

Decree on Tax Incentives for the Northern Border Region

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On December 31, 2018 the Mexican government published the “Decree on Tax Incentives for the Northern Border Region” (the “Decree”) granting certain tax benefits to residents of a northern border strip area. The main reason for these incentives is to promote economic competitiveness in the northern region of the country.

On January 30, 2019 the Mexican Tax Administration Service (“SAT”) published in Mexico’s Official Federal Gazette (“OFG”) the general rules (“the Rules”) for the application of the Decree.

1. Benefits of the Stimulus for the Northern Border Region (The “Region”)

A. Income Tax

Benefit. Application of a “tax credit” equivalent to one third of the income tax *triggered in the fiscal year or in the provisional payments*. Such tax credit will be credited against the income tax triggered in future periods only in the proportion represented by the income received in the Region with respect to the total income generated by the taxpayer in a fiscal year or in the period corresponding to the provisional payments.

The tax credit must be applied in the period that the income tax is triggered (either in the provisional payment or at the close of the fiscal year). If the credit is not applied in a specific period where the tax is triggered, the taxpayer will lose the right to apply it in future periods.

Beneficiaries. Taxpayers — residents of Mexico or with a permanent establishment in the country — who earned income in the Region equivalent to at least 90 percent of their total income in the last fiscal year in the Region. Income originated by intangible assets and digital commerce is excluded from the 90 percent threshold.

Taxpayers who initiate operations should estimate that 90 percent of their income will be earned in the Region.

Requirements to Apply the Benefit

1. The taxpayer must be registered in the “Registry for the Beneficiaries of the Northern Border Region Stimulus” no later than March 31 of the fiscal year in which the benefit will be applicable or within the month following the registration in the Federal Taxpayer Registry (“RFC”) for taxpayers who initiate operations. To obtain the authorization, the taxpayers must prove that at least in the past 18 months before the registration application is filed, they had their tax domicile, a branch, agency or any other establishment within the Region.

If taxpayers do not comply with the 18 month threshold or they initiate

operations, they must prove that they: (i) have sufficient financial capacity, assets and the proper facilities to carry out their business operations in the Region; and (ii) in order to perform their operations in the Region, they use new fixed assets and at least 90 percent of their total income is originated in the Region.

2. Have a valid electronic signature and access to the tax mailbox.
3. Collaborate bi-annually with the SAT in a real time verification program.
4. If tax authorities do not respond to the authorization request within the time frame specified in the Decree (one month), the authorization will be deemed as denied.
5. The authorization must be renewed no later than the date on which the tax return of the fiscal year in which the benefit was applied is due (March 31). If the authorization is not renewed it will be deemed as cancelled.
6. The benefit will not give rise to any refund or offset. The benefit will not be considered as taxable income for purposes of the income tax law.

Taxpayers not entitled to request the benefit. (i) financial institutions, insurance and bond companies, bonded warehouses, leasing companies and credit unions; (ii) taxpayers who carry out maquila operations ; (iii) taxpayers who carry out business activities through a trust; (iv) outsourcing companies; (v) taxpayers to whom in the past five years a tax assessment was determined and who did not correct their tax situation; (vi) taxpayers listed as issuers of invoices for nonexistent operations in terms of the Federal Tax Code or if any shareholder of the company is listed or if they have carried out operations with any taxpayer listed and they did not prove the materiality of the operation; (vii) any taxpayer to whom any special tax treatment or any other tax benefit was granted, including exemptions and subventions; and (viii) estate productive companies, as well as the contractors according to the Hydrocarbons Law.

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