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**INTERNATIONAL TAXATION
IN MEXICO**

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Agenda

- Sources of Tax Law
- Constitutional Principles in Taxation
- Income Tax
- Residence Rules
- Permanent Establishment
- Anti-Deferral Rules
- Withholding at Source
- DTTs and TIEAs
- Treaty Rates
- FATCA (IGA) and CRS

Sources of Tax Law

- Constitution
- Law (Statute)
- Regulations
- Administrative Rules (Miscellaneous Resolution)
- Jurisprudence (Case Law)
- Tax Treaties

Constitutional Principles

Article 31. Mexicans are obligated to:

IV. Contribute to the public expenditures, whether federal or local, in the proportional and equitable manner established by law.

Proportionality, equitable, and legality.



Income Tax - General

- Federal tax, no local income taxes
- Worldwide basis of taxation
- Corporate rate: 30%
- Individual Rate: 35% (highest marginal rate)
- Dividends: 10%
- NOLs: Carryforward 10 years, no carryback



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Income Tax - Dividends

- Enacted in 2014
- Entities must maintain two accounts:
 - CUCA (Paid-in capital)
 - CUFIN (After tax retained earnings)
- Dividends subject to 10% withholding:
 - Profit distributions
 - Capital reductions
 - Deemed dividends
- When paid to nonresidents, or to individuals
- Effective Rate: 42%
- Dividends not from CUFIN are grossed up



Income Tax – Gift & Succession

- No transfer taxes in Mexico (yet!)
- Gifts and Inheritances generally treated as income
- Nontaxable income if from close relatives
- Must be disclosed to remain nontaxable
- Carryover basis on transfers in kind
- Transfers of Mexican shares and real estate to nonresidents by inheritance are not exempt (25% tax on FMV, basis is stepped up)



Residence Rules - Individuals

- When their place of abode is in Mexico
- If they have a place of abode in other jurisdictions in addition to Mexico: if their center of vital interests is in Mexico:
 - If more than 50% of their income (on a calendar year basis) is from Mexican sources, or
 - If their principal place of professional activities is in Mexico
- Mexican citizens are presumed to be resident in Mexico



Residence Rules - Entities

- When they establish in Mexico:
 - The principal administration of their affairs, or
 - The effective place of management
- Mexican entities are not presumed to be resident in Mexico



Residence Rules - Leaving

- Notice must be given upon acquiring tax residence elsewhere
- If new residence is in a low tax regime, they will remain tax residents in Mexico for the current and the following three years
 - Except if there is a broad information exchange agreement



Permanent Establishment

- A place of business in which the business activities are partially or totally undertaken
- When acting through an agent, other than an independent agent, even if no place of business exists, if the agent has and habitually exercises powers to execute contracts
- When acting through an independent agent, if the agent does not act in the ordinary course of business, ie if he maintains inventory and makes deliveries, assumes risks belonging of the foreign resident, acts subject to detailed instructions or general control by the foreign resident, undertakes activities that economically belong to the foreign resident, receives compensation independently of its results, operates for consideration other than that corresponding to unrelated parties on comparable transactions.
- On construction projects, when they last over 183 days (including activities of subcontractors)



Permanent Establishment

No permanent establishment if:

- Maintaining a facility solely for storage of merchandise
 - Maintain merchandise solely to be stored, exhibited, or transformed
 - A place of business uniquely for acquiring merchandise
 - A place of business solely for previous or auxiliary activities, whether marketing, gathering information, scientific research, or other preparatory activities
-
- Income attributable to a permanent establishment includes income corresponding to the business activity of the PE and sale of inventory or real estate in Mexico



Income Tax – CFC

- Anti deferral rules
- Not based on black list of “tax havens”
- Based on “Preferential Tax Regimes” (PTR)
 - Income subject to tax lower than 75% of the tax that would apply in Mexico
 - Income obtained through fiscally transparent entities
- Exceptions:
 - Active business income represents at least 80% of income
 - No effective control over timing of income distributions
- Information Return on:
 - PTR Income
 - Income from “black list” jurisdictions even if not a PTR



Income Tax – Withholding Rates

- Mexican source income
- Capital gains (Mexican real estate or Mexican shares): 25% of gross proceeds (option to pay 35% of net proceeds with certain requirements)
- Dividends: 10%
- Interest: 4.9%, 10%, 15%, 21%
- Royalties and Technical Assistance: 5%, 25%
- Payments to a PTR: 40%



DTTs & TIEAs

- Treaties in force or in negotiation with approximately 100 jurisdictions
- Treaty efforts began in early 1990s (OECD)
- Information exchange with most treaty partners
- Signatory of the Convention on Mutual Administrative Assistance in Tax Matters
- As mandated by the Constitution, taxes may only be levied by a formal statute
- No additional taxes or burdens may be imposed by a treaty
- Related party transactions must prove existence of double taxation



Treaty Rates

- Dividends: 0%, 5%, 10%, 15%
- Interest: 4.9%, 5%, 10%, 15%
- Royalties: 10%, 15%



FATCA & IGA

- Mexico was an early adopter of an IGA (2012)
- *Automated* and “*reciprocal*” information exchange
- Information from the IRS to the SAT includes:
 - Depository Accounts generating over \$10 in interest
 - Custodial Accounts generating US source income
 - Accounts held directly by Mexican individuals or entities
- No reporting of UBO of offshore entities, trusts, or foundations (FOR NOW)



Common Reporting Standard

- CRS acts as Global FATCA
- Automatic Information Exchange between 95 countries
- Mexico among 55 countries starting in 2016
- The rest will follow in 2017 (Switzerland in 2019)
- Significant ID and financial information subject to exchange



CRS – Activated Exchanges with Mexico (80)

Andorra	Curaçao	Italy	Poland
Anguilla	Cyprus	Japan	Portugal
Argentina	Czech Republic	Jersey	Romania
Australia	Denmark	Korea	Russia
Austria	Estonia	Latvia	Saint Lucia
Barbados	Faroe Islands	Lebanon	St Vincent and the Gren.
Belgium	Finland	Liechtenstein	Samoa
Belize	France	Lithuania	San Marino
Bermuda	Germany	Luxembourg	Saudi Arabia
Brazil	Gibraltar	Malaysia	Seychelles
British Virgin Islands	Greece	Malta	Singapore
Bulgaria	Greenland	Mauritius	Slovak Republic
Canada	Guernsey	Monaco	Slovenia
Cayman Islands	Hong Kong, China	Montserrat	South Africa
Chile	Hungary	Nauru	Spain
China	Iceland	Netherlands	Sweden
Colombia	India	New Zealand	Switzerland
Cook Islands	Indonesia	Norway	Turks and Caicos Islands
Costa Rica	Ireland	Pakistan	United Kingdom
Croatia	Isle of Man	Panama	Uruguay



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