TAX

REFORM 2013

HIGHLIGHTS

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asesores fiscales

According to the analysis conducted by the Federal Government, during 2012 the Mexican economy expanded at a rate similar to that registered in 2011, while demand for Mexican products grew moderately.

The Federal Government estimates growth of 3.5% in the real value of GNP for 2013, accompanied by inflation between 3% and 4%.

It is estimated that federal revenues will have a nominal increase of 7.9% compared to the revenues budgeted for 2012.

It is expected that the flat rate business tax collection will be 12% lower than that of 2012, whereas income tax is expected to increase by 9.4%. In terms of indirect taxes, such as value added tax and excise tax, federal revenues will increase by 11.9% and 15.1%, respectively.

Based on the argument that the global economic environment shows elements of uncertainty relative to the world's largest economies, the 2012 income tax rate is not modified, as well as different provisions that once again defer the enactment of certain amendments to tax laws, as explained further below in this document.

The changes whose enactment was deferred include the interest regime originally intended for 2010, on the basis that the tax treatment for this type of revenues needs to be reviewed.

As with the last change of President in Mexico, a tax amnesty is included which consists of forgiving contributions incurred before 2007, as well as surcharges and fines generated on contributions incurred after 2007 and up to 2012, whose application represents a benefit for taxpayers.

After the start of the year those persons required to issue tax receipts must do so using digital forms, eliminating the printed method, except for certain taxpayers in some cases, as established in the tax reform for 2010.

On January 1 the Miscellaneous Tax Resolution for 2013 goes into effect, underlining the clear intention of the tax authorities to continue legislating through this legal instrument to increase tax collections.

There are significant amendments in the Tax Code for the Federal District in relation to refunds, which directly affect the net worth of taxpayers.

In our analysis of the relevant aspects of the tax reform, we discuss the most important changes which are to be generally applied, and only use certain technical concepts to achieve a better understanding of the tax changes for the executive not expert in tax matters.

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FEDERAL INCOMES LAW

Tax Amnesty

A transitory provision establishes the total or partial forgiveness of unpaid tax liabilities for federal taxes, countervailing duties, including government charges for both, as well as fines for noncompliance with federal tax obligations other than payments, regardless of whether the unpaid tax liabilities were determined by the tax authorities, or self-determined.

In order for the forgiveness to be considered valid under any of the assumptions indicated below, it will be essential for the taxpayers to file a request with the respective tax authorities, together with the exhibits that will be published by such authorities at the latest in March 2013.

This system represents a significant economic benefit for taxpayers who wish to regularize their situation regarding taxes payable, which they were obligated to withhold, fees and social security contributions.

Taxes prior to 2007

In relation to unpaid tax liabilities derived from federal taxes, countervailing duties and fines for noncompliance with tax obligations other than payments, which were incurred before January 1, 2007, the amount of the forgiveness will be 80% of such items, adjusted for inflation. In relation to surcharges for late payment, for extensions, fines and enforcement expenses derived from the taxes and countervailing duties, the forgiveness will be 100%.

In order for the forgiveness to be considered valid, it will be essential for the taxpayer to fully settle the part not forgiven in a single payment.

The forgiveness will be 100% of the tax, countervailing duty or fine, when the taxpayers have been audited by the tax authorities for the years 2009, 2010 and 2011, provided that it was determined that they complied correctly with their tax obligations, or settled the unpaid taxes determined, and have also complied with their tax obligations.

We believe that the assumptions are unclear for purposes of taxpayers wishing to apply the additional forgiveness described above, because the respective wording gives rise to a number of different interpretations.

It might be thought that in order to apply this additional forgiveness, the authorities had to have audited the years 2009, 2010 and 2011, or that such authorities had to have conducted their audits during such years, independently of the year subject to review.

It is also unclear whether the tax authorities should have conducted the audit during the aforementioned three years or for any of them, or even have reviewed another previous year during one of such years.

We believe that such lack of clarity must be corrected through general rules that will be issued by the tax authorities at the latest in March 2013.

Additional charges on taxes from 2007 to 2012

Total forgiveness (100%) is granted for the additional charges (surcharges and fines) derived from unpaid tax liabilities for countervailing duties and federal taxes other than withheld, transferred or collected taxes, as well as fines for noncompliance with tax obligations other than payments, which were incurred between January 1, 2007 and December 31, 2012, provided that the restated taxes or countervailing duties are settled in a single payment.

Requirements to apply the amnesty

The payment of the part of the unpaid tax liabilities not forgiven under any of the assumptions discussed cannot be made by means of payment in kind, giving in payment, or offsetting.

The tax authorities must publish in the Federal Official Gazette, at the latest in March 2013, the necessary rules in order to apply the amnesty, as well as the exhibits which must be filed together with the respective request.

The amnesty will be considered valid even though the unpaid tax liabilities were challenged by the taxpayers, provided that at the filing date of the amnesty application, the appeal procedure has been concluded through a firm ruling or, otherwise, the acknowledgment of abandonment of the lawsuit must be attached.

It is established that the amnesty does not apply to unpaid tax liabilities which have been settled, and that under no circumstances will the amnesty give rise to any refund, offsetting, crediting or favorable balance. The amnesty will not be applicable when a judgment for the plaintiff is issued in criminal matters.

It is established that the response to the request for amnesty cannot be challenged by the taxpayers.

If the unpaid federal tax liabilities are administered by the authorities of the States, the amnesty must be requested directly from such authorities.

Fines levied in 2012 and 2013

A 60% reduction of the fines levied during fiscal years 2012 and 2013 is established in relation to noncompliance with tax obligations other than payments, except in the case of fines for declaring excessive tax losses provided that they are paid within the 30 days following their notification.

Income Tax Rate at 30%

A decree published on December 7, 2009 established that in order to deal with the decrease in collections that Mexico would suffer due to the global crisis at that time, the income tax applicable to Mexican entities and the maximum applicable rate for individuals, would increase from 28% to 30% during the years 2010, 2011 and 2012, and then drop to 29% for 2013.

Despite the macroeconomic indicators which show favorable growth rates in Mexico, the Purposes Article establishes that due to the problems with the sustainability of public finances in different countries of the European Union and the USA, it would be advisable to maintain the rate and tariffs in effect in 2012 so as to avoid a structural weakening of public finances in Mexico.

The Purposes Article states that this measure reflects the international environment, because in the period from 2009 to 2012, almost one third of the member countries of the OECD have increased their income tax rate, more than half have maintained the rate and only a few countries have actually cut it.

Given the above, it is established that for 2013 the rate applicable to corporations, instead of that established in the aforementioned decree, will be 30%.

It is also established that the tariffs applicable for individuals will be those in effect in 2012, which means that the maximum marginal rate remains at 30% during the year 2013.

The aforementioned reform establishes that the 29% rate will be applied in 2014. It is questionable that a law in effect for one year should seek to regulate the rate applicable in a subsequent year.

In line with these modifications, it is established that the applicable rate to determine the tax generated through a real estate investment trust (Spanish acronym FIBRA), will be 30% only for 2013, instead of the 28% established in the Income Tax Law.

Interest Regime for 2014

Another one-year extension is established for the enactment of the new interest regime on income tax, so that it will begin to be applied as of January 1, 2014.

Previously, the enactment of this regime had been deferred to give financial institutions the opportunity to adjust their processes and systems, and to keep specific accounting accounts. However, for this year the Purposes Article also establishes that due to the change in the Presidency, the Mexican Treasury Department should review such tax regime to determine whether it is applicable or, as the case may be, make the respective changes.

We believe that the regime whose implementation is proposed for the year 2014, should be modified before it goes into effect in order to correct the distortions that it presents, as already discussed in our Highlights of the 2010 Tax Reform.

Given that the regime for interest in effect for the year 2013 remains the same, the obligations for withholding and payment of the income tax related to such interest, and the filing of information returns and compliance with other formal obligations are also unchanged.

Withholding on Bank and Stock Exchange Interest

It is established that institutions engaged in the financial system will continue to apply the annual rate of 0.60% on principal which gives rise to the payment of interest, in order to determine the withholding of income tax on any revenues obtained for this item, as had been the case in recent years.

As in previous years, we believe that current interest rates do not justify such a high withholding rate.

Real Interest on Mortgage Loans

The provision remains in effect whereby the amount of real interest effectively paid on mortgage loans will be determined in accordance with the procedure established in the tax provisions applicable to individuals resident in Mexico (nominal interest less inflation), pursuant to the interest regime that will be in effect in the year 2013.

4.9% Rate on Interest

The income tax withholding rate of 4.9% on the interest paid to foreign banks registered with the Mexican tax authorities remains in effect for fiscal year 2013, provided that they reside in a country with which Mexico has a current double taxation treaty and they comply with the requirements established in such treaty.

As already noted on previous occasions, we believe that in order to provide legal certainty for taxpayers, this provision should be included in the Income Tax Law, instead of a one-year statute such as the Federal Incomes Law.

Surcharges Rate

The surcharges rate established in the previous year, in relation to the deferral of the payment of unpaid tax liabilities, is maintained for the year 2013. In relation to due and payable tax liabilities on unpaid balances, the surcharges rate applicable is 0.75%. Consequently, the surcharges rate for late payments will be 1.13% per month.

In those cases where payment by installments is authorized the following surcharges rates will be applied: 1% per month for installment payments of up to 12 months; 1.25% per month for installment payments of more than 12 and up to 24 months; and 1.5% per month for installment payments in excess of 24 months or deferred installment payments.

Tax Incentives

The tax incentives related to the acquisition of diesel made by taxpayers who carry out business activities (except mining), agriculture, forestry and transportation of persons or freight, whether public or private, remain in effect for year 2013.

However, it is established that taxpayers engaged in agriculture or forestry activities will not be able to apply the incentive which consists of crediting a part of the expense for the acquisition of diesel, or requesting the refund of any tax which they were entitled to credit, when the excise tax that is transferred to them is either zero or negative.

Furthermore, the tax incentive applicable to expenses incurred in the use of the highway infrastructure is maintained for taxpayers engaged exclusively in the public and private transportation of freight or passengers, which use the National Toll Road Network.

Foreign Pension and Retirement Funds

The possibility remains in effect for business corporations which have foreign pension and retirement funds as shareholders, that comply with the requirements established in applicable tax provisions, to exclude from the calculation of their total revenue the income generated by inflation and the exchange gain derived exclusively from the debts contracted for the acquisition or to obtain revenues from granting the temporary use or enjoyment, of land or other constructions attached to it, which are located in Mexico.

The above is intended to determine whether these persons comply with the requirement of 90% of their revenues to be exempt from the payment of income tax, based on the shareholding percentage or the participation of such funds in the Mexican legal entity.

Flat Rate Business Tax Credit

The provision which bars the application of the credit for excess deductions against income tax incurred in the same year in which such credit is determined, remains in effect; for this reason it may only continue to be credited against flat rate business tax determined in the subsequent 10 years.

Notwithstanding the adverse economic effect that this restriction generates for taxpayers, the Mexican Supreme Court recently ruled that this provision is not subject to the constitutional rights established in tax matters, because it refers to a benefit for taxpayers, which does not affect the essential or variable elements of the flat rate business tax.

The Supreme Court has also ruled that this provision does not violate the constitutional right of legal certainty, because it refers to a provision that is valid for one year, and the Flat Rate Business Tax Law does not have a fixed or determined duration.

Inspection and Oversight Fees Charged by the CNBV

The provision remains in effect whereby full-service banks, development banks, securities firms and investment funds (except investment funds specializing in retirement funds) may elect to pay the fee for inspection and oversight rendered by the National Banking and Securities Commission (CNBV), based on the provisions in effect for the year 2012, plus a margin of 5%.

If the aforementioned option is exercised and the annual payment is made during the first quarter of the year 2013, the 5% discount for the total payment of the annual fees established in the Federal Incomes Law will not be applicable.

As a result, a flat fee is incorporated for the inspection and oversight services provided by the CNBV to such entities, which will begin to be paid as of the business day following that in which they obtain registration with such Commission, or inform the National Commission for the Protection and Defense of Financial Service Users that they have been established, and will be incurred proportionately from that date until the end of the fiscal year.

MISCELLANEOUS TAX RESOLUTION

Tariffs for Individuals

Tariffs are published to determine the income tax payable by individuals for the year 2013, but they have not been restated in relation to those published for the previous Miscellaneous Tax Resolution, which produces adverse economic effect for taxpayers, because the increase due to wage inflation is affected even more with the payment of tax.

Pursuant to the Income Tax Law, such tax should be restated when inflation exceeds 10% since the last restatement performed, which occurred in the year 2012.

Even though the tariffs published are not restated, based on the mechanism established in the Income Tax Law, we believe that there are sufficient grounds to apply the respective restatement, in compliance with the obligations expressly set forth in such law.

Securities Listed among the Investing Public

The concept of credit instruments which are considered as placed among investing public for purposes of the Income Tax Law and its regulations is modified to now establish that they will be those registered in the National Securities Registry and those listed on the International Quotations System of the Mexican Stock Exchange.

Consequently, the reference to the listing of securities of Exhibit 7 of the Miscellaneous Tax Resolution (commonly known as *"Bursatómetro"*) is eliminated, because its duration was not extended, and it was not included in the current Miscellaneous Tax Resolution.

Nevertheless, the reference to Exhibit 7 is still included in the rules related to the "Calculation of nominal interest for institutions engaged in the financial system" and "Shares of investment funds which are considered for purposes of personal savings accounts"; for this reason, we hope that such omission is cleared up by the tax authorities, because the application of these two rules is questionable.

Business Activities in Joint Ventures and Trusts

Since the 2011 Miscellaneous Tax Resolution, it has been established that business activities are not deemed to be performed through a trust or joint venture (Spanish acronym AenP), when the passive income is equal to or in excess of 90% of the total income earned by either of such figures.

The gain from the sale of participation certificates or securitized trust certificates issued under a FIBRA, as well as the gain on the sale of securitized trust certificates issued by trusts whose assets are fully invested in participation certificates issued by FIBRAS, are added as constituent items of passive income.

Furthermore, as of the year 2013 the option is established for taxpayers to consider that business activities are not performed through these figures subject to compliance with the requirements established for such purposes.

It is questionable the fact that the revenue used to determine the percentage of passive income should be the profit earned on the sale of the certificates, not their selling price, because this reduces the percentage of passive income.

Royalties from Software Use

For the application of double taxation treaties, it is established that the software known as "commercial off the shelf" (COTS) is considered as a standardized or standard application, whose payments for their temporary use or enjoyment will not be considered as royalties, provided that such use is granted universally on a wide scale in the market.

It is established that standardized applications do not include those considered special or specific, which are understood to be those adapted in some way for the acquirer or user, or those designed, developed or manufactured for a user or a group of users, by the creator or by the person responsible for the respective design, development or manufacture.

It is also established that a standardized or standard application loses such status when it is subsequently adapted in some way by the acquirer or user, to be converted into a parameterizable application. This restriction is not applicable when the software is incorporated with another standardized or standard application.

Receipts for Installment Payments

Pursuant to the Federal Tax Code, in those transactions which are settled by means of installment payments, taxpayers are required to issue a tax receipt for the total amount and one for each installment payment received in relation to the consideration in question.

Now the taxpayers may elect to issue a single tax receipt which expressly states that the payment of the consideration will be made in installments, provided that it contains the total value of the transaction in question and the amount of the withheld and transferred taxes, while also itemizing, as the case may be, each of the respective tax rates.

A transitory provision establishes that such system will also be applicable to tax receipts issued as of January 1, 2012, without establishing a specific mechanism for such purpose.

Account Statements as CFD's

A transitory provision eliminates as of July 1, 2013 the administrative rule whereby account statements that fulfill the requirements to be considered as Digital Tax Receipts (CFD's) may be used as tax receipts.

This rule applied to account statements issued by credit institutions, securities firms, investment fund operators, distributors of shares of investment funds, regulated multiple purpose finance entities, retirement fund administrators, budget finance companies authorized to operate as savings and loans in accordance with the Popular Savings and Credit Law, as well as non-commercial companies that issue service cards.

For this reason, as of July 1, 2013 the account statements must fulfill the requirements applicable to Internet Digital Tax Receipts (CFDI's).

Receipts for Used Vehicles

Taxpayers may consider that they fulfill the requirement related to obtaining evidentiary documentation that supports the acquisition of used vehicles from individuals that are not taxed under the general or intermediate regime of business activities or that of professional activities, when they comply with the following:

1. They enter into a written contract of purchase and sale;
2. They indicate in the contract the domicile of the seller and obtain a copy of the identification of the seller of the vehicle; and,
3. They keep a copy of the tax receipt issued by the person who sold the vehicle for the first time.

Information Requirements for SIBRAS

A new obligation is added for business corporations that fulfill the requirements to be considered as real estate construction or acquisition companies (Spanish acronym SIBRAS), whose shareholders intend to apply the tax incentive whereby they may defer the accrual of any gain generated from the contribution of real estate properties to such companies.

This obligation consists of filing a writ with the SAT for each contribution, in which they indicate that the aforementioned incentive is being applied.

Such writ must be accompanied by different documentation and information related to the company that receives the contribution of the real estate property, and the shareholder who makes the contribution, and must be filed at the latest on the 17th day of the month immediately after that in which the contribution is received.

If the aforementioned letter is not filed, duly accompanied by the required documentation and information, or the filing requirement is not totally fulfilled, it will be understood that the aforementioned tax incentive was not applied.

In our opinion, the filing of the documentation required in accordance with this rule is practically impossible to carry out within the deadlines granted for such purposes, which thus discourages the use of the SIBRAS as a tax incentive.

Auditor's Tax Report of Holding Companies

The requirement is included to indicate in the report on the review of the tax situation of the holding company for 2012, whether the holding company reduced its equity percentage in a controlled company, a controlled company withdrew from tax consolidation, or the group ceased to consolidate for tax purposes, while also indicating any omission or noncompliance regarding the income tax deferred under the tax consolidation regime, in relation to those commonly known as CUFIN differentials.

The above is relevant if we bear in mind that under applicable tax provisions the amount that should be paid for the deferred tax is not clearly indicated, when the holding company fulfills one of the aforementioned assumptions, because the rule allowing for the deferral of tax derived from the CUFIN differentials does not establish whether such amount refers to the total amount of deferred tax or only that portion corresponding of the equity that was decreased of the controlled company or the portion of the controlled company withdrew from the tax consolidation group.

Auditor's Tax Report of Financial Statements

Filing dates are established for the auditor's tax report for 2012 through the SAT Internet webpage, by considering the first letter of the RFC (tax ID number) of the taxpayer, based on the calendar indicated below:

LETTERS OF THE RFC CODE NO.	FILING DATE
From A to F	From June 14 to 19, 2013
From G to O	From June 20 to 25, 2013
From P to Z and &	From June 26 to July 1, 2013

It is established that when taxpayer files the auditor's tax report after the respective filing date, as established in the above calendar, it will not be considered as having been filed late as long as such report is sent at the latest on July 1, 2013.

Furthermore, it is established that companies which consolidate for tax purposes must file the auditor's tax report containing the respective information and documentation at the latest on July 15, 2013.

Option to Not File the Auditor's Tax Report

The form in which the taxpayers serve notice that they elect not to have their financial statements audited for tax purposes is hereby modified. Now, such notice will be contained in the normal income tax return for the year in which such option is exercised, which must be filed within the deadlines established in applicable tax provisions.

Please bear in mind that filing the annual return after the legal deadline established will mean that the authorities consider that the aforementioned option was not exercised.

For the year 2011, taxpayers had to serve notice to the tax authorities by means of a writ, which was filed with the SAT at the latest on April 30, 2012.

The dates on which taxpayers will have to file the information other than the auditor's tax report, because the exercised the option, will be the same as those applicable to the filing of the aforementioned report.

RFC for the Financial System

The obligation is added for financial institutions to provide their RFC to other institutions in the financial system in which they have accounts opened or when they open accounts, so that the latter can confirm with the SAT that effectively the account-holding institutions are exempt from the payment of the IDE (cash deposit tax), for any cash deposits that they make in their own accounts, as a result of their financial brokerage or the purchase and sale of foreign currency.

TAX CODE FOR THE FEDERAL DISTRICT

Vehicle Possession Tax

The tariff is restated for the calculation of the vehicle use and possession tax in the specific case of new automobiles intended for the transportation of up to 15 persons, resulting in an increase of approximately 3% compared to the 2012 tax.

Subsidy for Vehicle Use and Possession Tax

The maximum value of vehicles is reduced from $350,000 to $250,000, so that individuals and nonprofit business corporations can enjoy the subsidy granted by the Federal District Government in the vehicle use and possession tax.

Tax Refunds

Up to July 23, 2012 the tax authorities were required to refund to taxpayers only the restated amount of the amounts unduly paid, when the latter had obtained a final favorable ruling in any legal action.

As a result of the reforms to the Tax Code for the Federal District in effect as of July 24, 2012, the tax authorities were required to refund taxpayers the amount of taxes unduly paid, as well as the amount of interest incurred from the date on which the payment was made.

As of January 1, 2013, the tax authorities were no longer obligated to pay the interest incurred on amounts paid unduly by taxpayers, when the latter obtained a favorable final ruling in any legal action. For this reason, currently the tax authorities are obligated to refund only the restated amount of the aforementioned amounts to taxpayers, without the payment of any interest.

We believe that the aforementioned reform constitutes a step backward in this regard, because it disavows the compensatory function of the surcharges, thus resulting in an adverse effect on the net worth of those persons who paid a tax that they did not actually owe.

It is questionable that taxpayers are obligated to pay surcharges for the untimely payment of their taxes or, as the case may be, for those invalid refunds.

We believe that the reform analyzed herein is unfair, because the taxpayers does not have the right to obtain the refund of a payment that was not owed, plus the respective surcharges, whereas the tax authorities are indeed authorized to determine the amount of the unpaid tax, plus the respective restatements and surcharges.

Please be advised that there is no transitory provision for those cases where a favorable verdict was obtained before the enactment of the reform and the undue payment was not refunded.

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