

# *Mexico: Presidential decree published providing tax benefits for maquiladoras*

January 17, 2014

## *In brief*

On December 26, 2013, an Industry Presidential Decree was published providing tax benefits for the maquiladora industry as follows:

- Maquiladoras may apply a new tax benefit that provides an additional deduction relating to tax-exempt employee benefits payments, thereby softening the effect of a new law otherwise limiting deductions for tax-exempt benefit payments.
- Taxpayers that complied with 216-Bis MITL<sup>1</sup> as of December 31, 2009, in effect until December 31, 2013, will have a 2-year period to fulfill the requirement of a 30% foreign ownership of the machinery and equipment (M&E) used in the maquila operation, meaning there will be a two-year grandfather clause for maquilas operating before 2010.
- Article 11 of the October 2003 Presidential Decree formally repeals the maquila industry reduced income tax rates in place from 2003 to 2013.
- “Productive Activity” for the maquila industry is defined in the Official Gazette.
- Tax Authorities must be informed of an APA election before June 30, 2014, according to the tax gazette.

## *In detail*

The Presidential Decree and Mexico’s Official Gazette grants new rules that in effect modify certain of the 2014 tax reform provisions to the maquiladora industry:

- The new tax benefit published is applicable to maquiladoras that determine

their taxable income under Articles 181 and 182 of the MITL (articles replacing the permanent establishment provisions for maquilas in former article 2, and replacing 216-Bis) as well as those that request an APA in the terms of the Article 34-A FTC<sup>2</sup>. The benefit consists of

an additional deduction for 47% of tax-exempt benefits paid to employees involved in the maquila operation. This benefit could be applied as long as the maquiladora maintains detailed accounting records that allow maquila operations to be

<sup>1</sup>. Mexican Income Tax Law.

<sup>2</sup>. Federal Tax Code.

distinguished from other activities—including tax-exempt maquiladora’s employee benefits—and informs the Tax Authority Service of such election.

- Taxpayers that had complied with Article 216-Bis MITL by December 31, 2009, in effect until December 31, 2013, will have a 2-year period from the date this decree comes into force, to fulfill the requirement to have at least 30% foreign ownership of the M&E used in the maquila operation. Foreign M&E may not have been owned by the maquiladora or a related party before.
- The tax rate reduction for maquiladoras derived from Article 11 of the October 2003 Presidential Decree is officially repealed.
- The official gazette clarifies that income relating to the manufacture and distribution of finished goods for resale cannot be considered as “solely from maquila

manufacturing activities,” but enforcement of this rule will be deferred until July 1, 2014. Therefore, until such date, maquiladoras may consider that their total income (including income relating to the manufacture and distribution of finished goods for resale) qualifies as income derived solely from the maquila, identifying each type of activity and related income in its books. Entities in this situation need to discontinue or spin off the non maquila activities by July 1, 2014.

- Additionally in the gazette, I.3.19.2 clarifies that maquiladoras that choose the APA option included in Article 182 of the MITL will be considered as compliant with Articles 179 and 180 of such law. As such, its foreign related party will not be deemed to have a permanent establishment for the maquila operation, as long as it meets the requirements established in such articles, and in

the APA request, determines its results according a transfer pricing methodology that considers in the computation the total assets for the performance of the maquila operation, including those owned by the foreign resident.

Companies that choose to request an APA for FY2014, should submit notice in writing before the corresponding Tax Authorities, no later than June 30, 2014, indicating their intention to request an APA pursuant to the terms of the Article 34-A of the FTC.

### ***The takeaway***

Based on the above, we recommend that taxpayers consider this information to make decisions about the best transfer pricing option.

We suggest reviewing your tax strategies for those maquiladoras that do not comply with the 30% of the M&E ownership, as well as those that have distribution activities.

### ***Let’s talk***

For a deeper discussion of how this issue might affect your business, please contact:

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