MEXICO

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1. INTRODUCTION

a. Forms of Legal Entity

Business in Mexico is typically carried on through two types of corporate vehicles regulated by the Mexican Mercantile Companies Law:

- Limited liability companies (*sociedades de responsabilidad limitada*) ("SRL"); or
- Corporations (*sociedades anónimas*) ("SA").

Although there are other corporate organisation forms, SAs and SRLs are the most customary forms of corporate organisation. SRLs are commonly used by US investors since this type of entity can elect to be a pass-through entity for US tax purposes. On the other hand, SAs are more commonly used by Mexican and non-US investors, since they operate as a general corporation which permits a more flexible transfer of equity. All publicly traded companies must be a sociedad anónima bursátil ("SAB"), which is a variation of a regular SA, but with specific rules for publicly listed entities.

Investments can also be made through other structures such as trust agreements ("fideicomisos"), the terms of which can vary based on the particular needs of a specific investment. Fideicomisos that are engaged in entrepreneurial activities are treated as a taxpayer and the trustee has to comply with the tax obligations on behalf of the beneficiaries, whereas Fideicomisos that are engaged in passive income generating activities are treated as pass-through. Recently, due to amendments to the law which affect the tax treatment of foreign vehicles such as limited partnerships or trusts, this type of Fideicomisos have become more attractive since they can still provide transparency on the investments made through them.

b. Taxes, Tax Rates

For income tax purposes, Mexican legal entities that are not pass-through, as well as Permanent Establishments ("PE") in Mexico of foreign residents, are taxed on their worldwide income at a rate of 30% on a net basis. PE's are taxed on the income attributable to them. Mexican resident individuals are taxed at progressive rates with a highest bracket taxed at 35%.

Non-Mexican residents without a PE in Mexico are taxed on income arising from a source of wealth situated in Mexico. The Mexican Income Tax Law ("ITL") establishes the criteria applicable to determine whether there is a Mexican source of wealth and the withholding tax applicable per type of income (i.e. employment income, pensions, professional services, director's fees, lease of movable and immovable property, touristic services and time sharing, transfer of immovable property, transfer of shares and other corporate rights, exchange of public debt for equity, financial derivative transactions, dividends, interest, royalties, construction services, prizes, artists, sports and public shows and other income). The highest withholding tax rate applicable to non-Mexican residents is 35%, or 40% if certain conditions are met.

c. Differences between income shown on tax returns and local financial statements

Mexican resident legal entities that are not pass-through and non-Mexican residents with a PE in Mexico are obligated to apply particular tax accounting principles to certain items of income and deduction which will result in differences between tax and financial accounting and give rise to temporary or permanent book/tax differences. The most common divergence relates to the maximum annual depreciation and amortisation rates of assets allowed by the ITL, which may differ from the depreciation methods used for financial accounting purposes. Another item of difference is the effect of inflation that has to be considered for tax purposes (depreciation, monetary position, tax basis of assets and shares, among others).

2. RECENT DEVELOPMENTS

a. Fiscal year 2019

The Federal Revenue Law for fiscal year 2019 incorporated a provision that eliminates the ability to utilise credit balances ("balances in favour") that a taxpayer has with respect to a certain tax against federal taxes of a different category, including income tax withholdings. For example, with respect to VAT, this provision provides that a taxpayer may only offset VAT using a credit balance which is also related to VAT until the credit balance has been fully utilised. Taxpayers will also be able to request a refund of the balances. Likewise, federal taxes may only be offset using balances in the tax payers' favour relating to the same category of tax, eliminating the possibility to offset them against tax withheld from other parties. Nevertheless, administrative guidelines were issued to allow taxpayers to offset balances in their favour generated as of 31 December 2018 against other federal taxes generated by the taxpayer (excluding withholding taxes) after 1 January 2019. As of fiscal year, 2020, these provisions have been included in the Federal Fiscal Code, meaning that this limitation will be applicable from 1 January 2020 onwards.

Additionally, effective 1 January 2019, a tax incentive has been made available to qualified taxpayers operating in the northern border region of Mexico (as defined therein). The tax credit is applied against either a taxpayer's annual income tax determined at the end of the year or prepayments of income tax. The amount of the tax credit is equal to one third of the annual income tax due by the taxpayer (or the tax prepayment), effectively reducing the income tax rate from 30% to 20%, and the current VAT rate from 16% to 8%. Initially, this incentive was only applicable for 2019 and 2020, however, it was amended on 30 December 2020 to extend its duration until 31 December 2024. Likewise, the same tax incentive was granted to qualified taxpayers operating in the southern border region of Mexico and will also expire on 31 December 2024.

Lastly, effective 8 January 2019, a tax incentive has been made available for certain taxpayers who establish procedures which promote investment in corporate debt bonds and standardise the tax treatment of publicly traded shares. Mexican tax residents that are required to withhold income tax from interest payments (at a 4.9% or 10% withholding tax rate, as the case may be) derived from securities issued by Mexican resident companies and placed in recognised markets are granted a tax credit equal to 100% of the withholding tax provided such interest payments are made to a resident in a country or jurisdiction with which Mexico has a treaty for the avoidance of double taxation or a broad exchange of information agreement in effect. Furthermore, for fiscal years 2019, 2020 and 2021, Mexican tax resident individuals and non-Mexican tax residents shall apply a 10% income tax rate on gains generated from said taxpayers from the sale of securities issued by Mexican resident entities, subject to the fulfilment of certain requirements. The aforementioned 10% income tax rate may also be applicable to venture capital investment trusts and other trusts or similar investment vehicles.

b. Fiscal year 2020

Effective 1 January 2020, a comprehensive tax reform was introduced which contained several items of domestic and international relevance.

A general anti-avoidance rule ("GAAR") was enacted allowing the tax authorities to recharacterise the legal acts entered into by taxpayers when such acts are deemed to lack business reasons and generate a direct or indirect tax benefit, to those that would have generated the reasonably expected economic benefit.

Following BEPS Action 12, mandatory disclosure rules were introduced as of fiscal year 2020. Tax advisers, either Mexican residents or non-Mexican residents with a PE in Mexico who advise in connection with the design, commercialisation, organisation, implementation or administration of certain schemes considered to be potentially aggressive and which are listed in the Federal Fiscal Code, are obligated to report such "reportable schemes" as of fiscal year 2020, or prior to fiscal year 2020 when the corresponding tax effects are reflected in such fiscal year and onwards, in this last case, to be reported by the tax advisors. In certain other cases, the taxpayers themselves are obligated to report the reportable schemes instead of the tax advisers.

As of fiscal year 2020, Mexican residents earning income through foreign fiscally transparent legal entities or foreign legal vehicles, whether transparent or not, shall accrue and report such income for Mexican tax purposes regardless of whether the income is distributed or not, in the proportion of their participation in said legal entities or legal vehicles.

Furthermore, foreign fiscally transparent legal entities and foreign legal vehicles will cease to be considered fiscally transparent for Mexican tax purposes as of fiscal year 2021, regardless of the tax treatment given abroad in the case of foreign legal vehicles. The aforementioned shall not be applicable in the context of the tax treaties entered into by Mexico, in which case the provisions contained therein shall apply. Furthermore, a tax benefit also applicable as of fiscal year 2021 will allow certain foreign transparent legal vehicles organised as private equity investment funds shall be deemed to be fiscally transparent provided that such legal vehicles, their members and the administrators are resident of, or have been incorporated in a jurisdiction with which Mexico has entered into a broad exchange of information agreement, and provided that the administrator of such transparent legal vehicles complies with certain reporting obligations.

In the context of BEPS Action 4, Mexico introduced, in addition to already existing thin capitalisation provisions, a general interest deductibility limitation rule whereby interest deductibility is limited to 30% of the taxpayers adjusted tax profits, applicable when the accrued interest resulting from the taxpayers liabilities exceeds MXN$20 million.

Pursuant to BEPS Action 3, the Controlled Foreign Corporation ("CFC") rules were amended to address OECD recommendations, amending the cases and thresholds in which such regime shall be applicable.

Mexico introduced passive income deductibility limitations concerning payments made to foreign related parties subject to preferential tax regimes, including scenarios as a result of hybrid mismatches. This limitation is also applicable in cases where the payment is not subject to a preferential tax regime but the direct or indirect counterparty uses such proceeds to make tax deductible payments to another group member or through a structured arrangement, subject to a preferential tax regime.

We would also note that, payments made by a taxpayer that are also deductible for a member of the same group or that are deductible for the taxpayer in another country or jurisdiction are non-deductible in Mexico if the relevant income is not accrued abroad for tax purposes.

c. Fiscal year 2021

On 20 April 2021, the Senate of the Republic approved amendments to labour and tax provisions dealing with the labour outsourcing regime. The most relevant modifications include: (i) the prohibition of subcontracting of personnel, it being understood as a provision of services in which an entity or individual provides or makes available to another entity its own employees for the other entity's benefit; (ii) contracting specialised services will be permitted only if such services or tasks are not part of the corporate purpose or main economic activity of the recipient, and as long as the contractor is listed in a public registry; (iii) supplementary or shared services provided between companies of the same corporate group will also be considered as specialised as long as they are not part of the corporate purpose or the main economic activity of the recipient of such services or tasks; (iv) individuals or entities providing personnel outsourcing services will be required to complete a registration process before the Labour Ministry and to renew such registration every three years; (v) a joint and several liability is recognized between the individual or entity who contracts the specialised services or specialised works and the contractor who fails to comply with the obligations resulting from the relationships with its workers; (vi) the amount of profit sharing to be paid to employees, will be capped to three months of salary or the average

amount received by the employee in the last three years; being applicable the amount that results more favourable to the employees; (vii) economic sanctions could result for employers who benefit from personnel subcontracting arrangements in violation of the new provisions of the Mexican Labour Law; (viii) for tax purposes, it is established that tax invoices issued for disallowed subcontracting of personnel will not have legal effects (i.e. non-deductible expense for income tax purposes and inability to claim a value added tax credit on such expense); and (ix) the use of simulated schemes of provision of specialised services or the execution of specialised works, as well as the subcontracting of personnel, will be considered a tax criminal offence.

These provisions became effective for tax purposes on 1 September 2021.

d. Fiscal year 2022

Several reforms were made to the ITL which became effective on 1 January 2022.

Among the most relevant reforms are the inclusion of new requirements to apply for an authorisation for a transfer at tax basis in the case of corporate restructures involving Mexican entities, thin capitalisation rules are modified to eliminate an option that taxpayers had to calculate the shareholder's equity based on the company's tax attributes and to expand their application to multiple purpose financial entities ("SOFOM") that are not supervised by the National Banking and Securities Commission ("CNBV") and the inclusion of additional restrictions for the use of accumulated tax losses in the case of change of ownership.

The Federal Fiscal Code was also modified to include, among other changes, new situations in which a purchase of assets may result in a joint liability for the purchaser and to include the ability for the tax authorities to challenge the tax neutral treatment of mergers and spin offs if they deem that such transactions lack a business reason.

e. COVID-19 measures

There have been no comprehensive nor significant tax measures enacted by the Federal Executive in order to combat the adverse economic climate resulting from the Covid-19 pandemic which are relevant for M&A taxes, however, certain measures, such as the possibility for taxpayers to remit unpaid tax debts relating to different types of taxes in a separate manner per each type of tax, plus surcharges and inflation adjustment, or the suspension of certain administrative deadlines for procedures that cannot be carried out through electronic means, have been implemented.

At State level, several tax measures consisting of the deferral or reduction of vehicle ownership tax, payroll tax, property tax, lodging tax and public spectacles tax, as well as the reductions of surcharges and penalties and the suspension of tax audit procedures in certain cases have also been implemented.

As such, whilst the Mexican Government has not introduced significant Covid-19 tax measures as we see in other countries, the above will still be relevant considerations in respect of due diligence exercises.

3. SHARE ACQUISITION

a. General Comments

In general, capital gains generated from the transfer of shares are subject to income tax by Mexican residents and non-Mexican residents with a PE in Mexico. The gain is equal to the difference between the sales price and the tax basis in the transferred shares. The funds used to purchase shares are considered to be sourced from Mexico if the issuer of the shares is a Mexican resident entity, or if more than 50% of the underlying book value of such shares is attributable, directly or indirectly, to real property situated in Mexico. Non-Mexican residents may elect to pay income tax equal to 25% of the sales price, or 35% of the capital gain realised for tax purposes. If the latter method is chosen (i.e. 35% of the capital gain), certain formalities must be satisfied by the non-Mexican resident including the designation of a Mexican resident legal representative and a formal determination of the tax basis of the transferred shares by a registered public accountant. The acquisition price will be considered for purposes of determining the basis of the shares in the event of a subsequent sale. Where shares are sold to a related party who is also a tax resident of a jurisdiction deemed to have a preferential tax regime, a 40% withholding rate may apply to such sale.

It is worth noting that due to recent amendments to the ITL, a Mexican resident who is appointed as a legal representative of a foreign resident will have to comply with several additional requirements, including having to prove to the tax authorities the capacity to bear the tax burden of the corresponding transaction and have the power to dispose of assets of the foreign taxpayer to cover a potential tax deficiency. Thus, a foreign resident disposing of stock in a Mexican entity will be faced with additional complications to apply a more beneficial treatment either under domestic law or through the application of a double tax treaty, options that generally require the appointment of a legal representative in Mexico.

Capital gains derived from the sale of shares of resident Mexican companies listed on a recognised stock exchange and shares issued by variable yield investment funds are subject to a 10% tax rate on the gains. The sale of such shares may be exempt if the seller is resident in a jurisdiction with which Mexico has a double tax treaty in force and certain formalities are met.

In general, Mexican resident target companies remain liable for taxes owed by the former shareholders in a share acquisition if the target company registers the acquiring shareholder in its shareholder registry and does not receive proof of withholding tax compliance from the acquiring shareholder or proof that the seller has paid all taxes derived from the sale. Thus, in the case of a foreign acquiror, it is important to ensure that the seller duly complies with its income tax payment obligations.

b. Tax Attributes

Mexican residents and non-Mexican residents with a PE in Mexico may offset any losses derived from the transfer of shares only against capital gains derived from other transfers of shares. A loss obtained by a non-Mexican resident seller on the sale of an entity may not be offset against future capital gains for Mexican tax purposes.

Following an acquisition of shares, tax attributes remain with the acquired entity although limitations may apply for the application of net operating tax losses. For example, net operating tax losses transferred by a merged entity to a surviving entity may be used by the surviving entity only against profits generated by the same business line in which the losses were generated. Additionally, if there is a change of shareholders that control the entity that has generated the net operating tax losses, and the losses, prior to the change of control exceed the sum of the income obtained by the entity in its last three fiscal years, such losses may only be used against profits generated in the same business line in which they were generated.

Where tax losses have been generated pursuant to certain regulated scenarios and the tax loss generating entity is part of a business restructuring or change of shareholders in such a way that the entity entitled to offset said losses ceases to be part of the original group, then the right to offset such losses may be challenged by the tax authorities absent proof of non-tax related motives. However, when the party that generated the tax losses no longer forms part of the original group after any form of restructuring that causes the entity to exit the group, the exit of tax losses from the group may be deemed unlawful. For example, when the taxpayer that generated the losses forms part of any of the regulated scenarios, the use of tax losses by such taxpayer may be disallowed if deemed unlawful by the tax authorities. The rules prevent groups from selling loss generating entities to third parties by targeting certain fraudulent schemes whereby losses are considered to have been generated artificially and then sold to group companies as "tax assets".

c. Tax Grouping

Tax integration (consolidation) is available under the ITL, which allows for the deferral of income tax for a period of three years, i.e. in Mexico there is never a permanent deduction/offset reducing the taxable profit and tax payments of the group, only ever a deferral of tax due. The application of the integration regime requires the holding company and the subsidiaries to be Mexican residents and the holding company must have above 80% ownership in all integrated subsidiaries, directly or indirectly. Furthermore, the holding company's voting stock must not be owned more than 80% by persons other than Mexican resident individual shareholders or foreign resident shareholders resident in a country who has entered into a broad exchange of information agreement with Mexico.

Each entity of the integrated group determines an individual taxable income or operating losses, as the case may be and in the annual return the losses belonging to group members may be offset pursuant to a specific mechanic. The difference between the integrated taxable income and the taxable income that would have been realised had there been no integration will be deferred for three years and updated for inflation. The deferred amount must be paid to the tax authorities in the tax return corresponding to the following fiscal year to that in which the end of the three-year period takes place.

Furthermore, the tax integration regime is allowed only for companies which are resident in Mexico for tax purposes. As a consequence, it is not possible to consolidate a foreign company with a Mexican company for tax purposes.

d. Tax Free Reorganisations

Mexican law provides for a tax neutral regime applicable to some qualifying corporate restructurings, such as mergers, spin-offs, contributions-in-kind and exchanges of shares. Subject to certain requirements, companies can achieve tax-free mergers and spin-offs whereby any transfer of assets is not considered as such for income tax and VAT purposes. In the case of mergers and spin-offs resulting from a corporate restructuring, the requirements set forth in the ITL described in the following paragraph must be met. Tax free mergers and spin-offs can only be achieved where the entities entering into the merger or resulting from the spin-off are Mexican resident for tax purposes.

In the case of corporate restructurings involving Mexican resident legal entities, the Mexican tax authorities may authorise a transfer of shares at cost basis between entities in the same corporate group. Subject to other requirements, the shares received and the shares transferred by each entity must remain directly held by the acquirer and within the group for a period of at least two years following the date of authorisation of the restructure, and the shares received by the taxpayer must represent the same percentage in the paid in capital of the entity whose shares are received, as the percentage that the shares being transferred in turn would represent, prior to the transfer, in the consolidated capital of both entities. Additionally, a new requirement has been established, consisting in the obligation to inform to the tax authorities any relevant transactions carried out during the five-year period preceding the request for the authorisation. Additionally, the tax authorities are granted with the power to forfeit the authorisation if they deem that the corporate restructure lacked a valid business reason.

Regarding contributions-in-kind and exchange of shares carried out by non-Mexican residents, the Mexican tax authorities must authorise the corporate restructuring before it is executed. The benefit of the authorisation is a deferral in the payment of the tax that would have been triggered without the reorganisation authorisation. The transfer value to be considered for purposes of the deferral is the tax basis of the shares. In any case, several formalities and requirements must be fulfilled to qualify for the tax neutral regime. Among other requirements, the related parties must not be subject to a preferential tax regime. Mexico also has some Double Tax Treaties in place which allow for tax free or tax deferred reorganisations (e.g. United States, the Netherlands, Luxembourg, Hong Kong and Spain, among others).

Tax free reorganisations are not allowed between foreign entities and Mexican entities. For example, a Mexican entity merging with a foreign resident entity cannot apply for a tax-free transfer of assets.

e. Purchase Agreement

Where the seller is a Mexican resident individual or a non-Mexican resident and the purchaser is a Mexican resident, the purchaser must withhold income tax due by the seller unless the seller elects to pay income tax due on the gain, in which case specific documentation should be provided to the purchasers to relieve them from the obligation to withhold income tax. In this regard, special provisions should be included to guarantee that the seller provides the required documentation within the time frame required by law.

f. Transfer taxes on share transfers

Acquisitions of shares of a corporation or partnership interest of a limited liability company are not subject to VAT or stamp tax in Mexico. Furthermore, no transfer taxes are triggered by a share acquisition (e.g. real estate transfer tax).

g. "Purchase accounting" applicable to share acquisitions

Purchase accounting is not applicable for tax purposes in a stock acquisition. The purchase price is fully allocated to the stock and may not be allocated to the individual assets and liabilities of the target entity for a step-up in the tax basis.

h. Share Purchase Advantages

Acquisitions of shares of a corporation or partnership interest of a limited liability company are not subject to VAT or stamp tax in Mexico. No transfer taxes are triggered by a share acquisition (e.g. real estate transfer tax).

The acquisition price will form part of the tax basis of shares of the buyer for subsequent sales.

Tax attributes remain with the acquired entity although limitations may apply for the application of tax losses.

i. Share Purchase Disadvantages

A loss incurred by a non-Mexican resident seller on the sale of an entity may not be offset against future capital gains for Mexican tax purposes.

The target company's liabilities and possible tax contingencies remain in the target company. The statute of limitations in Mexico is five years.

The buyer is generally not allowed to deduct the financing costs of the acquisition against the target's future profits.

If the buyer is a foreign resident and acquires shares at a value that is at least 10% lower than the appraisal value of the shares, the tax authorities may assess a deemed income to the foreign buyer on the difference between the actual sales price and the appraisal value of the shares. The foreign buyer must pay a 35% income tax on the difference between the sales price and the appraisal value.

There are no tax clearances available.

4. ASSET ACQUISITION

a. General Comments

The transfer of assets is subject to income tax on the capital gain realised by the seller, if the seller is a Mexican resident or a non-Mexican resident with a PE in Mexico, Special considerations apply to the transfer of real property situated in Mexico. The sale of real property situated in Mexico, transferred by a non-Mexican resident without a PE in Mexico is deemed to be sourced in Mexico and subject to tax either at a 25% rate on the purchase price or 35% on the gain realised by the foreign resident. To pay tax on gain rather than the purchase price, certain requirements must be satisfied, such as that a Mexican resident legal representative is designated and the transaction is conducted through a notary public.

b. Purchase Price Allocation

The purchaser may reasonably allocate the purchase price among the individual assets being acquired, which will result in a step-up in the taxable basis of each individual asset. Usually, an independent appraisal of the assets is needed to support the allocation.

c. Tax Attributes

The tax attributes of a target, such as accumulated net operating tax losses, are not transferred to the purchaser in an asset acquisition.

d. Tax Free Reorganisations

It is not possible to apply for a tax-free reorganisation in an asset transaction, other than the transfer of assets through a merger or spin-off subject to complying with the requirements mentioned above.

e. Purchase Agreement

Special attention should be given to the proper issuance of invoices by the seller for the assets being transferred. In order to document the deductibility of assets, the tax cost basis shall be backed up by electronic invoices that meet legal requirements.

Furthermore, special attention should also be placed on any withholding VAT or IT obligations that may be imposed on the purchaser.

Additionally, given the recent amendments to the Federal Fiscal Code, the purchaser of assets may be considered jointly liable for taxes attributable to an ongoing concern.

f. Depreciation and Amortisation

The cost of tangible and intangible assets purchased may be deducted via depreciation or amortisation beginning either in the fiscal year that they are put to use or in the following year. The depreciation for tax purposes is determined on the straight-line method and restricted to maximum annual percentages set forth in the ITL per kind of asset or business line to which they are destined. Purchased inventories may not be deducted via depreciation and shall be deducted as the cost of goods sold when such goods are effectively sold.

The ITL does not allow for the deduction of goodwill. Goodwill paid as part of the purchase price of shares of a company is part of the tax basis of the shares, which can be deducted from the sales price in a subsequent sale (provided however that the overall original acquisition price was at market value at the time of purchase).

g. Transfer Taxes, VAT

The transfer of assets is generally subject to VAT at a 16% rate and paid by the seller. The cost, however, is transferred to the purchaser. Certain assets may be subject to a 0% VAT rate or exempt from VAT. VAT borne by the purchaser may be credited against the VAT in charge due for the sale of goods, the provision of services, the granting of the temporary use or enjoyment of goods or the importation of goods which are subject to a 16% or a 0% rate. If the purchaser is a non-Mexican resident, the VAT is not recoverable and will represent an additional cost for the transaction.

Additionally, the transfer of real property situated in Mexico will be subject to real estate transfer tax at local level, generally imposed on the purchaser. The rate may go from 2% to 5% on the higher of the transaction value, the cadastral value, or an appraisal value.

Excise tax may apply on the transfer of certain goods, such as fuel, tobacco or alcohol.

There are no other stamp duties or transfer taxes in Mexico than those discussed above.

h. Asset Purchase Advantages

Step-up of the value of the assets for the purchaser.

The cost of assets purchased may be deducted via depreciation beginning either in the fiscal year that they are used or in the following year. Seller may be able to offset accumulated net operating tax losses against capital gains derived from the disposition of assets.

The target company's liabilities and possible tax contingencies are not transferred to the buyer unless the transfer is deemed the acquisition of an ongoing concern. However, as mentioned above, new provisions have been included which could result in a limited transfer of assets being considered an ongoing concern.

i. Asset Purchase Disadvantages

Tax attributes such as accumulated tax losses of the target are not transferred to the buyer.

Real estate transfer tax is applicable on the transfer of real estate property situated in Mexican territory. This tax is levied at the local level at a rate that may go from 2% to 5% of the value of the property.

Regardless of the general rule that the target company's liabilities are not transferred to the buyer, Mexican tax provisions establish that, in case of the acquisition of an ongoing concern, the buyer will be jointly and severally liable with the seller for any taxes triggered from the activities carried out by such business.

5. ACQUISITION VEHICLES

a. General Comments

In the acquisition of Mexican resident targets, it is common to set up either a domestic or foreign acquisition vehicle, depending on the characteristic of the financing that will be provided. Special considerations must be taken into account to obtain relief for the financing cost of the acquisition. For instance, special planning will be required to implement a debt pushdown strategy.

b. Domestic Acquisition Vehicle

Domestic acquisition vehicles are generally used when it is envisaged that the transaction will be financed via third party debt and it is envisaged that the target will generate enough operating income to pay principal and interest and will be able to take advantage of the interest deductibility. Since a tax-free merger cannot be achieved between a Mexican resident and a non-Mexican resident entity, a domestic acquisition vehicle is required to implement a debt push-down strategy as described below.

c. Foreign Acquisition Vehicle

Foreign acquisition vehicles are generally used when there are special considerations to be taken into account with respect to the tax regime in the country or jurisdiction in which the foreign acquisition vehicle is tax resident. Since the corporate income tax rate of Mexico is relatively high compared to international standards (30%), payments made abroad to lower tax jurisdictions may result in an overall benefit for a multinational enterprise group. Furthermore, when the target acquired is a holding entity itself, it will not be necessary to set up a domestic acquisition vehicle as a blocker of any withholding taxes due from payments abroad by the operating target such as interest, royalty or dividend income tax withholdings.

Private equity investment acquisitions are commonly carried out through foreign transparent legal vehicles. The recently introduced fiscal transparency rules described in Section 2.b. of this chapter shall be considered as of fiscal year 2021 to achieve the desired tax transparency.

d. Partnerships, joint ventures and trusts

Joint ventures (*asociaciones en participación*) and partnerships (*sociedades civiles*) are taxed in the same manner as Mexican resident corporations. However, partnerships are taxed on a cash flow basis rather than on an accrual basis. Joint ventures, although not corporate bodies, are treated as a single taxpayer for Mexican tax purposes.

As opposed to joint ventures in the terms described above, it is common to set up investment vehicles through Mexican trusts (*fideicomisos*), which are treated in the same manner as Mexican resident corporations when they conduct entrepreneurial activities. Foreign residents conducting business through such "business trusts" are deemed to have a PE in Mexico for the income attributable to such trusts. Conversely, passive income trusts are treated as transparent entities (pass-through) and their members are taxed on distributions made to such trust in accordance with their applicable tax regime.

e. Strategic vs Private Equity Buyers

There are no particular tax considerations for strategic vs. private equity acquisitions since there is no particular tax treatment applicable to majority shareholders (which is normally the case of strategic buyers) as opposed to minority shareholders (which may be the case of private equity buyers) pursuant to domestic law. However, certain tax treaties entered into by Mexico do provide preferential withholding taxes on dividend distributions or capital gains depending on the level of ownership of the foreign resident.

With respect to private equity investments, the ITL contemplates special investment vehicles such as a Capital Risk Investment Trust ("FICAP" is its acronym in Spanish) which are treated as transparent vehicles for Mexican tax purposes (i.e no withholding applies to the distributions made by the operating target to the FICAP, and each member of the FICAP is taxed individually, being eligible to apply the benefits of a double tax treaty). FICAP must invest in non-publicly-traded Mexican resident targets and at least 80% of the proceeds received by the trust every year must be distributed to investors in the first two months of the subsequent year.

6. ACQUISITION FINANCING

a. General Comments

The introduction of funds into Mexico does not present particular difficulties. Mexico does not currently have exchange control regulations or limitations with respect to the transfer of funds outside Mexico. Notwithstanding the above, please note that as a practical matter, transfers of funds through Mexican financial institutions may trigger reporting requirements pursuant to anti-money laundering regulations. Furthermore, Mexico does not impose any taxes or duties on capital contributions nor stamp taxes on foreign currency being introduced into Mexico.

Based on the foregoing, funding may be provided immediately and with no setbacks once the target vehicle has been incorporated.

b. Equity

There are no local substance requirements for foreign holding companies in Mexico, nor is Mexico a jurisdiction suitable for holding companies given the high tax burden applicable to passive income earned by Mexican residents. Based on the foregoing, a holding jurisdiction is typically chosen based on the benefits that are available under a double tax treaty entered into with Mexico and the network of tax treaties available in such jurisdiction. Some common holding company jurisdictions for Mexican businesses are Spain, the Netherlands, Luxembourg and the United States.

Nevertheless, the ITL has certain requirements in place to tackle what would be considered as abusive structures by the Mexican tax authorities: in addition to the requirement that Mexican residents must obtain a certificate of residence of the non-Mexican resident to apply treaty benefits, the Mexican tax authorities may request such non-Mexican resident taxpayers to prove the existence of juridical double taxation being relieved under the applicable tax treaty, as well as an explanation of the tax treatment given in the country of residence. In addition, Mexico has opted to include the Simplified Limitation of Benefits provision to its Covered Tax Agreements under the Multilateral Instrument, and in recent treaty negotiations Mexico has included a principal purpose test or limitation on benefits clauses to restrict treaty benefits in abusive situations.

Furthermore, there are no tax incentives for equity financing under Mexican ITL such as a deemed interest deduction for equity contributions or deductibility of paid in capital. However, capital reimbursements that do not exceed the paid in capital, subject to certain computations set forth in the ITL, are considered tax free distributions. There are however anti-abuse provisions set forth to avoid the result of a transfer of shares through capital increases and future capital redemptions by another shareholder.

c. Debt

For income tax purposes, interest is deductible when:

- The capital is invested for the attainment of the purpose of the business.
- If the taxpayer grants loans to third parties, employees or shareholders, only the interest accrued on borrowed capital for up to the amount of the lowest interest rate set forth in the loans to third parties or to the taxpayer's employees or shareholders on the portion of the loan made to the latter parties will be deductible. These limitations do not apply to banking institutions, regulated multiple purpose financing companies or ancillary credit organisations regarding transactions that are inherent to their activities.
- Interest must be determined at a fair market value. Any excess will be considered non-deductible.
- Tax withholding obligations and other disclosure obligations must be complied with.

As of fiscal year 2020, a general interest deductibility limitation rule has been introduced whereby interest deductibility is limited to 30% of the taxpayers adjusted tax profits, applicable when the accrued interest resulting from the taxpayers liabilities exceeds MXN $20 million. The limitation shall be applicable to all Mexican resident legal entities or non-Mexican resident legal entities with a PE in Mexico forming part of the same group.

Thin capitalisation rules disallow the deduction of interest on debt owing to foreign related parties if the total amount of interest-bearing debt exceeds a three to one debt equity ratio. Likewise, interest may be re-characterised as a dividend if the loan is considered a back-to-back loan, and therefore non-deductible. Furthermore, according to the tax provisions applicable as from fiscal year 2022, financing structures lacking a business reason will qualify as back-to-back-loans, and therefore, non-deductible.

Although interest expense on a debt subscribed for dividend distribution purposes is not generally prohibited, Mexican tax authorities have the position that interest derived from a loan obtained to pay dividends to shareholders is non-deductible because they consider that the loan is not used for the business purpose of the company. In a similar fashion, the Mexican tax authorities are not fond of debt pushdowns even if there is no particular provision that prohibits them.

The usual strategy to push down debt on an acquisition is to incorporate a Mexican acquisition company to borrow the purchase funds. Following the purchase, the acquisition company is merged into the target company, so it pays debt and interest from operating cash flows. The merger may qualify as a tax neutral transfer of assets subject to the fulfilment of certain requirements. Nevertheless, the Mexican tax authorities may challenge the deduction of the interest considering that such interest is not strictly necessary for the purposes of the surviving company.

Tax consolidation was used to optimise a group's tax burden utilising the deduction of acquisition debt interest (with the associated recapture of losses if the holding company did not individually generate sufficient profits to amortise the loss derived from financing). However, as from fiscal year 2014, the tax consolidation regime was replaced by a fiscal unity regime which only allows the deferral of taxes for a three-year period.

d. Earn-outs

Earn-outs will be subject to income tax in Mexico depending on how they are structured in the transaction. If, for example, earn-outs are agreed as adjustments to the final purchase price, they will be taxable under the rules applicable to the sale of shares. If they are structured as service fees or non- compete payments, for example, they will be subject to tax in Mexico to the extent that they are either earned by a Mexican resident or a non-Mexican resident with a PE in Mexico, or if they are earned by a non-Mexican resident for activities carried out in Mexico.

Generally, an earn-out payment will not require the performance of activities in Mexico so they may not be subject to tax under certain considerations. Nevertheless, a specific analysis should be conducted to determine the nature of such earn-out payments in order to accurately determine the Mexican tax ramifications.

7. DIVESTITURES

a. Tax Free

Capital redemptions will not be subject to taxation in Mexico to the extent the amounts reimbursed to the shareholders/partners do not exceed the amounts originally contributed to the Mexican entity. Such amounts are reflected in the Contributed Capital Account ("CUCA" is its acronym in Spanish). The CUCA includes the paid-in capital contributions and premiums paid in the issuance of shares and is decreased by capital reductions. The balance of the account is adjusted for inflation.

Any amounts that exceed the CUCA or the net after tax profits account ("CUFIN" is its acronym in Spanish) will be treated as a taxable distributed profit as described in the following subsection.

b. Taxable

- Dividends: Dividends distributed in an amount up to the balance of the net taxable profits account ("CUFIN") are not subject to corporate taxation in Mexico at the level of the distributing entity. If distributions exceed the CUFIN, a specific gross-up procedure must be applied to the excess distributed amount, in order to determine the amount of the income tax due by the Mexican entity (at the corporate level) upon the distribution of such dividends. The corporate tax levied may be credited against income tax due in the fiscal year in which the dividend is distributed and in the following two fiscal years.

  In addition to the corporate tax, if applicable, a withholding tax applicable to individuals and foreign tax residents is established in the ITL when receiving dividends distributed by Mexican companies, which will be determined by applying the 10% rate to the gross amount of the distributed dividends and will be withheld by the company paying such dividends. The 10% rate may be reduced under the benefits granted by a double tax treaty entered into by Mexico.
- Sale of shares: The tax regime applicable to the transfer of shares is described in section 3. Share Acquisition above.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

Mexican residents are subject to tax on their worldwide income. In this regard, income tax paid abroad on income from sources located abroad may be credited against the income tax due under the ITL, provided that (i) such income is subject to tax under the ITL, (ii) the income considered as gross income includes the income tax paid abroad, and (iii) certain crediting requirements are met.

The tax credit granted by Mexico shall be limited to the income tax that would have been due under Mexican law.

As of fiscal year 2020, the tax credit will not be granted in situations where (i) the corresponding tax has been credited in another country or jurisdiction for a reason other than the application of a foreign tax credit in similar terms granted under the ITL, unless the income to which said tax corresponds was accrued in said country or jurisdiction and/or (ii) in the case of a dividend distribution, such distribution is deductible or represents a similar reduction for the distributing entity abroad.

b. CFC Regime

Mexico has a CFC regime applicable to preferential tax regimes where income is obtained through a subsidiary in a low tax jurisdiction. Accordingly, Mexican resident entities and non-Mexican residents with a PE in Mexico that carry out activities through preferential tax regimes are taxed on income obtained through a CFC even if no distributions have been made, provided that they exercise control over those vehicles. Additionally, they are required to file an annual disclosure return reporting income obtained subject to a preferential tax regime or income obtained through entities subject to such regimes or in certain blacklisted jurisdictions.

Pursuant to the ITL, Mexican tax residents and non-Mexican residents with a PE in Mexico could be deemed to receive income from jurisdictions considered as preferential tax regimes whenever: (i) such income is not taxed abroad, or (ii) the income tax abroad is less than 75% of the income tax that would be levied and paid in Mexico. The regime is not applicable when the foreign legal entity carries out entrepreneurial activities, not more than 20% of their total income is passive income, as defined therein, and not more than 50% of the income earned by such foreign legal entity is sourced in Mexico or has represented a tax deductible payment, directly or indirectly, in Mexico.

As of fiscal year 2020, income earned by Mexican resident through a transparent entity or legal vehicle (i.e. a trust, an association, an investment fund or any other legal figure under foreign law that does not have its own legal personality) are subject to similar income accrual rules regardless of whether they are incorporated, or resident in a low tax jurisdiction. Transactions carried out through foreign transparent entities or figures should also be reported regardless of whether they are subject to a preferential tax regime or not.

Taxes levied on the taxpayer for the aforementioned transactions may be credited against the IT due in Mexico, subject to certain limitations.

c. Foreign branches

Foreign branches of Mexican resident entities are subject to the provisions stated in subsections a. and b. above. Profits attributable to a PE of a Mexican resident will be taxed as part of the worldwide income of that Mexican resident and taxes levied at source may be credited against income tax due in Mexico for such activities.

d. Cash Repatriation

- Dividends received by Mexican residents from foreign entities are considered taxable income. However, the corporate income tax paid abroad by those foreign entities may be credited in proportion to the dividends or profits received by the Mexican entity, under a specific procedure established by the ITL.
- In past years the Federal Executive has issued repatriation decrees by means of which Mexican residents may regularise their tax situation with respect to offshore investments at preferential tax rates. Currently, no repatriation decrees are in force. The most recent such decree was issued during fiscal year 2017, which granted an incentive to Mexican residents consisting of applying an 8% tax rate to the resources kept abroad before 1 January 2017, which were brought back to Mexico. This decree is no longer in force.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

The tax regime applicable to the transfer of real property situated in Mexico is described in section 4.a. General Comments and 4.g. Transfer Taxes, VAT above.

As previously stated, pursuant to the ITL, the source of wealth from the acquisition of shares issued by a foreign entity is considered to be in Mexico, when the accounting value of such shares (issued by a foreign entity) is represented more than 50%, directly or indirectly, by real property situated in Mexico.

b. CbC and Other Reporting Regimes

- Transfer pricing disclosure returns: Pursuant to the ITL and in line with BEPS Action 13, in certain cases taxpayers are required to file information returns: (i) a master information return of related parties from the multi-national business group, (ii) local information return of related parties, and (iii) information return, Country-by-Country, of the multi-national business group. The master information return and Country-by-Country report shall be filed no later than 31 December of the following fiscal year, whereas the local file shall be filed no later than 15 May of said following fiscal year.
- Information return on income from preferential tax regimes: No later than February of each fiscal year, Mexican resident taxpayers and non-Mexican residents with a PE in Mexico must submit an information return with respect to income subject to a preferential tax regime that they have earned in the immediately preceding year or the income earned through corporations or other entities subject to that regime in the preceding year, along with account statements that specify deposits, investments, savings or any other items.

  Taxpayers that earn income of any kind in blacklisted jurisdictions, as well as those that conduct transactions through fiscally transparent foreign entities or legal vehicles, are also required to file the above-mentioned information return.

  Financial institutions are released from the obligation to file this return, provided that they keep a copy of the return filed in due time and in proper form by the holders and co-holders of income subject to a preferential tax regime.
- CRS/FATCA: There are rules and reporting requirements in force requiring Mexican financial institutions, including their foreign branches, to comply with the exchange of information requirements under the Foreign Account Tax Compliance Act ("FATCA") and the Common Reporting Standards ("CRS").

10. TRANSFER PRICING

Mexican resident corporations and non-Mexican residents with a PE in Mexico who engage in transactions with related parties are obligated to determine their taxable income and deductions considering the prices and amounts of consideration that would have been agreed upon with or between independent parties under comparable circumstances. The Mexican tax authorities can modify the tax profit or loss of taxpayers, through the presumptive determination of the price at which taxpayers acquire or sell goods, among other situations, when the agreed price of the transaction is higher or lower than fair market value.

Formal and pre-established methods to determine an arm's length consideration, following OECD transfer pricing guidelines, are contemplated in the ITL, giving preference to the comparable uncontrolled price method. Mexican entities are required to obtain and keep transfer pricing studies for transactions carried out with domestic and foreign related parties. Regarding transfer pricing documentation, Mexico has implemented Action 13 of the BEPS project, obligating Mexican residents to comply with Country-by-Country, Master File and Local File reporting, following OECD standards, for information pertaining to fiscal year 2016 onwards.

Advance Pricing Arrangements ("APA") and Mutual Agreement Procedures ("MAP") are available for taxpayers who wish to approach the tax authorities and seek private rulings (or APAs / MAPs) to obtain juridical certainty of their transfer pricing policies. These procedures are lengthy and cumbersome, however.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

As from 2014, a hybrid mismatch rule was introduced establishing that the deduction of any payments made by Mexican tax residents will be disallowed if the deduction is also picked up at the level of a national or a foreign resident related party (unless such related party considered such payment in its taxable basis). As from 2020, this limitation is also applicable to the PE of non-Mexican residents when the payment is also deductible for the non-Mexican resident in its country of residence, or in cases of dual resident taxpayers, to the extent that in the latter case, the income accrued in Mexico is also accrued abroad.

Starting in fiscal year 2020, payments made to related parties or through structured arrangements are non-deductible when the recipient of such payments is subject to a preferential tax regime. This limitation shall not be applicable in the case of income derived from entrepreneurial activities and other requirements are met, unless the payment is deemed to be subject to a preferential tax regime by virtues of a hybrid mechanism. For these purposes, a hybrid mechanism is deemed to exist when the Mexican and foreign legislations characterise in a different way a legal entity, a legal vehicle, income, the owner of assets, or a payment, and which results in a deduction in Mexico when the totality or part of a payment is not subject to tax abroad.

b. Use of Hybrid Instruments

Please see the deductibility limitation with respect to payments made to related parties or through structured arrangements mentioned in Section 6. above.

c. Toll Manufacturing

Mexico has in place a toll manufacturing regime (*maquila*) to attract foreign investment and take advantage of low manufacturing costs. Under this regime, non-Mexican residents will not be deemed to have a PE in place derived from the juridical or economic relations maintained with companies that carry out maquila operations, that habitually process within Mexico goods or merchandise kept by the non-Mexican resident in Mexico, utilising assets provided, directly or indirectly by that non-Mexican resident, as long they are resident in a jurisdiction with which Mexico has a double tax treaty in place. In addition, the toll manufacturing company must comply with certain profitability safe harbours derived from the services rendered to the non-Mexican resident for the latter not to trigger a PE in Mexico for its activities.

Furthermore, non-Mexican residents that provide directly or indirectly raw materials, machinery or equipment, to carry out maquila operations through companies with a maquila permit under the shelter modality, authorised by the Ministry of Economy, will not be deemed to have a PE in Mexico, to the extent that the foreign resident is not, directly or indirectly, a related party of the company with the maquila permit. As of fiscal year 2020, said non-Mexican residents shall enrol before the Federal Taxpayers Registry through the Mexican resident with which they have entered into the shelter programme. The Mexican resident company shall determine the profits earned by the non-Mexican resident and file the corresponding tax returns containing the income tax due in charge of said non-Mexican resident. The Mexican resident company shall be jointly liable for the determination and payment of income tax due by the non-Mexican resident, which taxable profits shall be determined pursuant to specific safe harbour rules.

d. Intellectual Property

Payments of any sort for granting the temporary use or enjoyment of patents, certificates of invention or improvement, brands, trade names, authors' rights over literary, artistic or scientific works, including films and recordings for radio or television, blueprints, formulas, industrial, commercial or scientific procedures or equipment, or information relating to commercial, industrial or scientific experiences, or other rights or ownership of a similar kind, are treated as royalties. The granting of temporary use of aeroplanes for commercial use in the transportation of passengers or cargo, is considered royalty as well.

The transfer of intellectual property by the seller is subject to the same tax treatment as the transfer of intangible assets described in section IV above. However, income obtained by a foreign resident from the transfer of goods or rights treated as royalties shall be subject to the tax treatment described below when the transfer of such goods or rights is conditioned to the productivity, use or subsequent disposal of said goods or rights.

Royalty payments shall be sourced in Mexico when goods or rights for which royalties are being paid are enjoyed in Mexico or when the payment is made by a Mexican resident or a non-Mexican resident with a PE in Mexico. The withholding tax applicable varies from 1% to 35% depending on the goods, assets or rights for which the royalties are being paid.

e. Special tax regimes

The ITL includes special tax regimes applicable to particular forms of investments through Mexican trusts ("fideicomisos"). In particular, there is a special tax regime applicable to real estate investment trusts (*Fideicomisos de Inversión y Bienes Raíces* or "FIBRAS") for the acquisition or development of real estate in Mexico where the beneficiaries benefit from the rental income or similar rights over the real estate assets subject to the trust estate. As of fiscal year 2020, the FIBRAS regime is solely applicable to publicly held investments, providing for a transitional exit regime for privately held real estate investment trusts. Additionally, a regime applicable to energy and infrastructure investment trusts ("FIBRA E") is also available to promote the financing of projects in those sectors.

12. OECD BEPS CONSIDERATIONS

The tax reforms introduced in Mexico effective as from 1 January 2014 and 1 January 2020, along with administrative regulations, have led to a comprehensive early adoption of BEPS actions within the Mexican tax regime.

In addition, Mexico has signed the Multilateral Instrument, which is still pending approval from the Mexican Senate to become effective. The Multilateral Instrument will be applicable to 61 Covered Tax Agreements. Mexico already has in its Covered Tax Agreements several provisions in line with the Multilateral Instrument, for which reservations have been issued in connection with transparent entities and dual residence issues, which will need to be analysed case by case. Furthermore, as previously stated, Mexico has opted for the Simplified Limitation of Benefits provision.

Mexico has not chosen to apply the arbitration mechanisms contained in the Multilateral Instrument.

13. ACCOUNTING CONSIDERATIONS

Mexican companies must present their financial information in accordance to the Mexican Financial Reporting Standards (*Normas de Información Financiera* or "NIF"). Publicly listed companies however must present their financial information in accordance with the International Financial Reporting Standards ("IFRS"). Furthermore, there are specific Mexican reporting standards applicable to the banking and financial system.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Please refer to Section 7. for the considerations with respect to distributions.

b. Substance Requirements for Recipients

There are no specific substance regulations or requirements in the Mexican tax provisions, however, the recently introduced GAAR allows the tax authorities to recharacterise the legal acts entered into by taxpayers when such acts are deemed to lack business reasons and generate a direct or indirect tax benefit. Moreover, additional "business reason" provisions have been included in the tax legislation as from 2022, including information obligations in connection with relevant transactions (such as restructures, mergers, spin-offs, change of shareholders, among others); identification of ultimate beneficiaries of companies, trusts, etc (with steep penalties if non-compliant); to provide tax authorities with more tools to evaluate the substance of transactions and deny, if any, tax benefits or recharacterise transactions.

c. Application of Regional Rules

This section is left intentionally blank.

d. Tax Rulings and Clearances

The Mexican tax authorities may issue rulings concerning inquiries issued by taxpayers on specific and factual situations. The tax authorities are bound to apply the criteria contained therein, provided that the inquiries meet specific formal requirements and that the facts and circumstances put forward by the taxpayer are accurate and real. The ruling issued will be binding during the fiscal year in which they are requested, or during the immediately preceding fiscal year when granted during the first three months of the fiscal year in which it is requested. The ruling shall not be binding to the taxpayer, allowing the latter to challenge any assessment issued by the Mexican tax authorities based on the application any unfavourable criterion issued. Favourable resolutions may be challenged by the Mexican tax authorities solely before a tax court. The Mexican tax authorities may also issue replies to consultations concerning theoretical inquires issued by taxpayers, however certain matters are restricted, and the reply obtained is not binding.

Furthermore, as mentioned in Section 10. above, the Mexican tax authorities may also rule upon inquiries regarding the methodology used to determine prices or consideration amounts in transactions with related parties. The rulings may result from an agreement with the competent tax authorities of a country with which Mexico has a double tax treaty in force. These rulings shall be valid for the fiscal year in which they are requested, the immediately preceding fiscal year, and for up to the three fiscal years following fiscal years. The rulings may be valid for a longer period if they derive from a mutual agreement procedure in accordance with an international convention to which Mexico is a party.

There are no tax clearances available in Mexico for federal tax purposes, but local governments do tend to grant clearances with respect to local taxes such as payroll tax or property tax to attract investment in their localities.

15. MAJOR NON-TAX CONSIDERATIONS

In general, there are no major non-tax considerations for M&A activities in Mexico nor investment restrictions, except for strategic sectors which are totally or partially served to the Mexican State or to full or a minimum Mexican participation. In this regard, activities such as exploration and production of hydrocarbons, planning and distribution of energy and the generation of nuclear energy is reserved to the Mexican State. Other activities such as national passenger, tourist and freight transportation is reserved to Mexican residents, and activities that involve, for example, the ownership of land destined to agriculture, livestock or forestry activities require a minimum level of Mexican participation.

Some transactions may require notice or authorisation from the Mexican Anti-trust Commission, depending on value of transaction, value of assets involved and other considerations.

16. APPENDIX I – TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Argentina	10 / 15	12	10 / 15	[1] [2]
Australia	0 / 15	10 / 15	10	[3] [4]
Austria	5 / 10	10	10	[5]
Bahrein	-	4.9/10	10	[54] [55]
Barbados	5/10	10	10	
Belgium	Exempt / 10	5 / 10	10	[6] [7]
Brazil	10 / 15	15	10 / 15	[8] [9]
Canada	5 / 15	10	10	[10]
Chile	5 / 10	5 / 10	10	[11] [12] [13]
China	5	10	10	
Colombia	Exempt	5 / 10	10	[14]
Costa Rica	5/12	10	10	[56]
Croatia	Non applicable			
Cyprus	Non applicable			
Czech Republic	10	10	10	
Denmark	0 / 15	5 / 15	10	[15] [16]
Ecuador	5	0 / 10 / 15	10	[55]
Estonia	Exempt	4.9 / 10	10	[57]
Finland	Exempt	10 / 15	10	[17]
France	Exempt / 5 / 15	5 / 10	10	[18] [19] [20]
Germany	5 / 15	5 / 10	10	[21] [22]
Greece	10	10	10	
Hong Kong	Exempt	4.9/10	10	[55]
Hungary	5 / 15	10	10	[23]
Iceland	5/15	10	10	
India	10	10	10	
Indonesia	10	10	10	
Ireland	5 / 10	5 / 10	10	[24] [25]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Israel	5/10 /10	10	10	
Italy	15	10	15	[26]
Jamaica	5/10	10	10	[58]
Japan	Exempt / 5 / 15	10 / 15	10	[27] [28]
Kuwait	Exempt	4.9/10	10	[55]
Lithuania	0/15	10	10	
Luxembourg	5 / 8 / 15	10	10	[29]
Malaysia	Non applicable			
Malta	Exempt	5 / 10	10	[30]
Mauritius	Non applicable			
Netherlands	5 / 15	5 / 10	10	[31] [32]
Norway	Exempt / 15	10 / 15	10	[33] [34]
Panama	5 / 7.5	5 / 10	10	[58] [55]
Philippines	5 / 10 / 15	12.5	15	[35]
Poland	5 / 15	10 / 15	10	[36] [37]
Portugal	10	10	10	
Puerto Rico	Non applicable			
Qatar	Exempt	5 / 10	10	[55]
Romania	10	15	15	
Russia	10	10	10	
Saudi Arabia	5	5 / 10	10	[59]
Serbia	Non applicable			
Singapore	Exempt	5 / 15	10	[38]
Slovakia	Exempt	10	10	
Slovenia	Non applicable			
South Africa	5 / 10	10	10	[39]
South Korea	0 / 15	5 / 15	10	[40] [41]
Spain	Exempt / 10	4.9 / 10	10	[42] [43]
Sweden	Exempt / 5 / 15	10 / 15	10	[44] [45]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Switzerland	Exempt / 15	5 / 10	10	[46] [47]
Turkey	5 / 15	10 / 15	10	[48] [49]
UK	Exempt / 15	5 / 10 / 15	10	[50] [51]
Ukraine	5 / 15	10	10	[58]
United Arab Emirates	Exempt	4.9 / 10	10	[55] [60]
Uruguay	5	10	10	
USA	Exempt / 5 / 10	4.9 / 10 / 15	10	[52] [53]
Venezuela	Non applicable			

Footnotes	
1	Dividends – Maximum rate of 15%. Reduced rate of 10% applies if the beneficial owner is a company which owns at least 25% of the company paying the dividends.
2	Royalties – Maximum rate of 15%. Reduced rate of 10% applies to royalties on certain cultural works (e.g. literary, dramatic, musical, artistic or scientific work), as well as to payments for the use of certain designs, models, blueprints, secret procedures or formulas, commercial, industrial or scientific equipment, computer software, patents and information concerning industrial, commercial and scientific experience, and payments for technical assistance.
3	Dividends – Maximum rate of 15%. 0% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the voting stock of the company paying the dividends, and the dividends are paid out of profits that have been subject to corporate tax.
4	Interest – Maximum rate of 15%. 10% rate if paid to banks or insurance companies, or when the interest is derived from bonds and securities traded on recognised markets or paid by banks or by the purchaser to the seller of machinery and equipment.
5	Dividends – Maximum rate of 10%. 0% rate applies if the beneficial owner is a company which owns at least 10% of the voting stock of the company paying the dividends.
6	Dividends – Maximum rate of 10%. Exemption applies when the beneficial owner is a company which has directly owned at least 10% of the voting stock of the company for an uninterrupted period of 12 months.
7	Interest – Maximum rate of 10%. 5% rate if paid to banks or insurance companies, or when the interest is derived from bonds and securities traded on recognised markets.
8	Dividends – Maximum rate of 15%. 10% rate applies if the beneficial owner is a company which owns at least 20% of the voting stock of the company paying the dividends.
9	Royalties – Pursuant to the most favoured nation clause, reduced rate of 10% applicable to royalties that do not proceed from the use of commercial and industrial brands. 15% rate applicable in other cases.
10	Dividends – Maximum rate of 15%. 5% rate applies if the beneficial owner is a company which holds (directly or indirectly) at least 10% of the voting stock of the company paying the dividends.

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Footnotes	
11	Dividends – Maximum rate of 10%. 5% rate applies if the beneficial owner is a company which owns at least 20% of the voting stock of the company paying the dividends.
12	Interest – Pursuant to the most favoured nation clause, 5% rate if paid to banks, and 10% rate in other cases.
13	Royalties – Reduced rate of 10% is applicable pursuant to the most favoured nation clause.
14	Interest – Maximum rate of 10%. 5% rate if paid to banks or insurance companies.
15	Dividends – Maximum rate of 15%. Reduced rate of 0% applies if the beneficial owner is a company which directly owns at least 25% of the company paying the dividends.
16	Interest – Maximum rate of 15%. 5% rate if paid to banks.
17	Interest – Maximum rate of 15%. 10% rate if paid to banks, or when the interest is derived from bonds and securities traded on recognised markets or paid by banks or by the purchaser to seller of machinery and equipment.
18	Dividends – Maximum rate of 15% applies when a French company pays dividends to a Mexican company that does not hold (directly or indirectly) at least 10% of the capital of the company paying the dividends. 5% rate applies when dividends are paid by a company of a Contracting State to a company of the other Contracting State whose capital is held in more than 50% by residents of third States. Exempt in any other case.
19	Interest – Pursuant to the most favoured nation clause, reduced rate of 5% rate if paid to banks or insurance companies, or when the interest is derived from bonds and securities traded on recognised markets, and 10% rate applicable in other cases.
20	Royalties – Pursuant to the most favoured nation clause, reduced rate of 10% is applicable to royalties.
21	Dividends – Maximum rate of 15%. 5% rate applies if the beneficial owner is a company (other than a partnership) which directly owns at least 10% of the company paying the dividends.
22	Interest – Maximum rate of 10%. 5% rate if paid to banks.
23	Dividends – Maximum rate of 15%. 5% rate applies if the beneficial owner is a company (other than a partnership not subject to taxation) which directly owns at least 10% of the company paying the dividends.
24	Dividends – Maximum rate of 10%. 5% rate applies if the beneficial owner is a company which owns at least 10% of the voting stock of the company.
25	Interest – Maximum rate of 10%. 5% rate if paid to banks.
26	Interest – Pursuant to the most favoured nation clause, reduced rate of 10% is applicable to interests.
27	Dividends – Maximum rate of 15%. 5% rate applies if the beneficial owner is a company which has owned at least 25% of the voting stock of the company paying the dividends for a period of 6 months prior to the end of the fiscal year in which the dividends are distributed. Additionally, if (i) the requirements for applying the 5% rate are met, (ii) the shares of the beneficial owner are traded on a recognised market of its country of residence, and (iii) more than 50% of said shares are property of either the government of the Contracting State on which the beneficial owner resides, or natural persons or legal entities of said Contracting State, dividends are not subject to taxation on the Contracting State on which the company paying the dividends resides.
28	Interest – Maximum rate of 15%. 10% rate if paid to banks or insurance companies, or when the interest is derived from bonds and securities traded on recognised markets, or paid by banks or by the purchaser to seller of machinery and equipment.

Footnotes	
29	Dividends – Maximum rate of 15%. 8% and 5% rate applies in Mexico and Luxembourg, respectively, if the beneficial owner is a company (other than a partnership) which owns at least 10% of the company paying the dividends.
30	Interest – Maximum rate of 10%. 5% rate if paid to or by banks.
31	Dividends – Maximum rate of 15%. 5% rate applies if the beneficial owner is a company which directly or indirectly owns at least 10% of the company paying the dividends.
32	Interest – Maximum rate of 10%. 5% rate if paid to banks or other financial institutions, or when the interest is derived from bonds and securities traded on recognised markets.
33	Dividends – Maximum rate of 15%. Exempt when the beneficial owner is a company (other than a partnership) which directly owns at least 25% of the company paying the dividends.
34	Interest – Maximum rate of 10%. 5% rate if paid to banks.
35	Dividends – Maximum rate of 15%. 10% rate applies if the beneficial owner is a company (other than a partnership) which directly owns at least 10% of the company paying the dividends. 5% rate applies if the beneficial owner is a company (other than a partnership) which directly owns at least 70% of the company paying the dividends.
36	Dividends – Maximum rate of 15%. 5% rate applies if the beneficial owner is a company which directly owns at least 25% of the company paying the dividends.
37	Interest – Maximum rate of 15%. 10% rate if paid to banks or insurance companies, or when the interest is derived from bonds and securities traded on recognised markets.
38	Interest – Maximum rate of 15%. 5% rate if paid to banks.
39	Dividends – Maximum rate of 10%. 5% rate applies if the beneficial owner is a company which at least owns 10% of the company paying the dividends.
40	Dividends – Maximum rate of 15%. Reduced rate of 0% applies if the beneficial owner is a company (other than a partnership) which directly owns at least 10% of the company paying the dividends.
41	Interest – Maximum rate of 15%. 5% rate if paid to banks.
42	Dividends – Maximum rate of 10%. Exempt when the beneficial owner is a company (whose capital is divided into shares or equity quotas) which directly owns at least 10% of the company paying the dividends.
43	Interest – Maximum rate of 10%. 4.9% rate if paid to banks or any other financial institution, or when the interest is derived from bonds and securities traded on recognised markets.
44	Dividends – Maximum rate of 15%. 5% rate applies if the beneficial owner is a company which directly owns at least 10% of the voting stock of the company paying the dividends. Additionally, if (i) the beneficial owner is a company which directly owns at least 25% of the voting stock of the company paying the dividends, and (ii) at least 50% of the voting stock of the beneficial owner is owned by residents of the same Contracting State, dividends are not subject to taxation on the Contracting State on which the company paying the dividends resides.
45	Interest – Maximum rate of 15%. 10% rate if paid to banks.
46	Dividends – Maximum rate of 15%. Exempt when the beneficial owner is a company which directly or indirectly owns at least 10% of the company paying the dividends.

Footnotes	
47	Interest – Maximum rate of 10%. 5% rate if paid to banks or other financial institution, or when the interest is derived from bonds and securities traded on recognised markets.
48	Dividends – Maximum rate of 15%. 5% rate applies if the beneficial owner is a company (other than a partnership) which directly owns at least 25% of the company paying the dividends.
49	Interest – Maximum rate of 15%. 10% rate if paid to banks.
50	Dividends – Maximum rate of 15% applicable a beneficial owner other than a pension fund, provided that the dividends derive from profits obtained through real estate investment trusts that distribute the majority of their profits annually and which profits derived from such real estate are exempt . Exempt in any other case.
51	Interest – Maximum rate of 15%. 10% rate applicable to interests paid by banks or by the buyer of machinery and equipment, when such interest is not paid to banks or insurance companies. 5% rate if paid to banks or insurance companies, or when interests derived from bonds and securities traded on recognised markets.
52	Dividends – Maximum rate of 10%. 5% rate applies if the beneficial owner is a company which directly owns at least 10% of the voting stock of the company paying the dividends. Exempt if the beneficial owner is a company which has owned at least 80% of the voting stock of the company for a period of 12 months previous to the dividends decree date.
53	Interest – Maximum rate of 15%. 10% rate applicable to interests paid by banks or by the buyer of machinery and equipment, when such interest is not paid to banks or insurance companies. 4.9% rate if paid to banks or insurance companies, or when interests derived from bonds and securities traded on recognised markets.
54	Dividends – The treaty does not limit the withholding tax rate in the source state.
55	Interest – The lower rate applies to interest paid to banks.
56	Dividends – The lower rate applies if the beneficial owner is a company, other than a partnership, which holds directly at least 20% of the capital of the company paying the dividends.
57	Interest – The lower rate applies to interest paid to banks, pension funds and schemes.
58	Dividends – The lower rate is applicable with respect to participations of at least 25% of the capital.
59	The lower rate applies to interest paid to financial entities or pension funds.
60	Royalties – A most favoured nation clause may be applicable with respect to royalties.

17. APPENDIX II – GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Nº	Category	Sub-Category	Description of Request
1	Tax Due Diligence	Federal Taxes	Copy of the annual tax returns (*declaraciones anuales*) for the last five fiscal years, including filing receipts. Annual tax returns for prior fiscal years, in case an amended return was filed during the last five fiscal years.
2	Tax Due Diligence	Federal Taxes	Copy of the monthly advance federal tax payments and withholdings of the last five fiscal years and those that correspond to the current fiscal year, including employees' profit sharing annual payments.
3	Tax Due Diligence	Federal Taxes	Copy of disclosure returns regarding operations with third parties ("DIOT").
4	Tax Due Diligence	Federal Taxes	Copy of disclosure returns (*declaración informativa múltiple*) of the last five fiscal years, including their acceptance receipts and exhibits filed.
5	Tax Due Diligence	Federal Taxes	Copy of the Official Forms 76 "Relevant Transactions Disclosure Return" filed in terms of article 31-A of the Federal Fiscal Code corresponding to the last five fiscal years ("DIOR").
6	Tax Due Diligence	Federal Taxes	Copy of the tax residence certificates requested by the Mexican Subsidiaries for a reduced withholding tax rate or exemption to be applied to the payments made to a foreign entity according to the provisions of the applicable Tax Treaty to avoid double taxation between the foreign entity's country of residence and Mexico.
7	Tax Due Diligence	Federal Taxes	Worksheets containing the determination of monthly and annual income tax corresponding to the five last fiscal years.
8	Tax Due Diligence	Federal Taxes	Worksheets containing the determination of value added tax balances corresponding to the five last fiscal years.
9	Tax Due Diligence	Federal Taxes	Worksheets including the computation of (i) the Capital Contribution Account balance ("CUCA"), (ii) Net After Tax Profits Account balance ("CUFIN"), and (iii) loss carry-forwards.
10	Tax Due Diligence	Federal Taxes	Confirmation that the Company does not apply and/or has not applied any of the non-binding criteria (*Criterios no Vinculativos*) issued by the Mexican tax authorities.
11	Tax Due Diligence	Federal Taxes	Worksheets containing calculations in order to determine whether or not thin capitalisation rules result applicable, in accordance with section XXVII of article 28 of the Mexican Income Tax Law.
12	Tax Due Diligence	Federal Taxes	Worksheets containing calculations in order to determine any non-deductible interest exceeding 30% of the adjusted tax profits, in accordance with section XXXII of article 28 of the Mexican Income Tax Law.
13	Tax Due Diligence	Federal Taxes	Copy of electronic tax invoices ("CFDI") corresponding to income tax withholdings regarding payments made to foreign resident related and non-related parties.
14	Tax Due Diligence	Federal Taxes	Worksheets containing the tax depreciation of fixed assets.
15	Tax Due Diligence	Federal Taxes	If applicable, copy of the labour subcontracting information, in terms of article 27 section V of the Mexican Income Tax Law, and 32 section VIII of Mexican Value Added Tax Law until 31 December 2019.

Nº	Category	Sub-Category	Description of Request
16	Tax Due Diligence	Federal Taxes	If applicable, documentation supporting value added tax withheld in connection with labour subcontracting and similar activities, in terms of section IV of article 1-A of the Value added Tax Law, from 1 January 2020 and onwards.
17	Tax Due Diligence	Foreign Trade	Confirmation of any foreign trade or maquila programme applicable (e.g. IMMEX, PROSEC) and if applicable, the authorisations (including IMMEX, PROSEC and VAT certification) issued.
18	Tax Due Diligence	Foreign Trade	Copy of import declarations and related information that support the payment of import duties, such as import applications (*pedimentos de importación*).
19	Tax Due Diligence	Federal Taxes	Copy of audited financial statements for tax purposes (*dictamen fiscal*) of the last five fiscal years. Regarding the foregoing, for fiscal years 2014 and following, copy of either the optional audited financial statements for tax purposes in terms of article 32-A or the informative return of tax situation in terms of article 32-H of the Federal Fiscal Code.
20	Tax Due Diligence	General	Opinion of compliance with the corresponding tax obligations issued by the Mexican tax authorities through the section "Mi Portal" contained in the Mexican tax authorities' web page (www.sat.gob.mx).
21	Tax Due Diligence	General	Copy of audited financial statements for financial purposes of the last five fiscal years.
22	Tax Due Diligence	General	Transfer Pricing Studies of the last five fiscal years.
23	Tax Due Diligence	General	Acceptance receipts of the monthly electronic accounting information filed since fiscal year 2015.
24	Tax Due Diligence	General	Copy of the records of visits made by the Mexican tax authorities during the last five fiscal years, as well as information of any review carried out by such authorities (including any claim asserted, rulings and resolutions by any Mexican tax authority).
25	Tax Due Diligence	General	Appeals made pending of resolution. Certification issued by the Target's legal director, describing the proceedings, status, amount and success probability.
26	Tax Due Diligence	General	Information about tax liabilities pending to be paid; including information regarding the tax to be paid, defence proceedings, amount, surcharges, penalties, etc.
27	Tax Due Diligence	General	Information about any historical transactions that may have a significant tax impact (such as mergers, spin-offs, capital reductions, among others) and, if applicable, any information attached to such transactions.
28	Tax Due Diligence	General	Information regarding the cancellation or temporary suspension of the use of digital seal certificates, in terms of article 17-H and 17-H Bis of the Federal Fiscal Code.
29	Tax Due Diligence	General	Information regarding the implementation of any reportable schemes pursuant to Title Sixth of the Federal Fiscal Code.
30	Tax Due Diligence	General	Information regarding transactions entered into with taxpayers whose transactions have been deemed to be inexistent in terms of any of the lists published in the Official Gazette in terms of article 69-B of the Federal Fiscal Code.

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Nº	Category	Sub-Category	Description of Request
31	Tax Due Diligence	Local Taxes	Copy of payments of local taxes, such as payroll tax, real estate tax and real estate transfer tax, among others for the last five fiscal years. If applicable, copy of local taxes reports by independent auditors of the last five fiscal years.
32	Tax Due Diligence	Local Taxes	If applicable, copy of real estate tax certificates stating there are not amounts owed (*certificado de no adeudo*).
33	Tax Due Diligence	Social Security	Copy of social security contributions payments of the last five fiscal years. If applicable, copy of the Mexican Social Security Institute ("IMSS") and Federal Workers Housing Fund ("INFONAVIT") reports by independent auditors of the last five fiscal years.

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