

TAX REFORMS FOR 2004

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President Fox, failed, for the second time, to enforce a tax reform to reactivate the national economy; since his proposal did not convince the opposition within Congress, this resulted in a budget vulnerable to possible cuts.

The main reforms are the following:

INCOME TAX LAW

- The Income Tax rate is 33%
- The substitutive Tax on payroll credit has been repealed and derogated.

Regulations of the Income Tax Law – published in the Official Gazette of the Federation on October 17, 2003.

1. Previously Article 22, now 42, refers to the Savings Fund.
Now 2 loans per year are allowed instead of 1, provided that said loans **do not exceed the saved amount**.
2. Previously Article 172, now 258, refers to sale of shares of Mexican companies owned by residents abroad.

VALUE ADDED TAX

- No changes were made applicable to the Maquila Industry.

FISCAL CODE OF THE FEDERATION

- Foreigners will be considered as Mexican residents for tax purposes.
- Rounding of the National Price Index factor.
- The rate of updates shall be modified only when the National Price Index is modified in more than 10%.
- All documents required by the tax authorities, must be presented electronically, and must contain electronic signature.
- The Ministry of Finance will issue a certification of authentication of the electronic signatures, which shall be valid for a maximum term of 2 years.
- All exhibits, such as public deeds and powers of attorneys, of documents filed electronically, must be submitted electronically.
- Electronic filing does not apply to notices of the Federal Taxpayers Registry.

- Inquiries and defense recourses may be filed either in writing or electronically.
- The term to return credits is reduced from 50 to 40 days for those requesting the return via bank deposit, and 25 days for companies who have an opinion issued by a certified public accountant.
- Limitation on the right of the Tax Administration Service to request additional information on credit requests.
- If a tax credit is denied, the tax authority must legally support the denial.
- Companies are held responsible for verifying that the recorded shareholders file tax returns in the event of transfer of shares or equity holdings.
- Companies must keep a detailed control of inventories of merchandise, raw material, work in progress, finished products.
- Individuals and companies that have an authorized electronic signature and who effect their bookkeeping electronically, may issue invoices electronically, upon authorization from the Ministry of Finance.
- Companies must keep corporate records in order from the date of incorporation to the date of liquidation. The statute of limitations of 5 years does not apply in this case.
- Certified public accountants may microfilm accounting records, which shall be valid as originals.
- When initiating an audit, the tax authorities must first request the opinion and any other information from the certified public accountants, and may only request information directly to the taxpayer if the opinion of the accountant is not favorable.
- Fines for omission of payment of taxes are reduced from 50% to 40%, and from 70% and 100% to 50%.
- New activities considered contraband:
 - The temporary importations carried out without a Maquila program or the Maquila program is not valid.
 - The temporary importation is effected under a Maquila program, when there has been a change of name of the company, and the corresponding notice has not been filed.

Consequences of the rejection of the 2004 tax proposals by President Fox:

- Increased audit activities and fines by tax authorities, such as transfer pricing studies; safe harbor regime application; review of financial statements issued by certified public accountants; review of fringe benefit plans; audits to verify compliance of Value Added Tax, Income Tax, Tax on Assets, withholdings and other taxes; refusal to reimburse tax credits; levy fines plus updates and surcharges.
- The Tax authorities will make all efforts to reduce deductions and increase verification of current deductible costs and expenses.
- Seizure of real estate or personal property to guarantee a tax liability.
- Assignment of foreign trade taxes derived from audits for:
 - Customs inspections.
 - Failure to comply with the Mexican Official Standards.
 - Failure to pay countervailing duties.

What should your company do if an audit or action is performed by the tax authorities?

- Make sure that it has all relevant documents and returns ready.
- Be aware of statute of limitations.
- Have a third party review the tax expert's opinion.
- Make clarifications and adjustments, if necessary.
- Assure that the individuals that will be served by the tax authorities know what to do.
- Allow for the participation of counsel.

What if there is a tax liability levied by the authorities?

- Make full payment.
- Request partial payments.
- Challenge the tax liability by filing:
 1. Recourse provided by the respective law.
 2. Nullity action filed with the Federal Tax Court.
 3. Amparo.
 4. Revision recourse (Appellation).

Congress approved an austere budget that will hardly help the economy of the country or the generation of jobs, henceforth President Fox will try to achieve a comprehensive tax reform through miscellaneous provisions.

If you have any questions on this or any other matter pertaining to Mexican Law, or if you wish to receive a complimentary copy of our Tax Maquiladora 2004 presentation, please feel free to contact us at:

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