

Modifications to the tax provisions for 2021

This past September 8, the Federal Executive presented the economic package for the fiscal year 2021 (“**FEP 2021**”) to the Congress of the Union. It contemplates, among other things, the proposal of the Federal Revenue Law for Fiscal Year 2021, and the proposal of Decree (“**Decree**”) amending provisions of the Income Tax Law (“**IT**”), Value Added Tax Law (“**VAT**”), Special Tax on Production and Services Law (“**STPS**”), and the Federal Tax Code (“**FTC**”).

The amendments set forth in the Decree are mainly designed to adjust certain procedures established in the current tax provisions (such as tax refunds, the administrative tax collection procedure, among others), modify the provisions applicable to the enforcement of the investigative powers of the tax authorities and those related to the invoicing of nonexistent transactions, tax evasion and tax simulation. It is important to mention that the FEP 2021 does not contemplate substantial changes to the tax provisions or the creation of new taxes.

Below you will find a general summary of the matters we consider relevant from the proposed amendments which the Congress of the Union will discuss and may approve in the coming months. It should be taken into account that the FEP 2021 may suffer substantial changes during the legislative process.

1. IT Law:

Among other modifications, the legal framework applicable to the entities authorized to receive deductible donations is reformed in order to combat certain improper practices identified by the tax authorities.

It is clarified that the maquiladoras may comply with their transfer pricing obligations only by obtaining and preserving the Advance Transfer Pricing Agreement or through the safe harbor method contemplated in that law.

2. VAT Law:

The Federal Executive proposal centers on reforming certain provisions applicable to the platforms that provide digital services which entered into force this past June 1.

The foregoing is done by adjusting the tax withholding mechanism and transferring certain formal obligations (to the platforms that provide digital intermediation services) that corresponded to providers resident abroad without a permanent establishment in Mexico.

Consideration is also given to establishing a control mechanism so that when digital service providers resident abroad without a permanent establishment in Mexico incur serious tax violations (i.e. failure to register before the Federal Taxpayer Registry, among others) the access of their services to internet may be blocked through an order issued by the Tax Administration Service (“**SAT**”) to the corresponding concession holders of the public telecommunications network in Mexico.

3. STPS Law:

Regarding STPS, it is contemplated to incorporate a scheme of complementary fees to those already established for the alienation and importing of automotive fuels (gasoline, diesel, non-fossil fuels or their mixtures).

4. FTC:

Among the main changes proposed to the FTC is to modify the anti-abuse rule established in that code through which the tax authorities can re-characterize the legal effects of the acts of the taxpayers intended to obtain a tax benefit, in order to distinguish its scope for tax and criminal purposes.

Regarding the spin-off of companies, the requirements that have to be met for it not to be considered as an alienation of goods are expanded.

It is also being considered to cancel the digital stamp certificates of Companies that Invoice Simulated Transactions (“EFOS”) and of the taxpayers that improperly transferred tax losses so the measure can be applied immediately without being entitled to the temporary restriction thereof.

In relation to tax refunds, the failure to locate the taxpayer or its domicile is established as a cause for considering the refund request abandoned.

In relation to joint liability, a new premise is included applicable to residents in Mexico that maintain transactions with related parties resident abroad when the latter establish a permanent establishment in Mexico.

Certain changes are also proposed for the preservation of the accounting records of taxpayers, such as the expansion of the period in the case of information and documentation necessary to implement the agreements reached as a result of the dispute resolution procedures contained in the treaties to avoid double taxation.

In relation to conclusive agreements, it is contemplated to limit their filing when the ruling determining the tax assessment is on route for notification, among other circumstances.

We will continue to monitor the legislative process of the FEP 2021 in order to update this document in case of any relevant change.

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