Denver Journal of International Law & Policy

Volume 4
Number 1 *Spring*
Symposium - Mexican-Foreign Investment Laws

Article 9

May 2020

Mexican Taxation: Law and Practice

Robert La Vega Miller

MEXICAN TAXATION: LAW AND PRACTICE

ROBERT LA VEGA MILLER*

The mere scope of the subject matter indicates the sheer presumptuousness of any attempt to state the law and practice of taxation of any modern country in a law review article. Rather, the effort of the author will be to eschew the abstract approach ordinarily preferred by the Civilist in favor of the practical and pragmatic approach preferred by the American practitioner. Through experience, it has been determined that most Americans tend to ask certain usual questions about Mexican taxation, and the effort will be to anticipate those questions and respond to them. For those requiring greater depth on specific subjects, a detailed bibliography is provided in Appendix B.

I. WHAT IS THE GENERAL CHARACTER OF THE MEXICAN SYSTEM OF TAXATION?

In its origin, the Mexican system drew heavily upon the French and Italian models.[1] Over more recent times, the experience of the United States has influenced the Mexican system.[2] Indeed, it is not uncommon to find highly placed persons in the taxation administration with LL.M. degrees in taxation from various American law schools. Additionally, Mexican authorities have computers and personnel with the ability to manage them. The net result is a highly sophisticated system of taxation and collection bearing more similarities to, than differences from that of the United States, superimposed over historical traditions, perhaps traceable more to the Italians, of overcentralization and widespread tax evasion, to the point of being a national scandal.[3] Having mentioned evasion as a fact, it is unlikely

---

* LL.B. Loyola of Los Angeles; LL.M. (Foreign & Comparative Law) New York University; Diploma, Facultad de Derecho de la Universidad Nacional Autonoma de Mexico; Research Fellow in Comparative Law and Taxation in Mexico for the Pan American Union, Organization of American States; Instructor Private International Law, Glendale University College of Law; private practice Los Angeles, California.

1. For an excellent treatment concerning the basic differences between the civil law and common law traditions, see J. MERRYMAN, THE CIVIL LAW TRADITION (1969). For the conceptual aspects of civil law taxation in general and the Mexican theory in particular, see S. ROJAS, DERECHO ADMINISTRATIVO (1965); F. ZAVALA, ELEMENTOS DE FINANZAS PUBLICAS MEXICANAS (1969).

2. It is beyond the scope of this paper to deal with any aspects of United States taxation. On the general subject of United States taxation of foreign operations see R. RHOADES, INCOME TAXATION OF FOREIGN RELATED TRANSACTIONS (1971).

3. Widespread tax evasion has reached the point of becoming a national scandal. *See* Excelsior, Nov. 4, 1973, at 6; Excelsior, Nov. 5, 1973, at 1; Excelsior, Nov. 17, 1973, § A at 15; Excelsior, Nov. 24, 1973, at 1.

that any foreigner would seriously consider participating, due to the sensitive nature of his presence and the constant scrutiny and vigilance usually devoted to foreign persons and enterprises in Mexico.

II. WHAT IS THE CURRENT SOURCE OF TAX LAW IN MEXICO?

The statutory source of Mexican income tax law is the *Ley del Impuesto Sobre la Renta* of December 30, 1964 (hereinafter LISR), consisting of 89 Articles. The LISR specifically provides that the Regulations of January 30, 1954, regulating the superceded income tax law of December 30, 1953, are to remain in effect until new regulations under the new LISR can be issued.[4] As of this date, no new regulations have been issued, and the 1954 Regulations, consisting of 220 Articles, continue in force.[5]

Governing most of the general provisions of administration and collection within the taxation system is the *Codigo Fiscal de la Federacion* (Fiscal Code) effective April 1, 1967, and consisting of 246 Articles.[6] Somewhat similar to a combination of the United States Internal Revenue Code Regulations, revenue rulings and cumulative bulletins, are the innumerable Circulars, consisting of published and unpublished directives and interoffice memoranda, designed to interpret, clarify and effectuate the provisions of the LISR. Finally, the decisions of the *Tribunal Fiscal* (Tax Court) and the *Suprema Corte de la Nacion* (Supreme Court) augment the other sources of tax authority.[7]

III. ARE TAXES ANY LESS IN MEXICO?

In Mexico, the highest rate of the progressive income tax is 42 percent. This rate is applied to those individuals whose income is greater than $3,500 per year and to those businesses with income in excess of $40,000 per year. However, this relatively low top rate is somewhat misleading. Two important reasons are first, other small direct and indirect taxes are levied which cummulatively reduce cash flow, and secondly, deductions from income are not as liberal as those in the United States. The net effect is that a greater amount of income is exposed to the lesser rate, therefore the tax impact is not

4. Ley del Impuesto Sobre la Renta, arts. 34 and 36 [hereinafter cited as LISR].

5. Reglamento de la Ley del Impuesto Sobre la Renta, Diario Oficial, Feb. 10, 1954 [hereinafter cited as RLISR].

6. Codigo Fiscal de la Federacion, Diario Oficial, Feb. 4, 1967 [hereinafter cited as Codigo Fiscal].

7. The entire system is activated by the enactment of the annual Federal budget, the latest being the Ley de Ingresos de la Federacion Para el Ejercicio Fiscal de 1974, Diario Oficial, Dec. 31, 1973, effective Jan. 1, 1974. The 1974 Budget projects a national income of approximately $18.5 billion, of which approximately 52 percent comes from taxation on the income and operations of persons and enterprises. *See* Ecelsior, Dec. 14, 1973, at 22-A; Excelsior, Jan. 3, 1974, § A at 8, 9.

significantly more favorable than the tax impact in the United States.

IV. How Is The System Administered?

Every taxpayer must enroll in the *Registro Federal de Causantes* (federal register of taxpayers),[8] administered by the principal taxing authority, *la Secretaria de Hacienda y Credito Publico* (hereinafter Hacienda).[9] Upon enrollment, the taxpayer is given a *cedula de causante* (identification number), which is a code based upon an arrangement of the taxpayer's name.

Depending on the nature of income, income tax returns must be filed and estimated taxes, withholding taxes and taxes otherwise due must be paid periodically with Hacienda. Since there are so many interim and periodical returns and payments necessary, one must be ever alert to filing dates.[10] In general, businesses must make estimated payments in May, September, and December, and must file their annual returns within three months of the close of their fiscal year. Individuals must file an anticipatory return in August and an annual return in April.[11] Tax payments may be made to specified banks and financial institutions, as well as to the treasury itself. Due to the normal slowness of the government's administrative machinery and partially to provide incentives for those who might have had second thoughts about tax evasion, Hacienda frequently provides no-penalty grace periods for taxpayers to comply with their fiscal obligations.

Hacienda has the authority to conduct audits of all taxpayers' returns.[12] There is a five-year statute of limitations, which may be interrupted in only one very limited circumstance.[13] Upon audit, if the auditing official determines there is an additional tax liability owed to the government by the taxpayer, the official must give written notice to the taxpayer explaining the basis for his determination of the taxes allegedly due. It is at this point that the system tends to break down. The taxpayer has three days from the receipt of notice of the alleged deficiency to either pay the assessment, under protest if he so desires, or to deposit 100 percent collateral and petition Hacieda for an administrative review. If the taxpayer does not

8. Codigo Fiscal, *supra* note 6, art. 93.

9. In English, la Secretaria de Hacienda y Credito Publico is sometimes referred to as the Ministry of Finance.

10. Since all merchants and enterprises must be members of a quasi-governmental Chamber of Commerce of Industry, the principal publication of the group, COMERCIO, provides a useful monthly reminder to its recipients of all the critical dates.

11. LISR, *supra* note 4, arts. 35, 85.

12. Codgio Fiscal, *supra* note 6, arts. 84, 85.

13. *Id.*, arts. 32, 33, 168.

act within the required three day period, he faces immediate attachment of his property in an amount equal to the assessment plus penalties and costs.[14] The short three day period is, therefore, a critical time in the process and exerts pressure on all parties to seek alternative remedies.

In the event that the taxpayer is able to provide the required collateral and elects to pursue his administrative remedy, Hacienda maintains a certain amount of authority to settle the dispute. The administrative procedure is supposed to be completed within a relatively short period of time.[15] If the taxpayer is dissatisfied with the administrative review, he has fifteen days from the notice of the adverse administrative decision to petition the Tax Court for further review.[16]

The Tax Court is an independent administrative court with exclusive jurisdiction over tax disputes. While it originally was conceived to deal only with tax matters, its jurisdition has expanded. All taxpayers will receive a fair determination of their tax liabilities from the highly independent and well-qualified magistrates.[17] From the determinations of the Tax Court, certain appeals are possible to the Federal Court system, and ultimately to the Supreme Court of Mexico.[18]

The government has recently made a serious effort to decentralize the fiscal bureaucracy. Some of the decentralization has involved agreements with state authorities to provide the states a share in the administration and the revenues of the federal tax system. It is still too early to determine the impact of this effort.

V. WHAT ARE THE TAXES?

The principal federal income tax is the *Ley del Impuesto Sobre la Renta*, which generates approximately 28 percent of the total Federal income. There are no state income taxes. The top marginal tax rate, generally for incomes above $40,000 per year for businesses and above $3,500 per year for individuals, is 42 percent, although a surcharge may raise the rate to 48.65 percent for businesses on amounts between $40,000 and $120,000 annually.[19] Taxable income includes all income from whatever source, unless specifically excluded.[20]

---

14. *Id.*, arts. 110, 111, 112, 157.
15. *Id.*, art. 159.
16. *Id.*, art. 192.
17. *See generally*, A. PORRAS Y LOPEZ, DERECHO PROCESAL FISCAL (1969).
18. Constitucion Politica de los Estados Unidos Mexicanos art. 103, 107; Ley de Amparo, arts. 114, 158.
19. LISR, *supra* note 4, art. 34.
20. *Id.*, art. 18.

With the exception of real property, there is no distinctive treatment of capital gains. As to income received from the sale of real property, while the tax rate is the same as on other income, the taxable base varies from 100 percent of the realized gain upon a sale within the first two years to 50 percent after a ten year holding period.[21]

The next major tax, which provides nearly 24 percent of the national income, is an excise tax on industry and commerce. The tax is generated in approximately equal proportions by the Mercantile Receipts Law[22] and special excise taxes upon specific industries. The Mercantile Receipts Law provides for a basic four percent tax on receipts from most sales of goods and services, with the rate increasing to 10 to 15 percent on products usually considered luxuries. The tax is administered by joint federal-state coordination, with the states receiving 45 percent of the taxes collected.[23] The special excise taxes upon specific industries vary considerably according to the industry. The specific laws regarding these excise taxes are collected in various tax publications which should be consulted in each individual case.

Other major sources of the Mexican Federal income, constituting direct or indirect taxation as the case may be, include import and export duties, payments for social security, and the stamp tax, which together amount to 12 percent of the Federal Budget.

Additionally, taxes are levied by state and local authorities, including a rather modest property tax. Inheritance taxes are no longer important. Profit sharing and other socially oriented requirements of the labor laws, as well as burdensome bookkeeping requirements, similarly must be calculated as part of the government-imposed costs of doing business. The sum total of the various fiscal obligations creates a total tax impact on cash-flow and operation not significantly different from that in the United States.

VI. WHAT REDUCTIONS ARE AVAILABLE TO REDUCE THE TAX IMPACT?

Principally, there are nine allowable deductions from the gross income of enterprises, and eight deductions from the gross income of

21. LISR, *supra* note 4, arts. 60, 70, 71. Prior to January 1, 1973, the reference was only to urban property and a complete exemption was provided for after the initial ten year holding period. The annual exemption for the gains on sales of securities by individuals was codified in an amendment to LISR art. 60 (III) and also became effective on Jan. 1, 1973. This exemption is of limited value, particularly because of the low volume, non-fluctuating operation of the Mexican securities market.

22. Ley Federal de Impuesto Sobre Ingresos Mercantiles, Diario Oficial, Dec. 31, 1951.

23. *Id.*, arts. 14, 15, as amended, Diario Oficial, Dec. 31, 1973.

individuals.[24] The most important of these deductions for businesses are cost of goods sold, depreciation and amortization and ordinary and necessary business expenses. These deductions are very strictly applied and are limited in their application. For example, depreciation and amortization is generally limited to a straight-line rate of from 3 to 35 percent, with the average falling at about 5 percent. The deductibility of ordinary and necessary business expenses is more limited in scope than that to which businessmen in the United States are accustomed.[25]

Individuals are permitted to deduct medical expenses, income from Social Security, interest payments, restricted charitable contributions, and some ordinary and necessary business expenses. Moreover, the individual taxpayer is entitled to personal exemptions of $720, $480, and $240, respectively, for himself, his spouse, and each of his lineal dependents.[26]

Because Mexico is a developing nation, the government fosters industrial growth in certain industries deemed to be socially desirable by allowing greater adjustments to gross income, including a lower tax base, accelerated depreciation, exemptions from certain taxes altogether, subsidies and tax rebates. The adjustments are also affected by the ownership and location of the enterprise.

While some special tax treatments are available within the income tax law itself,[27] the remainder are contained in a variety of laws and decrees found in diverse publications. For example, investment in an industry which promotes tourism or industrial development receives special fiscal treatment.[28] Shopping centers established in certain border cities receive special treatment also.[29] The Secretary of Industry and Commerce periodically publishes a list of desirable "new and necessary" industries covering a range of activities. The Secretary has the power to grant special fiscal stimuli to those seeking

24. LISR, *supra* note 4, arts. 20, 82.

25. *Id.*, art. 26 and RLISR, *supra* note 5, art. 54.

26. LISR, *supra* note 4, arts. 81, 82.

27. For example, LISR, *supra* note 4, art. 21 (i) (b) (11), (12) permits a 35 percent depreciation and amortization rate where the capital investment is dedicated to the improvement of the environment or to develop national technology. Similarly, LISR, *supra* note 4, at art. 34 allows a tax credit of 40 percent for certain agricultural and fishing enterprises and a 50 percent credit for book publishers.

28. Diario Oficial, June 20, 1973.

29. Diario Oficial, Nov. 19, 1973. The so-called "free zone" of the northern border area has provided considerable benefit for those withn its scope; Diario Oficial, July 19, 1968 and Mar. 17, 1971. *See also* Cowan, *Mexican Border Industrialization Program*, 8 COMP. JUR. REV. 17 (1971); D. BAERRESON, THE BORDER INDUSTRIALIZATION PROGRAM OF MEXICO (1972).

to engage in such activities.[30] To foster reinvestment, there is no undistributed earnings tax.

VII. WHERE MAY SPECIFIC INFORMATION BE OBTAINED?

Most of the large United States accounting firms operate in Mexico and are able to provide detailed information on specific tax problems. Additionally, the relevant governmental agencies are very helpful. A brief listing of these agencies is attached hereto as Appendix A. One would be well advised to speak directly to the various officials, however, rather than attempting to obtain information by correspondence. There are also a number of general books and articles on the subject of Mexican taxation. Most important are the various looseleaf services on Mexican taxation. These services are essential for anyone desiring to keep abreast of the current developments in Mexican taxation. Appendix B contains a bibliography to which the reader is directed for more specific information.

VIII. Conclusion

The Mexican tax system bears many similarities to the United States system. While some differences are readily apparent, such as the heavy emphasis on withholding taxes from all sources, the strong development and social-orientation reflected in the tax system and the gross evasion problems, the overall impact on the legitimate taxpayer is much the same as in the United States. Indeed, the complaint that the government is placing too heavy a tax burden upon its citizens is in no way unique to the United States, and is an increasingly familiar sound in Mexico.

30. SECRETARIA DEL INDUSTRIA Y COMERCIO, INDUSTRIAL OPPORTUNITIES IN MEXICO (1971); Diario Oficial, Jan. 4, 1955.

APPENDIX A

Sources of Information

Secretaria de Hacienda y Credito Publico
Palacio Nacional, Mexico 1, D.F.
Switchboard: (905) 5-85-40-11
International matters: (905) 5-21-72-37

Secretaria de Industria y Comercio
Av. Cuauhtemoc Num. 80, 6 ° piso.
Mexico 7, D.F.
International Information: (905) 5-78-86-42
Industrial promotion: (905) 5-88-59-93

Instituto Mexicano de Comercio Exterior
Avenida Insurgentes Sur 1443, Mexico, D.F.
Switchboard: (905) 5-63-43-00
International promotion: (905) 5-63-62-65

Camara Nacional de Comercio
Paseo de la Reforoa 42
Mexico 1, D.F.
(905) 5-46-24-48

APPENDIX B

Bibliography

1. ARTHUR ANDERSON & CO., MEMORANDUM ON MEXICAN TAXES, MEXICAN TAX BRIEFS, Jan. 4, 1965, *et seq.*
2. CCH, MEXICAN INCOME AND COMMERCIAL RECEIPTS—TAX LAWS AS OF JANUARY 1, 1973 (1973).
3. ERNST & ERNST, MEXICO: A DIGEST OF PRINCIPAL TAXES (1969).
4. FOREIGN TAX LAW ASS'N, MEXICAN INCOME TAX SERVICE, 4 vols. (no date).
5. H. GUMPEL & H. MARGAIN, TAXATION IN MEXICO, Harvard Law School World Tax Series (1957).
6. MARTINEZ DE ESCOBAR, HOW TO DO BUSINESS IN MEXICO (1972); available from Ediciones Rafael Martinez de Escobar, Mexico.
7. OAS PAN AMERICAN UNION, A STATEMENT OF THE LAWS OF MEXICO IN MATTERS AFFECTING BUSINESS (1970).
8. PRICE WATERHOUSE & CO., INFORMATION GUIDE FOR DOING BUSINESS IN MEXICO, Oct. 1964; Supp. Jan. 1966.
9. A. ROSAS, BUSINESS OPERATIONS IN MEXICO (1973); available from the Bureau of National Affairs, Inc., Wash. D.C.
10. TRADUCCIONES, INCOME TAX LAW (1973); available from Traducciones, Apdo. 52 Bis Mexico 1, D. F.
11. H. WRIGHT, FOREIGN ENTERPRISE IN MEXICO: LAWS & POLICIES (1971).
12. CCH MEXICANA, S.A. DE C.V., MEXICO FISCAL, IMPUESTO SOBRE LA RENTA (1965).
13. A. JIMENEZ, IMPUESTO SOBRE LA RENTA (no date); available from Ediciones Antolin Jimenez, Apdo. Postal M-2589, Mexico, D. F.
14. A. JIMENEZ, CODIGO FISCAL DE LA FEDERACION (no date); available from Ediciones Antolin Jiminez, Apdo. Postal M-2589, Mexico, D. F.