International
Comparative
Legal Guides

Practical cross-border insights into corporate tax law

Corporate Tax 2023

19th Edition

Contributing Editor:
William Watson
Slaughter and May

ICLG.com

Q&A Chapters

Mexico


Eduardo Michán Escobar


Alejandra Paniagua Robles


Eduardo Espinosa Reséndiz


Sebastián Ayza Concha

Galicia Abogados, S.C.

1 Tax Treaties and Residence

1.1 How many income tax treaties are currently in force in your jurisdiction?

There are 62 income tax treaties currently in force in Mexico.

1.2 Do they generally follow the OECD Model Convention or another model?

Yes. Nevertheless, Mexico has relevant reservations with respect to the OECD Model Convention in subjects such as treaty entitlement for partnerships or other tax-transparent entities or arrangements, scenarios under which a permanent establishment in Mexico is deemed to exist, the characterisation and right to tax certain items of income (such as business profits, dividends, interest or royalties), as well as the characterisation of certain rights relating to real estate as immovable property, among others. Likewise, it is worth noting that the tax treaty with the US might differ in certain aspects from the OECD Model Convention (and its interpretation under the commentaries thereto).

1.3 Has your jurisdiction signed the tax treaty MLI and deposited its instrument of ratification with the OECD?

Mexico executed the MLI on 7 June 2017; however, the treaty was not ratified by the Senate until 12 October 2022, and its deposit with the OECD was also expected to occur during October 2022. Therefore, it is expected to enter into force in February 2023 and be enacted as of January 2024 with respect to Mexican withholding taxes.

1.4 Do they generally incorporate anti-abuse rules?

Most of the treaties entered into by Mexico contain specific anti-abuse rules enabling Mexico to apply domestic provisions with respect to controlled foreign corporations, thin capitalisation, back-to-back financing transactions and arm's-length standards. Furthermore, a number of treaties, such as those entered into with Panama, Singapore, the UK and the US, contain limitation on benefits provisions (e.g., ownership and base erosion or derivative benefits tests, anti-treaty shopping or economic substance requirements). The tax treaties entered into by Mexico with Argentina, the Philippines and Spain contain a broad principal purpose test. We note that Mexico's MLI position is to accept the inclusion of a principal purpose test and a simplified limitation on benefits clause to tax treaties that currently do not contain these provisions.

1.5 Are treaties overridden by any rules of domestic law (whether existing when the treaty takes effect or introduced subsequently)?

As a general rule, treaty override is only enforceable when it is specifically set forth under the relevant tax treaty; for instance, specific references to domestic law under the treaty for purposes of characterising certain items of income, or applying anti-abuse rules such as those described in question 1.4 above. That being said, there is certain controversy as to whether Article 175 of the Mexican Income Tax Law (which provides the definitions for certain Mexican-sourced items of income) and its interpretation by Mexican taxing authorities has in practice allowed treaty override. We note that case law in Mexico provides that treaties shall prevail over domestic law.

1.6 What is the test in domestic law for determining the residence of a company? Has the application of the test been modified in response to COVID-19?

Under domestic law, a legal entity qualifies as a Mexican resident whenever it establishes the principal place of business or the effective management in Mexico.

We note that domestic provisions governing tax residence have not been amended in response to COVID-19.

1.7 Is your jurisdiction's tax authority expected to revisit the status of dual resident companies in cases where the MLI changes the treaty "tiebreaker"?

The current tiebreaker rules under Mexico's tax treaties will not be affected by the entry into force of the MLI given Mexico's multiple reservations to Article 4. Mexico's position is that its covered tax treaties already contain provisions dealing with dual residency of companies; most of which require the States to endeavour to reach a mutual agreement as to an entity's tax residence prior to denying tax treaty benefits.

2 Transaction Taxes

2.1 Are there any documentary taxes in your jurisdiction?

There are currently no documentary taxes or stamp duties under Mexican federal tax law. However, certain Mexican States have adopted documentary taxes levied on legal acts performed in their territory.

2.2 Do you have Value-Added Tax (VAT), or a similar tax? If so, at what rate or rates? Please note any rate reduction in response to COVID-19.

Yes. As a general rule, VAT is levied on the following activities when conducted within Mexican territory: (i) the transfer of goods; (ii) the provision of independent services; (iii) the granting of the use or enjoyment of goods (tangible, movable and immovable property); and (iv) the importation of goods or services into Mexico. The current VAT rate is 16%, although we note that a 0% tax rate may apply to specific activities (e.g., sale of medicines). In addition, transactions that qualify as exportations of goods or services are subject to VAT at a 0% rate.

We note that a tax incentive providing a reduced VAT rate of 8%, in respect of taxpayers that are domiciled and conduct their business in the northern and southern borders of Mexico, is currently in effect to the extent that certain requirements are satisfied.

No relief or rate reduction was introduced as a consequence of COVID-19.

2.3 Is VAT (or any similar tax) charged on all transactions or are there any relevant exclusions?

All transactions that fall within the activities described above are subject to VAT, except for certain activities or transactions that are expressly listed as exempt from VAT under the Mexican Value Added Tax Law. The following are some of the most relevant: the transfer of land; shares or equity interests; constructions that are exclusively destined for housing purposes; interest paid to or received by certain Mexican financial institutions; and interest paid in respect of transactions that are VAT-exempt or subject to a 0% VAT rate or interest paid on certain financial transactions, or certain temporary importations.

2.4 Is it always fully recoverable by all businesses? If not, what are the relevant restrictions?

Generally speaking, VAT is recoverable by way of credit or refund. However, certain limitations may apply. For instance, VAT charged on transactions that are characterised as non-deductible for income tax purposes is not subject to credit. Likewise, VAT leakage may arise as a result of the calculations applicable under the Mexican Value Added Tax Law for purposes of determining the VAT credit factor in respect of input and output VAT.

Furthermore, we note that taxpayers that perform exempt activities, such as pension fund managers, financial institutions or taxpayers in the construction industry, might not be able to fully recover VAT.

2.5 Does your jurisdiction permit VAT grouping? If so, how does this apply where a company in one jurisdiction has an establishment in another?

VAT grouping is not allowed under Mexican tax law.

2.6 Are there any other noteworthy transaction taxes or indirect taxes that are payable by companies?

On the federal level, excise taxes may be levied on the sale or importation of certain goods, such as alcoholic beverages, tobacco, or fuel, as well as on the provision of services relating to such goods, or other services such as telecommunications. The tax base and rate of such excise taxes vary depending on the nature of the transaction.

In the context of import transactions, import taxes and custom duties or levies may also be applicable. The corresponding tax treatment also varies depending on the goods subject matter of the transaction.

2.7 Are there any other indirect taxes of which we should be aware?

Local real estate transfer taxes and local sales taxes may be applicable depending on the Mexican State in which a relevant transaction occurs.

3 Cross-border Payments

3.1 Is any withholding tax imposed on dividends paid by a locally resident company to a non-resident?

Dividends paid by a Mexican entity to a foreign resident are subject to withholding tax at a 10% rate on the gross amount of the payment pursuant to the Mexican Income Tax Law.

Relief in the form of reduced withholding tax rates or exemptions may be achieved under tax treaties entered into by Mexico.

3.2 Would there be any withholding tax on royalties paid by a local company to a non-resident?

Under domestic law, the withholding tax rates applicable to Mexican-sourced royalties varies depending on the asset in respect of which the payment is made, as described below:

i) 5% in connection with rail wagons, containers, trailers and semi-trailers that are temporarily imported into Mexico for a period under one month in accordance with customs law, as well as vessels with federal permits or concessions granted in order for the lessee to provide transportation services;
ii) 25% in respect of royalties, other than the items described in i) above;
iii) 1% in respect of aircrafts with federal permits or concessions in order for the lessee to provide transportation services; and
iv) 35% regarding patents, trademarks, commercial names and invention certificates.

In general terms, tax treaties provide a reduced 10% withholding tax rate on royalty payments.

It is worth noting that both under domestic law and the relevant tax treaties to which Mexico is a party, lease payments in connection with industrial, commercial and scientific equipment qualify as royalties, subject to a 25% withholding tax rate under domestic law and 10% in terms of the relevant tax treaties.

3.3 Would there be any withholding tax on interest paid by a local company to a non-resident?

Mexican-sourced interest income is generally subject to withholding tax at a rate ranging from 4.9% up to 40%, depending on several factors, such as the legal and tax status of the parties involved, terms and conditions of the relevant loan, such as use of proceeds, guarantees and maturity, among other factors. Under specific circumstances, an exemption on withholding taxes may be applicable (e.g., interest paid on securities issued by the Mexican government, loans with a maturity of three or more years granted or guaranteed by foreign export credit agencies, among others).

Under domestic law, a reduced rate of 4.9% may be achieved in the context of capital market transactions, as well as in financing transactions in which the lending party complies with specific regulations in order for it to be recognised as a foreign bank or financial institution.

Withholding tax rates on interest income under income tax treaties subscribed by Mexico tend to range from 4.9% up to 15%. However, tax treaties may also provide exemptions under specific circumstances (e.g., interest paid on financing granted to the Mexican government or a political subdivision thereof, or interest paid to qualified foreign pension funds).

3.4 Would relief for interest so paid be restricted by reference to "thin capitalisation" rules?

Yes. As previously noted, most tax treaties subscribed by Mexico allow for anti-abuse rules under domestic law, including thin capitalisation rules, to be applied. In this respect, Mexican entities are required to keep a debt-to-net equity ratio of 3:1. Interest exceeding this threshold that is paid on debt contracted with non-Mexican related parties would not be deductible. As described in question 3.5 below, we note that certain exceptions may apply.

3.5 If so, is there a "safe harbour" by reference to which tax relief is assured?

Certain exceptions to thin capitalisation rules may apply. For instance, debt contracted by entities that are treated as part of the Mexican financial system, as well as debt contracted for the construction, operation or maintenance of productive infrastructure in strategic economic sectors or the generation of power, would not be computed for thin capitalisation purposes.

Furthermore, under specific circumstances, taxpayers may file an authorisation with the taxing authority requesting to increase their debt capacity ratio under thin capitalisation rules.

3.6 Would any such rules extend to debt advanced by a third party but guaranteed by a parent company?

Not directly. However, all debt (domestic and cross-border and contracted with related and unrelated parties) is computed for purposes of determining whether a given entity is in compliance with the 3:1 debt-to-net equity ratio. In such a scenario, however, special attention should be given to back-to-back loan provisions.

3.7 Are there any other restrictions on tax relief for interest payments by a local company to a non-resident?

As noted, tax treaties concluded by Mexico often refer to domestic anti-abuse rules. In this regard, in addition to thin capitalisation rules, the following are some of the most relevant limitations:

i) re-characterisation of interest as dividend income (e.g., back-to-back loans or interest paid in excess of fair market value);

ii) non-deductibility of payments made to related parties that are subject to a preferential tax regime (as defined under Mexican tax law), even by means of conduit arrangements; and

iii) earnings-stripping rules pursuant to which net interest expenses of a given fiscal year exceeding 30% of the relevant taxpayer's adjusted tax base cannot be deducted (certain exceptions apply).

3.8 Is there any withholding tax on property rental payments made to non-residents?

Yes, under domestic law, a withholding tax rate of 25% would be applicable on the gross revenue. It is worth noting that lease payments in connection with industrial, commercial and scientific equipment are treated for Mexican tax purposes (both under domestic law and income tax treaties) as royalties. Therefore, the applicable withholding tax rate in such cases may be 25% under domestic law or 10% in accordance with income tax treaties. Likewise, we note that US tax residents may be subject to Mexican taxation at a 30% rate on the net basis (considering deductions) under the Mexico-US tax treaty.

3.9 Does your jurisdiction have transfer pricing rules?

Yes, transfer-pricing rules under Mexican law are generally compliant with OECD standards and guidelines. However, Mexico's domestic law establishes a statutory order to follow when evaluating the applicability of the methodologies, which starts with the comparable uncontrolled price (CUP) methodology.

Mexican resident companies are obligated to annually prepare a transfer pricing report for all related party transactions, and to file informative returns on such transactions. Consistent with BEPS Action 13, companies with income in excess of the designated threshold must prepare a local, master file and country-by-country report according to domestic rules, which tend to exceed the extent of information required in the model reports under the OECD guidelines.

3.10 Can companies in your jurisdiction obtain unilateral, bilateral or multilateral advance pricing agreements?

Yes, unilateral, bilateral and multilateral advance pricing agreements may be coordinated with respect to jurisdictions with which Mexico has a comprehensive exchange of information agreement. However, certain exceptions may apply (e.g., *maquilas* may no longer obtain an advance pricing agreement and must apply the existing safe harbour rules to comply with transfer pricing requirements).

4 Tax on Business Operations: General

4.1 What is the headline rate of tax on corporate profits?

The current corporate income tax rate is 30%.

4.2 Is the tax base accounting profit subject to adjustments, or something else?

No. Corporate income tax is levied on the relevant fiscal year's tax profit. Such tax result is equal to the taxable profit reduced by tax losses. In turn, the taxable profit is calculated by subtracting authorised deductions (for tax and not accounting purposes) and mandatory employee profit sharing from the relevant entity's taxable income (again, for tax and not accounting purposes).

4.3 If the tax base is accounting profit subject to adjustments, what are the main adjustments?

This is not applicable in Mexico.

4.4 Are there any tax grouping rules? Do these allow for relief in your jurisdiction for losses of overseas subsidiaries?

The Mexican Income Tax Law provides a specific tax grouping regime; however, it is only applicable with respect to Mexican corporations in which the Mexican holding entity holds, directly or indirectly, an interest of at least 80% of their voting stock. Therefore, these rules do not allow for relief of losses of overseas subsidiaries.

4.5 Do tax losses survive a change of ownership?

As a general rule, tax losses *per se* cannot be transferred (not even by way of a merger). However, they do survive a change of ownership in the legal entity that generated the corresponding tax losses. In addition, when the controlling shareholders of a company with tax losses change, the use of such losses is subject to the compliance of certain requirements.

We note, however, that the Mexican tax administration has the authority to scrutinise transactions whose main purpose is presumed to be the transfer of tax losses.

4.6 Is tax imposed at a different rate upon distributed, as opposed to retained, profits?

Mexican entities are required to keep an after-tax profit account (known as *Cuenta de Utilidad Fiscal Neta*, or CUFIN). Generally speaking, the balance of the CUFIN account consists of distributable income that has already been subject to corporate taxation. The balance of the CUFIN account is increased by dividends received from other Mexican entities and net profit generated each fiscal year, and decreased by dividends paid by the relevant Mexican entity or profits distributed as a consequence of a capital redemption.

Dividends or profits paid out of the CUFIN balance do not trigger corporate income tax at the level of the paying entity (regardless of the withholding tax that may be applicable at the level of the recipient).

However, if dividends are not paid out of an entity's CUFIN balance, corporate income tax is due by multiplying the amount of the dividends being paid by a factor of 1.4286, and applying the corporate tax rate of 30% to the product. Subject to certain limitations, the resulting corporate income tax would be creditable for the paying entity against its own income tax liability in the relevant tax year or during the two following fiscal years.

4.7 Are companies subject to any significant taxes not covered elsewhere in this chapter – e.g. tax on the occupation of property?

Even though it is not a tax *per se*, companies are generally liable to distribute 10% of their annual taxable profits (without offsetting losses) to all their employees, except to upper management and directors. As of 2021, this profit distribution is capped per employee to the highest between: (i) three months of salary; or (ii) the average profit sharing received by the relevant employee in the past three fiscal years.

5 Capital Gains

5.1 Is there a special set of rules for taxing capital gains and losses?

There is no special set of rules for taxing capital gains with respect to Mexican tax-resident entities, as the capital gains generated by a Mexican tax-resident entity shall be subject to general corporate income tax. However, a special set of rules applies to capital losses (associated with the transfer of shares, securities and certain equity derivatives), pursuant to which such losses could only be offset against the capital gains generated on the transfer of shares, securities or certain equity derivatives in such fiscal year or the following 10 fiscal years. To be entitled to offset these losses, Mexican tax-resident entities are required to file certain tax notices, and, in certain cases, they shall request for an authorisation from the tax authorities.

With respect to non-Mexican residents that derive capital gains from the sale of equity through a stock exchange, a reduced rate of 10% or even an exemption may be applicable under domestic law, subject to certain limitations.

5.2 Is there a participation exemption for capital gains?

No, there is no participation exemption for capital gains in Mexico.

5.3 Is there any special relief for reinvestment?

Yes. The tax effects of reinvested profits are deferred until the next capital reimbursement or the liquidation of the Mexican company occurs, provided the reinvestment in the Mexican company takes place within the next 30 calendar days following the distribution of profits.

5.4 Does your jurisdiction impose withholding tax on the proceeds of selling a direct or indirect interest in local assets/shares?

Yes. There is Mexican source of income when a non-Mexican tax resident transfers (i) real estate located in Mexico, (ii) shares or securities issued by a Mexican tax resident, or (iii) shares or securities whose 50% or more of their book value derives from real estate located in Mexico.

Income tax should be triggered at a 25% rate over the gross proceeds received. However, it may be triggered at a 35% rate over the net gain, if certain requirements are met (e.g., for the transfer of real estate, a Mexican legal representative is appointed and/or the transfer is executed through a public deed; and for the transfer of shares or securities, a Mexican legal representative is appointed, the income is not subject to a preferential tax regime, nor is it subject to a territorial taxation system). The applicable tax treaties may provide a tax exemption or a reduction thereto.

We note that as of 2022, additional stringent requirements must be met in connection with the appointment of a Mexican legal representative (e.g., solvency capacity, granting of powers of attorney for ownership purposes by the non-Mexican tax resident, among others).

6 Local Branch or Subsidiary?

6.1 What taxes (e.g. capital duty) would be imposed upon the formation of a subsidiary?

There are no taxes due for the incorporation of a Mexican subsidiary. However, the following fees should be considered: (i) notary public fees, generally ranging between US$650 and US$750; and (ii) fees to register the incorporation deed in the public registry of approximately US$150.

6.2 Is there a difference between the taxation of a local subsidiary and a local branch of a non-resident company (for example, a branch profits tax)?

In general terms, the tax regime applicable to a local subsidiary or a local branch is essentially the same. However, the following differences exist: (i) deductibility for income tax purposes of foreign prorate expenses; (ii) remittance rules (please see a further explanation below); and (iii) attribution of income rules.

6.3 How would the taxable profits of a local branch be determined in its jurisdiction?

Mexico taxes the attributable income of a local branch that carries out business activities or renders services in Mexico at an income tax rate of 30% over the net taxable profit or VAT of 16% over the consideration charge for the activities carried out or the goods transferred. The net taxable profit should be equal to the attributable income *less* the applicable deductions. The attributable income should depend on a transfer pricing analysis of the corresponding functions, risks and assets of the local branch.

For income tax purposes, the local branch should also keep a CUFIN account and a tax account that computes the remittances sent by its home office (CURECA, as per its acronym in Spanish). Any remittance of profit sent by the local branch to its home office or other non-Mexican branches that does not derive from the CUFIN or CURECA should be grossed-up at a factor of 1.4286 and the output should be subject to income tax of 30%. In addition, we note that any remittance of profits sent by the local branch should be subject to an additional tax of 10% on the gross amount of the remittance.

6.4 Would a branch benefit from double tax relief in its jurisdiction?

Yes. A local branch may credit against Mexican income tax, exclusively, the taxes withheld from a foreign source and under the applicable rules for Mexican tax residents.

In addition, we note that, in general terms, a local branch would only benefit from the applicable tax treaty in connection with the non-discrimination provision, as a local branch does not qualify as a "person" or "resident" for purposes of the tax treaties. As an exception, the Mexico-US tax treaty sets forth a branch profits tax provision whereby the remittances sent by the local branch to its home office may be exempt or subject to a reduced tax rate of 5%, if certain requirements are met.

6.5 Would any withholding tax or other similar tax be imposed as the result of a remittance of profits by the branch?

Yes. Any remittance of profit sent by the local branch should be subject to an additional tax of 10% over the gross amount of the remittance. As noted above, the applicable tax treaty may provide a tax exemption or reduction thereto.

7 Overseas Profits

7.1 Does your jurisdiction tax profits earned in overseas branches?

Yes. Mexico follows a worldwide taxation system, which means that Mexican tax residents are taxed on their worldwide income, irrespective of whether such income is derived from Mexico or not.

7.2 Is tax imposed on the receipt of dividends by a local company from a non-resident company?

Yes. Dividends received by a Mexican tax-resident entity should be included as taxable income, which would ultimately be subject to general corporate income tax at a 30% rate on the entity's taxable profit. We note that a Mexican tax-resident entity may apply an indirect or direct credit of the taxes paid abroad, provided that certain requirements are met.

7.3 Does your jurisdiction have "controlled foreign company" rules and, if so, when do these apply?

Yes. Mexico has controlled foreign company rules that are applicable when Mexican tax residents or non-Mexican tax residents with a Mexican permanent establishment receive income through a foreign entity in low-taxation jurisdictions (i.e., the corporate income tax rate is lower than 22.5%). In such case, generally, a Mexican tax resident or non-Mexican tax resident with a Mexican permanent establishment should recognise as taxable income the income received by the foreign entity, in the fiscal year in which such foreign entity receives it. Notwithstanding, certain exceptions may apply, such as the absence of control or if the foreign entity carries out business activities. We note that the Mexican Income Tax Law sets forth a complex test in order to confirm whether a person has control over a foreign entity (e.g., who is entitled to eventually receive the assets held by the foreign entity, who has voting rights, whether a consolidation for accounting purposes is applicable, etc.).

In addition, we note that, as a general rule, Mexican tax residents or non-Mexican tax residents with a Mexican permanent establishment are required to recognise as taxable income any income receive through a tax-transparent entity or vehicle, in the same fiscal year in which such entity or vehicle receives it.

8 Taxation of Commercial Real Estate

8.1 Are non-residents taxed on the disposal of commercial real estate in your jurisdiction?

Yes. As a general rule, income tax is levied at a rate of 25% on the gross proceeds.

However, non-residents may choose to pay income tax at a rate of 35% on their net gain, subject to complying with certain formal requirements (e.g., appointing a legal representative in Mexico, and formalising the sale by means of a public deed or a real estate ownership certificate).

8.2 Does your jurisdiction impose tax on the transfer of an indirect interest in commercial real estate in your jurisdiction?

Yes, gains derived by a non-resident from the disposition of shares issued by a non-Mexican entity, the value of which is derived, directly or indirectly, from more than 50% from immovable property located in Mexico, is deemed as Mexican-sourced. In such cases, income tax is levied on the value of the shares or interest that is being transferred and not exclusively by reference to the value attributable to immovable property located in Mexico. As noted in question 8.1 above, income tax may be assessed and paid, at the seller's discretion, at a rate of 25% on the gross proceeds, or 35% of the capital gain.

8.3 Does your jurisdiction have a special tax regime for Real Estate Investment Trusts (REITs) or their equivalent?

There is a special regime for real estate investment trusts (*Fideicomisos de Inversión en Bienes Raíces* or FIBRA, as per its acronym in Spanish) exclusively engaged in the acquisition or construction of real estate for sale or lease. Among other requirements that need to be met in order for such regime to apply, a FIBRA's purpose must be the acquisition or construction of real estate destined to be leased, the acquisition of the right to receive rental income, or granting mortgage-backed financing for the foregoing purposes. Likewise, a FIBRA is required to invest at least 70% of its estate in immovable property, rights to receive rental income or interest in the aforementioned financing transactions. In order for the tax regime to be applicable, real estate acquired or constructed by a FIBRA must be leased and not sold for a period of at least four years as of its acquisition or end-of-construction date.

9 Anti-avoidance and Compliance

9.1 Does your jurisdiction have a general anti-avoidance or anti-abuse rule?

Yes. The general anti-avoidance rule allows taxing authorities to disregard or re-characterise tax effects of transactions that presumably lack business purpose. In general terms, lack of business substance may be presumed by the tax authorities: (a) when the tax benefit obtained from the transaction is greater than the quantifiable present or future economic benefit resulting from it; or (b) if the same economic benefit could have been obtained through fewer legal acts that would have resulted in greater tax liability for the taxpayer.

9.2 Is there a requirement to make special disclosure of avoidance schemes or transactions that meet hallmarks associated with cross-border tax planning?

There are mandatory disclosure obligations with respect to certain tax planning arrangements. In essence, the primary obligation to report corresponds to the tax advisors involved in the transaction; however, under specific circumstances, taxpayers themselves could be required to comply with said obligations.

The Federal Tax Code provides a description of transactions that qualify as reportable insofar as they generate a tax benefit in Mexico. Such transactions are classified as generalised when they are mass marketed or personalised when they are adapted to a particular circumstance. Such hypotheses include, among others: (i) those aimed at avoiding foreign tax authorities from exchanging tax information with Mexico; (ii) avoiding the application of rules regarding foreign transparent entities or legal arrangements; (iii) the transfer of tax losses; (iv) certain intra-group payments; (v) the application of benefits under an income tax treaty; (vi) schemes aimed at avoiding the creation of a permanent establishment in Mexico; (vii) the transfer of a fully depreciated asset to step up its basis; (viii) certain related party transactions, including the transfer of intangible assets that are difficult to appraise and the restructuring of companies without consideration and reduction of profits; or (ix) hybrid mechanisms.

Failure to comply with mandatory disclosure obligations may result in penalties, such as (a) loss of tax benefits, and (b) financial penalties for taxpayers ranging from 50% to 75% of the tax benefit of the reportable transaction obtained or expected to be obtained in all fiscal years involved in the application of the reportable transaction. Furthermore, tax advisors may be subject to a penalty of up to MXN$22 million (approximately US$1 million) for each reportable transaction that is not reported to the Mexican tax authorities.

9.3 Does your jurisdiction have rules that target not only taxpayers engaging in tax avoidance but also anyone who promotes, enables or facilitates the tax avoidance?

Yes. As noted in question 9.2 above, mandatory disclosure obligations apply to tax advisors.

In addition, fines may be imposed on third parties that assess, advise, or render services to avoid the payment of taxes, collaborate in the alteration or inscription of accounts, accounting records, or false data in the accounting or any other document, participate in the execution of tax-criminal offences, and those that permit or publish through any means an advertisement for the acquisition or sale of tax invoices that supports non-existent or sham transactions.

9.4 Does your jurisdiction encourage "co-operative compliance" and, if so, does this provide procedural benefits only or result in a reduction of tax?

Yes, there are specific programmes that promote tax certainty and seek to prevent tax controversies through cooperative, voluntary, and timely compliance with tax provisions. These programmes may be coordinated with jurisdictions where Mexico has a comprehensive tax information exchange agreement in force. These include unilateral, bilateral and multilateral advance pricing agreements that seek to confirm that the methodology used to determine prices and amounts in transactions with related parties abroad is correct.

9.5 Are there rules requiring special disclosure where a company is taking a position on a tax issue that is uncertain (open to dispute from a technical perspective)?

There is no requirement to disclose such information at the level of the taxpayers. However, under specific circumstances, taxpayers may request confirmation from the tax authorities to a given criteria or construction of tax law based on real and concrete situations. Likewise, the Mexican tax authorities publish "non-binding criteria" on a yearly basis, establishing what they deem to be undue tax operations. The performance of any of these operations must be reported by the independent auditor in the audited financial statements report.

10 BEPS, Tax Competition and the Digital Economy

10.1 Has your jurisdiction implemented the OECD's recommendations that came out of the BEPS project?

Mexico has incorporated measures that align with the OECD's recommendations regarding BEPS. Specifically, Action 2 (Hybrid mismatch arrangements) was incorporated with the 2014 tax reform, as well as certain updates related to Action 3 (Controlled foreign company) and Action 6 (Prevention of tax treaty abuse). In 2016, Action 13 (Country-by-country reporting) was incorporated into domestic legislation. By 2020, Mexico had introduced several measures to tackle BEPS, including Action 1 (Digital services), Action 4 (Interest deductions), Action 7 (PE status), and Action 12 (Disclosure of aggressive tax planning). The latest significant measure to comply with the BEPS plan was the ratification of the MLI by the Senate on 12 October 2022, corresponding to Action 15 (Multilateral instrument). Once the deposit of the MLI has been made, the MLI will enter into force, and concerning taxes withheld in the source country, it should be applicable as of 1 January 2024.

10.2 Has your jurisdiction adopted any legislation to tackle BEPS that goes beyond the OECD's recommendations?

In general terms, Mexico has implemented diverse tax reforms that are consistent with the BEPS recommendations (as noted in question 10.1). Nevertheless, some of the recommendations may arguably differ or go beyond the OECD's recommendations, in particular the scope of the Mexican general anti-avoidance rule that singles out standard operations, the powers vested in the Mexican tax authority to disregard the transparency of foreign vehicles to determine tax liability, the parameters used to apply the thin capitalisation rule, and finally the restriction of deductibility of payments to controlled foreign corporations regime, as well as establishing a 10-year tax limit to tax losses carried forward under the earnings-stripping rules adopted pursuant to Action 4.

10.3 Does your jurisdiction support information obtained under Country-by-Country Reporting (CBCR) being made available to the public?

CBCR is not available to the public. In Mexico, it is subject solely to the review of the Mexican tax authorities.

10.4 Does your jurisdiction maintain any preferential tax regimes such as a patent box?

There is a list of countries that are considered to have a preferential regime for tax purposes. There is a taxpayer's obligation to file an informative return when such person obtained income from these jurisdictions. There are jurisdictions that are not in the list and could qualify as a preferential tax regime or, conversely, there are jurisdictions that could be in the list and do not qualify as a preferential tax regime.

10.5 Has your jurisdiction taken any unilateral action to tax digital activities or to expand the tax base to capture digital presence?

Yes. As of 2020, an income tax and VAT taxation framework in respect of digital activities was introduced. As a result, non-residents that provide digital services to users in Mexico are required to transfer VAT to customers and pay such VAT to the Mexican tax administration. Similarly, income tax and VAT withholding obligations may apply to platforms that intermediate in the provision of goods or services by individuals.

Eduardo Michán Escobar's clients benefit from invaluable experience obtained from his participation in several complex transactions in different sectors and industries. He frequently represents commercial and investment banks, private equity funds, pension funds and international corporations with respect to the tax effects in mergers and acquisitions, financing and real estate transactions.

In addition to his law degree, he holds a postgraduate degree in Tax Law from the Escuela Libre de Derecho and an LL.M. in International Business Law from King's College London.

He is the President of the International Tax Committee of the Mexican Institute of Public Accountants and an active member of the International Fiscal Association and the Tax Committee of the Mexican Private Equity Association (AMEXCAP).

Galicia Abogados, S.C.
Blvd. Manuel Ávila Camacho, No. 24, 7th Floor
Lomas de Chapultepec, 11000 Mexico City
Mexico

Tel: +52 55 5540 9220
Email: emichan@galicia.com.mx
URL: www.galicia.com.mx

Alejandra Paniagua Robles is focused on tax consultancy matters, such as estate planning, corporate restructuring, international treaty application and tax audits. Alejandra's tax advisory is aimed at national and international clients, and she is also an expert in providing legal and tax services to non-profit organisations.

Alejandra obtained her law degree and a Master's degree in Business Law from Universidad Panamericana. She also holds a diploma in International Taxation from Instituto Tecnológico Autónomo de México, Duke University and completed a course in International Taxation at Sheltons International Tax Training Institute in 2019. Alejandra was nominated as a Rising Star for *The Legal 500* ranking in 2021 and 2022.

Galicia Abogados, S.C.
Blvd. Manuel Ávila Camacho, No. 24, 7th Floor
Lomas de Chapultepec, 11000 Mexico City
Mexico

Tel: +52 55 5249 2003
Email: apaniagua@galicia.com.mx
URL: www.galicia.com.mx

Eduardo Espinosa Reséndiz specialises in tax law. Eduardo has provided tax advisory services regarding, among others, day-to-day operations, mergers and acquisitions, tax restructures, capital markets, lending and *maquila* tax regimes. Likewise, he has rendered tax advisory services to foreign and Mexican clients dedicated to novel models and digital platforms in the crypto, financial and gambling sectors. In addition, he has advised different clients on the compliance and due control of companies to prevent and mitigate tax/criminal liabilities. Furthermore, Eduardo has participated in private investigations associated with tax felonies and has collaborated with criminal lawyers for defence preparation related to tax crimes.

Galicia Abogados, S.C.
Blvd. Manuel Ávila Camacho, No. 24, 7th Floor
Lomas de Chapultepec, 11000 Mexico City
Mexico

Tel: +52 55 5540 9292
Email: eespinosa@galicia.com.mx
URL: www.galicia.com.mx

Sebastián Ayza Concha's practice is specialised in transactional and capital markets tax matters. His work focuses on corporate reorganisations, mergers and acquisitions, national and cross-border investment fund structuring, mainly concerning private equity and real estate transactions, as well as cross-border financing operations. Sebastián studied law at Instituto Tecnológico Autónomo de México and completed a course in International Taxation at Sheltons International Tax Training Institute in 2019.

Galicia Abogados, S.C.
Blvd. Manuel Ávila Camacho, No. 24, 7th Floor
Lomas de Chapultepec, 11000 Mexico City
Mexico

Tel: +52 55 5249 2008
Email: sayza@galicia.com.mx
URL: www.galicia.com.mx

With over 28 years of experience, Galicia is recognised as a leading firm in Mexico and Latin America. We are the only Mexican firm with the ability to provide our clients with a unique legal service offer integrated with strong transactional and regulatory expertise coupled with strategic capabilities in litigation and ESG.

In close collaboration with the firm's 25 practice areas, our tax team offers specialised tax consulting, controversy and litigation services, providing innovative legal strategies to help our clients meet their goals and objectives. Galicia's tax practice has vast experience in matters such as corporate restructures involving mergers, spin-offs, domestic and international financing transactions, infrastructure and energy projects, as well as private equity and real estate fund formation.

Galicia's tax team has been recognised by *Chambers and Partners* and *The Legal 500*, the latter praising the team's "great technical capabilities and exceptional relationships with clients". It is also included in *ITR*'s World Tax rankings for both its "transactional tax" and "corporate tax" rankings.

www.galicia.com.mx

The International Comparative Legal Guides are published by: glg global legal group