45 años Miranda & Estavillo ABOGADOS

TAX REFORMS 2020

RELEVANT TOPICS

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INCOME TAX LAW

I. DEFINITIONS

Structured agreement: any agreement in which a taxpayer in Mexico or one of their related parties participates, if the consideration is given under preferential tax systems that favor the taxpayer or their related party or if the facts or circumstances conclude that the agreement was made for this purpose.

Foreign entities: companies and other entities created or incorporated under foreign law, which have their own legal status, as well as legal entities incorporated under Mexican law that reside abroad.

Permanent establishment: any place of business where business activities or independent personal services are performed in whole or in part, including branches, agencies, offices, factories, workshops, facilities, mines, quarries or any place of exploration, extraction or exploitation of natural resources.

Foreign legal entities: trusts, associations, investment funds and any other similar legal entity under foreign law, provided they do not have their own legal status.

Hybrid mechanism: if Mexican and foreign tax legislation have different definitions for a corporation, legal entity, income or the owner of assets or a payment that gives rise to a deduction in Mexico and all or part of it is not taxed abroad.

Partially transparent: if the foreign tax law in question attributes a part of their income to their partners or shareholders, while the remaining part is attributed to that entity.

Tax transparency entities: foreign entities and foreign legal entities that are not tax residents for income tax purposes in the country or jurisdiction where they have been incorporated or where they have their principal place of business or head office, and their income is attributed to their members, partners, shareholders or beneficiaries.

II. PERMANENT ESTABLISHMENT

It is set forth that a resident abroad who carries out activities in national territory through an individual or a corporation, other than an independent agent, even without a place of business, will be deemed to have a permanent establishment in Mexico if the individual or corporation normally performs the main role leading to the conclusion of contracts entered into by the resident abroad and any of the following circumstances apply:

1. They are entered into in the name or on behalf of the same;
2. They provide for the alienation of property rights, or the granting of the temporary use or enjoyment of an asset held by the foreign resident or over which they have a right of temporary use or enjoyment, **or**
3. They force the foreign resident to provide a service.

An individual or corporation is deemed not to be an independent agent if they act exclusively or almost exclusively on behalf of foreign residents who are their related parties.

COHESIVE BUSINESS OPERATION

A permanent establishment in Mexico is deemed to exist if residents abroad perform activities in one or more places of business in Mexico that are complementary, as part of a cohesive business operation, to any performed by a permanent establishment it has in national territory, or to any performed by a related party that is a resident in Mexico or a resident abroad with a permanent establishment in the country in one or more places of business in Mexico[1].

III. FOREIGN TRANSPARENT FISCAL ENTITIES AND FOREIGN LEGAL ENTITIES

A. MEXICO TAX RESIDENTS

Foreign transparent fiscal entities and foreign legal entities will be subject to the Income Tax Law, on the understanding that they will be considered Mexican residents for tax purposes if any of the following circumstances apply to them[2]:

(i) In the case of individuals, any who have established their home in Mexico or whose center of vital interests is located in Mexico, in other words: a) If more than 50% of the total income they obtain in the calendar year has a source of wealth in Mexico; b) If the main center of their professional activities is located in Mexico, and c) Any individuals of Mexican nationality who are State officials or State workers, even if their center of vital interests is located abroad.

(ii) In the case of corporations, they are considered to have tax residence in Mexico if they have established their main place of business or head office in Mexico.

[1] The ISRL (Income Tax Law) does not define what the term cohesive means for the purposes of that provision. The Dictionary of the Real Academia de la Lengua Española defines cohesion as "The act of meeting or adhering to each other or the matter they are made from.
[2] This provision shall come into force on January 1, 2021.

B. CUMULATIVE INCOME

Income obtained through foreign transparent fiscal entities in proportion to their interest in them must be accumulated with other income.

If the foreign entity is partially transparent, only the income attributed to it will be accumulated and the expenses and investments made by the legal entity may be deducted in the same proportion as the accumulated income. The amount of income during the calendar year of that legal entity, calculated in accordance with the Income Tax Law, will be taxable and must be accrued as of December 31 of the calendar year in which it was generated.

Any tax paid in Mexico by the foreign transparent tax entity or foreign legal entity may be credited in full in the same proportion in which the income of such entity or legal entity has been accumulated, on the understanding that the accounting records of the foreign transparent tax entity or foreign legal entity, or documentation allowing its expenses and investments to be verified, must be available to the tax authorities, otherwise the deduction of the expenses and investments made by such entity or legal entity will not be allowed.

IV. EMPLOYEE PROFIT-SHARING SCHEME (PTU) - PROFIT MARGIN

The PTU paid out in the same fiscal year must be reduced in equal parts by provisional payments for the months of May through December of the fiscal year. The decrease will be made in the fiscal year's provisional payments on a cumulative basis and the amount of the decrease will not be deductible under any circumstances.

V. LABOR SUBCONTRACTING SCHEME

The provision setting forth the obligation for the contractor to obtain a copy of proof of payment of tax receipts for wages paid to workers who provided the subcontracting service is derogated.

VI. NON-DEDUCTIBLE EXPENSES

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NON-DEDUCTIBLE EXPENSES

Income subject to a Preferential Tax System (REFIPRE)

They may be deductible in the following cases:

- The payment is credited to the recipient's business. ✓
- It is demonstrated that the recipient has the necessary personnel and assets for carrying out the activity. ✓
- The receiving entity resides in a country or jurisdiction that has entered into a comprehensive information exchange agreement with Mexico. ✓

Even if you comply with the above, it will not be deductible if you are in a:

- Hybrid system ✗

Hybrid schemes

They will be deductible in the following cases:

- The recipient of the payment is a partner or shareholder of the payer residing in Mexico. ✓
- The payments are non-existent or non-taxable income in the country where the partner or shareholder resides by virtue of the fact that the resident in Mexico is deemed taxably transparent for foreign purposes. ✓
- The partner or shareholder accumulates the income generated by the Mexican resident subsidiary in proportion to its interest. ✓
- Payments are not considered subject to REFIPRE. ✓

Structured agreements involving REFIPRE or hybrid schemes

- If such payment is taxed in the country or jurisdiction of the payment recipient's tax residence and/or where such permanent establishment or branch is located. ✓

Payments made to entities whose income does not qualify as subject to a REFIPRE are not deductible either if such user (direct or indirect) uses the resources received to make deductible payments to another member of the group or under a structured agreement, which are considered as REFIPRE.

For the purpose of this section, two members are considered to be in the same group if one of them has effective control over the other[3], or if a third party has effective control over both.

In addition, the following are set forth as non-deductible items:

- Payments made by the taxpayer that are also deductible for a member of the same group, or for the same taxpayer in a country or jurisdiction where they are also considered a tax resident.

- Net interest for the fiscal year in excess of 30% of adjusted tax profits. In the case of taxpayers who accrued interest during the fiscal year from their debts in excess of $20,000,000.00. This amount will be applied jointly to all legal entities subject to the foregoing and permanent establishments of residents abroad belonging to the same group or who are related parties.

  This provision shall not apply if accrued interest equals or exceeds the interest due. Non-deductible net interest for the fiscal year may be deducted over the following ten years until it is fully eroded. The balance not deducted in the following ten years will be non-deductible.

The provision exempts, among other things, interest derived from: (i) debts contracted in order to finance public infrastructure works, as well as to finance construction work, including for the acquisition of land where such works are to be carried out, located in national territory; (ii) financing for projects for the exploration, extraction, transportation, storage or distribution of petroleum and solid, liquid or gaseous hydrocarbons, as well as for other extractive industry projects; (iii) the generation, transmission or storage of electricity or water, and (iv) income from public debt.

VII. TAX INCORPORATION SYSTEM. INDIVIDUALS

The provision of services or sale of goods via Internet, through technological platforms and computer applications by individuals is added to this system.

[3] See paragraph XI of this section.

VIII. SALE OF GOODS OR PROVISION OF SERVICES VIA INTERNET, BY MEANS OF TECHNOLOGICAL PLATFORMS, COMPUTER APPLICATIONS AND SIMILAR

The sale of goods or services via Internet, by means of technological platforms, computer applications and similar, including payments received by the same means for any additional item, is added as taxable income within business activities.

Tax will be paid by means of a withholding by legal entities resident in Mexico or resident abroad with or without a permanent establishment in the country, as well as by foreign entities or legal entities that provide, whether directly or indirectly, the use of the aforementioned technological platforms, computer applications and similar.[4]

The provision sets forth rates for: (i) the provision of land passenger transport services and delivery services for goods; (ii) the provision of accommodation services and, (iii) the sale of goods and the provision of services.

For purposes of the above, the provision sets forth that corporations resident in Mexico or resident abroad with or without a permanent establishment in the country, as well as entities or legal entities, must comply with the following obligations, among others:

- ✓ Provide tax receipts to the individuals against whom the withholding was made, indicating the amount of the payment and the tax withheld, no later than 5 days after the month in which such withholding is made.[5]
- ✓ Provide the SAT (Tax Administration Service) with the information specified in Article 18-J, section III, of the Value Added Tax Law. If taxpayers fail to provide their federal tax number, the corresponding tax shall be withheld at a rate of 20% of the income in question.
- ✓ Withhold and pay the corresponding income tax by means of a tax return to be filed with the authorized offices no later than on the 17th day of the month immediately following the month for which the withholding was made.
- ✓ Keep, as part of their accounting records, documentation demonstrating that they withheld and paid the corresponding income tax.

[4] This provision shall come into force on June 1, 2020.
The SAT will issue the general rules no later than January 31, 2020.

[5] During 2020, foreign residents without a permanent establishment in the country, as well as foreign entities or legal entities, may issue, instead of the tax receipt referred to in said section, a receipt for the withholding made that complies with the requirements set forth by the SAT through general rules and makes it possible to identify, among other aspects, the amount, item, type of operation and the federal tax number of the person against whom the tax is withheld.

IX. LEASING OF REAL ESTATE

Individuals receiving income from the leasing of real estate must demonstrate to the judicial authorities, in real estate leasing trials, the payment of income tax on such income, otherwise the judicial authorities will notify the Tax Administration Service.

X. SOURCE OF WEALTH FOR CHARTER AGREEMENTS

A last paragraph is added to Article 166 setting forth that, in the case of charter agreements under which chartered vessels perform coastal navigation in Mexico, any income received by the charterer residing abroad will be subject to a 10% withholding, except in the case of commercial, industrial or scientific equipment.

In this regard, the provision omits the distinction between bareboat charter and time or voyage charter as defined by the Navigation and Maritime Commerce Law.

XI. CONTROLLED FOREIGN ENTITIES SUBJECT TO PREFERENTIAL TAX SYSTEMS

It is set forth that the profit or loss generated by all the transactions performed in the calendar year by each foreign entity[6] will be considered in order to determine whether or not income is subject to a preferential tax system.

The provisions of this section apply only if the taxpayer exercises effective control over the foreign entity in question. In this regard, effective control means the following, among other things:

I. If the taxpayer's average daily interest in the foreign entity allows them to have more than 50% of the total voting rights in the entity, gives them the right to veto the entity's decisions, or their vote is required for such decisions, or such interest accounts for more than 50% of the total value of the shares issued by the entity.

II. If, as a result of any agreement or security other than the ones indicated in the previous section, the taxpayer is entitled to more than 50% of the foreign entity's assets or profits in the event of any type of capital reduction or liquidation, at any time during the calendar year.

III. If the percentages indicated in the above sections are not met, when the sum of both means that the taxpayer has more than 50% of the aforementioned rights.

[6] Article 176 of the Income Tax Law.

IV. If the taxpayer and the foreign entity consolidate their financial statements based on the accounting standards applicable to them.

V. If, in view of the facts and circumstances, or any type of agreement or security, the taxpayer is entitled, whether directly or indirectly, to unilaterally determine the foreign entity's shareholder meeting resolutions or management decisions, including through a third party.

If there is an interest in two or more foreign entities resident in the same country or jurisdiction and they are consolidated for tax purposes in their country of residence, the determination may be made on a consolidated basis. In other words, all income tax paid by the foreign entity will be considered, regardless of the country or jurisdiction from which they were received, provided that the distribution of such income is performed in the same calendar year it was generated in or within six months following the end of that year, and that the tax has been paid in that period.

It should be noted that this section does not apply to cases where income is earned:

a. Through a foreign transparent tax entity or foreign legal entity in which it has a direct interest, regardless of whether or not the latter's income is subject to a preferential tax system.

b. Through a foreign transparent tax entity or foreign legal entity, regardless of whether or not they are subject to a preferential tax system, if their indirect interest in such entity or legal entity is comprised by a structure that exclusively integrates one or several foreign transparent tax entities or foreign legal entities.

The income referred to in points a. and b. above is included in paragraph B of section III of the "*Income Tax Law*" herein.

Also excluded from the provisions of this section is income obtained through foreign entities performing business activities, unless their passive income (interest, dividends, royalties, earnings from the sale of shares, securities or intangible assets; earnings from derivative financial transactions if the underlying asset is comprised by debt or shares, among other things) accounts for more than 20% of their total income, unless more than 50% of the foreign entity's income comes from a source of wealth in Mexico or corresponds to a deduction in the country directly or indirectly.

Income tax paid by foreign entities on income subject to a preferential tax system in Mexico and abroad may be credited against income tax pursuant to Article 5 of the Income Tax Law.

XII. IN-BOND MANUFACTURE UNDER THE SHELTER MODALITY

Article 183 is modified and article 183 Bis is added. They set forth that foreign residents may not under any circumstances sell products manufactured in Mexico unless they have an export license for them, and nor may they sell to the company with an in-bond program under the shelter modality, any machinery, equipment, tools, molds and dies and other similar fixed assets and inventories belonging to them or to their related parties residing abroad or to foreign clients, either before or during the period in which the provisions of this article apply.

It also sets forth additional obligations to the ones specified in Article 183. Among other things, they must:

(i) Identify the operations and determine the taxable income corresponding to each of the residents abroad, for purposes of determining and paying tax calculated on the basis of the 30% corporate rate;
(ii) Keep available for tax authorities documentation demonstrating that the information of the companies belonging to residents abroad is duly identified individually by each company in the accounting records of the company with the in-bond program under the shelter modality, during the five-year term.

The provision sets forth that companies with an in-bond program under the shelter modality will be jointly and severally liable for the calculation and payment of taxes determined on behalf of the resident abroad.[7]

XIII. FOREIGN LEGAL ENTITIES THAT MANAGE PRIVATE CAPITAL INVESTMENTS IN CORPORATIONS RESIDENT IN MEXICO.

Article 205 is added to the Income Tax Law[8] in order to set forth that income obtained by shareholders from interest, dividends, capital gains or from the leasing of real estate, when obtained through foreign legal entities that manage private capital investments, will be transparent, and they will be required to pay the corresponding income tax only when:

- ✓ The administrator of said legal entity or its legal representative in the country submits to the Tax Administration Service a record of all the members of said entity in the previous fiscal year, as well as any changes thereto; this must include documentation evidencing the tax residence of

[7] Residents abroad without a permanent establishment in the country that perform in-bond activities through companies with in-bond programs under the shelter modality pursuant to the provisions of Article 183 of the Income Tax Law in force until December 31, 2019, which, at the time this Decree comes into force, fall within the four-year application period referred to in the last paragraph of said article, may continue to apply the provisions of said article until the end of said period. When the above period expires, they must apply the provisions of Articles 183 and 183-Bis of the Income Tax Law in force as of January 1, 2020, starting in the month following the end of the four-year period.
[8] This provision shall come into force on January 1, 2021.

each member of said entity. If there is no documentation for any of the members, the legal entity will not be subject to tax transparency in the proportion of its interest.

- ✓ The legal entity has been established in a country or jurisdiction with which Mexico has a comprehensive information exchange agreement.

- ✓ The members of this legal entity, including the administrator, reside in a country or jurisdiction with which Mexico has a comprehensive information exchange agreement.

- ✓ The members of this entity, including the administrator, are the actual beneficiaries of the income received by this entity.

- ✓ The income indicated in this Law, attributable to members residing abroad, is accumulated by them, otherwise the legal entity will not enjoy tax transparency in proportion to the interest of the member whose income was not accumulated.

- ✓ The income obtained by members residing in Mexico or permanent establishments of residents abroad is accumulated in accordance with articles 4-B or 177[9], even if the members had been exempted from paying tax on such income.

[9] See sections III and XI of the "Income Tax Law" section of this document.

VALUE-ADDED TAX LAW

I. SUBCONTRACTING SYSTEM - OUTSOURCING - INSOURCING

An obligation is added to withhold 6% of the consideration actually paid by contracting parties to contractors when such services are provided through personnel who perform their duties on the premises of the contracting party or of a party related thereto, or even outside such premises, regardless of whether or not they are under the direction, supervision, coordination or dependency of the contracting party, and regardless of the name governing the contractual relationship between the contracting party and the contractor.

II. DIGITAL SERVICES

Article 1.-A BIS and Chapter III Bis are added to the law to regulate digital services provided by residents in Mexico to users located in national territory, who operate as intermediaries in activities carried out by third parties subject to payment of value added tax.[10]

In this regard, the following provisions are set forth:

*"**Article 18-B.**- ... only the digital services mentioned below are considered if they are provided through applications or content in digital format on Internet or some other network, essentially automated, and which may or may not require minimum human intervention, provided a fee is charged for such services:*

I. *Downloading or accessing images, films, text, information, video, audio, music, games, including gaming, as well as other multimedia content, multiplayer environments, obtaining ringtones, viewing online news, traffic information, weather forecasts and statistics.*

The provisions of this section shall not apply to the downloading of or access to electronic books, newspapers and magazines.

II. *Intermediation services between third parties that are suppliers of goods or services and users thereof.*

The provisions of this section shall not apply in the case of intermediary services aimed at the sale of used movable property.

III. *Online clubs and dating sites.*

[10] Effective June 1, 2020.
The SAT will issue the general rules no later than January 31, 2020.

IV. *Distance learning or testing or exercise."*

The user of the service is deemed to be in Mexico if the latter: (i) has specified an address located in national territory to the service provider; (ii) makes payment to the service provider through an intermediary located in national territory; (iii) has specified to the service provider a telephone number whose country code corresponds to Mexico, and (iv) if the IP address used by the electronic devices of the service user corresponds to the range of addresses assigned to Mexico.

Residents abroad without an establishment in Mexico who provide digital services to users located in national territory must comply with the following obligations, among others: (i) register with the Federal Taxpayers' Registry (the SAT will publish the entities that register)[11]; (ii) offer and charge, together with the price of their digital services, the corresponding value added tax expressly and separately; (iii) provide the SAT with information on the number of services or operations performed in each calendar month with users located in national territory who receive their services; (iv) calculate in each calendar month the corresponding value added tax on the consideration actually collected and pay it by the 17th day of the following month at the latest.[12]

It is expressly set forth that the provision of digital services by residents abroad will not constitute a permanent establishment in Mexico.

Any tax withheld from users of the service may be credited in compliance with the various requirements specified by the law itself.

III. DIGITAL INTERMEDIARY SERVICES BETWEEN THIRD PARTIES

Residents abroad without an establishment in Mexico who provide the services indicated in Article 18-B above and operate as intermediaries must, among other things: (i) publish the value added tax on their website, application, platform or any other similar medium, expressly and separately; (ii) withhold 50% of the value added tax collected from individuals who sell goods, provide services or grant the temporary use or enjoyment of goods. If such individuals do not disclose their federal tax number, the withholding must be 100%, and such withholding must be reported no later than on the 17th day of the month following the one in which the withholding was made; (iii) provide the SAT, no later than the 10th day of the following month, with information on its customers who are selling goods, providing services or granting temporary use or enjoyment of goods.

[11] If residents abroad without an establishment in Mexico are not featured in the publication by the SAT, the users of the services will consider such services as imports and must pay the corresponding tax (Article 18-I).

[12] They must comply with sections (i) and (iv) no later than June 30, 2020.

IV. WITHHOLDING OF TAX FOR THE PROVISION OF INDEPENDENT PERSONAL SERVICES AND LEASING BY INDIVIDUALS

It is set forth that corporations that make payments to individuals for the items indicated in this section may choose not to provide the tax receipt provided the

Individual provides them with a tax receipt expressly stating the amount of tax withheld, in which case the receipt may be considered as proof of tax withheld and the respective credit may be made.

V. LEASING OF REAL ESTATE

In the case of real estate leasing trials in which the tenant is ordered to pay the rent due, the creditor must demonstrate to the judicial authorities that they have issued the corresponding tax receipts, otherwise said authorities shall be required to inform the SAT of said omission.

FEDERAL TAX CODE

I. BUSINESS RATIONALE FOR TAXPAYERS' LEGAL ACTS

Article 5-A is added, setting forth the following:

> *"**Article 5-A**.- Any legal acts that lack a business rationale and give rise to a direct or indirect tax benefit will have the tax effects that correspond to the ones conducted to obtain the economic benefit reasonably expected by the taxpayer.*
>
> *…"*

In this regard, the same article sets forth that tax authorities, upon exercising their powers of verification, may presume that legal acts based on the facts and circumstances of the taxpayer and the assessment of evidence, information and documentation obtained by virtue of such verification powers, lack a business rationale; it shall be presumed that they lack a business rationale if the reasonably expected quantifiable economic benefit[13] is less than the tax benefit.[14]

Under such circumstances, the taxpayer may contest the presumption of the authorities by means of arguments, information and documentation submitted to contest the observations of the authorities, and the authorities must bring the case before a collegiate body comprised by officials from the Ministry of Finance and Public Credit and the Tax Administration Service; if the opinion of the collegiate body is not received within two months following the referral of the case by tax authorities, it will be understood as a constructive disapproval; in other words, the tax authorities may not resolve that the legal acts in question lack a business rationale.

II. DIGITAL STAMP CERTIFICATES

Article 17-H bis is added specifying circumstances under which tax authorities may temporarily restrict the use of digital stamp certificates:

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[13] *Article 50-A.- ...*
…
A reasonably expected economic benefit is deemed to exist when the taxpayer's operations seek to generate income, reduce costs, increase the value of the assets they own, improve their market positioning, among other things. In order to quantify the reasonably expected economic benefit, up-to-date information on the operation in question, including the projected economic benefit, will be considered to the extent that such information is substantiated and reasonable. For the purposes of this article, the tax benefit shall not be considered as part of the reasonably expected economic benefit.

The term "business rationale" shall apply regardless of the laws governing the economic benefit reasonably expected by the taxpayer. The tax effects produced under the terms of this article shall not under any circumstances produce consequences as a criminal matter.

[14]. *The tax effects produced shall not under any circumstances produce consequences as a criminal matter, pursuant to the provisions of the aforementioned Article 5-A.*

"...

I. *If they find that taxpayers, in a given fiscal year, who are required to do so, fail to file their annual tax return after one month following the date on which they were required to do so under the terms of the tax provisions, or two or more consecutive or non-consecutive returns of estimated income tax or final returns.*

II. *If the taxpayer cannot be not found or disappears during the administrative enforcement procedure.*

III. *If, in the exercising of their powers, it is found that the taxpayer cannot be found at their tax domicile, disappears during the procedure, vacates its tax domicile without submitting the corresponding notice of change to the federal taxpayers' registry, their address is unknown, or, by virtue of such powers, it is found that the tax receipts issued were used to cover non-existent, simulated or illicit operations.*

For the purposes of this section, tax authorities are deemed to be exercising their powers of verification from the moment they take the first steps to serve documents ordering the use of said powers.

IV. *If they find that the taxpayer issuing tax receipts failed to contest the presumed non-existence of operations covered by such receipts and, as a result, is definitively subject to this circumstance, pursuant to Article 69-B, fourth paragraph, of this Code.*

V. *If they find that the taxpayers are subject to the circumstances referred to in the eighth paragraph of Article 69-B of this Code and, after the period provided for in that paragraph has elapsed, have failed to demonstrate the actual acquisition of the goods or receipt of the services, and have failed to correct their tax situation.*

VI. *If, as a result of the verification process set forth in Article 27 of this Code, they find that the tax domicile indicated by the taxpayer does not comply with the requirements of Article 10 of this Code.*

VII. *If they find that the declared income, as well as the tax withheld by the taxpayer, as specified in the estimated, withholding, final or annual payment statements, is not the same as the income indicated in the digital tax receipts on Internet, files, documents or databases that tax authorities keep, have in their possession or have access to.*

VIII. *If they find that, for reasons attributable to the taxpayers, the means of contact established by the Tax Administration Service through general rules, registered for the use of the tax mailbox, are not correct or authentic.*

IX. *If they find that one or more of the infringements specified in articles 79, 81 and 83 of this law have been perpetrated, and the infringement is carried out by the taxpayer who is the holder of the digital stamp certificate.*

X. *If they find that these taxpayers have not contested the presumption of unduly transferring tax losses and, as a result, feature on the list referred to in the eighth paragraph of Article 69-B Bis of this Code.*

…"

In such cases, the taxpayer may request clarification of such circumstances from the SAT and put forward arguments and evidence to contest the charge or correct any irregularities, so that, the day after the request is made, the use of such certificate is restored. Tax authorities must issue their decision within a maximum of ten days as from the day following the one on which the application is received. In the meantime, tax authorities will allow the use of the digital stamp certificate for issuing digital tax receipts by Internet. If tax authorities require any further information, the taxpayer will have five working days to provide it, with a one-time extension of five additional days.[15]

III. JOINT AND SEVERAL LIABILITY

The following cases are added to Article 26, by virtue of which the partners or shareholders of the company are held as jointly and severally liable with the company for any taxes incurred, in respect of whichever portion of such tax is not guaranteed by the company's assets, without the liability exceeding the share they had in the company's capital during the period or on the date in question:

- ✓ They leave the premises where they have their tax domicile without submitting a notice of change of address.
- ✓ They cannot be found at the tax domicile registered with the Federal Taxpayer Registry.
- ✓ They fail to pay any amounts withheld or collected as tax within the time limit set forth by law.
- ✓ They feature on the list published by the SAT because they are definitely presumed to have issued receipts covering non-existent operations.
- ✓ They have not evidenced the actual acquisition of goods or receipt of services, and have failed to correct their tax situation, when in a given fiscal year said corporation has received tax receipts from one or more taxpayers that fall into the circumstances referred to in the immediately preceding paragraph, for an amount greater than $7,804,230.00.

[15] This procedure will be performed using the tax mailbox. As a result, and by virtue of the relevance of any notification by the SAT, it is of the utmost importance that taxpayers enable their tax mailbox, otherwise notifications will be provided at court.

- ✓ They feature on the list published by the SAT, because they are definitely presumed to have transmitted tax losses unduly.
  The partners or shareholders of a company that acquired and reduced tax losses unduly will be considered jointly and severally liable[16], provided that, as a result of the restructuring, spin-off or merging of companies, or the changing of partners or shareholders, the company no longer forms part of the group to which it belonged.

IV. FEDERAL TAXPAYER REGISTRY (RFC)

Article 27 regarding the RFC is restructured and additional provisions are added, the most relevant of which include the following:

a. Individuals and corporations that have opened an account in their name in financial system entities or in savings and loan cooperative societies, in which they receive deposits or perform transactions that may be subject to taxation, are not required to submit periodic returns or issue tax receipts for the activities they carry out, but must comply with the following:

   (i) Apply for registration in the Federal Taxpayer Registry;
   (ii) Provide information on their identity, address and, in general, their tax situation, by means of the notices established in the Regulations of this Code, as well as provide an e-mail and telephone number, or a means of contact as determined by tax authorities through general rules.
   (iii) Provide the federal taxpayers registry with their tax domicile.
   (iv) Request the advanced electronic signature certificate.

b. The legal representatives, partners and shareholders of corporations are required to:

   (i) Apply for registration in the Federal Taxpayer Registry.
   (ii) Provide information on their identity, address and, in general, their tax situation, by means of the notices set forth in the Regulations of this Code, as well as provide an e-mail address and telephone number, or a means of contact as determined by tax authorities through general rules.

   (iii) Provide the federal taxpayers registry with their tax domicile.
   (iv) Request the advanced electronic signature certificate.

[16] "Article 69-B-Bis
...
III. If an undue transfer of tax losses is the result of a decrease of more than 50% in their material capacity to perform their main activity, in fiscal years subsequent to the one in which they declared the tax loss, as a result of the transfer of all or part of their assets through the restructuring, spin-off or merger of companies, or because such assets had been transmitted to related parties".

c. Corporations residing abroad without a permanent establishment in the country and foreign entities or legal entities must, among other things, comply with the following:

(i) Register with the RFC within 30 calendar days following the date on which the digital services are first provided to a user located in national territory.
(ii) The Tax Administration Service will publish on its website and in the Federal Official Gazette the list of foreign residents who are registered there.
(iii) Appoint a legal representative with the SAT and provide an address in national territory for the purpose of notification and monitoring compliance with tax obligations relating to the digital services they provide.
(iv) Processing their advanced electronic signature.

V. VERIFICATION POWERS OF THE TAX AUTHORITIES

Tax authorities may visit the premises of tax advisors in order to verify that they have complied with the obligations to report reportable schemes[17], in other words, any scheme that gives rise or could give rise, directly or indirectly, to the obtaining of a tax benefit in Mexico and has, among other things, any of the following characteristics[18]:

(i) It prevents foreign authorities from exchanging tax or financial information with Mexican tax authorities, including through the application of the Standard for Automatic Exchange of Information on Financial Accounts in the Field of Taxation.
(ii) It prevents Article 4-B or Chapter I, Title VI, of the Income Tax Law from being applied.
(iii) It consists of one or more legal acts that allow the transfer of tax losses pending reduction of tax profits to parties other than the ones that generated them.
(iv) It consists of a series of interconnected payments or transactions that return all or part of the amount of the first payment that is part of that series, to the party that made it or to one of their partners, shareholders or related parties.

(v) It involves a foreign resident who applies a double taxation treaty signed by Mexico, with respect to income that is not taxed in the

[17] Pursuant to the Transitional Provisions of the Federal Tax Code, "Reportable schemes that must be disclosed are the ones designed, commercialized, organized, implemented or administered as of the year 2020, or prior to such year if any of their tax effects are reflected in fiscal years as of 2020. In the latter case taxpayers will be the only ones required to make disclosures."

[18] Article 199

country or jurisdiction that constitutes the taxpayer's tax residence. The provisions of this section shall also apply when such income is taxed at a reduced rate compared to the corporate rate in the country or jurisdiction that constitutes the taxpayer's tax residence.

(vi) It involves transactions between related parties in which:

- ✓ Intangible assets that are difficult to value are transferred in accordance with the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, adopted by the Council of the Organization for Economic Cooperation and Development in 1995, or any guidelines that may come to replace them. An intangible asset is deemed difficult to measure if, at the time of the transactions, there are no reliable comparisons or the projections of future flows or revenues expected from the intangible asset, or the assumptions for valuing it are uncertain, and it is therefore difficult to predict the ultimate success of the intangible asset at the time it is transferred.
- ✓ Business restructuring is performed in which there is no consideration for the transfer of assets, functions and risks or when, as a result of such restructuring, taxpayers who pay taxes in accordance with Title II of the Income Tax Law reduce their operating profit by more than 20%. Corporate restructuring is referred to in the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, approved by the Council of the Organization for Economic Cooperation and Development in 1995, or any guidelines that may come to replace them.
- ✓ The temporary use or enjoyment of goods and rights are transferred or granted without payment, or services are provided, or functions are performed without payment.
- ✓ There are no reliable comparisons, as the transactions in question involve unique or valuable functions or assets, or
- ✓ A unilateral protection system granted under a foreign law is used in accordance with the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, approved by the Council of the Organization for Economic Cooperation and Development in 1995, or any guidelines that may come to replace them.
- ✓ The creation of a permanent establishment in Mexico, pursuant to the terms of the Income Tax Law and the treaties for avoiding double taxation signed by Mexico, is avoided.

The obligation to disclose a reportable scheme, regardless of the taxpayer's tax residence, arises whenever the taxpayer obtains a tax benefit in Mexico.[19]

In this regard, the applicable fines and penalties in the event of noncompliance with the obligations regarding reportable schemes are set forth, and in some cases involve a fine of $20,000,000.00 pesos.

VI. FINES AND SANCTIONS.

Article 69-B ter. is added, setting forth the procedure to be followed if tax authorities detect the issuing of receipts in non-existent operations[20] and, where appropriate, use the information and documentation provided by third-party tax informants, i.e. parties who voluntarily provide tax authorities with information that is legally available and sufficient to prove such circumstances. The identity of the third-party tax informant will be kept confidential.

The purpose of this document is to provide information on the legislative modifications in the field of taxation that will be in force as of this year; however, given the complexity of these changes, we suggest that prior to any implementation, the scope of each circumstance be analyzed in detail.

[19] The deadline set forth for complying with the Reportable Scheme Disclosure obligations will start to run as from January 1, 2021.

[20] "Article 69-B.- If tax authorities find that a taxpayer has been issuing receipts without having the assets, personnel, infrastructure or material capacity, directly or indirectly, to provide the services or produce, commercialize or deliver the goods covered by such receipts, or that such taxpayers cannot be found, it shall be presumed that the transactions covered by such receipts do not exist.
…"
Any individuals or corporations that, prior to the coming into force of this Decree, have given any tax effect to the tax receipts issued by a taxpayer included in the list referred to in Article 69-B, fourth paragraph, of the Federal Tax Code, without demonstrating to the tax authorities, within the thirty-day period set forth for such purpose, that they did indeed acquire the goods or receive the services covered by the aforementioned tax receipts, may remedy their tax situation within three months following the coming into force of this Decree by submitting the corresponding complementary tax return or returns pursuant to the Federal Tax Code.