



## Approval in plenary session of the Senate to the economic package and miscellaneous tax rules for the 2017 fiscal year

The rulings were approved in the same terms as approved by the House of Representatives, which comprehend the following:

- General Criteria for Economic Policy
- Federal Revenue Law
- Amendments to the Income Tax Law
- Amendments to the Value Added Tax Law
- Amendments to the Federal Fiscal Code

- Amendments to the Federal Fees Law
- Amendments to the Hydrocarbons Revenue Law
- Amendments to the Federal Tax on New Cars Law

Of particular importance there are three reforms: one to the Income Tax Law and two to the Value Added Tax Law related to the outsourcing of employees and to the credit or refund requests of the value added tax paid for expenses

and investments in preoperating periods.

In this sense, the first one will establish that the outsourcing payments will be deductible, provided that the contracting party obtains from the contractor a copy of the electronic invoices for the payment of wages to the contractors' workers who provided the subcontracted service, the corresponding receipts,

return of the income tax withholdings made to these workers and social security contributions payment to relevant authorities.

The second relates to the credit of value added tax related to outsourcing of employees in terms of the Federal Labor Law, which will proceed when the contracting party obtains from the contractor a copy of the corresponding return and acknowledgment of receipt of the tax payment, as well as of the information reported to the Mexican tax authorities on the payment of said tax.

In the case of outsourcing operations, the contractor must also inform the Mexican tax authorities of the amount of value added tax that was specifically transferred to each of its customers, as well as the amount paid in the respective monthly return.

The third relates to the credit of value added tax for expenses and investments made in the preoperating period until the activities that lead to the payment of the same are carried out; or the option to request the refund of the corresponding tax in the month following in which the expenses or investments are made, the last in accordance with the estimate made of the proportion in which these expenses and investments will be allocated to the performance of activities subject to value added tax or the 0% rate, in relation to the total of activities to be carried out, jointly filed with the first return certain documentation.

The preoperating period will have a maximum duration of one year, starting from the first value added tax refund application, unless the interested party proves to the tax authority that its preoperating period will have a longer duration according to the prospectus or investment project whose implementation would give place to the carry out of activities taxed by the law. In the event that the taxable activities do not start after

a year has elapsed, the amount of the refunds that have been obtained, adjusted per inflation and surcharges, would have to be reimbursed.

For both options, in the twelve-month period, starting from the month immediately following in which the activities were initiated, the new proportion corresponding to the twelve months prior to that month must be calculated and compared against the proportion applied to credit the value added tax, and if the proportion is modified by more than 3%, the credit must be adjusted. If the proportion decreases, the credit adjusted per inflation must be reimbursed, and if it increases the credit adjusted per inflation may be increased.

Following are other reforms approved by the Senate that we consider to be of general interest:

### Macroeconomic Framework

	2016	2017
<b>GDP real % of growth</b>	2.0 - 2.6	2.0 - 3.0
<b>Inflation %</b>	3.2	3.0
<b>Exchange rate</b>	18.3	18.62
<b>Interest rate %</b>	4.5	5.3
<b>Current account %</b>	-3.2	-3.0
<b>Tax deficit %</b>	-0.4	0.1
<b>Oil (dollars/barrel)</b>	36.0	42.0

### Federal Revenue Law

- Current surcharges rates and incentives will continue.
- Purchase of biodiesel and its mixtures would be added as an excise tax incentive, always that the beneficiary obtains the corresponding

electronic invoice ("CFDI") in which it is stated the proportion of biodiesel, in case of mixtures, and the number of importation customs declaration, as well as copy of such customs declaration from the supplier is obtained.

- Annual income tax withholding rate for interests paid to individual Mexican residents is 0.58% over the principal amount.
- Through transitory provisions, it is established that the Energy Regulatory Commission, with the opinion of the Federal Antitrust Commission, would issue the agreements or set the timetable for 2017 and 2018 in which gas and diesel prices are to be set at market value. In the regions within the country, during which such prices are not determined at market value, the tax authorities will establish the maximum prices to general public and will let them know no later than December 31, 2016.

In transitory provisions, it is established that the tax authorities will publish within 90 days after January 1, 2017 the rules on the delivery of the carbon bonds and the determination of their value, which will serve as means of payment of the excise tax on production and services applicable to fossil fuels.

These rules must anticipate that the bonds of projects in Mexico guaranteed by the United Nations under the Kyoto Protocol, or the instrument that replaces it under the Paris agreement, will also be accepted as a means of payment.

### Income Tax Law

#### Legal entities

### Non-taxable income

- Income derived from economic or cash support received by taxpayers through the programs foreseen in the Federal or State expense budgets, subject to certain requirements and always that expenses or costs made with such support are not deductible, would be considered non-taxable income.
- Considerations in kind paid to contractors in license and share productions contracts according to the Hydrocarbons Revenue Law, to the extent that for the calculation of their income tax the cost of goods value of such consideration is not considered as deductible, when they are sold or transferred, would be considered non-taxable income. The income obtained by the disposal of the goods received as consideration would be taxable.

### Authorized deductions

- In relation to the requirement that the deductions have actually been incurred during the year, it will be incorporated to this requirement those payments which in turn are income of the taxpayers referred in the new chapter of fiscal incentives related to the option of accumulation in the time in which they are effectively received.
- In the case of vehicles powered by rechargeable electric batteries, as well as electric cars that also have an internal combustion motor or with hydrogen driven engine, payments made for their temporary use or enjoyment will be deductible up to an amount not exceeding \$ 285.00 MXN per day per car.

### Deductions on investments

- 7% depreciation rate of machinery and equipment used in the processing of crude oil and natural gas would be eliminated.
- 25% depreciation rate for conventional bicycles, bicycles and motorcycles whose propulsion is through rechargeable electric batteries would be added.
- 10% depreciation rate of machinery and equipment used in fixed infrastructure for the transportation, storage and processing of hydrocarbons, in rigs or ships for drilling wells, and ships for processing and storage of hydrocarbons, would be added.

A limit of \$250,000.00 MXN would be added for investments made in automobiles propelled by rechargeable electric batteries, as well as electric cars that also have an internal combustion engine or a motor driven by hydrogen.

### Individuals

#### Income not subject to taxation

- It would not be considered as taxable income those that are economic or cash support that are earned by taxpayers through the programs foreseen in the Federal or State expense budgets. In case resources are assigned to business activities, the programs would need to have a beneficiaries' registry and comply with certain requirements. Expenses and costs that are carried out with such supports that are not considered income would not be deductible for income tax purposes.

### Personal deductions

- Personal deduction regarding payments for professional services in psychology and nutrition rendered by persons with a professional title issued and registered by the competent educational authorities would be added.
- In the case of complementary and willing contributions for retirement plans, it would be added in the case of personal retirement plans that are hired in a collective manner, that each individual that forms such plan is identified, besides the fact of complying with the requirements established by the tax authorities. In these cases, each individual would be subject to the 10% income or minimum five salaries threshold.

### New Tax Incentives

#### Accruable income option for legal entities

- Legal entities that are incorporated only by individuals and that are taxed in terms of the Title II [Legal Entities] of the Law, which total income earned in the previous fiscal year have not exceeded \$5,000,000 MXN are entitled to this benefit, not being able to opt for this benefit:
  - i) legal entities with one or various partners that participate in other legal entities in which they have control or administration, or when they are related parties; ii) those that carry out activities through a trust or an "Asociación en Participación" ("A en P"); iii) those subject to the Integration Regime; iv) legal entities whose partners are shareholders of other legal entities that have paid income tax according to the

provisions of this incentive; and v) those that stop applying this incentive.

- The incentive would consist on considering the income taxable at the time it is effectively received, including advances or deposits, and they would be considered effectively received when the interest of the creditor is satisfied through any form of extinguishing obligations. Also, special rules would be established to tax income derived from forgiveness of debt or prescription of debt.

In the case of exported goods, if the income is not received within the following twelve months to which the exportation was carried out, the income would become taxable.

Taxpayers who opt to apply this incentive, regarding deductions, instead of applying the cost of goods sold, they will deduct the acquisition of merchandise used to render services, manufacture goods or to sell them, less any return, discount or bonus, with the requirements that they have been effectively paid in the fiscal year, as well as other requirements established by Law.

In the case of investments, they would be deducted in the fiscal year in which their use starts or the following one, even when in such fiscal year, the original amount of the investment has not been fully paid.

On the other hand, there would not be any obligation to calculate adjustment per inflation.

There would be an obligation to file monthly estimated

income tax payments.

- In the case of dividends distributed to their individual shareholders, the legal entities would have to withhold 10% over such dividends.
- Through a transitory provision, it would be established that taxpayers who are taxed in terms of Title II of the Law, would be able to opt for this incentive, as long as they comply with the stated requirements and submit a notice before tax authorities no later than January 31, 2017 stating that they would exercise this option.

In addition, they should not consider as taxable income in 2017, that income considered taxable in 2016. In the case of deductions taken in 2016, they would not to be taken again in 2017.

Also, they must continue applying the maximum depreciation rates for the deduction of investments that correspond for the period of time that has already elapsed, in regards to the investments carried out until December 31, 2016.

In the case of inventory of goods as of December 31, 2016, it would be able to be deducted according to the cost of goods rules, applying the "PEPS" method (first entries, first exits).

### **Research and development of technology**

- The research and development of technology tax incentive which was in force until 2009 is reincorporated. Taxpayers who carried out research and development of technology would be granted with a tax

credit equivalent to 30% of costs and investments incurred in the fiscal year related with the research or development of technology to apply against the income tax of the year in which such credit is determined. The amount of the tax credit would not be taxable.

Unlike the tax incentive in effect until 2009, this credit would only apply on the incremental expenses and investments made in the year compared to the average of those expenses and investments made in the previous three fiscal years.

The total amount of the tax incentive to be distributed among all the applicants to the incentive would not exceed 1.500 million pesos for each fiscal year or 50 million pesos per taxpayer.

In addition, taxpayers must comply with certain requirements to apply for such incentive such as submitting before the tax authorities an informative return providing the detail of the expenses and investments made in research and development of technology, which must be validated by a certified public accountant, having a computer system whereby the tax authorities are provided with the information related to the application of the resources on an ongoing basis, among others.

This tax incentive would not be applicable with any other tax incentive.

### **Supply equipment for electric vehicles**

- This incentive would consist on applying a 30% tax credit of the amount invested in supply of equipment for

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electric vehicles during a specific fiscal year against income tax payable for the year in which the credit is determined, as long as such equipment is connected and fixed in public areas. The credit would not be taxable.

### Value Added Tax Law

#### Export of services subject to the rate of 0%

- In the case of services rendered by residents in Mexico that yield benefits abroad, it would be added to the services subject to the 0% VAT rate the information technology services, such as:

Development, integration, processing, storage, maintenance, backups, database management, application hosting, update and optimization of security systems, and continuity in the operation of the previous services, among others, provided that the requirements and rules established by the tax authorities are complied with.

The information technology services indicated would not be considered exported when such services are rendered through private virtual networks and when the services rendered, apply to assets located Mexico.

### Federal Tax Code

#### Electronic invoices

- A rule would be added that states that a CFDI would only be canceled when the person to whom it is issued accepts its cancellation. In this case, the tax authorities would establish a set of rules with the approved forms and means in which such acceptance would be granted.

A transitory provision would establish that this change is to become effective as from May 1, 2017.

#### Electronic reviews

- The procedure for the preliminary resolution and analysis of the evidence provided by the taxpayer within 10 days following the 15 days in which the taxpayer provided information and documentation to challenge the irregularities and payment of contributions set forth in that resolution is substantially modified. In this case, the tax authority will have a maximum period of 40 days to notify the decision based on the information and documentation that is counted in the record. The calculation of this term would start from deadlines established in the regulation itself.
- The tax authorities should conclude the procedure for the electronic review within a maximum period of six months from the notification of the preliminary resolution, except in reviews regarding customs duties, in which a case the period shall not exceed two years. The before mentioned periods will be suspended in the cases specified in the Federal Fiscal Code.

#### Penalties

- A penalty of \$140,540.00 MXN to \$200,090.00 MXN would apply to those donees that do not assign all of its patrimony to other institutions authorized to receive deductible donations.
- Those donees that do not provide the information of goods assigned to other institutions authorized to

receive deductible donations would be subject to a penalty of \$80,000.00 MXN to \$100,000.00 MXN.

- A penalty of \$1.00 MXN to \$5.00 MXN per CFDI would apply for invoices containing information that does not meet the technological specifications determined by the tax authorities.
- In the event that donees do not maintain available to the general public the information regarding its authorization and, use or destination given to the donations received, as well as the compliance with its tax obligations, they will become be subject to a penalty of \$80, 000.00 MXN to \$100,000.00 MXN and the cancellation of the authorization to receive deductible donations.

### Hydrocarbons Revenue Law

- Changes to the profit sharing agreements, the adjustment mechanism and the determination of supporting documentation related to expenses would be established.

Through a transitory provision, it is stated that the transitory regime will continue to apply for the maximum amount of deduction for costs, expenses and investments during fiscal years 2017 and 2018.

- The definition of "adjustment mechanism" is adapted to allow the Mexican State to capture the extraordinary profit, by modifying the applicable rate on the value of hydrocarbons or, if more efficient, the final amount of the resulting consideration.

In order to determine the deduction of expenses in consortia for tax purposes, instead of distributing expenses in the participation stated in the agreement, the operator must issue an electronic invoice to the members for the amount that has effectively covered each member. The operator only deducts the percentage of the total of the CFDI that corresponds to the expenses that have actually been covered.

### Federal Tax on New Cars

- This tax will not be applicable on the sale or final importation of automobiles whose propulsion is through rechargeable electric batteries, as well as of electric cars that also have an internal combustion engine or a motor driven by hydrogen.

### Federal Fee Law

In relation to transfer pricing, the following fees would be applied:

- For the study and processing of each request regarding prices or amounts of considerations between related parties, the fee of \$ 216,308.51MXN.
- For each review of the annual report on the implementation of previous resolutions, the fee of \$43,261.70 MXN.

The decrees of these laws and their reforms were turned over to the Federal Executive for publication in the Official Gazette of the Federation and will come into effect as of January 1, 2017, except for those in which a specific date is established.

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