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Mexican Fiscal Update 1 / 2009

Repatriation Presidential Decree 2009

On March 27, 2009 came into effect the "Decree that grants several tax benefits regarding income tax concerning to deposits or investments received in Mexico" ("Decree") that was published in the Official Gazette of the Federation on March 26, 2009, through which the income tax associated with revenues obtained by Mexican resident individuals and legal entities derived from investments kept abroad may be regularized, provided they are repatriated into Mexico.

The President expressed as rationale of this tax incentive, the need of fostering productive investments and employment in Mexico.

1. Relevant issues of the Decree

a) Benefited subjects.- Individuals and legal entities residing in Mexico that obtained income derived from resources maintained abroad before January 1, 2009 that prior to the payment date:

- Have not being subject to a tax review by the Mexican federal tax authorities with respect to such type of income, or
- Have not exercised legal means of defense against the tax treatment of such revenues.

b) Regularized income.- Income generated by the resources that are regulated under any of the following Titles of the Income Tax Law ("ITL"): **(i)** Legal Entities (Title II), **(ii)** Individuals (Title IV) and **(iii)** Preferential Tax Regimes ("REFIPRES") –commonly known as "Tax Paradises" or "CFC income" - (Title VI).

Income tax for the tax year in which payment is made as well as all previous tax years shall be considered as paid.

Likewise, formal tax obligations triggered by such revenues (ex. informative declaration for REFIPRES –CFC- income) will be considered as duly complied with.

Repatriated resources will have to be invested in national territory for at least 2 years since their repatriation.

The Decree does not apply to revenues which were deducted by a Mexican resident for tax purposes.

c) Taxable Basis and Rates.- 4% for individuals and 7% for legal entities; same rates that are applied upon the aggregate amount of the repatriated resources.

- d) Payment date.- Within 15 natural days subsequent to that in which the deposit of the repatriated resources was made.
- e) Payment method.- By acquisition of stamps in Mexican banks or brokerage firms, which should establish:
- Acquisition date
 - Income tax amount paid
 - Name and signature of acquirer (or legal representative for legal entities)
- f) Legal entities' notice.- They shall present a writ to the Tax Administration System ("TAS") informing:
- Tax identification data
 - Date and amount of returned resources
 - Income tax paid through the acquired stamps
 - Stamps' folio
- g) Legal entities' net tax profit account ("CUFIN").- Profit corresponding to the repatriated resource shall be calculated, and to this amount, the income tax paid should be diminished; the result can be added to their CUFIN's balance. As it is known, this account is kept by Mexican legal entities, reflecting the profits which have been subject to corporate taxation, and hence, which further distribution does not trigger further income tax.
- h) Sundry tax rules.- It is established that:
- Tax benefits obtained will not be accruable for income tax purposes
 - Benefits of the Decree will not give rise to tax reimbursements, tax credits or tax compensation (off-set)
 - It will not be creditable for business flat tax purposes
- i) Application rules.- The Decree empowers the tax authorities to issue general rules for applying the Decree.
- j) Effectiveness and derogation of other repatriation decrees.- The Decree's effectiveness is until December 31, 2009 and repeals the repatriation decrees published in the Official Gazette of the Federation on October 18, 1995 and January 26, 2005.

2. Additional comments

- a) Confidentiality for individuals.- The Decree obliges legal entities to render notice to the TAS regarding its adoption, not so for individuals.

The Decree does not state that the financial institutions where the stamps are acquired should keep *(i)* copy of them *(ii)* neither of their information; hence, if the general rules establish this lack of conservation by such institutions, the result would be that only the individuals should keep such stamps, circumstance that would produce a confidentiality so needed in the current times.

- b) 1995 and 2005 repatriation decrees abrogation.- Their express abrogation and the absence of term rules within them, confirms the standing of their term until March 26, 2009.

- c) Repatriated resources destination.- Given that the effectiveness of the Decree's application is conditioned to making certain sort of investments for a 2 year period; the general rules that the TAS will issue need to clear and reasonable in order to achieve the purpose's aim.

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,

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