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EY TAX Flash

Tax aspects to consider in the Economic Package for 2021

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General Considerations

On September 8 of this year, the President submitted to Congress the Economic Package for fiscal year 2021. This Package is basically comprised of: i) the General Economic Policy Criteria for 2021, ii) the bill for the Federal Revenue Act, iii) the bill for a decree that reforms, adds and eliminates various provisions of the Mexican Income Tax Law, Value Added Tax Law, Special Tax on Production and Services Law and the Federal Tax Code, iv) the bill for the decree of the Federal Duties Law and v) the Federal Expenditures Budget.

As expected, the aforementioned package does not contemplate an increase in taxes or the creation of new taxes. In accordance with the comments made by the President, the economic package is focused on: i) administrative simplification and legal certainty, which in accordance with the explanatory notes, will be achieved through the elimination of the payment of certain duties and simplification of the collection process for the remaining duties, as well as strengthening of the administrative powers of the tax authorities, ii) Enhancement of technological tools, such as the use of cameras to collect images and video material when the authority conducts tax audit procedures, iii) tackling corruption and impunity by proposing rules for action by the tax authorities and iv) directly addressing tax evasion and avoidance through different measures, such as joint liability for permanent establishments in Mexico regarding their transactions with foreign related parties and new guidelines for tax audits in the case of mergers and spin-offs. It is important to mention that, the President is also proposing not to authorize any refunds when the taxpayer cannot be located, which would encourage taxpayers to improve their management of tax compliance.

Notwithstanding the above, from our perspective, there are other areas that require attention and that will also contribute to improving legal certainty and tax simplification, leading to better tax compliance, such as the provisions related to: i) preferential tax regimes, ii) mandatory disclosure obligations and iii) informative tax returns.

General Economic Policy Criteria

The General Economic Policy Criteria for 2021 are established based on the differences compared to prior years and are determined based on a thorough analysis of economic, social, health and public finance aspects in Mexico. These criteria also reflect the analysis performed by the Federal Executive Branch of the results of the policies implemented to date, the remaining challenges, and the proposed policy measures for overcoming such challenges.

Specifically, the criteria indicate that, in 2021, public policies will have to continuously be adapted per the development of the COVID-19 pandemic, for which they will be focused on extending and strengthening the capacity of the health system, particularly services for vulnerable groups, promoting the quick and sustainable restoration of employment and economic activities, and continuing to reduce inequality and establishing the foundation for well-balanced development and long-term tax sustainability.

The General Economic Policy Criteria for the bill for the Federal Revenue Act and the Federal Expenditures Budget establishes the following macroeconomic projections:

Item	2020 estimate	2021 estimate
GDP growth %	-8	4.6
Inflation Dec-Dec %	3.5	3
Average nominal exchange rate (Mexican pesos per U.S. dollar)	22	22.1
Average price per oil barrel in U.S. dollars (Mexican basket)	34.6	42.1
Average interest rate for CETES at 28 days, %	5.3	4

This document also establishes that the debt policy for 2021 will reflect the prudence that has characterized the current administration and that the proposed debt policy contemplates the following: i) refinancing most of the federal government's needs, mostly with long-term instruments; ii) improving the debt maturity profile and adjusting the financial portfolio to the prevailing financial conditions, iii) establishing a proactive, flexible and innovative policy to ensure that debt markets are functioning correctly; iv) diversifying markets and extending the investor portfolio, as well as requesting a cap of USD 5.2 billion for net foreign debt in the public sector (federal government and development banks).

Our comments on the most relevant aspects of the tax modifications are as follows:

Specific aspects

Federal Revenue Act

1. Estimated revenue

The bill for the Federal Revenue Act for 2021 indicates that the Federation will receive revenue corresponding to the following items and for the following estimated amounts in millions of Mexican pesos¹:

Item	2021
Revenue	6,295,736.2
Income tax	1,908,813.4
Value added tax	978,946.5
Special Tax on Production and Services	510,702.7
Total estimated taxes	3,533,031.1

¹ Only the most relevant federal tax items are included.

2. Interest surcharge and withholding rates

The surcharge rates for extensions on payments of tax liability will remain practically the same as in 2020. The corresponding rates are as follows:

- ▶ 0.98% monthly on outstanding balances
- ▶ 1.26% monthly on payments in installments of up to 12 months
- ▶ 1.53% monthly on payments in installments of more than 12 months and up to 24 months
- ▶ 1.82% monthly on deferred payments and payments in installments of more than 24 months

The 0.98% rate is established based on the downward trend of interest rates on public and private instruments, as well as on the decrease in the average annual monthly inflation. The rate currently in effect is 1.45%.

3. Tax incentives

In general, the same tax incentives for 2020 will be implemented in 2021, except for the following changes:

Diesel or biodiesel and their combinations

The following tax incentives shall be considered by the beneficiaries as taxable profit for income tax purposes upon their application:

- ▶ Individuals engaged in business activities who acquire diesel fuel, biodiesel fuel or their combinations for non-vehicle general machinery
- ▶ Individuals engaged exclusively in agricultural or forestry activities who import or acquire diesel, biodiesel or their combinations for final consumption in such activities
- ▶ Taxpayers that import or acquire diesel, biodiesel or their combinations for final consumption, either for automotive use in vehicles used exclusively for public and private transportation of people or freight or for tourism. It is important to clarify that taxpayers under the simplified regime who have been applying administrative incentives were already required to consider these incentives as taxable

4. Sale of books, newspapers and magazines

The bill proposes eliminating the tax incentive that consists of an additional deduction for income tax purposes of an amount equal to 8% of the cost of the books, newspapers and magazines acquired by individuals and legal entities that are Mexican residents and sell books, newspapers and magazines, whose total revenue for the immediately prior year is not in excess of MXN 6 million.

Value Added Tax Law

Our comments on the main proposals related to the Value Added Tax Law established in the bill for the 2021 Tax reform are as follows:

1. Digital services

i. Used personal property

The bill proposes considering the sale of used personal property through intermediaries as taxable, which would involve eliminating the exception currently included in the Value Added Tax Law.

ii. Withholding of 100% of VAT by intermediaries for foreign residents without a permanent establishment in Mexico

Digital service intermediaries that collect the price and the VAT for a product on behalf of sellers, service providers or grantors of temporary

use or enjoyment of goods, will be required to withhold 100% of the VAT collected from individuals or legal entities that are foreign residents without a permanent establishment in Mexico.

In this case, the foreign resident will be relieved from the obligation to comply with digital tax obligations, and platforms will not be obligated to report information on such foreigners in their quarterly returns. In addition, the intermediary platform will be responsible for issuing tax invoices to the end users when requested.

iii. Blocking of access to digital telecommunication services (Internet) for foreign digital service providers

Access to digital telecommunication services will be blocked to a foreign digital service provider in case it fails to comply with the following tax obligations:

- ▶ Registration in the federal taxpayer registry, designation of a legal representative and tax address
- ▶ Processing of electronic signature, VAT payment, remittance of withholdings or filing of monthly and/or quarterly information returns

With regard to the above, it is suggested to include a procedure for the foreign taxpayer to enforce their constitutional right to a hearing prior to the blocking of the digital services.

Concessionaires who fail to comply with the blocking instruction will be subject to a fine ranging from MXN 500,000 to MXN 1,000,000 for each month it fails to comply with the instruction.

2. Private charitable organizations

The bill proposes considering professional medical services that require a medical license provided by individuals through private charitable organizations as exempt from the payment of VAT.

Special Tax on Production and Services Law

The only change contained in the bill with regard to the special tax on production and services (IEPS) is as follows:

Supplementary fees for automotive fuel

With regard to automotive fuel, the bill proposes incorporating supplementary fees in addition to the fees currently established in the Special Tax on Production and Services Law in order to protect public finances in the event of a decrease in the price of oil, international reference rates and exchange rates. The supplementary fees are determined based on a comparison between the base price restated for inflation and the reference price. It is important to mention that this methodology is already being implemented through the "Agreement to inform on the methodology for determining the IEPS incentives applicable to fuel" published on December 31, 2019 (i.e. an incentive that has been published weekly in the Official Gazette).

However, the only difference between this new incentive and the previous one is that the bill is proposing that the IEPS fee established in article 2, section I, paragraph D) of the Special Tax on Production and Services Law become supplementary and adjustable to be decreased (incentive) or increased based on the following:

- ▶ When the prices for gasoline and diesel are higher than the base prices, the supplementary fees shall be subtracted from the fees established in article 2, section I, paragraph D) of the Special Tax on Production and Services Law, as applicable. The fee decrease referred to in this section is limited to the fees established in article 2, section I, paragraph D) of the Special Tax on Production and Services Law.

- ▶ When the prices for gasoline and diesel are lower than the base prices, the supplementary fees shall be added to the fees established in article 2, section I, paragraph D) of the Special Tax on Production and Services Law, as applicable.

The fees and their validity period will be published in the Official Gazette on a weekly basis. The supplementary fees are effective and applicable as of January 1, 2021, provided that the aforementioned conditions are met.

Mexican Income Tax Law (MITL)

We believe that many of the proposed changes or reforms to the MITL are centered around tackling tax evasion and avoidance, as described below:

1. School-business programs

Currently, paragraph f) of section I of article 27 and paragraph f) of section III of article 151 of the MITL state that non-onerous and non-remunerative donations granted to school-business programs are deductible, provided that they meet certain requirements.

The explanatory notes to the bill explain that, in the 23 years that this option has been available, only one school-business program has been authorized by the tax authorities to receive deductible donations, although this authorization was revoked in 2019 because the program did not have the appropriate documentation to support its activities. Currently, there is no pending authorization regarding this program, so the President proposes eliminating the provisions related to the application of the school-business program.

2. Legal entities that require authorization to receive deductible donations in accordance with Title III

The President indicated in the explanatory notes to the bill that, since many civil partnerships and/or associations engaged in education and sports activities, despite having a predominantly economic purpose, managed to pay taxes under the rules of Title III for non-profit legal entities, section X of article 79 of the MITL for 2014 was reformed to expressly state that only partnerships or associations engaged in the aforementioned activities shall pay taxes under the regime for non-profit legal entities (as non-income tax payers), **provided they are authorized to receive deductible donations in the terms of the MITL.**

Based on the above, and following the same logic, the President proposes modifying sections XI, XVII, XIX and XX of article 79 of the MITL to establish that only civil partnerships or associations engaged in the following activities shall pay taxes under the rules of Title III of the MITL, provided they are authorized to receive donations²:

- ▶ Scientific and technological research
- ▶ Grant scholarships
- ▶ Research or preservation of wild land or aquatic flora or fauna, as well as institutions dedicated to the promotion of the prevention and control of water, air and land pollution, environmental protection, and preservation and restoration of ecological balance
- ▶ Reproduction of protected and endangered species and the conservation of their habitats

² The transitory article states that partnerships or associations engaged in the activities listed above that are not authorized to receive deductible donations at the effective date of the bill shall pay taxes under the rules of Title III, but must determine the distributable surplus at the 2020 closing in the terms of Title III and their partners and members must consider the surplus as income when the aforementioned partnerships or associations deliver it in cash or in kind; transitory rule similar to the rule established for purposes of section X of article 79 for 2014.

Continuing with the subject of tackling tax evasion and avoidance mainly by taxpayers who are taxed under the rules of Title III of the MITL, the bill proposes including a rule stating that all taxpayers who are taxed under the rules of said Title must have digital tax receipts (CFDIs) to support any expense incurred; otherwise, the expense will be considered as deemed distributable income. Nonetheless, after analyzing the proposed reform to the second paragraph of article 79 in relation to this point, it seems that the reform goes beyond simply limiting expenses that are not supported by a CFDI, but also extends to expenses that do not meet the condition of the consideration exceeding MXN 2,000, or it being paid through a wire transfer from an account opened on behalf of the taxpayer, a check from the taxpayer's account, credit, debit or service cards, or through the electronic wallets authorized by the Tax Administration Service.

3. Integration and representation cooperatives

Based on the proposed bill and in accordance with the Mexican Cooperatives Act, Savings and Loans Cooperatives are grouped through integration and representation cooperatives, which shall be public interest institutions, with their own legal identity and equity, and which shall adopt the nature of non-profit Cooperatives for legal purposes.

Since cooperatives have similar characteristics to other entities that are taxed under the rules of Title III, the bill proposes establishing that such organisms are allowed to be taxed under the same rules.

4. Authorized donees

i. Revenue not related to authorized activities

Following the same line of tackling tax evasion and avoidance, and based on an analysis performed of the revenue reported in 2019 by legal entities authorized to receive deductible donations, the Federal Executive Branch proposes including an anti-abuse rule so that, if the authorized donors obtain revenue from activities other than those authorized to receive donations corresponding to more than 50% of their total revenue for the fiscal year, their authorization will be revoked.

ii. Allocation of equity

The bill proposes modifying various sections of article 82 of the MITL in relation to the requirements and obligations for institutions authorized to receive deductible donations in order to, establish additional control mechanisms and generate more transparency regarding the allocation of resources.

An entity whose authorization is revoked or expires and that does not resolve the situation within 12 months must transfer all of its equity to an entity authorized to receive deductible donations and shall no longer pay taxes under Title III of the MITL and shall be subject to Title II of the MITL.

An authorization cancellation scenario is also being added, in accordance with explanatory notes, in response to the requests made by donees. The bill also states that legal entities or trusts whose authorization has been revoked or that have been denied the renewal of their authorization for failing to make available to the general public (i) their authorization to receive donations; (ii) the use and destination of the donations received; and (iii) proof of tax compliance, must comply with this obligation within the month following the date on which the authorization was revoked or the renewal of the authorization was denied.

iii. Certifying entities

Article 82-Ter of the MITL, which indicated that certain institutions were authorized to issue certifications related to tax compliance, transparency and evaluation of authorized donors, is eliminated. Based on the statement of intent, this change is being implemented since the certification involved a high economic cost for the donors and there were no certifying entity options available.

iv. Grounds for revoking authorization

Addition of article 82-Quater to establish the specifics of the assumptions and procedure for revoking the authorization to receive deductible donations. Currently, the fourth paragraph of article 82 of the MITL indicates that the Tax Administration Service may revoke or deny the renewal of authorizations on the grounds of non-compliance with the requirements or obligations for authorized donees established in Mexican tax laws.

The bill establishes the following assumptions for revoking the authorization:

- ▶ Using the entity's assets for any purpose other than the purpose for which it obtained the corresponding authorization.
- ▶ Failing to issue a CFDI for the donations received or issuing tax receipts for deductible donations to support any other transaction that is not a donation.
- ▶ When, within the course of a tax audit, the Tax Administration Service detects any fact that constitutes non-compliance with the obligations or requirements for authorized donees
- ▶ Being included in the list of taxpayers with simulated transactions published by the Tax Administration Service.
- ▶ When any of the entity's legal representatives, partners or associates, or members of the board of directors have served in another organization whose authorization was revoked in the last five years.
- ▶ When more than 50% of the entity's revenue for the fiscal year is obtained from activities other than those for which it obtained authorization to receive deductible donations.

The revocation procedure will begin with a notice from the authorities indicating the grounds for revocation and the entity will be granted a term of ten business days to contest it. After such term, the authorities will issue the corresponding ruling within a term of no more than three months.

5. Maquiladora Companies-Transfer Pricing

For maquiladora companies, the bill proposes an adjustment to the wording of the third paragraph of article 182 of the MITL. This modification seeks to clarify that maquiladora companies must either apply the Safe Harbor methodology or submit a request for an Advance Pricing Agreement (APA) to the tax authorities. The bill also proposes changes focused on considering non-compliance with the transfer pricing provisions contained in the MITL to be a serious offense. As mentioned in the section on the Federal Tax Code below, the bill proposes eliminating the reduction of transfer pricing fines by 50% and paying or guaranteeing the tax liabilities resulting from transfer pricing audits within 30 business days following the notification of the tax authorities' ruling.

Federal Tax Code

Through the bill, the authorities seek to reform, add and eliminate various provisions of the Federal Tax Code, as follows:

1. General anti-abuse rule

With regard to the general anti-abuse rule, the President proposes amending article 5-A of the Federal Tax Code (FTC) to clarify that the effects given to legal acts shall be limited to the determination of the corresponding taxes, surcharges and fines, without prejudice to the investigations and criminal liability that could arise.

This reform was proposed to prevent the referred provision from being unduly applied in detriment to the federal treasury in the criminal investigations opened both for simulated transactions and tax fraud. The objective of the reform is to clarify that the application of said provision is limited to the administrative tax aspects of the legal acts in question and does not intend to alter the mechanics of any criminal process that may arise.

It is important to note that the bill mentions that, with regard to the offense referred to in article 113-bis of the FTC (purchase-sale of tax receipts that support nonexistent transactions), nonexistent or false transactions cannot be rebutted by indicating a business reason for the transaction.

2. Sales with deferred payments or in installments

The bill proposes amending article 14 of the FTC to specify that sales with deferred payments or installments will be considered as such when the entity issues a simplified tax receipt.

3. Spin-offs

The bill proposes that spin-offs be treated as taxable sales, even if the requirements indicated in section II of article 14-B of the FTC are met, when the spin-off gives rise to the creation of items or amounts of that were not recorded or recognized in any of the equity accounts of the statement of financial position.

4. Updating of the regulatory framework for recognized markets

The bill seeks to consider as recognized markets not only the Mexican stock exchange, but any other corporation that obtains the concession title granted by the Ministry of Finance and Public Credit.

5. Cancellation or temporary restriction of digital stamp certificates

The bill proposes immediately cancelling the digital stamp of taxpayers that are tax receipt issuers that have not disproven a presumed nonexistent transaction or a presumed undue transfer of tax losses, so these legal acts are now included in article 17-H of the FTC.

In order to obtain a new certificate, taxpayers that find themselves in this situation will have to follow the clarification procedure established in article 17-H, sixth paragraph of the FTC, and the bill proposes extending the term for the tax authorities to resolve clarification requests from three to ten days.

Regarding the temporary restriction of digital stamp certificates for the issuance of digital tax receipts, the President proposes establishing in article 17-H Bis a limit of 40 business days for taxpayers to submit the clarification referred to in said provision, in order to avoid having cases staying open indefinitely and to encourage taxpayers to submit their clarifications.

6. Refund of favorable tax balances

With regard to refunds of favorable tax balances, the bill proposes the following relevant changes:

- ▶ A refund request shall be considered as not having been submitted when the taxpayer or the address provided by the taxpayer cannot be located in the Federal Taxpayer Registry.

The explanatory notes indicate that the inclusion of this provision in the law does not mean that taxpayer's refund request is rejected in these cases, and it only means that the taxpayer will have to correct its situation by submitting the corresponding notice.

- ▶ The bill also proposes establishing that, in the case that a refund request is considered to have not been submitted, the attempted filing shall not be considered a collection procedure that interrupts the term allowed for the tax authority to refund the recoverable tax balance.
- ▶ In addition, in order to make the refund process more timely and efficient, the President proposes amending article 22-D, section IV of the FTC to allow the tax authority to determine, in the event of various refund requests filed

by the same taxpayer for the same type of tax, whether it should perform a single tax audit for all of the requests or separately for each request, and then, in either case, issue a single ruling.

- ▶ The bill also proposes extending, from 10 to 20 days, the term granted to the authority to communicate the corresponding ruling once the term for the exercise of its powers of review has concluded.

With regard to the above, transitory provisions state that, in the case of open refund requests that the tax authority has already started reviewing at the date the decree comes into effect, the corresponding ruling must be issued in accordance with the version of article 22-D of the FTC that was in effect prior to the decree becoming effective.

7. Joint liability in spin-offs and permanent establishments

Regarding joint liability, the bill proposes the following changes:

- ▶ The bill proposes amending article 26, section XII of the FTC to establish that the limit on the liability of newly created companies referred to in said provision shall not be applicable when the transfer of all or a portion of the assets, liabilities and equity gives rise to an item in the equity of the original company or the newly created company or companies that was not recorded or recognized in any of the equity accounts of the statement of financial position.
- ▶ The bill also proposes adding a new joint liability condition to establish a mechanism that will allow the tax authorities to collect taxes through a joint liability strategy, when foreign residents obtain revenue that they do not recognize and have a permanent establishment in Mexico.

The President proposes considering Mexican residents or foreign residents with a permanent establishment in Mexico that carry out transactions with foreign related parties as jointly liable parties for these transactions, when the operating structure of said foreign residents gives rise to a permanent establishment in Mexico for the foreign resident. It is important to note that the amount of the referred joint liability shall not exceed the taxes that the foreign resident in question would have generated as a permanent establishment as a result of the aforementioned transactions.

8. Federal Taxpayer Registry

With regard to the Federal Taxpayer Registry, the President proposes the following modifications to article 27 of the FTC:

- ▶ Any information related to the identity, address and tax situation of taxpayers must be made available to the Federal Taxpayer Registry Taxpayers, and taxpayers must register and maintain updated a single e-mail address and telephone number.
- ▶ Clarification that the obligation to report on changes in or inclusion of partners or shareholders is applicable to members of an entity, that, due to their nature (similarity), in essence, their roles, obligations and rights, are similar to those of a partner or shareholder.
- ▶ The Tax Administration Service has the power to suspend or reduce obligations registered by taxpayers in the Federal Taxpayer Registry when the authority determines that the taxpayers have not recorded any type of activity during the last three months.
- ▶ In addition, the President proposes incorporating the minimum requirements that must be met by taxpayers prior to the cancellation of their federal taxpayer registration number (RFC), including: i) the taxpayer must not be subject to a tax audit by the authorities or have tax liabilities; ii) the taxpayer must not be included in the lists referred to in articles 69, 69-B and

69-B Bis of the FTC; and iii) the income reported and the taxes withheld by the taxpayer must coincide with the information shown in the tax receipts, files, documents or databases of the tax authorities.

9. Digital tax receipts (CFDI)

With regard to CFDIs, the bill proposes several changes, which consist of the following:

- ▶ The bill proposes expressly establishing that taxpayers must request the corresponding digital tax receipt when making partial or deferred payments or when exporting merchandise that is not for sale or is given free of charge.
- ▶ The bill proposes clearly defining the concept of transactions carried out with the general public, such as those for which the taxpayer does not have the recipient's taxpayer registration number (RFC), as well as the possibility of offering certain concessions for these types of transactions.

The bill indicates that this change would be implemented by including an enabling clause in the law that would allow for regulation of these types of transactions in the general rules for digital tax receipts, as well as the requirements and characteristics for what are now referred to as simplified tax receipts, which will be the specific name for the sales receipt or delivery ticket included in the general invoice.

10. Term for retaining accounting records

With regard to the term for retaining accounting records, the bill proposes including as an exception from application of this term, the information and documentation required to implement the agreements reached as a result of the controversy resolution procedures established in Mexico's treaties to avoid double taxation, in order to instead establish that this information must be retained for as long as the Company exists.

The bill specifies that, with respect to meeting minutes that support a capital increase, the taxpayer must also retain the corresponding bank account statements when the capital increase was made in cash or the corresponding appraisals when the capital increase was made in kind or as a result of a surplus arising from a remeasurement of fixed assets.

In the case of capital increases made through the capitalization of provisions or dividends, the bill indicates that the taxpayer must also retain the meeting minutes that support these resolutions, as well as the corresponding accounting records. In the case of capital increases made through the capitalization of liabilities, the taxpayer must also retain the meeting minutes that support the referred resolutions, as well as the document that supports the accounting existence of the liability and its corresponding value.

With regard to meeting minutes that support share capital reductions through reimbursements to the partners or shareholders, the taxpayer must also retain the corresponding bank account statements that support these resolutions. As for meeting minutes that support a capital reduction made through a return of capital or the release of unpaid capital contributions, the taxpayer must retain the minutes establishing the subscription, release or cancellation of shares, as applicable.

In addition, the bill establishes that, in the case of meeting minutes that support a merger or spin-off, the taxpayer must also retain the statements of financial position, statements of changes in equity and workpapers for calculation of the net taxed profits account and restated contributed capital account corresponding to the year immediately prior to and the year immediately following the merger or spin-off.

With regard to receipts issued or received by legal entities in the terms of the Mexican Income Tax Law upon distribution of dividends or profits, the taxpayer must also retain the bank account statements that support such transactions.

11. Tax assistance and communications

The President proposes giving a new power to the tax authorities that consists of periodically issuing reference parameters related to the profits, deductible items or tax rates that other entities are reporting, based on the economic sector or industry to which they belong.

The Tax Administration Service will be able to inform taxpayers, their legal representatives and, in the case of legal entities, their boards of directors, when it detects potential risks, through so-called “voluntary compliance programs”, without involving a tax audit by the authorities.

The authorities will be able to send taxpayers payment proposals or pre-filled tax returns, as well as communications via e-mail to encourage them to comply with their tax obligations and inform them of inconsistencies or atypical behavior.

12. Precautionary seizure

With regard to enforcement measures, precautionary seizure is currently only applicable to taxpayers and the parties that are severally liable for the actions, information requests or documentation requirements sent to them, but the bill seeks to include third parties related to the taxpayers.

The explanatory notes indicate that the related third parties are generally companies that issue tax receipts for simulated transactions or taxpayers who receive exorbitant earnings similar to salaries.

Article 40-A of the FTC is being amended to include third parties related to the taxpayer in the procedure for precautionary seizure.

The bill proposes indicating the amount of precautionary seizure for third parties related to the taxpayer, which is one-third of the amount of the transactions carried out by the third party, or of the amount that the tax authorities intend to review through the information requests sent.

The bill proposes modifying the order of priority of the assets subject to seizure in order to make the process more immediate and effective, with bank deposits in first place, followed by accounts receivable, shares, bonds, expired coupons, etc.; real property; personal property; the taxpayer's trade; copyrights and artistic work, scientific collections, jewelry, etc.

The bill also proposes establishing that financial entities and savings and loan cooperatives may not deny taxpayers the information about the authority that ordered the precautionary seizure.

Lastly, the transitory provision states that precautionary seizure procedures pending a ruling at the effective date of the Decree must be resolved in the terms of the provisions in effect at December 31, 2020.

13. Use of technology

Since the use of technology has become a fundamental element for the exercise of the authorities' powers of review, the bill proposes using technological tools (the statement of intent includes cameras, recorders, mobile phones, or other) to record images or material that will serve as proof of the assets located in the taxpayer's tax address.

Such images or material will be protected in terms of article 69 of the FTC (tax secrecy).

14. Review of audit report

The bill proposes that the review of audit reports not only include requesting that the public accountant produce the workpapers prepared, but also that the public accountant appear at the offices of the Tax Administration Service to answer questions regarding the workpapers.

The review will be carried out exclusively with the public accountant that prepared the audit report, so a legal representative will not be necessary.

15. Term for filing reports or documents

Concerning the terms established in article 53 of the FTC for filing the reports or documents requested by the tax authorities, the bill proposes extending the terms by ten days in the case of documents that are difficult to obtain.

It is important to note that the extension of the term was previously only considered for paragraph c) of article 53 and the bill proposes it also be included in paragraph b), which refers to documents that taxpayers should have in their possession, for which the initial term was six days.

16. Tax secrecy

The bill establishes the application of tax secrecy with respect to the images or materials obtained in the course of a tax audit through technological means.

The bill includes as a new exemption from tax secrecy, the obligation established in the National Criminal Proceedings Code of providing the information required by the police and the public prosecutor in relation to the investigation of concrete criminal activities.

17. Presumption of undue transfer of the right to off-set tax losses

With regard to the undue transfer of the right to off-set tax losses, the bill proposes various reforms, including:

- i) Amending article 69-B Bis, first paragraph of the FTC to specify that the presumption refers to the undue transfer of the right to off-set tax losses.
- ii) Amending the second paragraph of section VI (when the taxpayer obtains tax losses and reports deductions for which the considerations are supported by the subscription of credit instruments and the acquired obligation is extinguished through a form of payment other than the ones established in the MITL for purposes of deductions) in order to avoid limiting the form of payment to credit instruments and allow the use of other instruments.
- iii) Adding the possibility of disproving positive facts in addition to negative facts. This means that the taxpayer can indicate the reason for the legal acts that gave rise to the transfer of the right to off-set tax losses in order for the authorities to be able to determine whether the purpose of the transfer was primarily for the taxpayer to carry out its business activities or to obtain a tax benefit.
- iv) Adding the possibility of requesting a 10-day extension for rebutting the presumption
- v) Establishing that the term for the authority to issue its ruling shall begin after all other terms have concluded, including the aforementioned extension.
- vi) Establishing that the undue transfer of the right to off-set tax losses is considered a simulated transaction for criminal purposes.

18. Conclusive agreements

In accordance with the bill under analysis, it has been detected that conclusive agreements have been used by taxpayers to prolong tax audit procedures, evade tax payments and even disprove the facts related to simulated transactions.

Therefore, the bill proposes setting a time limit for conclusive agreement requests of 15 days following the date on which the final ruling is issued or the letter with the preliminary findings of the audit or the provisional ruling is delivered.

The bill includes the following inapplicability scenarios:

- i) Audits to verify refunds of favorable balances or undue payments
- ii) Parallel audit procedures on third parties
- iii) Acts resulting from compliance with rulings or judgments

- iv) When the 15-day term after the date on which the final ruling is issued or the letter with the preliminary findings of the audit or the provisional ruling is delivered has elapsed
- v) Taxpayers who meet the conditions of the second and fourth paragraphs of article 69 B of the FTC (companies that issue tax receipts for simulated transactions)

Finally, the bill specifies that the agreements reached with the Tax Ombudsman (PRODECON) are indisputable even in international matters and states that no controversy resolution procedure contained in a treaty to avoid double taxation is valid against such agreements.

19. Fines related to Transfer pricing

The bill proposes establishing non-compliance with transfer pricing provisions as serious grounds for the infliction of fines.

In line with the above, the bill also proposes eliminating the 50% reduction of fines in the event of non-compliance with transfer pricing provisions.

20. Sanction for public telecommunication network concessionaires

With regard to non-compliance with certain obligations for foreign residents without a permanent establishment in Mexico that provide digital services in Mexico, the bill proposes establishing a fine of MXN 500,000.00 to MXN 1,000,000.00 for public telecommunication network concessionaires that do not comply, within a term of 5 days, with the order to block access to the digital service provided by any service provider that fails to comply with the obligations indicated in sections I, VI and VII of article 18-D of the Value Added Tax Law (registering with the Federal Taxpayer Registry, naming a legal representative, providing an address to receive notifications and obtaining an advanced electronic signature).

The bill also proposes a sanction for concessionaires that do not comply, within the same 5-day term, with the order to unblock the access to the digital service once the service provider has resolved the situation that triggered the block.

Lastly, the bill indicates that the sanction will be imposed for each calendar month that passes without the concessionaire complying with the aforementioned orders.

21. Presumption of contraband

The bill proposes adding section XXI to article 103 of the FTC to include in the conditions for presumption of contraband the failure to return, transfer or switch to another customs regime any merchandise temporarily imported under maquila or export programs whose continued presence in Mexico is subject to the term of the program.

The reason for this change is that there are companies that take advantage of these programs to temporarily keep merchandise in Mexico without paying taxes or bring merchandise into Mexican territory that is not returned abroad or transferred to another regime once the export programs expire. This situation affects the public treasury because companies are not paying the taxes corresponding to the import of such merchandise.

22. Tax liability guarantee

The bill proposes amending section V of article 141 of the FTC to specify that administrative seizures are only applicable to tangible personal property and real property, except for rural property or trade, since they are difficult to sell.

This change is transcendental because it eliminates the option applied by many taxpayers to guarantee tax liabilities through the administrative seizure of their business.

The explanatory notes mention that intangible assets, such as trademarks, cannot be used as a guarantee, since they are not an ideal means for recovery of a tax liability.

23. Credit seizures

The bill proposes modifying the credit seizure procedure to include a requirement for debtors to inform the characteristics of the contractual relationship with the taxpayer and a fine in the event that they fail to comply within a term of three days.

Conclusions

It is clear that tackling tax fraud will continue to be an important process for the current administration. However, as was previously mentioned, we believe that these types of measures should be coupled with tax reforms that clarify and provide more legal certainty to taxpayers so they can ensure compliance with their tax obligations.

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