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Proposed Changes to the Maquiladora Decree and the Enactment Process

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As many folks in the maquiladora sector are aware of, on January 12, 2010, the Federal Commission for the Regulatory Improvement (“COFEMER”, due to its initials in Spanish) published in its website a project filed by the Ministry of Economy that proposes to modify certain aspects of the Maquiladora Decree (Decreto por el que se Modifica el Diverso para el Fomento y Operacion de la Industria Maquiladora de Exportación).

However, due to the lack of clarity in the draft of the proposed changes, in some cases, the consequences of determined proposed dispositions are not very clear and consequently, may be interpreted in diverse manners.

Due to the aforementioned, at the proper time, it may become advisable to seek a confirmation of criteria from the corresponding authorities, so as to ensure that the interpretation of a determined disposition is the same one as that of your Maquila Company.

Nevertheless, prior to the petition of confirmation of criteria, it is important to understand what the proposed changes are and what the enactment process of such proposed changes entails.

Among others, the changes proposed to the Maquiladora Decree, are the following:

1. The modification of article 33 of the Maquiladora Decree in order to establish that for Income Tax Law Purposes, Maquiladora Operations should be understood as those in which:
 - a. Raw materials are subject to a Transformation or repair process (hence excluding as Maquiladora Operations, the services provided by Service Maquiladoras)
 - b. The raw materials used in the maquila operation process are preponderantly supplied by an entity not residing in Mexico.
 - c. Provided the Maquiladora Company started operations after November 13, 2006; the maquila operation is done through machinery and equipment that a) is property of an entity that does not reside in Mexico; b) was imported into Mexico under a temporary regime; c) was not initially

- property of the Mexican Maquiladora carrying out the Maquila Process.
2. The modification of article 4 of the Maquiladora Decree in order to limit to a 6 month stay, steel raw materials imported under a temporary regime (as opposed to an 18 month stay which is the period of time currently authorized for raw materials in general), exception made for Certified Companies ("Empresas Certificadas") which may continue to have them for an 18 month period of time.
 3. The inclusion of article 33 BIS within the Maquiladora Decree in order to establish that for Value Added Tax purposes, Maquiladora Operations should be considered as the manufacturing operations carried out by the Maquila Companies in accordance to their Maquila Program.

Such proposed modifications are not yet official; as they have not been enacted.

Generally speaking, when a Ministry or Branch of the Executive Power (Such as the Ministry of Economy) proposes to modify any governmental regulation, (such as the Maquiladora Decree), it has to submit the project containing its proposals to COFEMER.

When COFEMER receives such type of projects, it has a 30 business day period to analyze such projects and to receive comments from the private sectors affected by or interested in such project.

If COFEMER considers it adequate or necessary, it may send to the

governmental branch that proposed the modifications, an opinion concerning the benefits and or disadvantages the modifications proposed would generate, including the comments received from the affected or interested private sectors, and any recommended changes, amendments, or improvements.

If the branch of the executive power that proposed the modifications does not comply with the recommendations emitted by COFEMER, it must, prior to sending the proposed changes to the head of the executive power (the President of Mexico, [who is the one that definitely authorizes or not such changes]) communicate to COFEMER its reasons for not complying with such recommendations, after which COFEMER has to render a final opinion with respect to the proposed changes.

When the project containing the proposed changes is submitted for the approval of the head of the executive power, the legal counsel of the executive power must take into account the final opinion of COFEMER and the considerations the executive branch had for the proposal of the modifications and its reasons for not complying with the recommendations of COFEMER.

As already stated, in the particular case of the project containing the proposed changes to the Maquila Decree, COFEMER received from the Ministry of Economy the project containing such proposed modifications, on January 12, 2010.

After such date, COFEMER has received many comments from the private sectors

affected by the proposed changes, including many Maquiladora and Accountant Associations, requesting COFEMER to ask from the Ministry of Economy, among others:

1. The reconsideration of the proposed modification that for Income Tax Law purposes, Maquila Operations should be performed with equipment and machinery property of an entity residing outside Mexico.
2. To define whether or not the condition aforementioned, implies that Mexican Maquiladoras will not be authorized to own any part of the machinery and equipment that is used in the maquila operation.
3. To reconsider the proposed modification that the raw materials used in the Maquila Operation should be preponderantly supplied by an entity not residing in Mexico.
4. To reconsider the condition that steel raw materials should only remain in Mexico for a 6 month time frame as opposed to an 18 month time frame.
5. To avoid defining in the Maquiladora Decree what should be understood as Maquiladora Operations for Income Tax Law and Value Added Tax Law purposes, as that should be defined in each respective law.
6. To include, for Income Tax Law Purposes, that the services carried out by the Service

Maquiladoras should also be understood as Maquila Operations.

Due to the many comments received by COFEMER from the private sectors affected, COFEMER has emitted and sent to the Ministry of Economy, the initial opinion concerning the project proposed by the Ministry of Economy, requesting the latter to consider the issues raised by the private sectors and the comments posted by them in the website of COFEMER.

However, the Ministry of Economy has not yet answered the initial opinion of COFEMER, as it only received it on the last week of February, therefore, we do not yet know whether the Ministry of Economy will take the recommendations contained in the same or not.

Consequently, in order to timely determine the exact impact maquiladoras will have due to the modifications proposed by the Ministry of Economy to the Maquiladora Decree, we advise to follow up on the communications between the Ministry of Economy and COFEMER, and any amendments to the proposed modifications, as well as the final draft of the project that contains the proposed changes and, if the President of Mexico approves such project, the date of its publication and enforcement.

Also and as initially stated, if the language of the final draft remains unclear with respect to the interpretation of certain proposed dispositions, it may be advisable to seek the confirmation of criteria by the corresponding authorities.

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