR, and that taxpayers must register and keep their e-mail account and telephone number updated. (Article 27, paragraph b), section II).

- Official notice of the entities' partners and shareholders. Regarding the obligation that the companies have to present a notice of the partners or shareholders before the tax authorities, each time that any modification or incorporation is made with respect to them, it is clarified that the information that the authority requires must correspond to the one related with the members of the company that due to their nature, in essence, the functions, obligations and rights are similar to those of a partner or shareholder, regardless of the name with which they are designated or recognized by the legislation or bylaws under which they are constituted. (Art. 27, paragraph b), section VI).
- Suspension or reduction of tax obligations. The SAT shall have the power to suspend or reduce obligations that taxpayers have registered in the FTR when it determines that taxpayers have not carried out any type of activity in the last three previous fiscal years. (Article 27, paragraph c), section XII).
- FTR cancellation requirements. There are minimum requirements that taxpayers must fulfill to be able to cancel their FTR number, such as (i) not to be subject to the exercise of verification powers, (ii) not to have tax credits in charge, (iii) not to be in the lists of articles 69, 69-B and 69-B BIS.

In those cases in which the taxpayer is materially liquidated, but its number in the FTR is not yet cancelled due to the non-compliance of any obligation, the facility that such taxpayers do not have to comply with their formal periodic obligation is granted. (Article 27, paragraph d), section IX).

- Concept of operations with the public. The concept of transactions with the public is defined as those in which the FTR number of the recipient is not available (Art. 29-A, section IV).
- CFDI in partial or deferred payments. In the case of the obligation to issue the CFDI for the receipt of advanced or partial or deferred payments, it is specified that a receipt must be issued for each payment, regardless of whether it is previous or after the time in which the operation is performed. (Art. 29-A, section VII, paragraph b).
- Accounting records and supporting documentation. It is established the obligation to keep, for as long as the company or agreement in question subsists, all the information and documentation necessary to implement the agreements reached as a result of the dispute resolution procedures contained in the treaties to avoid double taxation, as well as the declarations of provisional payments and of the fiscal year, of federal contributions.

Likewise, reference is made to the supporting information and documentation necessary to prove the economic substance of the increases or decreases in the capital stock, as well as the distribution of dividends or profits, as part of the accounting to be kept.

In case of capital increases, the statements of account issued by the financial institutions or the corresponding appraisals should be kept, so that the authority is able to verify the materiality of the capital increase.

Finally, it includes the review of the balance of origin and the movements of the net tax profit account, the capital contribution account or any other tax or accounting account involved, in the years in which said balance is reduced by tax losses, dividends or profits are distributed, capital is reduced or capital remittances are reimbursed, for which taxpayers must have the documentation or information that accredits the mentioned operations. (Art. 30).

- Deadline for the presentation of account reports according to CRS. The deadline has been modified for submitting information on high value and new accounts, as well as on low value and pre-existing accounts, which are accounts reportable under the Standard for Automatic Exchange of Information on Financial Accounts for Tax Purposes (CRS), which shall be submitted no later than August 31 and not June 30. (Art. 32b BIS).
- Prohibition of public contracting with listed taxpayers. In no case shall acquisitions, leases, services or public works be contracted with individuals, corporations or legal entities that have not rebutted the presumption of issuing tax receipts that cover non-existent operations or unduly transfer tax losses and, therefore, are on the lists published for such purposes (Art. 32-D).
- Precautionary Assurance. The process that the tax authority must currently follow in the precautionary insurance is substantially modified, including the insurance of assets or the negotiation not only of the taxpayers, but also of the third parties related to the taxpayers and jointly liable (without defining the concept of related third parties).
- Inapplicability for conclusive agreements. The new provisions provide the impossibility to file a conclusive agreement in the following scenarios: (i) when an audit to determine a tax refund is being practiced; (ii) when an audit procedure to third parties is being practiced; (iii) acts derived from enforcing a tax resolution or rulings; (iv) when the 20-day term after the conclusion of a tax audit has elapsed; and (v) when the taxpayer locates in the provisional or definitive listings published by the tax authorities in terms of Article 69-B of the FTC (companies that issue simulated tax invoices).
- Impossibility of filing a legal remedy vs conclusive agreements. Besides the impossibility of filing a legal remedy against the resolution of a conclusive agreement, it will not be possible to initiate a dispute procedure provided for in a treaty to avoid double taxation (Art. 69-H).
- Penalties. The concessionaires of a public telecommunications network in Mexico that do not comply with the order to block access to the digital service of the provider of said services will be sanctioned with a fine of \$500,000.00 to \$1'000,000.00 MXP. (Art. 90-A).
- Smuggling. It will be deemed as smuggling the failure to return, transfer or change the customs regime, machinery, tools and similar equipment, imported temporarily, once the IMMEX program has expired (Art. 103, section XXI).

## Acronyms

CFDI	Digital invoice	PE	Permanente establishment
FTR	Federal Taxpayer Registry	SAT	Tax Administration Service
FTC	Federal Tax Code	VAT	Value added tax
IT	Income tax	VATL	Value Added Tax Law
ITL	Income Tax Law		