

April 29, 2009

## MEXICAN FISCAL UPDATE 2 / 2009

### Application Rules of the Repatriation of Capitals Decree

Today it came into effect the Resolution that establishes applications rules ("Rules") for the repatriation of capital decree ("Decree") published in the Mexican Official Gazette on March 26 which content was referred to in our **MEXICAN FISCAL UPDATE 1 / 2009**.

Herein below please find the salient features of the Rules.

**1. Revenues subject to the Decree** (First Rule).- It is confirmed that the Decree applies for revenues in cash, goods, services or in credit of foreign legal entities and/or legal figures even when same were not distributed to Mexican resident individuals or legal entities (i.e. controlled foreign corporation –CFC- related income), in which case, the tax paid abroad shall not be creditable in Mexico.

It is established that the Decree may apply even if at the date of its effectiveness, the repatriated resources were invested in instruments or goods other than money.

**2. Destiny of the repatriated resources** (Second Rule).- The repatriated resources should be destined to the performance of investments or other ends as follows:

#### **A. Investments.**

*(i)* Acquisition of:

- Fixed assets deductible for income tax purposes.
- Land and constructions located in Mexico.

#### **B. Financial Investments.**

*(i)* Investments in Mexico through Mexican financial institutions in the following:

- Debt instruments placed in the Mexican Stock Exchange, issued by Mexican resident companies, the Federal Government, its decentralized organisms, Local States or the Mexican Central Bank.
- Certificates placed in the Mexican Stock Exchange issued by Mexican debt trusts that replicate yields of stock market debt indexes (see our Mexican Fiscal Update 1 / 2009).
- Shares of stock of investment companies in debt instruments.

Financial debt operations are expressly excluded.

*(ii)* Investments in Mexico through Mexican financial institutions in the following:

- Shares of stock placed in the Mexican Stock Exchange issued by Mexican resident companies.
- Certificates placed in the Mexican Stock Exchange issued by Mexican debt trusts that replicate the yields obtained by stock market shares' indexes.

- Shares of stock of variable yield investment companies.

Investments in exchange coverage investment companies, capital financial derivatives and American Depositary Receipts are expressly excluded.

*(iii)* Acquisition of shares of stock issued by Mexican resident companies which assets are represented, in at least 50% by goods located in Mexico.

*(iv)* Deposit in savings institutions and popular credits, as well as loans to such entities.

The resources need to be invested at least for two years since their date of repatriation; and it is allowable to change the investment to other than the originally made, whenever the new one corresponds to any of the before mentioned destinies.

### **C. Other accepted resources' destinies.**

It shall be equally deemed that the resources are invested in Mexico when destined to:

*(i)* Payment of debts entered into with unrelated parties for income tax purposes, acquired prior to January 1<sup>st</sup> of 2009.

*(ii)* Payment of contributions or any other tax related debts.

*(iii)* Payment of salaries related with subordinated services furnished in Mexico.

**3. Acquisition of stamps** (Third Rule).- The part that the taxpayer keeps should contain the name of the individual or legal entity acquiring it; in this latter case, followed by the name of the legal representative.

**4. Information provided to the tax authorities** (Fourth and Fifth Rules).- The credit institutions and brokerage firms should deliver the global information required (Article Four, fourth paragraph of the Decree) through a writ no later than the day 10 of the subsequent month to the correspondent federal tax office. On the other hand, the legal entities should equally deliver their writ to the applicable federal tax administration offices.

Should you have any comment or doubt related with the content of this preliminary analysis, please contact us in the e-mail address [info@turanzas.com.mx](mailto:info@turanzas.com.mx)

Sincerely,

**TURANZAS, BRAVO & AMBROSI**  
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