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Mexico's 2020 Tax Reform

2020 Tax Reform. VATL and LIEPS Modifications.

Below you will find a brief summary with the modifications to various provisions of the Value Added Tax Law ("VATL") and the Special Tax on Production and Services Law ("LIEPS") approved in Mexico's Chamber of Deputies and Senators, which will be published in the Official Gazette of the Federation.

VATL

Concept	Amendments	Effects and issues to consider
1. Outsourcing. *Articles 1-A, section IV, 5° section II and 32, section VIII, VATL.*	Taxpayers who receive services by which the contractor provides directly or to a related party personnel to perform their activities inside or outside their facilities or the facilities of a related party, whether or not they are under the direction, supervision or coordination of the taxpayer, will have to withhold 6% of the value of the consideration effectively paid. According to the explanatory statement of the tax reform initiative, the withholding tax of 6% on the value of the consideration paid is proposed, because withholding the whole 16% of the Value Added Tax ("VAT") will create positive balances and consequently multiple requests for reimbursement. This will generate an undesired financial effect for the service providers and an additional administrative burden for the Tax Administration Service ("SAT").	It seems that the definition provided in the VATL requires the withholding of VAT for both outsourcing services, as well as any other service by which personnel is provided to perform the activities of the contracting company. This generates uncertainty for companies that hire independent personal services, since the definition given is very broad and ambiguous. This creates confusion for the taxpayers to identify which services payment will be subject to the withholding in connection to the activities performed by the personnel provided by the service provider. In order to apply the deduction of the payments and the VAT credit charged to

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		the contracting party, companies will be obliged to withhold and pay 6% of the VAT payable by the contractor. Companies will not be required to: *i)* have the service provider's VAT returns and payments; and *ii)* file the report to the SAT regarding the payments, withholding and credit of VAT applied.
2. Digital Economy. *Chapter III BIS, VATL.*	A new regime is established to tax digital services in Mexico. The following digital services will be taxed at a 16% rate, as long as a consideration is charged: • Downloading or accessing digital content; • Online clubs and dating pages; • Digital intermediation services between third parties; and • Distance learning or "test" or exercises. It is important to mention that the VATL considers that the recipient of the service is located in Mexico, if any of the following cases are met: *i)* when a domicile located in Mexico is revealed to the service provider; *ii)* when payment for the service was made through an intermediary located in Mexico; *iii)* when the IP address of the electronic devices of the service receiver corresponds to the range of addresses assigned to Mexico; and *iv)* when a telephone number is displayed to the service	The subjects obliged to comply with these obligations are the providers of digital services through platforms that offer music, video, food delivery, lodging, private transport, etc. However, the economic impact will be for the individual or corporation receiving the service in Mexico, to whom the VAT will be charged. Even when these modifications will come into effect in June 2020, it is important that those who fall under the class of digital service providers take the necessary measures to comply in time with all obligations imposed.

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	provider, whose country code corresponds to Mexico. Residents abroad without a permanent establishment ("PE") in Mexico who provide digital services in Mexico must comply with the following: *i)* register in the Federal Taxpayers Registry ("RFC"); *ii)* separate VAT from the price of the services; *iii)* provide quarterly information on the number of services or operations performed in each month; *iv)* calculate and pay monthly VAT; *v)* designate before the tax authorities a legal representative and an address in Mexico; and *vi)* obtain an advanced electronic signature. In the event that the foreign resident is not registered in the RFC, the service recipient will consider said service as an import and must pay the corresponding tax. Compliance with the aforementioned obligations will not generate a PE in Mexico for the foreign resident. Foreign residents without a PE in Mexico, who operate as intermediaries through their digital platforms shall also comply with the following: *i)* publish on the digital platform the VAT charged in the price at which they offer the goods or services; *ii)* withhold and collect 50% of the VAT when they charge the price on behalf of individuals. In the event that an individual does not provide their RFC, the withholding will be 100% of the VAT and the digital tax invoice ("CFDI") for the withholding must be issued, for which they must be registered in the RFC as a withholding agent; and *iii)* provide certain information about operations carried out with its clients.	At the latest, by January 31, 2020, the SAT must issue general rules regarding the provision of digital platform services from foreign residents, who do not have a PE in Mexico.

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	When digital services are offered jointly with other digital services not subject to VAT, the tax will be calculated by applying the rate of 16% only to the services taxed, provided that the separation is made in the invoice. However, if the separation is not made, it will be considered that the consideration charged corresponds to 70% of the digital services described in the VATL.	
3. VAT triggering moment for free services. *Article 17, VATL.*	It is clarified that in the case of free services for which VAT must be paid, the VAT is triggered in the moment that such services are provided.	Previously the VAT was triggered in the same moment; however, it was argued that the wording was not clear, thus it was clarified in the VATL.
4. Import of services provided by foreign residents. *Article 26, section IV VATL.*	Before the tax reform, a service was considered to be imported when: *i)* the benefit was obtained in national territory; *ii)* the service was rendered abroad; and *iii)* the consideration was effectively paid. The reform establishes that the service will be imported when: *i)* the benefit is obtained in national territory; *ii)* the service is provided by non-residents in Mexico; and *iii)* the consideration is effectively paid.	According to the amendment, it is irrelevant whether the service provider is located abroad or in Mexico. Therefore, in those operations where services are provided by non-residents in Mexico, they shall be considered imported services and therefore VAT would be triggered, which would generate a tax credit in the same tax return (virtual VAT).

LIEPS

Concept	Modifications	Effects and topics to consider
1. Offset of positive balances. *Articles 5 and 5-D, LIEPS.*	The possibility to offset positive balances generated by the payment and transfer of the Special Tax on Production and Services ("IEPS") corresponding to different categories of goods and services is eliminated. If the taxpayer exports goods and these represent at least 90% of the total value of the activities carried out in the month or two-month period, he may choose to request a tax refund.	It is necessary to review this new offset regime regarding the taxpayer's operations that refer to different categories, which could affect the cash flow and generate positive balances that should be requested for refund.
2. Fees Update. *Article 2, section I, subsection A), C), D) and 2-A, LIEPS.*	The fee established for certain products such as*: i)* alcoholic beverages and beer; *ii)* carved tobacco, cigarettes, cigars; *iii)* flavored drinks; and *iv)* automotive fuels will be subject to an annual update and will be effective as of January 1 of each year.	Each year, the new updated fee must be reviewed in order to pay the IEPS.
3. Energy drinks. *Article 3, section IX, subsection XVII), LIEPS.*	The definition of "energy drink" is modified, in order to eliminate the reference to the number of milligrams of caffeine per one hundred milliliters of product, as follows: "non-alcoholic beverages added with the mixture of caffeine and taurine or glucuronolactone or thiamine and/or any other substance that produces similar stimulating effects. "	The ingredients of the energy drinks must be reviewed, in order to determine whether or not the IEPS is triggered for the sale or import of the goods. The taxpayer of IEPS is the individual or corporation that imports or sells the energy drink; however, the tax is charged to the final consumer, so it will affect the final sale price.
4. Automotive and fossil fuels. *Article 2, section I, subsection D), numeral 1, paragraphs a and*	The gasoline octane value established in the LIEPS is modified to determine the applicable fee in the sale. Also, the definitions of automotive fuels, gasoline, diesel, non-fossil fuels and ethanol	Before the amendment, there was a disparity in the octane provided for in the LIEPS and in the Official Standard "NOM-016-CRE-2016 – Oil quality specifications", in which a minimum octane of

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b, 2-A, and sections I and II; 3, sections IX and X of the LIEPS	are replaced by those established in the Federation Revenue Law.	91 is set for premium gasoline.