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## Mexico
## Tax Disputes

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This country-specific Q&A provides an overview of tax disputes laws and regulations applicable in Mexico.

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# Mexico: Tax Disputes

## 1. Is it necessary for a taxpayer to register with the tax authority? Are separate registrations required for corporate income tax and value added tax/sales tax?

Taxpayers are bound to register under the Federal Taxpayer Registry, for income, value added and excise tax purposes.

Since 2022, taxpayers above 18 years are obligated to obtain such registry, regardless of their economic activities or lack thereof. The tax authorities recently clarified that the registry does not entail payment of taxes nor filings, unless an economic activity is performed that is subject to tax.

An additional registration process is required for federal excise taxpayers that manufacture, bottle or import alcohol or alcoholic beverages.

## 2. In general terms, when a taxpayer files a tax return, does the tax authority check it and issue a tax assessment – or is there a system of self-assessment where the taxpayer makes their own assessment which stands unless checked?

Mexico has imposed a self- assessment method for filing federal taxes. Thus, the assessment filed by the taxpayer stands unless the authority amends it through a tax assessment.

The tax authorities have the power to request –within a 3-month term- the taxpayer or even third parties information or documents to corroborate what is stated in the tax return filed. This is commonly known as one of the "*facultades de gestión*", which do not entail a formal audit.

Additionally, the tax authorities can exercise its auditing powers ("*facultades de comprobación*"), which can result in a tax assessment. Tax omissions or incorrect filing can result in other consequences, such as fines or even a restriction of the digital certificate to issue tax invoices.

## 3. Can a taxpayer amend the taxpayer's return after it has been filed? Are there any time limits to do this?

Once a taxpayer has filed a return it is considered final. As a general rule, taxpayers may voluntarily amend their returns up to 3 times, subject to certain requirements, as long as tax authorities have not initiated an audit.

Exceptionally, a taxpayer may file a fourth or subsequent amended tax return even after initiating a tax audit, in specific exceptional cases that generally represent a higher tax revenue for the authorities.

Once an amended return is filed, the statute of limitations regarding the concept modified is extended.

## 4. Please summarise the main methods for a tax authority to challenge the amount of tax a taxpayer has paid by way of an initial assessment/self-assessment.

In our view, the main methods to verify the compliance of tax obligations, upon exercising auditing powers, are the following:

- In-situ tax audit ("*visita domiciliaria*"): This review takes place in the taxpayer's tax domicile; the tax authorities requests therein the submission of information and documents to verify the compliance of tax obligations.
- Desk review ("*revisión de gabinete*"): Such review is carried out by requesting taxpayers to submit information and documents at the tax authority's offices.

The electronic review ("*revisión electronica*"), which is a less common procedure, consists in the examination of information electronically available to the tax authorities.

It is important to point out that during the past years, and still in 2024, the tax authorities have been increasingly issuing taxpayers non-official "invitations", which are powers different from carrying out a formal audit.

Although these invitations are not challengeable, the consequences of not replying or clarifying the taxpayer's situation can result in a restriction of the digital certificate to issue invoices.

Finally, the authority has increasingly resorted to the

 

referred power to restrict the digital certificate since it forbids the taxpayer to issue invoices, as a method for collection on unpaid taxes -specially taxes withheld or transferred, in the case of indirect taxes-, without the cost associated of a formal audit.

## 5. What are the time limits that apply to such challenges (disregarding any override of these limits to comply with obligations to relief from double taxation under a tax treaty)?

The tax authority's ability to impose sanctions or determine a tax assessment is limited to 5 years.

Under exceptional circumstances, such as when taxpayers are not registered, or when they fail to file their annual tax return, the term is limited to 10 years. In the latter, the taxpayers' income and due tax may be determined presumptively by the authority through a special procedure.

## 6. How is tax fraud defined in your law?

Tax fraud is defined, by law, as the omission in paying taxes, or obtaining an undue benefit, through the use of deception or taking advantage of an error.

Additionally, the law defines what is “aggravated” tax fraud, such as omitting the payment of taxes withheld, for example. This results in higher fines, aside from criminal sanctions.

No criminal charges are brought up, if the taxpayer voluntarily pays the corresponding tax omitted, along with surcharges and the adjustment by inflation, before the authorities acknowledge the omission, or issue a requirement, or an order to verify compliance.

## 7. How is tax fraud treated? Does the tax authority conduct a criminal investigation with a view to seeking a prosecution and custodial sentence?

Although tax fraud is punishable with a custodial sentence, in our view tax authorities mainly seek the recovery of the taxes due, when applicable. This is also reflected in certain provisions that foresee the dismissal of the case, upon the Ministry of Finance's request, when the taxes and applicable surcharges are fully paid, among other cases.

A similar provision states that no criminal complaint shall be brought up, if the taxpayer voluntarily pays the corresponding tax omitted and surcharges and the adjustment by inflation, in the case referred to above.

A new tax reform, which is pending Congress approval (plenary session), was recently submitted and passed by Commissions. In essence, the reform proposes that the “qualified” tax fraud -which comprises omitting taxes withheld, among other scenarios- would be subject to mandatory preventive custody.

The main motive for this reform, as stated in the initiative, is to tackle the simulation of transactions (EFOs per its Spanish acronym); however, the proposed measure goes beyond and is not limited to simulation transactions, which raises concerns. Especially considering the Inter-American Court of Human Rights has concluded that such measure breaches the presumption of innocence principle, among others.

## 8. In practice, how often is a taxpayer audited after a return is filed? Does a tax authority need to have any justification to commence an audit?

It is not common that the tax authorities initiate an audit after a return is filed. However, in recent years, it has become common practice for such authorities to issue non-official invitations, requiring taxpayers to pay any taxes due or submit explanations on atypical tax conducts.

Regarding formal audits, the Administration of Federal Audit Planning and Programming is the area of the Federal Tax Administration that has the power to establish the parameters and limits for audits concerning federal taxes.

The Tax Administration published the 2024 “master plan” attempting to increase tax collection in the following years, particularly for high-income taxpayers.

The plan foresees the use of Artificial Intelligence (AI) to enhance collection processes. Specifically, to implement data analytic models and “machine learning” to identify taxpayers in “risk” areas, as well as the identification of inconsistencies in tax invoices related to smuggling and simulated transactions.

The plan also targets auditing on several sectors or taxpayers, such as: NOLs, corporate restructure, sale of shares and intangibles, capitalization of liabilities, treaty benefits, technology platforms, and others.

Finally, under the current rules it is not necessary for tax

 

authorities to have a formal justification to commence an audit, even for taxpayers who submit an auditor's tax report.

## 9. Does the tax authority have to abide by any standards or a code of conduct when carrying out audits? Does the tax authority publish any details of how it in practice conducts audits?

The tax authorities must comply with certain minimum standards contained in Federal Taxpayer Rights Law, as well as the Federal Tax Code, among others.

Depending on the type of audit conducted, certain specific rules are applicable. For example, when carrying out *in-situ* audits, tax authority's officers must identify themselves upon initiating audits, allow taxpayers to select witnesses, and make a record of every submitted and requested during such audit.

Additionally, the authorities are bound to communicate –upon commencement of a formal audit-, the period and tax that is subject to review. Additionally, tax authorities are limited as to the duration of the audits. Generally, audits must conclude in a 1-year period, subject to exceptions, such as taxpayers who are part of the financial system or when the authorities formally request information abroad.

## 10. Does the tax authority have the power to compulsorily request information? Does this extend to emails? Is there a right of appeal against the use of such a power?

During the course of an audit, the tax authorities have the power to request documents necessary to review the correct compliance of tax obligations. Generally, the information and documents requested therefrom, must be strictly necessary to review the correct tax compliance.

Under a recent Federal Circuit Court precedent, the Court considered that the name and address of the tax advisors is not strictly relevant for such purposes.

Although taxpayers can file a nullity tax claim to challenge certain acts, we consider that, since the request of information is not a “definitive” act, a claim of such nature would have no grounds. The *amparo* claim, when challenging such acts, is of an “exceptional” nature and will only be valid in case there is a clear constitutional breach on the request.

Regardless, in case a taxpayer files a nullity claim or an administrative appeal challenging a tax assessment, such taxpayer can raise arguments challenging the prior information requests, or any procedural act, deemed illegal.

## 11. Can the tax authority have the power to compulsorily request information from third parties? Is there a right of appeal against the use of such a power?

The tax authority can request information from third parties, as well as from any joint obligors related to the audited taxpayer, exclusively regarding the periods and taxes that are subject to audit. Furthermore, as of 2021, the tax authority has the statutory power to seize assets, including bank deposits, when the third party fails to comply with providing information upon an authority's request.

In this case, we believe a nullity tax claim, or even an *amparo* claim by a third party, would generally have no grounds. To sustain this, we consider the third party would have no tax liability resulting from the information requested, nor a tax assessment determined to another person.

## 12. Is it possible to settle an audit by way of a binding agreement, i.e. without litigation?

As of 2014, taxpayers have widely used the conclusive agreement procedure, which is type of mediation with the tax authorities, regarding federal taxes, with the intervention of the Mexican Tax Ombudsman Agency (“PRODECON”).

Tax authorities are free to accept or reject the taxpayer's proposal but have the legal obligation to participate in such procedure.

The agreement reached is binding and unchallengeable for both parties. What is agreed upon in one fiscal year does not constitute a precedent for other years.

The taxpayer has the right to submit additional evidence in this procedure and is entitled to a 100% fine reduction, if an agreement is reached, only on the first conclusive agreement.

In case the taxpayer reaches a partial agreement, the tax authority will have the power to issue a formal tax assessment considering what was not agreed upon. Taxpayers may file a nullity claim before the Federal

 

Court of Administrative Justice, to challenge such assessment.

Recently, an internal criterion was issued by PRODECON's technical committee; the criterion basically states that after a first conclusive agreement procedure is carried out, no longer can taxpayers opt for a second or subsequent conclusive agreement procedure given the definitory nature of the procedure. This reflects a change of position, or criteria adopted by PRODECON officers.

## 13. If a taxpayer is concerned about how they are being treated, or the speed at which an audit is being conducted, do they have any remedies?

Taxpayers that consider the tax authorities do not abide by the rules set for tax audits, can file a complaint with the PRODECON, for investigation and to determine if the taxpayer's rights are breached.

A PRODECON observer may be requested to attest on how the audit is being developed. We consider that, an expedited or slow audit, provided it complies with the time limits (*1 year – general rule*), would not breach taxpayer's rights.

Additionally, if a tax assessment is determined and challenged, the taxpayers can raise arguments on the non-compliance of the audit's formalities.

## 14. If a taxpayer disagrees with a tax assessment, does the taxpayer have a right of appeal?

Once a taxpayer has been notified of a tax assessment, they have the option to file an administrative appeal directly with the Tax Administration's legal branch, or a nullity claim before the Federal Administrative Justice Court.

If the taxpayer elects to file an administrative appeal, and obtains an unfavorable ruling, they can challenge such rulings and the tax assessment, and raise new arguments thereto.

Additionally, in case a taxpayer elects to file an administrative appeal, they have the right to exhibit further evidence not provided during the audit; this is the last procedural stage for the taxpayer to do so.

Furthermore, taxpayers are relieved from the obligation to provide a guarantee, as opposed to nullity trials, except under the substance over form nullity trial, where this obligation is relieved until a first instance ruling is issued.

## 15. Is the right of appeal to an administrative body (independent or otherwise) or judicial in nature (i.e. to a tribunal or court)?

An administrative branch (non-judicial) of the Tax Administration rules upon the administrative appeal, while the Federal Court of Administrative Justice, which is an autonomous Court solves upon a nullity claim.

Although such Court is autonomous, it does not form part of the federal judicial branch.

Once the Federal Court of Administrative Justice issues its ruling, taxpayers have the right to file an *amparo* claim ("*amparo directo*"), to challenge an unfavourable decision, which is solved by a Circuit Court that is part of the referred judicial branch.

## 16. Is the hearing in public? Is the decision published? What other information about the appeal can be accessed by a third party/the public?

The administrative appeals and nullity trials are mainly carried out through written procedures.

Thus, most rulings – aside from the "substance over form" procedures- are issued without a previous public hearing.

All rulings issued must be published (generally on an anonymous basis) or made available upon official requests, on the grounds that such rulings are considered to be of public interest, as per a 2020 decision of the Supreme Court of Justice. Notwithstanding, in practice we consider this rule is not always followed through.

## 17. Is the procedure mainly written or a combination of written and oral?

In Mexico, tax trials and administrative appeals are mainly composed by written procedures.

Taxpayers have the choice to file these proceedings under a "substance over form" methodology, provided certain requirements and a "*de minimis*" threshold are met.

The "substance-over-form" procedure is special in nature where orality plays a major role. After the claim and reply are filed, the parties are summoned to a hearing for

 

defining the controversial points. Furthermore, the Court has the power to summon expert witness, for a special hearing to raise specific questions and follow up queries. One of the benefits of these hearings is that parties have the right to exchange and refute arguments in the presence of the magistrates. This means that such magistrates can get a deeper understanding of the controversy, as well as the arguments. Regarding the nullity trial, a special chamber rules on this special procedure, and the taxpayer benefits from being relieved to guarantee the tax assessment, on first instance.

## 18. Is there a document discovery process?

There is not a formal document discovery process, as in certain common law countries.

Generally, the taxpayer must submit documentary evidence along the nullity claim. Special evidence, such as the expert witness report, are submitted at a later stage of the trial.

In the administrative appeal, the taxpayer has a 15-day term to state its proposed evidence, and the same term for submitting it.

Regarding documentary evidence in possession of the authorities, the taxpayer can request the Court to order such authorities its submission, provided certain requirements are met.

## 19. Are witnesses called to give evidence?

Taxpayers have the right to offer witnesses in nullity trials. The Court has certain discretionary powers to take such witness into account.

Even if the taxpayer does not offer a witness testimony, the Court may order proceedings for better understanding the disputed facts, although in practice the Courts rarely use such power.

## 20. Is the burden on the taxpayer to disprove the assessment the subject of the appeal?

In Mexico, all administrative acts are presumed valid, subject to certain exceptions, until proven otherwise.

In other words, the burden to disprove a tax assessment –on trial or administrative appeal mainly- falls on the taxpayer, as the assessment is protected by the aforementioned presumption.

## 21. How long does an appeal usually take to conclude?

In our experience, an administrative appeal ruling can take approximately from 1 – 2 years. A nullity trial ruling can take approximately 2 -3.5 years, depending on the circumstances of the case. This, especially considering that the taxpayer may challenge interim rulings (dismissal of evidence, for example).

The time expectancy may vary this current year, considering the current work or labour stoppage by officers of the Judiciary Branch. Such circumstance arose from a bill that has been approved by Commissions, to radically reform the Judiciary Branch and implement a system to elect Judges, Magistrates and Justices by vote.

Derived from this situation, an administrative ruling was recently published to give leeway only to urgent cases, as defined in a ruling, and suspend deadlines for ongoing non-urgent trials.

Once the Federal Court of Administrative Justice has ruled upon, taxpayers may file an *amparo* action ("*amparo directo*") to challenge an unfavourable decision and raise legality or even constitutionality arguments, of the law applied in the disputed ruling or even in the or that should have been applied.

The Supreme Court of Justice can attract the case, in certain limited cases, and/or rule upon an exceptional appeal filed in the *amparo* trial.

## 22. Does the taxpayer have to pay the assessment pending the outcome of the appeal?

Generally, once a tax assessment is notified, the taxpayer has 30 business days to pay the determined amount or provide a guarantee (ex. surety bond).

However, the applicable exceptions are as follows:

- When a taxpayer files an administrative appeal, no guarantee is required for the duration of this procedure. Only in case a fully unfavourable ruling is issued, must the taxpayer pay the amount due or provide a guarantee, within a 10-day term.

Under certain interpretations, when a partially favourable ruling is issued, the taxpayer may be relieved of this guarantee.

- The guarantee is not required in a "substance-

 

over-form" trial, until the first instance ruling is issued.
- The taxpayer can request a "reduction" of the guarantee before the Tax Court, under justified circumstances, however, the granting of the reduced amount to be guaranteed is discretionary by the Tax Court, according to the taxpayer's concrete situation.

## 23. Are there any restrictions on who can conduct or appear in the appeal on behalf of the taxpayer?

Initially, all taxpayers (entities) must file the appeal through their legal representative with sufficient power to appear before Court. Generally, a general power for litigious acts or sufficient power to file lawsuits is accepted. For administrative appeals, a general management power or special one for such appeals is also acceptable.

The legal representative can appoint authorized person to appear and act on its behalf, in the proceedings.

## 24. Is there a system where the "loser pays" the winner's legal/professional costs of an appeal?

Under the Mexican system, no award of costs is in place for administrative appeals, to be borne by the "losing" party.

We consider this a disadvantage because the taxpayer cannot recover its legal expenses (attorneys, bond, etc.) notwithstanding obtaining a favorable ruling.

The only "exception" is that taxpayers are bound to pay legal costs in favor of the authority when rulings are challenged with notoriously dilatory purposes.

Additionally, the authorities are bound to pay damages and lost profits in cases when a "serious fault" is incurred upon issuing the contested resolution and the authority does not accept the claim, upon reply during the trial. Taxpayers must expressly request this and is not commonly seen in practice.

Finally, the Tax Administration Service's law also contemplates the possibility that taxpayers are indemnified for damages and lost profits caused by liable public servants.

## 25. Is it possible to use alternative forms of dispute resolution – such as voluntary mediation or binding arbitration? Are there any restrictions on when this alternative form of dispute resolution can be pursued?

As stated, taxpayers may request to participate in an alternative dispute resolution form referred to as "conclusive agreement procedures" which are carried out with the intervention of the PRODECON.

Certain cases are barred from conclusive agreement procedures per the Federal Tax Code; the currently barred cases are:

- When an audit was initiated to verify a tax refund request.
- When the dispute concerns an information request to a third party arising from an audit.
- Audit acts that derive from a court or administrative appeal ruling.
- When the taxpayer has been "flagged" by the tax authority for issuing tax invoices without the necessary assets, personnel or infrastructure.

## 26. Is there a right of onward appeal? If so, what are all the levels of onward appeal before the case reaches the highest appellate court.

After the Federal Court of Administrative Justice issues its first instance decision, the taxpayers have a right of onward appeal via a constitutional claim ("*amparo directo*").

Under the *amparo* procedure, taxpayers may raise legality arguments to challenge the considerations of the contested ruling, as well as constitutionality arguments of the provisions of the disputed matter.

Finally, in case the *amparo* claim is resolved unfavourably, taxpayers may file a last appeal before the Supreme Court of Justice; however, such appeals are only limited to constitutional matters and should be of an exceptional interest, from a constitutional or human rights perspective.

## 27. What are the main penalties that can be applied when additional tax is charged? What are the minimum and maximum penalties?

Unpaid taxes are subject to adjustment for inflation based on Mexico's national price indexes and subject to monthly surcharges (in 2024, the monthly rate is 1.47%),

 

for a maximum of five years, as a general rule.

Additionally, tax authorities may impose fines that range from 55% to 75% of the (historical amount) unpaid tax.

Under certain circumstances, the fines can be increased due to aggravating conducts, such as failing to pay withheld taxes, thus increasing the fines for an additional 50% to 75% of the historic amount of tax due.

In case the same act is subject to multiple fines, the taxpayer is only obligated to pay the one with the highest value.

## 28. If penalties can be mitigated, what factors are taken into account?

Fines can be mitigated in several forms. First, in case the unpaid tax is settled spontaneously, before an authority's requirement is issued, the applicable fine is waived.

Additionally, in case taxpayers formalize a conclusive agreement procedure, a 100% fine reduction is applicable, as a one-time benefit. Subsequently, a reduction of a lesser percentage is applicable, in terms of the Federal Taxpayer's Rights Law, depending on the promptness on which the taxpayer settles its debt.

Furthermore, the following are additional statutory forms to reduce fines and/or surcharge rates:

- Taxpayers can benefit from a 100% fine reduction upon omissions identified during tax audits, provided the unpaid tax does not include withheld or "transferred" taxes, such as VAT, under Article 70-A of the Federal Tax Code.

Under the same legal basis, taxpayers are entitled to a reduction of the surcharges rate in case they meet the applicable requirements, such as not incurring in aggravating circumstance, to benefit from such reduction and reduced rate.

The General Tax and Administrative Guidelines state that, to the extent the authority does not formally state an aggravated act has been committed, the taxpayer can still benefit from this option.

- Taxpayers can also benefit from a fine condonation or reduction, upon breaching tax or customs laws, provided the fines are definitive and not challenged, and if so, that the procedures have concluded.

The applicable reduction varies from 10% to 100%, depending mainly on the originating infraction, including its date, type of tax and whether a tax assessment has been already determined.

What is ruled upon on the fine reduction or condonation request, is not challengeable by ordinary means of defense. This gives leeway to exceptionally challenge an unfavourable decision through an *amparo* claim.

## 29. Within your jurisdiction, are you finding that tax authorities are more inclined to bring challenges in particular areas? If so, what are these?

Considering the effective tax collection for high-revenue taxpayers on 2024 (January to May) which represented 52% of all tax revenue, it is likely the tax authorities will focus on such taxpayers in the following years. Additionally, considering the 2024 approved "master plan", the authorities plan to focus on the sectors and concepts listed therein (NOLs, corporate restructure, etc.).

A current focus of attention has been recently placed on insurance companies. The tax authorities identified an alleged VAT omission on the productive chain, when a claim is paid.

Finally, we consider that the authorities are having an increasingly active intervention using non-audit mechanisms, such as the "*cartas invitación*" and the restriction of the digital certificate to invoice, which we consider will likely be replicated in the following years.

## 30. In your opinion, are there any areas which taxpayers are currently finding particularly difficult to deal with when faced with a challenge by the tax authorities?

Tax refunds are an extremely burdensome process for most taxpayers, especially since the elimination of the "universal offset" of tax balances as of 2019. As of this year, taxpayers have more limited options on offsetting or compensating balances and leaves them with the refund process that are lengthy and generally require a considerable number of documents and information, before approval. This has generally derived in complaints with PRODECON or administrative appeals.

This is especially relevant since the rule that allowed taxpayer to continue offsetting pre-2019 balances, under certain conditions, was repealed as of 2024.

Furthermore, we consider the tax authorities have a very formalistic approach on tackling or challenging

 

deductions, especially when no evidence is provided to prove the service was rendered, according to its view.

Finally, although the "substance over form" trial or appeal is useful, we consider that such a procedure should have a broader scope, to avoid excessive or disproportionate effects to the taxpayers´ non-compliance of formal requirements. Eliminating the de minimis requirement and/or broadening the admissibility requirements would be helpful.

### 31. Which areas do you think will be most likely to be the subject of challenges and disputes in the next twelve months?

We consider that NOLs, tax refunds and the application of border tax incentives, among others, continue to pose a special interest for the authorities, as well as payments made abroad. Also, whilst Courts continue to re-define the concept of "materiality, tax authorities continue to challenge the deduction (and VAT crediting) of services, to tackle tax evasion or simulation.

Regarding NOLs, tax authorities are increasingly requesting extensive information acknowledge the origin of such losses. We believe that, given the ambiguity of the statutory rules, it is common to see requests of considerable documentation, as if such authorities were auditing a different year, to corroborate supposedly the origin of such NOLs.

Furthermore, we anticipate State tax authorities to focus on the so-called "environmental" or "green" taxes during the following years. Such taxes have become an important source of local revenue, although not as important as the payroll tax, considering the international commitments to reduce CO2 emissions and control temperature rising.

In Queretaro, Federal Courts have sustained the unconstitutionality of the 2022 rules for the emissions tax. The Courts basically concluded that the date of payment of the tax is not clearly defined, since it takes into account the reporting instrument of both, the Federal and State level, which have a different deadline.

On the other hand, Courts have also sustained the unconstitutionality of the 2022 rules for such tax in Estado de México. The Courts have ruled that some elements to determine the taxable base are set forth in administrative rulings -and not a formal law-, thus breaching the tax legality principle.

Finally, in the tax international arena, a recent landmark case was decided upon concerning the applicable withholding rate on technical assistance payments. Such precedent -mandatory to lower courts, concludes that technical assistance under the Dutch-Mexico tax treaty an undefined treaty term, and thus, Mexican's domestic law is applicable, which subjects these payments to a withholding rate of 25%.

This will likely provide leeway to tax authorities to apply the same criteria to other tax treaties that do not define "technical assistance", or even to other undefined treaty terms, thus breaking a trend to consider such payments as "business profits" under certain cases, and therefore, relieved from taxation at the source jurisdiction.

We consider the courts' rationale in the court precedent raises queries or concerns from the analysis made, mainly since i) the "other income" treaty provision was not thoroughly addressed in the precedent; and ii) a limited analysis seems to be made to the wording of Article 3(2) of treaty, which allows resorting to domestic law, unless the "context" otherwise foresees another interpretation.

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