



The position of Index regarding the Tax Reform initiative relevant to the Maquiladora tax regime in relation to Income Tax (IT)

The Tax Reform initiative considers the following proposals in relation to Income Tax (IT):

1. Include in the law a definition of Maquila operations similar to the definition currently set forth in article 33 of the Development of the Industrial, Maquila, Manufacturing and Export Services Decree, but with some additional limitations.
2. Limit the options stipulated in the current Law in order to determine the accruable income and authorized deductions, which, in relation to transfer pricing, should be observed by maquiladora export companies, thus producing:
 - a. A considerable increase in the tax base (taxable income) for IT purposes, and
 - b. A considerable increase in the tax base for PTU (Profit Sharing Employees') purposes.
3. Limit authorized deductions to just 41% of remunerations and benefits paid to workers which by definition are exempt from IT.
4. Revoke the benefits of the Presidential Decree of October 30, 2003, which partially reduces the IT payable. This would result in an increase in the corporate tax rate from the current rate of actual 17.5%¹ to 30% plus the additional 10% tax on the payment of dividends.

The maquiladora tax regime adheres to the OCDE's international guidelines for transfer pricing. The Maquiladora Export Industry is not a tax evading sector and it has not attempted to promote the administrative facilities of the IMMEX Decree to take advantage of or abuse the regime. Therefore, **index** categorically states the following:

1. The maquiladoras did NOT seek, promote or agree to the incorporation of the PITEX, ECEX and ALTEX programs into the Maquiladora Decree (subsequently called IMMEX).
2. **Index** reiterated multiple times to the tax authority that including these companies in the IMMEX Decree opened a window to facilitating the restructuring of some companies, even those belonging to the national industry, by incorporating them into the maquiladora tax regime.

¹ Effective IT/IETU rate after the application of incentive decrees;



3. **Index** was proactive and proof of this is that it collaborated jointly with the tax authority to find the mechanisms and rules needed to prevent any abuse of the regime. In this way, **index** cooperated on writing the current article 33 of the IMMEX decree, the primordial purpose of which was to close the door on the companies that abusively wanted to adopt the benefits granted to maquiladoras, leading to the provision of the requirements, such as ownership of the machinery and equipment used in maquila operations.
4. Determination of the tax base (taxable income) of maquiladoras is not the result of preferential tax treatment. On the contrary, it is a regime that seeks to attribute to the maquiladora a profit based on its functions and risks and includes a reasonable return on assets that are the property of the nonresident, based on the transfer pricing rules.
5. In fact, as of the year in which they are incorporated and in which they begin operating, maquiladoras must determine their taxable income, a situation that rarely occurs in other sectors in which profits might be generated as of the third year.
6. Neither **index** nor the Sector itself determined the requirements necessary to obtain an IMMEX program. It would be unfair to state that maquiladoras abuse the regime if the rules of the game are not made by the Sector itself.
7. In fact, maquiladora companies currently export more than 90% of their total production even though the requirement for obtaining an IMMEX program is to export just 10%.
8. Mexico needs foreign direct investment to generate jobs and, therefore, it has to maintain a competitive tax regime that offers legal certainty.
9. Clear rules must be defined so that companies that carry out operations other than those of maquila exports segment and identify the results of said operations and the tax authority can exercise its inspection powers to identify any abuse.
10. Maquiladoras are unjustifiably accused of not contributing appropriately to the country's tax collection and of taking advantage of fiscal expenditure by paying low salaries and exempt remunerations, when the reality is that companies in the export sector have contributed to regional development. It has been proved that wherever a maquiladora export company is established, the development of the region is visible and noticeable.

CONCLUSION:



The tax regime for the maquiladora export industry accounted for in the Tax Reform Initiative presented by the Federal Executive Branch to the Chamber of Deputies would have the following effects:

1. The tax base (taxable income) would increase by over 100% in relation to the current taxable income.
2. As a consequence, the taxable income for PTU purposes would increase exponentially.
3. IT payable would increase considerably in relation to the tax paid under the current Income Tax Law.
4. This would cause a loss in competitiveness and investment attraction for the country since its effective corporate tax rate would be higher than that of countries with a similar tax regime.
5. Hence, this would translate into a decrease in the attraction of foreign direct investment.

The message sent out to the maquiladora export industry is extremely negative. **index** attempted to approach the tax authorities to carefully analyze changes to the tax regime. Even though just a couple of meetings were held, the position and petition of the export sector has not been taken into consideration.

As a result, **index** proposes maintaining the tax regime provided in the current article 216-Bis of the Income Tax Law and transferring it in its entirety to article 176 of the Tax Reform Initiative. Likewise, it proposes transferring article 33 of the IMMEX Decree to article 175 of the Tax Reform Initiative and establishing a permanent measure in order to neutralize the impact of the non-deductibility of 59% of remunerations and exempt benefits paid to workers.