AN ALERT FROM THE BDO INTERNATIONAL TAX PRACTICE

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SUBJECT

MEXICAN TAX REFORM: UPCOMING DEADLINES FOR IMMEX AND MAQUILADORA COMPANIES

DISCUSSION

As discussed in a previous BDO Tax Alert,[1] Mexico reformed several of its tax laws, effective January 1, 2014. Companies operating under the Decree for the Promotion of Manufacturing, Maquila and Export Services Industry ("IMMEX") and companies performing transformation or repair services under a "consignment" agreement with a foreign principal are significantly affected by these reforms. The following table highlights important upcoming deadlines and suggested action items relating to these new tax laws, which are each discussed in more detail below:

Issue	Date
Value added tax ("VAT") withholding requirements	January 1, 2014
VAT on temporary importations	January 1, 2015
VAT certification	Varies by region; generally April 1, 2014, through October 22, 2014
Compliance with new transfer pricing rules	June 30, 2014
Maquiladora revenue requirement	July 1, 2014
Maquiladora machinery and equipment requirement for previously grandfathered maquiladoras	January 1, 2016
Compliance with new shelter maquiladoras requirements	January 1, 2014

[1] The prior Tax Alert may be found at www.bdo.com/download/3001.

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VAT Withholding Requirements

Beginning on January 1, 2014, an IMMEX company purchasing goods located in Mexico from a nonresident is subject to VAT through a new VAT withholding obligation. Such sales were previously exempt from VAT through December 31, 2013. New filing requirements apply and withholding tax must be paid to the Mexican tax authorities. Withheld taxes may be recovered in the following month. Beginning January 1, 2015, however, IMMEX companies certified for VAT purposes would not be subject to withholding, as discussed below.

VAT on Temporary Importations

Beginning January 1, 2015, all temporary importations made by IMMEX companies will be subject to VAT at the rate of 16 percent. The amount paid may be recovered through a credit, offset, or refund process; however, the specific processes are currently unclear. Note that temporary importations may still be subject to excise tax.

VAT Certification

In order to apply for immediate credit for VAT on the imports, companies may apply to become certified for VAT/excise tax purposes. The rules for certification have been published and companies should consider applying for certification in 2014 with the Customs Regional Administration ("ARACE") applicable to each company's tax domicile, pursuant to the following schedule:

ARACE	Dates
Existing companies certified under Rule 3.8.1, Chapter L (so-called NEEC companies) and tax warehouse vehicle assembly or vehicle manufacturing companies	April 1 – April 30
North Pacific	April 15 – May 15
Northeast	June 3 – July 3
North Central	July 7 – August 7
Central	August 7 – September 8
South and West	September 22 – October 22

Compliance with New Transfer Pricing Rules

Beginning January 1, 2014, for transfer pricing purposes, a maquiladora may either elect the safe harbor method or request an advance pricing agreement ("APA") from the Mexican tax authorities. Any maquiladora electing to request an APA must file a letter with the Mexican tax authorities stating its intent to do so no later than June 30, 2014. Note that a formal APA request, including the applicable transfer pricing analysis, may be submitted at a later date.

Maquiladora Revenue Requirement

As of July 1, 2014, foreign principals that provide raw materials, parts, and supplies to a maquiladora that generates revenue from production activities that do not clearly relate to its maquiladora operations will no longer qualify for the permanent establishment exemption previously enjoyed. Mexican tax authorities have recently clarified that the sale or distribution of finished goods is not considered a qualified production activity. Other types of activities may be qualified, however, only to the extent they are related to the maquiladora activity.

Maquiladora Machinery and Equipment Requirement for Previously Grandfathered Maquiladoras

Previously, only a maquiladora that began operations after December 31, 2009, was required to have at least 30 percent of the machinery and equipment used in the operation of the maquiladora be owned by the foreign principal. So-called grandfathered maquiladoras (those that began operations before December 31, 2009) had no such requirement. Under the new law, a grandfathered maquiladora is required to comply with the machinery and equipment requirement within a two-year period of the effective date of the enacted law. Thus, non-compliance with the regulation will result in the foreign principal losing its permanent establishment exemption in Mexico as of January 1, 2016. This is not a new requirement for non-grandfathered maquiladoras; thus, these companies should have already addressed this issue.

Compliance with the New Shelter Maquiladoras Requirements

The permanent establishment protection that is offered to nonresident manufacturers operating through a shelter maquiladora will be limited to four years upon compliance with certain requirements established in the Income Tax Law.