GARRIGUES
Commentary

Tax - Mexico

1-2015
September

Tax matters of the Economic Reform Package

The Mexican Executive submitted a Tax Reform proposal to the Mexican Congress as part of the Economic Package for 2016. The proposal honors the promise of the Executive to not increase taxes during the rest of their term, and includes certain benefits, although it does increase the compliance burden for Mexican companies and it notably includes country-by-country reporting obligations for Mexican entities in line with BEPS.

The main reasons behind the proposed tax amendments include promoting investment in strategic sectors, addressing the private sector's requests for rules that allowed the immediate deduction of assets again, and fulfilling the commitments made within the framework of the OECD (BEPS). The main proposed tax amendments are highlighted bellow.

As for corporate income tax, we point out the proposition of temporally allowing the immediate deduction of investments – during 2016 and 2017, as well as through Q4 of 2015 – to taxpayers with taxable income under 50 million Mexican pesos, as well as for investments in transportation infrastructure (eg, highways, roads, and bridges) and equipment utilized in the energy sector. The immediate deduction of investments used to be allowed under the law in force until 31 December 2013.

Also being purposed is the introduction of new informative returns regarding related parties transactions within the framework of the country-by-country reporting. Said informative returns would include: (i) a master information return, (ii) a local related parties information return, and (iii) a country-by-country information return. Only business groups headquartered in Mexico will be obliged to file the aforesaid informative returns. The Mexican authorities intend to implement the main elements of the suggestions issued in this regard by the OECD to address Action 13 of the Base Erosion and Profit Shifting Action Plan (BEPS).

Particularly for the energy sector stands out the proposal to exclude for thin capitalization purposes debts acquired for investment in infrastructure used for the generation of electricity. Mexican thin capitalization rules foresee the non-deductibility of interest derived from debts with foreign related parties that exceed a 3:1 debt/equity ratio. An exemption currently exists for debts acquired for investment in strategic sectors, which is now intended to be extended to electricity generation as well.

Another benefit regarding the determination of the net after tax profit account (CUFIN for its acronym in Spanish) is being considered for enterprises engaged in the generation of energy obtained from renewable sources or in to the cogeneration of efficient electricity. Said benefit consists in the ability to calculate the CUFIN as if investments had been depreciated at a 5% per year as opposed to 100% in accordance with the immediate deduction of investments benefit. Under this new provision, the abovementioned companies would be able to obtain a larger surplus on their CUFIN balance; and, lastly, such entities will not be obliged to pay withholding tax on dividends (10%) for dividends distributed our of such CUFIN balance.

Moreover, the following tax amendments are also being proposed: (i) a tax benefit for individuals who decide to reinvest their profits obtained from publicly traded companies, consisting on a partial reduction on dividend withholding tax during 2017-2019; and, (ii) the implementation of a temporary tax benefits for the repatriation of undeclared investments held abroad.

Regarding the special tax levied upon production and services (IEPS, for its acronym in Spanish), a reduced rate of 0% applicable to the exportation of food products with high caloric density is being considered. If this amendment were to be approved, foodstuffs enterprises will be able to offset the amount of IEPS paid alongside the supply chain. It is worth mentioning that the foodstuffs industry has strongly expressed disagreement with the amendments to the IEPS Law introduced with the 2014 tax reform.

Finally, we must point out that the abovementioned tax amendments will be reviewed and voted by the Federal Congress; therefore some of them may be modified or even dismissed in the following months.

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