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## Long-awaited proposed rules and criteria issued on the Mexican Hydrocarbon Fiscal Regime under Round One

The Tax Administration Service (SAT) unveiled a proposal of the so-called Fourth Resolution on Amendments to the Omnibus Tax Rulings in force and annexes 3 and 7.

Said proposal relates to various tax concerns deriving from the Hydrocarbons Revenue Law (LISH).

Below we summarize the main topics:

### **Commencement of deduction of investments**

For purposes of determining income tax of contractors and assignees, it is established that in the case the taxpayer commences the deduction of investments after the exercise in which they are carried out, the exercise in which begins the use of the property or after the following year, the taxpayer will forfeit the right to deduct the amounts corresponding to the elapsed years since he could make the deduction, and until he commences such deduction calculated by applying the percent established by the Hydrocarbons Revenue Law and not the maximum percent authorized by the same Law.

### **Determination of the VAT by members of consortia**

The Digital Tax Invoices (CFDI) issued by the operator of the consortium in favor of each of the members of the said consortium in order to cover the costs, expenses and investments shall incorporate an "addenda".

This will serve to document on an individual basis the proportion of VAT and shall contain the information referred to in the respective rule, among other, contract number which the expense is linked to; the total amount of costs, expenses, and investments made and that are covered in the CFDI issued to the operator of the consortium; and indicate whether the expenditure made by the operator is a cost, expense or investment

### **Tax loss corresponding to activities in deep waters**

A rule is added that states that when a taxpayer conducts activities in regions of sea water with a draught greater than 500 meters and in regions other than such regions, he shall determine the result or the tax loss of activities in regions of sea water with a draught greater than 500 meters, separated

from the result or the tax loss corresponding to the activities in zones other than such regions.

In the event that the taxpayer has accrued revenues or authorized deductions corresponding indistinctly to activities in the marine regions with a draught greater than 500 meters and in regions other to those regions, to determine the result or fiscal loss in these regions, an apportionment will be held under the terms provided in the own rule provided compliance with the requirements established thereof.

It should be remembered that the loss determined by activities in regions of sea water with draught greater than 500 meters, may be reduced from the taxable income of the fifteen following exercises until it is used up; while fiscal loss corresponding to the activities in regions other than such regions, may be reduced in terms of the Income Tax Law in the following ten years.

#### **Tax invoices for considerations received by consortia**

A rule is incorporated that establishes that the CFDI issued by the members of the consortium to the operator, when they choose the considerations to be delivered to the operator so he distribute them among the members of the consortium in the respective proportions, shall incorporate the "Addenda" the SAT publishes on its website, which shall contain **among other**, information the contract number from which is derived the respective consideration and reference that the CFDI is linked to the CFDI issued by the operator of the consortium to the FMP (Mexican Oil Fund) due to the considerations which would have received on behalf of the consortium.

#### **Deductibility of provisions or reserves of abandonment**

The new rule states that are not to be considered as non-deductible for the purposes of the income tax, the contributions made to the trust of abandonment referred to in paragraph 18 of the guidelines for the preparation and presentation of the costs, expenses, and investments; the procurement of goods and services in the contracts and assignments; accounting and financial verification of the contracts, and the updating of royalties in contracts and the right of extraction of hydrocarbons, published in the Official Gazette by the Ministry of Finance

and Public Credit (SHCP), provided that, **among other**, the requirements established in the same rule are complied with, as in the in case of remaining resources these are transferred to the FMP.

#### **"Same Project" definition**

For purposes of computing the period in which the resident abroad have a permanent establishment when performing activities in national territory or in the exclusive economic zone over which Mexico is entitled, which adds together more than 30 days in any period of 12 months, considering within the computation the activities carried out by the related party of the resident abroad provided that the activities are identical or similar, or are part of the **same project**, a rule is added that establishes that it is understood that the activities carried out by a related party abroad are part of the same project, covered by the same contract for the exploration and extraction of hydrocarbons.

#### **Hydrocarbons Revenue Law (LISH) Criterion**

Is added the 2/LISH/NV criterion on the "Permanent establishment for purposes of the LISH. Exploration and extraction of hydrocarbons", so it is considered an incorrect tax practice, those who consider that the obligation to create a permanent establishment only refers to activities of contractors or assignees under the hydrocarbons law.

#### **Normative criteria of the LISH**

Normative criteria is disclosed on the LISH covering the following topics:

- Returns, discounts and bonuses for periods prior to 1 January 2015.
- Compensations in favor of the contractors in the contracts of exploration and extraction of hydrocarbons. Moment of accrual for Income tax purposes.
- Percentage of deduction for contractors and assignees. Its application is not an option.
- Percentage of deduction for contractors and assignees. They are not applicable for other taxpayers.

- Necessary expenditures for the exploration, extraction, transportation or delivery of hydrocarbons. They are costs and expenses deductible for the determination of the right by the shared profit.
- Exploration of hydrocarbons law. Deductibility for the determination of the basis of the right by the shared profit.
- Thin capitalization. An exception is applicable only for the assignees and contractors referred to in the Hydrocarbons Law.
- Permanent establishment for purposes of the activities referred to in Hydrocarbons Law.
- Recording of accounting operations of assignees and contractors. The national currency or the recording should be used

If you want to consult the whole content of this Project published in the SAT webpage click:

[http://www.sat.gob.mx/informacion\\_fiscal/normatividad/Paginas/modificaciones.aspx](http://www.sat.gob.mx/informacion_fiscal/normatividad/Paginas/modificaciones.aspx)

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