



## **Tax and Legal Services**

Tax Controversy Flash 2/2019

January 8, 2019

# Inequality of treatment vis-a-vis the maquiladoras as per the decree to grant tax benefits at the northern border region

On December 31st, 2018, the Decree to Grant Tax Benefits at the Northern Border Region was published in the Federal Official Gazette. This Decree is applicable to Mexican residents and foreign residents with a permanent establishment in Mexico who pay taxes in accordance with Title II (Entities); Title IV (Individuals), i.e. Chapter II, Section I (Individuals with business activities) and Title VII, i.e. Chapter VIII (Optional Revenue Accrual for Entities) of the Federal Income Tax Law, provided these

taxpayers earn their revenues exclusively derived from the northern border region.

One of the benefit consists of applying a credit equal to 1/3 of the income tax due, against income tax due in the same fiscal year or in that fiscal year's advanced payments, and in the same proportion the northern border region revenue has to the overall revenue to be accrued by the taxpayer in that fiscal year or the period pertaining to the advanced payments.

In that regards, Section VII of the Sixth Article of said Decree states that the abovementioned benefit will NOT be applicable to taxpayers who determine their taxable basis under Articles 181 & 182 of the Federal Income Tax Law, i.e. maquiladoras who wish to relieve their foreign principal of a permanent establishment in Mexico, derived from the maquiladora activities.

We believe this limitation to be in breach of the maquiladoras' constitutional rights as taxpayers, as provided for in our Federal Constitution,

thus creating the opportunity to challenge said limitation via an Amparo (Constitutional Challenge), to allow maquiladoras to apply this income tax benefit.

The Constitutional challenge must be submitted before a District Judge no later than February 14th, 2019.

We remain at your service should you wish us to elaborate on this or to support you in submitting said constitutional challenge. We, therefore, include the contacts of our professionals so that you may reach out to us at your earliest convenience.

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### Contact:

#### **Mauricio Martínez de Meza**

[maumartinez@deloittemx.com](mailto:maumartinez@deloittemx.com)

Phone: +52 (55) 5080 7040

#### **Raciel Flores Talavera**

[raflores@deloittemx.com](mailto:raflores@deloittemx.com)

Phone: +52 (33) 3819 0520

#### **Hugo Romero Cervantes**

[hromero@deloittemx.com](mailto:hromero@deloittemx.com)

Phone: +52 (55) 5080 6331

#### **Carlos Alberto Ramirez Larsen**

[cramirezlarsen@deloittemx.com](mailto:cramirezlarsen@deloittemx.com)

Phone: +52 (81) 8133 7423

#### **Ricardo Santoyo Reyes**

[risantoyo@deloittemx.com](mailto:risantoyo@deloittemx.com)

Phone: +52 (55) 5080 7041

#### **Eduardo Revilla**

[erevilla@deloittemx.com](mailto:erevilla@deloittemx.com)

Phone: +52 (55) 5080 6081

#### **Jorge Jiménez**

[jorjimenez@deloittemx.com](mailto:jorjimenez@deloittemx.com)

Phone: +52 (55) 5080 6600

#### **Martha Dorantes**

[mdorantes@deloittemx.com](mailto:mdorantes@deloittemx.com)

Phone: +52 (55) 5080 6425

#### **Hernaldo Vega**

[hevega@deloittemx.com](mailto:hevega@deloittemx.com)

Phone: +52 (55) 5080 6258

#### **Abel Camacho Brito**

[acamachobrito@deloittemx.com](mailto:acamachobrito@deloittemx.com)

Phone: +52 (442) 238 2936

[www.deloitte.com/mx](http://www.deloitte.com/mx)

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**Aguascalientes**

Universidad 1001, piso 12-1  
Bosques del Prado  
20127 Aguascalientes, Ags.  
Phone: +52 (449) 910 8600  
Fax: +52 (449) 910 8601

**Cancún**

Avenida Bonampak SM 6, M 1, lote 1,  
piso 10, 77500 Cancún, Q. Roo  
Phone: +52 (998) 872 9230  
Fax: +52 (998) 892 3677

**Chihuahua**

Av. Valle Escondido 5500  
Fracc. Des. El Saucito E-2, piso 1,  
31125 Chihuahua, Chih.  
Phone: +52 (614) 180 1100  
Fax: +52 (614) 180 1110

**Ciudad Juárez**

Baudelio Pelayo No. 8450  
Parque Industrial Antonio J. Bermúdez  
32400 Ciudad Juárez, Chih.  
Phone: +52 (656) 688 6500  
Fax: +52 (656) 688 6536

**Culiacán**

Insurgentes 847 Sur, Local 103  
Colonia Centro Sinaloa  
80128 Culiacán, Sin.  
Phone: +52 (33) 1454 2000

**Guadalajara**

Avenida López Mateos Norte 2405, piso 29  
Colonia Italia Providencia  
44648 Guadalajara, Jal.  
Phone: +52 (33) 3669 0404  
Fax: +52 (33) 3669 0469

**Hermosillo**

Blvd. Eusebio Francisco Kino No. 315  
Piso 8, Suite 804, Colonia Lomas del Pitic  
83010 Hermosillo, Son.  
Phone: +52 (662) 109 1400  
Fax: +52 (662) 109 1414

**León**

Paseo de los Insurgentes 303, piso 1  
Colonia Los Paraísos  
37320 León, Gto.  
Phone: +52 (477) 214 1400  
Fax: +52 (477) 214 1405 y 1407

**Mérida**

Calle 56 B 485 Prol. Montejo Piso 2  
Colonia Itzimna  
97100 Mérida, Yuc.  
Phone: +52 (999) 913 4032  
Fax: +52 (999) 913 4052

**Mexicali**

Calzada Francisco López Montejano 1342  
Piso 7 Torre Sur  
Fracc. Esteban Cantú  
21320 Mexicali, B.C.  
Phone: +52 (686) 905 5200  
Fax: +52 (686) 905 5231 y 5232

**Ciudad de México**

Paseo de la Reforma 505, piso 28  
Colonia Cuauhtémoc  
06500 México, D.F.  
Phone: +52 (55) 5080 6000

**Monclova**

Blvd. Ejército Nacional 505  
Colonia Los Pinos  
25720 Monclova, Coah.  
Phone: +52 (866) 190 9550  
Fax: +52 (866) 190 9553

**Monterrey**

Av. Juárez 1102, piso 40  
Centro  
64000 Monterrey, N.L.  
Phone: +52 (81) 8133 7300

**Monterrey - La Rioja**

Carr. Nacional 85, 5000, local S-6  
Colonia La Rioja  
64988, Monterrey, N.L.  
Phone: +52 (81) 8155 5757  
Fax: +52 (81) 8155 5758

**Puebla**

Edificio Deloitte, Vía Atlixcayotl 5506, piso 5 Zona  
Angelópolis  
72190 Puebla, Pue.  
Phone: +52 (222) 303 1000  
Fax: +52 (222) 303 1001

**Querétaro**

Avenida Tecnológico 100-901  
Colonia San Ángel  
76030 Querétaro, Qro.  
Phone: +52 (442) 238 2900  
Fax: +52 (442) 238 2975 y 2968

**Reynosa**

Carr. Monterrey-Reynosa 210-B, PA  
Fracc. Portal San Miguel  
88730 Reynosa, Tamps.  
Phone: + 52 (899) 921 2460  
Fax: +52 (899) 921 2462

**San Luis Potosí**

Av. Salvador Nava Martínez 3125, 3-A  
Fracc. Colinas del Parque  
78294 San Luis Potosí, S.L.P.  
Phone: +52 (444) 102 5300  
Fax: +52 (444) 102 5301

**Tijuana**

Misión de San Javier 10643, Piso 8  
Zona Urbana Río Tijuana.  
Tijuana B.C., 22010  
Phone: +52 (664) 622 7878  
Fax: +52 (664) 681 7813

**Torreón**

Independencia 1819-B Oriente  
Colonia San Isidro  
27100 Torreón, Coah.  
Phone: +52 (871) 747 4400  
Fax: +52 (871) 747 4409



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