

# Tax incentive for investments in productive economic activities in the southeastern region of Mexico

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On June 5, 2023, the "Decree to promote investment by taxpayers engaged in productive economic activities within the Isthmus of Tehuantepec" (the "Decree") was published in the Federation's Official Gazette.

## General considerations

The Decree establishes a series of fiscal incentives for taxpayers who engage in productive economic activities within the Isthmus of Tehuantepec (located on the southeastern region of Mexico, within the states of Veracruz and Oaxaca), in the specific areas determined by the decentralized public entity called the Isthmus of Tehuantepec Interoceanic Corridor.

To be eligible for the incentives provided in the Decree, the following requirements must be met:

- I. Being up to date with the tax obligations;
- II. Having a valid concession title or being the owner of a property within one of the areas determined for these purposes;
- III. Submission of the investment project for which the concession title was granted; and
- IV. Having the tax address in the areas determined for these purposes, where the productive economic activities are carried out.

Additionally, to maintain the fiscal incentives, progress in the investment project and compliance with minimum employment levels must be met, which will be determined by the Ministry of Finance and Public Credit ("SHCP", as per its acronym in Spanish) in accordance with the project and the economic activity being carried out. The SHCP will issue a certificate evidencing compliance with such requirements, or a resolution of non-compliance, based on an opinion issued by the general director of the Isthmus of Tehuantepec Interoceanic Corridor.

The productive economic activities covered by the Decree are the following

- I. Electrical and electronic;
- II. Semiconductors;
- III. Automotive (electric mobility);
- IV. Auto parts and transportation equipment;
- V. Medical devices;
- VI. Pharmaceutical;
- VII. Agro-industry;
- VIII. Electric power generation and distribution equipment (clean energies);
- IX. Machinery and equipment;
- X. Information and communication technologies;
- XI. Metals and petrochemicals; and
- XII. Any other activity not included in the previous items determined by the Board of Directors of the Isthmus of Tehuantepec Interoceanic Corridor.

The Decree provides a fiscal incentive for individuals or corporations residing in Mexico, as well as to residents abroad with a permanent establishment in the country, who are subject to income tax under Title II (corporate taxpayers), Section I of Chapter II of Title IV (individuals with business and professional activities), or Chapter XII of Title VII (simplified trust regime for corporate taxpayers) of the Income Tax Law ("ISR", as per its acronym in Spanish) that generate income through any of the aforementioned productive economic activities within the specific areas determined for these purposes.

## Income tax benefits

The incentive consists of a credit against the income tax ("ISR", as per its acronym in Spanish) due in the corresponding fiscal year, in accordance with the terms established in the Decree.

This tax credit will be equal to 100% of the ISR due during three fiscal years, counted from the year in which the taxpayers obtain the certificate allowing them to apply the benefits of the Decree.

After the three-year period, the fiscal incentive will be 50% of the ISR due in the following three fiscal years, or up to 90% if certain minimum employment levels are met, according to the guidelines to be issued by the SHCP.

Furthermore, the Decree establishes that taxpayers may deduct 100% of the original investment amount in new fixed assets used to carry out their productive economic activities in the specific areas determined for these purposes.

This accelerated depreciation will replace the maximum deduction percentages established in the LISR. This benefit will be valid for a period of six fiscal years, counted from the year in which the taxpayers obtain the certificate allowing them to apply the benefits of the Decree.

### **Value Added Tax benefits**

Likewise, the Decree grants a fiscal incentive for Value Added Tax ("VAT") purposes, consisting of a tax credit equivalent to 100% of the VAT payable on the sale of goods, provision of independent services, or granting of temporary use or enjoyment of goods mentioned in the Decree. This tax incentive will be valid for a period of four years from the entry into force of the Decree and can be used to reduce the VAT payable on such activities.

It is important to note that the fiscal incentive referred to in the previous paragraph will only apply if no amount of VAT is charged to the acquirer of the goods or services, and as long as the goods, services, or use or temporary enjoyment of goods are used by the acquirers in the performance of their productive economic activities within the specific areas determined for these purposes.

### **Other considerations**

It is important to mention that in order to apply the benefits established in the Decree, taxpayers must calculate the ISR due for the fiscal year and the corresponding advance payments, considering only the income attributable to the productive economic activities carried out within the specific areas determined for these purposes, as well as deductions that are strictly necessary to obtain such income and that meet the requirements established in the LISR.

Likewise, if the amount of the deductions exceeds the corresponding income, the difference will be considered a tax loss and can only be offset against the tax profits derived from the productive economic activities carried out within the specific areas determined for these purposes.

In this regard, if taxpayers generate income other than that attributable to the productive economic activities carried out within the specific areas determined for these purposes, they must separately calculate the ISR corresponding to such income in accordance with the provisions of the LISR, without applying the tax credit referred to in the Decree.

Taxpayers benefiting from the fiscal incentives mentioned in the previous paragraphs cannot simultaneously apply the following benefits:

- I. The provisions established in articles 181 and 182 of the LISR (foreign residents with maquilas).
- II. The optional regime for groups of companies established in Title II, Chapter VI of the LISR.
- III. The provisions established in articles 187 and 188 of the LISR, regarding trusts dedicated to the acquisition or construction of real property (REITs).
- IV. The fiscal incentives mentioned in articles 189, 190, 202, and 203 of the LISR.

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