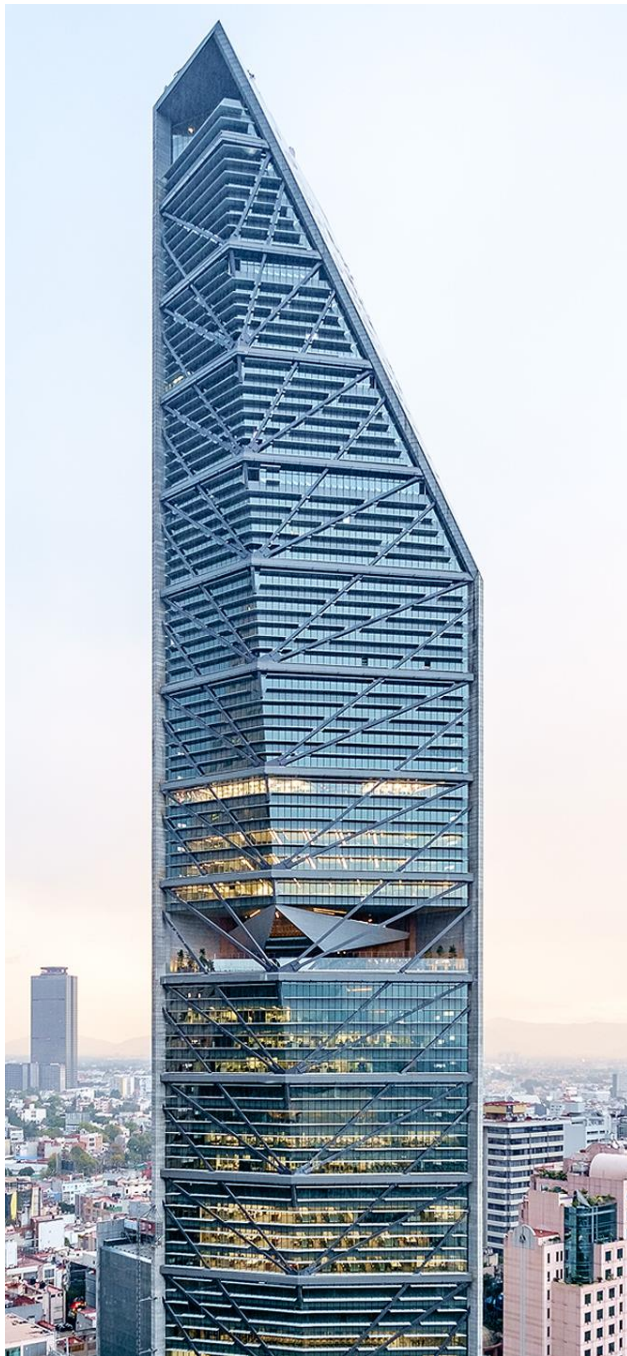


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# 2022 Tax Reform

Mexico City – Tax

November 12, 2021



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## Potential Tax Impact on the Taxation of Multinational Groups in Mexico

On November 12, 2021, the Executive Branch published on the Federal Official Gazette (“**DOF**”) the "Bill by which various provisions of the Mexican Income Tax Law, Mexican Value Added Tax Law, the Mexican Excise Tax Law, Mexican New Automobiles Federal Law, the Mexican Federal Tax Code, and Other Regulations are amended, added and repealed" (hereinafter the "**2022 Tax Reform**").

The 2022 Tax Reform includes several amendments that may have economic effects on the taxation of Mexican corporate groups and multinational companies.

The most relevant aspects of the 2022 Tax Reform for the above-mentioned taxpayers are as follows:



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## Mexican Income Tax Law (“MITL”)

### 1. Recharacterization of financing transactions with lack of business purpose (back-to-back loans)

- The amendments extend the scope of "back-to-back loans" by adding financing transactions with lack of “business purpose” that result in payable interest from Mexican resident entities or permanent establishments to foreign residents.
- The Mexican Tax Authorities will be able to recharacterize financing transactions with lack of “business purpose” as "back-to-back loans". As a result, the accrued interest would be treated as dividend distribution for income tax purposes.

### 2. Business purpose in corporate reorganizations

- Article 24 of the MITL is amended to establish that the authorization to transfer shares at a tax cost basis resulting from corporate reorganizations (“**corporate group restructuring authorization**”) is only applicable to companies with tax residence in Mexico and not to entities incorporated in the country.
- The following requirements are added to request the corporate restructuring authorization:
  - a) Filing of public accountant tax report including new items such as (i) book value of the shares subject to the authorization; (ii) corporate chart of the group describing the direct and indirect participation and ownership of the group of companies before and after the restructuring; (iii) business segment of the involved companies; and (iv) certification that the corporate group entities consolidate their financial statements for accounting purposes.
  - b) Submission of information concerning all relevant transactions related to the corporate restructuring subject to authorization within the five previous years.
- Relevant transactions within the following five years after the corporate reorganization subject to authorization must be disclosed in the Informative Return of Relevant Transactions (“Form 76”).



- If the Mexican Tax Authority finds that the corporate restructuring lacks a “business purpose”, the authorization effects will be finished and the deferred income tax coming from the corporate reorganization will have to be paid by taxpayers.

### 3. Thin Capitalization (“Thin Cap”)

- Article 28, paragraph XXVII of the MITL is amended to establish that Mexican corporate taxpayers must support that the net worth (*capital contable*) is consistent with the balances of their capital contribution accounts (known as “**CUCA**”), net tax profits account (known as “**CUFIN**”), net reinvested tax profits account (“**CUFINRE**”) and net operating losses balance (“**NOL’s**”), in order to exclude a higher amount of interest deduction under the thin cap mechanics.
- The Tax Reform 2022 provides that in the calculation of the net worth (*capital contable*), taxpayers must include available and unused NOL’s. Consequently, most of the tax attributes are considered in the thin cap limits calculation.
- Taxpayers will also need to have the contractor's status issued by a competent authority in order to claim the construction, operation or maintenance of infrastructure exemption.
- The financial system exemption on thin cap will not be applicable to debt transactions of unregulated multiple purpose financial companies (“**SOFOMES ENR**”) when carrying out activities with domestic or foreign related parties as consequence of their business purpose.

### 4. Restrictions to transfer NOL’s in spin-offs

- The 2022 Tax Reform includes a new restriction for the transfer NOL’s in spin-offs by establishing that new companies must carry out the same activities/line of business than the divided entity. Additionally, if the Mexican Tax Authority audits the transaction, taxpayers must evidence that the entities involved in the spin-off are engaged in the same activities/line of business.

### 5. Payments to foreign related parties

- Same as Mexican tax residents, foreign residents with Mexican source income will be required to determine income, gains, profits and, if applicable, deductions, derived from transactions with related parties, considering the prices, consideration amounts or profit



margins that would have been used or obtained with or between independent parties in comparable transactions.

### 6. Business purpose in international reorganizations

- Different amendments are included in the existing corporate reorganization tax provisions. The most relevant addition is that the Mexican Tax Authority may verify if corporate reorganizations have a valid business purpose; otherwise, the deferred income tax authorization effects will expire.

### 7. Interest withholding tax rate

- Article 166 of the MITL is amended to include a restriction to apply the 4.9% and 10% withholding tax rates, if the beneficial owner of the interest is directly, indirectly, individually or jointly a related party of the Mexican resident paying the interest.
- Related parties are defined as (i) shareholders of more than 10% of the debtor's voting shares or (ii) legal entities that own more than 20% of the debtor's shares.

### 8. Appointment of Legal Representatives

- The 2022 Tax Reform requires that legal representatives appointed by foreign residents for transactions with Mexican source income own sufficient assets to respond as a joint and several obligors in accordance with general rules to be published by the Mexican Tax Authorities.

### 9. Transfer Pricing

- The 2022 Tax Reform provides that the comparable transactions analysis needs only to consider information corresponding to the fiscal year subject to review.
- The amendments clarify that in the event of applying transfer pricing methods to obtain price ranges, considerations or profit margins will be adjusted in accordance of the interquartile method agreed upon a mutual agreement procedure indicated in the treaties to avoid double taxation in which Mexico is party or with the method authorized in accordance with the general rules that will be issued by the Mexican Tax Authorities for such purpose.



- A new requirement is established for the compliance of the first paragraph of Article 182 of the MITL concerning maquila operations. As a result, taxpayers will be required to file a complete and correct informative return of their maquila operations, exposing their tax profit calculation and applicable tax data.

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## Mexican Federal Tax Code (“FTC”)

### 1. Joint and several liability on business acquisitions

- Different scenarios are included to establish concrete cases in which business acquisitions are effectively performed by the transfer of assets. This initiative aims to determine joint and several liability on asset purchasers in the event of unpaid taxes and duties derived from the business when owned by another person.
- Among other cases, a business acquisition is deemed to exist when (i) there is a total or partial transfer of assets; (ii) there is an identity between the management, legal representatives and suppliers; (iii) there is a same tax domicile, (iv) there is identity between trademarks, patents and industrial property rights, as well as (v) total or partial identity between fixed assets and facilities.

### 2. Relevant Transactions

- Taxpayers must now report the sale of shares deriving from an international corporate reorganization subject to a previous authorized deferral of income tax in the "Relevant Transactions Return" provided by Article 31-A of the FTC.



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For additional information regarding the content of this document, please contact our Tax team in Mexico.

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