



JONES DAY  
**COMMENTARY**

## MAJOR LEGISLATIVE OVERHAUL FOR *MAQUILA* COMPANIES IN MEXICO

The Mexican tax law amendments that entered into effect on January 1 pose various challenges for the *maquila* sector and related foreign trade participants, with significant value-added tax (“VAT”) and income tax implications. *Maquilas* or *maquiladoras* are assembly plants located in Mexico, and authorized to operate by the Mexican government, to which imported materials and parts are shipped and from which the finished product is then returned abroad.

### FORMER VALUE-ADDED TAX EXEMPTION FOR TEMPORARY *MAQUILADORA* IMPORTS REPLACED BY TAX CREDIT, SUBJECT TO CERTIFICATION REQUIREMENTS

The VAT law was amended to eliminate the VAT exemption for temporary imports of raw materials and machinery by *maquila* companies. As a result, in principle all temporary imports made by

*maquiladoras* will now be subject to VAT upon their entry into Mexican territory. However, the *maquiladora* can obtain a certification from the Mexican Tax Administration Service (“SAT”) authorizing it to take a tax credit equal to the amount of the entry VAT, thereby offsetting the tax.

*Maquiladoras* may also obtain this benefit if they guaranty the VAT payable with a bond issued by an authorized bonding company.

The SAT’s requirements for accreditation follow the existing trend of relying heavily on formalities (timely and correct filings, maintain accounting records, etc.) rather than on true compliance with the *maquiladora*’s substantive obligations, namely (i) the use of the temporarily imported assets in an industrial transformation process, and (ii) their return abroad after their legal term of stay.

Some of the new certification requirements are cause for concern. For example, a certified *maquiladora* will be required to:

- Prove that the value of the merchandise transformed and returned during a given year represents at least 60 percent of the value of the temporarily imported materials during the same period.
- File the response to an electronic verification via the SAT's electronic system attesting that not only it, but also its members, shareholders, legal representatives, and sole director or board members, are in compliance with their respective tax obligations.
- Have the infrastructural capacity necessary to operate under its specifically approved *maquila* program. (It is unclear whether the SAT presently has the capacity to verify this. If the SAT denies a certification for this reason, the company may not reapply for certification for six months.)
- Engage SAT-authorized Mexican or foreign transportation companies for the movement of temporary imports.
- Reapply for certification if it is the resulting entity in a merger or spin-off.
- Notify the SAT of any change in its members, shareholders, directors, sole administrator, or legal representatives.
- Comply with its social security obligations.
- In case of an audit, evidence the lawful stay in Mexico of any assets with a value of US\$7,500 or more.

Failure to comply with any of the above requirements will result in the cancellation of a *maquiladora's* "certification."

In principle, certification is subject to yearly renewal. However, *maquiladoras* with five or more years operating under the same authorization, or with machinery and equipment valued at more than US\$3.85 million or more than 1,000 employees, may obtain this certification for two-year periods. *Maquiladoras* with seven or more years operating under the same authorization, or with machinery and equipment valued at more than US\$7.7 million or more than 2,500 employees, may obtain this certification for three-year periods.

*Maquiladoras* are no longer required to withhold VAT from the sales by their Mexican suppliers. While this may benefit the Mexican suppliers, it could affect the cash flow of smaller *maquiladoras*.

## **ADDITIONAL REQUIREMENTS FOR FAVORABLE INCOME TAX TREATMENT FOR *MAQUILADORAS***

The new tax law amendments also create additional legal requirements for *maquiladoras* to obtain certain previously available income tax benefits. Prior to the amendments, *maquiladoras* were deemed not to create a "permanent establishment" for their foreign contractor for Mexican income tax purposes if certain administrative requirements were met. With the present amendments, *maquiladoras* that wish to preserve this benefit are required to prove, besides other formalities, that:

- \* All of their foreign material suppliers (other than their main contractor) have a "commercial relationship" with them.
- \* All materials that were not temporarily imported by the *maquiladora* are being used together with the temporarily imported materials in the relevant industrial process, and definitively exported with the temporarily imported materials.
- \* The temporarily imported machinery and equipment used to carry out the *maquiladora's* operations is owned either by it or by its foreign parent. At least 30 percent of this machinery and equipment must be owned by the foreign contractor.

*Maquiladoras* are granted a period of two years to comply with the requirement of ensuring that at least 30 percent of the machinery and equipment used in their operations is owned by the foreign resident with whom they have a *maquiladora* agreement (the foreign contractor). Such machinery and equipment may not have been previously owned by the *maquiladora* or a related party.

Certain additional income tax benefits are provided for *maquiladoras*:

- They are allowed to deduct, in addition to currently existing deductions, an amount equal to less than half of the wages paid to their workers.
- VAT caused by the sales of temporarily imported goods that a *maquiladora*'s foreign resident contractor makes to a *maquiladora* may be offset by the *maquiladora* purchaser against the amount payable for the tax in monthly VAT tax returns, which overrides the negative impacts of VAT.

Finally, it also bears mentioning that the benefit consisting of a reduced 17.5 percent income tax rate for *maquiladoras* (and other temporary importers) was repealed. Therefore, temporary importers must now pay the full income tax.

## LAWYER CONTACTS

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our "Contact Us" form, which can be found at [www.jonesday.com](http://www.jonesday.com).

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