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Tax Flash 31

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Background

On September 8 the Mexican President, through the Ministry of Finance and Public Credit, presented to the Chamber of Deputies the Economic Package for the Tax Year 2016, which contains the following:

- General Criteria of Economic Policy
- Initiative of the Federal Revenues Law
- Initiative of Amendments to the Income Tax Law
- Initiative of Amendments to the Federal Fees Law
- Initiative of Amendments to Federal Tax Code
- Initiative of Amendments to the Excise Tax Law
- Federal spending Budget Project.

Here are some proposals which we consider to be of general interest

Macroeconomic Framework	**2015**	**2016**
Growth % real	2.0 – 2.8	2.6 – 3.6
Inflation %	3.0	3.0
Exchange rate	15.6	15.9
Interest rate %	3.1	4.0
Current account %	-2.5	-2.6
Tax deficit %	-1.0	-0.5
Oil (dlls./barrel)	50.0	50.0

Federal Revenues Law

- The same rates of surcharges, tax incentives and exemptions will continue. What is new is that it is included the mining sector in the stimulus that allows to credit the tax excise incurred by the sale of diesel, as well as the tourism sector that uses diesel for passenger transport; also, it is proposed that the tourism sector can credit 50% of the payment for services for the use of toll road infrastructure.

- For purposes of withholding for interest paid to resident individuals in Mexico, withholding would be calculated by applying the 0.53% annual rate on the amount of capital.

Income tax

Overview

- Limitations for the deduction of interest on capital taken on loan when the taxpayer in turn grants loans to third parties, would not apply for multiple purpose regulated financial entities.

- Regarding the payments which, in turn, are income from taxpayers in the regime of agricultural, livestock, forestry and fisheries activities, these will be only deducted when they have been effectively disbursed in the year in question

- Regarding the deduction of social prevision granted to non-union workers, the requirement of generality to be in arithmetic average in an amount equal to or less than the unionized workers would be eliminated.

- It is eliminated the limitation of ten general minimum wages per year for the amount of the deduction of benefits of social prevision, which was contemplated for non-unionized workers.

- For purposes of the non-deductible interest for concept of thin capitalization, the debts contracted for the construction, operation or maintenance of production infrastructure for the generation of electric power, will not be included within debts that accrue interest held by the taxpayer for the calculation of the amount in excess to the triple of the stockholders' equity.

- It is added the requirement to consider them coordinated companies whose members perform activities of trucking cargo or passengers **exclusively**, provided that not predominantly provide their services to another company resident in the country or abroad, which is considered related party. Also, are considered taxpayers engaged **exclusively** to the activity of trucking terrestrial cargo or passengers, those whose revenue from such activities represent at least 90% of total revenues, excluding revenues by the disposals of fixed assets and land, owned by them that had been subject to their activity.

- Regarding the exemption that companies who are engaged to perform exclusively activities of agriculture, livestock, forestry or fishery activities, which in its entirety should not exceed 200 times the minimum wage converted to the year, it is established that this limitation shall not be applicable to rural properties and communities; this provision would be applicable from 1 January 2014, so the rural properties and communities, that would have paid income tax for the fiscal year 2014, may apply this exemption without the designated limit, and in case of obtaining a favorable balance, it may be offset, in no case this benefit results in a cash refund.

  Also, in the case of the exemption that have the individuals and corporations that are engaged in such activities whose revenue in the year exceed 20 or 40 times the minimum daily wage converted annually, respectively, such exemption is amended to reverse the order of these revenues, since they would be 40 times the wage for individuals and 20 for companies.

  On the other hand, individuals who obtain revenue by such activities will not pay income tax up to an amount, in the fiscal year of 1 general minimum daily wage converted annually, provided that such revenue represents at least 25% of total revenues for the year, excluding revenues from the sale of fixed assets or fixed assets and land owned by them, that had been used in the aforementioned activities, and also their total revenue in the year do not exceed 4 times the general minimum wage converted annually; This provision would be applicable from 1 January 2014, so taxpayers, who would have paid income tax for the fiscal year 2014, may apply this exemption, and in case of obtaining balance in favor, it may be offset, in no case this benefit results in a cash refund.

- Taxpayers who held operations with related parties resident in Mexico or abroad, besides obtaining and keeping the supporting documentation that demonstrate that market values were held and it had submitted the informative return on its tax situation for being in the obligation due to revenue, having placed shares in the public investor, being integrator or integrated, entity state-owned or having a permanent establishment in the country, according to the corresponding precept, they shall provide to the tax authorities on December 31 of the year following the fiscal year in question at the latest, the following informative annual returns from related parties: master related parties informative return of the multinational business group, local related informative return and informative return country-by-country of the multinational business group; with information that establishes the new provision.

  By transitional provision it is established that new related parties informative returns mentioned in the preceding paragraph, corresponding to the fiscal year 2016, must be submitted at the latest on 31 December 2017.

  In this respect, is considered infringement penalized by a fine ranging from $140,540.00 to $200,090.00 mexican pesos not to provide the information of such returns, or submit it incomplete, with errors, inconsistencies or other than stated in the tax provisions.

  Other penalty established for breach of these new returns on transfer pricing, is that taxpayers who had the obligation to file and the term to be presented has expired and was not filed, these taxpayers, in no case may

contract acquisitions, leases, services or public works with the Federal Public Administration, Centralized and State-owned, as well as the Attorney General's Office.

- It is added a provision that allows the companies exclusively engaged in the generation of energy from renewable sources or cogeneration systems of efficient electricity, whose revenue from such activities represent at least 90% of total revenues, excluding revenues from the sale of fixed assets or fixed assets and land, owned by them, that had been used in their activity, in the period they apply the deduction for depreciation at 100% of machinery and equipment, to create an taxable income account for Investment in Renewable Energy, which would be calculated on the same terms as the Net Taxable Income Account (CUFIN).

  It is considered taxable income on investment in renewable energies of the year, the amount obtained from subtracting the income tax from the tax result of the same period, both determined in accordance with a certain procedure, and the non-deductible items.

  It will not be subject to the payment of income tax the dividends or earnings that are distributed from the taxable income account for investment in renewable energies, except for the final additional 10% withholding Income Tax.

  By transitory provision it is stated that the taxable income account for investment in renewable energy, will be updated as the same as CUFIN, and for purposes of the first update shall be regarded as the month in which the latest update was carried out, the month in which that account is comprised.

- In the case of the Fiscal Regime of Incorporation for individuals, it is added that taxpayers may apply provisions of that Regime, when they also obtain income for wages and interest, provided that the total revenue obtained in the period immediately preceding by the above-mentioned activities, as a whole, do not exceed two million pesos.

- Regarding the individuals personal deductions limitation, the lowest of 4 minimum wages converted annually or 10% of the total revenue, is excluded from such limitation the deposits, payments or acquisitions in personal savings accounts, payments of premiums of insurance contracts or acquisitions of shares in investment funds respectively, and to the retirement complementary contributions carried out directly in the subaccount of retirement complementary contributions under the terms of the Retirement Savings System Law or the accounts of personal retirement plans, as well as voluntary contributions.

- In the case of FIBRAS (Trusts Engaged in the Acquisition or Construction of Real Estate) and the incentive to promote investment in venture capital of the country, is added to the requirement that the trust must be a credit institution resident in Mexico authorized to act as such in the country, it also be a brokerage houses resident in Mexico authorized to act as such in the country.

  In the case of the incentive to promote investment in venture capital of the country, it is eliminated the requirement that the trust that is comprised for such purposes will have a maximum duration of 10 years.

  In the case of the incentive to promote investment in venture capital in the country, it is stated through transitory provision, that taxpayers who had deducted the amount from the deposits, payments, or acquisitions, in the accounts, premiums or shares, respectively, in their annual return during 2014 or 2015, must consider as taxable revenue in the return corresponding to the calendar years in which they are received or withdrawn from their special personal account for savings, the contract of insurance in question or the company or mutual fund from which the shares had been acquired, those amounts which had been considered as deductible in terms of the aforementioned Law during the years 2014 and 2015, at the time of the deposit, payment, or corresponding acquisition.

- By a transitory provision it is stated that the rate of 4.9% will continue for the interest paid to foreign banks, provided that the beneficial owner of that interest is a resident in a country with which Mexico has a treaty to

avoid double taxation and that the requirements provided for in this treaty are fulfilled to apply the rates that are expected for this kind of interest.

Tax deconsolidation

- Taxpayers who calculated their deferred tax in terms of the Income Tax Law or rules in force on 31 December 2013, through an amendment return for the year 2013, as well as for those who applied the schedule procedure established in that law, may choose to apply a credit against 50% of deferred income tax determined by the concept of tax losses that on the occasion of the deconsolidation is pending of payment as of 1 January 2016, which shall be determined by multiplying the 0.15 factor by the amount of the updated individual tax losses from previous years of the companies which had had the status of controlled or the Holding, which have been considered in the determination of income tax by deconsolidation and that as of 1 January 2016 the company which generated those losses has them pending of decrease, provided that:

  1. The holding keeps in the controlled concerned a consolidating equity equal or higher than it had at the time of the deconsolidation
  2. The tax loss is considered in the same consolidating equity that was used at the time of the deconsolidation.
  3. The losses for sale of capital stock are not considered for this credit.
  4. Tax losses are not deducted from the tax earnings of 2016 and subsequent years by any taxpayer, whether he generated them or are transferred by spinoff or another legal act.
  5. The 50% remnants of deferred income tax must be continued to be paid according to the table of payments which had chosen the corporation that had the capacity of Holding.
  6. The Holding company files a notice using the official form published by the Tax Administration System.
  7. The Holding company or any company had paid deferred Income tax for tax losses derived from mergers, spinoffs or liquidation of corporations.
  8. As of 1 January 2016, the ex-holding and ex-controlled corporations are up-to-date with tax obligations and as tax withholder.
  9. During a mandatory period of five years, corporations which integrated the consolidation group as of 31 December 2013, collaborate on a quarterly basis with authority, by participating in the verification program in real time that has implemented the General Administration of Large Taxpayers of the Tax Administration System.
  10. Do not participate in the Optional Regime for Groups of Corporations.
  11. Withdraw any means of defense interposed against the amendments on tax consolidation.
  12. The Holding company in the determination of deferred tax of the tax years from 2008 to 2013, has considered the amount of losses on sale of capital stock issued by its controlled companies that have been decreased in the determination of its result or tax loss consolidated corresponding to the same years, or either corrects its tax situation for the non-payment of deferred income tax for such losses in the terms that are discussed later.
  13. The Holding company and those that have had the capacity of controlled for which were considered their tax losses to determine the 50% credit of the deferred income tax, submit supplemental annual return for the year 2015, on which decrease the balance of tax loss carryforwards from prior years pending of apply with the amount of losses that were used to determine the credit; Likewise, the Holding company must cancel in its accounting books the deferred Income Tax from tax losses used to pay it.

- Corporations which had the status of Holding, that had deducted losses for the sale of capital stock of their controlled corporations, in the determination of the consolidated result or tax loss from any of the tax years from 2008 to 2013, and that they had not considered these losses in the determination of deferred income tax for deconsolidation, may choose to pay the deferred tax liabilities to correct this situation, in 10 annual installments under the scheme stated in the transitory provision (from 31 March 2016 - 3 annuities-; and from the fourth to the tenth from 31 March 2017, and up to 31 March 2023), with update and surcharges.

  Those corporations that are paying the taxes corresponding to the deferred Income Tax for these losses, with respect to the outstanding balance as of 1 January 2016, may choose to pay in equal installments according to the dates specified in the referenced scheme of payments.

Differences in tax liabilities should be shown in the amendment tax return of the corresponding year, which must be filled at the latest on March 2016.

It is established that the implementation of this scheme of payments will depend on the fact that the corporation that had the Holding status had correctly determined the average cost per share in accordance with the Income Tax Law in force until 31 December 2013. Alternatively, if it did not do so, it should correct its tax situation before applying this payment scheme and desist of any means of defense filed against the amendments on tax consolidation.

Finally, in case the corporation that had the Holding status decreases the loss for the sale of capital stock in any period subsequent to 2015, it should liquidate all of the unpaid deferred tax on the date that the corporation has the obligation to make the subsequent immediate partial payment.

- It is noted that corporations which had the Holding status may credit Income Tax they have incurred on the occasion of the deconsolidation from 1 January 2014, on dividends or earnings in cash or goods, that corporations that consolidated had paid each other, and that have not come from CUFIN or CUFINRE, against the deferred tax incurred by this same concept that is unpaid as of 1 January 2016, and up to the amount of the latter. Such crediting shall not give rise to any refund or compensation, by being subject to the corporation receiving the dividend or earning does not increase its CUFIN with the amount of such dividends or earnings, and the one that had the controlling capacity do not increase the balance of the consolidated net taxable profits account incurred as of 31 December 2013.

- Finally, it is established that the provisions in the previous topics of this section of deconsolidation, shall apply to those taxpayers that are still consolidating in accordance with the rules provided until 2013 for being within the mandatory regime of five years, for which the unpaid deferred Income Tax shall be considered on the occasion of the deconsolidation as of 1 January of the immediate year subsequent to that in which they should consolidate. Also, the tax losses will be pending to decrease at the same date.

Repatriation of capital

The individuals and corporations resident in Mexico and foreign residents with PE in the country who have obtained revenues from direct and indirect investments, which have remained abroad until 31 December 2014, may choose to pay taxes they are obliged to in accordance to the provisions of the Income Tax Law. Only the revenues and investments held abroad that return to the country, will fall within the benefit, provided they fulfill, among other requirements with the following.

1. Revenues from investments held abroad for which may exercise the option provided for, are the taxable in terms of the Income Tax Law, except those that correspond to concepts that have been deducted by a resident in national territory or a resident abroad with a permanent establishment in the country.
2. Income tax is paid within the 15 days following to the repatriation date, updated.
3. They will not pay the fines and surcharges and may make take a foreign Income tax credit for taxes paid abroad.
4. When investments constitute concepts for which Income Tax should had been paid, the payment of tax is proved.
5. The return on investment and revenues should be within a period not exceeding six months from January 1st 2016 and invest during 2016 in fixed assets without being able to dispose over a period of three years from the date of acquisition; in research and development; and for the payment of liabilities that have been contracted with independent parties. The return must be made through transactions made with credit institutions or brokerage houses in the country
6. No tax authorities' inspection are commenced or have not filed a defense motion, except if they desist, for revenues and investments repatriated.
7. They will consider as fulfilled the formal obligations for such revenue.
8. They shall calculate taxable income corresponding to the total amount of funds repatriated, which will decrease with the Income Tax paid. The result will be added to the balance of the CUFIN.
9. This income will be considered to determine the employees profit sharing ("PTU")

10. The resources that return to national territory will not be considered for purposes of the tax discrepancy of individuals (expenses higher than the income reported in the year in which they return).

Definitive 10% of Income Tax on distributed dividends

- Tax credit is granted to individual taxpayers, residents in Mexico, equivalent to the amount resulting from applying the corresponding percentage according to the year of distribution under the table provided in the precept, to the dividends or earnings distributed, generated in 2014, 2015 and 2016, while they are reinvested by the corporate that generated them, which is creditable only against Income Tax that must be withheld for the same purpose, and shall not be considered taxable income.

  This benefit will apply only if the dividends or earnings are distributed and reinvested by corporates whose shares are placed in stock markets in terms of the Securities Exchange Act and also meet the ID requirements and submit information to the SAT.

  The percentage of the incentive in 2017 will be 1% on the dividend distributed; 2% for 2018; and 5% 2019 onwards.

Immediate deduction

It would apply to taxpayers with revenues reported in the immediately preceding year up to 50 million Mexican pesos and for those taxpayers who initiate activities and estimate they are going to obtain those revenues; for those who make investments in the construction and expansion of transport infrastructure, such as road , roads and bridges; and for those who make investments in activities provided in the Hydrocarbon Law, as they are: treatment, refining, sale, marketing, transport and storage of oil; processing, compression, liquefaction, decompression and regasification, as well as transport, storage, distribution, marketing and sale to the public of natural Gas; transport, storage, distribution, marketing and sale to the public of oil-bearing; and pipeline transport and storage of petrochemicals that is connected to ductwork; and equipment for the generation, transmission, distribution and supply of energy.

- The incentive consists on making the immediate deduction of new fixed assets, by deducting in the year in which they are acquired, the amount resulting from applying to the original amount of investment the percentages established in the table for 2016 and 2017, that are very similar to those established in the LISR in force until 2013 and decrease significantly for 2017; the portion not deducted would be deductible under two other tables, depending on the type of taxpayer, similar to that provided until 2013, when the assets are sold or ceased to be useful.

- Taxpayers may apply immediate deduction for investments made between 1 September and 31 December 2015, under the terms provided for the year 2016, when submitting the annual return for fiscal year 2015.

- For purposes of the estimated payments of 2018, taxpayers who apply immediate deduction in 2017, must calculate their coefficient of profit, adding to the taxable profit or reducing the tax loss of 2017, as applicable, with the amount of the deduction.

Federal Tax Code (CFF)

- It is incorporated to the CFF an article on the implementation of the Common Standard Report, referred to in the recommendation adopted by the OECD Council on July 15, 2014, so that financial institutions report information in accordance with the referred Standard.

- To these effects the CFF states that corporations and legal figures, which are financial institutions and resident in Mexico or resident abroad with a branch in Mexico, according to the Standard for the Automatic Exchange of Information on Financial Accounts on Tax Matters, referred to in the recommendation adopted by the Organization for Economic Co-operation and Development Council on 15 July 2014, as published after the

adoption of the recommendation or the latest update, shall be required to effectively implement and comply with that Standard, therefore, they will be subject to what is stated in this new provision on existing and new accounts, for identification procedures, the special register, reportable accounts of high and low value, to the dates for their report and infringements established for it, in the CFF.

Excise Tax

- It is proposed that in 2016 the maximum prices of gasoline and diesel can begin to fluctuate in a manner consistent with their international reference; for this, a tax scheme of fixed fee tax would be adopted for automotive fuels. With this in mind, tax will no longer be tied to performance and costs of PEMEX as it does at present. However, as part of the transition process it is proposed to establish a band for fluctuations in prices during 2016 and 2017, so that the movements of fuels upward and downward are stated. And in 2018 as foreseen in the energetic reform, the automotive fuels market will be an open market with free determination of prices.

  It is amended the tax for gasoline and diesel, and tax on non-fossil fuels is established and a transitory is stated for alienation of gasoline and diesel made prior to 1 January 2016, to be collected subsequently, for them apply rates and regulations in force until 31 December 2015.

- The export of foods with a high caloric density is considered as taxable at the rate of 0%, in order to be able to credit the tax that has been transferred to them

Federal Fees

- It is established the payment of fees for licensees and permit holders of bands of radio spectrum frequencies in the megahertz range indicated in the table provided in that provision and for the fees described thereof.

  It also stipulates that the licensees and permit holders of bands of radio spectrum frequencies in the megahertz range frequencies indicated in the table Range of frequencies in megahertz provided in that provision, will pay annually the fee of use, enjoyment or exploitation of frequency bands of the radio spectrum, for each region in which they operate and for each kilohertz granted or licensed, according to the fees and coverages indicated in the table, as appropriate; entering into force by transitory provision from 1 January 2018.

As soon as we have news of the legislative progress of this initiative we will make it known.

If you want to be kept up to date you can consult our tax flashes of the day and previous days, as well as the latest and historical tax news, on our Deloitte Widget.

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