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Mexico Tax Amnesty Repatriation Decree 18 January 2017

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Agenda

- Background
 - Mexican taxation of foreign accounts
 - Tax Treaties
 - FATCA/IGA (EUA)
 - CRS (OECD)
- Previous Amnesty Programs
 - 1989, 1990, 1995, 2001, 2005, 2009, 2016



Agenda

- 2017 Amnesty Decree
 - Stated Goals
 - Beneficiaries
 - Amnesty
 - Procedure
 - Requirements
 - Investment in Mexico
 - Non-binding Criteria
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Mexican Taxation of Foreign Accounts

- Mexico has a system of worldwide taxation
 - Anti-tax haven legislation introduced in 1997 creating first anti-deferral regime
 - Major overhaul in 2005 creating a robust CFC-type regimen addressed at “preferential tax regimes”
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- Anticipate income recognition
 - File information return
 - Significant penalties



Tax Treaties

- DTTs and TIEAs in force or in negotiation with approximately 100 jurisdictions
- Treaty effort commenced in 1990s (OCDE)
- Signatory of the Convention on Mutual Administrative Assistance in Tax Matters



FATCA & IGA

- FATCA es a US Statute imposing an obligation on international banks to inform the IRS about US beneficial owners of accounts
- Mexico was an early signatory of an IGA (*Inter Governmental Agreement*) under FATCA
- Under the IGA there is automated y “reciprocal” information exchange
- Under the IGA, the IRS provides Mexico’s tax authority information in connection with the following Mexican owned accounts:
 - Deposit accounts that generate more than USD\$10 in interest
 - Custody accounts that generate US source income



Common Reporting Standard

- CRS acts as a sort of global FATCA
- Automated information exchange among 95 countries
- Mexico is among the 55 early adopters
(Information 2016/Exchange 2017)
- The remaining countries begin a year later
(Information 2017/Exchange 2018)
- Switzerland begins a year after that
(Information 2018/Exchange 2019)
- Under CRS substantial financial and tax information is exchanged



CRS – Activated Exchanges with Mexico (55)

| | | | | |
|--------------|------------|-------------|---------------|----------------|
| Anguilla | Croacia | Groenlandia | Latvia | Rumania |
| Argentina | Chipre | Guernsey | Liechtenstein | St V and the G |
| Australia | Rep Checa | Hungría | Lithuania | San Marino |
| Austria | Dinamarca | Islandia | Luxemburgo | Seychelles |
| Bélgica | Estonia | India | Malta | Slovakia |
| Bermuda | Islas Faro | Irlanda | Mauricio | Slovenia |
| BVI | Finlandia | Isla de Man | Monaco | Sudafrica |
| Bulgaria | Francia | Italia | Montserrat | España |
| Canada | Alemania | Japón | Holanda | Suecia |
| Islas Caimán | Gibraltar | Jersey | Noruega | Turks y C |
| Colombia | Grecia | Korea | Portugal | Reino Unido |

1989

- 2 August 1989 (Carlos Salinas)
- Interest income and exchange rate gains
- 5% tax on the total amount repatriated for investments maintained outside of Mexico before 1985
- 3.7% tax on the total amount repatriated for investments maintained outside of Mexico during 1985
- Payment through the banking system without identifying the individual taxpayer
- All tax obligations related to such income are deemed compliant



1990

- 15 May 1990 (Carlos Salinas)
- 1% tax on repatriated amount
- For investments performed before 31 December 1985
- Payment through “stamps”
- All tax obligations related to such income are deemed compliant
- Between 1990 and 1992 over US \$9 billion repatriated



1995

- 18 October 1995 (Ernesto Zedillo)
- 1% tax on the value of the investments maintained outside of Mexico (0.5% for investments made before 31 March 1996)
- Partial or total repatriation
- Investments maintained outside Mexico before 30 September 1995
- Payment through “stamps”
- All tax obligations related to such income are deemed compliant



2001

- 31 de diciembre de 2000 (Vicente Fox)
- For investments maintained outside of Mexico before 31 December 2000
- Partial or total repatriation
- 1% tax on the investment amount
- All tax obligations related to such income are deemed compliant



2005

- 26 January 2005 (Vicente Fox)
- Repatriation of income (interest, dividends, and gains) derived from direct or indirect investments in preferential tax regimes
- Tax at regular rates on 25% of repatriated income
- Alternative to pay the tax on 100% of the income through an anonymous payment mechanism (in force until December 2014)
- Repatriated income must be invested in Mexico during 3 years
- All tax obligations related to such income are deemed compliant



2009

- 26 de marzo de 2009 (Felipe Calderón)
- Applicable to income from investments maintained outside of Mexico before 1 January 2009
- Repatriation up to 31 December 2009
- 4% tax for individuals and 7% tax for entities on the repatriated amount
- Payments through “stamps”
- Must be invested in Mexico for 2 years
- All tax obligations related to such income are deemed compliant



2016

- 18 November 2016 (Enrique Peña Nieto)
- Investments maintained outside of Mexico before 31 December 2014
- Repatriation no later than 30 June 2016
- Regular income tax rates
- Repatriated amounts must be invested in Mexico for 3 years
- All tax obligations related to such income are deemed compliant
- Approximately MXP \$1.600 billion repatriated (USD \$90 million), 140 taxpayers



2017 Repatriation Decree

- Published 18 January 2017
- In force originally until 19 July 2017
- Regulations published 16 May 2017
- FAQs published May/July
- New Decree 17 July 2017
- Extends program 3 months to 19 October 2017
- Non-binding criteria published 30 August 2017



Stated Goals

- Promote productive investment in strategic areas and create jobs
- Provide incentives for the repatriation of capital maintained abroad

Beneficiaries

- Individuals or entities resident in Mexico that generated income from direct or indirect investments maintained outside of Mexico before 31 December 2016
- Not applicable to income from illicit activities
- Not applicable to taxpayers currently under audit or tax litigation (although they may dismiss their case and apply)



Amnesty

- 8% tax without inflation adjustment or interest charges on the amount of income (interest, dividends, capital gains, and exchange rate gains among others)
- Investments maintained outside of Mexico before 1 January 2017
- If the capital itself was not reported as income, the 8% tax shall also apply to the principal amount
- Entities may add the repatriated amounts to their CUFIN account



Procedure

- The funds must be sent through the financial system
- The name of the remitter and beneficiary must be the same, or they must be related parties
- The tax is due 15 calendar days following the date of repatriation
- Exchange rate of the day the tax is paid
- Taxes paid abroad may be creditable against the 8% due



Requirements

- The repatriated funds must be invested in Mexico for 2 years
- Notice must be given to the tax authority on the investment option (no later than 31 December 2017)
- A change in the investment vehicle is possible within the 2 year period, giving notice of said change
- The repatriated amount must increase the amount of investments maintained by the taxpayer in Mexico, and must be maintained for the 2 years at that level (a loss in the investments does not count)



Investment in Mexico

- In case of entities:
 - Acquire fixed assets
 - Acquire land and construction
 - Research and Development
 - Payment of pre-existing debt with independent parties
 - Investments through financial institutions



Investment in Mexico

- In case of individuals:
 - Invest in Mexican issued instruments through Mexican financial institutions
 - Shares issued by Mexican entities
 - Acquire fixed assets
 - Acquire land and construction
 - Research and Development



Non-Binding Criteria

- Investments on shares of Mexican entities, when the entity in turn invests outside of Mexico is considered an “improper tax practice”

Results

- By mid September
 - Repatriated amount: over MXP \$225 billion (approximately USD \$12.5 billion)
 - Tax revenue: over MXP \$9.8 billion (approximately USD \$500 million)
 - Over 2,000 taxpayers (the vast majority individuals)



Q&A

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