KPMG

# Investment in Mexico 2022

KPMG in Mexico

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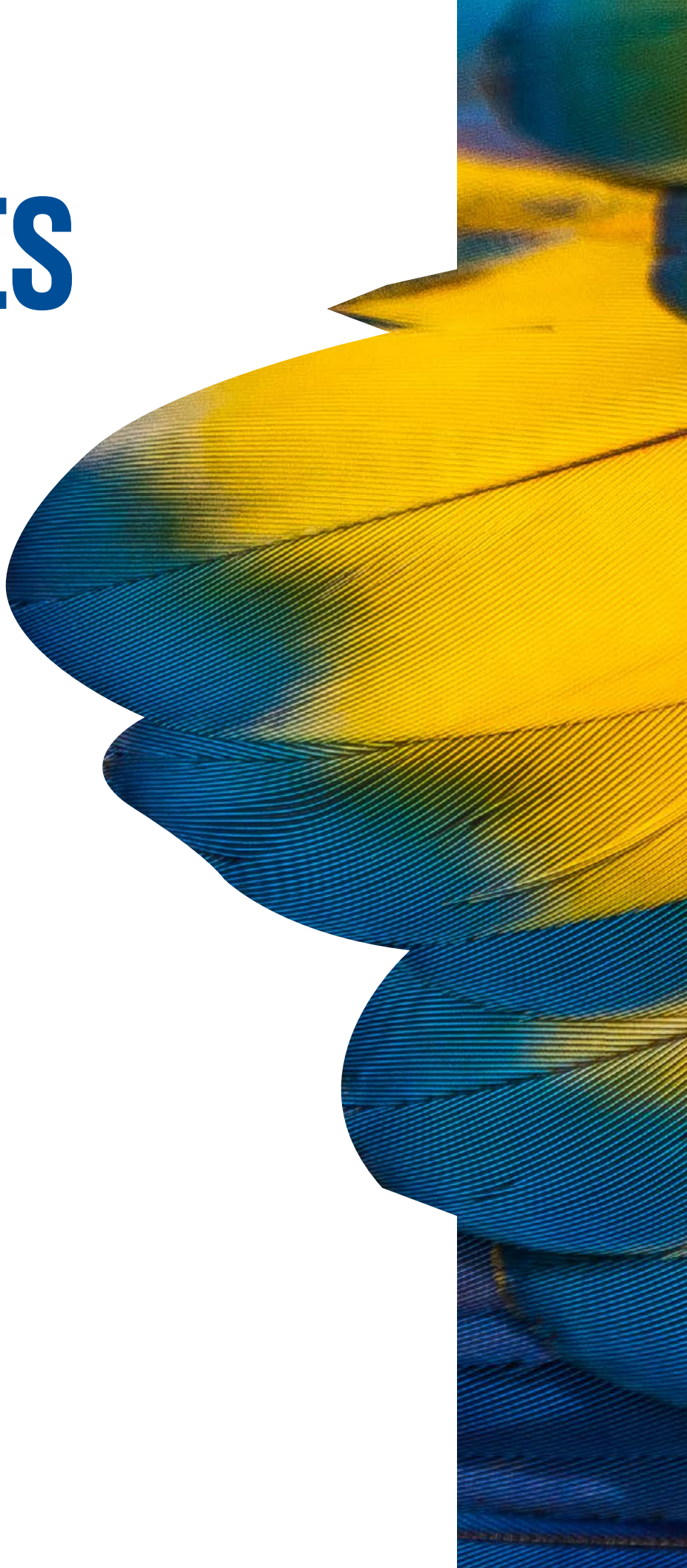


# Tax incentives

Entities dealing exclusively in primary activities are exempt from income tax (IT) when their gross revenues do not exceed 20 times the annual minimum wage for each partner (approximately USD 32,250) and the aggregate does not exceed 200 times the annual minimum wage (approximately USD 322,510). Additionally, when their income exceeds the above threshold but does not exceed 423 times the annual minimum wage (approximately USD 682,110), a tax credit of 30 percent is granted to the tax payable as calculated in accordance with the corresponding provisions.

Additionally, the Mexican Tax Legislation provides for other tax incentives, which are listed as follows:

1) Deductibility of contributions to personal funds for Mexican resident individuals
2) Deductibility of personal income tax withheld by employers hiring people with disabilities or senior citizens
3) Capital gains deferral upon contribution of real estate to Mexican Real Estate Investment Trust, REIT, (FIBRAS, by its Spanish acronym)
4) Manufacturing, Maquiladora and Export Service Decree (IMMEX, by its Spanish acronym)
5) Ver que sea vigente o se mencione que se restringió, si es el caso.
6) Tax deduction upon acquisition of land (as opposed to the cost of goods sold, known as COGS) acquired by taxpayers engaged in the construction and sale of real estate
7) Preferential tax regime for venture capital investments through Mexican trusts
8) Preferential tax regime for tax profits derived through production cooperatives entities
9) Tax credit of 30 percent for research and development expenses
10) Renewable energy:
    - Full depreciation of machinery and equipment utilized in the creation of renewable energy and electricity
    - Related to the disruptive effect on after-tax profit account (CUFIN, by its Spanish acronym) there are specific rules on computing CUFIN derived for such activities (CUFIN E)
11) Tax transparency for legal figures used by foreign private equity funds to invest in Mexican companies
12) Tax incentives for value added tax (VAT) and income tax purposes, applicable to activities performed in Mexican northern border regions (within 43 municipalities) from January 1, 2019 to December 31, 2024 and to activities performed in Mexican southern border regions (within 22 municipalities) from January 1, 2021 to December 31, 2024
    - Income tax: tax credit equivalent to one third of the income tax to be paid in the year or in monthly advanced payments. The tax credit shall be applied based on the proportion the income derived from the Mexican northern border region represents to the total income derived by the taxpayer during the same tax period. Taxpayers must submit a notice to the SAT no later than March 31 to be registered. There are additional rules issued by the Mexican Tax Authority (MTA) but there are no rules regarding the effects on the after-tax profit account (CUFIN, by its Spanish acronym)
    - Value added tax: 50 percent credit upon the general 16 percent VAT rate caused by the transfer of goods, rendering of independent services and temporary use or enjoyment of goods, by branches or offices located within the Mexican northern border regions. The VAT activities mentioned above shall be carried out within the Mexican northern border. Formal requirements shall be complied with to apply the VAT incentive. Please note that the VAT incentive shall not apply to the importation of goods or services, the sale of immovable property and intangible assets, digital commerce transactions, among others
13) Per a presidential decree, Mexican tax residents acting as withholding agents on interest payments to foreign residents derived from corporate bonds issued by publicly quoted Mexican resident companies may take a tax credit equivalent to 100 percent of the potential withholding, provided certain requirements are met
14) Per a presidential decree, a tax incentive is established for the fiscal years of 2019, 2020 and 2021 for Mexican resident individuals and foreign residents, which involves being taxed at the 10 percent withholding rate upon the gains derived from the transfer of shares issued by Mexican companies through the Mexican Stock Exchange, even if those shares were not acquired through the Mexican Stock Exchange. To be entitled to apply for the tax incentive, specific requirements shall be met
15) Deduction of special taxes paid in the acquisition of diesel for motor vehicles that were intended only for public and private transport of people or goods
16) Deduction of toll roads for those which render public and private transport of people or goods
17) Incentive for equipment of power supply for electrical vehicles
18) Incentive for research and development of technology
19) Incentive for high performance sports

# Overview

# Residence

Legal entities are deemed Mexican tax residents when their main business administration or place of effective management is established in Mexico. Under Mexican tax legislation, such situations arise when the persons making or executing the decisions, dealing with the control, direction, operation or management of the legal entity, and the activities of those are in Mexico.

As part of the Tax Reform for fiscal year 2022, the status of resident in Mexico is not lost if the change of residence is not proven, or when the change is to a country or territory where their income is subject to a preferential tax regime, in which case, the resident status in Mexico will be maintained for a period of five years (instead of the three years as is currently stated), homologous to the period with which the tax authorities have to exercise their powers of verification, according to the Federal Tax Code.

In the case of change of residence to a territory where income is subject to a preferential tax regime, it is proposed that the term of five years is not applicable when said territory has a comprehensive information exchange agreement in force with Mexico; and there is a treaty in force that allows mutual administrative assistance in the notification and collection of contributions.

# Fiscal period

The fiscal period must be 12 months for legal entities and individuals, coinciding with the calendar year, except for the initial year and liquidation years (irregular period).

# Updating (restating for inflation)

Late tax payments will be restated using inflation indexes from their due date to the actual date of payment. Interest for late payment is computed on the updated taxes while penalties are computed on admitted amounts only.

# Offsetting and claims

Balances in favor may be offset or claimed by taxpayers and will also be updated with inflation indexes. Favorable balances derived from federal taxes may be offset or claimed through tax refunds.

Taxpayers may only offset their amounts of favorable balances against those they are obliged to pay for their own debt, provided that both balances arise from the same tax, including its interest and penalties. This will not be applicable in the case of taxes that are levied upon importation or those that have a specific purpose.

# Loans and equity contributions

If a company receives a loan or equity contributions in cash for more than MXN 600,000, the company that receives such an amount must inform the Mexican tax authorities about this funding within 15 business days after the receipt of the money; in the event of a failure to inform, such an amount will be considered taxable income.

# Income tax general computation

The following groups of taxpayers are subject to income tax:

(i) Mexican residents on their worldwide income; (ii) Mexican permanent establishments (PEs) of foreign residents on income attributable to those PEs; and (iii) foreign residents without having a Mexican PE on income arising from Mexican sources. The corporate income tax rate is 30 percent.

# Taxable income

The Mexican Income Tax Law (MITL) establishes that taxable income includes any income received in cash, goods, services, credit, or any other form during the year, including income from establishments located abroad and the annual inflation adjustment, to be discussed later.

As of 2022, the taxpayers must consider as accrued income, the consolidation of the bare property and the usufruct of an asset. The bare owner will accrue the value of the usufruct right, which must be valued by a person authorized by the Tax Authority.

For these purposes, public notaries, are obliged to report the dismemberment of the property within the next 30 days following the transaction takes place. In addition, in case of foreign currency exchange income, starting 2022, said income may not be lower than the one determined if the official exchange rate published by Bank of Mexico was applied instead of the exchange rate used by taxpayers.

# Deductions

Taxpayers may claim, among others, the following deductions: (i) returns of merchandise, discounts or refunds; (ii) cost of goods sold (COGS); (iii) net expenses; (iv) investments in fixed assets; (v) bad debts provided certain requirements established in the MITL are met, and (vi) annual inflationary adjustment.

It is important to note that some requirements must be met for a taxpayer to deduct the above items, among others: (i) deductions must be strictly necessary for carrying out the taxpayer's trade or business; (ii) digital invoices must be issued and comply with tax requirements; (iii) payments must be made through banks or financial institutions (wire transfer) or with a nominative check; (iv) deductions must be recorded in the accounting records, and (v) corresponding value added tax must be evidenced and collected.

Starting 2022, new rules were introduced for deduction of "investments" (tax depreciation), "bad debts" reserves, technical assistance, among others.

# Payments to related parties

From 2020, payments made to related parties or through a structured agreement will not be deductible when the income is subject to preferential tax regimes (REFIPRES, by its Spanish acronym), leaving aside the possibility of deducting the payment even if it is made at arm's length value.

Based on the above, any payment made to a resident in a country where the applicable tax rate for that income is below 22.5 percent is non-deductible in Mexico; for example, payments to the United States that qualify at the reduced rate of Foreign-Derived Intangible Income (FDII) of 13.125 percent. There may be similar cases in payments to other countries.

There is an exemption if the receiver of the income has personnel and actives used in a business activity.

# Inflationary accounting for tax purposes

The MITL recognizes the effects of inflation in determining taxable income. Taxpayers must determine an inflationary adjustment on liabilities and monetary assets and may restate the tax depreciation deduction and net operating losses.

Exchange rate fluctuations (FX gains/FX losses) are also cumulative/deductible in the calculation of the taxable income.

# Employee profit-sharing

Mexican entities are required to pay a mandatory employee profit-sharing of 10 percent of its profits from the second year of operation. The profit-sharing should be paid to the employees during the month of May of the following year.

# Transfer pricing

Under Mexican domestic tax legislation, all taxpayers are required to price their transactions with related parties at arm's length and prepare supporting documentation of the arm's length nature of all cross-border and domestic intercompany transactions. The analysis must be conducted on a transaction-by-transaction type basis.

There are specific formal requirements that must be met by the transfer pricing documentation, such as including the transfer pricing method used and the supporting documentation of the application of the transfer pricing method for testing each intercompany transaction, as well as a two-sided functional analysis and a step-by-step comparability adjustments explanation.

In general, Mexico follows The Organization for Economic Cooperation and Development (OECD) transfer pricing guidelines although there are deviations in some specific topics. For example, all the transfer pricing methods included in Mexico's legislation are contained in the OECD transfer pricing guidelines and are acceptable by the authorities although there are some differences with regards to the applicability of some of them.

Taxpayers undertaking related party transactions with foreign and domestic related parties are required to file an informative return to the tax authorities regarding transactions carried out with said foreign related parties during the previous fiscal year. The information to be filed consists of the corporate name, country of residence and tax ID number of the related party, the type and amount of transactions carried out, as well as additional information of the economic analysis including the profit margin obtained from the transactions, the transfer pricing methodology used to test the arm's length nature, the Standard Industrial Classification (SIC) codes used, the number of comparable companies identified, (segmented) financial information used in each economic analysis, range

of arm's length values, among other information. Depending on the transaction, additional information with regards to the amount involved in the cross-border intercompany transactions (e.g., accumulated or deducted amount for income tax purposes, amount paid, and amount exempt for each specific transaction) must be provided along with information on whether a specific reduced withholding tax as a result of the application of a tax treaty to avoid double taxation was used (including withholding tax rate and withheld amount). According to the 2022 Tax Reform, this informative return must be submitted no later than May 15 of the following fiscal year.

If the tax authorities consider a taxpayer to have paid insufficient taxes because of an unacceptable transfer pricing policy, it is likely that the taxpayer will suffer a penalty ranging from 55 percent to 75 percent of any additional taxes due. Moreover, if the taxpayer fails to provide the transfer pricing supporting documentation or to file the informative return, only the highest penalty will be imposed. Also, if a taxpayer declared a loss for tax purposes due to an unacceptable transfer pricing policy towards the tax authorities, it is likely that the taxpayer will suffer a penalty ranging between 30 percent and 40 percent of the excess reported loss stated.

There is no penalty reduction if the taxpayer has maintained adequate supporting documentation and there is no specific penalty for failing to maintain updated transfer pricing documentation; however, there is a penalty for not filing the informative return, which ranges from USD 4,000 to USD 8,000.

Also, if the arm's length nature of the intercompany transaction is not supported, or the informative return is not filed, payments made to foreign based related parties may be considered non-deductible.

APAs may be negotiated with the Mexican tax authorities. It is worth mentioning that in Mexico APAs are rulings issued by the tax authorities (e.g., confirmation of a specific transfer

pricing methodology applied in related party transaction), and not contracts signed by both parties (taxpayer and Tax Administration). The majority of APAs already concluded have been unilateral agreements issued to maquilas. Such rulings may also derive from an agreement with the competent authorities of a treaty partner (bilateral and multilateral APAs). Unilateral APAs can cover up to five years; that is, the year in which the APA is requested, a rollback year and up to three subsequent taxable years. The period covered in bilateral and multilateral APAs depends upon the agreement reached by the Tax Administrations involved.

However, as part of the Tax Reform 2022, in the case of maquiladoras, the option to request an APA is eliminated, leaving only the option of "Safe Harbor". It also establishes that compliance with the latter will be stated in the Informative Tax Return of Manufacturing companies, Maquiladoras and Export Services (DIEMSE, by its Spanish acronym) no later than June of the following year.

In the same way, the option for the shelter maquilas to request an advance resolution of transfer prices is eliminated, leaving the "Safe Harbor" as the only option.

The current Income Tax Law also addresses plans such as the non-deductibility of certain intercompany payments.

In the context of the Base Erosion and Profit Shifting (BEPS), the requirements of the MITL expands the transfer pricing disclosure requirements. In particular, the following taxpayers must be aware that additional disclosure requirements are applicable:

- Taxpayers whose revenues for fiscal year 2021 were equal to or greater than MXN 842,149,170
- Corporate taxpayers with shares quoted in public stock exchanges
- Corporate taxpayers ruled by Chapter VI of Title II of the MITL which refer to the optional regime for group of companies
- Parastatal entities of the public administration
- Foreign taxpayers with a permanent establishment in Mexico only with regards to the activities conducted by said permanent establishment
- Taxpayers required to file BEPS informative returns, those required to file a Statutory Tax Report and their related parties in Mexico

In general, the requirements of the master file and local file deviates from those included in the OECD Action 13. However, with regard to the master file, if the document is prepared by a foreign parent company in accordance with the OECD requirements, it is considered to be compliant for Mexican purposes. In addition, the master file might be prepared or submitted either in Spanish or English.

The country-by-country information tax return shall only apply to anyone that falls within one of the following provisions:

Mexican parent companies, meaning those that comply with the following requirements:

- Mexican residents
- Have subsidiaries in terms of the Mexican GAAP (NIF, by its Spanish acronym) or permanent establishments located outside Mexico
- Are not subsidiaries of a foreign resident
- Are required to prepare consolidated financial statements according to the Mexican GAAPs
- Prepare consolidated financial statements including the financial results of entities that are in foreign tax jurisdictions
- Have obtained in the previous fiscal year consolidated revenues equal to or greater than MXN 12 billion
- Mexican taxpayers or foreign taxpayers with a permanent establishment in Mexico that were designated by the foreign parent company as the company responsible for submitting the country-by-country information return

The local file must be filed on May 15 of the following year and the master file in December of the following year.

Finally, there are requirements that (1) limit the possibility of conducting transfer pricing adjustments if the taxpayer is already within the arm's length range and (2) forces any adjustment to be conducted to the median of the interquartile range (starting 2022 the interquartile range is the only statistical method approved by the Income Tax Law). Finally, on this regard it is worth mentioning that any transfer pricing adjustment conducted for reducing the tax base of the Mexican taxpayer must comply with very detailed requirements so that they are accepted and there are time limitations to conduct them.

# Thin capitalization rules

Interest paid to related parties residing abroad arising from debts which exceed a 3:1 debt-equity ratio shall not be deductible. Debts contracted for constructing, operating or maintaining infrastructure of strategic areas for the country shall not be considered in computing the debt-equity ratio.

From 2022 onwards, regarding the non-inclusion of debts related to infrastructure in strategic areas for the country or for the generation of electricity, the exemption will only be applicable to those taxpayers who are assignees, contractors or holders of the permits established in the Electricity Industry Law or the repealed Law of the Public Electric Power Service.

The exception to apply the capitalization rules will not be applicable for unregulated multiple purpose financial companies (Sofomes ENR, by its Spanish acronym) that carry out activities predominantly with their domestic or foreign related parties.

In addition, as consequence of the Tax Reform, taxpayers who may elect the tax attributes ("tax equity") in substitution of the accounting equity may consider a "net equity balance", decreasing to the amount of the Contribution Capital Account (CUCA, by its Spanish acronym) and CUFIN the amount of net operating losses (NOLs) carryforward. Taxpayers may not elect this alternative when the "tax equity" exceeds more than 20 percent of the financial equity of the entity.

Starting 2020, the deduction of net interest (interest accrued in charge less interest accrued in favor) cannot exceed 30 percent of the adjusted fiscal profit. If the interest expense cannot be deducted each year, it can be deducted in the following ten years. As point of departure, the calculation of this 30 percent is applicable individually, but there is an option to apply it at the group level, according to the rules that will be issued in 2020.

The adjusted fiscal profit will be the fiscal profit plus accrued interest expenses and the deduction of investments, a kind of fiscal EBITDA (Earnings Before Interest, Taxes, Depreciation, and Amortization). It is important to mention that in the case the tax result at the end of the year derives in a tax loss, the net interest expense will not be deductible and subject to the carryforward.

There is an exception for the first MXN 20,000,000; however, this amount is at the group level.

# Loss treatment

NOLs may be carried forward for ten years and must be restated for inflation. The right to apply a net operating loss is lost when the taxpayer fails to apply such loss in a year allowed. There are specific restrictions on the use of NOLs in case of mergers and spin-offs. New distribution rules for spin-offs are introduced starting 2022.

# Foreign tax credit regime

Mexican residents are entitled to an ordinary foreign tax credit with a per-country limitation provided that the foreign income is subject to Mexican income tax. The foreign tax credit limitation for business activities is 30 percent of the tax profit from foreign sources determined in accordance with the MITL.

# Foreign transparent vehicles and private equity funds

Some provisions were added to establish new rules for taxing the income obtained by or through foreign tax transparent entities or legal figures.

Transparent entities and legal figures will be treated as opaque. Where their administration or effective place of management is in Mexico, they will be taxed as Mexican tax resident entities. They will be subject to income tax under the corresponding regime of the Income Tax Law (corporations, not-for-profit organizations, foreign residents, and preferential tax regimes) which is applicable to them. This provision does not apply when a tax treaty that Mexico has in force, contains provisions that provide the tax treatment of the transparent entity or legal figure. The regime described will enter into force on January 1, 2021.

Another provision has been included in the Income Tax Law to regulate treatment to income obtained by Mexican residents or PEs located in Mexico by foreign residents through foreign transparent entities or legal figures. In that scenario Mexican residents and PEs would be subject to taxation from the income received through to the entity or figure. If those vehicles are subjected to income tax under any of the regimes of the Income Tax Law, then such income tax if effectively paid may be credited by the Mexican resident taxpayer.

Notwithstanding the above, legal figures will not be treated as opaque, due to a tax incentive that has been incorporated in the Law, applicable only to private equity investments.

In this regard, investments made through foreign investment vehicles without a legal personality and considered as transparent for tax purposes abroad that invest in Mexican legal entities, should be considered as transparent and tax the income on the hands of the beneficiaries.

The tax incentive only applies to income derived from interest, dividends, capital gains and the use of immovable property.

Moreover, this tax incentive would be applicable if the transparent vehicle complies with the following requirements:

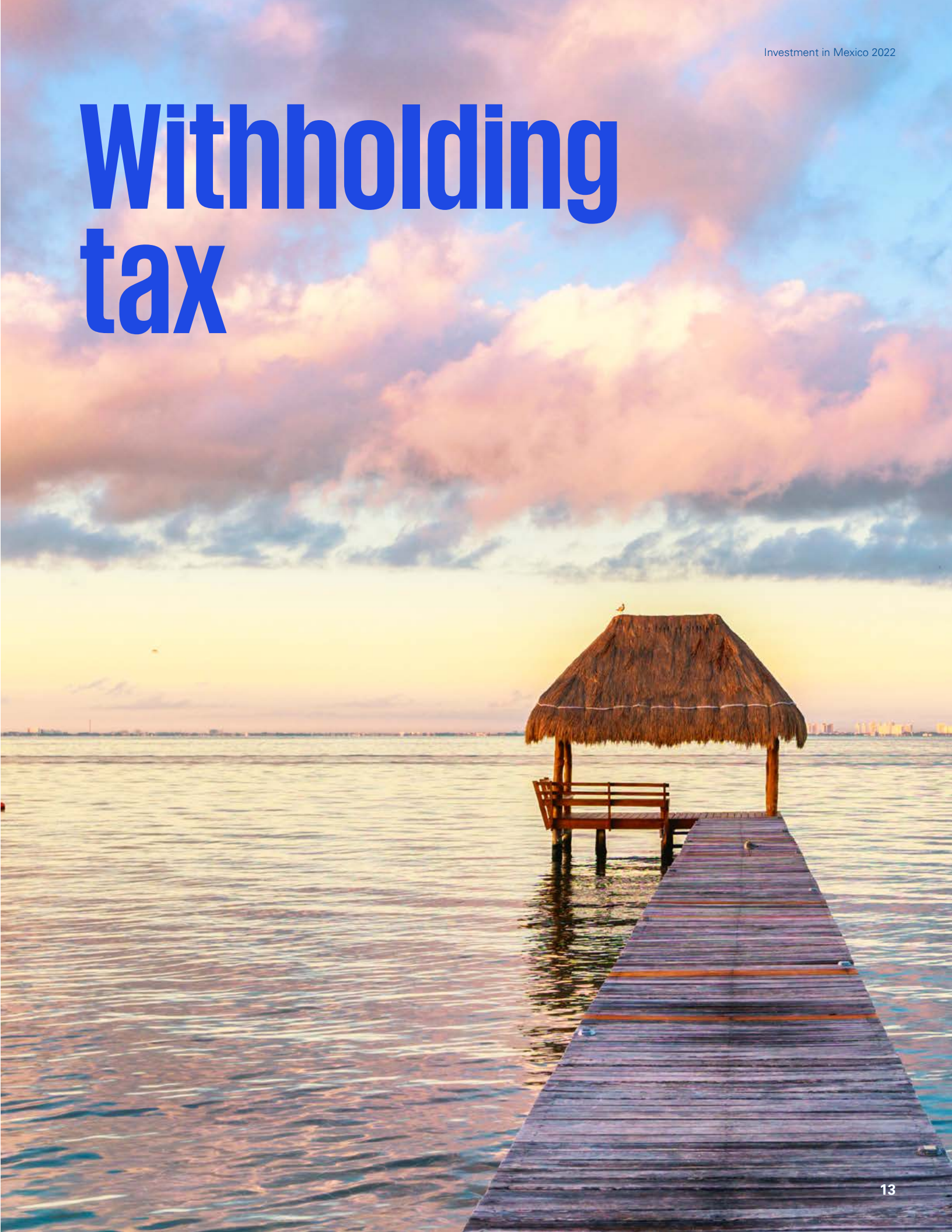
- The manager of the foreign vehicle should implement a registry of all the members of the foreign investment vehicle, which must be submitted before the MTA. Any modification about the members of the foreign vehicle, must be reported to the MTA in the following February of the next calendar year
- The Manager must provide to the MTA the certification of residence of all the members of the foreign vehicle and his or its own certificate
- Pension funds and international organizations must file their constitutive agreement
- The foreign investment vehicle should be constituted in a country that has in force a broad exchange of information agreement with Mexico
- The members of the foreign vehicle, including its manager, should be resident for tax purposes, in a country that has in force a broad exchange of information agreement with Mexico
- The members must be the beneficial owner of the income received, and the income must be subject to taxation in the jurisdiction where they are resident for tax purposes

If the above obligations are not met, the tax transparency of the vehicle will not be applicable in the proportion of the participation of the member that does not fulfill the above requirements, and the figure will be treated as a corporation for Mexican tax purposes in such percentage.

# Tax treaty benefits

To enjoy the benefits of tax treaties to avoid double taxation, the resident of a treaty country must provide evidence that it is a bona fide resident of the treaty country for income tax purposes. In addition, the foreign resident must comply with certain formal requirements. Additionally, as part of the Tax Reform 2022, it is added as a requirement to be eligible for treaty benefits, filling the annual informative tax return on taxpayer situation or filing the statutory tax report when the taxpayer is obliged. Mexico has income tax treaties in force and has signed the OECD Multilateral Instrument (MLI).

# Withholding tax



## Dividends

Individuals residing in Mexico and non-residents who receive any dividends or profits that are generated from 2014 will be subject to a 10 percent withholding tax, which should be considered as a final payment. Tax treaties to avoid double taxation may reduce this rate, where applicable.

For Mexican corporate income tax purposes, dividends paid out of the entity's previously taxed profits account known as the CUFIN account may be distributed without any further taxation. When dividends do not come from said account or exceed the balance thereof, the dividend or exceeding amount will be subject to corporate taxation by applying the 30 percent corporate tax rate (effectively, the dividend being grossed up by a factor of 1.4286).

## Interest

Interest is considered to be Mexican sourced when the capital is placed or invested in Mexico or when the party paying the interest is a Mexican resident or a Mexican PE. Withholding tax rates applicable to interest paid to a nonresident generally vary, ranging from 4.9 percent to 35 percent.

Starting from 2022, to apply the reduced rates of 10 percent and 4.9 percent, it is a requirement that the payment is not carry out in more than 5 percent to related parties. Previously, this only applied in the case of interest derived from bonds.

## Capital gains

In case of transfer of shares a source of wealth will be deemed to be in the Mexican territory, when the issuer of the shares is a Mexican resident (direct transfer) or when more than 50 percent of the shares' accounting value is derived, directly or indirectly, from real property located in Mexico (indirect transfer). Withholding tax rates applicable to capital gains is 25 percent but there are some reduced tax rates.

In 2022, to have access to the exemption of gains in the sale of shares listed in the stock market, the foreign resident of a country with which Mexico has in force a treaty to avoid double taxation, must provide, in addition to previous requirements, the registration or tax identification number issued by the foreign competent authority. If this information is not provided the 10 percent withholding tax will be applicable.

## Royalties and technical assistance

Income from royalties, technical assistance and advertising is considered to be Mexican source when the goods or rights on which royalties and technical assistance are paid are used or enjoyed in Mexico or when the person making the related payment is a tax resident of Mexico or the Mexican permanent establishment of a foreign entity. The Mexican definition of royalties includes industrial, commercial, or scientific equipment (ICS equipment).

The tax rate varies, depending upon the goods or rights used or enjoyed. The applicable withholding tax rates are as follows: (i) railcars: 5 percent; (ii) technical assistance and other royalties not included below, including the use of Industrial, Commercial or Scientific (ICS) equipment: 25 percent; (iii) for the temporary use or enjoyment of patents or certificates of invention or improvement, trademarks, or brand names and for advertising: 35 percent.

In 2021, the definition of royalties set forth in the Federal Fiscal Code includes the income from rights over the "image" of the authors.

## Services

In the case of income from fees and in general income for the provision of independent personal services, the source of wealth will be considered to be in Mexican territory when the service is rendered in Mexico. The service will be presumed to be rendered totally in Mexico when a portion thereof is shown to be rendered in Mexican territory, unless the taxpayer demonstrates that a portion of the service is rendered abroad.

Income tax will be calculated by applying the 25 percent rate to total income obtained, without any deductions, and income tax must be withheld by the person who makes the payments if he is a Mexican resident or a foreign resident with a permanent establishment in Mexico with which the service is related. Otherwise, taxpayers will pay the corresponding tax by filing a tax return at the authorized offices within 15 days following the obtainment of the income.

## Tax haven considerations

Payments made to a related party located in a tax haven will be subject to a 40 percent withholding tax rate to the above-described payments. If the foreign related party is resident of a country with which Mexico has in force a tax treaty to avoid double taxation, normal withholding tax rates should apply.

# Digital tax

## Definition of digital services

The following activities fall within the scope of digital services when these are provided through applications or content in digital format over the internet or other network, fundamentally automated, and may or may not require minimal human intervention to the extent a payment is done.

- Download or access images, movies, text, information, video, audio, music, games, including gambling, as well as other multimedia content, multiplayer environments, obtaining mobile tones, viewing news online, traffic information, weather forecasts and statistics. Does not apply to download or access to books, newspapers, and electronic journals
- Intermediation services (e.g., commissions and fees) between third parties that supply and demand goods or services
- Online clubs and dating pages
- Distance teaching, test or exercises

## Digital service is provided in Mexico, thus taxable, when:

- Domicile of the recipient is in Mexico
- Bank intermediary of the payment is in Mexico
- IP address of the device is in Mexico
- Country code of its phone number is Mexican

## Taxes to foreign digital platforms

1) Value added tax. Platforms must collect 16 percent VAT on the digital services provided in Mexico
2) Income tax. No income tax to be paid by foreign platforms with no PE

# Taxes to be withheld when the platform is an intermediary

## VAT

In case of VAT, the intermediation platform must withhold 50 percent of the VAT collected from individuals selling goods, providing services or the use or enjoyment of goods, to the extent the platforms process payments. A withholding of 100 percent of the VAT should be done when the individuals do not provide a valid Taxpayer Identification Number (TIN) to the platform.

Also, when a foreign resident providing a digital service (except for intermediation) through an intermediation platform that process payments, the latter should withhold 16 percent of the VAT collected from the foreign residents Mexican's customers.

## Income tax

For income tax purposes, the intermediation platform that processes payments should withhold tax from the income obtained through it. The rate will depend on the activity performed.

- Ground transportation services of passengers and delivery of goods: 2.1 percent
- Accommodation services: 4 percent
- Sale of goods and services: 1 percent

When the individual resident in Mexico does not provide his TIN, the withholding tax will be 20 percent.

The VAT and income tax withheld can be considered for individuals as final payment, if the amount received for the services rendered or goods sold does not exceed approximately USD 15,000 annually. For income tax, the individual may consider the withholding as an advanced payment and for VAT the withholding is creditable.

The withholding mechanism applies to foreign or Mexican intermediation digital platforms.

## Formal obligations in VAT and income tax

- Appoint a Mexican legal representative
- Obtain a TIN and electronic signature
- Charge and collect VAT on digital services
- File VAT returns and remit VAT collected on a monthly basis
- Monthly informative return on the number of transactions performed with Mexican recipients, the type of services provided, and price charged. Before fiscal year 2022, this obligation was on a quarterly basis
- Send PDF receipts to their Mexican customers

Additionally, when the digital platform is an intermediary it must comply with the following:

- Display the price including VAT
- Provided that the intermediary collects the price and VAT of the transaction subject to intermediation:

  - Withhold VAT and IT from individual
  - Remit the withheld taxes
  - Issue electronic invoices (CFDI, by its Spanish acronym) for the amounts withheld

## Sanctions to foreign residents

Additional to pay any omitted taxes, interests, and penalties, in the cases where the foreign resident who provides any of the digital services subject to VAT, does not have a TIN, does not appoint a legal representative and provide an address in Mexico for the purposes of receiving notifications and does not obtain an electronic signature, will result in a temporary blocked access to the digital service in Mexico of the foreign resident.

Temporary blocking of access to the digital service will also apply for those foreign digital service providers that are already registered in Mexico, but omit three consecutive monthly payments of informative and withholdings returns.

# Value added tax (VAT)

Mexican VAT is paid on a cash flow basis. The VAT Law establishes that all individuals and entities are required to pay VAT at a standard rate of 16 percent (0 percent rate applies in some cases) when they carry out the following activities within Mexico: (i) sale of goods; (ii) supply of independent services; (iii) granting of temporary use or enjoyment of (tangible) goods; and (iv) import of goods or services.

VAT is calculated on a monthly basis and is considered as final tax payment. Favorable balances may only be credited against the corresponding tax in the following months or request it through a VAT tax refund. When such VAT tax refund is requested, it must be on the total favorable balance. Favorable balances whose return is requested shall not be credited in subsequent tax returns.

There are important exceptions for which no VAT is payable. The most significant of these are land and buildings destined for housing; books and newspapers, as well as certain other rights; used personal property, except that sold by businesses; partners' interests and securities; and local and foreign currencies and pieces of gold or silver, including troy ounces.

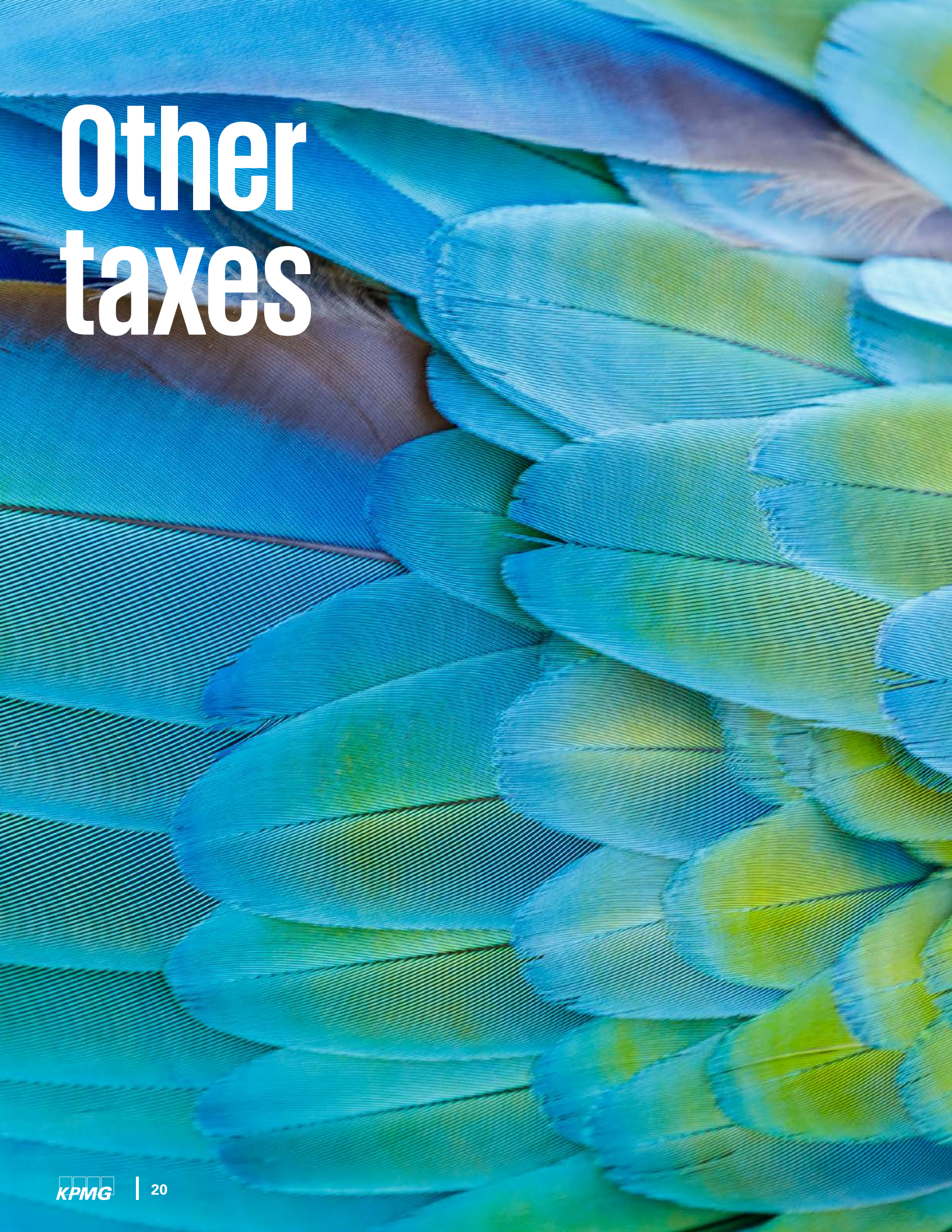
In general, the importation of goods or services is subject to the payment of VAT, with specific exceptions. In the case of the importation of tangible goods, tax is payable as soon as the goods are available to the importer and is payable to the customs authorities. In the case of temporary importation, the VAT is payable when the importation becomes definitive, except for temporary imports carried out by companies which are part of the IMMEX Program, which are entitled for the temporary import of goods, imported goods to be warehoused in automotive in-bond warehouses and goods imported under the strategic in-bonded warehousing system.

The 2022 tax reform include the following main amendments:

- A 0 percent VAT rate should apply to menstrual health products and food for both human and animal consumption
- Incorporation of a new provision regarding activities that are considered non subject to VAT, which are those carried out outside Mexico and those not taxable under the VAT. Expenses related to non-subject to VAT income are considered non creditable and should also be considered to determine the VAT creditable ratio
- The import documentation (pedimento) shall be issued under the name of the taxpayer to carry out the VAT credit paid on imports
- The temporary use or enjoyment of tangible goods is taxable for VAT when the goods are used in Mexico, regardless of where the material delivery of the good takes place

Additionally, during 2021 and due to the Labor Reform, the outsourcing and insourcing services are prohibited and alongside, the VAT withholding on subcontracting services at the rate of 6 percent is no longer in force. However, specialized services are allowed, and VAT taxpayers shall comply with several documentation to consider any VAT for the services mentioned as creditable. Such documentation includes the authorization of the specialized services provider before the labor authorities and evidence of the VAT returns filed by the provider for the corresponding period.

# Other taxes



## Transfer taxes and stamp duties

Mexico does not generally impose transfer taxes or stamp duties, except for those charges described below.

## Real estate tax

Real estate acquisition tax is a local tax which was substituted for stamp tax and is imposed on transfers of real estate or similar operations by which immovable property or rights thereto are transferred. The tax is payable on the greater of the acquisition price (i.e., transaction value), the determined cadastral value by application of the unitary values of the land (i.e., property tax value), constructions affixed to it, special facilities of common type, accessory elements or complementary works or the appraisal value (i.e., fair market value) determined by the tax authorities, applying the rates in force in the Law of the State where the property is located.

## Import duties

Individuals or corporations importing goods into Mexico must pay import duties, which are assessed based on the customs value of the goods. In general terms, duties are payable on the importation of goods intended to remain in the country for an undetermined period. The tariff rate applied to each good is different, but the average rates can vary between 0 percent and 5 percent.

## Insurance tax

Mexico does not impose an insurance tax. In the case of premiums paid or transferred to foreign reinsurers by a resident for Mexican tax purposes or by a non-resident with a Mexican PE, the income tax rate is 2 percent. The tax must be withheld and paid by the person making the payments.

## Excise tax (on production and services)

In accordance with the Excise Tax Law entities or individuals are required to pay the tax imposed, when performing the following acts or activities: (i) The sale with Mexico or, where appropriate, the importation of goods set out in such Law; (ii) The provision of the services referred to in such Law. The tax rate varies based on the product or good in question.

As part of the Tax Reform for fiscal year 2022, minor changes were proposed for purposes of the Excise Tax, which mainly include the following:

- The tax authorities have now the faculty, under verification powers, to apply the corresponding quotas to the fuels for which the payment of the Excise Tax has been partially or totally omitted
- For alcoholic beverages purposes:
  - The definition of "electronic tag" and "final consumption establishment" were incorporated
  - Tax authorities will grant relieves regarding the obligation of consumption establishments to destroy alcoholic beverages containers
  - Final consumption establishments shall implement a QR code reading system in order to verify the labels in presence of the consumer
  - Manufacturers, packers, or importers of denatured alcohol and un-crystallizable honeys shall not register for the Taxpayers of Alcoholic Beverages Register
- The Tax Authority is the only allowed issuer of security codes in tobacco products (except for cigars and those made entirely by hand). Said codes shall be incorporated in any presentation in which tobacco products are sold

## Tax on new automobiles

Sales of new automobiles manufactured in Mexico, and the importation of new automobiles or models not more than ten years old are subject to this tax. The seller or importer is responsible for paying the tax. For the importation of vehicles by manufacturers and dealers, the tax will be due and payable at the time the vehicle is sold to the consumer and not upon its importation.

The tax basis is the automobile manufacturer's sales price offered to the consumer or its dealers, including its accessories, or the value used to compute the general import tax, including optional equipment, but does not include the VAT included in such sales. The tax rate has ranges.

# Logistical services and customs

## Importers' registry

Entities and individuals importing merchandise from abroad and wishing to trade in Mexico must enroll in the importers' registry. To apply for this authorization, the entities should be Mexican residents or foreign residents having a permanent establishment in Mexico. Accordingly, they must have duly obtained a taxpayer ID from the Federal Taxpayers Registry and follow all the general tax obligations.

## Specific sectors registry

To import certain goods considered to involve a potential risk to public health or national security (goods such as chemicals, radioactive and nuclear products, explosives, guns and weapons, textiles, steel, and steel products, among others), it is necessary to be registered in the specific sector importer´s registry.

## Export promotion programs

Mexico's foreign trade policy has emphasized the promotion of exports, particularly non-oil exports, mainly through the creation of export programs.

## Manufacturing, Maquiladora and Export Service Decree (IMMEX)

Since November 1, 2006, the IMMEX program has consolidated both the Maquila Decree and the Temporary Import Program for Exporters (PITEX, by its Spanish acronym), into one single export promotion instrument. This program allows industrial, or service operations aimed at assembling, transforming, manufacturing, or repairing goods originating abroad, which are imported on a temporary basis, to be subsequently exported. Additionally, it entails services that are destined for export. Specific incentives are provided under this program, however certain requirements must be met.

## Sector Promotion Programs (PROSEC)

This program is a tariff reduction measure that allows foreign or domestic producers to request from tax authorities a reduction or elimination of a tariff rate on the import of goods of specific sectors, regardless of whether the goods to be produced are for export or the domestic market. In this sense, some of the sectors allowed are electronics, furniture, toys, photographic industry, agricultural machinery, automotive, aerospace, and textiles.

## VAT and excise tax certification

Since December 11, 2013, the VAT Law establishes that the VAT and excise tax exemption for temporary importations for elaboration, transformation, or repair under IMMEX program, bonded warehouses for assembly and manufacture of vehicles, or elaboration, transformation or repair under a Free Trade Zone, will no longer be available unless the companies have a certification issued by the tax and customs authorities (commonly known as "VAT Certification"). It is important to point out that the authority removed several benefits during 2020 and only keeps the credit of the VAT for temporary importations.

## Authorized Economic Operator

The function of the Authorized Economic Operator (AEO) involves the combined efforts of the Mexican Customs Authorities and the private sector through the implementation of minimum safety standards recognized internationally, increasing security, reliability, and accuracy of their customs operations in order to seek different benefits for companies that desire to participate. Several customs and operational benefits are granted under AEO. It is important to note that the authority requests at least two years of customs operations before submitting the corresponding application.

## USMCA (formerly NAFTA)

The United States–Mexico–Canada Agreement (USMCA) was signed the 30th of November of 2018 in Argentina, by the three presidents of the nation members of this agreement

which is the result of the renegotiation of the previous trade agreement between these nations (North American Free Trade Agreement - NAFTA). On December 10th, 2019, the Protocol of Amendment to the USMCA was signed by the three countries. The NAFTA will remain valid until the USMCA enters into effect once the three countries comply with its internal requirements to approve (ratify) the new deal. Mexico ratified the Protocol on December 12th, 2019.

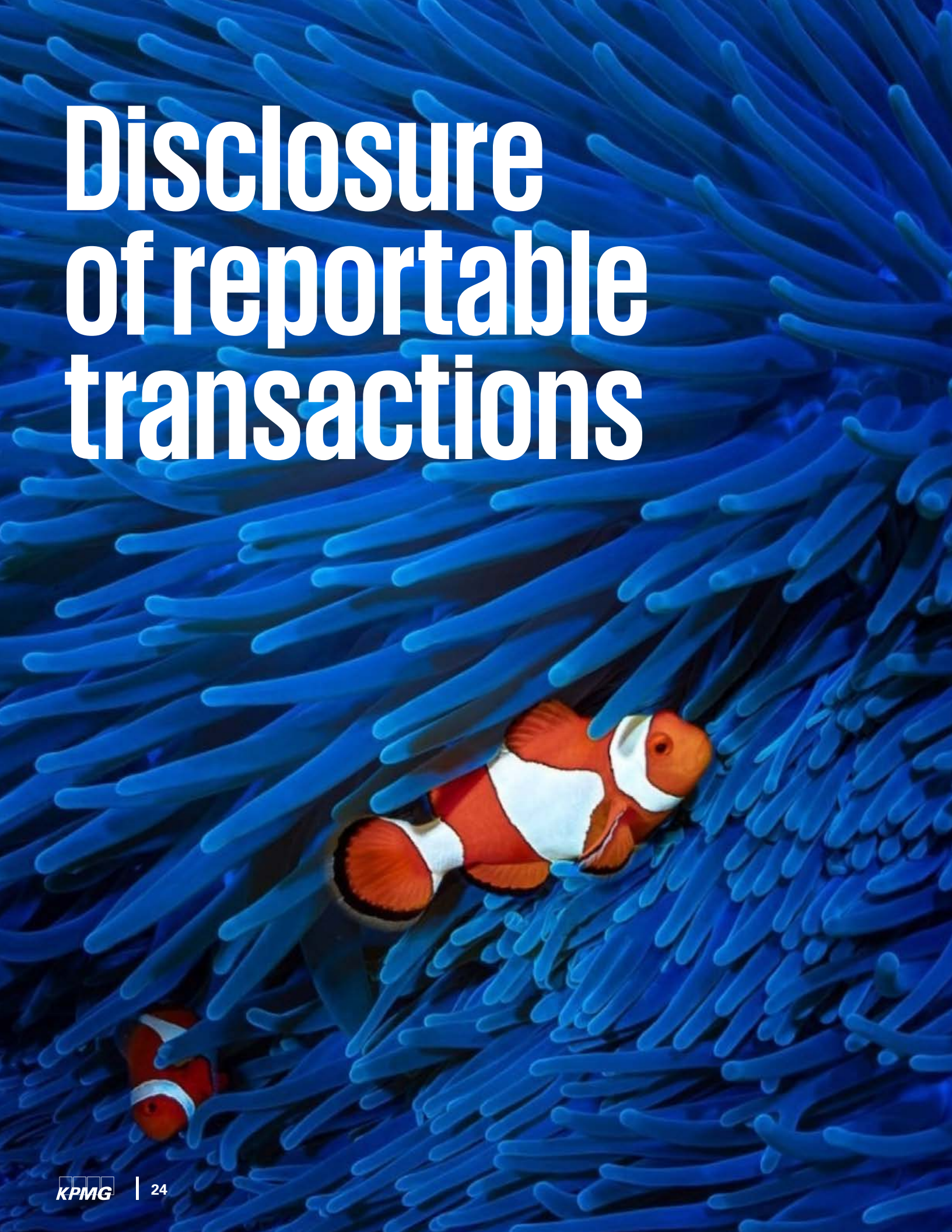
Currently, most of the imports under the NAFTA are duty-free. The aim of the USMCA is to reduce technical barriers, such as import permits and other non-tariff barriers, as well as to develop fair and expedite procedures for the resolution of disputes. It also intends to increase international competitiveness and regional trade between the three participating countries, as well as to protect the environment and provide better labor conditions. Panels were installed as dispute settlement mechanism and quick response panels were introduced to address certain labor issues between parties.

Some of the main considerations would be that the de minimis threshold was increased from 7 percent to 10 percent, which would assist in the USMCA origin qualification process. In addition, the official format of the certificate of origin will be no longer needed but the essential information that was on the certificate of origin will still have to be demonstrated. The importers would also be allowed to declare the goods as originating, in addition to the exporters and producers (Mexico will defer this for three and a half years). Origin verification audits will be more extensive for certain goods as textiles.

Some of the most impactful changes were the amendments to the rules of origin in the automotive, chemicals, textiles, and television industries. Regarding the automotive sector, the rule of origin was amended so that the Regional Value Content (RVC) of automobiles shall gradually increase to 75 percent from the one that currently applies (62.5 percent); 40 percent of the value of the car shall be produced in countries with an hourly salary of at least USD 16; 70 percent of the aluminum and steel shall be USMCA originating; and the core parts shall also be originating. In addition, the RVC of spare parts was also set to gradually increase.

Several new chapters were considered in the USMCA regarding small and medium enterprises, e-commerce, labor, environment, competitiveness, anticorruption, and good regulatory practices, among sectorial annexes, such as chemicals, cosmetics, information and technology, medical devices, pharmaceutical products, and energy efficiency.

# Disclosure of reportable transactions



On September 8th, 2019, the Mexican President presented to the Congress the economic legislative package for the year 2020, which includes measures to certain provisions of Mexican Federal Fiscal Code (FFC), which was passed on October 31, 2019, and entered in force on January 1, 2020.

According to the Explanatory Statement of the economic package and according with Action 12 of the BEPS Project, it is established that with the aim of recognizing and identifying the aggressive tax planning and provide elements to the MTA to face possible tax risks, the taxpayers are obliged to disclose certain schemes through its tax advisors.

For such effects, it is established within the Explanatory Statement that the main purpose of disclosing such schemes is to increase the transparency of the operations, granting visibility to the tax administrations of the operations carried out. This with the aim to identify which may qualify as aggressive, as well as the taxpayers who carried out such operations and the advisors who promote them.

In this regard, as part of the Mexican Tax Reform 2020, it was included the new Sixth Title "Disclosure of Reportable Schemes". This new chapter requires that starting on January 1, 2020, taxpayers, and their tax advisors present information before the Mexican tax authorities regarding transactions or operations that they incurred in during 2020.

Moreover, on November 19th, 2020, an amended version of the Mexican Tax Rules was published on the Mexican Official Gazette, which includes the new chapter 2.22, "Disclosure of reportable transactions", which includes a detail on the supporting information or documentation that Mexican taxpayers or tax advisors should file before the MTA in order to comply with this requirement.

## Obligation to report

Under this provision, tax advisors must provide details of the schemes to the MTA, since they have a better understanding of the transactions or operations and its corresponding tax benefit.

Therefore, the FFC define a "tax advisor" as an individual or legal entity that, in the ordinary course of its activities, performs tax advisory, and is responsible for or is involved in designing, trading, organizing, implementing, or managing the totality of a reportable structure; or places at disposition the totality of a reportable scheme for implementation by a third party.

## Obligation in case many tax advisors provide services

However, if many tax advisors are required to disclose the same reportable transaction or scheme, all of them shall be deemed to meet the obligation of reporting, provided that one of them discloses before MTA that structure in the name and account of all of them, otherwise, all the tax advisors will be obliged to meet their reporting obligations individually.

On the other hand, in case that the tax advisor is an individual that carries out its tax advisory services through a legal entity, they shall not be required to disclose the corresponding reportable scheme, provided that such legal entity discloses reportable structures.

## Circumstances in which taxpayers are obliged to disclose the reportable schemes

Notwithstanding, the MTA establish the following assumptions where the taxpayer, and not the tax advisor, is obligated to disclose the reportable scheme:

- Whenever a tax advisor fails to provide the identification number of a reportable scheme, issued by the MTA, or fails to deliver a certificate attesting that the scheme is not subject to disclosure
- Whenever a reportable scheme is designed, organized, implemented, and managed by a taxpayer
- Whenever a taxpayer obtains tax benefits in Mexico from a reportable scheme designed, traded, organized, implemented, or managed by a person that is not considered a tax advisor
- Whenever a tax advisor is a foreign resident without a PE in Mexico
- Whenever there is a legal impediment for a tax advisor to disclose a reportable scheme
- Whenever there is an agreement between a tax advisor and a taxpayer, so that the latter is the one compelled to disclose a reportable scheme

In this regard, taxpayers that fall into the previous provision shall be those considered residents in Mexico or foreign residents with a PE in Mexico, when their tax returns reflect a tax benefit of a reportable structure.

Such taxpayers are also required to disclose the reportable schemes when they enter into transactions with foreign resident related parties, and such transactions or operations generate tax benefits in Mexico.

## What must be disclosed?

For these purposes, the FFC establishes that, "it is understood as scheme", any plan, project, proposal, advisory, instruction or recommendation make known expressly or implicitly with the purpose of materializing a series of legal acts. It is not considered a scheme, the performance of a procedure against the authority or the defense of the taxpayer in tax controversies.

Additionally, the MTA identified the following kinds of schemes:

- Generalized reportable structures are those that seek to be traded massively to all kinds of taxpayers or to a specific group thereof, and that even if they require minimal or no adaptation to a taxpayer's specific circumstances, the way of obtaining a tax benefit is the same
- Personalized reportable structures are those that are designed, traded, organized, implemented, or managed to adapt to a taxpayer's particular circumstances

Also, the FFC defines "tax benefit" as economic benefit arising from any reduction, elimination, or temporary deferral of a contribution. This definition also includes those benefits reached through deductions, exemptions, non-subjections, non-recognition of a gain or an item of gross income, adjustments to or absence thereof in taxable base, tax credits, re-characterization of a payment or activity, change of tax regime, among others.

However, it was published in the Federal Official Gazette on February 2nd, 2021, a statement that determines the minimum amount for which these provisions will be applicable to tax advisors or taxpayers with respect to the reportable schemes, provided that they are personalized reportable schemes, and the amount of the tax benefit obtained or expected to be obtained in Mexico, does not exceed MXN 100 million.

Moreover, when there is more than one reportable scheme that involves or expects to involve the same taxpayer, implemented, or intended to be implemented in at least one common fiscal year, and provided that in the case of personalized reportable schemes, to determine the amount of MXN 100 million, the portion of the tax benefit obtained or expected to be obtained in Mexico through all of the aforementioned personalized reportable schemes must be considered.

According to the above, a reportable scheme will be disclosed when a tax benefit exists and has any of the following characteristics:

- It avoids foreign authorities exchange tax or financial information with the MTA, including the application of the Standard for Automatic Exchange of Financial Account Information in tax matters, as well as other similar forms of exchange of information
- It avoids the tax payment for income obtained through transparent foreign entities or foreign legal figures
- Existence of legal transactions that allow the transfer of losses pending to be carried forward to reduce tax profits to persons other than those that sustained them
- It is composed of a series of interconnected payments or transactions that return the totality or part of the first payment that is part of such series
- It involves foreign residents applying the provisions of an agreement to avoid double taxation, regarding income not

subject to tax in the country or jurisdiction of tax residence of the taxpayer
– It involves transactions between related parties where:

a) Hard-to-value intangibles are transferred, in accordance with the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
b) Entrepreneurial reorganizations take place, where there is no consideration for transferring assets, functions, and risks, or when as a result of such reorganization, taxpayers reduce operating profits in more than 20 percent
c) The temporary use or enjoyment of goods and rights is transferred or granted without consideration in exchange or services are provided or functions that are not consideration are performed
d) There is no reliable comparable as the transactions involve unique and valuable functions or assets
e) A unilateral protection regime afforded by foreign law is used, in accordance with the Transfer Pricing Guidelines

– It avoids the creation of a PE
– It involves the transmission of an asset totally or partially depreciated to another entity that allows depreciation thereof
– It involves a hybrid mechanism
– It avoids identification of the effective beneficiary of income or assets
– Whenever there are tax losses with a term for being carried forward to offset about to expire and transactions are executed to earn tax profits that may be reduced by such tax losses
– It avoids the application of the additional withholding tax rate of 10 percent on dividends distributed to individuals and foreign residents
– It entails granting the temporary use and enjoyment of a good and the lessee, in turn, grants the temporary use and enjoyment thereof to the same lessor or a related party
– It involves transactions whose accounting and tax records present differences greater than 20 percent, except when they arise from differences in the calculation of depreciation
– It involves a scheme or mechanism implemented to avoid falling under one of the previous mentioned assumptions

# Filing information

Once the operations or transactions subject to be disclosed have been identified, the FFC establishes that, if a taxpayer falls into any of the listed reportable transactions and once determined if the taxpayer or the tax advisor will be required to disclose, then the following information, among others, should be included:

– Name, corporate name, and federal taxpayer identification number (RFC, by its Spanish acronym ) of the tax advisor or taxpayer disclosing the reportable scheme
– Name of the legal representative of the tax advisors or taxpayers
– Detailed description of the reportable scheme and the applicable local or foreign legal dispositions
– Detailed description of the obtained or expected tax benefit
– Fiscal years on which is expected to implement or has been implemented the scheme
– Any other information that the tax advisor or the taxpayer considers relevant for its review

Based on the above and once identified that a scheme of transaction is subject to be disclosed and the supporting information is duly provided, the dispatch of the schemes will be through an informative tax return, and will be performed as follows:

– In case of generalized reportable schemes, it shall be disclosed no later than the following 30 days after the day when the first contact for commercialization is made
– In case of personalized reportable schemes, it shall be disclosed no later than the following 30 days in which the scheme becomes available to the taxpayer for implementation or is carried out the first legal act of such scheme, whichever occurs first

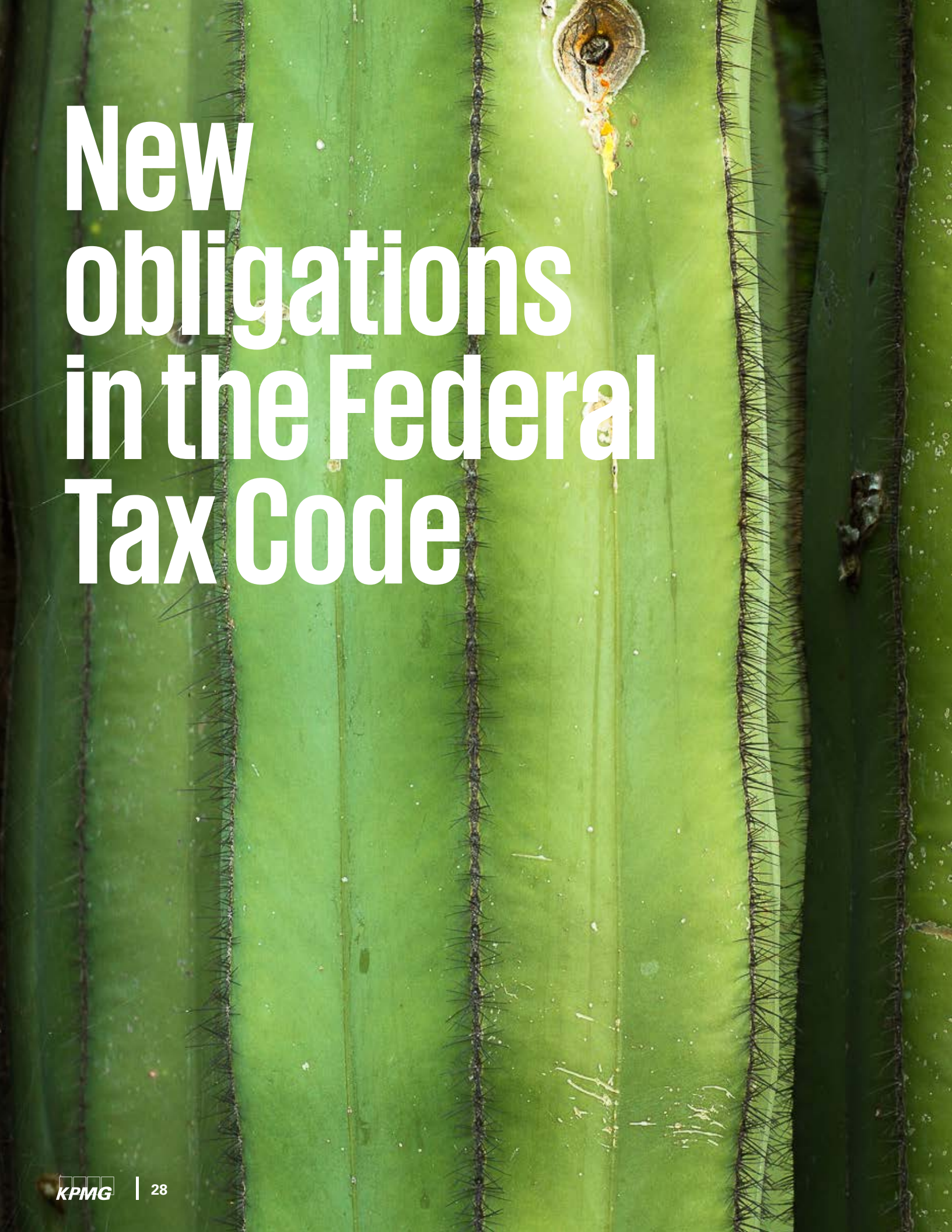
It is important to note that when the disclosure of the reportable scheme is carried out, the MTA will grant to the tax advisor or the taxpayer forced to disclose, an identification number for each of the disclosed reportable schemes.

Therefore, it shall issue a copy of the informative tax return through which the reportable scheme was disclosed, a receipt of such tax return and a certificate where the identification number of the scheme is assigned.

# Other obligations

Taxpayers that are implementing reportable schemes or transactions, shall be required to include the abovementioned identification number in the annual tax return of the year in which the first fact or legal transaction for the implementation thereof takes places, and in the subsequent fiscal years, when the structure continues producing tax effects.

In addition, if there is any modification to the reportable scheme after its disclosure, the taxpayer and the advisor must inform the MTA of this modification within 20 days.



# New obligations in the Federal Tax Code

## Business reason in corporate reorganizations and restructurings

One of the main modifications that the FFC added are the new rules and consequences corresponding to the disposal of assets that will be applied to mergers or divisions carried out if the authority determines that said operations lack a business reason.

The assumptions that the authority may take into consideration to determine if there is a valid business reason were established.

The information related to mergers and spin-offs must be included as relevant operations in the event of corporate reorganizations and restructurings.

## Exercise of verification powers by the Tax Authority

For de fiscal year 2022, the FFC established an option for taxpayers who are subject to the exercise of verification powers to correct their tax situation by applying the amounts they are entitled to receive from the tax authorities (even when they are different contributions).

Modalities are indicated in which the amounts that may be applied can be requested, as well as the procedure.

Other important changes to the FFC are:

- The tax authorities have powers of verification through financial institutions
- The practice of property appraisals is included as part of the powers of verification
- For the determination of simulation of legal acts, the simulated act, the quantification of the tax benefit and the object of the simulation of the act must be specified
- New requirement to cancellation of invoices

## New rules to have financial statements audited by an authorized public accountant

One of the main changes in the FFC requires that the income of taxpayers who want their financial statements audited by a certified public accountant, is equal to MXN 1,650,490,600 or greater. Also, taxpayers who, at the end of the fiscal year, will have shares among the general investing public.

The obligation of the authorized public accountants is to inform the authority when, derived from their review, they become aware of the behaviors that may constitute tax crimes. If it has not been reported (knowing the situation), it can be considered as concealment of tax crimes. However, it constitutes an exception to the sequential review when taxpayers have shares placed among the general investing public.

## New concept of controller beneficiary and his obligations

The article 32-B quarter established some definitions about what the FFC define as "controller beneficiary".

Likewise, this article lists some obligations for the controlling beneficiary, such as preserving, as part of the accounting, the complete and updated information of the controlling beneficiaries (requirement to obtain a compliance opinion).

Also, a new obligation for public notaries is to obtain information from controlling beneficiaries in the constitution of legal entities.

## New assumptions of tax felony

For 2022, the FFC notes new scenarios that tax authorities could presume to be a tax crime, such as:

- The simulation of subcontracting through the new simplified regime of trust – updates qualified as tax fraud crime
- The granting of tax benefits (deduction, accreditation, etc.) for payments in contravention of anti-corruption legislation is prohibited
- Presumption of smuggling is established:
  - Inaccurately declare description or tariff classification
  - Transfer of goods or merchandise (including hydrocarbons or petrochemicals) without the digital tax receipt
- The crime of smuggling is established:
  - Omit the payment of contributions or compensatory fees when importing foreign merchandise from the strip or border region
  - Extract merchandise from fiscal or controlled warehouses without authorization

Likewise, the FFC established that when it is not possible to determine the amount of the omitted contributions, the consequence will be three to six years in prison.

# Mexican Labor Reform 2021

On April 23rd, 2021, a decree was published on the Official Mexico Gazette which modifies several legislations including the Federal Labor Law, Social Security Law, Law of the Institute of the National Housing Fund for Workers, as well as the FFC, MITL and Mexican Value Added Tax Law (VATL), to modify the labor and tax consequences of the use of outsourcing services in Mexico.

It is important to mention that the changes made on Federal Labor Law, Social Security Law and National Housing Fund for Workers entered in force the next day of publication in the Mexican Official Gazette.

On the other hand, the amendments made on the FFC, MITL and VATL entered in force on August 1, 2021.

Based on the above, the following modifications were included:

## Federal Labor Law

- Articles that regulated the outsourcing in Mexico were eliminated, so subcontracting personnel using these structures will be prohibited
  - Transitory provisions established that outsourcing employee could be transfer to the operating entity within 90 days, without the necessity of transferring the assets of the subcontracting entity
- Hiring of personnel that performs activities that are related to the core business of the contracting company will be also prohibited
- In case of specialized services, can be provided by obtaining the proper authorization from the Mexican Labor Ministry, therefore, specialized service provider must be registered. This is relevant in those groups of companies that provide services in Mexico to other entities of the same group
  - According to the transitory provisions, the Mexican Labor Authorities will issue within 30 days the corresponding provisions and guidance in order to obtain the registration
  - The registration referred above must be renewed every three years
  - Also, the transitory provisions establish a period of 90 days to obtain the register
- Individuals and legal entities that subcontracts or execute specialized services will be jointly and severelly liable, if the employer fails to comply with its obligations arising from the relations with its worker
- The amount of the Employee Profit Sharing (PTU, by its Spanish acronym) will be limited up to the most favorable amount obtained from either the three months of the employee's salary or the average of the PTU received by the employee in the last three years

## Social Security Law

- Specialized service provider must disclose certain information before the Social Security Authorities, when its services are rendered. This information includes, among other examples, parties that signed the agreement, detail of the service contracted and number of employees that will be working
- The abovementioned information must be notified on a quarterly basis

## National Housing Fund for Workers Law

- Specialized service provider must disclose before the National Housing Fund Authorities certain information, when its services are rendered. This information includes, among other examples, service contracts; amounts of contributions and amortizations; employee information; determination of the contribution base salary, and simple copy of the registry issued by the Ministry of Labor and Social Security
- The abovementioned information must be notified on a quarterly basis

## Federal Fiscal Code

- In the event that Mexican entities subcontract personnel related with this core business activities or in the case of employees of an entity that were transferred to the services entity (prior to this reform) and such employees rendered the services to the entity, the amount paid as consideration will not be deducted for MITL purposes and credited for VATL

## Mexican Income Tax Law

- In case of authorized specialized services, the Mexican entity that receives the services must obtain, among others, copy of the tax receipts of payment of salaries and wages of the workers and supporting documentation that confirms the employer has properly carried out its social security contributions and labor obligations

## Value Added Tax Law

- The obligation to withhold 6 percent over the subcontracting services will be eliminated
- In case of authorized specialized services, the Mexican entity that receives the services must obtain documentation that confirms the VAT payment of the service. If this information is not provided, the recipient of the service must file an amended monthly VAT return eliminating such credit

## Tax fraud

- Also, this reform considers a tax fraud any scheme that simulates the provision of specialized services, specialized labor, or the subcontracting of personnel

From the above, additional rules will be issued to explain these procedures and registration.

# Individuals

# Resident taxpayers

Mexican individuals are taxed on their worldwide income which includes all income earned, except income specifically excluded by the Law. An individual is considered a Mexican tax resident when their home is in Mexico. If such person has his or her home in another country as well, he or she would be considered a Mexican tax resident if their economic center of vital interest is in Mexico. Mexican citizens are considered tax residents unless they prove otherwise.

The status of tax resident in Mexico is not lost if the change of residence is not proven or, when the change is to a country or territory where the income is subject to a preferential tax regime. The resident status in Mexico is maintained for the year the change of residency notice is filed and for the following five years. As part of the Tax Reform for fiscal year 2022, conditions to stop to be considered as a tax resident applies not only to Mexican citizens but to foreign citizens, in addition, the period mentioned has increased from three to five years.

It is important to mention that in the case of change of residence to a territory where income is subject to a preferential tax regime, the term of five years is not applicable when said territory has a comprehensive information exchange agreement in force with Mexico and there is a treaty in force that allows mutual administrative assistance in the notification and collection of contributions. Last condition was included as part of the 2022 Tax Reform.

Resident individuals are allowed to claim personal deductions when filing the annual tax return; among others: fees paid for medical, dental, nutrition and psychology, hospital expenses, funeral expenses, donations approved by the Tax Authority, mortgage interests paid for main residence, school bus expenses for children, school fees, supplementary and voluntary contributions to the National Retirement Savings System, contributions to personal retirement plans, and medical insurance premiums. To claim personal deductions, certain requirements should be met as the amount to be claimed has different limits.

Generally, resident individuals should file a Mexican annual income tax return no later than April 30th of the following year, except in specific cases.

The income tax is determined by applying progressive rates depending on the income level, with a maximum marginal tax rate of 35 percent for fiscal year 2022.

# Non-resident taxpayers

Non-resident individuals are taxed on Mexican sourced income only and are not subject to file a Mexican annual income tax return, as tax payments and withholdings are considered final or definitive tax payments. For salary income, it is considered that the source is in Mexico when the service is rendered in this country.

Non-residents are exempt on the first MXN 125,900 Mexican source income wages earned; then an income tax rate of 15 percent applies when income exceeds MXN 125,900 and a 30 percent rate applies on the income that exceeds MXN 1,000,000 within a 12-month period. Individuals should accumulate the income received every month to determine the tax rate to be used to calculate the corresponding income taxes. For other type of Mexican source income (besides salary) different rates should be applied.

# Social security

The Social Security Law is intended to guarantee the right to health, medical assistance, and welfare services necessary for the social and collective wellbeing of employees and their families. Employers are obliged to comply with certain social security obligations and failure to do so may result in monetary penalties not only for omission but also for late compliance.

# Payroll tax

Payroll tax is levied on a local basis and will vary depending on the State in which the company operates. However, payroll tax is generally of 3 percent of the total payroll of the company in the relevant area.

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SÚPER EMPRESAS EXPANSIÓN 2021 TOP companies

ESR Empresa Socialmente Responsable Inclusión Social