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For the Director

Individuals are exempt from paying Flat Tax (IETU) on income from the sale of goods in their inventories on December 31, 2007.

It is important to take into consideration that income received by an individual, arising from entrepreneurial activities, generated by sales transactions (transferring goods' ownership), for example selling inventories kept on December 31, 2007 made from January 1, 2008 and on are exempt from paying Flat Tax (IETU).

This obviously applies to land and fixed assets; it applies to all goods owned upon closing 2007 fiscal year.

This might surprise you; because the general opinion is that they are taxed, which is applicable only to organizations (juridical persons).

This exemption is beautifully stated in fraction VII of article 4 of Flat Tax Act (LIETU). Discuss this with your consultants and your auditor, if they disagree, they may change their mind after analyzing the section below.

Think about it!

Tax-free income for individuals which are also authorized deductions for purchaser

It is important to take into consideration that :

- a) Article 4 of Flat Tax Act is the legal provision that lists income exempted from Flat Tax.
- b) Fraction VII states that income from incidental acts is included in tax-exempt income.
- c) In addition to stating the scope of this concept, said fraction also says that taxed income received by individuals from sales that have not been deducted for Flat Tax purposes are considered included in said scope, whenever said individuals receive income taxed for Income Tax purposes from:
 - Entrepreneurial activities (agriculture, cattle breeding, forestry, fishing, industry and trade) and professionals.
 - Leasing and in general granting the temporary use of real estate.

This is why the Presidential Decree on Fiscal Incentives dated November 5, 2007 only benefits organizations (juridical persons), giving the following incentives:

- Credit for inventories to December 31, 2007.
- Credit for accounts payable for purchases of goods made between November and December 2007 for taxpayers who in 2007 received at least 70% of their income from operations with general public.

Deducting purchases made as of 2008 of goods included in the seller's inventory on December 31, 2007 is, of course, allowed, even if the supplier is exempted from paying Flat Tax, as stated in fraction I of article 6 of Flat Tax Act.

The above mentioned deduction will of course apply provided the taxpayer meets applicable requirements for deduction, such as:

- goods are used to perform business activities,
- goods generate income taxed with Flat Tax,
- they are essential to perform business activities taxed with Flat Tax.

It had to be

Electronic log to complete DIOT

SAT (equivalent in Mexico to IRS) recently uploaded to its Webpage a new tool with which VAT taxpayers may prepare the Information Return on Operations with Third Parties (Declaración Informativa de Operaciones con Terceros - DIOT), which, among others, has the following advantages:

- Unlimited taxpayers recording.
- List of suppliers for each registered taxpayer (avoiding the need to input recurring suppliers every month).
- Database to include taxpayers corresponding to the month being reported (whenever applicable register all months in the fiscal year and input suppliers' information as it is submitted to SAT, as well as registering the global supplier).
- Printable operations report, which may be exported to Excel.

- Encrypted information to be included through “batch load” in DIOT electronic form (avoiding direct input in DIOT form).

In general, the system is a good tool, user-friendly, which will reduce each month the time required to input information to prepare the corresponding return in a *.txt file with a few clicks.

Be up-to-date in foreign trade

First Resolution on Amendments to Foreign Trade Rules 2008-2009

Last July 31 the *First Resolution on Amendments to General Rules on Foreign Trade for 2008* was published in the Federation’s Official Gazette. We therefore point-out below the main amendments:

- *Rule 2.2.6.* To obtain the authorization to import goods without being included in Importers List (Padrón de Importadores), a legible photocopy of Flat Tax provisional returns for current fiscal year must be attached.
- *Rule 2.6.17.* Revoking the assignment given to customs agents to carry out foreign trade operations will be enforced on the date the application is submitted, or at a later date whenever stated so.
- *Rule 2.26.* Copy of entry/export summaries for carrier, importer or exporter and customs agent may be printed only with the fields included in the form “Simple Summary Printing”, provided the corresponding summary includes IP identifier listed in Appendix 8 of Exhibit 22 of said Resolution.
- *Rule 2.7.4.* Courier companies may not import goods which are hard to identify due to their presentation in pharmaceutical shapes, such as; pills, tablets, powders or capsules, which may require physical and/or chemical analysis to know their composition, nature, origin and other features to determine the corresponding tariffs classification.
- *Rule 4.3.* Samples of human serum or human tissue may be exported, provided they are covered by a Research Protocol, approved by the Federal Commission for the Protection against Sanitary Risks.

Most recent, most relevant

1. Second Resolution on Amendments to Miscellaneous Fiscal Rules 2008-2009

In the same issue of the Official Gazette on July 31, the *Second Resolution on Amendments to Miscellaneous Fiscal Rules for 2008* was published. The most important issues are discussed below:

First Book:

- *Rules 1.2.3.2.1., 1.2.3.2.2., 1.2.3.2.4., 1.2.10.10., 1.3.9.1., 1.3.9.7., 1.3.9.10., 1.3.9.11., 1.3.9.12. and 1.6.5.* State the number, included in Exhibit 1-A “Fiscal Filings”, which taxpayers must mention when submitting to fiscal authorities notices regarding each of the above-mentioned rules. The last amendment to said Exhibit was published in the Federation’s Official Gazette last August 4.
- *Rule 1.2.9.1.* It states that bank statements used as evidence must include the fiscal address of the institution, stock broker, company or administrator that issues them.
- *Rule 1.11.22.* It clears-out that holders of concentrating accounts for deposits made on them will not be jointly responsible for the Tax on Cash Deposits they must collect, whenever they were not been informed by institutions in the financial system due to failures in their computer systems; provided they collect outstanding Tax on Cash Deposits due to lack of information on the working day following the date when the corresponding institution provides said information.
- *Rule 1.11.29.* It is eliminated to point-out that Financial System concept for purposes of articles 12 of Tax on Cash Deposits Act and 8 of Income Tax Act will include organizations both resident in Mexico and abroad.

Second Book:

- *Rules 11.2.3.1.9., 11.2.12.1., 11.2.12.3., 11.2.12.5., 11.2.12.6., 11.2.17.1., 11.2.20.5., 11.3.11.1., 11.6.10. and 11.6.23.* State the number, included in Exhibit 1-A “Fiscal Filings”, which taxpayers must mention when submitting to fiscal authorities notices regarding each of the above-mentioned rules. The last amendment to said Exhibit was published in the Federation’s Official Gazette on August 4.

- *Rule II. 2.2.6.* It states, for organizations that have their financial statements certified as Big Taxpayers, that whenever they request the reimbursement of a balance in favor they must attach to Form 32, Exhibits 16 y 16-A.
- *Rule II.2.12.7.* The term to submit the list of concepts for Flat Tax purposes is adjusted; i.e., it will be submitted observing the same deadlines as provisional returns for this tax. However, the information corresponding to June should have been submitted by August 10, 2008. This will also apply to *maquiladora* companies.
- *Rule II.2.16.1.* It adds the procedure to be followed by taxpayers to correct mistakes regarding the concept of tax paid, Taxpayer Number, name, corporate name and fiscal year in 2006 annual tax returns for Income Tax and Tax on Assets.
- *Second Transitory Article.* It states that the obligation to submit an information return on customers and suppliers will be considered observed whenever the taxpayer submits the Information Return on Operations with Third Parties (Declaración Informativa de Operaciones con Terceros (DIOT) for 2008 fiscal year.

2. Third Resolution on Amendments to Miscellaneous Fiscal Rulings 2008-2009

To the date of this bulletin, and still to be published in the Federation's Official Gazette, SAT disclosed in its Webpage the "Draft" for the *Third Resolution on Amendments to Miscellaneous Fiscal Rulings for 2008*. To point-out, regarding Rule I.11.28 of First Book, the possibility to consider Tax on Cash Deposits (IDE) corresponding to August and September 2008 actually paid in said month even if it were extemporaneously collected (for reasons not attributable to taxpayers) within the first ten days of the following month.

This will apply provided the above-mentioned collection is included in the monthly certificate vouching for payment of Tax on Cash Deposits (IDE) corresponding to said month. This benefit will not apply to taxes collected for purchases in cash of cashier checks nor for term deposits which individual amount is over \$25,000.00.

Question of the month

I read in a magazine that Rule I.4.7. of Miscellaneous Fiscal Rulings allows deduction for Flat Tax (IETU) purposes of goods purchased up to 2007 when payment is made as of 2008. What is your opinion on this?

It is really amazing that said Rule is construed like that, because no way does it suggest, or allows making said deduction, not in a tacit way and never expressly.

Due to its importance it is transcribed below:

For purposes of article 6, fraction IV of Flat Tax Act, the requirement regarding date of issuance of vouchers stated in article 31, fraction XIX, first paragraph of Income Tax Act is considered observed whenever the corresponding voucher was issued on a fiscal year previous to the fiscal year when the deductible expenditure was actually paid.

Upon analyzing it we find:

1. It is acknowledged that Flat Tax Act conditions deductions made to the observance of deductibility requirements stated in Income Tax Act.
2. It stresses the requirement in the last sentence of the first paragraph of fraction XIX of article 31 of Income Tax Act; this is, vouchers for a deductible expense must be dated on the fiscal year when the deduction is made.
3. It subtly suggest disobeying the previous provision, by stating that whenever the voucher for the corresponding expense was issued on the fiscal year prior to the fiscal year when the deductible expense was actually paid, there is no need to exchange it.

On this issue it is important to bear in mind:

- In principle, the rule is considered useless, taking into consideration the contents of ninth transitory article of Flat Tax Act, which states that operations made up to December 31, 2007 cannot be deducted because, for a deduction to be applicable for Flat Tax purposes, payments must be earned as of January 1st, 2008, which means that vouchers for deductible expenses made in 2008 will always be dated in said year.
- Therefore, we may consider that this Rule will apply for operations made in 2008, which will be paid in 2009, which is perfectly valid, though

surprising, because the situation is largely anticipated.

- This Rule may also apply to expenses made up to 2008 for some of the concepts to be included in the Original Amount of Investment (Monto Original de la Inversión – MOI) mentioned in the second paragraph of article 37 of Income Tax Act, i.e. duties, anti-dumping tariffs, freights, insurance against transportation risks, handling and commissions on purchases and fees paid to customs agents.

It will be applicable if, and only if, said expense is included in some investment made between September 1 and December 31, 2007, which according to the fifth transitory article is considered an additional deduction for Flat Tax purposes, provided it meets the requirements stated in said article, standing out the requirement of being new investments.

- For example, a piece of machinery could have been purchased in 2007, which purchase meant paying a commission on the purchase to an organization, which was paid in January 2008.
- Therefore, the voucher for the commission would be identified as part of the Original Amount of Investment on machinery, but at the same time it is an expense made by the purchaser and earned by the supplier of said service in 2007, which when paid in 2008 should observe the requirements set to this purpose by Income Tax Act, and therefore “if it is a deductible expense, the date in the voucher (2007) must match the date when it is deducted (2008)”.

As may be observed, this Rule was never issued with the purpose of making legitimate a deduction expressly forbidden by Flat Tax Act, but to adjust a Rule that merely states the way to do something, providing the details so that any expense linked to a given investment can be made hassle-free.

Give unto Caesar...

"Too soft laws are never obeyed; too harsh laws are never executed". **Benjamin Franklin.**

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