

November 26, 2019

EY TAX Flash

Tax Reform 2020: Indirect Taxes

NEW! EY Tax News: Mexico Edition

EY's Tax News: Mexico Edition is a free, personalized email subscription service that allows you to receive EY Mexico Tax Alerts and newsletters across all areas of tax. Access registration [here](#).

Also available is our EY Mexico Tax Alert Library [here](#).

The Mexican Congress has approved the economic package submitted by President López Obrador to be in force in fiscal year 2020.

The Reform has significant provisions that may affect multinationals operating in Mexico. As in the past, Mexico continues to show its commitment by adopting the recommendations of the Organization for Economic Co-operation and Development's Base Erosion and Profit Shifting project.

In this regard, please find below the main reforms affecting Mexican indirect taxes, this is Value Added Tax ("VAT") and Excise Tax ("IEPS").

1. VAT

i. VAT Withholding on labor outsourcing payments

Pursuant to the tax reform, Mexican entities receiving services, through personnel or employees, irrespective of the contractual name provided, should withhold 6% of VAT on service payments.

Under the new provisions, 10% (out of 16%) of the VAT will be collected by the service provider and the remaining 6% will be withheld and filed to the Mexican Tax Authorities ("MTA") by the recipient of the service.

ii. Elimination of universal compensation

As of January 1st, 2020, Mexican residents will only have the option to offset favorable VAT vs. future payable VAT or else to request the full balance in refund before the MTA.

iii. Exempt activities

The alienation and lease of goods as well as the rendering of services carried out by entities authorized to receive deductible donations will be exempt for VAT purposes; as such these entities' creditable factor could be reduced to zero.

In addition, the VAT Law excludes as exempt ground transportation services hired through intermediary digital platforms provided with private vehicles.

iv. Real estate leasing

In trials in which the lessee is instructed to pay past due rents, the judicial authority will require from the lessor to prove that the latter issued the corresponding e-invoices (CFDIs).

If the lessor fails to prove their issuance, the judicial authority will have to inform the MTA of such situation, in a maximum 5-day period starting from the expiration date of the period granted to the lessor to meet such requirement.

v. Other relevant topics

a) Free of charge services

Payable VAT will be triggered in the moment the service is provided.

b) Enjoyment in Mexican territory of services provided by foreign residents

VAT will be triggered when the consideration is effectively paid.

2. VAT rules on Digital Economy

The Reform expands the definition of services performed in Mexico to include those rendered through digital platforms to Mexican users. As such, digital service providers are required to charge, collect and remit VAT on certain goods and services sold through applications or digital content.

Digital services subject to the new rules include: streaming services and download/access to images, movies, information, videos, among others; third-party intermediation services; access to online clubs and social websites; and, online educational services.

Digital services are deemed to be rendered in Mexico when the recipient of the services:

- i. has declared to the service provider a domicile in Mexico;
- ii. the consideration of the digital services is paid through an intermediary located in Mexico;
- iii. the IP address used by electronic devices of the recipient corresponds to Mexico; or
- iv. has provided a phone number with a Mexican country code.

Foreign entities providing digital services in Mexico will be obliged to comply with the following requirements:

- (i) Register in the Mexican Federal Taxpayers Registry ("RFC");
- (ii) Break down VAT from the prices of digital services offered;
- (iii) Keep records of digital services provided monthly & report them to the MTA on a quarterly basis.
- (iv) Compute monthly VAT collected for digital services and submit the VAT return through the MTA's website.
- (v) Issue and deliver the corresponding invoices.
- (vi) Appoint a legal representative and provide a tax domicile in Mexico.
- (vii) Obtain the electronic signature from the MTA.

The fulfillment of these requirements does not constitute the creation of a permanent establishment ("PE") in Mexico.

Non-compliance with obligations to register, appointment of a legal representative and tax

domiciles, or else, fail to file 3 returns will grant the authorities the right to block the internet webpage¹.

The recipients of services will be entitled to credit the VAT paid in terms of the VAT Law.

Non-Mexican residents acting as intermediaries will be also obliged to:

1. Publish the applicable VAT on goods and services offered by them as intermediaries.
2. When the intermediary makes collections on behalf of third parties, they should:
 - (i) withhold from individuals 50% of the VAT collected (100% if no RFC is provided);
 - (ii) pay withholding by the 17th day of the following month;
 - (iii) issue withholding e- invoices within following 5 days; and
 - (iv) register in the RFC as a withholding agent.
3. Report to the MTA information about clients, no later than on the 10th day of the following month.

Digital service VAT provisions will entry into force on June 1, 2020, for which the MTA should issue administrative rules by January 31, 2020.

During 2020, only simplified invoices should be issued; starting in 2021, foreign residents providing intermediary services will be obliged to issue official withholding tax e-invoices.

3. IEPS

i. Updated fees applicable to:

- a) Tobacco: fee update from December 2010 to December 2019.
- b) Automotive fuels: adjustment to the fuel octanes from 92 octanes to 91 octanes and determination of dues, based on mixture.
- c) Flavored beverages: fee update from December 2017 to December 2019.
- d) Fossil fuels: in mixed fuels, report quantity per fuel.

ii. Limitation of compensation to same type of IEPS

Favorable IEPS balances are limited to be offset only vs. same type/category of goods or services as included in the list of activities taxed by such Law.

iii. Refund of IEPS on high-caloric food

Exporters of high-caloric food will be able to request in refund favorable IEPS so long as they represent more than 90%.

iv. Other relevant topics

- a) Elimination of minimum quota scheme for beer.
- b) Amendment to the definitions of the concepts of fossil & non-fossil fuels, gasoline, diesel, ethanol and energetic beverages.

¹Such suspension may only be dictated by a General Administrator of the MTA.

For further information about this bulletin, please contact any of the following professionals:

Jesús Montaña
jesus.montano@mx.ey.com

Ricardo Delgado
ricardo.delgado@mx.ey.com

Mónica Montes de Oca
monica.montesdeoca@mx.ey.com

Teresa Rodríguez
teresa.rodriguez@mx.ey.com

Mayra Espejel
mayra.espejel@mx.ey.com

Liliana Salomón
liliana.salomon@mx.ey.com

EY

Assurance | Tax | Transactions | Advisory

About EY's Tax Services

Your business will only succeed if you build it on a strong foundation and grow it in a sustainable way. At EY, we believe that managing your tax obligations responsibly and proactively can make a critical difference. Our global teams of talented people bring you technical knowledge, business experience and consistency, all built on our unwavering commitment to quality service – wherever you are and whatever tax services you need.

We create highly networked teams that can advise on planning, compliance and reporting and help you maintain constructive tax authority relationships – wherever you operate. Our technical networks across the globe can work with you to reduce inefficiencies, mitigate risk and improve opportunity. Our 45,000 tax professionals, in more than 150 countries, are committed to giving you the quality, consistency and customization you need to support your tax function.

For more information about our organization, please visit www.ey.com/mx

© 2019 Mancera, S.C. EYGM Limited All Rights Reserved ©

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients.

This bulletin has been prepared by the professionals of EY and contains general comments on the application of various accounting, tax and financial standards, as applicable. Since the contents of this bulletin are informative in nature and do not represent a specialized study of any specific situation, this bulletin must in no case be construed as being professional advice on any concrete case. At EY, we are committed to providing you with reliable and timely information; however, we cannot guarantee that the contents of this document will be valid at the time you receive or consult this document, or that they will continue to be valid in the future. Therefore, EY assumes no responsibility whatsoever for any errors or inaccuracies that may be contained in this document and the decision to use the information contained herein is entirely the recipients. All rights reserved (currently being processed).