



## Capital repatriation and immediate depreciation decrees

On 18 January 2017, it was published in the Federal Official Gazette a decree that grants several administrative facilities for income tax purposes relating to deposits or investments received in Mexico and the decree that provides a tax incentive for immediate depreciation of new fixed assets by micro and small companies; the most relevant aspects of these two decrees are mentioned below.

### **Decree that grants several administrative facilities for income tax purposes relating to deposits or investments received in Mexico**

- This decree enters into force on 19 January 2017 and will remain in force for the six months following this date.
- It is applicable to individuals and entities resident in Mexico, as well as nonresidents with a permanent establishment in Mexico, who have earned income from direct and indirect investments that remained abroad until up to 31 December 2016.
- Indirect investments are defined for purposes of the decree as those carried out through legal acts or entities abroad in which the taxpayer directly or indirectly participates in accordance

to the proportion that may correspond to such participation, as well as those carried out through legal acts or entities considered transparent for tax purposes, in terms of the Mexican Income Tax Law.

- The tax will be calculated by applying an 8% rate, without deduction, to the total amount of the investments repatriated to Mexico that had been, direct or indirectly, remained abroad before 1 January 2017.
- The applicable exchange rate would be the one of the day on which the

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payment of the abovementioned tax is made.

- Foreign tax paid as a result income from investments remained abroad before 1 January 2017 may be credited against the 8% tax paid on the repatriation of these investments, but the credit is limited to the latter.
- The tax resulting from the credit mentioned above has to be paid within the fifteen calendar days following the date on which the investments are repatriated to Mexico.
- If the income tax associated to investments remained abroad has already been paid in Mexico, it is no longer necessary to repatriate them, but supporting documentation of the payment would be required. If the income tax has not been paid at the time, the taxpayer will be able to choose to pay the tax in the terms of this decree.
- In the event that a legal means of defense has been filed, taxpayer shall desist from it in order to apply for the decree.
- This decree does not apply to income derived from an illegal activity.
- This decree does not apply to income that has been deducted by a resident or a nonresident with permanent establishment in Mexico.
- Only income and investments that return to Mexico during the six months following 19 January 2017 and that are invested during 2017 and remain invested in Mexico for at least two years from the date on which they are repatriated are eligible. It will be considered that the requirement of two years of permanence of the investments is fulfilled, when the taxpayers have invested the resources on the following:

01. Acquisition of fixed assets that are deductible for income tax purposes and that are used by taxpayers for the performance of their activities in Mexico, without being able to sell them within a period of two years as of the date of its

acquisition.

02. Acquisition of land and buildings located in Mexico that are used by taxpayers to carry out their activities, without being able to sell them in a period of two years as of the date of acquisition.
03. In research and development of technology that consists of investments directed to the development of products, materials or production processes.
04. The payment of liabilities that have been contracted with independent parties prior to the entry into force of this decree, provided that the payment is made through credit institutions or brokerage houses constituted under Mexican law. Also, the payment of taxes, social security contributions, assessments, government fees and administrative payments to the Mexican government, as well as the payment of salaries and wages derived from the provision of a subordinate personal service in Mexico are included.
05. Investments in Mexico through credit institutions or brokerage houses, constituted according to Mexican laws.

- Taxpayers must prove that the investments increased the amount of their total investments Mexico, which should not be reduced for a period of two years.
- The repatriation of investments must be made through operations carried out between credit institutions or brokerage houses incorporated in Mexico and entities incorporated abroad that provide financial services, for which the foreign sender of the such investments must match with the beneficiary of the resources in Mexico or when they are related parties in terms of the Mexican tax legislation.
- The CUFIN balance may be increased with the taxable profit determined by the repatriated investments, diminished by the tax paid on such repatriation.

- The taxable profit determined by the repatriated investments must be considered to determine the taxable profit for purposes of PTU.
- Tax obligations related to income and investments repatriated into Mexico will be considered complied as long as the requirements of this decree have been fulfilled. The tax paid is understood to be covered for the fiscal year in which the payment is made and for the previous fiscal years. The investments that are repatriated to Mexico will not be considered for tax discrepancy. The benefits established in this decree will not be considered as taxable income for the purposes of income tax and its application will not give rise to any refund or offset.
- Mexican tax authorities may issue general rules necessary for the proper and correct application of this decree.

### Decree that grants an immediate depreciation of new fixed assets for micro and small business

- This decree enters into force on 19 January 2017.
- Applicable to taxpayers whose taxable income in the previous fiscal year was 100,000,000 MXN or less (special rule for those who started activities in 2017, which they would be able to apply benefit based in estimation of income).
- Consists of an immediate depreciation of new fixed assets in the year in which they were acquired, applying the percentages established in the decree itself, for example, for 2017, from a 63% rate for supply pumps of fuel to trains and up to 96% rate for the machinery for assembly and transformation of magnetic components for hard disks and electronic cards for the computer industry; and by 2018, from a 43% rate and up to 92% rate, respectively.
- The option cannot be exercised in the case of office furniture and equipment, cars and armor equipment, or any fixed assets that cannot be individually identified, or in the case of airplanes

other than those used for agricultural fumigations.

- For purposes of the monthly advanced income tax payments corresponding to fiscal years 2017 and 2018, the amount of immediate depreciation taken in the same year may be reduced from the tax basis for the same period, starting from the month in which the investment is made, in a cumulative manner, without being able to recalculate the coefficient of profit.
- On the other hand, for purposes of monthly advanced income tax payments for fiscal year 2019, taxpayers should calculate the coefficient of profit by adding the taxable profit or reducing the tax loss corresponding to 2018, as the case may be, to the amount of immediate depreciation taken in the fiscal year 2018 in accordance with this decree.
- Taxpayers should consider gain obtained by the transfer of the fixed assets, the total income received from the transfer.
- Finally, when the assets are sold, lost or no longer useful, an extra deduction updated by inflation can be made, applying the corresponding percentages in accordance with the number of years elapsed since the immediate depreciation and the percentage of immediate deduction applied to the asset in question, according to the tables established in the decree itself for the immediate depreciation taken in 2017 and 2018.

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