21 February 2020

Global Tax Alert

News from EY Americas Tax

Guatemala allows airlines engaged in international transport services to deduct costs and expenses generated outside of Guatemala

On 10 February 2020, the Guatemalan Government published in the *Official Gazette* Decree 2-2020, which was approved by Guatemala's Congress on 20 January 2020. The decree allows airlines engaged in international transport services to deduct costs and expenses generated outside of the Guatemalan territory that are necessary to provide transport services in Guatemala. The decree generally applies from 11 February 2020, but the income tax provisions will apply beginning 1 January 2021.

Specifically, the decree incorporates Section 21 bis into the Income Tax Law (ITL), which requires foreign taxpayers to apply the ITL's general deduction rules if they: (i) carry out international air transportation activities to and from Guatemala; and (ii) have operations performed by branches, agencies or other permanent establishments in Guatemala. In addition, they may deduct a proportion of the overall costs and expenses reported by their parent company in accordance with the following formula:

Proportionate expenses = ((Income of the branch or Permanent Establishment / Global income of the parent entity) * (Global expenses – expenses registered locally)) – Expenses registered locally

The formula will be automatically calculated by the tax authorities' electronic system when preparing the electronic tax return for income tax purposes.

The decree provides that the proportional expenses determined by the formula should not be considered as income as it is a repayment on a pro-rata basis of the expenses incurred by the parent company, to the extent the expenses are necessary, indispensable or pertinent to produce taxable income for the permanent establishment in Guatemala.

Additionally, the decree incorporates Section 21 ter into the Income Tax Law, which requires airlines to support the information for the proportional deductible expense calculation with the parent company's audited financial statements, which must be: (i) created in accordance with international accounting rules; (ii) duly apostilled; and (iii) translated to Spanish. If a taxpayer (e.g., branch, agency, permanent establishment) is unable to provide the audited financial statements, the decree allows the taxpayer to apply the presumption that the taxable base is 15% of its gross income and is subject to a 25% income tax rate. This provision is effective 1 January 2021.

For additional information with respect to this Alert, please contact the following:

Ernst & Young, S.A., Guatemala

- Rafael Sayagués rafael.sayagues@ey.com
- Manuel Ramírez manuel.ramirez@cr.ey.com
- Ana Alfaro ana.alfaro@gt.ey.com
- Cilia Castellanos cilia.castellanos@gt.ey.com
- Gerber Morales gerber.morales@gt.ey.com

Ernst & Young LLP (United States), Latin American Business Center, New York

- Ana Mingramm ana.mingramm@ey.com
- Enrique Perez Grovas enrique.perezgrovas@ey.com
- Pablo Wejcman pablo.wejcman@ey.com

Ernst & Young LLP (United Kingdom), Latin American Business Center, London

- Lourdes Libreros lourdes.libreros@uk.ey.com

Ernst & Young Tax Co., Latin American Business Center, Japan & Asia Pacific

- Raul Moreno, *Tokyo* raul.moreno@jp.ey.com
- Luis Coronado, *Singapore* luis.coronado@sg.ey.com