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Chapter 18

MEXICO

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I INTRODUCTION

Investment is the component of spending that enables higher levels of growth. It is the sum of the resources that are used to acquire fixed capital by which the population can become more productive. 2023 will be an interesting year for Mexico, as the government of President Andres Manuel Lopez Obrador is coming to its conclusion, so there will be several political factors that will influence Mexico's economy; however, it should be noted that despite the covid-19 pandemic and various geopolitical factors such as the war in Ukraine that have definitely impacted the global economy, Mexico has maintained some economic stability, which has generated the attraction of capital flows.

According to the Mexico Ministry of Economy, from 2021 to 2022, direct foreign investment in Mexico increased by 12 per cent for a total of US$35.29 billion; it is important to note that 48.15 per cent of foreign direct investment (FDI) corresponds to new investments, which reflects a stable economic climate that makes Mexico attractive for foreign capital investment. According to numbers from the government, 36.02 per cent of FDI in 2022 was from the manufacturing sector, 13.15 per cent from financial and insurance services, and 15.13 per cent from transportation, while the rest was distributed throughout sectors such as, among others, commerce and accommodation services. In terms of country of origin, 42.5 per cent of FDI came from the United States, 10.71 per cent from Canada, 4.98 per cent from the United Kingdom and the rest from Germany, Japan and other countries.

Manufacturing is an essential pillar of the Mexican economy. This sector represents 18.5 per cent of the economy and it is a major attractor of foreign investment. It has represented 47.9 per cent of the FDI in the past five years. This is mainly explained by the fact that, as a result of the pandemic and other geopolitical factors, many industries and manufacturing companies moved their facilities from abroad to locate them in areas closer to the United States (nearshoring).

In the past few years, the nearshoring trend has increased Mexico's manufacturing sector, positioning Mexico as a key player in North America's supply chain. Nearshoring is to be understood as a commercial, economic and legal synergy in which a transnational organisation establishes its manufacturing, assembly or supply processes in the country or continent where they will be marketed, reducing the risk of suffering operational interruptions.

Private consumption will strengthen gradually, aided by remittances and the rollout of vaccines. Exports will continue to benefit from deep integration into international value chains and a gradual recovery in tourism. Planned public infrastructure projects will boost

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investment. According to data from the Central Bank of Mexico (Banxico), the institution considers that inflation in Mexico will close at 7.5 per cent in the first quarter of 2023. Banxico also made modifications for the second quarter (the forecast varies from 6.4 to 6.3 per cent) and for the fourth and last quarter of 2023, when it expects inflation to close at 4.8 per cent (the previous estimate was 4.9 per cent).. In 2019, the Global Competitiveness Report issued by the World Economic Forum ranked Mexico as 48th out of 141 economies and placed it as one of the most competitive economies in Latin America. Mexico's improvement is based on efficiency in trade, investments and productivity. In addition, as a member of the OECD and the World Trade Organization, Mexico has become a champion of free trade, with a considerable network of tax treaties, which have given rise to a large amount of wealth being created. Unfortunately, this wealth is amassed to only a small percentage of the population. The country has one of the highest rates of inequality in the world and will certainly face challenges in the future to achieve inclusive and sustained growth for all its citizens.

Over the past three years, certain events have created both opportunities and obstacles with regard to private investments in Mexico, such as the renegotiation of the North America Free Trade Agreement (NAFTA), the US tax reform and the federal administration in charge for the period 2018–2024.

With respect to NAFTA, after more than a year of negotiations, the United States, Mexico and Canada signed the new United States–Mexico–Canada Agreement (USMCA) on 30 November 2018, which became fully effective on 1 July 2020. The most important effects of NAFTA are chapters on labour, environment, digital trade, competitiveness and anticorruption. This agreement is playing a positive role in increasing trade flows and reinforcing channels for investors, exporters and importers.

Another development with significant implications in Mexico is the US tax reform. Approved in December 2017, this reform reduced business tax rates and substantially modified the US international tax system. As a result, the reform has had important consequences for companies and markets in Mexico, including the taxation of US corporations' foreign subsidiaries. That said, Joe Biden's administration has proposed the Made in America tax plan, which is very different to 2017's aforementioned reform. Among other things, the plan includes raising the corporate income tax rate to 28 per cent and eliminating offshoring incentives while limiting corporations' use of tax loopholes.[2] If these are applied, they would have a significant effect on Mexico.

All investors must consider, in the global tax environment, the undergoing legal modifications that were triggered by the Base Erosion and Profit Shifting (BEPS) Action Plan set forth by the OECD. BEPS actions are focused on information transparency and avoiding the undue use of treaties, which reflects a minimum standard to combat treaty shopping.

As a member of the OECD, Mexico has been actively involved in the design and development of BEPS and has begun implementing many of the following recommended actions since 2014:

- *a* taxation of the digital economy (Action 1);
- *b* anti-hybrid rules (Action 2);
- *c* limiting base erosion involving interest deductions and other financial payments (Action 4);
- *d* preventing the artificial avoidance of permanent establishment status (Action 7);
- *e* a form of mandatory disclosure requirement for taxpayers (Form 76) (Action 12);

f an obligation for taxpayers to present a country-by-country report, master file and local file (Action 13); and
g new OECD transfer pricing guidelines (Actions 8–10).

Mexico is a signatory party of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI), under which Mexico elected to supplement the principal purpose test with a simplified limitation on benefits provision. On 12 October 2022, Mexico ratified the MLI and, finally, on 15 March 2023, the Mexican Senate deposited the MLI with the OECD. It is important to point out that the MLI will enter into force in Mexico as of 1 January 2024, the main consequence of which will be the amendment of several provisions of the double taxation avoidance treaties that were in force in Mexico.

The most important changes are the inclusion of minimum standards to be applied to all covered tax treaties, including a principal purpose clause. In addition, as part of these minimum standards, the MLI implements a series of rules aimed at eliminating situations perceived as abuses of the tax treaties as observed in the different final reports of BEPS. Therefore, it is important for multinational groups with Mexican entities, or Mexican groups that regularly make payments abroad, to consider the entry into force of the MLI, in order to understand its effects and thus be able to anticipate possible contingencies. Furthermore, Mexico has broadened the scope of exchange of tax information under the Common Reporting Standard (CRS), with 100 currently active automatic exchange relationships with other countries, as well as the Foreign Account Tax Compliance Act with the United States.

On 30 October 2019, Mexico's Congress approved several amendments to the Mexican tax regime. Although the federal government's executive branch committed to not create any new taxes, the new amendments will directly affect certain taxpayers and give them additional obligations, many of which will increase their administrative burden.

Among the most important amendments are the following:

a a new regime for income received through foreign transparent entities or foreign legal vehicles (transparent or not);
b modification of the control rules for tax preferential regimes;
c a limitation to deductions of payments made to related parties and interest accrued;
d a new tax regime for income received from digital platforms;
e a new anti-avoidance rule for the re-characterisation of operations;
f new cases to determine joint and several liability for shareholders, partners and general managers;
g new rules for the cancellation of digital certificates; and
h the disclosure of tax-planning structures.

The new administration will bring changes to various areas of the Mexican economy, which may bring new business opportunities for investors, but also new rules that will have to be reviewed to better capitalise on the opportunities in the new political environment.

The federal government has refused to increase public debt or raise taxes to face the economic effects of the covid-19 pandemic, but the Austerity Law may not be enough to face the crisis. There is a need for increased tax collection and regulation of larger taxpayers, especially by Mexico's Tax Administrative Service; during recent years, tax authorities have increased their effectiveness in auditing taxpayers in view of the verification powers granted to them, as well as the technological tools available, that allow the gathering and processing of several pieces of taxpayers' information, as well as the flow of information from foreign tax authorities.

II TAX

Mexico has a residence-based system under which an individual residing in the country for tax purposes is subject to taxation over his or her worldwide income. An individual is a Mexican tax resident if he or she settles his or her habitual abode in Mexico. If an individual has a home in Mexico and another country, the centre of vital interests is the factor that determines the tax residence in Mexico. Mexican nationals are presumed tax residents in Mexico.

Income tax liability is the income obtained by the taxpayer during a fiscal year (which coincides with the annual calendar). Mexican law does not provide a general definition of income; however, in the context of the Income Tax Law, Mexican courts have defined it as a 'positive modification registered in the patrimony of a person that is susceptible of pecuniary valuation'. Individuals are taxed on income received in cash, in kind, in credit or in services.

Individuals can apply certain personal deductions (education costs, charity donations, medical and dental), and most personal deductions are limited to 15 per cent of the yearly taxable income.

Personal income tax rates are progressive up to 35 per cent. Individuals with business activities or professional income are subject to income tax at a rate of 30 per cent and may deduct normal business expenses according to entities rules. In most cases, a tax return has to be filed by the end of April in the following year.

Non-resident individuals are taxed only with respect to income that is sourced in Mexico under varying terms and conditions depending on the type of income. The tax rate varies between 5 and 40 per cent. Double taxation agreements apply by reducing the taxable rates or even producing a non-taxable event.

The principal types of taxable income for individuals (residents in Mexico and non-residents) are the following:

i Sale of shares

Mexican-resident individuals are taxed over the sale of goods, including shares issued by foreign entities. To assert the tax base, individuals are allowed to perform certain deductions. For such purposes, Mexican-resident taxpayers will be able to deduct, among other things, the updated amount of the acquisition cost of the shares, commissions, certain considerations paid to intermediaries, and some other taxes or duties paid.

With respect to foreign individuals, a sale of shares will trigger a tax of 25 per cent on the gross amount, or 35 per cent on the net profit, if the non-resident appoints a representative in Mexico. A tax return must be filed in conjunction with an auditor's opinion obtained from a Mexican public accountant certifying that the reported gain was correctly determined.

Income deriving from the sale of securities or publicly traded shares is subject to a 10 per cent tax on the gain (foreigners are subject to a 10 per cent withholding tax on the gain).

ii Dividend distributions

Resident individuals must include the dividends received from Mexican corporations (grossed up for the corporate income tax paid by the corporation) in their individual income tax returns and are able to claim the underlying corporate income tax paid as a credit against their personal tax liability.

With respect to dividends paid from profits that were generated by the distributing entity after 2013, an additional 10 per cent tax on the net dividend will be withheld by the Mexican company. This tax is in addition to the tax paid with the annual tax return, and it cannot be credited. In the case of dividends paid to foreigners, the dividend amount will also be subject to this 10 per cent withholding rate.

Double taxation agreements, in certain cases, grant preferential withholding rates upon any profit or dividend distribution sourced in Mexico (reducing it by up to 5 per cent).

iii Interest income

Interest earned on accounts held in Mexican banks is subject to withholding tax and should be reported in the annual tax return.

Interest on bank accounts, bonds and other debt obligations issued by non-residents is fully taxable, and the taxable interest includes adjustments for inflationary losses and exchange gains and losses with respect to the principal.

Interest paid to a non-resident is subject to withholding tax at rates ranging from 4.9 per cent to 35 and 40 per cent.

iv Real estate

Income deriving from the sale of real estate is taxable for income tax purposes considering the seller's gains (the tax basis with recognition of the inflationary effect).

With respect to the acquirer, a local tax of approximately 2 to 6 per cent is applicable on the commercial or transaction value (whichever is greater).

If real property is acquired as a gift or at under 10 per cent of the appraisal value, income tax will also be triggered by the acquirer.

With respect to foreign individuals, the sale of real estate will trigger a tax of 25 per cent on the net income or 35 per cent on the gross amount if the non-resident appoints a representative in Mexico.

v Inheritance and gift taxes

Actually, there is no specific inheritance, estate or gift tax in Mexico. Inheritances and gifts are treated as income under the income tax law, but they may be exempted as long as certain requisites are complied with.

Income received by Mexican tax-resident individuals from inheritances and donations (when applicable) in a given tax year must be reported to the tax authorities in their annual tax return. Income received by resident individuals from donations shall be reported to the tax authorities when all donations (including prizes and loans) received in a tax year exceed 600,000 Mexican pesos.

Income received as a result of a gift from a spouse, lineal ancestor or lineal descendant is also exempt. However, gifts between siblings are not exempt, and gifts to parents are not exempt if the asset is later given or sold to a sibling of the original owner.

Other gifts are tax-exempt, provided the gift does not exceed US$5,265.00. Any portion of the gift exceeding this amount would be subject to income tax.

In recent years, multi-partisan legislators, the OECD and even media outlets have made many attempts to promote the creation of an inheritance tax in Mexico. Given the economic effects of covid-19, the idea has increased in terms of its public acceptance.

vi Taxpayers subject to the preferential tax regime

Mexican tax residents will be subject to the preferential tax regime rules only regarding income generated through foreign legal entities. Similarly, a new tax regime applicable to Mexican tax residents that obtain income through foreign transparent entities or legal figures (transparent or not transparent) has been established.

The taxpayer will trigger income tax (at a 35 per cent rate + a 10 per cent dividend) for income or profits generated directly or indirectly by a foreign non-transparent entity (when such entity's tax rate is below 22.5 per cent for Mexican entities and 26.25 per cent for Mexican individuals).

Income subject to the preferential tax regime is subject to taxation in Mexico during the fiscal year that such income is generated abroad even if the income, dividends or profits have not yet been distributed by the foreign legal entity in which the Mexican taxpayer directly or indirectly participates.

In February of each fiscal year, taxpayers must file an informative tax return regarding income subject to the preferential tax regime directly or indirectly; income generated in the previous tax year; income generated in blacklisted countries; and transactions carried out through foreign legal entities.

There are several exceptions to this regime, especially regarding the absence of effective control of the foreign legal entity.

Nevertheless, the rules to determine if there is effective control are substantially modified. Under these new rules, there is effective control over the foreign entity if the taxpayer has more than 50 per cent of the shares or rights that allows such taxpayer to obtain the profits or assets in cases of a capital reduction or liquidation.

It is important to consider that in the case of individuals participating directly or indirectly in such structures, the threshold to determine if the preferential tax regime applies will be 26.25 per cent of the income tax rate against the corporate tax rate of 22.5 per cent.

III SUCCESSION

Succession is a part of civil law that, for the purposes of Mexican legislation, is regulated in the federal and local civil codes. Mexico has 32 federal states and entities, including the capital, Mexico City. The federal and local civil codes have mostly the same regulations, but there may be specific conditions that differ among them.

The Federal Constitution establishes that the powers not expressly granted to the federation are understood to be reserved to the states. Therefore, because succession is not a federal matter, depending on the state where the succession takes place, the local civil code will be the applicable one.

The transfer of an estate could take place by operation of a will (which will determine to whom and how the decedent patrimony will be divided) or, in the absence of a will, through a set of specific rules contained in the local state-applicable civil code, which will determine who is entitled to receive assets and how the assets of the successor will be transferred. In an intestate succession, the descendants, ascendants, collateral relatives, spouses and concubines have the right to inherit.[2] Heirs can resign their inheritance rights. The probate process in Mexico is carried out before a Mexican notary or a judge.[3] Further, there are specific non-probate rules for certain assets, such as bank accounts with a beneficiary.

The administration of an estate of inheritance initiates upon the death of the decedent according to the testament given before a notary public, as an intestate or legitimate succession when there is no testament, or where the testament that was granted is invalid; the testator did not dispose of all the assets; or there is no heir (because of death, repudiation or a condition that is not fulfilled).

Upon the death of the successor, the administration of the estate will be managed by an executor, who is appointed by the decedent in his or her will, or named by a majority of the heirs if there is an intestate procedure. An heir could also be designed or appointed as executor. The executor needs to accept his or her duty or resign. The executor will perform an inventory of the assets, pay debtors of the estate and proceed with a partition and distribution of the assets. A will made in a foreign country could have legal effects in Mexico City or other states when made according to the laws of the country in which it was granted and if it is not considered invalid under Mexican legislation.

A foreign person may inherit in Mexico. In this scenario, the inheritor must comply with certain Mexican rules. In this regard, generally, foreigners can acquire real estate (including through inheritance) in Mexico if they agree to consider themselves as nationals with respect to said property and not to invoke the protection of their governments.

In relation to the above, the Mexican Foreign Investment Law regulates how and in which cases foreigners can acquire real estate. Foreigners, individuals and legal entities can acquire real estate if it is located outside a restricted zone (100 kilometres from borders and 50 kilometres from beaches). There are special requirements that must be fulfilled. The acquisition of other kinds of assets besides real estate and shares is not prohibited or restricted. With respect to prenuptial agreements and their effects on personal property and transfer of such under a will or intestate succession, a couple may enter into a prenuptial agreement before their wedding to constitute the patrimonial regime of their marriage (joint property, separated property or a mixed regime) and to regulate the administration of the assets. However, this agreement does not grant inheritance rights and is not commonly executed.

As for the tax effects that derive from a succession, these can generally be divided between those applicable to the estate before it is divided and awarded to the corresponding heirs, and those applicable for the acquisition of the assets.

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2 Currently, most states allow same-sex marriages (including Mexico City). The Supreme Court declared, in a binding precedent, that the state laws that prohibit marriage between persons of the same sex are unconstitutional for being discriminatory. Therefore, same-sex marriages can be carried out in all the states of Mexico. On the other hand, for unmarried couples that have lived together in a constant and permanent way for a minimum period of two years or that have a child in common, there is a special term: concubinage. These couples have the right to reciprocally inherit from one another as if they were spouses (in the event of an intestate succession). The Supreme Court declared, in non-binding precedents, that concubinage is considered for same or different sex couples in accordance with the reasons that allow for same-sex marriage (non-discriminatory principles).

3 On 23 July 2012, the last significant amendment made to Mexico City's Civil Code relating to succession was published, in which the different types of testaments that could be granted were eliminated (public, private, handwritten, military and maritime), with only ones made before a notary public remaining as valid.

The executor will be the one responsible (being also jointly liable) for the calculation of the taxes generated under the estate probation and the filing of the tax returns.

Currently, there is no applicable inheritance tax in Mexico. For income tax purposes, any transmission of assets made via a succession is exempt so long as the acquisition is reported in the annual tax return corresponding to the year the assets are adjudicated to the heir. Life insurance payments are tax free if the insurance company is a Mexican insurer. There is a carry-over basis whereby the heir will also 'inherit' the tax basis of the transferor (normally the cost of acquisition). In August 2018, a congressman submitted to the Congress a bill that proposed modifying the Mexican Income Tax Law to limit the inherence tax exemption. The bill aimed to tax inheritance, legacies and gifts when they exceed 10 million pesos.[4] Although the bill was not even subject to discussion in the House of Representatives and ultimately this proposal was discarded, it led to huge discussions over the need for, and pros and cons of, a new tax reform that targets the transfer of wealth.

There are several factors that could facilitate the implementation, in the short term, of a tax on inheritances. Recently, the OECD recommended that Mexico adopt a tax on inheritance.[5] The recommendations of this organisation have always been significant in the design and implementation of public policies in Mexico given that, in many instances, Mexico has been a pioneer in the implementation of such policies.

The acquisition via succession of real estate is taxed at a local tax rate that ranges from 2 to 6 per cent, and the basis for the tax is usually considered to be the appraisal value of the asset to be transferred.

Foreigners acquiring real estate or shares of Mexican entities will also be taxed at a rate of 25 per cent on the fair market value (appraisal) without being able to credit or deduct a cost basis.

IV WEALTH STRUCTURING AND REGULATION

i Investments made by Mexican tax residents in Mexican structures

One of the most commonly used structures is the *fideicomiso* (a Mexican trust), which is a commercial agreement governed by Mexico's general law of credit instruments and operations.

A Mexican trust normally consists of three parties: the trustor or settlor, the trustee and the beneficiary, although the beneficiary is not required in some trusts. The trustor or settlor can either be an individual or an entity and is the party that usually transfers title or management of certain assets, rights and benefits to the trustee, who holds them in the trust.

The trustee is the party who holds the assets in the trust, and the party that is given the responsibility of performing and complying with the specific purposes and goals of the trust. The beneficiary, although often named, is not a party that appears in all trusts. The

4 According to the proposed bill, the taxpayer would be required to make a pre-instalment tax payment that would be computed by applying the following progressive tax rates to the amount that exceeds 10 million pesos: a 10 per cent tax rate on the amount ranging from 10 million pesos to 50 million pesos; a 20 per cent tax rate on the amount ranging from 50 million to 100 million pesos; and a 30 per cent tax rate on the amount that exceeds 100 million pesos.

5 S Araújo, B Brys and K Killmeier, 'Strengthening Mexico's fiscal policy.' *Getting it Right: Strategic Priorities for Mexico* (OECD Publishing, Paris, 2018, https://doi.org/10.1787/9789264292062-3-en).

beneficiary of the trust is the party that stands to benefit from the assets and trust, whether by using and enjoying the assets, by having privileges or special rights to the assets, such as a security interest, or by receiving income from the assets.

The trustee must always be a Mexican bank or financial entity, and it must act in accordance with the trust's purpose.

Mexican trusts are always created for specific purposes, and trustees are bound and limited to act in accordance with such purposes. However, in practice, trustees usually take a passive role during most of the trust's life, further allowing management and other duties to be taken by the beneficiary or other third parties.

By law, trusts are considered irrevocable, unless otherwise provided in the trust itself.

By law, trusts can also hold most types of properties and rights.

When properties and rights are transferred to the trust, the trustor may 'hold back' or 'reserve' for itself certain portions of a particular asset, or only do so under a partial or limited assignment. This means the trustor may also keep and maintain for him or herself certain rights over the assets held in trust.

Trusts must be in writing and prepared (or amended) following the same formalities required for the transfer of the properties that will be subject to the trust. For instance, if the property to be transferred to the trust is real property, then the trust must be created with the same requirements as when real property is transferred in Mexico. That includes the formalisation of the trust in a public deed in front of a Mexican notary public.

Trusts are normally created for a specific period of time and cannot exceed 50 years, except under certain specific cases where this term may be exceeded.

The trust can be framed under two different fiscal effects, depending on the operation carried out in the trust: if the assets affected by the trust are transferred in ownership, all the effects inherent to property transfer would be presented; however, if the patrimony affected by the trust is a commercial activity, the effects inherent to the performance of business activities would be presented.

No sale is deemed for tax purposes when asset contributions are made to a trust and the settlor reserves the right to reacquire such assets. The income tax is triggered when such reacquisition right is lost or when a third party is the beneficiary of the trust.

Property transfer tax is triggered in real estate transactions in Mexico.

If a Mexican trust carries out commercial activities (receiving active income, namely income from sales) it will be considered as an entrepreneurial trust for Mexican tax purposes. In this scenario, the Mexican trust will determine the taxable profit, and such will be allocated to the beneficiaries. Losses are not allocated to the beneficiaries (they remain in the trust and can be offset only against profits derived from the trust activities).

ii Insurance as an investment vehicle

Other forms of wealth structuring have included the usage of insurances (survival or with some savings component) on a stand-alone basis or combined with other structures (such as foreign trusts).

Payments obtained by Mexican tax residents derived from insurance agreements could be considered as tax-exempt income as long as the following requirements are fulfilled:

a survival insurance: when the risk covered by the insurance is the survival of the insured person, the payments will be considered tax-exempt income provided they are paid when the insured person reaches 65 years of age and at least five years have passed since the insurance was contracted;

b life insurance paid by individuals: if life insurance was not paid directly by the employer for its employees, the payments will be considered tax-exempt income as long as the risk covered is the death, disability, loss of limb or incapability of the insured individual to perform a remunerated personal job in terms of social welfare provisions; and

c retirement and healthcare insurance: payments derived from departure, pension or retirement insurance, as well as healthcare expense insurance, may be considered as partially tax-exempt as long as certain specific requirements are met.

The aforementioned exemptions are only applicable if the amounts are paid by an insurance company that is incorporated in terms of Mexican law; payments or income obtained from foreign insurers are not considered exempt.

iii Tax incentives for certain bond interests and capital gains on initial public offering share sales

The government has granted certain income tax benefits to incentivise the markets listed on the stock exchange, as detailed below:[6]

a The incentive for income obtained from corporate bonds. Corporations or individuals that are resident in Mexico who are required to withhold income tax for the interest paid derived from corporate bonds may apply a tax credit equal to 100 per cent of the income tax they are required to withhold from interest paid on publicly traded bonds issued by Mexican companies in accordance with the Stock Market Law, which will be credited against the income tax that should be paid for the withholding. This implies exempting the interest from withholding income tax in Mexico.

b The incentive for income obtained from the sale of shares issued by Mexican entities. Gains derived by Mexican individuals and non-residents from the sale of publicly traded shares of Mexican companies are generally taxed at a rate of 10 per cent, provided the shares are sold on a stock exchange or derivatives market recognised under the Mexican Stock Market Law. However, the rate may increase to up to 35 per cent where the shares sold on the stock exchange were acquired outside a stock exchange or market recognised abroad. For 2019, 2020 and 2021, the government allows Mexican individuals and non-residents to be taxed at a 10 per cent rate on gains from sales of shares of Mexican companies listed on recognised stock exchanges where certain requirements are met.[7]

c The incentive for the sale of shares acquired by a venture capital investment trust. The benefit foreseen in (b) above (a 10 per cent rate on income tax on the profits obtained from the sale of shares) will also be applicable to taxpayers who constitute a control group – in accordance with Article 129, Final Paragraph, No. 2 of the Income Tax Law – provided that at least 20 per cent of the shares of the Mexican entity have been

6 A presidential decree published in Mexico's Official Gazette on 8 January 2019 grants certain benefits that are designed to encourage investment in the domestic corporate bond and private equity markets, applying as of 9 January 2019.

7 The sale of shares is carried out through an initial public offer of a Mexican entity that has not previously been traded on the stock exchange or any other recognised markets; the value of the stockholders' equity of the Mexican entity is at least 1 million Mexican pesos or greater; and the sale is not part of the disposition of a 10 per cent or greater direct or indirect participation within a 24-month period, does not take place outside a stock exchange and does not involve a corporate merger or split-off.

acquired by a venture capital investment trust in Mexico whose certificates are placed among the large investing public through a licensed stock exchange, in terms of the Stock Market Law or in any other recognised markets, and that the transfer refers to a process of transition of divestment by the trust fund to initiate the public listing of the entity object of investment.

It is important to note that in 2023, the Mexican Senate approved several amendments to the Securities Market Law and the Investment Funds Law to create a simplified securities registration procedure to encourage small and medium-sized companies to participate in the stock market. Likewise, amendments to the Investment Funds Law were proposed to incorporate the figure of hedge funds to provide investment and financing alternatives to the Mexican market.

The initiative will still have to be approved by the Chamber of Deputies before it is finally enacted by the President of Mexico and becomes effective in the Mexican legal system.

iv Investments made by Mexican tax residents in foreign structures

It is customary for Mexican individuals to set up structures abroad using a certain type of legal figure for inheritance, confidential and tax-deferral purposes.

Taxpayers will be obliged to consider as taxable income (in some cases, only the profits) that originated abroad by tax-transparent entities or legal vehicles, according to the Mexican resident participation, even if such entities or legal vehicles do not distribute such income. The tax triggered will be 35 + 10 per cent for dividend distributions.

If taxpayers have operations through these entities or legal vehicles (transparent or not) they will have to file a tax report with the tax authorities.

The income will be directly attributed to Mexican taxpayers, and the tax paid abroad by these entities or vehicles will be considered as paid by the Mexican resident only for the taxable income that was considered.

The tax paid will create a tax credit for the Mexican resident in proportion to the income received by the entity or legal vehicle that was considered as taxable income by the taxpayer.

The concept of control is not relevant anymore for these types of structures; if a taxpayer has a direct or indirect participation in such structures, the new regime will be applicable. This situation might affect certain fund investments where the taxpayer does not have control of or access to the entire information of the structure to determine the tax triggered.

In the case of structures that involve transparent entities or legal vehicles with no disregarded entities, taxpayers shall perform an analysis to determine if this new regime will apply and whether the income received is subject to a preferential tax regime.

Taxpayers shall pay special attention when there is no capital contribution or defined participation because the taxable income will have to be accrued according to such participation, a situation that creates legal uncertainty in determining who is subject to the tax and in which proportion the income will be attributed.

v Investments made in Mexico by foreign investors

Wealth tax structures for foreigners would vary depending on the type of investment and also how the individuals have accommodated their structure abroad. Normally, it is common to have investments that derive interest, dividends, capital gains and real estate, of which tax effects are discussed in Section IV.iii.

Nevertheless, several foreign structures have been put into place in Mexico with respect to private capital (normally related to investments in real estate).

Transparent entities and legal vehicles that obtain income from Mexican sources, without regarding the fact that their members or shareholders consider such as taxable income, will be deemed as corporations and will be obliged to pay Mexican income tax. The above will not be applicable against double tax treaties. Such entities or legal vehicles are considered transparent for tax purposes when they do not have tax residence in the country of incorporation or where they have their main business administration or actual address, and their income is attributed to their members or shareholders. As a tax incentive, it is established that foreign transparent legal vehicles that have private capital investments in Mexican corporations will still be deemed as tax-transparent for Mexican income tax purposes only for income obtained from interests, dividends, capital gains or real estate leasing if certain reporting obligations are met and such legal vehicles are incorporated in a country.

It is important to analyse how this new provision affects transparent structures regarding the applicability of anti-double tax treaties, considering each particular treaty.

It is common to find transparent structures that have private capital investments in Mexico, which are integrated by foreign and national members or partners. This new provision will affect the tax regime of such structures.

This transparency treatment is recognised owing to civil law recognition of the non-legal separate personality of the partnership from its members, irrespective of the tax treatment in the country of origin or creation of the partnership. Unfortunately, this eliminates structuring using entities that have a separate legal personality.

vi Anti-money laundering and other applicable regulations

The anti-money laundering regime is fairly new in Mexico, being only introduced in 2014; despite this, the financial sector and others who have been especially vulnerable to the negative effects of money laundering have strongly supported its implementation.

Mexican anti-money laundering operates through a legal system that forces financial institutions and persons involved in vulnerable transactions to identify and monitor their clients to prevent, detect and report money laundering (specific transactions include real estate acquisitions, loans not granted by the banking system, lending of real estate, acquisition of jewellery, gambling and other customary activities that are identified with money laundering).

On 14 June 2018, a decree was published in the Federal Official Gazette that reforms the General Corporations Law. The decree entered into force on 15 December 2018. The amendment imposes on limited liability companies and business corporations the obligation to inform the Ministry of Economy of any change in the structure of their capital stock. These reforms promote the reporting and exchange of information between authorities with the purpose of fighting against money laundering from taxpayers.

These changes will have an effect in terms of the enforcement of the Anti-Money Laundering Law (Federal Law for the Prevention and Identification of Operations with Illegal Assets) as, through the aforementioned report and exchange of information, authorities may now verify the accuracy of the data collected to see if any vulnerable activity is being carried out.

Tax authorities (which are the authorities with the power to review and impose penalties related to the compliance of anti-money laundering regulations) have been issuing fines to a considerable amount of individuals and corporations who did not identify clients that carried out vulnerable activities or that did not present the corresponding information required by the Anti-Money Laundering Law.

Nevertheless, the Federal Revenue Law for 2019 sets forth that taxpayers obliged to comply with Anti-Money Laundering Law obligations are entitled to implement regularisation programmes by requesting and obtaining them from the tax authorities. This involves obligations triggered from 1 July 2013 to 31 December 2018.

The Federal Revenue Law for 2019 states that no penalties shall be determined for the regularisation programme period (July 2013 to December 2018), and the tax authorities can cancel fines already imposed during the regularisation programme period.

vii Disclosure of tax planning structures

From 2020, tax provisions set a new regime of reportable tax planning structures, establishing an obligation for tax advisers and, in some cases, taxpayers, to disclose certain tax-planning structures to the tax authorities.

A reportable tax-planning structure is one that generates or may generate, directly or indirectly, a tax benefit in Mexico, and has some of the characteristics identified in a list as risk areas, such as:

a preventing foreign authorities from exchanging tax or financial information with Mexican authorities;
b allowing the transfer of tax losses to another individual or entity than the one that generated them;
c involving a foreign resident who applies a tax treaty to avoid double taxation signed by Mexico regarding income that is not taxed in the country or jurisdiction of tax residence of the taxpayer;
d avoiding the identification of a beneficial owner; or
e avoiding constituting a permanent establishment.

Tax advisers must provide the identification number of the reported tax-planning structure to taxpayers so that they can include it in the tax return. If the tax advisers do not report the tax-planning structure, the taxpayer will be obliged to report it. If the transaction is not considered as a tax-planning reportable structure, but the taxpayer obtained a tax benefit, the tax adviser shall issue a certificate to the taxpayer supporting a non-reportable tax-planning structure or a prohibition on revealing it.

The penalty to be imposed on a tax adviser for not disclosing a reportable tax planning structure, or doing it incorrectly or incompletely, can be anything from US$2,500 to US$1 million (approximately), while not complying with other obligations regarding the report, such as providing the identification number of the reportable tax-planning structure to the taxpayer, not attending to official requirements for information, not issuing a certificate supporting a non-reportable structure or the prohibition to reveal it, not informing the tax authorities of any change in the reportable tax planning structure or not filing the annual informative tax return, may result in a fine of US$1,000 to US$25,000.

The penalty for a taxpayer for not disclosing a reportable tax-planning structure or doing so incorrectly or incompletely is the non-application of the tax benefit provided in the reportable scheme plus a fine of 50 to 75 per cent of the amount of the benefit that was obtained or expected to be obtained in all the years involved. The taxpayer will be subject to a fine of US$2,500 to US$100,000 for not including the identification number of the reportable structure in the tax return, not attending official requests or not informing the tax authorities of any change in the reportable structure.

The new tax planning structure report entered into force on 1 January 2021.

Tax advisers shall report the tax-planning structures on the date that the new regime enters into force regarding the reportable tax-planning structures implemented, designed, organised or managed as of 1 January 2020.

However, taxpayers will be obliged to report all tax-planning structures implemented, designed, organised or managed before 2020 that still produce tax consequences.

A modification that is relevant is the inclusion for the first time in the tax legislation of Mexico of a general anti-avoidance rule. According to this rule, tax authorities, in exercise of their audit authority, are entitled to re-characterise any act that does not have a business reason and generates a tax benefit to the taxpayer, attributing to such acts the tax effects that would have been produced to obtain an economic benefit reasonably expected.

It is legally assumed, unless the taxpayer proves otherwise, that a transaction does not have a business reason when the measurable economic benefit is a smaller amount than the tax benefit obtained; or the reasonably expected economic benefit could have been reached with fewer acts, and the tax effect would have been greater (fragmentation of operations).

A tax benefit is considered to be any reduction, elimination or temporary deferral of a contribution. For example, it is pointed out that there is a reasonably expected economic benefit when operations seek to generate income, reduce costs, increase the value of goods, improve market positioning, among other cases; to measure such benefit, tax authorities may use contemporary information related to operations, including the projected economic benefit.

It is recommended that taxpayers consider this new rule when making a decision as to whether to carry out any operation. To have elements to challenge the legal assumption, taxpayers must have supporting evidence to prove that there was an economic benefit greater than the tax benefit obtained and that, ultimately, the operation chosen is the most burdensome among all the options.

viii Controlling beneficiary rules

Tax reforms for 2022 set a new obligation for taxpayers to obtain, keep and provide to the Mexican tax authorities information[8] from individuals who are considered controlling beneficiaries of legal entities and other legal vehicles. This obligation was imposed according with recommendations issued by the Financial Action Task Force, the purpose of which consisted of identifying the individuals having a certain level of control, significant participation or otherwise being responsible for management decisions in an investment structure.

A controlling beneficiary is an individual that:

a directly or indirectly obtains a benefit from its participation in a company, or in the last instance is the person that exercises the rights of usage or exploits the goods or services of the company;

b has direct or indirect control of the company through shares, membership interests or any other type of equity holding, and being able to:
- make direct or indirect decisions at the shareholders' or members' meetings;
- hold and maintain the ownership of rights that allow, directly or indirectly, the exercise of voting rights in respect of more than 15 per cent of the capital stock; and
- lead, directly or indirectly, the management, strategies, or main policies of the company.

8 The information will be in general terms name, date of birth, gender, nationality, tax residence, tax ID and marital status.

As criteria for determination of the controlling beneficiary, (a) and (b) and all of its subsections must be applied successively, in such way that when (a) has been applied but has not resulted in the identification of the controlling beneficiary person, (b) and its subsections must be applied.

When no individual is identified under such criteria, the person who occupies the position of sole administrator or, in cases where the company has a board of directors or equivalent body, each member of said board will be considered as the controlling beneficiary of the company.

The Federal Tax Code states fines for failing to comply with this obligation, ranging from US$25,000 to US$100,000. Recently, the Mexican Supreme Court of Justice ruled that it is constitutional for the Mexican tax authorities to request from taxpayers information related to their controlling beneficiaries. The Supreme Court states that the controlling beneficiary rules do not affect taxpayers' rights, but rather strengthen the tax system to combat tax evasion, terrorist financing and money laundering. In addition, the constitutional court emphasised that such rules comply with international commitments in terms of tax transparency and exchange of information, since the tax authority can obtain reliable, complete and updated information regarding individuals, legal structures and bank accounts.

V CONCLUSIONS AND OUTLOOK

The current investment and wealth management climate cannot be disassociated from international efforts towards transparency and avoidance of double non-taxation agreements, implemented mainly and among others by the OECD with its BEPS project and the CRS platform.

Today, the automatic exchange of information is a reality that the tax authorities around the world have embraced. This situation implies that wealth structuring cannot rely on having the objective of 'catch me if you can' or secrecy. Wealth structuring must be fully compliant with the tax laws of multiple jurisdictions to pass the test of substance and also to be aware of the fact that a large amount of compliance or informative returns (not just tax returns) must be considered. The wealth management world has changed.

Mexico has been part of this change and it is likely that, with time, there will only be a greater focus on reviewing wealth structuring by the Mexican tax authorities. Tax enforcement will be facilitated through collaboration with other countries, and the amount of information that the Mexican tax authorities might have about a particular individual or transaction will be remarkable. Structures that in the past were non-compliant where they relied purely on confidentiality will be tackled and fought by the tax authorities with all the new tools available.

These changes have led, in some part, to the high amount of revenue collected by the 2017 repatriation programme successfully implemented by the Mexican tax authorities. Even now, some audits are beginning to review whether the compliance of the requisites set forth in such programme were observed by the taxpayer. In addition, certain public leaks related to investments in locations regarded as secret offshore tax havens have piled pressure on the tax authorities to increment their reviews on Mexican high net worth individuals on compliance and the need to improve public awareness about compliance, as well as the possibility of voluntary disclosure and regularisation. Further, the outcome of the NAFTA renegotiations and understanding the international effects of the US tax reform may also have repercussions with regard to current structures of high net worth individuals.

Finally, the most profound element of change will come about through the new administration. This new presidency, with control over both the House of Representatives and the Senate, could, with further alliances, gain the power to amend the Constitution, implementing programmes that will increase social spending, which will have to be funded in some part through an increase of tax revenues. As a result, in the future we can expect a greater amount of tax enforcement actions rather than a change of tax policies or modifications to the current tax legal framework. This is a serious situation to take into account, whether within the framework of current wealth structures or those to be implemented in the future.

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