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2021 Tax Reforms and Pending Items of 2020 Tax Reform

2021 Tax Reform

On November 5, the Congress approved the 2021 tax reform, including the decree with amendments to various provisions of the Mexican Income Tax Law, the Value Added Tax Law and the Federal Fiscal Code ("FFC"), presented to the Congress on September 8, 2020 by the Mexican President. Its publication in the Official Gazette is still pending.

In general terms, legislators did not include substantial changes to the proposed reforms, with the exception of certain controversial proposals that were qualified as tools for "tax terrorism". Below a summary of the most relevant aspects that were approved or rejected:

- Non-for-profit organizations tax regime was significantly amended.
- Professional fees that exceed MXN $75 million should no longer qualify for salaries tax treatment.
- The Tax Administration Service would be authorized to block, through instructions to the public telecommunications network concessionaires, digital service providers that do not comply with their tax obligations in Mexico.
- The FFC was amended to incorporate various precisions in order to enhance auditing powers of the tax authorities and to mitigate the implementation of aggressive tax planning by taxpayers.
- The complementary quotas of excise tax applicable to the sale and import of automotive fuels (gasoline and diesel) was not approved.

Pending Items of 2020 Tax Reform

Although the 2021 tax reform does not include significant changes that require immediate action from taxpayers, it is important to note that in connection with the 2020 tax reform, there are still many issues that have not been fully clarified, such as:

- The registration of foreign legal vehicles commonly used in the private equity industry to create funds, which will allow to maintain the tax transparency status going forward. Special attention shall be paid to all "multi-tier" structures that might not be in compliance with the new requirements, since the deadline for restructuring is December 31 of this year.
- The limitation for deducting payments made to foreign related parties when the respective income is subject to preferential tax regimes ("REFIPRES"), which might impact transactions that are not necessarily linked with tax planning, such as charges for administrative services.
- The limitation to deduct interest that exceeds 30% of the adjusted tax profit (that is, of the tax EBITDA).
- The new regime applicable to income obtained by Mexican residents through transparent foreign entities or foreign legal vehicles, or through non-transparent controlled foreign entities subject to a REFIPRE (Mexican CFC rules). All wealth and estate structures should be revised, as well as the structures of private equity funds investing money of Mexicans abroad.
- Reportable schemes that shall be informed to the tax authorities by taxpayers for tax years prior to 2020 or by their tax advisors beginning this year.

Although it is true that in recent months the tax authorities have stated in various forums their intention to publish some rules to clarify the abovementioned issues, it is possible that such rules will be issued until next year and, additionally, there is no certainty that, once published, they will cover all concerns related with these issues.

If you require additional information, please contact Oscar López Velarde (olopezvelarde@ritch.com.mx) or Santiago Llano Zapatero (sllano@ritch.com.mx), partners of the Tax practice at Ritch Mueller.