Mexico

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Mexico: Tax

1. How often is tax law amended and what is the process?

Tax laws in Mexico are subject to constant amendments, usually on a yearly basis. Any and all statutes concerning the essential elements of tax law (subject, object, taxable basis, tax rate or tariff and time of payment) shall be set forth by tax laws issued by the Mexican Congress in order for them to be valid. The Mexican Constitution expressly states that tax laws must be initially discussed at the House of Representatives (failing to comply with said mandate could lead to the unconstitutionality of the relevant law).

In this regard, initiatives and amendment proposals shall be discussed and approved both by the House of Representatives and the Senate. Once the relevant amendment has been authorized, the executive branch orders its issuance and publishing in the Federal Official Gazette.

Even though bar associations are consulted on some occasions concerning tax law amendments or proposals, it is not deemed as a formal practice far less a legal requirement for such proposals to be valid.

Notwithstanding the foregoing, it should be noted that the executive branch is entitled to issue provisions or regulations relating to the applicability, construction or enforcement of tax laws (but not concerning the essential elements of tax laws) without having to abide by the amendment procedure reserved for tax laws.

On a different subject, tax laws are often contested by means of the amparo figure (an extraordinary trial that can be initiated either once ordinary recourses have been used or directly, in cases where a constitutional violation is claimed). Generally speaking, the effects of judicial rulings produced as a result of an amparo trial are limited to the plaintiff seeking legal remedy, that is, not erga omnes. Nonetheless, precedents or jurisprudence derived of the procedure set forth in the applicable laws subject tax laws to the interpretation and constitutional review by the competent courts.

A tax law of relevance is the *Ley de Ingresos de la Federación*, which regulates the annual income that the Mexican State foresees to obtain from different sources, including taxation.

On September of each year, the Ministry of Finance releases the economic package for the next fiscal year containing the proposal for amendments and additions to numerous provisions of the different tax laws.

Lastly, it is important to bear in mind that tax regulations known as *Resolución Miscelánea Fiscal* are published annually by the Ministry of Finance, establishing particular rules and benefits for taxpayers in order to comply with fiscal obligations.

2. What are the principal administrative obligations of a taxpayer, i.e. regarding the filing of tax returns and the maintenance of records?

Individuals and legal entities deemed as Mexican tax residents are required to register under the Federal Registry of Taxpayers, specifying a tax domicile within national territory.

Additionally, Mexican tax residents are bound to maintain accounting records that in general terms consist of books, ledger entries, account statements, inventories, notices to the Federal Registry of Taxpayers, tax returns, financial statements, information concerning shares or securities held, customs documentation, invoices and documentation supporting the materiality thereof.

Accounting records shall be duly kept for a period of five years (some exceptions could apply) and digitally filed before the tax authorities on a monthly basis. Generally speaking, taxpayers are also required to file advance income tax returns on a monthly basis and a definitive annual tax return. Concerning value added tax, taxpayers shall file monthly returns, which are considered as definitive. Depending on the taxpayers' activities or corporate structure, the filing of informative tax returns regarding a) their participation in offshore legal entities, or b) income obtained in jurisdictions considered to be subject to preferential tax regimes in terms of Mexican law or through fiscally transparent entities or vehicles, could be mandatory. Additionally, taxpayers may file complementary tax returns through which the data filed in previous tax returns may be amended or corrected.

It is important to point out that failure to comply with the abovementioned formal obligations, whether it be to register with the Federal Registry of Taxpayers, properly keeping accounting records or filing the corresponding returns, could result in penalties being imposed by the tax authority or even deemed as a criminal offense.

On January 1st, 2022, a new set of rules came into force regarding the collection of information of 'controlling beneficiaries' of companies and other legal entities or vehicles and trusts. This information shall be kept as part of the accounting records and provided to the tax authorities when the same is required.

The above shall be complied by legal entities; trustees, settlors or beneficiaries, in the case of trusts; contracting parties or members of other legal vehicles; notaries public participating in the incorporation of entities and execution of trusts; and financial institutions (in certain cases).

3. Who are the key tax authorities? How do they engage with taxpayers and how are tax issues resolved?

Most tax related matters are dealt with the Tax Administration Service. In recent years, stringent criterions relating even to 'standard' issues have been adopted, making it hard for taxpayers to comply with the authorities' interpretation of the applicable tax laws. In this sense, procedures such as tax refunds (particularly concerning value added tax), or the annulment of tax liabilities determined by the authorities often require strenuous efforts and, considering the several stages of proceedings available both for authorities and taxpayers, such procedures could take several months or even years.

This has led to a heavier administrative burden for taxpayers, and correlatively, higher expenses for taxpayers. In addition to the federal Tax Administration Service, other local taxes such as property taxes, payroll taxes or taxes on the acquisition of real estate shall be dealt with local tax administrations or treasuries. Furthermore, other administrative authorities such as the Mexican Social Security Institute are also entitled to initiate audit procedures concerning employer contributions.

4. Are tax disputes heard by a court, tribunal or body independent of the tax authority? How long do such proceedings generally take?

In terms of the applicable laws, taxpayers have the option of contesting a tax liability before a different area of the Tax Administration Service than the one that determined it. Nevertheless, taxpayers are not required to do so in order to have access to the different stages of proceedings before jurisdictional bodies.

In this regard, taxpayers are entitled to challenge and request the annulment of resolutions issued by tax authorities directly before the Local or Federal Court of Administrative Justice.

Likewise, in the cases where taxpayers decide to challenge the tax liability before the Tax Administration Service, they still have the option of filing an annulment claim against the administrative resolution that confirms the tax liability that was initially determined.

Furthermore, in cases where constitutional violations are claimed to have occurred as a consequence of a tax dispute or the administrative or judicial decisions related thereto, taxpayers could be entitled to file an amparo lawsuit in order to be ruled by the Federal Judicial Branch.

Most tax disputes could take an average of one to four years to be fully concluded, considering the stages of proceedings available, both for authorities and taxpayers.

Notwithstanding the foregoing, whenever taxpayers challenge a tax liability before local or federal court of administrative justice or any court of the judicial branch, the disputed amount shall be guaranteed by the taxpayer in order for it not to be collected by the tax authorities.

In any case, once the tax dispute has been resolved, the winning party is entitled to receive the disputed amount updated to present value as well as interests accrued in connection therewith (interests are accruable for up to five years).

Regardless of the foregoing, it is worth noticing that audited taxpayers are also entitled to seek remedy before the Mexican Tax Ombudsperson (PRODECON). Taxpayers can request the intervention of the tax ombudsperson in order to negotiate with the Tax Administration Service, or any other tax authority, solutions to contingencies that may arise from federal taxes so as to prevent liabilities from escalating into litigation.

Alternative means of dispute resolutions before the tax ombudsperson can be sought in as long as the tax authorities have not served notice to the taxpayer of a resolution determining the existence of a tax credit or liability.

Furthermore, in the international level, Mutual Agreement Procedures (MAP) provided in double taxation treaties can be requested by taxpayers involved in double taxation issues assessed by the Mexican tax authority, if an action of a contracting State implies or could imply a violation of the treaty.

5. What are the typical deadlines for the payment of taxes? Do special rules apply to disputed amounts of tax?

Depending on the tax at hand or the applicable tax regime, different deadlines for payment could apply. For instance, income tax is generally paid by means of an annual tax return that shall be filed within the first three months following the end of the fiscal year for which it is being filed. However, taxpayers are also required to file estimated monthly returns and advance payments regarding income tax due.

Concerning value added tax, taxpayers shall file the corresponding returns on a monthly basis.

Pursuant to the Federal Tax Code, whenever the applicable law does not indicate the relevant tax's date of payment, it shall be paid by means of a tax return filed: (i) within the first seventeen days of the subsequent month for which the corresponding tax is being paid, in cases where the taxpayer is required to tax withholding or the contribution is calculated for periods established in the corresponding laws; or (ii) in any other case within the next five days after the corresponding tax has been caused for all other cases. In cases where taxpayers challenge a tax liability before the Tax Administration Service, the payment in dispute is postponed until the corresponding administrative resolution is issued and served to the taxpayer.

Any disputed tax amounts with the tax authority may be challenged in the first instance before the tax authority itself and if the tax amount is confirmed by the tax authority, taxpayers may challenge the corresponding resolution before the administrative courts. In this case the taxpayers shall guarantee the tax liability in order to avoid collection by the tax authorities. If the tax dispute is resolved in favour of the taxpayer, he will be entitled to receive the disputed amount updated to present value as well as interests accrued in connection therewith (interests are accruable for up to five years).

6. Are tax authorities subject to a duty of confidentiality in respect of taxpayer data?

In terms of the Federal Tax Code, Mexican tax authorities are subject to a duty of confidentiality regarding the information provided by taxpayers and it is duly protected from disclosure to third parties. In this sense, such information could only be provided to other governmental authorities in cases sanctioned by law.

Nonetheless, it should be noted that certain information could be required from tax authorities on an international level, under broad exchange of information agreements or other relevant instruments such as FATCA or CRS.

As result of the incorporation of the reportable schemes' regime in the Federal Tax Code, similar to the disclosure obligations set forth in the Disclosure of Tax Avoidance Schemes (DOTAS) in the United Kingdom, information gathered as a result of disclosing a reportable scheme could be used as evidence in a criminal trial, only when in such judicial procedure the issuance, purchase or sale of false invoices is involved being alleged by the Department of Justice. Any additional evidence collected by the tax authorities arisen from the reportable schemes' regime may not be used in a criminal trial.

7. Is this jurisdiction a signatory (or does it propose to become a signatory) to the Common Reporting Standard? Does it maintain (or intend to maintain) a public register of beneficial ownership?

As a member of the G20, Mexico has subscribed to the Common Reporting Standards (CRS), and even has adapted the local set of laws to meet the standards set forth by the OECD.

Additionally, Mexico has executed the Model Agreement for Competent Authorities on the CRS, along with other 105 jurisdictions. As consequence thereof, parties engaged as or with Mexican taxpayers could be required to submit country-by-country reports describing the operations in which they are involved. Moreover, Mexico has made efforts to obtain the names, accounts and balances of Mexican taxpayers that have opened accounts abroad.

Regarding the powers of the tax authorities in transfer pricing matters, information in connection with the identity of independent third parties in comparable transactions and the information used to justify a resolution issued by the tax authority within an audit may only be disclosed before the court where such resolution is being challenged.

Mexico does not maintain a public register of beneficial ownership. However, all obligated parties shall obtain, integrate, and keep as part of their accounting records, the reliable, complete, and updated information of the individual or group of individuals that meet said status. Additionally, the Mexican tax authority may request the obligated parties to provide said information.

8. What are the tests for determining residence of business entities (including transparent entities)?

In terms of article 9 of the Federal Tax Code, a legal entity could be deemed as a Mexican tax resident whenever they establish their main seat of business or effective management within national territory. In this regard, a legal entity could be considered as a Mexican tax resident when the parties entitled to decide its business strategies, policies, distribution of profits, dividends or other core subjects are located within Mexican territory.

On the other hand, individuals could be deemed as Mexican tax residents if: (a) they establish their dwelling home in Mexico; (b) they have their center of vital interests within the country (when more than 50 per cent of the total income received by such individuals is Mexican sourced); (c) the center of their professional activities is in Mexican territory; (d) Mexican nationals that are public servants (even if their center of vital interests is located elsewhere).

Foreign legal entities could need a tax residency certificate or official documentation issued by competent authorities confirming that they filed their annual tax return in order to evidence their tax residence before Mexican tax authorities.

Furthermore, the tax residency could be determined in terms of the procedures or conditions set forth in the applicable double taxation agreement concluded by Mexico and the respective country or jurisdiction.

Although the Mexican legislation in force recognizes tax transparency of entities that are not deemed as taxpayers in other countries allocating income to the members of such entities and vehicles, a new rule was included in 2021 in the Income Tax Law to simplify the collection of taxes that ultimately correspond to the members of transparent entities and vehicles, either Mexican tax residents or non-residents.

The new provision is applicable to foreign fiscally transparent legal entities and vehicles (such as trusts and partnerships) who obtain Mexican sourced income, in order to disregard their tax transparent status thus being subject to tax under the rules applicable to resident legal entities (in case the foreign entity or vehicle falls within the rules to be considered a Mexican tax resident) or to non-resident legal entities, as the case may be.

An exception to the above rule was included regarding tax transparent vehicles that manage private equity funds invested in Mexican legal entities, subject to the compliance of certain requirements, i.e. that the transparent vehicle and its members are tax residents in a jurisdiction with which Mexico has entered into an exchange of information agreement considered as a "broad" by the Mexican tax authorities.

9. Do tax authorities in this jurisdiction target cross border transactions within an international group? If so, how?

In line with the BEPS Action Plan, Mexican tax authorities are particularly concerned with base-eroding practices. Consequently, in the case of cross border transactions they tend to focus on transactions between related parties, corporate reorganizations and similar operations conducted by multinationals.

In this regard, tax audits with respect to such operations tend to focus on the adequate compliance of transfer pricing rules (arm's-length transactions), the (non)deductibility of certain expenses, or the actual existence of double taxation when the parties involved claim treaty benefits. For instance, parties that claim treaty benefits are required to comply with certain formal tax obligations under Mexican law in order to evidence that they actually qualify as residents in terms of the corresponding double taxation agreement and as such, that they are in fact entitled to the relevant tax benefits.

Moreover, concerning transactions between related parties in which treaty benefits are claimed, Mexican tax authorities could request a sworn affidavit (executed by the non-tax resident's legal representative) stating the existence of double taxation and identifying the statutes or provisions under foreign law that cause it.

Furthermore, taxpayers in Mexico are bound to file informative returns in relation to their transactions with related parties or concerning their participation in offshore structures (they are subject to country-by country and other returns based on CRS), pursuant article 76-A of the Income Tax Law. The Supreme Court has settled jurisprudence on the constitutionality of such measures.

10. Is there a controlled foreign corporation (CFC) regime or equivalent?

Concerning CFC rules, the Income Tax Law establishes that Mexican tax residents and non-tax residents with a permanent establishment in Mexico could be deemed to receive income from jurisdictions considered as preferential tax regimes whenever: (i) income deriving therefrom is not subject to taxation in the relevant jurisdiction; or (ii) the income tax to which said income is subject to in the relevant jurisdiction is lower than 75 per cent of the income tax that would have been levied and paid in Mexico for such an operation.

To this regard, Mexican tax residents or non-tax residents with a permanent establishment within national territory could be required to pay income tax in terms of Title VI of the Income Tax Law (Controlled Foreign Companies subject to Preferential Tax Regimes; Multinational Enterprises and Transactions with Related Parties) on income received through foreign legal entities in which they participate, directly or indirectly (in proportion to their participation therein), as well as on income received through foreign legal entities deemed as tax transparent.

In general terms, taxpayers that receive income considered as subject to a preferential tax regime are required to keep specific accounting records concerning each of the legal entities through which they perceive income, and to pay the related income tax separating it from the rest of their accruable income.

Furthermore, it is of paramount importance to point out that Mexico, as part of the G20, has been actively participating in the development and implementation of OECD guidelines in several subjects including CFC rules, to the extent of amending the local set of laws. Therefore, more stringent requirements have gradually been incorporated to the Mexican tax system. The Mexican transfer pricing rules have been adapted to the OECD guidelines on the subject.

Accordingly, transactions between related parties are required to comply with the arm's length principle.

Moreover, concerning transactions between a Mexican tax resident and a foreign related party, the first would be required to determine its accruable income and authorized deductions bearing in mind that the price and compensation for the relevant transaction should be equal to that which would have been paid to an independent party (arm's-length principle).

It is worth mentioning that in terms of the applicable Mexican laws, it is possible to obtain an advanced pricing agreement. Nevertheless, the issuance of the corresponding resolution could take from two to three years. Generally speaking, resolutions issued by Mexican authorities with respect to advanced pricing agreements could be valid and enforceable during the tax year in which the corresponding application is filed, for the previous tax year, and up to the subsequent three tax years. Nonetheless, advanced pricing agreements could be valid for a longer period in case they resulted from an amicable procedure in terms of an international treaty subscribed by Mexico.

11. Is there a transfer pricing regime? Is there a "thin capitalization" regime? Is there a "safe harbour" or is it possible to obtain an advance pricing agreement?

The Mexican tax system contemplates transfer-pricing, thin capitalization, CFC, safe harbour for the Maquila industry (IMMEX Program), back-to-back and tax recharacterizations as anti-avoidance rules. Moreover, Mexican authorities have established more stringent requirements that shall be complied with for a double taxation agreement to be applicable (e.g. the filing of a sworn affidavit executed by the non-tax resident's legal representative stating the existence of double taxation).

Additionally, thin capitalization rules shall be observed in terms of the applicable Mexican tax laws. The allowed debt-to-equity ratio for Mexican resident legal entities is of 3 to 1. In general terms, interests due on contracted debt that exceed by threefold the company's net worth would be deemed as non-deductible for income tax purposes.

Nonetheless, the Tax Administration Service could authorize a higher debt-to-net equity ratio for legal entities considered as part of specific industries, such as the financial system or other national strategic sectors.

12. Is there a general anti-avoidance rule (GAAR) and, if so, how is it enforced by tax authorities (e.g. in negotiations, litigation)?

We direct the reader's attention to the content of Article 5-A of the Federal Tax Code, which contains the GAAR as a presumption for the authority to deny the fiscal benefits of a transaction or series of operations, due to a lack of business rationale and, thus, recharacterize the operations (involving juridical acts), as a whole.

Additionally, it should be noted that Mexico has been actively participating in the development and implementation of OECD guidelines and adapting the local set of laws to comply with the standards set forth by the BEPS action plan. In this sense, for the past few years, tax authorities have adopted more stringent requirements and standards to measure the taxpayers' compliance with anti-avoidance rules. As consequence of the foregoing, it is common for taxpayers to challenge the application of such rules by Mexican tax authorities.

13. Is there a digital services tax? If so, is there an intention to withdraw or amend it once a multilateral solution is in place?

As from January 2020, a series of amendments to the Mexican Value Added Tax Law and the Mexican Income Tax Law regarding the taxation of digital services and platforms came into force.

Due to the exponential growth of the digital economy in recent years, the explanatory memorandum of the aforementioned amendments states that in order to generate fair competition between suppliers of goods or services that perform their economic activities through physical establishments or stores, and those that offer them through digital platforms, it is necessary to establish a criterion that allows the Mexican State to tax non-tax residents without a permanent establishment in Mexico, which is in accordance with the method through which they provide digital services.

According to Action 1 of the BEPS Action Plan, the digital economy is characterized by its reliance on intangible assets as well as the massive use of data. In this context, Action 1: "Tax Challenges Arising from Digitalisation" aims to identify the main challenges of the digital economy for the application of existing international tax rules and to develop detailed measures to address these challenges, taking a global view and considering both direct and indirect taxation. Issues under consideration include, among others, the application of source-related rules and how to ensure effective collection of VAT with regard to the cross-border supply of digital goods and/or services.

In terms of the Value Added Tax Law, Chapter III BIS was added, which establishes the regime applicable to the rendering of digital services by non-residents without a permanent establishment in Mexico. Such Chapter establishes the definition of digital services, the conditions under which the service will be considered to be rendered in Mexico and the general obligations of non-residents who do not have a permanent establishment in the country that provide digital services. Such digital services will be taxed at a 16% rate. In addition, this amendment is only aimed at taxing certain digital services established in the law, which are generally consumed in households or used by individuals for their consumption.

Additionally, a special regime is established for providers who act as intermediaries between the service provider or seller of goods or merchandise and the final user or consumer, who shall withhold 8% of this tax. In this regard, an administrative benefit is established for individuals acting as intermediaries whose annual income does not exceed certain amount, through a simplified taxation scheme.

Likewise, new rules were added to the Mexican Income Tax Law in order to establish the taxation regime applicable to individuals who act as intermediaries between the service provider or seller of goods or merchandise and the final user or consumer. Different income tax rates are established depending on the activity developed, as well as the amount of the total income obtained by the individual, including the gratuities received directly from the final consumers through the platform.

14. Have any of the OECD BEPS recommendations, including the OECD's recent two-pillar solution to address the tax challenges arising from digitalisation of the economy, been implemented or are any planned to be implemented?

Mexico participated actively in the development of the Base Erosion and Profit Shifting (BEPS) Action Plan. Consequently, since the tax reform of 2014, the local set of laws have been amended to abide by the standards set forth therein. To this regard, more stringent conditions and requirements have been established relating to tax challenges arising from digitalization of the economy (Action 1), hybrid mismatches (Action 2), controlled foreign corporation rules (Action 3), interest deduction (Action 4), treaty abuse (Action 6), transfer pricing rules (Actions 8 through 10) and reporting obligations (Action 13).

Special emphasis should be made to the 2015 Final Report on Mandatory Disclosure Rules by the OECD. This is the most regarded source for States willing to implement such provisions in their domestic legislations. The BEPS Action 12 provides the key pieces needed to create an effective disclosure system in order to combat and prevent aggressive tax planning, as well as deterring the abuse of double taxation treaties in cross border transactions.

According to the BEPS Action 12, the key design features of a mandatory disclosure regime include the following: who reports, what information to report, when the information has to be reported, and the consequences of non-reporting. The main objective of mandatory disclosure regimes is to increase transparency by providing the tax administrations with early information regarding potentially aggressive or abusive tax planning schemes and to identify the promoters and users of those schemes.

This view is completely shared by the Mexican legislative branch in the text of the Initiative for Reform of the Federal Tax Code and is reflected nowadays in the content of Articles 197-202 of the Code.

Ostensibly, the Mexican legislation follows -almost by the book-, the key design principles of mandatory disclosure regimes. This is clear from the ratio legis of the 2020 tax reform that introduced the Reportable schemes obligations into the Federal Tax Code and from the legal framework surrounding the subjects obliged to disclose, what needs to be disclosed, and the consequences of non-disclosure. Despite having this organization of provisions that follow the key design principles contained in the BEPS Action 12, certain aspects for the domestic implementation of this type of rules have been overlooked by the Mexican legislative branch.

Finally, in relation to the OECD's recent two-pillar solution to address the tax challenges arising from digitalization of the economy there is no reform proposal under discussion, however it will be necessary to analyze the reform proposal for the 2023 fiscal year to be submitted by the Federal Executive before the House of Representatives at the latest on September 8, 2022.

15. How has the OECD BEPS program impacted tax policies?

The BEPS Action Plan has had a considerable impact on Mexican tax authorities and on the local set of laws. Accordingly, more stringent criterions concerning the applicability of tax benefits, such as the use of tax treaties, the conditions necessary to acquire (avoid) a permanent establishment status, the deductibility of certain expenses, transfer pricing rules, amongst other concepts have been driving the government's tax policies for the past few years. Moreover, the Mexican government has been actively participating in **the development and application of multilateral international instruments and** broadening its network of tax information exchange agreements.

Among the latter, the inclusion of the reportable schemes' regime in the Federal Tax Code, pursuant to BEPS Action 12, will certainly impact the Mexican tax authority administrative operation with respect to the control and supervision of the reportable schemes disclosed by taxpayers, ever since, every transaction that falls within the 'reportable scheme' criteria must be disclosed, despite the transaction's value. This results in the lack of a de-minimis filter, which is a key aspect of the Final Report of the OECD's BEPS Action 12.

16. Does the tax system broadly follow the OECD Model i.e. does it have taxation of: a) business profits, b) employment income and pensions, c) VAT (or other indirect tax), d) savings income and royalties, e) income from land, f) capital gains, g) stamp and/or capital duties? If so, what are the current rates and how are they applied?

In general terms, Mexican tax laws adhere to the recognized OECD Model, even to the extent that in some cases the content of local statutes is given by the OECD guidelines.

With respect to the taxes included in the Mexican taxation system, the following should be noted:

a) Taxation of business profits.

Legal entities deemed as Mexican tax residents are liable to income tax on a worldwide basis. That is, all income received by such entities could be subject to taxation in Mexico irrespective of their source. Since Mexican resident companies are liable for income tax in Mexico on a worldwide basis, income items recognized by them as business profits would need to be added to the rest of their accruable income for the current tax year for purposes of determining the corresponding taxable basis.

The current corporate tax rate is of 30 per cent.

In the case of non-tax residents that generate business profits in Mexico, the applicable tax treatment would vary depending on whether such income is attributable to a permanent establishment or else, considered as a Mexican-sourced income (that is not attributable to a permanent establishment, in the event that the relevant non-tax resident had one).

Non-tax residents with a permanent establishment would trigger income tax on business profits they derive (attributable to the permanent establishment) and income tax thereupon would be levied on a similar basis as if the relevant non-tax resident were a Mexican legal entity (subject to the corporate tax rate of 30 per cent).

Lastly, income tax on business profits obtained by a non-tax resident without a permanent establishment (or to which said income item cannot be attributed), would be triggered depending on the nature of the activities from which such income is derived. That is, whilst certain business profits could be considered not to be Mexican sourced (as such, not subject to income tax in Mexico), other income items that fall under the characterization of business profits could indeed be subject to taxation.

With respect to the double taxation agreements entered by Mexico, it is worth noting that an ample debate exists on which type of business profits (income items) can be characterized as business profits in terms of article 7 of the Model Tax Convention (and the respective DTAs).

b) Taxation of employment and pensions.

In accordance with the Income Tax Law, employers are required to withhold income tax due over the salary or wages of their employees. The applicable withholding rate varies depending on the relevant employee's income, ranging from 0 (minimum wage) up to 35 per cent.

In general terms, social security pensions and state workers' social security pensions are not subject to taxation.

In cases where a non-tax resident receives a salary or wage as consideration for subordinate personal services, the source of income would be deemed to be located in Mexico when the non-tax resident's services are rendered within national territory. Should this be the case, depending on the amount of the remuneration, the non-tax resident could be exempted (for the first $125,900 Mexican pesos perceived during the corresponding calendar year), or subject to a tax rate of 15 per cent (when the remuneration is somewhere in between $125,900 and $1'000,000 Mexican pesos) or a tax rate of 30 per cent (when the remuneration exceeds the amount of $1'000,000 Mexican pesos). Concerning pensions received by non-tax residents, their source of income would be deemed to be located in Mexico whenever the party that makes the corresponding payments is a Mexican resident for tax purposes or a non-tax resident with a permanent establishment in Mexico, or whenever the contributions to the relevant pension are linked to a subordinate personal service rendered by the non-tax resident within national territory. Income tax due would be calculated based on the same parameter as in the case of salaries or wages perceived by non-tax residents.

It should be noted that aside from income tax, employers could be subject to the local tax on payrolls. Depending on the relevant state, the corresponding tax rate could range from an approximate of 2 to 4 per cent.

c) Value added tax.

Both individuals and legal entities that, within national territory, sell goods, render independent services, lease goods or import goods or services, could be subject to value added tax in Mexico. The general tax rate is 16 per cent.

Nonetheless, depending on the nature of the goods or services that are being sold, rendered or imported, the relevant operation could be exempted from value added tax or subject to a 0 per cent tax rate. Moreover, it should be noted that the exportation of goods or services are subject to a 0 per cent tax rate in terms of the Value Added Tax Law.

It is important to distinguish value added tax-exempt activities and those subject to the cero per cent tax rate, since only value added tax on the latter activities could eventually be credited by taxpayers.

d) Taxation of savings income and royalties.

Income received by Mexican individuals by means of savings funds could be exempted from income tax insofar as they meet the requirements set forth by the Income Tax Law in order to be deemed as deductible.

Additionally, interests paid by financial institutions or cooperatives over checking accounts, accounts for the deposit of pensions, retirement, or savings could be exempted from income tax provided that the average daily balance of the investment does not exceed an amount equivalent to five minimal wages to the year (approximately $175,505 Mexican pesos).

In cases where the aforesaid conditions are not met, the Mexican individual would be required to pay income tax at the corresponding tax rate (ranging from 1.92 to 35 per cent).

Royalties paid to Mexican legal entities do not have a special treatment, thus the general 30 percent income tax rate is applicable. Concerning royalty payments made to a non-tax resident, the applicable tax rate could range from 5 to 35 per cent, depending on the concept for which royalties are being paid.

e) Taxation on income from land.

Two local taxes should be considered on this subject. Depending on the state, the acquisition of land could trigger taxation. The applicable tax rates could range from an approximate of 1 to 6 percent. Additionally, land could be subject to a state property tax. It is worth mentioning that both taxes should be paid to the corresponding local treasuries instead of the Tax Administration Service.

On a federal level, income perceived by taxpayers as consequence of the exploitation of land could trigger income tax. It is worth mentioning that the transfer of land is generally considered as exempted from value added tax.

In cases where non-tax residents receive any income from alienation of land located in Mexico, said income will be subject to taxation at a rate of 25 per cent over the gross amount of the corresponding consideration.

However, provided that certain requirements are met, non-tax residents could opt to calculate income tax at a rate of 35 per cent on the gain obtained.

f) Taxation of capital gains.

Generally speaking, Mexican tax residents are required to pay income tax on a worldwide basis. In this sense, capital gains shall be added to their taxable income for the relevant fiscal year.

Income resulting from the sale of shares issued by a Mexican resident company could be subject to taxation at a rate of 25 per cent over the gross amount of the corresponding consideration, when in the hands of a non-tax resident seller.

Nonetheless, provided that certain requirements are met, non-tax residents could opt to calculate income tax at a rate of 35 per cent on the given capital gain (with the possibility to deduct the cost of the shares).

It is important to point out that for the latter alternative to be available, non-tax residents are required to appoint a legal representative in the country who will be in charge of complying with several obligations, such as remitting the corresponding tax.

Furthermore, more beneficial tax treatments could be achieved by means of double taxation agreements, provided that certain formal requirements are met.

Additionally, the disposal of stock listed in the Mexican Stock Exchange, as well as other recognized markets, could be subject to a 10 per cent tax rate.

g) Stamp and/or capital duties.

The Mexican tax system does not include any stamp or capital duties.

17. Is business tax levied on, broadly, the revenue profits of a business computed in accordance with accounting principles?

Yes, the standards that regulate accounting in Mexico are based on generally accepted accounting principles as contained in the Mexican Financial Reporting Standards (MFRS) issued by the Mexican Financial Reporting Standards Board (CINIF); in the accounting criteria prescribed by the National Banking and Securities Commission of Mexico (CNBV) applicable to the financial sector; and the International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board (IASB) which are observed by public companies.

Mexican resident legal entities are subject to income tax on a worldwide basis.

Unless otherwise provided by the applicable laws, and depending on the activity that triggers income tax, income could be considered to have been received by a resident-taxpayer (and should therefore be taxable) when the corresponding invoice is issued, when the good or service is materially delivered or rendered, respectively, or when the consideration is paid or is entirely or partially due and payable. However, it should be noted that income tax is generally paid by means of an annual tax return.

In general terms, the taxable basis on which a Mexican resident legal entity is required to pay is determined as follows: the entity's profits are reduced with the corresponding fiscal year's authorized deductions and the workers' participation in the entity's profits. Additionally, net operation losses from past fiscal years could be reduced.

Although legal entities are usually required to pay income tax by means of an annual tax return, monthly estimated provisional tax returns (whose amount is determined considering the past fiscal year's results) shall be filed.

Concerning non-tax residents, taxes due on income that has its source of wealth within Mexico are generally withheld by the person making the corresponding payment.

18. Are common business vehicles such as companies, partnerships and trusts recognised as taxable entities or are they tax transparent?

Pursuant article 7 of the Income Tax Law, the concept of legal entity comprises, amongst other, business corporations or companies, decentralized agencies whenever they primarily carry out business activities, financial institutions, partnerships and joint ventures.

Nevertheless, different tax treatments could be applicable depending on the nature of the relevant legal entity. Although tax transparency is not recognized with respect to Mexican entities or vehicles, certain types of trusts could be subject to a pass-through treatment as if they were fiscally transparent. That is, tax consequences arising from income derived by such trusts would be triggered at the level of its beneficiaries. Said vehicles are commonly used due to the versatility they offer. For instance, they are incorporated by means of an agreement or contract and can adopt a wide range of corporate purposes.

Furthermore, they tend to be considered as attractive vehicles to channel foreign investment in the country since they allow for tax consequences to be triggered at the level of the beneficiaries (for instance, treaty benefits could be claimed by the beneficiary participating in the vehicle).

Notwithstanding the foregoing, as a result of the 2020 tax reform, foreign transparent entities and foreign vehicles (e.g. joint ventures, partnerships) that lack an inherent legal personality, are deemed as separate entities, and thus, subject to taxation in Mexico when they obtain Mexican sourced income. It is important to highlight that these entities also could be treated as Mexican residents, if their business is primarily managed in national territory. However, no specific test is set forth for these cases.

This could lead to a scenario where Mexican residents (legal or natural persons) will be taxable on income generated through foreign legal entities or investment vehicles. Nonetheless, there are legal cases pending to be resolved by the Mexican tribunals in which such approach is disputed.

19. Is liability to business taxation based on tax residence or registration? If so, what are the tests?

The Mexican income tax system is mainly built around the concepts of residence and source. To this regard, Mexican resident legal entities are required to pay income tax on a worldwide basis and non-tax residents could be required to pay income tax on all income attributable to permanent establishments located in Mexico, or on Mexican-sourced income.

Nonetheless, particular attention should be paid to the sanctions related to the reportable schemes' regime provided in the Federal Tax Code, given that one of the cases to consider a scheme as reportable, is one that in any manner avoids the constitution of a permanent establishment in Mexico. Although, no particular test for this criterion has been yet established.

20. Are there any favourable taxation regimes for particular areas (e.g. enterprise zones) or sectors (e.g. financial services)?

On December 31, 2018, a decree approving a number of tax incentives was published establishing benefits related to value added tax and income tax to certain taxpayers located in the northern border region. Such tax incentives were initially applicable only in specific municipalities of the states of Baja California, Sonora, Chihuahua, Coahuila, Nuevo León and Tamaulipas.

In terms of the aforementioned decree taxpayers located in the referred northern region were eligible to apply for a reduced value added tax rate of 8% and for an income tax credit equivalent to one third of the tax due in the year, provided that certain requirements were met.

As of January 2021, the benefits of the decree were extended to taxpayers located in the southern border of the country in certain municipalities of Quintana Roo, Chiapas, Campeche and Tabasco. These benefits will be applicable until December 2024.

In addition, Mexican tax laws establish a favorable tax regime related to financial institutions. Interest payments deriving from loans between said institutions could be exempted from value added tax. Moreover, financial institutions could be subject to reduced income tax rates.

Also, some incentives are granted to national cinematographic and theatrical productions, as well as for innovation (CONACYT), real estate investment trusts ("FIBRAs") and on investments in risk capital and on the Maquila industry (IMMEX Program).

21. Are there any special tax regimes for intellectual property, such as patent box?

No special tax regimes concerning intellectual property are considered by Mexican tax laws.

22. Is fiscal consolidation permitted? Are groups of companies recognised for tax purposes and, if so, are there any jurisdictional limitations on

what can constitute a tax group? Is there a group contribution system or can losses otherwise be relieved across group companies?

As of January 1, 2014, an optional regime for groups of companies was incorporated to the Income Tax Law. This regime is composed of two types of companies: an integrating company and the integrated companies.

In general terms, this optional regime enables the integrating company to determine income tax due by the group on a consolidated basis and to defer a portion thereof for up to three fiscal years.

It should be noted that for a legal entity to be eligible as an integrating company, the following conditions shall be met: (i) it shall be a Mexican tax resident; (ii) it must hold more than 80 per cent of the integrated companies' voting shares (even if said shares are indirectly held by the integrating company by means of another integrated company of the group); (iii) no more than 80 per cent of the integrating company's voting shares shall be held by one or more companies, unless they are tax residents of a jurisdiction with which Mexico has concluded a tax information exchange agreement.

On the other hand, more than 80 per cent of the voting shares of a corporation shall be directly or indirectly (or both) held by an integrating company for the first to be eligible as an integrated company.

However, this regime does not include all types of entities, i.e.: (a) non-profit legal entities; (b) legal entities that are part of the Mexican financial system, (c) non-tax residents even in cases where they have a permanent establishment in Mexico (d) maquila companies, etc.

23. Are there any withholding taxes?

Under certain circumstances taxpayers can be subject to income and value added tax withholdings. For instance, the Income Tax Law provides that employers shall withhold income taxes due on their employees' wage. Additionally, income tax due by a non-tax resident that carried out a transaction with a Mexican tax resident is often required to be withheld by the latter.

Taxation of digital services platforms (e.g. transport services via smartphone; delivery food, or digital sales), both an income tax and a value-added tax withholding with a variable rate has been established in respect of individuals who render such services or sell goods online.

Also, residents and nonresident intermediaries without a permanent establishment in Mexico, who manage and control digital platforms are now obliged inter alia to: register before the tax authority as a withholding agent, pay the withheld tax to the Mexican tax authority, and provide Value Added Tax information (known as DIOT in Mexico), in respect of their transactions involving a natural person using the digital platform.

Regarding Value Added Tax, the following parties could be required to withhold taxes due: (i) financial institutions that receive payments in kind or obtain goods by judicial or fiduciary allocation or awarding; (ii) legal entities that: (a) receive personal independent services from or use goods leased to them by individuals; (b) acquire industrial waste used as consumables for their activities; (c) receive transportation services from individuals or other legal entities; (d) receive services from commission agents that are individuals; (iii) individuals or legal entities that acquire, temporarily use, sell or lease to non-tax residents without permanent establishments, tangible assets.

24. Are there any environmental taxes payable by businesses?

No environmental taxes are recognized at a federal level under the applicable Mexican tax laws. However, businesses could be required to pay for specific carbon credits or certificates depending on the number of tons of carbon dioxide produced by them.

Furthermore, taxpayers that have invested on renewable energy projects could be entitled to accelerated depreciation related thereto.

Although there are no specific environmental taxes at a federal level, certain taxes contained in specific tax laws are aimed at inhibiting the production, commercialization, and import of certain goods such as fossil fuels and some pesticides; these activities are taxed under the Special Tax on Products and Services.

On the other hand, at the local level the following taxes may be mentioned:

a) An environmental tax on the extraction, exploitation and/or use of stone materials is regulated in the states of Baja California, Coahuila and Nuevo León.

b) An environmental remediation tax on the extraction of soil and subsoil is regulated in the states of Campeche, Oaxaca, Querétaro and Quintana Roo.

c) An environmental tax for the emission of atmosphere polluting gases is regulated in the states of State of

Mexico, Guanajuato, Nuevo León, Querétaro, Tamaulipas, Yucatan and Zacatecas.

d) An environmental tax for the emission of pollutants into water, soil and/or subsoil is regulated in the states of Guanajuato, Nuevo León, and Yucatán.

e) An environmental tax for the deposit or storage of special management residuals or dangerous residuals is regulated in the states of Guanajuato, Querétaro and Zacatecas.

25. Is dividend income received from resident and/or non-resident companies taxable?

Dividends paid by Mexican tax resident legal entities are not subject to further taxation when they are paid out of the after-tax earnings and profits account ("CUFIN"), since such income would have already been subject to taxation. If that were not the case, the entity paying dividends would be required to pay corporate tax on such untaxed profits at the moment of the distribution.

Regardless of the abovementioned corporate tax, dividends paid to non-tax residents, whether individuals or legal entities, as well as to Mexican resident individuals, would be subject to an additional 10 per cent withholding tax. Profits distributed by a non-tax resident's permanent establishment set up within Mexico to its parent company could be deemed as dividend income and as such, the 10 per cent withholding tax could also be triggered.

In addition, it needs to be noted that the Mexican Income Tax Law provides two approaches to foreign tax credit for dividends: a direct foreign tax credit, and an indirect one. The first one could be denied by the tax authority whether the income tax is creditable in another State, unless that such credit derives from a foreign indirect credit or is also deemed as a taxable income in that other State. The Income Tax Law prevents residents in Mexico to apply the indirect foreign tax credit for dividends if the taxpayer resident in another State (nonresident in Mexico) has a right to deduce the paid dividends in such other State.

Nonetheless, it should be noted that relief in the form of reduced withholding rates could be provided by double taxation agreements (insofar as certain requirements are met).

26. What are the advantages and disadvantages offered by your jurisdiction to an international group seeking to relocate activities?

The World Economic Outlook of the International Monetary Fund has positioned Mexico on its April 2021 report, as the fifteenth largest economy worldwide by gross domestic product (GDP).[1] Despite the adverse effects of the Covid-19 Pandemic, the World Economic Outlook projected the highest GDP growth for Mexico in 2021 amongst regional neighbors.[2] The World Bank's Doing Business 2020 ranked Mexico as the regional leader (Latin America and the Caribbean) on the ease of doing business score.[3]

Mexico is a member of the OECD since 1994 and has a wide treaty network including double tax conventions with over seventy-five jurisdictions, being also part to the Convention on Mutual Administrative Assistance in Tax Matters, and the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, also known as the Multilateral Instrument (MLI).

Mexico has an open economy that guarantees access to the most important international markets through an extensive network of free trade agreements including the Global Agreement with the European Union and the US-Mexico-Canada Agreement (USMCA), which allows for beneficial cross-border trade.

Mexico is an attractive destination for investment considering the advantages of its strategic geographical location, the size and strength of its internal market, its production capacity, as well as the constant development of the services and infrastructure necessary to participate actively in international markets.

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