

## Tax Newsletter

January 08, 2019

### Advance Publication of the Rules for the Universal Tax Offset for 2018 and the Tax Incentives for the Northern Border Region Decree

On January 7, 2019 the Tax Administration Service ("SAT" per its Spanish Acronym) published the draft of the Sixth Resolution of Modifications to the Fiscal Miscellaneous Resolution of 2018 and the Appendix 1-A ("Sixth Resolution of Modifications") on its webpage, pending publication in the Federal Official Gazette. This document addresses several rules for the application of the Universal Tax Offset ([See bulletin Elimination of the Universal Tax Offset – Legal Remedies](#)) and for the Tax Incentives for the Northern Border Region Decree (the "Decree") ([See bulletin of Tax Incentives For The Northern Border Region Decree](#))

The most relevant rules of the Sixth Resolution of Modifications are the following:

#### Elimination of the Universal Tax Offset

Taxpayers may offset their favorable balances generated until December 31, 2018, against any other federal taxes due, provided that: i) the taxes do not derive from importations, ii) the same authority collects it and iii) it does not have a specific destination. This will also be applicable to its accessories.

In this regard, the Universal Tax Offset can be applied to the favorable balances in or undue payments generated until 2018, not including withheld taxes, in which case, such taxes will not be able to be offset against balances accrued through 2018.

Even though the offset of favorable balances regarding taxes due is permitted, the Universal Tax Offset for favorable balances generated after January 1, 2019 and the possibility of offsetting favorable balances against withheld taxes was eliminated. Therefore, we consider this is a severe violation to the human rights and constitutional guarantees, as we previously advised in the ELIMINATION OF THE UNIVERSAL TAX OFFSET – LEGAL REMEDIES Newsletter ([see bulletin](#))

It was intended to rectify any possible human right's violation regarding the non-retroactivity of the law with the issuance of these rules. However, due to the elimination of the possibility to offset favorable balances against the withheld taxes, the violation to human rights and the negative impact to taxpayers prevails.

#### Tax Incentives for the Northern Border Region Decree

Below we will address the most relevant rules for Income Tax and Value Added Tax ("VAT") purposes.

##### A. Income Tax

- To register in the Registry for the beneficiaries of the tax incentive in the Northern Border Region (The "Registry") and to apply for the Decrees benefits, taxpayers must file the notice 1/DEC-10 in the following dates:

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Scenario	Due date
Taxpayer with domicile or establishment in the Northern Border Region on January 1, 2019	March 31, 2019
Taxpayers that initiate activities or open an establishment, branch or agency subsequently in this region.	Within the following month to the date of registration in the Federal Tax Registry or to the filing date of the establishment opening notice
Taxpayers that renovate their registry	Same term as the annual income tax return for the previous fiscal year

- Through the notice the taxpayers must comply with the following additional requirements:
  - a) Declare that all the requirements are met to apply to the Decree's incentive.
  - b) Declare under oath that they obtain at least 90% of their annual income in the Northern Border Region in the previous fiscal year and the value of the activities performed in this region, separating the income obtained in the Northern Border Region from the rest. The income obtained through branches, agencies or establishments must be separated in the integration income.
  - c) Declare under oath that they have not carried out operations with taxpayers involved in activities that are presumed to be inexistent operations, or evidence that they actually acquired the goods or received the services that the invoice evidences.
- SAT can deny the registration if it considers that the requirements were not met by the taxpayers and will disclose the cause of rejection to the taxpayer.
- To verify the accuracy of the information provided through the Notice, SAT can audit taxpayers prior to the registration in the Registry. If it considers that they do not comply with the Decree's requirements, the notice will be canceled. Within the next 10 business days following the cancelation, taxpayers may initiate a procedure to undermine it.
 

In case the notice is cancelled and the taxpayer does not undermine it, the taxpayer should rectify its fiscal situation as of the date in which the incentive was applied.
- Only the activities performed in the Northern Border Region should be considered to determine if the 90% annual income threshold is met.
- Taxpayers that do not apply this credit to any estimated monthly payments due will lose the benefit to apply the incentive.
- To cancel the registration of the Registry taxpayers must file the Notice 2/DEC-10.
- The following rules must be complied to collaborate with the real time inspection program:
  - a) Every six months the taxpayers that are registered in the Registry must file the Notice 6/DEC-10. Among other information, the following must be complied:
    - i. Documentation that evidences the presence of the taxpayer in the Northern Border Region. For this purpose the following documents are admissible: (i) bank statements; (ii) receipts of services, property or land registry payments. In any case, these documents must contain the taxpayer's name.

- ii. Taxpayers that do not comply with the 18-month presence requirement and need to evidence sufficient economic resources, assets and installations must file the documents that evidence their principal source of income. Among other documents, the following can serve this purpose: (i) Mexican Taxpayer's Identification Number and the job description of the persons included in its structural organization; (ii) the statement of financial position of the previous year or of the latest month; (iii) accounting records and documentation that supports the policies linked to the taxpayer's investments, as well as photographs; (iv) documentation that evidence the financing source ; (v) real estate property titles where the operations are performed by the taxpayer.
- b) Taxpayer must file additional information if required. In that regard, the requests and reunions with the SAT must be attended from August 2019 until the first semester of 2021.
- c) The real time inspection may be performed in: (i) the fiscal domicile; (ii) the registered branch, agency or establishment and (iii) in the SAT's offices.
- d) Once the inspection is conducted, taxpayers will be notified with a petition that must be answered during the next 3 business days, confirming their participation. Additional information or a meeting with the taxpayer or its legal representative may be requested once the SAT receives the response.
- e) In case of not complying with the procedure, or not replying to the requests, it will be considered as if the taxpayer did not cooperate in the verification program.
- f) In any case, the SAT can conduct an audit procedure and determine a tax assessment.

## **B. VALUE ADDED TAX**

- To apply to the VAT incentive, the Notice 4/DEC-10 must be filed in the following dates:

Scenario	Due Date
Taxpayers that performed activities subject to the incentive as of January 1, 2019	February 7, 2019
Taxpayers that initiate activities subsequently	With the registry in the Federal Taxpayer Registry.

- The taxpayers that apply to the VAT incentive must comply with the following invoice requirements:
  - In the tax rate catalogue, also called "TasaOCuota", the option of "VAT credit applied to the 50%" must be selected. This option will be accessible 72 hours after filing the notice.
  - This option is not applicable to operations that are not subject to the incentive.
  - The Invoices Certified Providers must validate that the taxpayer filed the applicable notice.
- Mediante la presentación del Aviso 5/DEC-10 los contribuyentes podrán dejar de aplicar el estímulo en materia de IVA.

This newsletter was prepared jointly by por Ricardo León-Santacruz  
([rls@sanchezdevanny.com](mailto:rls@sanchezdevanny.com)), Jorge López-López  
([jlopez@sanchezdevanny.com](mailto:jlopez@sanchezdevanny.com)), José Rodolfo Pérez-Argüello  
([jperez@sanchezdevanny.com](mailto:jperez@sanchezdevanny.com)) and Andrea Núñez-Leal  
([anunez@sanchezdevanny.com](mailto:anunez@sanchezdevanny.com))

## Contact

**José Ángel Eseverri-Ahuja**

[jae@sanchezdevanny.com](mailto:jae@sanchezdevanny.com)

**Ricardo León-Santacruz**

[rls@sanchezdevanny.com](mailto:rls@sanchezdevanny.com)

**Abel Francisco Mejía-Cosenza**

[amejia@sanchezdevanny.com](mailto:amejia@sanchezdevanny.com)

**Guillermo Villaseñor-Tadeo**

[gvillasenor@sanchezdevanny.com](mailto:gvillasenor@sanchezdevanny.com)

**Mariana Eguiarte-Morett**

[meguiarte@sanchezdevanny.com](mailto:meguiarte@sanchezdevanny.com)



**Mexico City**

T. +52 (55) 5029.8500

[www.sanchezdevanny.com](http://www.sanchezdevanny.com)

**Monterrey**

T. +52 (81) 8153.3900

**Querétaro**

T. +52 (442) 296.6400