

## *Decree granting administrative incentives in Income Tax matters relative to deposits or investments received in Mexico (Repatriation of Capital).*

On May 15<sup>th</sup>, 2017 the “First Resolution of Changes to the Omnibus Tax Bill for 2017” (“General Rules”) was published in the Official Federal Gazette. It includes the general provisions necessary for the lawful and correct application of the “Decree granting administrative incentives in Income Tax matters relative to deposits or investments received in Mexico” (“Decree”) published on January 18<sup>th</sup> of this year<sup>1</sup>.

This Decree establishes a scheme of incentives in order to incentivize the return of resources held abroad, so that such capital may be invested in productive activities that contribute to the economic growth of the country.

The Decree incorporates an incentive for individuals and entities that are residents in Mexico or residents abroad with a permanent establishment in Mexico, that have obtained income from direct or indirect investments they have maintained abroad until December 31<sup>st</sup>, 2016. This Income Tax (“ISR” for its acronym in Spanish) incentive consists of applying the rate of 8%, without any deduction, on the total amount of resources that are returned. The tax determined will be paid within fifteen calendar days from the date of return<sup>2</sup>.

In terms of the above paragraph, it is considered that a taxpayer has an indirect investment when it makes such investment through foreign legal entities or figures in which it participates directly or indirectly, as well as those investments made in fiscally transparent foreign legal entities or figures<sup>3</sup>.

For purposes of the Decree, the resources to which the contemplated benefits will be applicable will be income taxed under the ISR Law (in terms of the titles applicable to entities and individuals and income subject to preferential tax regimes). Those concepts that have been deducted previously by residents in Mexico or residents abroad with a permanent establishment in Mexico are expressly excluded.

It is considered that entities with residence in Mexico and those with residence abroad with a permanent establishment in Mexico invest the returned resources<sup>4</sup> in Mexico when they: (i) acquire deductible fixed assets, (ii) acquire lands and constructions used to carry out their activities in Mexico, (iii) invest in technology research and development for the execution of their own projects, (iv) pay liabilities incurred with independent parties (prior to January 1<sup>st</sup>, 2017), (v) are used for the payment of taxes or government charges, (vi) and for the payment of salaries and wages derived from providing a personal subordinated service in Mexican territory and (vii) when investments are made through credit institutions or in brokerage houses incorporated in accordance with Mexican laws<sup>5</sup>.

<sup>1</sup> The Decree entered into force on the day after its publication and will be in force for the following six months.

<sup>2</sup> The resources will be understood as returned to Mexico on the date on which they are deposited in a credit institution or brokerage house in Mexico.

<sup>3</sup> It is considered that the foreign legal entities or figures are tax transparent when they are not considered taxpayers of the income tax in the country in which they are incorporated or they have their effective principal administration or headquarters and their income is attributed to their members, partners, shareholders or beneficiaries (article 176 of the Income Tax Law).

<sup>4</sup> It is contemplated that the entities referred to by the Decree also invest the resources returned to Mexico when the investment is made in shares issued by entities residing in Mexico.

<sup>5</sup> Through the General Rules it is clarified that the investments made in Mexico through institutions of the Mexican financial system may be made in financial instruments issued by Mexican entities denominated in Mexican or foreign currency.

The entities that choose to apply the benefits established must calculate the tax profit corresponding to the total amount of the returned resources, from which the ISR paid, will be subtracted. The result obtained may be added to the balance of the net tax profit account contemplated in the ISR Law and must be considered for determining the taxable income, which will serve as the basis for the determination of the participation of the workers in the profits of the companies.

It is important to indicate that the resources referred to must remain invested in Mexico for at least 2 years but may be changed to an investment different from the one originally chosen<sup>6</sup>.

In the case of individuals, it is considered that they invest these resources when they: (i) invest in financial instruments issued by residents in the country or in shares issued by entities residing in Mexico<sup>7</sup>, (ii) acquire deductible fixed assets, land and constructions used for carrying out their activities in the country, (iii) and when they are invested in technology research and development.

Additionally, the Decree establishes that taxpayers may credit against the ISR that must be paid for the returned resources, the tax that has been paid abroad for the same resources. The creditable amount of the tax paid abroad cannot exceed the amount that results from applying the rate of 8% to the total amount of the returned resources.

In general, it is contemplated that the tax paid will be understood as covered by the fiscal year in which the payment is made and for the fiscal years prior thereto. Additionally, the benefits that are granted will not be considered accruable income for purposes of the ISR nor will give rise to any return or compensation.

It is important to indicate that the taxpayers for which a desk review, inspection, domiciliary visit, tax report review or electronic review in relation to the referenced taxed income has been initiated, may apply the provisions of the Decree provided they correct their tax situation through the payment of the ISR<sup>8</sup>. Those who have filed a defense or any other administrative or judicial procedure relative to the tax regime on the indicated income may not apply the benefits of the Decree unless they withdraw from them<sup>9</sup>.

According to the General Rules issued, in order for the taxpayers that have acquired shares or other capital or debt instruments issued by residents abroad to choose the benefit of the Decree, they must sell them or invest the amount that results from such sale in Mexico. This will also be applicable in the case of reimbursements for reduction of capital of entities residing abroad.

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<sup>6</sup> According to the General Rules issued, when taxpayers change to an investment different from the original one they must present a notice within thirty days following the date on which such change is made.

<sup>7</sup> It is considered that the individuals referred to in the Decree invest in Mexico the resources returned when they acquire shares issued by investment funds or certificates of rights over the assets of trusts, formed solely by shares, of national issuers.

<sup>8</sup> In any stage within the exercise of review powers and even after the ruling of unpaid taxes or a definitive ruling is notified as long as the deadlines for filing the defense measures against them have not expired.

<sup>9</sup> Includes the obligation to send the information corresponding to the withdrawal from any means of defense or from any other administrative or judicial procedure that has been filed against the referenced taxed income.



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Finally, also in the General Rules it is established that the payment of the tax generated must be made no later than August 3<sup>rd</sup>, 2017, including any adjustment for inflation and surcharges that may have been generated<sup>10</sup>. When the adjusted tax and its surcharges have not been paid in full it cannot be chosen to pay the tax in terms of the Decree and the tax authorities will require the payment of all the unpaid taxes<sup>11</sup>.

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Sincerely,

***Von Wobeser & Sierra, S.C.***

Mexico City, May 19<sup>th</sup>, 2017.

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<sup>10</sup>It is also contemplated that the taxpayers that choose to pay the tax according to the Decree must present no later than December 31<sup>st</sup>, 2017 the "Notice of use of income returned to Mexico" indicating the total amount returned and the investments they have made in the fiscal year.

<sup>11</sup>The resources for which it can be evidenced that the tax was not owed on them, that they were exempt from payment or that it was actually paid, may be excluded from the basis of the tax.