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# **TAX REFORM 2021: HOW WILL THE REFORMS IMPACT YOUR OPERATIONS IN MEXICO?**



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# Agenda

1. General Criteria of Economic Policy
2. Revenue Law
3. Value Added Tax Law
4. Income Tax Law
5. Federal Tax Code
6. Labor Reform (Legislative intent)

# General Criteria of Economic Policy

Code	Product	Price	Total		
			2017	2018	2019
T0001	RICE	120	1200	1320	1440
T0002	PORK	100	650	750	850
T0003	CORN	85	850	900	750
T0004	PEANUT	150	300	600	600
T0005	CHEICKEN	100	2000	2500	2000
T0006	...	150	600	750	600

## ■ Main objectives

- Public policies subject to the pandemic's evolution.
- Aimed at expanding and strengthening the health system capacities.
- Promoting a fast and sustained recovery of employment and economic activity.
- Continuing to reduce inequality and laying the foundations for a balanced development and long-term fiscal sustainability.

## ■ Macroeconomic projections:

Concept	2020e	2021e
<b>PIB Growth %</b>	-8	4.6
<b>Inflation %</b>	3.5	3
<b>Exchange rate</b>	22	22.1
<b>Oil barrel (price in US dollars)</b>	34.6	42.1
<b>CETES' interest rate 28 %</b>	5.3	4



A black and white photograph of a business meeting. Several people are seated around a table, looking at a laptop. One person in the foreground is holding a pen over the laptop screen. Another person in the background is also holding a pen. The scene is professional and focused on work.

# Revenue Law



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Concept	2020	2021	Nominal Increase %
Income	\$ 6,107.73	\$ 6,295.73	3%
Taxes	3,505.82	3,533.03	1%
Income Tax (ISR)	1,852.85	1,908.81	3%
VAT (IVA)	1,007.54	978.94	-3%
IEPS	515.73	510.70	-1%
Foreign Trade Taxes	70.98	61.64	-13%

\*Amounts in billions of pesos





- **Surcharge rates are maintained**
  - 0.98% .

- **Withholding rate on Financial System's interests**
  - Down from 1.45% to .97%



## The Tax Incentives remain in force until 2020, with the following exceptions:

- It is specified that the beneficiaries of the fiscal incentive related to diesel or biodiesel and their mixes, must be considered them as accumulative income for ISR purposes, at the time they are credited.

### Macroeconomic projections:

Concept	2020e	2021e
PIB Growth %	-8.00 %	4.60 %
Inflation %	3.50 %	3.00 %
Exchange rate	\$ 22.00	\$ 22.10
Oil barrel (price in US dollars)	\$ 34.60	\$ 42.10
Interest Rate CETES 28 %	5.30 %	4.00%



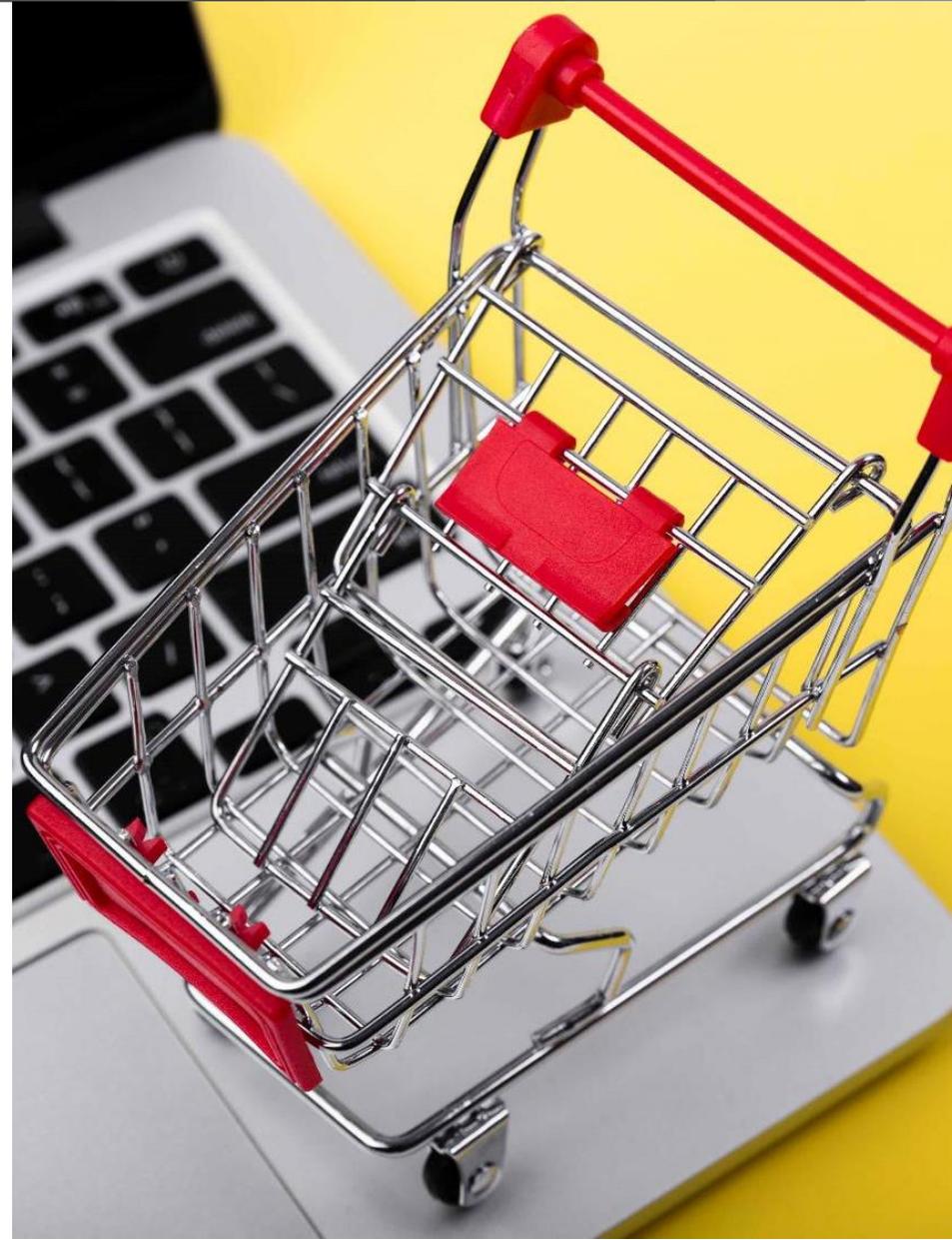


# Value Added Tax Law

## 1.- Blocking access to internet infrastructure

### ■ Penalties

1. For digital services providers and intermediaries with no PE in Mexico:
  - No access to internet infrastructure; and
  - Tax ID shut down.
2. For the concessionaires of the public telecommunications network:
  - Fines between \$500 thousand and \$1 million pesos.



## 2. Obligations for digital platforms

- Withhold and remit VAT
- Issue electronic invoices
  - Mexican individuals
  - Non-resident digital service providers
- Non-resident digital service providers relief:
  - Taxpayer ID, appoint legal representative and tax domicile in Mexico
  - Collect the price plus 16% VAT.
  - Quarterly informative return
  - Electronic invoices with VAT details, at the request of the user.
- “VAT Included” label on prices.



## 3.- Sale of used goods through digital platforms

- Not exempt for VAT purposes.

## 4. Professional Medical Services:

- Professional medical services requiring a professional degree provided through authorized assistance or charitable institutions, are not subject to VAT.





# Income Tax Law

## 2. Non-profit legal entities

- Non-authorization (due to revocation, loss of validity or non-compliance) = Title III exit.
- Loss of authorization:
  - > 50% of their income comes from activities other than the purposes for which they were authorized.
  - Using their assets for purposes other than the corporate purpose for which they obtained their authorization.
  - Not issuing tax receipts or issue them as donations that cover transactions other than donation.
  - Partners/shareholders in the definitive 69-B list.
- 12 month period to obtain a new authorization.



- Upon leaving the non-taxpayer regime:
  - They must allocate all of their assets to other entities authorized to receive donations.
  - The certification regarding compliance with tax, transparency and social impact assessment obligations is eliminated.
- Expenses not supported with tax invoices will be considered as part of the distributable income for partners.

- *Prevent the misuse of nonprofit organizations for illegal activities.*
- *Limit certain aggressive schemes carried out on a recurring basis by such organizations.*
- *It was detected that the vast majority pursue a predominantly economic purpose, which is contrary to their main objective.*



- Must have authorization to receive deductible donations:
  - Associations or societies that grant scholarships.
  - Those engaged in scientific or technological research.
  - Those engaged in the research and conservation of flora or wildlife species, terrestrial or aquatic, and environmental protection activities.
  - The entities engaged in the breeding of protected and endangered species and the conservation of their habitat.
  
- No later than July 1<sup>st</sup>, 2021.



### 3. Maquiladoras

It is confirmed that there are only two options to comply with the requirements concerning transfer pricing for companies performing manufacturing operations:

- APA
- Safe Harbor

## 4. Re-characterization of deemed salary income

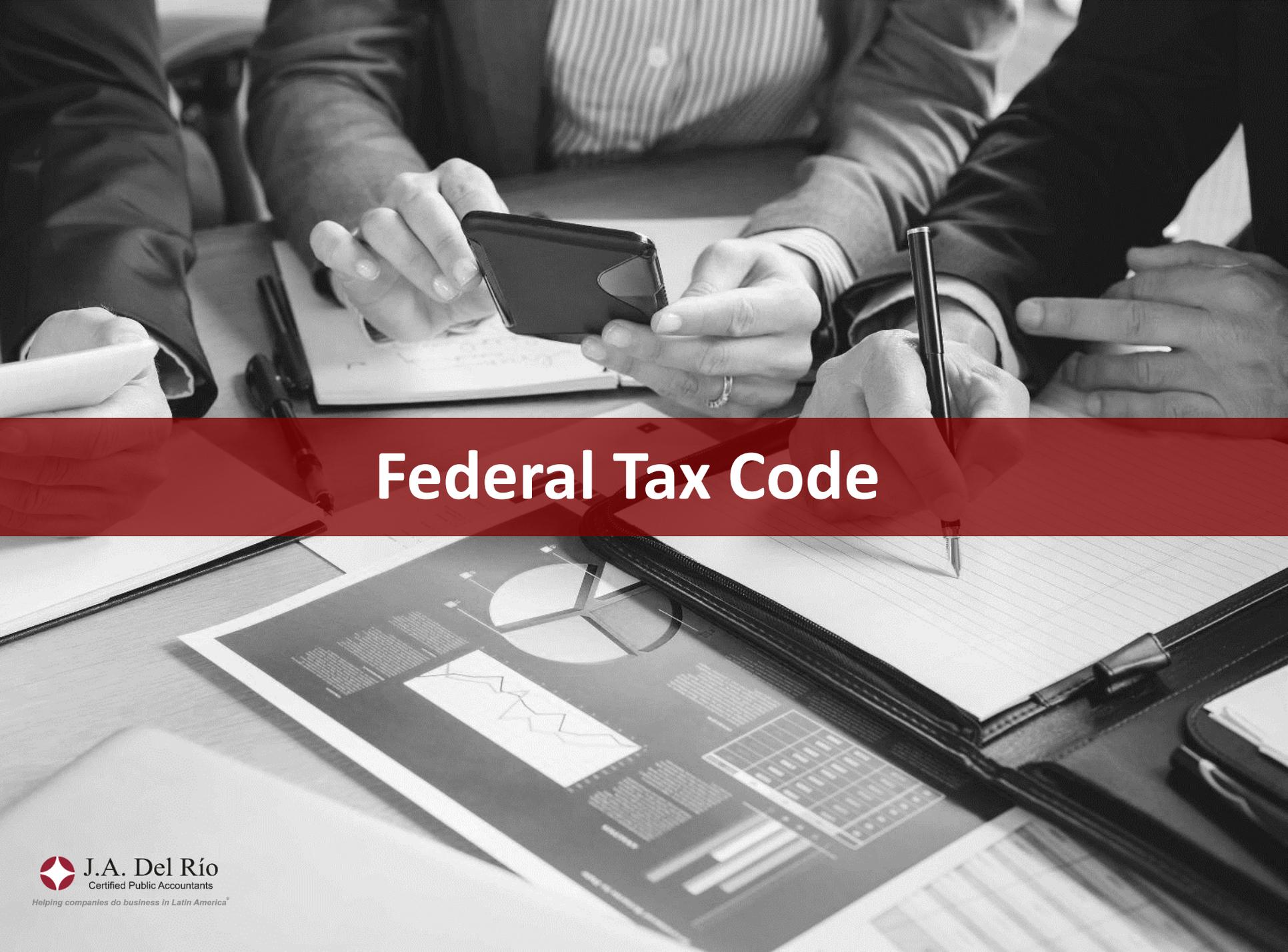
- Individuals
- Income > MxP\$ 75 millions = out of the deemed salary income regime.
- Must pay the corresponding tax according under the business activities regime in the following month.
- Submit a written notification to the entity from which they receive such income.
- Tax authorities will establish the rules for such procedure.

## 5. WHT for individuals obtaining income through digital platforms

- Fixed rates, instead of progressive rates established in FY20:

▪ Transportation of passengers and delivery of goods	2.1%
▪ Lodging services	4%
▪ Sale of goods and rendering of services	1%



A black and white photograph of a business meeting. Several people are seated around a table, looking at a smartphone held by one person. In the foreground, there are financial documents with a pie chart and a line graph. A pen is visible on the table. A red banner is overlaid across the middle of the image.

# Federal Tax Code



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## 1. Business reason – General Anti-avoidance rule (GAAR).

- It is proposed to reform article 5-A of the Federal Tax Code to clarify that the effects granted to legal acts (i.e., deficiency will be limited to the determination of the contributions, their accessories and corresponding fines, without prejudice to the investigations and criminal responsibility that may arise.

## 2. Sales with deferred payments or in installments.

- It is proposed to amend article 14 of the FTC to specify that sales will be considered as with deferred payment or in installments when a simplified tax receipt is issued in terms of article 29-A, section IV.



### 3. Corporate spin-off.

- In case of a corporate spin-off, it is proposed to amend article 14 where it will be considered that there is an alienation when it gives rise to the creation of concepts or items that did not exist before, in the spun-off company in question, even when it meets the requirements indicated in section II of article 14-B of the FTC.
- Likewise, the partners or shareholders will be jointly and severally liable, without limitation, when said spin-off gives rise to the creation of concepts or items that did not exist before in the spun-off company in question.

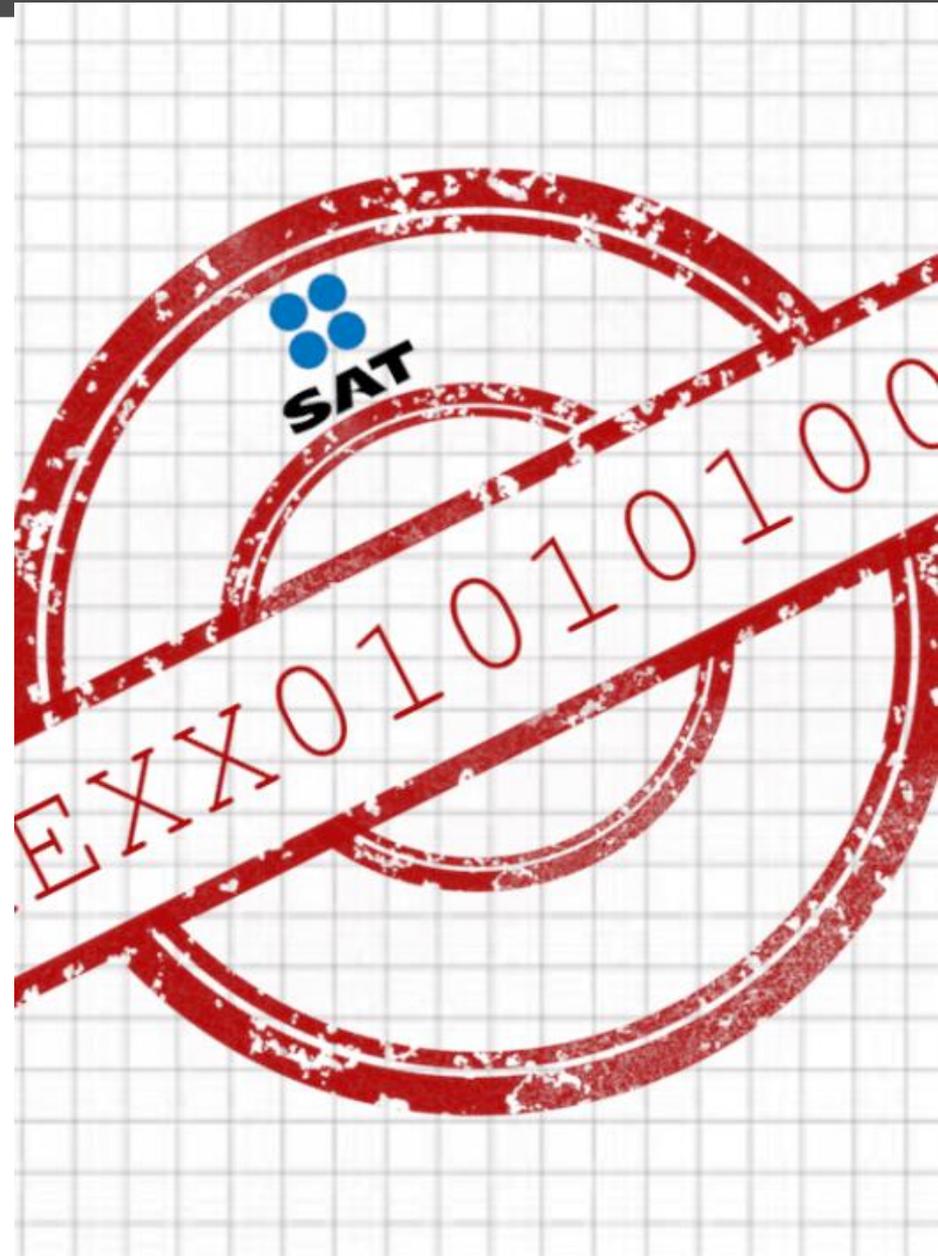
### 4. Recognized markets.

- It seeks to consider as recognized markets, not only the BMV (Mexican Stock Exchange), but any corporation that obtains the concession title granted by the SCHP to act as a stock exchange under the terms of the Securities Market Law.



## 5. Cancellation of digital stamp certificates.

- The certificates will be void when it is detected that the taxpayer issuing tax receipts is in a situation in which there is a lack of transactions, in accordance with:
  - Article 69-B (“EFOS”), fourth paragraph, or
  - The definitive list referred to in the ninth paragraph of article 69-B Bis, for having transferred tax losses unlawfully.
- A procedure is established in order to obtain a new certificate.





## 6. Balances in favor

- In the event that the taxpayer, or the address stated before the RFC, are not located, it will be grounds for having a refund request considered as not submitted.
- In the case of having several refund requests from the same taxpayer for the same type of contribution, the authority may decide whether to carry out a single exercise of powers for the total number of requests or one for each one of them, issuing, however, one single resolution.
- At the end of the execution of the verification powers, the authority must issue its resolution within a period of 20 business days.



## 7. Verification visits

- Places where visits may be carried out: offices, warehouses, or any place where administrative activities take place.
- Refusing to sign the official letter does not undermine the validity of the act.
- Use of information provided by third parties.
- As many visits as needed by the authority.

## 8. Tax audit report

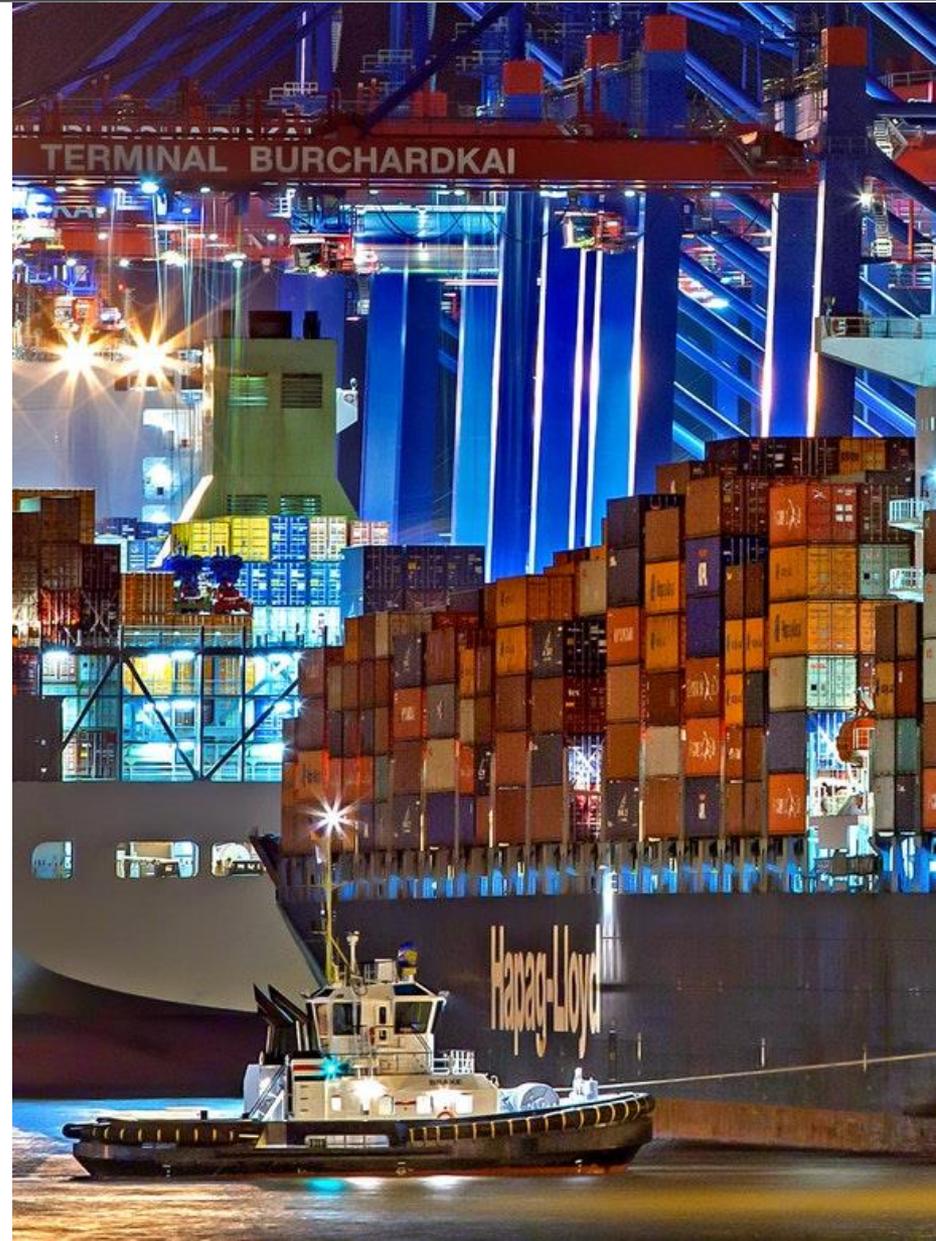
- CPA obligations:
  - Provide the tax authorities the workpapers required under a tax audit scenario,
  - Appears before them to make the needed clarifications.
- Audits related to foreign trade taxes should also observe custom taxes and duties.

## 9. Deadlines to fulfill tax authorities' requirements of information

- The period to provide information to the tax authorities, in the case of difficult-to-obtain documents, is extended from 6 to 10 days.

## 10. Electronic Reviews

- It is proposed that electronic reviews performed by the tax authorities must be concluded in a maximum period of six months, except concerning foreign trade, in which case, it will not exceed two years for those cases in which an international verification has been requested.



## 11. Improper transmission of tax loss

- When the tax authority detects that a taxpayer:
  1. Has issued tax invoices without having the assets, staff, infrastructure or material capacity to directly or indirectly provide services, sell or deliver goods supported by these receipts; or
  2. Is not located

The operations supported with those tax invoices will be considered as non-existent



## 12. Conclusive agreements.

- Legal figure raised as an answer to the many complaints of taxpayers been audited.
- The Procuraduría de la Defensa del Contribuyente (“PRODECON” for its acronym in Spanish) designed a special procedure to offer better and definitive solutions to every audited taxpayer: the Conclusive Agreements.
- The taxpayers’ Ombudsman advocates for convenient resolutions not only for the taxpayers but also for the tax authorities, because the objective is to build progressively a new relationship among the parties.
- The tax authorities have expressed that conclusive agreements are frequently used by taxpayers to delay and interfere with the acts of the authority. So, it was proposed to:
  - Reduce to 20 days the period to present a conclusive agreement; and
  - Increase the reasons to deny its admissibility.





### 13. Transfer pricing penalties

The possibility of reducing up to 50% of the transfer pricing penalties is eliminated. Only a 20% reduction would be granted if the penalty is paid within the 20-day period the taxpayer is notified.

The tax authorities say that globally, transfer pricing penalties are higher than normal tax compliance penalties.

Also, it would be considered as aggravating circumstances not to prepare:

- The transfer pricing study;
- The local file;
- The master file;
- The country by country report;
- Not to comply properly with maquila obligations.

## 14. Presumption of smuggling

- The proposal is to include as a presumption of the crime of smuggling the omission to return, transfer or change the customs regime of goods (i.e. merchandise, fixed assets) temporarily imported under maquila or export programs when the legal stay of such merchandise in national territory relies on the validity of the program.

## 15. Notifications

- NOT APPROVED – The use of technological tools to collect pictures or any other relevant information related to the taxpayer's fiscal address that could serve as evidence of the verification visit.
- Notifications made through stands at the tax authorities offices, the period of time where the document could be seen by the taxpayers would be reduced from 15 to 6 days. This modification aims to speed the process.



## 16. Guarantee of tax liabilities

- When the tax authorities order the seizure of the company's assets to guarantee a tax liability, the proposal clarifies that such asset should only be tangible, no trademarks, brands or goodwill for example as they are not considered the ideal method to guarantee a liability.



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# Labor Reform (Legislative intent)



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## General Points

The proposal aims to regulate the following schemes:

- Outsourcing
  - Receiving or rendering services through which staff is made available would be prohibited.
  
- Personalized services and specialized activities
  - Should not be part of the main purpose of the entity
  - Authorization issued by the Labor and Social Security Ministry (STPS as per its acronym in Spanish) as would be mandatory.
  - Authorized service providers catalog.



- Recruitment agencies
  - Should only participate with respect to personnel hiring aspects:
    - Recruitment, selection and training, among others.
    - In no case, the intermediary would be considered as employer. Such condition is attributable only to whom receives the benefited from the labor of the employees.
  
- Employer substitution
  - The goods owned by the company transferring the employees should be also transferred to the new employer. Otherwise, the substitution would have no legal effects.

### Penalties

- From MxP\$173,760 to MxP\$4,344,000 (US\$8,400 - US\$212,000)



General Points

- Establishes that specialized activities are not considered part of the main purpose of the entity receiving the service.
- The contracting party of specialized services would be jointly liable for the omission of social security contributions.
- Single employer's ID for different entities → Eliminated.



- Under employers an substitution scenario, the new employer would be jointly liable for the contributions to the employee's housing fund up to 6 months.
- The Mexican Social Security Institute (IMSS as per its acronym in Spanish) + the National Workers' Housing Fund Institute (INFONAVIT as per its acronym in Spanish) + STPS would work together and exchange information.

### Penalties

- Ranging from MxP\$43,440 to MxP\$173,760 (US\$2,100 - \$8,400).



## General Points

- A general outsourcing definition for tax purposes is established.
- Electronic invoices supporting outsourcing services without legal effects.
- It is proposed to include a case of recidivism when deducting outsourcing services.
- The use of sham/illegal outsourcing schemes would be considered a major crime for tax purposes.



## Penalties

- Contractor obliged to provided documentation to deduct the payment and take the VAT credit associated to the expense.
  
- Penalties for non-compliance
  - From MxP\$150,000 to MxP\$300,000 (US\$7,300 - US\$14,600)



## General Points

- Specialized services
  - Deductible upon compliance of :
    - ✓ Authorization issued by the STPS
    - ✓ Tax invoices supporting:
      - Salaries
      - WHT
      - Social security contributions



## General Points

- **Article 1-A(IV) of the VAT is derogated**
- VAT non-creditable if:
  - ✓ An employer substitution took place
  - ✓ The staff made available carry out whole the activities of the contracting party
- VAT credit subject to the following conditions:
  - ✓ Authorization issued by STPS
  - ✓ VAT return
    - To be obtained within the following month in which the payment is made.



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