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Mexican Taxation: New Opportunities of Frankenstein Reborn? ¹

Introduction

A major reform of the Mexican tax system has been in President Vicente Fox's agenda even before he was elected. We provided some background on this subject and our views about it in our memorandum of August 22, 2001 (the "August Memorandum").

Mr. Fox first introduced a bill in April of 2001. As we predicted in the August Memorandum, the bill faced two major hurdles: a strong opposition from other parties like the National Action Party (*Partido Acción Nacional*) ("PAN"), and the need to raise revenues given the fall in oil prices in the middle of a recession. The political parties negotiated until well past the Constitutional deadline (midnight, December 31), and finally reached a compromise. The main item in Mr. Fox's agenda, the inclusion of food and medicines as taxable for value added tax (*impuesto al valor agregado*) ("VAT") purposes, was aborted as a result of a mediocre negotiation process between PAN (the right-wing party), PRI (the old government party) and PRD (the left-wing party). In the end, to avoid a legislative stalemate, the PRD, and not the PRI as originally expected, reached an agreement with PAN.

The Income Tax Law (*Ley del Impuesto Sobre la Renta*) that was in effect through December 31, 2001 (the "Old LISR") was replaced by a new Income Tax Law (*Ley del Impuesto Sobre la Renta*) ("NLISR"). About 85% of the provisions of the Old LISR are incorporated in the NLISR, under a new structure. The remaining percentage includes small drafting changes with a major conceptual impact, as well as major conceptual changes. The resulting tax reform, which came into effect on January 1, 2002, not only created new taxes, but with a few major exceptions, it also turned out to be more intricate and harder to manage than the previous regime. Frankenstein was re-born and is here to stay at least during 2002.

Despite the fact that this new tax regime left individuals and companies unsatisfied, Mexican taxpayers must now learn to structure their transactions to accommodate the new rules. Specifically, the changes we are now facing are:

- i. The enactment of the NLISR.
- ii. The enactment of a Tax on Wages Paid (*Impuesto Sustitutivo del Crédito al Salario*), which must be paid in addition to, and not in lieu of, the state payroll tax.
- iii. Amendments to the Value Added Tax Law (*Ley del Impuesto al Valor Agregado*) ("LIVA"), which, oddly, were passed by way of transitory provisions to the 2002 Law of Revenues of the Federation (*Ley de Ingresos de la Federación*) ("LIF").
- iv. The enactment of a Tax on Luxurious Articles (*Impuesto a la Venta de Bienes y Servicios Suntuarios*), obviously at the urging of the PRD.
- v. Amendments to the Law of the Special Tax on Production and Services (*Ley del Impuesto Especial sobre Producción y Servicios*) ("LIEPS"), which makes items such as soft drinks extremely expensive, thus hurting the majority of the population in spite of the PRD's repeated vow not to pass taxes that would have such an impact.

We are outlining below the most representative concepts of the tax reform:

I. NLISR

A. General Provisions

• Fixed Base

The NLISR eliminates the concept of a fixed base. Now, any place in Mexico where foreigners provide independent personal services is considered a permanent establishment.² This change is consistent with the policies of the Organization for Economic Cooperation and Development or OECD, which amalgamated the concept of the fixed base to the concept of permanent establishment in its Commentaries on the Model Tax Convention on Income and on Capital 2001.³

In this regard, we note that since most Mexican agreements to avoid double taxation still distinguish between the concepts of permanent establishment and fixed base, each situation involving such concepts must be carefully analyzed in order to avoid misinterpretations of the law.

• Agreements to Avoid Double Taxation

As a positive development, the NLISR now provides that, whenever an agreement to avoid double taxation establishes lower withholding rates than those set forth in a Mexican statute, the payor shall be able to withhold directly at the lower rate, provided that certain requirements are met. Furthermore, should the withholder unduly apply a higher rate, the foreign payee would be entitled to apply for the reimbursement of any excess payment.⁴

• Partnerships

Although they are *not* legal entities for commercial purposes,⁵ joint venture partnerships (*asociaciones en participación*) performing business activities are now legal entities for NLISR purposes.⁶ This new treatment may seem irrelevant since partnerships were already treated to a large extent as legal entities. Nonetheless, it brings full economic neutrality to the system with respect to choosing between creating a joint venture partnership or a legal entity from a tax point of view. Moreover, the partners and those who directly or indirectly control such partners will henceforth be considered to be related parties for transfer pricing purposes.⁷

No other statute, within or outside of the tax area, treats joint venture partnerships as legal entities. This inconsistency may make it necessary to keep a dual system of records for these types of partnerships, an exercise that may be too costly. Partners who maintain these types of arrangements may need to re-assess their economic and tax suitability as a vehicle to do business in Mexico.

• Consequences of a change of residence by legal entities

The NLISR now makes it clear that, whenever a legal entity shall cease to be a Mexican resident for tax purposes, it shall be considered, in accordance with the Fiscal Code of the Federation (*Código Fiscal de la Federación*) ("CFF"), that the entity is being liquidated, with all consequential tax effects.⁸ Since the CFF was not amended at all, it is unclear whether a legal entity incorporated in Mexico may stop being a Mexican resident in those cases where there is no agreement to avoid double taxation with the country to which the Mexican entity is transferring.⁹

B. Legal Entities

1. Rate

The maximum corporate tax rate will be reduced according to the following schedule:¹⁰

Year	Rate
2002	35%

2003	34%
2004	33%
Commencing 2005	32%

2. Tax deferral

Formerly, corporations could split the 35% rate as follows: 30% would have to be paid on a current basis, while the remaining 5% was deferred until dividends were distributed.¹¹ However, the NLISR permits no deferral of the corporate income tax: it must be paid on a current basis.¹²

It is noteworthy that the deferral of tax on carry over profits that was allowed by the Old LISR will end at the time dividends are distributed from such profits.¹³

3. Profit sharing (*participación de los trabajadores en las utilidades de la empresa*) ("PTU")

Both the Political Constitution of the United Mexican States (*Constitución Política de los Estados Unidos Mexicanos*) (the "Constitution") and the Federal Labor Law (*Ley Federal del Trabajo*) ("LFT") provide that enterprises must share a percentage of their profits with their workers.¹⁴ The amount of PTU must be calculated annually following the formula set forth in the NLISR.

Article 14 of the Old LISR established a procedure to determine such profits, which was different in several respects from the procedure to calculate taxable income. However, the Supreme Court of Justice (*Suprema Corte de Justicia de la Nación*) ruled that the procedure provided in Article 14 of the Old LISR was unconstitutional and that the profits referred to in the Constitution for profit sharing purposes were nothing but taxable income, that is gross income minus deductions.¹⁵

Unfortunately, Article 16 of the NLISR replicated almost exactly Article 14 of the Old LISR. On the positive side, this fact opens the possibility of challenging the concept on constitutional grounds for those taxpayers who did not challenge it in the past.

4. Items that must be accumulated as gross income (*ingresos acumulables*).

The main changes in this area are:¹⁶

- i. Interest payments received must be included as gross income without any adjustment for inflation. This responds to Mexico's decreasing inflation rates (officially 4.4% for 2001). Previously, only interest amounts exceeding inflation could be included.
- ii. In some cases, the annual adjustment for inflation must also be included as gross income. This annual adjustment for inflation is a concept introduced by the NLISR; under the Old LISR inflation adjustments had to be made on a monthly basis.¹⁷

1. Deductions

The NLISR introduces the following amendments in this area:

- i. Social security taxes (*aportaciones de seguridad social*) paid by employers will be fully deductible.¹⁸ Formerly, they were partially deductible.¹⁹
- ii. Interest payments. Under the NLISR, interest payments are fully deductible without adjustment for inflation.²⁰ Formerly, interest payments were partially deductible, i.e. to the extent their amount exceeded the inflation rate calculated on a monthly basis.²¹
- iii. In some cases, the annual adjustment for inflation will be deductible. (See section II.2.6 below).²²

iv. Under the NLISR, the taxpayer may elect between two forms of asset depreciation:

- The straight-line method, applying the depreciation percentages provided by the NLISR for every kind of asset;²³ or,
- The taxpayer may deduct a percentage (ranging from 35% to 89% depending on the type of asset) of the value of the asset *in the year immediately following that in which it was first utilized*. The NLISR also authorizes almost the full deduction of certain assets. Nonetheless, the remaining value of the asset will not be deductible or depreciable unless such asset is destroyed or sold. Even in these cases, the allowable deduction would be subject to limits based on the amount originally deducted and on the number of years during which the taxpayer held the asset.²⁴ We note that this election is only applicable to assets purchased after January 1, 2002.²⁵ Likewise, this election is generally not available for assets located in certain areas of Mexico City, Guadalajara and Monterrey.²⁶
 - i. Restaurant expenses. Under the NLISR, 50% of restaurant expenses are deductible, provided certain (cumbersome) requirements are met.²⁷ These expenses were not deductible under the Old LISR.
 - ii. PTU. Under the NLISR, PTU shall not be deductible at all.²⁸ Automobiles. Investments in automobiles can still be depreciated at an annual 25% rate,²⁹ up to an aggregate amount of approximately U.S. \$21,300.³⁰ If the vehicle is armored, the price of the armor shall be considered to be part of the amount of the investment.³¹ Therefore, it will be much easier to reach the threshold of non-deductibility. (Although the statute is not clear in this respect, there are grounds to consider that a partial deduction, up to the maximum permitted amount, is available for those who purchase an automobile the price of which exceeds the threshold).

- Annual vs. Monthly Inflation

Formerly, the effect of inflation was recognized on a monthly basis. Under the NLISR, it must be recognized annually. This annual adjustment may yield a tax deduction or a tax gain; in the latter case, it must be accumulated as gross income.³² Thus, taxpayers will no longer be able to recognize the effect of inflation until the end of the year. In practice, they will have to make prepayments on account of income tax on the full amount of the interest payments they receive and not on their real value.

- Losses

Formerly, losses could be allocated between the parties to a spin off in proportion to the allocation of capital. The NLISR³³ now provides that losses must be divided between such parties in proportion to (i) the allocation of the *inventories and accounts receivable*, if the original corporation carried out mainly commercial activities; or (ii) the allocation of *fixed assets* excluding real estate not related to such activity, if the original corporation carried out mainly other types of activities, i.e. industrial, agricultural, fisheries, etc.³⁴

C. Individuals

Several changes were made in the area of personal income tax. We will only discuss the most significant ones affecting the business community.

1. Dividends

Formerly, corporations had to withhold a 5% tax from the dividends they distributed to Mexican individuals.³⁵ Then, the shareholder could either (i) add the amount of all dividends received to his gross income and credit against his tax liability the corporate income tax and the 5% withholding tax mentioned above, or (ii) exclude the amount of all dividends received from his gross income and to deem the taxes paid by the corporation as definitive.³⁶ The NLISR has eliminated a corporation's obligation to withhold 5% from dividend distributions, along with the much debated multiplier factor of 1.5385. The corporation must henceforth distribute dividends and the shareholder must simply accumulate the amount thereof as part of his gross income.

The shareholder is entitled to credit against his own tax liability his proportionate amount of tax paid at the corporate level, if he includes as part of his gross income the amount of the dividend received, plus an amount equal to: ³⁷

Year	Formula
2002	(amount of the dividend) 1.5385) 35%
2003	(amount of the dividend) 1.5152) 34%
2004	(amount of the dividend) 1.4925) 33%
Commencing 2005	(amount of the dividend) 1.4706) 32%

We note that these multiplier factors could be unconstitutional since they artificially increase the amount of taxable income. ³⁸

2. Directors' Fees

The NLISR now provides that fees paid to Board of Directors' members are subject to the following minimum withholding tax rates: ³⁹

Year	Rate
2002	35%
2003	34%
2004	33%
Commencing 2005	32%

3. Sale of shares

As of April 1, 2002, ⁴⁰ the NLISR will change the procedure to determine taxable gains in the sale of shares:

- i. For the sale of shares outside of a stock exchange or through a stock exchange when the sale does not qualify for an exemption, taxable gain is the difference between income received from the sale and the cost of the stock. Under the NLISR, there are two procedures to calculate the cost of shares: ⁴¹
 - a. If the holding period of the shares was 18 months or less, then:

Acquisition cost – dividends paid – capital reimbursements = cost of the stock

- b. If the holding period exceeded 18 months, then:

Acquisition cost + profits received by the issuing corporation + dividends received by the issuing corporation – tax losses of the issuing corporation – dividends paid – capital reimbursements = cost of the stock

Should the cost of the stock be negative, the income derived from the sale of the shares will be a taxable gain. Additionally, any amount exceeding the acquisition cost shall, in subsequent sales, have to be deducted from the acquisition cost when calculating the taxable gain. ⁴²

Notwithstanding the foregoing, in these cases the purchaser of the shares must withhold a 20% tax on the total amount of the transaction as a prepayment of the tax if such purchaser is a Mexican resident or a foreign resident with a permanent establishment in Mexico.⁴³ If the purchaser is not a Mexican resident or a foreign resident with a permanent establishment in Mexico, the seller must withhold and pay the tax directly to the tax authorities within 15 days from the date he received the payment of the shares.⁴⁴ Likewise, in those cases where the tax must be withheld, the seller may elect to calculate the tax due on the gain of the transaction by notifying the purchaser in writing.⁴⁵

We note that there seems to be no justification for setting two different procedures to arrive at the taxable gain depending on the holding period of the shares. Such distinction seems arbitrary and unfair and therefore may be challenged on constitutional grounds.

(ii) In general, the sale of shares through a stock exchange remains exempt. However, the exemption is restricted in certain cases. Specifically, public offerings would only be exempt if:⁴⁶

- The initial public offering was made not less than 5 years prior to the purchase;
- At least 35% of the issuer's paid-in shares are publicly traded;
- The offer encompasses all the series of shares;
- The price offered is the same for all the shareholders; and,
- The shareholders are able to accept offers from third parties.⁴⁷

i. If a public offering does not qualify for the exemption, the brokerage house must withhold a 20% tax on the gain of the transaction. The taxpayer may credit the tax so withheld in his annual return.⁴⁸

1. Impact of capital stock reductions.

Under the NLISR, a capital reduction is deemed to be a sale, regardless of whether it is made through a cancellation of shares *or through a reduction of the value of the shares*, whenever it occurs within two years after the last capital increase.⁴⁹ (Under the Old LISR, only the cancellation of shares within two years from the last capital increase to reduce the capital stock would be considered as a sale).⁵⁰

2. Interest

The NLISR introduced the following changes:

- i. Certain kinds of interest, such as those received from checking accounts or pension funds, remain exempt⁵¹ when the average balance on such accounts does not exceed five Mexico City's minimum daily wages (*salarios mínimos generales diarios vigentes en el Distrito Federal*), annualized, that is approximately U.S. \$7,900.00.⁵²
- ii. During 2002, only interest payment amounts resulting from the first 10 percentage points of interest will be subject to a 24% final withholding tax.⁵³
- iii. Commencing 2003, all interest payments will be subject to the following regime:

a) Tax prepayments:

- Interest payments from the financial system will be subject to a withholding tax, the amount of which will be determined every year by Congress.
- Interest payments from any other source will be subject to a 20% withholding tax.

b) Final payment of the tax:

- The recipient of interest must include in his gross income the amount of interest received minus the effect of inflation. If inflation was higher than the interest received there will be a loss, which may be deducted from income derived from other sources in the same fiscal year, and any excess may be carried forward for up to 5 years.⁵⁴

- Housing

Formerly, the sale of a house would only be exempt from income tax if its owner had inhabited it for at least 2 years prior to the sale.⁵⁵ This 2-year holding requirement has been eliminated.⁵⁶ As a result of the NLISR any owner may sell his house income tax free, regardless of whether he has inhabited it or not.

Likewise, interest payments on mortgage loans, the principal amount of which shall not exceed approximately U.S. \$487,000,⁵⁷ less the inflation adjustment, are now deductible.⁵⁸

D. Foreign Residents

Few modifications were made in this area. This is even truer with regard to residents of countries whose government has entered into an agreement to avoid double taxation with Mexico. This notwithstanding, the following observations are noteworthy:

1. Withholding Tax

Payments (i.e. interest, royalties, etc.) to foreign residents are subject to a withholding tax, the amount of which may vary depending on the nature of the payment and the residence of the payee. The NLISR withholding tax rate is generally 25%.⁵⁹

2. Royalties

The NLISR provides that royalty payments for contracts concerning the use of patents will be taxed at a 35% rate.⁶⁰ On the other hand, payments for technical assistance are taxed at a 25% rate.⁶¹ Finally, payments under contracts involving the use of both patents *and* technical assistance will be taxed at a 25% rate.⁶² Thus, users of patented technology should consider incorporating technical assistance in their contracts as well, so that the applicable tax rate is 25% and not 35%.

3. Dividends

Formerly, dividends paid to foreign residents were subject to a 5% withholding tax.⁶³ The NLISR has eliminated this obligation.⁶⁴ Since taxes must be paid on net income only at the corporate level, it is unclear whether foreign investors will be able to credit the tax paid by the distributing corporations in Mexico against their own home-country tax liability and, if they are able to, how they will do it.

4. Sales of Shares

The NLISR provides that any sale of shares issued by a Mexican legal entity is subject to a final withholding tax of 25%, unless the seller elects to pay the tax on the gain derived from the sale. To apply this option several requirements must be met, including the appointment of a legal representative in Mexico.⁶⁵

Finally, we note that the sale of shares remains exempt for individuals if it is concluded through a stock exchange. Specific requirements must be met regarding transactions involving public offerings.⁶⁶ If the seller is not an individual, the brokerage house must apply a 5% withholding tax on the amount of the transaction, or a 20% withholding tax on the gain from the transaction.⁶⁷ There seems to be no justification for legal entities not enjoying the same exemption individuals enjoy. This discrimination could be challenged on constitutional grounds.

5. Interest payments

The NLISR leaves the tax treatment of interest payments to foreign residents untouched. Accordingly, the NLISR provides that for 2002, the withholding rate for interest paid to foreign banks, including investment banks, shall remain at 4.9%, if the payee is a resident of a country with which Mexico has executed an

agreement to avoid double taxation. Note, however, that unless there is another change in the law, to the extent consistent with Mexico's tax treaties, this rate will increase to 10% in 2003. ⁶⁸

6. Tax Havens

The NLISR did not change the treatment of tax havens. There continues to be an exhaustive list of countries and territories considered to be tax havens. ⁶⁹ Their new name is territories with preferential tax regimes (*territorios con regímenes fiscales preferentes*), known as "TEREFIPRES." ⁷⁰

7. Transfer pricing

The Old LISR transfer pricing concepts suffered little change. An important development is that the NLISR now considers the members of a joint venture partnership as related parties for transfer pricing purposes, as mentioned in section II.1.3 above. Likewise, the NLISR now accepts the application of the OECD's "Guidelines on Transfer Pricing for Multinational Enterprises and Fiscal Administrations", ⁷¹ which is a widely-used tool regarding the application of transfer pricing provisions.

I. Tax on Wages

A. General Description

As a major novelty, Congress created a new tax for employers. This tax is equal to 3% of all the wages employers must pay to their employees. Under the Old LISR, the amount of the credit on wages was applied by employers directly and offset against each employee's tax. ⁷²

This tax is supposed to be paid annually. However, taxpayers (employers) must make prepayments on a monthly basis. Wage earners are entitled to a tax credit against their income tax, which is calculated and withheld by their employers every month. However, because of a legislative technical deficiency, employers do not seem to be liable for this tax if they fail to apply such tax credit when calculating their employee's tax liability. ⁷³

Employers must now determine whether they should apply the tax credit or not. As in a myriad of other areas, the Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*) ("SHCP"), with the assistance of the Tax Administration Service (*Servicio de Administración Tributaria*) ("SAT"), is issuing general rulings (*reglas generales*) in an attempt to clarify this legal vacuum. Strictly speaking, a legal vacuum of this magnitude cannot be filled through general rulings. As in many other areas, challenges on constitutional grounds will probably ensue.

II. LIVA

A. General Overview

As explained above, the LIVA was not specifically amended. Instead, some of its provisions were amended by way of transitory provisions to the LIF. Since the LIF's effectiveness is only one year, currently 2002, it is uncertain whether the amendments in the IVA area will remain in force after 2002.

In general, both the IVA rates and the list of exempt items under the LIVA remain unchanged.

B. Cash Method

Formerly, the obligation to pay IVA was triggered upon the realization of any of several events, i.e. (i) when the purchase price was paid; (ii) when the invoice for the transaction was issued, regardless of whether payment thereunder had been received; or (iii) upon the delivery of the goods.⁷⁴ Henceforth, IVA will not be triggered until payment for the sale or lease of goods or the performance of services is actually received.⁷⁵ Likewise, only effectively paid IVA may be creditable against a taxpayer's IVA liability.⁷⁶

This very positive amendment simplifies the IVA system and solves cash flow problems brought about by the previous system. Formerly, taxpayers were financing the government by having to pay IVA even if they had not yet collected it from their customers.

C. Double Taxation

In Mexico, there is concurrent jurisdiction between the federal government and the state governments to levy taxes in certain areas. This sometimes gives rise to a phenomenon known as "double taxation". Article 41 of the LIVA was enacted several years ago to avoid double taxation. Such article basically establishes that the federal government may conclude agreements with the state governments providing that the federal government will share a percentage of the revenues derived from IVA collections with the state governments, in exchange for these refraining from levying taxes in activities already subject to IVA.

Nevertheless, the new tax system allows the state governments, notwithstanding the existence of the federal-state agreements described hereinabove or the actual application of IVA, to levy taxes at a rate of up to 5% on the net income derived from the rendering of independent personal services or the undertaking of business activities by individuals, for as long as such income is lower than approximately U.S.\$426,000 per year.⁷⁷ Likewise, it allows the state governments to levy a tax of up to 3% on the general sale or lease of goods or the performance of services.⁷⁸

As it can be seen, the new tax system brings back problems and issues that had been properly addressed in the LIVA. We note that, should any state legislature exercise the authority vested upon it by Transitory Article Seventh of the LIF regarding income derived from the performance of independent personal services, the resulting tax could be unconstitutional because it would arbitrarily and exclusively tax persons with a lower income, excluding persons with a higher income. Clearly, it would be a regressive tax.

Again, if not renewed at the end of 2002, the authority vested upon state governments through the LIF will expire in 2003.

III. Tax on Luxurious Articles

A. General Overview

Another major novelty for 2002 is a federal sales tax on certain goods and services considered to be "luxurious". The LIF provides an exhaustive list of such goods and services. Some examples of items covered by this tax are: caviar, motorcycles, perfumes and jewelry; services related to golf, polo and car racing; rental of aircrafts and motorcycles.⁷⁹

A tax rate of 5% is to be applied on the amount of each transaction. This tax is aimed only at retail sales (*ventas al público en general*). For these purposes the law considers that any sale backed by an invoice meeting all the requirements of the fiscal laws (*comprobante para efectos fiscales*), commonly known as "factura", will not constitute a retail sale.⁸⁰

Thus, at first glance anyone with a Taxpayer Identification Number (*Registro Federal de Contribuyentes*) ("RFC") may avoid this tax by simply showing a copy of his RFC and requesting an invoice. However, the SHCP already

issued a ruling setting forth various requirements to make the avoidance of this tax more difficult. ⁸¹ This ruling, again, may be challenged on constitutional grounds as it seems to thwart the statute that it is designed to implement.

V. LIEPS

A. *Scope*

The amendments to this tax broadened its scope. It now covers not only sales of alcoholic beverages, tobacco, diesel and gas, but also soft drinks and syrups using sweeteners other than sugar. These items are taxed at the general rate of 20%. ⁸² Others, such as tequila, are taxed at the rate of 60%. ⁸³

On the other hand, LIEPS now taxes services related to radio communications, cellular phones, cable television, and satellite television. In these cases, the tax rate is 10%. ⁸⁴ Indeed, this 10% tax is a very unfortunate development as it affects services where Mexico's development is clearly behind that of other nations.

Finally, the tax rate on tobacco will gradually increase over the next 4 years, as shown in the following chart: ⁸⁵

Year	Rate for cigarettes with filter	Rate for cigarettes without filter
2002	105%	60%
2003	107%	80%
2004	110%	100%
Commencing 2005	110%	110%

These amendments are unfortunate since they cause economic distortions and are not conducive to the economic neutrality that an effective tax system must bear. For instance, soft-drink producers are now encouraged to use sugar in their products to avoid paying IEPS. This, despite the availability of other sweeteners such as fructose. (Incidentally, this development could lead to a dispute between Mexico and the U.S. as it could be construed to be an illegal barrier to trade).

These amendments further seem arbitrary and unfair since they distinguish between taxpayers who are basically equal. For instance, cable television providers vs. free television providers; basic telephone service providers vs. cellular phone service providers. We expect that these amendments will be challenged on constitutional grounds.

Footnote:

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² See Ley del Impuesto Sobre la Renta, [N.L.I.S.R.], (Mex.), art. 2 (2002), available at <http://www.cddhcu.gob.mx/leyinfo/txt/82.txt> (last visited Apr. 1, 2002). [Back To Text](#)

³ This change also reflects the fact that both concepts received the same treatment already. See Ley Del Impuesto Sobre la Renta, [L.I.S.R.], (Mex.), art. 4 (1987), available at <http://www.pgr.go.cr/leyes-usuales/Ley%20N%207092.htm> (last visited Apr. 1, 2002). [Back To Text](#)

⁴ See N.L.I.S.R., art. 5. [Back To Text](#)

⁵ See. Ley General de Sociedades Mercantiles, [L.G.S.M.](Mex.), art. 252, et seq., available at <http://www.cddhcu.gob.mx/leyinfo/144> (last visited Apr.1, 2002). [Back To Text](#)

⁶ See N.L.I.S.R., art. 8. [Back To Text](#)

⁷ See id., art. 215. [Back To Text](#)

⁸ See id., art. 12. [Back To Text](#)

⁹ See Codigo Fiscal de la Federacion [C.F.F.], (Mex.), art. 9, available at <http://www.cddhcu.gob.mx/leyinfo/8/> (last visited Apr.1, 2002). [Back To Text](#)

¹⁰ See N.L.I.S.R., art. 10, Transitory Art. Second–LXXXII. [Back To Text](#)

¹¹ See L.I.S.R., art. 10, 10(A). [Back To Text](#)

¹² See N.L.I.S.R., art. 10. [Back To Text](#)

¹³ See id. Transitory Art. Second (XLV). [Back To Text](#)

¹⁴ See [Mex. Const. art. 123\(A\)\(IX\)](#); Ley Federal del Trabajo [L.F.T.], art. 117. [Back To Text](#)

¹⁵ See Jurisprudencia 48/1999 (S.C.J.N. 1999). [Back To Text](#)

¹⁶ See N.L.I.S.R., art. 20(X)–(XI). [Back To Text](#)

¹⁷ See [infra](#) I.B.5 for a more thorough analysis on this annual adjustment for inflation. [Back To Text](#)

¹⁸ See N.L.I.S.R., art. 29–VIII. [Back To Text](#)

¹⁹ See L.I.S.R., art. 25–I. [Back To Text](#)

²⁰ See N. L.I.S.R., art. 29–IX. [Back To Text](#)

²¹ See L.I.S.R., art. 22–X. [Back To Text](#)

²² See N.L.I.S.R., art. 29–X [Back To Text](#)

²³ See [id.](#), art. 39 et seq. (Art. 41 of old LISR already contemplated this form of depreciation). [Back To Text](#)

²⁴ See [id.](#), art.220, et seq. [Back To Text](#)

²⁵ See [id.](#), Transitory Art. Second–LXVIII. [Back To Text](#)

²⁶ See [id.](#), art. 220 (last paragraph). [Back To Text](#)

²⁷ See [id.](#), art. 32–XX. [Back To Text](#)

²⁸ See N.L.I.S.R., art. 32–XXV. [Back To Text](#)

²⁹ See [id.](#), art. 40–VI. [Back To Text](#)

³⁰ See [id.](#), art. 42–II. As of the date of this Memorandum, the exchange rate is approximately \$9.40 Mexican pesos per U.S. \$1.00. [Back To Text](#)

- ³¹ See id., art. 37. [Back To Text](#)
- ³² See id., arts. 46– 47. [Back To Text](#)
- ³³ See id., art. 61. [Back To Text](#)
- ³⁴ See C.F.F., art 16. [Back To Text](#)
- ³⁵ See L.I.S.R., art. 23–IV. [Back To Text](#)
- ³⁶ See id., art. 122. [Back To Text](#)
- ³⁷ See N.L.I.S.R., art. 165, Transitory Art. Second–LXXXII (stating shareholder eligibility to credit). [Back To Text](#)
- ³⁸ See "Cinco Votos.– Ponente: Juan Díaz Romero," Amparo en revisión, 1109/2000. Suprema Corte de Justicia de la Nación. Segunda Sala. Eli Lilly and Company, Mar. 30, 2000, (noting potential unconstitutionality of multipliers). [Back To Text](#)
- ³⁹ See N.L.I.S.R., arts. 113, 177, Transitory Art. Second–LXXXVIII (providing Board of Directors fees subject to withholding tax rates). [Back To Text](#)
- ⁴⁰ See id. (stating gains derived from sale of shares concluded prior to entry into force of new provisions will continue to be calculated in accordance with provisions of Old LISR). [Back To Text](#)
- ⁴¹ See id., art. 24 (declaring N.L.I.S.R. contains two procedures to calculate cost of shares). [Back To Text](#)
- ⁴² See id. (stating subsequent sales containing amount in excess shall be deducted from acquisition cost when calculating taxable gain). [Back To Text](#)
- ⁴³ See N.L.I.S.R., art. 150 (declaring purchaser does not need to withhold any tax if seller provides statement in writing that latter will pay tax on gain of sale according to provisions of Regulations of Income Tax Law). [Back To Text](#)
- ⁴⁴ See id., art. 154, (fourth paragraph) (stating foreign residents permanently established in Mexico must withhold and pay taxes directly to authorities within fifteen days of receipt of payment of shares). [Back To Text](#)
- ⁴⁵ See id. (discussing options when tax is withheld). [Back To Text](#)
- ⁴⁶ See id., art. 60, 109–XXVI (illustrating conditions for exemption in public offerings); L.I.S.R. art. 154. [Back To Text](#)
- ⁴⁷ See L.I.S.R., art. 154. [Back To Text](#)
- ⁴⁸ See N.L.I.S.R., art.60 (discussing various institutions of credit). [Back To Text](#)
- ⁴⁹ See id., art. 89 (promulgating when capital reduction is sale). [Back To Text](#)
- ⁵⁰ See L.I.S.R., art. 120. [Back To Text](#)
- ⁵¹ See N.L.I.S.R., art. 109–XVI (illustrating changes made by "New" L.I.S.R.) [Back To Text](#)
- ⁵² Calculated at an exchange rate of \$9.40 Mexican pesos per U.S.\$1.00. [Back To Text](#)
- ⁵³ See N.L.I.S.R., arst. 158– 160, Transitory Art. Second–LXXII. [Back To Text](#)

⁵⁴ See id. [Back To Text](#)

⁵⁵ See L.I.S.R., art. 77–XV. [Back To Text](#)

⁵⁶ See N.L.I.S.R., art. 109–XV. [Back To Text](#)

⁵⁷ This figure was derived from a calculation at an exchange rate of 9.40 Mexican pesos per U.S.\$1.00. [Back To Text](#)

⁵⁸ See N.L.I.S.R., art. 176–IV. [Back To Text](#)

⁵⁹ See id., title V. [Back To Text](#)

⁶⁰ This rate will gradually come down to 32% over the next 4 years. See N.L.I.S.R., arts. 177, 200, Transitory Art. Second–LXXXVIII. [Back To Text](#)

⁶¹ See N.L.I.S.R., art. 200. [Back To Text](#)

⁶² See id. [Back To Text](#)

⁶³ See L.I.S.R., art. 152–I. [Back To Text](#)

⁶⁴ See N.L.I.S.R., art. 193. [Back To Text](#)

⁶⁵ See id., art. 190. [Back To Text](#)

⁶⁶ See id.; see also supra I.D.4 of this article for a discussion of the requirements applicable to public offerings. [Back To Text](#)

⁶⁷ See N.L.I.S.R., art. 190. [Back To Text](#)

⁶⁸ See id. at art. 195, Transitory Art. Second–LIV. [Back To Text](#)

⁶⁹ See id., Transitory Art. Second–LVI. [Back To Text](#)

⁷⁰ See "Territorios Con Regímenes Fiscales Preferentes," title IV, D.O., Jan. 1 2002, (providing preferential tax benefits). [Back To Text](#)

⁷¹ See N.L.I.S.R., art. 215. [Back To Text](#)

⁷² See "Las Personas Que Hagan Pagos Que Sean Ingresos," art. 80–B, D.O., Dec. 30 1980, (stating, as part of Old LISR, this new tax is in addition to, and not in lieu of, states' payroll tax, which is usually 2%). [Back To Text](#)

⁷³ See N.L.I.S.R., Transitory Art. Third. [Back To Text](#)

⁷⁴ See "Ley del Impuesto al Valor Agregado," arts. 11,17, D.O., Dec. 29 1978. [Back To Text](#)

⁷⁵ See "Ley de Ingresos de la Federacion," Transitory Art. Seventh–I, II. [Back To Text](#)

⁷⁶ See id. [Back To Text](#)

⁷⁷ Calculated at an exchange rate of \$9.40 Mexican pesos X U.S.\$1.00. [Back To Text](#)

⁷⁸ See L.I.F., Transitory Art. Seventh–IX , X. [Back To Text](#)

⁷⁹ See id., Transitory Art. Eighth. [Back To Text](#)

⁸⁰ See id., Transitory Art. Eighth. [Back To Text](#)

⁸¹ See Diario Oficial de la Federación ("D.O.") (Federal Register) of January 14, 2002, available at <http://www.cddhcu.gob.mx/leyinfo/txt/82.txt> (creating title 14 of "Resolución Miscelánea 2000" [Miscellaneous Resolution]). Indeed, SHCP has issued various general rulings since January 1, 2002. Unfortunately, for most part they have made tax reform laws less, and not more, clear). [Back To Text](#)

⁸² See art. 2 of Decree amending LIEPS (published in D.O., of Jan. 1st, 2002) (the "LIEPS Decree") (declaring tax rate). [Back To Text](#)

⁸³ See id., art. 2–I(A)(3) (illustrating broad scope of "LIEPS" Decree). [Back To Text](#)

⁸⁴ See id., art. 2–II(B), 3–XIII. [Back To Text](#)

⁸⁵ See id., Transitory Art. Second–XIV. [Back To Text](#)