

Proposed Tax Amendments in the 2020 Budget Bill

Category: Legal Alerts, Tax

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On September 8, 2019, the Executive delivered to the Mexican Congress the Budget Bill for 2020, which includes the proposed “Decree by which various provisions of the Income Tax Law, Value Added Tax Law, Law on Special Tax on Production and Services and the Fiscal Code are amended, added and repealed” (the “2020 Tax Amendments”). Below we highlight the most relevant proposed tax modifications that will be discussed by Congress in the following days.

Income Tax

- Updating of the concept of permanent establishment, in accordance with recommendations set forth in action 7 of the BEPS Project.
- Revision of the provisions addressing hybrid mechanisms, in accordance with recommendations set forth in action 2 of the BEPS Project.
- Modification of various provisions of the Law referring to the Preferential Tax Regimes, differentiating the income obtained through tax transparent foreign entities and vehicles, from the income related to preferential tax regimes obtained through controlled foreign entities.
- Introduction of a general rule addressing income realized by tax transparent foreign entities and vehicles.
- Establishment of a new limitation on the deduction of interest setting a cap equal to 30% of the Adjusted Tax Profit, as well as modification of the thin capitalization rules.
- Incorporation of the provision that was previously included in the Federal Revenue Act, allowing the reduction of the employee profit sharing upon calculating advanced monthly payments.
- Addition of a new set of rules dealing with income generated by Mexican resident individuals from the sale of goods or the provision of services through the Internet, technological platforms, and similar

computer applications.

- Elimination of private REITs (FIBRAS), which will trigger the payment of the tax generated by the transfer of the assets to the trust as regulated under transitory provisions.

Value Added Tax Law

- Taxing digital services provided by non-residents with no PE in Mexico, as well as digital intermediation services between third parties provided by non-residents with no PE and by Mexican residents.
- Withholding of tax payable to labor outsourcing service providers.
- Rules dealing with activities not subject to VAT and their impact on credits.
- Repeal of the possibility to offset VAT favorable balances against other taxes due.

Excise Tax on Production and Services

- Repeal of the possibility to offset favorable excise tax balances against other taxes due.

Federal Fiscal Code

- Establishment of a general anti-abuse rule (GAAR) aimed at transactions that are deemed to lack a business purpose and resulting in a tax benefit.
- Amendment of the rules governing the offset of favorable tax balances, now excluding the possibility of being applied with respect to taxes withheld from third parties.
- Introduction of the obligation for tax advisors to disclose reportable transactions, as well as the possibility of performing tax audits to review the compliance therewith and assessing penalties for non-compliance.
- Addition of various provisions aimed at challenging companies that issue, market and use tax invoices from non-existent operations.

For further information with respect to the Proposed Tax Amendments, please get in touch with your regular contacts at Nader, Hayaux & Goebel.