

July 13, 2009

MEXICAN FISCAL UPDATE 3/2009

Modifications to the Application Rules for the Capital Repatriation Decree

On July 9, 2009 entered into effect the First Resolution of Modifications ("Modifications") to the Application Rules ("Rules") for the Capital Repatriation decree ("Decree"), published in the Mexican Official Gazette on March 26, 2009, which we analyzed in our previous Mexican Fiscal Updates 1/2009 and 2/2009.

Herein below please find a description of the amendments to the Rules:

1.- Revenues subject to the Decree (First Rule).- The benefits of the Decree will be applicable to debt and equity instruments and certificates comprised under Sections II and III of the Second Rule of the Rules, when the custody and administration of such securities be transferred from a foreign financial broker to a Mexican financial broker.

The securities mentioned above are the following:

- Debt instruments issued by Mexican resident companies, the Federal Government, its decentralized organisms, Local States or the Mexican Central Bank, placed in recognized markets.
- Certificates issued by Mexican debt trusts that replicate yields of debt indexes, placed in recognized markets.
- Shares of stock of investment companies in debt instruments.
- 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 yields obtained by stock market shares' indexes.
- Shares of stock of variable yield investment companies.

For these purposes, the amount considered to be repatriated would be the value that the instrument, certificate or share, had at the end of the day previous to one in which the Mexican broker receive the custody and administration of the securities.

2.- Destiny of repatriated resources (Second Rule).- This requirement is flexibilized, setting forth that repatriated resources could be invested, among other instruments, in debt instruments issued by Mexican resident companies, the Federal Government, its decentralized organisms, local States or the Mexican Central Bank; as well as in certificates issued by Mexican debt trusts that replicate yield of markets debt indexes, when such are placed in recognized markets according to the Federal Tax Code provisions.

In general terms, the following are considered as recognized markets: the Mexican Stock Exchange, the Derivatives Mexican Market, exchanges and equivalent systems of listing of securities, contracts or goods with 5 years in operation and authorized to function as such, according to the laws of the country where they are settled.

Previously, this benefit was only applicable to securities placed in the Mexican Stock Exchange.

3.- Requirements of stamps (Third Rule).- The requirement of stating \$0.00 in the items "Updated Amount" and "Surcharges" of the stamp is deleted.

4.- Tax base (Sixth Rule).- This new rule sets forth that the following will not be considered in the tax base for the determination of the income tax: *(i)* repatriated revenues which not subject to taxation when obtained; *(ii)* exempt income; and *(iii)* those that already had paid the corresponding tax. Taxpayers should have evidence to prove that they are in one or more of these hypotheses.

Regarding the first hypothesis, we should stress out that the amount that can be excluded from the tax base correspond to revenues that were not subject to tax at the moment in which they were obtained. For such purpose, it is not relevant that on the date of the repatriation the corresponding statute of limitations has already lapsed.

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

Sincerely,

TURANZAS, BRAVO & AMBROSI
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This document constitutes a preliminary analysis for informative purposes which has been carefully prepared by the members of Turanzas, Bravo & Ambrosi. In no manner it intends to be an opinion or a definite position for particular cases, same that will have to be analyzed under their specific circumstances

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