

October 14, 2005

## Mexican Fiscal Update 2/2005

### Fifth modification to the Miscellaneous Tax Resolution for 2005

Yesterday it came into effect the Fifth Resolution of Modifications to the Miscellaneous Tax Resolution ("Resolution") as published in the Official Gazette of the Federation ("Gazette") on October 12, 2005 which contains certain international tax related issues to which we subsequently refer to.

**1.- "Cross Currency Swaps"** (Rule 3.3.7.). It provides that these sorts of financial derivatives are deemed as debt financial derivative transactions for income tax purposes.

In the case of non Mexican residents, income tax is levied upon the difference of the effectively collected and paid amounts (measured in Mexican pesos), to the extent that the collected amount is higher than the paid amount. Special rules are added regarding the interest computation.

**2.- Payments to foreign tax transparent legal figures subject to Mexican CFC's rules** (Rule 3.23.13.). A clarification is done to this rule that recognizes the fiscal transparency of payments made to tax transparent legal figures created and subject to the jurisdiction of a country with which Mexico has a broad agreement for exchange of information in which the income tax is triggered in the hands of the participants in such legal figures, irrespective if these latter are Mexican residents or non Mexican residents.

Under our legal construction, the clarification provides that if the participant in the tax transparent legal figure is subject to the Mexican controlled foreign corporation's regime, a 40% withholding will apply, as long as the participant is a related party of the Mexican taxpayer making the corresponding payment.

For these purposes, a foreign legal figure is deemed as any act, contract or agreement that does not constitute nor has a legal personality of its own, concept with which we concur.

**3.- Debt Financial Derivative Transactions** (Rule 3.23.14). No withholding applies on revenues derived by non Mexican residents from debt financial derivative transactions if referred to (i) Equilibrium Interbank Interest Rate or (ii) securities issued by the Mexican Federal Government or its financial agents, when such transactions are performed in the Mexican Stock Market or the Mexican Market of Derivatives. There are some formal obligations to be complied by the non residents.

Should you have any comments, doubts or comments on the foregoing, please contact us either at the phone number (52 55) 52513545 or at the e-mail address [info@turanzas.com.mx](mailto:info@turanzas.com.mx)

Sincerely,

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