RITCH MUELLER

2022 Tax Reform: Key takeaways

On October 26, Mexican Congress approved the 2022 tax reform, which amended, added or repealed several provisions of the Mexican Income Tax Law ("MITL"), the Value Added Tax Law ("VATL"), the Excise Tax Law ("LIEPS" for its acronym in Spanish), the Federal Fiscal Code ("FFC"), among other regulations; such reform was submitted to Congress on September 8, 2021 by President López Obrador. Until today, its publication in the Official Gazette is still pending.

In general terms, congressmen approved the proposed reform, with the exception of some proposals that were controversial, such as: (i) the order for taking foreign tax credits and the tax paid in advance in Mexico; (ii) the non-inclusion of voluntary and complementary payments to retirement plans within the limitation of five times the annual value of the "*UMA*", or 15% of the taxpayer's total taxable income, and (iii) the clarification that legal age individuals with no economic activities, originally obliged by the tax reform to register before the Federal Taxpayers Registry ("RFC", for its acronym in Spanish), will not be forced to file tax returns, pay taxes or be subject to penalties.

The following is a summary that considers some of the key takeaways that were approved:

MITL

- **Mexican financial system:** Mexican tax authorities may issue administrative rules necessary for the due and correct application of the provision which establishes which entities are considered as part of the Mexican financial system for tax purposes. It will be important to monitor the content of such rules, particularly, for the case of Mexican *SOFOMEs*.

- **FX gains:** FX gains may not be less than those which result from applying the exchange rate to settle obligations in foreign currency, published in the Official Gazette that corresponds to the day on which such gains are obtained.

- **Back-to-back loans:** Financing transactions, other than those already ruled in the MITL, from which interest arise for Mexican legal entities or foreign residents with a permanent establishment in Mexico, will also be treated as back-to-back loans when they lack a "business reason". The term "business reason" was already relevant as a result of several legal precedents; however, since this term becomes even more relevant due to this tax reform, it will be crucial to carefully analyze any interest deduction derived from intercompany loans.

- **Usufruct:** Rules are added to prevent abuses resulting from the detachment of property rights, such as transferring the bare ownership (*nuda propiedad*) or maintaining the usufruct of a certain asset during a period of time, to avoid the generation of taxable income derived from the sale of assets and to obtain tax losses. Rules added are as follow: (i) the value of the usufruct right, determined through an appraisal and at the moment in which the unification of the bare ownership and usufruct of an asset is carried out, must be considered as taxable income; (ii) public notaries, public brokers, judges and other parties with public faith before whom the usufruct was constituted,

will have a 30-day period to inform such transaction to the Mexican tax authorities, and (iii) in the sale of the usufruct or the bare ownership of an asset, the gain must be determined by subtracting, from the price obtained, the original amount of the investment in the proportion which corresponds according to the appraisal carried out.

When a given usufruct right over a real estate property is acquired, it must be considered as a fixed asset and, therefore, a 5% maximum rate for the deduction of investments will apply.

- **Corporate restructures at tax cost:** The requirements to obtain the respective authorization by the tax authorities are hardened, including: (i) this benefit will only be granted to "companies that are residents in Mexico for tax purposes" and belong to the same group (previously, reference was made to "companies incorporated in Mexico"); (ii) the opinion issued by a certified public accountant must contain several additional information; (iii) all relevant transactions (as defined in the provision itself) related to the intended restructure, carried out in the 5 immediate years, must be described; (iv) if any relevant transaction is carried out within the 5 year-period after the restructure, the buyer party must submit certain information, and (v) in the event tax authorities, within the exercise of their auditing powers, notice the restructure lacks a valid "business reason", the authorization will be void and the updated tax will be due, considering the market value of the shares.

- **Measures against illicit hydrocarbons market:** As a new deductibility requirement for the acquisition of fuel for maritime, air and land vehicles, digital tax invoices must include fuel supplier's current permit information.

- **Expenses regarding technical assistance, technology transfers or royalty payments:** Due to the "New labor reform", payments made to residents in Mexico regarding technical assistance services, technology transfers or royalty payments rendered by third parties, will only be tax deductible if they are deemed as *specialized services*.

- **Collection efforts for uncollectible credits:** The reform adds requirements to consider uncollectible credits as deductible, including that for credits which principal amount is greater than 30 (thirty) thousand *UDIS*, the creditor must obtain a final resolution issued by the relevant authorities to demonstrate that collection efforts were exhausted or collecting such credits is virtually impossible. It is important to highlight that this change limits the possibility for taxpayers to deduct credits without exhausting the necessary collection efforts, since previously it was only necessary to file a collection lawsuit to be able to deduct uncollectible credits.

- **Thin capitalization rules:** Regarding the option taxpayers have to consider as stockholders' equity of a given tax year, the average of the sum of the beginning and ending balances of their tax attributes, some changes are included: (i) tax losses pending to be applied are considered as an element to be subtracted, and (ii) it is established as a general rule that such option will not apply when the result of the arithmetic formula exceeds 20% of the stockholders' equity, unless it is proven that the circumstances which cause such difference have a valid "business reason". It is clarified that the exception of not including as debts that accrue interest payable by the taxpayer, those contracted for the construction, operation or maintenance of productive infrastructure related to Mexican strategic areas or for the generation of electric energy, is only applicable to the holder of the document issued by the relevant authority, with which it is proven that it can carry them out on its own.

The exception for not including within debts which accrue interest payable by the taxpayer, those held by the members of the financial system in transactions inherent to their corporate purpose, will not be applicable in the case of non-regulated *SOFOMES* that for achieving their corporate purpose carry out activities mainly with their domestic or foreign related parties.

- **Deduction of technical reserves by insurance companies:** It is clarified that for technical reserves created by insurance companies to be tax deductible, these have to be created in accordance with the administrative rules issued by the National Insurance and Bonding Commission.

- **Investments**: The disbursements regarding the physical allocation, installation, assembly, handling, delivery and the services contracted for the investment to operate correctly, are now considered as part of the original amount of the investment. Additionally, the obligation to file a notice for the transfer of assets which are no longer useful was reincorporated, to prevent certain taxpayers from continuing giving tax effects to those assets that are no longer useful.

- **Mining sector:** Regarding investments carried out for the acquisition of mining concession titles (exploitation rights), they will not be considered as investments made within the pre-operating period, but rather must be considered as deferred expenses to which maximum deduction percentage will be the result of dividing said deferred expenses by the number of years for which the concession was granted, and not the 10% rate corresponding to disbursements made in the pre-operating period. This will result in a significant reduction in the deduction percentage that companies in said sector may apply.

  In case of installations, additions, repairs, improvements, adaptations, as well as any other construction carried out in a mining lot, the maximum annual rate of 5% shall be applicable in order to deduct such investments.

- **Information on cash deposits:** Financial system institutions that pay interest are obliged to report to the authorities under certain assumptions, on a monthly basis, information on cash deposits made in the accounts opened by taxpayers in such institutions. Previously, it was an annual obligation.

- **Tax losses amortization:** It is clarified that the correct interpretation, in case of corporate spin-offs, has always been that tax losses pending to be subtracted should be divided among the new companies which keep the same line of business as the spin-off company. Additionally, the assumptions to consider a change of partners or shareholders after a merger, for purposes of tax loss amortization derived from previous years, are broadened. In summary, the following cases are added: (i) when there is a change of direct or indirect shareholders with preferential rights which allow them to take decisions in shareholders' meetings or in the board of directors, and (ii) the financial statements of the company are no longer consolidated. Lastly, in the event that agreements or legal acts are executed, according to which a change of partners or shareholders depends on a suspension condition, the change is considered to have taken place on the execution of said act.

- **Agricultural, livestock, forestry or fishing activities (AGAPES) Individuals:** Due to the entry of the new "good faith" simplified regime for individuals, the current AGAPES regime is modified, providing that individuals engaged exclusively in agricultural, livestock, forestry or fishing activities,

whose income for the year does not exceed the amount of nine hundred thousand pesos effectively collected, will not pay income tax on the income obtained from those activities.

- **Computation of net taxable income:** It is stated that the Employees' Profit Sharing ("PTU" for its acronym in Spanish) is not a concept that must be subtracted for the computation of the net tax profit.

- **Concepts assimilated to salaries:** It is specified that individuals with income assimilated to salaries for fees and business activities that obtain income greater than seventy-five million pesos, must pay taxes under the Business and Professional Activities Regime, and the tax authorities are authorized to update the economic activities and obligations of such taxpayers in the event that the tax is not paid in terms of the aforementioned regime.

- **Tax Incorporation Regime:** The Tax Incorporation Regime is eliminated so that taxpayers may choose to be taxed under the new "good faith" simplified tax regime. It is important to mention that these taxpayers must apply the credits and deductions in the annual tax return for 2022, as well as request a refund of any outstanding tax credit balances.

- **"Good faith" simplified regime for individuals:** Individuals who only carry out business or professional activities or grant the temporary use or enjoyment of property may choose to be taxed under this regime, provided that their total income does not exceed the amount of three million five hundred thousand pesos. The monthly payments will be determined considering the total income actually received, without including the value added tax, and without applying any deduction, applying a progressive tax rate ranging from 1% to 2.5% depending on their income.

- **Donations personal deduction for individuals:** Payments made in the form of donations are included within the limit of personal deductions (5 times the annual value of the UMA or 15% of the taxpayer's total income).

- **Comparable operations of residents abroad:** Residents abroad who obtain income from sources of wealth located in Mexican territory will be required to determine the income and deductions derived from transactions with related parties, considering the prices, amounts of consideration or profit margins that they would have used or obtained with or between independent parties.

- **Income from acquisition of goods residents abroad:** When the tax authorities perform an appraisal and the appraisal exceeds by more than 10% the agreed consideration for the sale, an obligation is included for the seller to pay the corresponding tax if he/she/it is a resident in Mexico or a resident abroad with a permanent establishment in Mexico; those who pay the tax in this case will substitute the taxpayer (resident abroad) in the obligation to pay the tax.

- **Income from the sale of shares residents abroad:** (i) An obligation is added for the public accountant to report whether the market value (agreed consideration) of the shares matches that which would have been used by independent parties and to include evidence of this (transfer pricing studies); (ii) it is detailed that the SAT, by means of administrative rules, may determine cases in which withholding does not apply; (iii) it is established that in corporate reorganizations, the shares will cease to be part of the group when the issuing company and the company acquiring the shares cease to consolidate their financial statements, and (iv) it incorporates the assumption that corporate reorganization authorizations are not only subject to the compliance with the

requirements established in the MITL Regulations, but also to the requirements established in the rulings issued by the tax authorities.

- **Transfer Pricing:** The reference to "foreign" related parties is eliminated, confirming that the transfer pricing analysis for transactions between related parties resident in Mexico are practically the same as those applicable to transactions with related parties abroad. The content of such supporting documentation that must be recorded in the accounting records is also specified. This should include information on the related parties (name, domicile, tax residence, etc.), the functions, assets and risks assumed by the taxpayer and its related parties, information on the transactions entered into with them and the transfer pricing method used.

  The filing date of the related parties' transaction returns and the local file return is modified, so that both must be filed no later than May 15 of the year immediately following the tax year in question. Additionally, it is specified that the master information return, and the Country-by-Country information return must be filed no later than December 31 of the year immediately following the tax year in question.

  Article 179 of the MITL is modified to expressly state that the arm's length principle is applicable to individual taxpayers.

  It is specified that information from comparable transaction of two or more tax years may only be taken if the business cycles or commercial acceptance of a taxpayer's product cover more than one tax year.

  Using methods to obtain price ranges, consideration amounts or profit margins different from the interquartile method, will be allowed when they come from a mutual agreement or administrative rules issued by the SAT.

  The obligation for maquiladoras to declare to the tax authorities that the tax profit of the year represented at least the greater between 6.9% of the value of the assets used in the operation during the year and 6.5% of the total amount of costs and expenses of the operation, is eliminated. However, such information must be included in the informative return of the *maquila* operations as a requirement to apply the *Safe Harbour* regime.

  The possibility for maquiladoras to obtain advanced transfer pricing agreements or specific rulings to determine their taxable income, is eliminated.

- **Interest withholding tax rate for residents abroad:** The reference that the interest withholding rates of 10% and 4.9% will not be applicable to beneficial owners, whether direct or indirect, who receive more than 5% of the interest "derived from the securities in question", is eliminated and the word "issuer" is replaced by "debtor", in order to avoid the interpretation that it is only applicable when the interest paid derives from debt instruments. As a result of the aforementioned, there is a strong impact on the operations of many companies in the financial sector, among others, since by having a reference to "interest" and not to "interest derived from the securities in question", it should be considered that such limitation applies to the yields of credits of any kind, so that any debt or credit entered into with related parties residing abroad, are at risk of losing the benefit of the reduced withholding rate of 10% or 4.9%, as the case may be.

In this regard, the possibility for the SAT to issue administrative rules necessary for the due and correct application of the above, is added, and, therefore, it will be important to monitor the publication of such rules.

- **Income from foreign residents from indemnification of damages or losses:** The reform adds a new assumption through which it is considered as taxable income for foreign residents, the payments for indemnification as a result of a judgment or arbitral award, in which case the person making such payment must withhold the corresponding income tax. It should be noted that the income tax triggered by such payments does not distinguish whether they arise from the payment of damages or from the payment of losses, and therefore, in principle income tax is triggered in both cases.

- **Foreign residents legal representative:** To be appointed as legal representative, the obligation to voluntarily assume joint and several liability for the payment of the taxes of the resident abroad, is added as a requirement, in addition to having enough assets to respond for the payment of said taxes. From the text of the reform, impossibilities for the individuals who are appointed as legal representatives in share transfer transactions may arise, since they will hardly have the necessary assets to face the potential payment of taxes in transactions of this type.

  The possibility that the SAT may issue administrative rules necessary for the due and correct application of the above, is added, and, therefore, it will be relevant to follow-up the rules to be issued by the SAT for this purpose.

- **Concepts that should not be considered under REFIPRE (e.g., Mexican CFC) rules:** It is clarified that inflationary and FX effects derived from the fluctuation of foreign currency regarding the domestic currency (e.g., pesos) should not be considered for purposes of: (i) calculating whether the income tax applicable abroad is less than 75% of the income tax that would be incurred and paid in Mexico, in order to determine whether the respective income is subject to a REFIPRE, and (ii) calculating the tax basis of the foreign entity whose income is effectively subject to such regime.

- **Tax incentives:** Registry of financial institutions that provide products subject to the tax incentives of Article 185 of the MITL. A registry of financial institutions with which individuals may contract products subject to the tax incentives contemplated in Article 185 of the MITL (e.g., special personal savings accounts, insurance contracts based on pension plans and acquisition of investment fund shares), is created.

  The possibility for the SAT to issue administrative rules applicable to FIBRAs is added.

  Within Title VII “On Tax Incentives”, a chapter named “Good Faith Simplified Regime for Legal Entities” is added, which will be applicable to those legal entities resident in Mexico whose partners or shareholders are only individuals, as long as their total income for the preceding tax year does not exceed 35 (thirty-five) million pesos, or to those legal entities that start operations and estimate that their income will not exceed this amount. For such purposes, interested legal entities may apply the provisions of this chapter as long as they comply with the referred requirements and file a notice before the tax authorities by January 31, 2022.

This new regime allows legal entities to: (i) accrue their income at the time it has been effectively received, and to make the corresponding deductions at the time they have been effectively spent (e.g., cash flow regime); (ii) make deductions for investments based on higher annual rates and shorter terms, provided that the total amount of the investments in the respective tax year does not exceed 3 (three) million pesos; (iii) make monthly provisional payments by subtracting deductions for expenses actually incurred from the income actually received for the period, without the need to compute a profit coefficient, and (iv) the easy-filing of returns through preloaded information in the SAT's electronic system.

Excise Tax Law

- **Automotive fuels:** A fifth paragraph is added to subsection D) section I of article 2 of the Excise Tax Law, in order to establish that when the Mexican customs or tax authorities, within their auditing powers, detect that due to the characteristics of the merchandise imported into Mexican territory, said merchandise actually corresponds to automotive fuels with respect to which the total or partial payment of said tax has been omitted, the corresponding fee will be applied according to the type of fuel in question, apart from the administrative and criminal penalties which may result applicable.

  An eighth paragraph is added to article 5 of the Excise Tax Law in order to establish that whenever the tax authorities, within their auditing powers, notice any payment omission of the excise tax applicable to automotive fuels referred to in article 2, section I, subsection D) of the Excise Tax Law, for purposes of determining the omitted tax, the corresponding fees will be applied in accordance with said law without any reduction taken (that is, without being able to apply the tax incentive weekly published), since it is not reasonable to encourage or support an unlawful conduct.

  Through the reform's statement of intent, it is stated that such measures seek to attack fuel smuggling, since the tax authorities have detected that, when importing automotive fuels, taxpayers import them under different tariff items than the one actually applicable to them, with the sole purpose of evading the payment of taxes.

- **Destruction of alcoholic beverage containers:** The Mexican tax authorities are empowered to issue administrative rules to establish the cases in which the obligation to destroy alcoholic beverages containers, consumed in the same place or establishment in which they are sold, immediately after their contents have been exhausted, will not be applicable.

- **Verification of QR codes on alcoholic beverages:** Establishments which sell alcoholic beverages for consumption, are obligated to read the QR codes on the labels containing such alcoholic beverages in the presence of the consumer of said beverages.

- **Denatured alcohol and uncrystallizable honeys:** The obligation of manufacturers, producers, packers and importers of "denatured alcohol" and "uncrystallizable honeys" to register before the Alcoholic Beverages Taxpayers' Registry, is eliminated.

- **Security code on cases, packages, wrappers or any other form of presentation:** An obligation to print a security code on each case, package, wrapper or any other form of presentation of cigarettes or tobacco products, in a standardized manner for producers, manufacturers and importers with respect to any presentation in which they sell their products (not only on cigarette packs), is established.

VATL

- **VAT crediting regarding non-taxable activities:** Different provisions related to the VAT crediting mechanism are amended in order to clarify that: (i) VAT related to expenses or investments that are used exclusively to carry out activities "not subject to VAT" is not creditable, and (ii) VAT related to expenses or investments that are used indistinctly to carry out activities both "subject to VAT" and "not triggering VAT", including activities "not subject to VAT", will be creditable in the proportion in which the value of activities "subject to VAT" represents in the total value of activities both "subject to VAT" and "not triggering VAT". For this purpose, concept definition of activities "not subject to VAT" is added, which includes those which the taxpayer does not carry out in Mexican territory in accordance with certain provisions of the VATL, as well as those different from the taxable acts or activities and that are carried out in Mexican territory, when in the mentioned cases the taxpayer obtains income or payments, for which it incurs expenses and investments in which VAT was transferred or that which it paid for importations.

- **VAT paid on importations:** Regarding VAT paid on importations, it is clarified that the customs declaration must be in the name of the taxpayer who intends to take the respective credit, and must include the payment of the corresponding VAT.

- **VAT on expenses and investments in pre-operating period:** For purposes of the adjustment mechanism in the crediting of VAT transferred for expenses and investments made in pre-operating period, and with the intention of identifying the month in which the respective adjustment must be made, an obligation is added for taxpayers to inform the authority the month in which they start their activities, in accordance with the administrative rules issued by the SAT for such purpose.

- **Digital services obligations:** The periodicity for taxpayers to provide before the SAT the information on the number of services or operations performed, is modified, becoming a monthly obligation for recipients located in Mexican territory, being previously an obligation that had to be complied with on a quarterly basis.

- **Temporary use or enjoyment of tangible goods:** The definition of temporary use or enjoyment of tangible goods in Mexican territory is amended in such a way that it is clarified that it has always been subject to the payment of VAT, regardless of the place of the material delivery thereof (whether in Mexican territory or abroad). According to the statement of motives of the proposal, this is due to the fact that the tax authorities have identified that some taxpayers that rent naval artifacts, such as the so-called drilling and exploitation platforms, floating, semi-submersible or submersible, among others, considered that the operation was not subject to the payment of VAT because the material delivery of the good was not made in national territory. This modification is relevant for shipping companies that carry out activities in Mexican territory and that deliver the vessels abroad, since as of the entry into force of the reform it must be considered that the goods are used in Mexican territory even if the delivery of the product is made outside the country. For further details, please refer to our press release "Paquete Económico 2022 - Hidrocarburos y Petrolíferos" (Economic Package 2022 - Hydrocarbons and Petroleum Products).

FFC

- **Residents abroad:** Individuals or legal entities that omit to prove the change of tax residence or, in case of proving it, the new tax residence is a country or territory where their income is subject to a low-tax regime (REFIPRE), will not lose the status of resident in Mexico for a period of five years (previously three). Likewise, if there is a change of tax residence to a territory in which the income is subject to a REFIPRE, the five-year term will not be applicable if such territory does not have an automatic information exchange agreement in force with Mexico, as well as an international treaty that enables mutual administrative assistance in the notification, collection and recovery of taxes.

- **Sale assumptions in cases of merger or spin-off:** A new assumption is added under which it may not be considered that in cases of merger or spin-off of companies there was no sale for tax purposes, when a concept or item arises in the stockholders' equity of any merged, merging, spun-off or spinning-off company, the amount of which was not recorded or recognized in any of the stockholders' equity accounts of the balance sheet approved for purposes of the respective merger or spin-off. A new assumption is also added under which, if the tax authority, in the exercise of its auditing powers, detects that the merger or spin-off in question has no "business reason", it will determine the corresponding tax for the sale, considering as taxable income the applicable gain, for which such authority may consider the relevant transactions (defined in the provision itself) related to the merger or spin-off, carried out within the 5 immediately preceding and subsequent years, with the obligation to submit certain information regarding the latter.

- **Transfer of capital stock in spin-offs:** It is clarified that a corporate spin-off is deemed as the transfer of all or part of the capital stock, since previously there were doubts as to whether stockholders' equity should be considered as "capital".

- **Computation of the refund period:** It is provided that for the computation of the forty days to carry out the refund, the period counted from the issuance of the first requirement and the fulfillment of the potential second requirement issued by the tax authority to obtain further documentation and information in the refund procedure, will not be considered.

- **Refunds in electronic format:** The income limit ($15,790.00 MXN) to carry out refund requests through the Electronic Refund Form ("FED" for its acronym in Spanish) is eliminated because currently all refund requests submitted through the FED must be signed with the Advanced Electronic Signature (*e-firma*).

- **Auditing powers in refunds:** It is clarified that once the exercise of auditing powers has concluded, the tax authority will grant the taxpayer a term of 20 days as from the effective date of the notification of the last partial assessment or official notice of observations, for purposes of refuting the authority's observations made during the refund validity auditing process.

- **Self-correction by applying favorable tax balances:** An option is established for taxpayers subject to the exercise of verification powers by the tax authority, so that they can perform the correction of their tax situation by applying favorable tax balances that they are entitled to receive of the tax authorities for any concept, against omitted contributions and accessories. It is important to mention that the self-correction option will not be applicable provided that: (i) the favorable tax balances have previously been denied; (ii) the refund obligation has prescribed, and (iii) the favorable tax balances amounts derive from an administrative appeal or sentence, also excluding

the remaining VAT favorable balances previously subtracted. This option will take effect on January 1, 2023.

- **Application of incentives:** For the application of the tax incentive credit, it is established that it may be applied against incurred and payable taxes. It is also clarified that the term must be counted as from the last day of the fiscal year in which the right to apply the tax incentive is triggered and not according to the expiration of the term for filing the annual tax return.

- **Joint and several liability in the sale of negotiations:** Regarding joint and several liability for contributions, assumptions are defined in which it will be considered that there is an acquisition of a negotiation when the authority detects that whoever transfers and acquires a set of assets is placed in any of the following assumptions: (i) the transferor totally or partially transfers to the acquirer assets or liabilities; (ii) when there is partial or total identity of the persons forming the management body, of partners or shareholders with effective control, of their legal representatives, suppliers, affiliated workers, fixed assets and infrastructure, and (iii) when there is identity in the tax address or facilities, trademarks, patents, copyrights, industrial property rights.

- **Joint and several liability of legal representatives:** The assumption of joint and several liability is specified for legal representatives of foreign companies for the payment of taxes in Mexico, or appointed in compliance with tax provisions, who must also comply with the requirements now established in article 174 of the MITL, which were explained above.

- **Joint and several liability in the transfer of shares:** An additional assumption of joint and several liability for taxes is included for legal entities that register new shareholders without having filed the notice of disposal of shares between foreign companies.

- **Change of shareholders notice:** In relation to the notice that must be filed each time any modification or incorporation is made to the shareholding or corporate structure, the obligation to include in such notice the percentage of participation of each shareholder or partner, the corporate purpose and who exercises effective control, is added. In the case of companies whose shares are placed among the general public, it is clarified that the aforementioned notice must be filed regarding the persons who have control, significant influence or power of command within the legal entity, also informing the names of the common representatives, their RFC and the percentage they represent with respect to the total number of shares issued by the legal entity.

- **Power to cancel or suspend RFC:** A power for the tax authorities to cancel or suspend the RFC of taxpayers that during the 5 previous fiscal years have not carried out any activity, issued any invoice, do not have any pending obligations to comply with or have died (in the case of individuals), is added, providing that by means of administrative rules other assumptions may be indicated.

- **Notice of cancellation of RFC:** For notices of RFC cancellation, except for merger cases, the requirement of having a positive opinion of compliance with tax obligations in social security matters, is added.

- **Volumetric Controls:** The figure of authorizations to be a supplier of (i) equipment and computer programs to carry out volumetric controls, (ii) certificates supporting their correct operation and functioning, and (iii) reports issued by a testing laboratory, which determines the type of

hydrocarbon or petroleum product in question and the octane rating in the case of gasoline, is eliminated.

However, it is understood that as of the effective date of the amendments to the FFC, the obligations related to volumetric controls may be enforceable and taxpayers must ensure that they are in compliance with the mentioned FFC, administrative tax rules and Annexes 30, 31 and 32 by contacting any supplier in the market:

- "Annex 30" - technical specifications and guidelines that equipment and software must comply with;
- "Annex 31" - guidelines for the verification services of the correct operation and functioning of the computer programs and the certificates to be issued, and
- "Annex 32", - guidelines for services for the issuance of reports that determine the type of hydrocarbon or petroleum product.
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It is important to emphasize that the tax reform neither eliminates the obligation to comply with the provisions of the FFC, administrative rules or Annexes 30, 31 and 32, nor to have certifications; it only eliminates the figure of "authorized suppliers".

The parameters of the obligation to carry out volumetric controls consisting of (i) the obligation to generate and keep the reports, (ii) volume records, (iii) specify measurement points and (iv) the obligation to associate to the volume records the information of the tax invoices or customs declaration, is included.

Criminal penalties are also established for taxpayers obliged to keep volume controls that do not have them, alter them, use them improperly, destroy them, do not have certificates, among others, and finally, assumptions related to volume controls under which it is understood that fuel of illicit origin is being alienated, are added, establishing a punishment of 6 to 12 years of imprisonment. For further details, please refer to our press release "Paquete Económico 2022 - Hidrocarburos y Petrolíferos" (Economic Package 2022 - Hydrocarbons and Petroleum Products).

» **Requirements for those who issue tax invoices:** The following are added as requirements for taxpayers who must issue tax invoices for the acts or activities they perform, for the income they receive or for the tax withholdings they make, (i) to have tax obligations at the RFC, and (ii) to comply with the requirements that the SAT establishes through administrative rules, including the "supplements" that are published on the SAT's website, whose content will be approved by said authority at the time the invoices are sent to it for validation prior to their issuance.

» **Tax invoices of expenditure for refund, discounts or bonuses:** For the refunds, discounts or bonuses for which invoices are issued, it is established that in the event of issuing invoices to cover expenses without having the justification and documentary support that proves such concepts, these may not be reduced from the income invoices.

» **Tax invoices to cover the legal possession and custody of goods:** It is established that the SAT, through administrative rules, may establish the characteristics of the invoices that will be used to cover not only the transportation but also the legal possession and custody of goods.

» **Tax invoice certification providers:** A new article is added to regulate the authorization and operation of invoice certification providers, in which it is established that individuals who intend to

obtain the respective authorization must comply with the requirements and obligations established by the SAT through administrative rules and other technical or regulatory documents, as well as that those individuals who obtain it will be obliged to offer a guarantee to cover the compliance of their obligations.

- **Tax invoice requirements:** Several adjustments are made to the requirements that tax invoices must comply with, such as including the name or corporate name of the person issuing them (which in many occasions was already done in practice), as well as the name or company name and zip code of the recipient''s tax address, and the use code for the invoice.

- **Discrepancy between tax invoice description and the economic activity in the RFC:** In case of discrepancy between the description of the goods, services or use or enjoyment indicated in the invoice and the economic activity registered by the taxpayer before the RFC, the authority may update the economic activities and obligations of such taxpayer to the corresponding tax regime, in which case taxpayers will be allowed to manifest their disagreement with this situation through the clarification procedure determined by the SAT through administrative rules.

- **Cancellation of tax invoices:** Additional requirements are established for the cancellation of tax invoices, such as the following: (i) as a general rule, invoices may only be cancelled prior to the filing of the annual tax return of the fiscal year in which they are issued and provided that the person in whose favor they are issued accepts their cancellation, and (ii) when taxpayers cancel invoices covering income, they must justify and support with documentation the reason for such cancellation, which may be verified by the tax authorities in the exercise of their audit powers.

- **Report on financial statements for tax purposes:** The obligation to report financial statements for tax purposes for the case of legal entities that in the last immediately preceding fiscal year have declared in their normal returns income equal to or greater than $1,650,490,600 MXN, as well as for those that at the close of the immediately preceding fiscal year have shares placed among the investing public at large, is reincorporated. The date for filing this report is modified to May 15 of the year immediately following the end of the fiscal year in question.

- **Information on beneficiaries:** The obligation for legal entities, trustees, settlors or trustees, in the case of trusts, as well as for the contracting parties or members, in the case of any other legal vehicle, to obtain and keep, and to provide to the SAT when so required by such authority, the information of their “controlling beneficiaries” (as such term is defined in the FFC), which may be shared with foreign tax authorities, is added. In case there are modifications in the identity or participation of the “controlling beneficiaries”, the respective information must be updated within a certain period of time. Those who fail to comply with these obligations will be sanctioned with various fines and may not be hired by authorities or public entities. Public notaries, brokers and other persons involved in the formation or execution of contracts or legal acts that give rise to the incorporation of legal entities or execution of trusts or any other legal vehicle, as well as the members of the financial system, will be obliged to obtain the information to identify the referred “controlling beneficiaries” and to adopt reasonable measures to verify their identity, in order to provide it to the SAT whenever required.

- **Auditing powers:** It is proposed to expand the tax authorities’ auditing powers to include the following: (i) to carry out the valuation of taxpayers investments as well as the services they provide or receive; (ii) to conduct audits or desk reviews to financial institutions, fiduciaries, settlors or trustees in the case of trusts, and to the contracting parties or members of any legal vehicle. This

power is included for the purpose of verifying compliance with obligations related to accountholders information (for financial institutions) and reporting by the parties to a trust or any other legal vehicle, on the "controlling beneficiary" (e.g., whoever exercises effective control in the agreement). Such parties must obtain, keep and, as the case may be, provide the SAT, with the information on such "controlling beneficiary".

- **Sham of legal acts:** The tax authorities are expressly empowered to determine the simulation or sham of legal acts for tax purposes within an audit, even based on presumptive facts, in the case of transactions between related parties. It is important to mention that such power is already recognized in several criteria issued by the Mexican Supreme Court of Justice, even in the case of transactions between independent parties.

- **Presumptive determination of income for the hydrocarbons industry:** Assumptions applicable to the hydrocarbons sector that empower the tax authorities to determine presumptive profits, are included, as well as the mechanisms and percentages that must be applied in these cases, due to non-compliance of volumetric control obligations.

- **Conclusive Agreements:** In order to avoid the delay of the review procedures, it is established that the conclusive agreement procedure shall not exceed a term of 12 months from the date the taxpayer files the corresponding request.

- **Penalties for public accountants who fail to report tax omissions:** Certain assumptions are added under which public accountants will be sanctioned for omitting to inform the tax authority, in cases when derived from the preparation of the opinion of financial statements, they become aware of taxpayers' non-compliance of tax and customs provisions. Likewise, it is established that the omission of the report by the registered public accountant will not be considered as an infraction in the case of harmonized tariff system code for goods.

- **Concealment of tax crimes:** An assumption of concealment of tax crimes is added in the case of a public accountant who has prepared an opinion on financial statements, and who had knowledge of a fact that "probably" constitutes a crime without having informed it to the authorities. The foregoing is relevant because in the Initiative it was only considered that the public accountant would be liable when he omitted to report the commission of a crime, and not only the probable commission of a crime. Accordingly, the spectrum of application of the concealment of tax crimes is broadened and a possible unconstitutionality of the rule could exist. It is important to mention that the penalty in these cases ranges from 3 months to 6 years of imprisonment.

- **Smuggling crime:** A presumption of the commission of a smuggling crime is included for those who inaccurately declare the description or tariff classification of merchandise, if this leads to the omission of payment of taxes and countervailing duties. Although there is an exception in the event that the customs broker in charge has complied with all its obligations in foreign trade matters, such exception is not applicable to taxes omitted for the import of automotive fuels, and, therefore, taxpayers must pay special attention to the correct filling-in of the documentation for the customs clearance of these goods. Likewise, the transfer of merchandise without the invoice of entry or transfer that is included in the bill of lading complement is included as an offense.

- **Simulation of employment:** Derived from the Labor Reform, in order to inhibit the improper application of the benefits of the new “good faith” simplified regime for individuals, the simulation of independent professional services is included as a qualification of tax fraud crime or equivalent. Likewise, the deduction or crediting of tax incentives or benefits in relation to disbursements made in violation of the anti-corruption legislation is included as a qualification of the crime.

Should you require additional information do not hesitate to contact Oscar A. López Velarde (olopezvelarde@ritch.com.mx) or Santiago Llano (sllano@ritch.com.mx), partners of the Tax practice at Ritch Mueller.

Torre Virreyes, Av. Pedregal No. 24, 10th floor
Molino del Rey, 11040 Mexico City
+52 55 9178 7000
contacto@ritch.com.mx / www.ritch.com.mx