

Mexico releases draft Miscellaneous Tax Regulations on tax incentives for northern border zone

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The Mexican Tax Administration (SAT for its Spanish acronym) released, on its website, the draft of the Sixth Resolution of Amendments to the 2018 Miscellaneous Tax Regulations (MTRs) on 7 January 2019. The MTRs provide rules for the application of the tax incentives for taxpayers in the northern border zone, recently granted by a special decree issued by Mexico's president. The MTRs are not effective until they are published in the *Official Gazette*.

The amendments to the MTRs include a rule that allows taxpayers to use overpayments generated before 31 December 2018, to offset tax liabilities for different taxes owed by the taxpayer (not applicable against withholding taxes). The rule does not apply to overpayments generated starting on 1 January 2019. Therefore, taxpayers may only credit them against tax liabilities for the same tax or taxpayers may request a refund.

Most of the rules included in the MTRs clarify the application and use of tax incentives for income tax and value added tax (VAT) for businesses operating in the northern border zone of Mexico for 2019 and 2020, granted by President López Obrador through a special decree published on 31 December 2018. For additional information on this Decree, see EY Global Tax Alert, [Mexico issues special tax incentives for businesses in border zone](#), dated 9 January 2019. Although there are still a lot of questions surrounding the application and eligibility for the benefits provided by the decree, the MTRs provide some guidance on enrollment and documentation requirements.

Rules for the application of tax incentives for the northern border zone

General considerations

Supporting documentation to prove at least 18 months of residence or operations in the northern border region

Taxpayers need to prove that they have maintained their tax address or had branches or establishments in the northern border region for at least 18 months before the date of enrollment in the Registry for Beneficiaries of the Incentives for the Northern Border (the Registry). The MTRs include a list of documents needed to verify this requirement. The list includes bank statements, payment receipts for services and payment receipts for property tax.

Supporting documentation for taxpayers with new operations in the northern border region

In the case of new operations or investments, taxpayers may request enrollment in the Registry, if they demonstrate that they are economically qualified, possess assets and have the infrastructure needed to carry out their activities. The MTRs contain a list of documents needed to comply with this requirement, including balance sheets, accounting records, a property title, and documentation showing a taxpayer's financing source and the terms.

Supporting documentation to prove the goods acquired are new (or used)

For purposes of the decree, the MTRs allow a taxpayer to prove that acquired goods are new by providing the electronic invoice (CFDI, for its acronym in Spanish) supporting the purchase. The electronic invoice cannot be more than two years old when filing the notice to enroll for the VAT incentive. A taxpayer may also use a bank statement showing the corresponding payment and the accounting journal entry related to the purchase as supporting documentation.

A taxpayer may prove the acquisition of used assets with an invoice or an electronic invoice. In addition, taxpayers or their legal representative must state under oath the tax IDs of the taxpayer's related parties and state that the goods have not been sold more than once.

Income tax incentive

Supporting documentation to prove the income obtained in the northern border region

Under the decree, individuals who perform business activities, foreign taxpayers with permanent establishments in Mexico and legal entities resident in Mexico for tax purposes that obtain revenue from activities carried out exclusively in the northern border region¹ may apply a tax credit equivalent to one-third of the annual income tax due on the income generated in that region. The credit also applies to estimated tax payments.

The MTRs require taxpayers to provide an affidavit stating that at least 90% of their total income will be derived from the northern border region. Additionally, taxpayers must show revenues derived from the northern border region for their estimated tax payments and on their annual tax return.

The MTRs also clarify, for purposes of the tax incentive, that a taxpayer is considered to meet the requirement of having 90% of its income exclusively from the northern border region when the income is derived from the performance of business activities in the northern border region. Income derived from the northern border region does not include income from intangible assets or income from digital commerce.

Enrollment in the Registry

Tax residents in Mexico and nonresidents with a permanent establishment in Mexico that want to apply the tax incentive for income tax purposes must request enrollment in the Registry by submitting the "Notice to enroll in the list of beneficiaries of the northern border incentives" through the SAT's webpage no later than 31 March 2019. The MTRs include the format and information required for enrollment.

Taxpayers or their legal representatives also must state under oath that they have satisfied all of the requirements for receiving the income tax incentive. Taxpayers must enroll in the Registry on an annual basis.

Loss of the right to apply the income tax incentives

As per the draft, a taxpayer will also lose its right to apply the income tax incentives granted by the Decree when the taxpayer has tax due, but fails to apply the incentive to its monthly estimated tax payment or include it on the annual tax return. In this case, the taxpayer will lose the right to apply the incentive for an entire year.

Value Added Tax

Notice for enrolling in the Registry for VAT purposes

Tax residents in Mexico and nonresidents with a permanent establishment in Mexico that want to apply the tax incentive for VAT purposes must file the “Notice to apply the VAT incentive on the northern border” through the SAT website within 30 calendar days following the effective date of the Decree.

Through a transitory provision of the MTRs, taxpayers must submit the notice no later than 7 February 2019.

Issuance of invoices applying the VAT incentive

The MTRs also include specific requirements for the issuance of invoices by taxpayers who have the right to apply the credit granted by the VAT incentive for the operations carried out in the northern border region. Additionally, the MTRs provide some flexibility for complying with the electronic invoicing requirements for transactions carried out from 1 January 2019 to 30 April 2019. However, taxpayers must comply with the electronic invoicing requirement by no later than 1 May 2019.

Additional guidance is expected to be provided by the Mexican Tax Authorities with respect to this Decree.

Endnote

1. The “northern border region” is comprised of the following states and municipalities Baja California: Municipality of Ensenada, Playas de Rosarito, Tecate and Mexicali; Chihuahua: Municipality of Janos, Ascensión, Juárez, Praxedis G. Guerrero, Guadalupe, Coyame del Sotol, Ojinaga and Manuel Benavides; Coahuila: Municipality of Ocampo, Acuña, Zaragoza, Jiménez, Piedras Negras, Nava, Guerrero and Hidalgo; Nuevo León: Municipality of Anáhuac; Sonora: Municipality of San Luis Río Colorado, Puerto Peñasco, General Plutarco Elías Calles, Caborca, Altar, Sáric, Nogales, Santa Cruz, Cananea, Naco and Agua Prieta; Tamaulipas: Municipality of Nuevo Laredo, Guerrero, Mier, Miguel Alemán, Camargo, Gustavo Díaz Ordaz, Reynosa, Río Bravo, Valle Hermoso and Matamoros.

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