



# Economic Package for 2017

In response to the constitutional mandate, on September 8, 2016, and in an adverse economic environment, the Federal Executive presented the Mexican Congress with the economic package for the following year, as well as reform proposals in various tax areas, which would, following discussions, subject to changes and approvals enter into force starting 2017.

We present in the following pages the economic information and the reform proposals that we consider to be the most relevant.

## Economic indicators

It is estimated that the economic growth in 2017 will be between 2% and 3%, using for budgetary purposes a rate of 2.5%, with an annual inflation rate of 3%.

The oil price is estimated to be around USD42 per barrel and a CETES average rate of 5.3% for 28 days.

## Surcharges

The surcharge rates applicable in case of extensions or in case of approvals for payments in installments according to the Mexican Federal Fiscal Code (MFFC) will remain in force as detailed below:

<b>Surcharges for</b>	<b>Applicable rate</b>
Extension	0.75%
Payment in installments up to 12 months	1.25%
Payment in installments from 12 to 24 months	1.5%
Payment in installments higher than 12 months and paid differently	1.5%

For such purposes, it is mentioned that the surcharges rates mentioned above include the update factor of the contributions.



## **Tax incentives**

The tax incentives which have been granted annually will be maintained, among which are the followings:

- For the acquisition of diesel for machinery in general, which is used for entrepreneurial activities, as well as for marine vehicles
- For the acquisition of diesel used for performing agricultural or forestry activities; optionally a scheme for limited repayment is anticipated for these taxpayers
- For the acquisition of diesel for automotive use in vehicles which are used exclusively for public or private transportation of passengers or merchandise; this incentive is not applicable in case of transactions predominantly performed with related parties

It is permitted to credit 50% of the payments made through the national system for toll roads for taxpayers which have as main activity only public or private transportation of passengers or merchandise.

The exemption on the acquisition of new vehicles tax is still applicable for the sale or importation of electric or hybrid vehicles.

The incentive to deduct the theoretical profit in the monthly estimated income tax payments corresponding to the employee profit sharing paid during such year will be included in the Federal Revenue Law.

It is permitted for purchasers of fossil fuels, when these are not allocated for combustion (burning), to credit the corresponding special tax paid for the production and services against the corporate income tax of the fiscal year.

During 2017, the institutions comprising the Mexican financial system will determine the tax to be withheld to individuals considering a tax rate of 0.58% applied over the capital which will be subject to the payment of interests.

## **Mexican Income Tax Law**

### **Incentives for equipment of power supply for electrical vehicles**

In order to increase the use of alternative sources of energy for motor vehicles which will contribute to the reduction of carbon emissions, in the context that electric and hybrid cars are at their initial stage of development in the country, it is proposed a tax incentive against the corporate income tax of the year and of the following years, at a rate of 30% of the investment value, which is done in equipment for supply of energy for electric vehicles, as long as this equipment are fixed and located in public spaces. Such tax incentive is not considered as taxable income for corporate income tax purposes.

### **Administrative facilities for micro-enterprises**

It is proposed that companies whose revenues do not exceed MXN5 million are allowed to determine their taxable income and taxable base for corporate income tax purposes based on the cash-flow principle.



For such purposes, and in order for the acquisitions to be deductible, a transitional regime is proposed so that the final inventories of 2016 can be deducted through the cost of goods mechanism, until depleted, under the system first in first out (PEPS, for its acronym in Spanish).

Likewise, it is proposed that these companies should not have the obligation to determine the annual adjustment for inflationary purposes and to compute the monthly estimated income tax payments without applying the profit factor.

For this incentive, the companies should fulfill certain control requirements in order to avoid any abuses.

### **Tax treatment for economic aids**

In order to ensure that the economic and monetary aids are received by the taxpayers through the programs provided in the expenditure budgets of the federation or of the federal institutions are not reduced due to tax reasons, it is proposed that such aids are not considered as taxable income.

### **Donations**

In order to promote the establishment and development of not-for-profit legal entities (charities), which are authorized to receive deductible donations, a series of support measures are proposed and consist in the following:

- The authorized charity can obtain up to 10% of their income from different activities to that of its social activity, stipulating that the excess will be subject to tax. For this purpose, it is proposed that the income subject to recovery fees will not be part of this limit
- That the authorized charity can support the implementation of productive projects of small farmers and craftsman located in rural and economically vulnerable areas
- The authorization to act as charitable institution may be granted, with a grace period of up to 12 months in order to obtain the accreditation of work
- An electronic mechanism which will allow the donation of merchandise dedicated for international trading which has been embargoed to be done efficiently
- Those educational institutions for superior level that are authorized charities may invest in entrepreneurship projects, as long as their gains are reinvested in new projects

On a separate note, control measures are proposed in order to prevent the abuse in the use of charities, especially with respect to situations consisting in change of residence and the revocation of the authorization, in order to transfer its patrimony to another charity. In the same way, other requirements are proposed such as: to file information which sustain the transparency of the activities rendered, as well as a voluntary certificate that will facilitate the formalities with the Mexican Tax Authorities.

### **Incentive for research and development of technology**

It is proposed to reincorporate the tax credit for research and development against the corporate income tax of the year and the next 10 following years, to an amount of 30% of the expenses and investments which qualify under this concept incurred during the year, stipulating that this credit will not be considered as taxable income for corporate income tax purposes. The level of such credit can be annually up to MXN1.5 million and up to MXN50 million per taxpayer. As control measures, it is proposed certain application rules.



## **Incentive for sports**

In order to promote high performance sports in the country, an incentive consisting in a tax credit against the corporate income tax up to 10% of the tax due for the year is proposed, determined out of the contributions made to investment projects in sport infrastructure and installations specialized, as well as to programs designed for the development, training and competition of high performance athletes. Such incentive will not be taxable for purposes of the corporate income tax. The incentive can be annually up to MXN500 million and up to MXN20 million per taxpayer.

## **Income and deductions in the area of hydrocarbons**

The incorporation of certain regulations which will allow to clarify the recognition moment of the income for those taxpayers that are performing activities in the exploration and extraction of hydrocarbons industry is proposed, so that in such cases where they receive as consideration a sort of onerous transmission of hydrocarbons extracted from the subsoil, or a percentage from the production, the income will be recognized entirely when such hydrocarbons are sold, given that in that moment the patrimony level will change and not when the contractual consideration is received.

On a separate note, with respect to deductions it is proposed to adapt the relative dispositions of the depreciation rates applicable to investments in pipelines not related to extraction and processing of petroleum, in order to grant access to preferential depreciation rates related to investments in pipelines used for transportation, storage and processing of hydrocarbons, as well as platforms and vessels used to perforate oil pits and storage of hydrocarbons.

## **Transfer pricing**

It is intended that taxpayers, which are contractors or assignees according to the Federal Revenue Law on Hydrocarbons and which realize operations with non-resident related parties should obtain and keep supporting documents that support the fact that the revenues and deductions were agreed at the arm's length, even if their revenues do not exceed MXN13 million (threshold provided for other taxpayers).

## **Individuals**

With respect to individuals it is proposed that the economic or monetary aids received from the government budgetary programs would not be considered as taxable revenues.

In connection to the personal deductions, it is proposed to include, in addition to the individual or employers' contributions, the collective contributions to the individual retirement plans; nonetheless, it is important to identify the amount of deduction applicable to each individual.

## **Value added tax (VAT)**

A new credit mechanism is proposed in case of investments and expenses incurred in pre-operating periods for every taxpayer, except taxpayers from the extracting industry.

The justification of this proposal is that the mechanism for updating the tax transferred to the taxpayer in connection to investments and expenses incurred in pre-operative periods, as a consequence of the various reforms to which the Mexican VAT Law has been subject to, was not timely updated.



The most relevant aspects of this new mechanism, among others, are the following:

- VAT will be creditable starting with the tax return of the first month in which the taxable operations are performed, in the proportion that they represent of the total activities. In addition, by using a drafting which can cause confusion, it is established that when taxpayers render activities which are taxable or exempted, these should calculate an annual adjustment of the proportion applied, indicating that in case it will be decreased or increased the level of the tax credit by way of an actualization method
- The effect of the restatement corresponding to the period between the month in which VAT has been transferred until the month in which the VAT is credited is recognized
- In connection to the expenses and investments incurred in the pre-operating periods until 31 December, 2016, the crediting of the tax should be done in accordance with the dispositions in force at that date, as long as the requirements for crediting this tax are fulfilled

In case of taxpayers involved in the extracting industry, it is specifically established that in order to perform the activities prior to commercial extraction with regularity of resources associated to the fields, these are not considered as pre-operating periods, it is possible to credit the VAT charged in such period.

In the event where the entity stops performing such auxiliary activities, the VAT refunded should be returned updated for inflation to the Mexican Tax Authorities, when this situation is the consequence of causes which are attributable to the taxpayer.

In addition, other reforms and modifications of the Mexican VAT Law are proposed, as follows:

- The proportion of creditable VAT in connection to the investments performed starting from January 1, 2017, for the taxpayers which initiate activities
- The imports of tangible goods for use or enjoyment, when delivery is made abroad
- The moment VAT becomes due in connection to imports of services rendered by foreign suppliers, when the services are exploited in national territory
- Exports of information technology services

## **Mexican Federal Fiscal Code**

### **Electronic tax signature**

With the purpose to promote the general use of the electronic tax signature for every type of legal acts, including between particulars, it is proposed that it can be used for such purposes if it is agreed and the requirements established by the Mexican Tax Authorities through general tax rules and the other applicable legal provisions are fulfilled.

### **Widespread use of the taxpayer's mailbox**

With the intention to convert it into a citizen mailbox for the benefit of taxpayers and to generate positive incentives through its use for promotional activities, it is proposed that the government sector (irrespective the level) as well as the private sector, have the possibility to place through this mailbox information and documentation which are of interest for the taxpayers, after having previously obtained their consent.



## **Registration of legal representatives in the Federal Taxpayers Registry**

It is proposed to establish the obligation for legal representatives of legal entities to be registered in the Federal Taxpayers Registry (RFC, for its acronym in Spanish), in order to have access to relevant information and to ensure certainty of the identity, similar to partners and shareholders of legal entities.

## **Strengthening the electronic tax invoices via the Internet**

It is proposed that the electronic tax invoices issued via Internet can be cancelled only when the person receiving such invoice accepts its cancellation, in accordance with the procedure established by the Mexican Tax Authorities through general tax rules. Such measure will enter into force starting May 1, 2017.

## **Suppliers of certification documents**

Currently, with the intention to assist the Mexican Tax Authorities in connection to the certification of the receipt of documents and digital documentation, the Mexican Tax Authorities, through general tax rules, authorize legal entities in order to be able to provide certification services concerning the receipt of digital documents.

It is proposed to recognize the suppliers of certification documents, given that currently the activity of such suppliers is sustained only by general tax rules.

## **Certifying bodies**

With the purpose of achieving administrative simplification of public finance, it is considered that the requirements to obtain the authorization to serve as a supplier of different necessary services in order to fulfill the tax obligations could be simplified for legal entities that are willing to incorporate as suppliers of different services established by the Mexican Tax Authorities.

From the above, it is proposed to implement a scheme so that both legal entities which are already authorized, as well as those that wish to register as suppliers of such services, would qualify as an authorized certifying body by the Mexican Tax Authorities, with the objective to continue with the assistance of these service suppliers and to make more efficient the monitoring activities carried out by the tax authorities in connection to such suppliers.

## **Powers of verification of the Mexican Tax Authorities**

In the Mexican Federal Fiscal Code (MFFC) are stipulated the powers of verification granted to the Mexican Tax Authorities with respect to visits at the taxpayers' domicile, known in the industry as deep reviews or quick reviews.

The first among them include the visits performed at the taxpayers' domicile, the persons which are jointly liable or third parties which are associated with these with the purpose to review the accounting, goods and merchandise by applying the procedure established under Article 46 of MFFC; and the second one, review the legal formalities for imports, the possession or location of the goods from abroad that are in Mexico, as well as combating the informal trade.

The review procedure in both cases presents certain similarities in connection to the exercise of the powers of the Mexican Tax Authorities, which can generate difficulties for taxpayers in determining the exact course of action under which the tax authorities exercise their review powers.



Derived from the above, it is proposed to reform, for establishing that the review periods of the Mexican Tax Authorities can be exercised with the finality to check the compliance of taxpayers with the tax obligations and in the area of customs matters. Likewise, in order to ensure more clarity to taxpayers, the tax provision which grant the exercise of the review powers by the Mexican Tax Authorities will be split in subsections.

### **Electronic reviews**

The Second Chamber of the Supreme Court of Justice when issuing the thesis LXXIX/2016, has pronounced itself with respect to the non-constitutionality of Article 53-B of the MFFC in the sense that establishing that the specific quantities determined under the pre-settlement process will be done through the administrative process, when the taxpayers do not provide evidence nor manifest the intention to act within its best interest, infringes the right to a hearing.

In accordance with the mentioned thesis, it is proposed to repeal the second paragraph of the referred article, with the purpose that the authority issues a definitive resolution in which the facts and circumstances are defined, which imply the fulfillment of the tax obligations of the taxpayers reviewed and on this basis, it is assessed the amount of the omitted taxes, giving the taxpayer the opportunity to present arguments and proof to exercise his rights during the auditing process, and when the taxpayer does not exercise this right or even if it has exercised it the irregularities identified cannot be avoided, guaranteeing in this way his right to a hearing.

In addition, it is proposed to amend the period of 40 days that the Mexican Tax Authorities have to issue and notify the resolutions, in order to be computed based on different assumptions by considering the deadlines allowed to present written arguments and evidence.

Also, it is proposed to establish that the notification of the definitive resolution cannot exceed six months, or two years in connection to foreign trade, counted from the date the authorities notify the resolution.

In connection to the regulation, which makes reference to the agreements concluded in front of the Taxpayers' Ombudsmen (PRODECON, for its acronym in Spanish), it is proposed to amend the tax provision, in order to establish the suspension of the terms granted during the electronic review to which Article 53-B of the MFFC refer to.

### **Transfer of patrimony from authorized charities – Information to be provided**

It is proposed to establish a penalty for the authorized charities which do not deliver their patrimony when they find themselves in liquidation and they don't transmit the totality of their patrimony to the authorized entities that are allowed to receive donations; and in addition they don't send the relevant information to the Mexican Tax Authorities in connection to such transfer.

### **Information to be sent to the Mexican Tax Authorities by the authorized certification suppliers which do not comply with the technical specifications**

It is proposed to introduce an offense against the authorized suppliers of certification of electronic tax invoices through the Internet, for filing with the Mexican Tax Authorities digital tax receipts via Internet which do not fulfill the technical specifications and, as a consequence, to establish a minimum fine for each tax receipt sent via Internet which contains information that does not fulfill the technical specifications.



## **Federal Law for Administrative Litigation Procedure**

### **Exclusive trial resolution on the substance**

It is proposed that this new procedure of tax lawsuit (hereinafter “exclusive trial resolution on the substance”) can be used when the concepts challenged concern the subject, the object, the base, the tax rate or the tariff of the contributions, and which amount is 200 times higher than the restatement and unit measure (UMA, for its acronym in Spanish) determined for the year, valid at the moment when the resolution is issued.

The appeal of the aspects with an inferior amount to the above mentioned can be carried out through the juridical dispute administrative trial, via the traditional route either on line or by indictment.

The exclusive trial resolution of the substance will be regulated by the principles of oral proceedings and celerity, and in order to resolve these types of trials, the Federal Tribunal for Fiscal and Administrative Justice will organize regional chambers specialized in connection to this type of trial.

### **Substance study**

It is proposed that in cases where appeals are raised in connection to controversial arguments concerning the form, these will not be subject to the analysis and resolution of the controversy, only those which are related to the substance of the problem matter, and only if arguments are formulated under the specific form mentioned under the procedure, in order to respect the human right of having an effective access to the judicial protection; it is proposed that the same specialized regional chamber settles the problem matter through the ordinary litigation trial.

Under the assumption that the plaintiff submits questions on matters regarding the substance and the form under this new procedure, the Federal Tribunal for Administrative Justice will be prevented to study the arguments concerning the form, but this will not imply the refusal of the right to justice, the proposed procedure is optional for the taxpayers, which means that, if such option is not exercised, they would have the possibility to apply the administrative litigation trial in the other versions available (ordinary, online or by indictment). Once the type of trial is selected it cannot be changed.

### **Suspension of the procedure**

It is proposed that with the admission of the request, the judge allocated will give an order for the suspension of the execution of the appealed act, without the necessity for the plaintiff to guarantee the tax interest. The suspension granted will operate until the sentence of the trial is pronounced, which will put an end to the trial.

With this, it is proposed to homologate the treatment which currently is applicable to administrative appeals.

### **Oral proceedings**

A hearing will be established for the formulation of dispute which should be done in the presence of the designated judge, with the assistance of the secretary for agreements and with the presence of the parties, and within the following 20 days in which the appeal or the answer for the appeal is received, to improve the orientation towards resolving the subject matters appealed.





## **Expert evidence**

It is proposed that the expert opinion is attached to the initial request for appeal and in the answer to the initial request, with the purpose that the designated judge has a complete view of the elements which are brought forward by the parties and the necessary information in order to arrive at a conclusion more rapidly. In addition, this measure will help to significantly reduce the time for resolution of the subject matter.

Likewise, the possibility that the designated judge can call the experts of the parties so that they can explain with details the technical elements of their expert opinion is included, with the possibility that the parties appear and extend their questionnaire or ask questions, which will generate a better understanding of the judge on the appeal matter.

## **Testing procedure**

Under this new modality of a fiscal trial, it is proposed that only the supporting documents which were provided during the administrative phase carried out in front of the tax authorities can be brought up, the ones offered during the administrative appeal for revocation, or the ones made available during the procedure for the conclusive agreement performed in front of PRODECON.

## **Tax review**

In case of a judgment being issued, which resolves the subject matter of the problem subject to the appeal, in case the judgment is unfavorable for the tax authority, the latter can file an appeal in front of the Circuit Collegiate Courts.

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If you need any further information, please call 01 800 292 5764 (in Mexico), +52 55 5246 8300 (from abroad), or write to [practicadeimpuestos@kpmg.com.mx](mailto:practicadeimpuestos@kpmg.com.mx)