

Tax Package 2016

Pursuant to the approved tax package, which was published in the Official Federal Gazette on November 18th, 2015, the 2016 Federal Revenue Law was issued and various provisions of the Income Tax Law, Excise Tax Law, Federal Fees Law and the Federal Tax Code were amended and added.

Since the majority of the provisions entered into force as of January 1st, 2016, below you will find those that we consider most important for our clients to take into account.

Federal Revenue Law

1. Various income tax and excise tax incentives remain in effect and the interest rates on unpaid taxes applicable to this date are maintained.

In relation to income tax, we consider relevant the continuation of the incentive consisting of the possibility of subtracting the amount of employee profit-sharing in the profits of the companies paid in that fiscal year from the tax profit determined for provisional payment.

Regarding the excise tax, tax incentives are maintained such as the possibility of those who purchase diesel for its final consumption crediting that charge.

2. It is established that the withholding for interest paid by institutions of the financial system to individuals residing in Mexico will be calculated applying the rate of 0.50 percent on the amount of the capital, and the methodology for this calculation is established.

Income Tax Law

1. In matters of social welfare one of the premises with which the requirement of generality in the case of non-unionized workers was complied with is eliminated.

In this premise it was established that the benefits were general when the same ones were delivered to all of them and they were in arithmetic average for each worker in an amount equal to or less than the expenditures made for each unionized worker.

The above implies that there are fewer limitations for complying with the requirements to access the deduction, in the case of expenses incurred for concepts of social welfare. It is important to consider that there are still other limits such as the partial deduction of payments that in turn are exempt for the workers.

2. It is established that for the calculation of thin capitalization, the debts contracted for construction, operation or maintenance of infrastructure related to strategic areas for the country or for the generation of electricity, will not be included in the debts that accrue interest owed.

3. Additional informative reports are established (master file, local file and country by country report) in relation to transfer pricing for certain entities (i) with income greater than \$644'599,005, (ii) that are listed on the stock exchange, (iii) that are members of the optional regime for groups of companies, (iv) parastatal entities and (v) entities residing abroad with a permanent establishment. These informative reports are described briefly below.

a. Master file

Relative to information of the multinational group to which they belong and focused on their structure, activity, operations with related parties and financial and tax information.

b. Local file

Relative to description of organizational structure (local), strategic activities and operations with related parties as well as financial information.

c. Country by country report

Relative to tax information on the global distribution of income and taxes covered, indicators of location of the economic activities of the jurisdictions where the group operates, its structure, principal economic activities of the entities forming the group and information on transactions with related parties.

The obligation to file such reports must be complied with no later than December 31st, 2017 and will correspond to information of the fiscal year 2016.

4. A provision is established for the creation of a profit account for investment in renewable energies (CUFIN-E), useful for determining the tax to pay in the distribution of profits of those entities that engage exclusively in the generation of power from renewable sources or from efficient cogeneration power systems. This is useful since it makes it possible to have a greater balance in the mentioned account and therefore the payment of such dividends to do not be subject to the payment of the corporate income tax.
5. The cap is expanded on the original amount of investments in automobiles, subject to depreciation, from \$130,000.00 to \$175,000.00.
6. In the case of individuals, the exemption for the sale of a home, provided the consideration does not exceed 700,000 UDIS, and it is formalized before notary public, continues in force changing only the time period in which the taxpayer cannot have sold another home in the past in order for this exemption to be applicable, from 5 to 3 years.
7. The cap for determining the personal deductions is changed from 4 to 5 general minimum wages raised to the year and from 10% to 15% in the case of income of the taxpayer.
8. The rate of withholding for interest paid to foreign banks is kept at 4.9% as in prior years, provided certain requirements are complied with, such as that they are beneficiaries of the interest and reside in a country with which Mexico has executed a treaty to avoid double taxation.
9. In the case of deconsolidation there is a broad regulation for determining the deferred tax applicable for taxpayers that continued consolidating, according to the rules applicable up to 2013, for being within the

mandatory vesting period of five fiscal years. This is with the intention of simplifying the existing schemes for the payment of the tax deferred for deconsolidation for individual tax losses, losses for sale of stock and payment of dividends not made from the net tax profit account.

10. By transitory provision a program is created for repatriation of capital applicable for individuals and entities residing in Mexico and residents abroad with an establishment in the country and that have obtained income from direct and indirect investments abroad up to December 31st, 2014. This benefit consists of being able to return the funds that such persons held abroad paying the corresponding tax without adjustment for inflation, fines or surcharges and being able to credit the income tax paid abroad, complying with several requirements among which are the following:

- (i) Return to the country in a time period of no more than the six months from January 1st, 2016 and they must be invested in that fiscal year.
- (ii) The income for which the benefits may be applied will be the income taxed in the income tax law for entities, individuals and preferential tax regimes.
- (iii) The corresponding income tax is paid within fifteen days following the date on which the funds are returned to the country.
- (iv) It must be proved that the income tax has been paid in Mexico when the investments held abroad (from which the income is derived) constitute concepts for which it was required to comply with such obligation.
- (v) The return shall be made through transactions carried out through credit institutions or brokerage firms of Mexico and of the foreign country.
- (vi) That the taxpayers that exercise the option have not had an investigation initiated against them or they have not filed defense motions in relation to the tax regime of the income that would be repatriated.

11. A tax credit is granted to individuals, subject to the additional tax of 10% of dividends, with respect to those generated in the fiscal years 2014, 2015 and 2016, provided they are reinvested and distributed beginning in 2017. The percentage of credit will depend on the year of distribution, will be creditable against the tax that should be withheld for the same concept and will not be considered accruable income.

The above implies that when the above requirements are complied with and the entity makes a withholding contemplated in the Law (10%), upon making the distribution, the individuals may credit against such withholding the credit granted, that is 1% of those distributed in 2017, 2% of those distributed in 2018 and 5% of those distributed from 2019 and forward.

12. The immediate deduction of new investments made by individuals and entities falling under one of the following premises is established: (i) whose income does not surpass 100 million pesos, (ii) those who invest in construction and expansion of transportation infrastructure, such as highways, roads and bridges, and (iii) those who invest in certain activities set forth in the Oil and Gas Law (except in surface recognition and exploitation and exploration and extraction) and in equipment for the generation, transportation, distribution and supply of electricity. The immediate deduction referred to is applicable to investments made in the last four months of 2015 and in the fiscal years 2016 and 2017.

Excise Tax Law

1. The export of food with high caloric density is considered taxed at the rate of 0% (instead of exempt) applicable to export by producers that have paid the import tax or purchase non-basic food imports in order to be able to credit such tax.

The above is because producers of non-basic food are not able to recover the tax paid (in the purchase of supplies when their production was for export) since crediting is not feasible, by express provision of the Law, with respect to acts or activities that are exempt.

2. The rate established for the sale (or import) of flavored beverages with low caloric content is lowered (by 50% for those that have up to 5 grams of sugar added for each 100 milliliters).
3. Fixed rates are established (instead of the referenced rate used previously) for the sale or import of automotive fuels (fossil and non-fossil) applicable to producers or importers when the fuel is sold or imported.

Federal Fees Law

1. There are new fees for services provided by the National Banking and Securities Commission corresponding to different procedures such as the following: (i) in order for a full service financial company to be considered as a regulated entity in terms of the General Auxiliary Financial Institutions Law for which a fee of \$24,706.61 will be paid, (ii) related to the registration to act as investment adviser in terms of the Securities Market Law for which a fee of \$27,901.67 will be paid, (iii) on the request, analysis and, if applicable, registration or renewal of the registration to act as exchange center in terms of the General Auxiliary Financial Institutions Law the fee of \$2,060.00 will be paid, (iv) for certification or renewal of external auditors and other professionals that provide their services to entities subject to supervision and to those that assist the commission (v) as well as for the auditing services that are contracted (for verification of compliance with financial laws) a fee of \$11,175.5 will be paid in both cases, respectively.
2. There are new fees for services provided by the National Insurance and Bonds Commission related to the (i) granting of recognition as insurer or bonding company (fee of \$34,784.43), (ii) for the authorization of the establishment of representation offices of foreign reinsurers (fee of \$20,870.66), (iii) for the incorporation and operation of insurance institutions and for the issuance of the certification for the initiation of their operations (fee of \$42,850.38.), (iv) for authorization for the incorporation and operation of insurance institutions, mutual insurance companies or bond institutions (fee of \$64,275.57) and, (v) for the issuance of the certification for the initiation of operations of insurance institutions, mutual insurance companies or bond institutions the fee of \$116,440.51 will be paid.
3. A fee is added for procedures before the Energy Regulatory Commission for the issuance of titles for permits for oil treatment and refining or processing of natural gas for which the amount of \$125,879.53 will be paid.

The above is for purposes of the power granted to the Energy Ministry as a result of the energy reform to grant permits for the treatment and refining of oil and the processing of natural gas.

4. A fee is established for the granting of the opinion of the National Foreign Investment Commission in order to obtain the concession to provide radio broadcasting services. For the reception and study of the request and the granting of such opinion, the amount of \$18,459.73 will be paid.
5. A new fee (\$9,768.27) is included for the authorization issued by the Ministry of Economy in order to use equipment, processes, testing methods, mechanisms, procedures or alternative technologies in the official Mexican standards.
6. In relation to the Federal Competition Commission a new fee is incorporated, of a considerable amount (\$160,000.00), to be paid for filing a notice of concentration.
7. Several changes are made to certain fees resulting from the creation of the Federal Telecommunications Institute, and those under the prior Commission were repealed, such as the change in the fees for issuance of concession titles in relation to telecommunications or radio broadcasting (for the use or exploitation of frequency bands of the radio-electric spectrum), for which now the payable amount is \$29,582.17.

Federal Tax Code

1. A new informational declaration is incorporated for financial institutions, related to the recommendation adopted by the Board of the Organization for Economic Cooperation and Development, on July 15th, 2014, in order for such institutions to share with their governments different information related to the application of procedures of identification of foreign reportable accounts.
2. In relation to the inclusion of new informative returns regarding transfer pricing, governmental bodies are prohibited from contracting with companies that have not complied with such obligation on time and these companies are also prohibited from taking advantage of subsidies and incentives.
3. A provision is added that regulates the exercise of inspection powers, in relation to requests for refunds filed by taxpayers, in order to give certainty to the proceeding and making clear that the authority may not determine tax liabilities as the result of the exercise of this power since it is only intended for reviewing the validity of refund requests.

This is because as it was regulated previously, it gave rise to the authorities in practice exceeding their powers and delaying the issuance of the corresponding resolution. This was often counterproductive for taxpayers since it could happen that not only was the refund denied but additional tax liabilities were imposed.

4. The obligation is established of the tax authorities to inform the taxpayer, its legal representative and the management bodies, of the detection of acts or omissions within a term of at least 10 business days prior to the preparation of the last partial act (of the observations ruling or of the definitive resolution in the case of electronic reviews). This is so they may exercise the right they have to go to the corresponding offices and thereby know the acts and omissions that have been detected in detail and they may be assisted by officers of the Taxpayer Defense Agency.
5. The regulation of electronic reviews is amended to require the authority to issue a provisional resolution in addition to the pre-liquidation ruling, if applicable. This implies that the pre-liquidation ruling will not

be considered definitive unless the taxpayer is not able to disprove the facts contained in the provisional resolution.

6. Infringements are added for the recently incorporated informational obligations in relation to transfer pricing, as well as for the failure to upload accounting information through the web page indicated previously.

This implies that in the case of accounting information (i) uploading it past the deadline, (ii) not uploading it according to the requirements established in the Omnibus Tax Bill or (iii) doing so with alterations that prevent their reading, will give rise to a fine (\$5,000 to \$15,000).

Similarly, taxpayers that engage in the following will be subject to fines: (i) not providing information on transfer pricing for transactions with related parties, (ii) providing incomplete information, or information with inconsistencies or errors or (iii) providing information in a manner different from what is contemplated in the respective legal provisions. The fines are considerable and go from \$140,540.00 to \$200,090.00.

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Sincerely,

Von Wobeser & Sierra, S.C.

Mexico City, January 12th, 2016.