

24 January 2017

Capital Repatriation Decree for 2017

On 17 January 2017, President Enrique Peña Nieto announced the actions to promote productive investments and employment creation, pursuant to the Agreement for Strengthening and Protecting the Families Economy. Along with other actions, this Agreement includes the Decree that grants incentives for income tax (IT) purposes in connection with investments or deposits received in Mexico. This Decree was published on 18 January 2017, and it seeks to promote and simplify the repatriation of capitals.

In general terms, the Decree grants a tax incentive to Mexican tax residents and foreign tax residents with a permanent establishment in Mexico that obtained income from direct and indirect investments held abroad until 31 December 2016.

Such incentive consists in applying an 8% tax rate to the resources kept abroad before 1 January 2017, which are brought back to Mexico. The resulting tax shall be paid within the following 15 calendar days in which such resources are repatriated.

The Decree applies to income originated abroad that would normally be taxable in terms of Titles I, IV and VI of the Mexican IT Law (Corporations, Individuals, and Preferential Tax Regimes, respectively), and it shall be enforceable for 6 months as of 19 January 2017. Returned capital shall remain invested in Mexico for at least two years as of the date on which it is returned.

In order to qualify for the Decree, corporations shall allocate returned capital on any of the following investments:

- a. Acquisition of fixed assets to be used for their economic activities;
- b. Acquisition of real estate located in Mexico to be used for their economic activities;
- c. R&D projects;
- d. Payment of liabilities contracted with independent parties before the entry into force of the Decree; or
- e. Investments in Mexico through credit institutions or brokerage firms.

On the other hand, individuals shall invest their returned capital in financial instruments or shares issued by Mexican companies through institutions recognised by the Mexican financial system, or by allocating it in any of the investments established in letters a., b., or c. from the previous paragraph.

Taxpayers who apply the Decree would be able to credit the IT paid abroad against the IT that they shall pay pursuant to such Decree. However, the foreign tax credit shall not exceed 8% of the resources returned to Mexico.

The Decree will not apply to taxpayers who are being subject to a tax audit in connection with the earned capital that would have been returned to Mexico.

Taxpayers who decide to apply the Decree and do not satisfy the mentioned requirements, or do not invest the returned capital in Mexico, would be subject to the applicable legal provisions.

Finally, it is established that the Tax Administration Service will issue general rules for the application of the provisions contained in the Decree.

Taxand's Take

In the midst of an unfavorable economic environment and the loss of foreign investment, the Decree intends to bring capitals held abroad by individuals and corporations by taxing them at a low income tax rate (ordinarily, such resources would be taxed at a 30% or 35% rate on corporations and individuals, respectively). However, from our point of view, its success will ultimately depend on the rules issued by the Tax Administration Service, particularly in connection with the anonymity of the beneficiaries of the Decree, which has been a major concern in the past. Potential beneficiaries should analyse their particular situation to assess if the Decree would result beneficial to them.

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