

Principal Changes to Tax Provisions for 2017

In the past several months¹ the changes to the tax laws approved by the Congress of the Union consisting of the 2017 economic package were published in the Official Federal Gazette. The changes include the amendment, repeal and addition of various provisions in the Income Tax Law, Value Added Tax Law, Federal Tax Code, Federal Tax on New Cars Law, Federal Fees Law, Hydrocarbons Revenue Law and 2017 Fiscal Year Federal Revenue Law.

Below you will find a brief explanation of those changes, the majority of which entered into force as of January 1, 2017.

The conclusions and opinions contained in this document are not binding on the tax authorities or the courts and should not be considered as a guarantee that they will agree with them.

Income Tax Law (ISR for its initials in Spanish)

Financial Support established in the budget

- The amounts received as financial support granted by governmental programs established in the Federal expense budget and in the State expense budgets will not be considered accruable income for purpose of the ISR.

In order to obtain the above mentioned benefit certain requirements must be met such as: (i) the programs have a registry of beneficiaries, (ii) the funds are distributed by electronic transfer, (iii) the beneficiaries comply with the specific rules of each program and (iv) having a favorable opinion of compliance with tax obligations issued by the Tax Administration Service (SAT).

Cash accrual option

- An accrual option is included for entities (whose shareholders are only individuals), with income no greater than 5 million pesos annually. The option consists of calculating the ISR by the cash based system and the simplification of the calculation of the tax substituting the deduction of the cost of sales with the deduction of fiscal year purchases.

This incentive may not be applied by entities: (i) when one or more of its partners or shareholders participates in other companies where they have corporate control or are related parties, (ii) that engage in activities through a trust or profit-sharing agreement, (iii) that pay tax in the optional regime for groups of companies, (iii) whose partners or shareholders have been from other persons who have applied the incentive.

¹ December 7th, and November 15th and 30th, 2016.

Persons that cease to apply the option must comply with the obligations contemplated in the general regime for entities beginning in the fiscal year after the one in which they cease to use the option or cease to meet the requirements.

No accrual of consideration in kind

- For purposes of the Hydrocarbons Revenue Law, a treatment is established of no accrual of consideration in kind received by contractors, and it is stipulated that although the consideration is non-accruable income, the subsequent sale of the good received as consideration is accruable income.

This treatment applies to the shared production and license contracts, provided certain requirements are met.

Tax exempt entities

- The list of activities that authorized donees can engage in is expanded and beginning in 2017 these activities include financial support to production projects of small agricultural producers and artisans located in less developed zones of the country and with income in the immediately prior year of up to 4 times the annual value of the Unit of Measurement and Adjustment.
- Furthermore, the income obtained for cost recovery fees from the 10% limit that authorized donees have to obtain income different from the purposes for which they were authorized is excluded.
- It is indicated that donees may choose to be subject to a process of certification of compliance with tax obligations, transparency and evaluation of social impact, done by specialized institutions that have SAT authorization. This is in order to improve the control mechanisms of donees and diminish response times with respect to requests for authorization as well as to give certainty to the donors regarding their donations to the donees.
- In addition, the obligation to have corporate governance as a requirement to obtain the authorization to receive deductible donations is included for those non-profit entities with annual income of more than 100 million pesos or with net worth of more than 500 million pesos. This measure will enter into force January 1, 2018.

Public agencies obligated to issue CFDI's

- The obligation is established for public agencies that by Law are obligated to deliver to the Federal Government the full amount of their operating surplus, that they issue digital tax receipts for contributions, products and charges they collect, as well as for the aid or incentives they grant and require them when they make payments to third parties.

Tax incentives

- A tax incentive is created equivalent to 30% of the amount of the investments taxpayers make in charging equipment for electric vehicles, provided such equipment is connected and permanently attached in a public place. This incentive will be in the form of a tax credit, will not be accruable and will apply against the ISR they owe in the fiscal year.

- A tax incentive is added equivalent to 30% of the expenses and investments made in technology research and development. It will be in the form of a tax credit, will not be accruable and will apply against the ISR caused in the fiscal year.

The total to distribute of the incentive mentioned in the above paragraph will not exceed 1,500 million pesos per fiscal year or 50 million pesos per taxpayer and the rules of application will be prepared by an inter-institutional committee.

- A tax incentive is incorporated for contributions to investment projects: (i) in highly specialized sports infrastructure and facilities, (ii) in programs for the performance, training and competition of Mexican high performing athletes and for (iii) operating and maintenance expenses of such sports facilities.

The incentives will be up to 10% of the ISR caused in the fiscal year, in the form of a tax credit which will not be accruable. The total amount budgeted of the incentive will not exceed 400 million pesos per fiscal year or 20 million pesos per taxpayer.

- Beginning in fiscal year 2011 an incentive for taxpayers of the ISR was included for contributions made to investment projects in national theatrical production. With the approved changes such incentive now will also apply to investment projects in visual arts, dance and music specifically in the fields of orchestra direction, instrumental and vocal performance of concert music and jazz.

The incentives consist of a tax credit applicable against the ISR of the fiscal year and provisional payments, which may not exceed 10% of the ISR (caused in the prior fiscal year) and with a limit of 2 million pesos per taxpayer.

- An annual 10% deduction applicable to investments in fixed infrastructure for transportation, storage and processing of hydrocarbons by taxpayers that are not contractors or assignees is added.

Documentation of operations with foreign related parties

It is also specified that the assignees and contractors referred to in the Hydrocarbons Revenue Law are obligated to obtain and preserve evidentiary documentation in relation to transfer pricing regardless of the level of income they obtain.

Deductions

Entities

- Entities may deduct 25% of the cost of conventional bicycles and bicycles and motorcycles whose propulsion is through rechargeable electric batteries.

A deduction is also permitted of up to \$285 pesos daily per automobile for the temporary use or enjoyment of electric or hybrid automobiles, and a deduction of up to \$250,000 pesos for the investment made in electric or hybrid vehicles.

- In the case of subcontracted services an additional requirement for the deductions is the obligation of the procuring entity to require from the contractor a copy of the tax receipts for payment of salaries, declaration and delivery of the tax withholdings made and of the payment of IMSS fees of the workers that have provided such services.

Individuals

- Individuals may deduct the expenses for fees derived from psychology and nutrition services. The deduction must consider the annual limits of the lesser amount between 5 general minimum wages elevated to a year or 15% of the total income of the taxpayer.

Collective retirement plans

- It is established that personal retirement plans can be deductible if contracted not only individually but also collectively. For this each of the persons belonging to the plan must be identified who will have the same cap on the personal deductions when filing their annual declaration.

Value Added Tax (VAT)

Pre-operative period

- With regard to activities for which VAT must be paid, carried out in the pre-operative period, the procedure is changed in relation to the crediting of the tax, establishing two options.

The first consists of permitting the crediting in the first declaration that is presented up to the moment the income is obtained.

The second option consists of requesting its refund complying with certain rules such as specifying at the time of making the request (i) the estimate and description of expenses to be made in the pre-operative period, (ii) estimate of the proportion that the taxed activities will represent of the total activities to carry out, (iii) financing mechanisms and (iv) the estimated date for carrying out activities subject to the VAT Law.

Labor subcontracting

- In the case of crediting VAT transferred for labor contracting services and in order for this to be valid, the procuring entity must obtain from the contractor a simple copy of the declaration and the receipt for the tax paid, as well as the information reported to the SAT on the payment of such tax.

Use or enjoyment of tangible goods granted by residents abroad

- The exemption from the payment of VAT is eliminated with respect to the use and enjoyment in the country of tangible goods, granted for residents abroad without a permanent establishment, when VAT would have been paid considering that there is an import of goods. It is also specified that the temporary use and enjoyment in the country of tangible goods previously delivered abroad will not be considered a taxed import provided the VAT is actually paid as a result of their introduction into the country, excluding the payment through the application of a tax liability. The taxable base will be the amount that would correspond to the use or enjoyment of goods in Mexican territory.

Use in the country of services provided abroad

- It is also clarified that when the service provided abroad by non-residents in Mexico are considered imported because of use in Mexico, the VAT is caused when the consideration is paid following the cash flow mechanism contemplated by the VAT Law.

Information technology services

- The providing of information technology services by residents in Mexico will be considered exported, applying the 0% rate, when they are considered used abroad. Such services include: (i) the development, integration and maintenance of software applications or computer systems, (ii) processing, storage, backup and management of databases, (iii) hosting of software applications, (iv) the modernization and optimization of information security systems and (v) the continuity in their operation.

The service companies must comply with (i) using technology infrastructure and human and material resources located entirely in Mexican territory, (ii) that the IP address of the electronic devices through which the services are provided and the internet provider are in the country and that the IP address of the receiver of the service and its provider are located abroad, (iii) indicating in the tax receipt the tax ID number of the resident abroad that contracted and paid the service and (iv) that the payment is made electronically and comes from accounts in financial institutions located abroad to accounts of the service provider in credit institutions in Mexico.

It is also indicated that such services are not considered exported when virtual private networks are used.

Federal Tax Code (CFF for its initials in Spanish)

Advanced electronic signature among private parties

- The electronic signature is generalized for use among private parties, when this is agreed to, for the authentication or signing of digital documents. In addition, it is established that the SAT may provide the service to verify and authenticate certificates used for signing digital documents.

Use of the tax inbox

- The government and the private sector are permitted to use the Tax Inbox to deposit information or documentation of interest to taxpayers, with their prior consent.

Obligation of legal representatives

- The obligation is established to register in the Federal Taxpayers Registry (RFC for its initials in Spanish) the legal representatives of entities and to obtain the advanced electronic signature certificate. Certifying public officials also must enter the RFC of the legal representatives in public instruments, or verify that such code appears in those documents.

Cancellation of Digital Tax Receipts by Internet (“CFDI’s”)

- The consent of the person in whose name a CFDI is issued will now be required for its cancellation. This requirement will enter into force on May 1, 2017, once SAT issues the respective general rules.

Electronic reviews

- The premise under which the amounts determined in pre-liquidation derived from electronic reviews can be enforced through the administrative enforcement procedure is eliminated, when the taxpayer does not offer evidence or make the corresponding manifestations, in which case the authority will issue a provisional ruling.

The form in which the 40-day term for issuing the final ruling in the electronic reviews will be calculated is specified and it is indicated that the notification of such final ruling may not exceed 6 months or two years in foreign trade matters.

Furthermore, the term for the electronic review will be suspended when a conclusive agreement proceeding is initiated and it is clarified that the time limits on the investigative powers of the tax authorities will be suspended with its processing.

Expiry

- As a result of the amendments to the VAT Law in relation to crediting in the pre-operative period, it is established that the term of five years for the expiry of the investigative powers of the tax authorities will run from the day following the date on which the month in which the taxpayer must make the adjustment of the credit applied in such period concludes.

Powers of investigation

- The basis is clarified for the tax authorities to exercise their investigative powers to verify compliance with customs regulations. For this purpose it is specified that the site inspection will be carried out following the procedure established in the CFF and in the Customs Law.

Violations

- Sanctions are added for authorized donees for (i) not complying with sending all the assets or donations, at the time of their liquidation, to other authorized entities, (ii) not providing information to the tax authorities regarding the destination of the assets, (iii) not complying with technological specifications of the CFDI's and (iv) not keeping available to the public in general the information related to the use and destination of the donations received.
- A sanction is established on taxpayers that do not send the digital tax receipts by internet with the technological specifications required by the SAT.

Federal Tax on New Cars Law (ISAN for its initials in Spanish)

- The ISAN Law includes the exemption from the tax in the sale and definitive import of electric and hybrid cars established previously in the Federal Revenue Law for Fiscal Year 2016.

Federal Fees Law (LFD for its initials in Spanish)

- Adjustments are made to the amounts charged for services provided by various agencies of the Federal Government in relation to immigration, radio, television and cinematography, consular matters, finance, agriculture and aquiculture health, telecommunications, public education, health and use and enjoyment of real estate, among others.

Rulings on transfer pricing

- Regarding rulings on transfer pricing the following is worth mentioning: (i) the considerable increase in the fees for the services consisting of the study and processing of rulings on prices or amounts of consideration between related parties (from \$12,633.43 to \$216,308.51), and (ii) the increase in the fee for the review of the annual report on the application of such rulings (from \$2,526.55 to \$43,261.70).

Use or enjoyment of real estate

- The regulatory framework is updated for providing services and for the use or enjoyment of Federal public property standardizing certain charges and concepts of the LFD with those contained in other provisions in order to ensure legal certainty.

An example of the above is the substitution of the reference to the National Property Appraisals Commission with the Institute of Administration and Appraisals of National Property, and the elimination from the LFD of the fee for the use and enjoyment of properties (for the installation of telecommunications infrastructure), so that such Institute is the one that establishes the applicable charge.

Consular services

- In consular matters certain exemptions are added for the payment of fees in the case of: (i) certification of documents for Mexicans abroad when the purpose is to obtain the voting card, as well as for the (ii) processing of voting cards abroad.

A reduction of fifty percent is also included on the amount Mexicans pay who wish to execute a will in a consular office.

Hydrocarbons Revenue Law (LISH for its initials in Spanish)

Fee to pay for shared profit

- The LISH incorporates the power granted to assignees, under the mode of shared profit, to deduct in a more flexible form the expenditures made. This is in order to make the calculation of the fee they must pay for the profit they obtain.

For these purposes the maximum amounts for costs, expenses and investments that can be deducted are increased and adjusted.

Adjustment mechanisms

- The definition of the adjustment mechanism is changed based on the fact that it is not necessary in all contracts to adjust the consideration depending on the profitability obtained. This is applicable to exploration and extraction contracts.

Similarly a flexible scheme is included in the license agreement that allows for designing a simpler adjustment mechanism not only by the change of the applicable rate on the value of the hydrocarbons, but also through the final amount of the consideration that results from the application of such rate.

Tax receipts in consortia

- In the case of issuance of receipts for participants in consortia, the deduction of expenses actually incurred is permitted, regardless of the fact that the percentage of expenditure made is different from the amount required to make, as agreed in the operating contract.

Investigative powers

- It is clarified that the Ministry of Finance and Public Credit may instruct the SAT to help in the verification of the operations and accounting records derived from the hydrocarbons exploration and extraction contracts through audits and inspections of the contractors.

2017 Fiscal Year Federal Revenue Law (LIF for its initials in Spanish)

Surcharges

- The LIF continues the same rate of surcharges as the previous year at .75% on the unpaid balances for the payment of tax liabilities for extension and of 1.13% in the case of surcharges for delay.
- With respect to the rates applicable to the payment in installments, the rates from the previous year are also maintained, which are: the rate of 1% monthly for periods of up to 12 months, of 1.25% monthly for periods of 12 to 24 months, and of 1.5% monthly for partial payments greater than 24 months.

Tax Incentives

- A tax incentive is granted to persons who carry out business activities and that to determine their profit can deduct the diesel or the biodiesel and their mixtures that they acquire for final consumption, provided they are used exclusively as fuel in machinery.

The incentive consists of allowing the crediting of an amount equivalent to the Special Tax on Production and Services that those who sell diesel or biodiesel and their mixtures in Mexican territory have caused by the sale of such fuels, as applicable to the type of fuel.

- Several incentives that applied previously in relation to the income tax (ISR) are maintained, such as: (i) the additional deduction of 25% of the salary actually paid granted to taxpayers that employ disabled persons and (ii) the incentive granted to entities to subtract from the tax profit determined for provisional payments, the participation of the workers in the profits of the company paid in the fiscal year, among others.

Interest

- The annual withholding rate of interest paid by members of the financial system is changed from .50% to .58%, due to the change of the procedure for determining the rate.

Additional obligations in energy matters

- Certain obligations are established for permit holders for the distribution and sale to the public of gasoline, diesel, jet fuel, aircraft fuel, liquid petroleum gas and propane, additional to those established in the Hydrocarbons Law.

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Sincerely,

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Mexico City, January 19th, 2017.