

# IMMEX Challenges, Facing Unconstitutional Tax Reform.



Tax Bulletin

The maquiladora, manufacturing, services export industry has distinguished itself as means of generating investment and jobs. Regularly, IMMEX has been part of the region's development and has contributed to the progress of the country especially when the socioeconomic conditions have not been favorable in our geographic region.

Taxwise, punctual compliance with tax obligation has been the industry's standard. This industry has always tried to fully comply with the law. It has invested in preventive measures and is usually first in line to make adjustments regarding any changes in tax provisions. The compliance with provisions reining its tax scheme - APA & Safe harbor- are punctually observed and have been observed along with its interaction with tax agencies specializing in upper tier taxpayers.

A large part of the country's tax income originates from this sector and as a job creator it has a strategic role in the nation's economy. Notwithstanding the above, the new tax reforms were not properly considered, as the first measure adopted was to tax temporary imports. This measure tries to create limits by way of a certification procedure "A", "AA" and "AAA", notwithstanding, the measure is unconstitutional, as certification sets discretionary rules to the benefit of the government that breaches the right of tributary legality.

We should remember that the provision's purpose is to tax temporary imports, but if the companies do not challenge this amendment by way of a Constitutional Protection Trial, its statute of limitations shall expire automatically and future claims shall be impossible.

Imagine what would happen if the government does not provide the certification based on its own rules. Imagine what would happen if your company, even after being certified, loses its certification or the following year this certification waiver benefit is cancelled. If such were the case, this tax would automatically apply to temporary imports and IMMEX companies would be able to defend themselves because the term for claiming the unconstitutional nature of the provision will have expired. Therefore we recommend evaluating filing a constitutional protection trial against the added value tax to temporary imports notwithstanding that the certification procedure "A", "AA" and "AAA", is ongoing.





Additionally, the industry was also affected by the reduction of deductions to 53% of the Income Tax (“Impuesto Sobre la Renta”) for payment of exempt benefits to its workers. This was minimized by way of a decree dated December 26, 2013 that grants a possibility to neutralize its effect with a 47% additional deduction. Notwithstanding that this decree provides an additional 47% deduction, many companies believe that they will not be affected by the 53% limitation on deductions, however, again if the government, at any time, decides to eliminate the decree, then IMMEX companies will be bound to the deduction limitation which implies that if no constitutional protection trial is filed in a timely manner, the companies shall be bound to only deduct 53% of the exempt benefits paid to its employees. Which would mean that companies would not be able to defend themselves because it would have consented to the law, in other words its term for challenging would have expired.

- General VAT/ IVA.

The border region has enjoyed a preferential rate of 11%, not because of a special and unfair distinction under law, but because the nature of its competition requires specific treatment for the border area’s development.

The generalization of the IVA/VAT from 11% to 16%, not only implies a 5 percentage point increase in rate but it also represents approximately a 45% tributary impact increase, taking into consideration that those 5 percentage points represent approximately half of the amount being previously paid.

Using models based on product expenditures and linear expenses, we can note in financial terms that there will exist erosion in companies, consumers, producers and generally all persons located in the border region.





The above is corroborated with an analysis of production multipliers that evidences direct damages and erosion to individuals and corporations. The recessive effects of the region, contraction of production mechanisms and its collateral damage in consumption are an evident example of the damage to be caused by generalization of the IVA/VAT.

The principles of tributary competitiveness, sustainable development and accelerate growth are acknowledged under article 25 of the Constitution, as well as the principles of stability of the law and tributary balance. All of the above, jointly are a right that are based on general conditions that are required to generate and maintain corporate and economic growth and supporting productions factors.

Regularly, companies are indirect tax collectors and subject to taxes, however, these conditions do not justify filing a claim by way of a constitutional protection trial, its capacity as consumers does allow them to file the claim by way of a constitutional protection trial because of the damage caused to its financial interests because of the affectation to the above referenced principles.

In the past, a precedent of the Supreme Court existed, published in September of 1997, where it was recognized “contrario sensu”, that regional competitiveness, required different tax rates.



This criteria appeared to be lost with precedent/jurisprudence 1/2009 from our high court, upon acknowledging that article 25 of the Constitution did not provide any guaranties, however fortunately, on June 5, 2013, our constitution evolved and was amended, -because of the implementation of human rights in Mexico – and admits, for the first time in its history, the principle of economic competitiveness, as economic principal protected by the constitution.

Given the structure of this principle, its nature supersedes the referred constitutional precedent and is considered an economic constitutional right to the benefit of citizens.

Additionally to the above, when an analysis is carried out regarding the justification for generalization of IVA/VAT, an insufficiency in justifying the increase is detected. Such insufficiency allows us to evidence that the reasons for increasing the rate do not comply with the principle of unreasonable increases in tributary affairs and accordingly, we consider that as a consumer, there sufficient elements to document damages; erosion of the legal interests and possibly declare the unconstitutional nature with ex tunc effects, and the 11% rate be restored for all goods it consumes; imports or changes in import regimes.

We suggest you be properly informed of these 3 different types of constitutional protection trials that would assist in maintaining a lawful state to the benefit of the IMMEX industry.

For more information please contact us.



#### **TIJUANA**

Ph.D Adolfo Solís  
Agua Caliente Blvd. #10611, 9th floor,  
Suite 901, Colonia Aviación, Centro  
Corporativo Centura, C.P. 22014.  
Tel. 52(664) 971-0722.

#### **AGUASCALIENTES**

M.D.F. Rosalba Sánchez Ramírez  
Adolfo López Mateos Av. #1001, Plaza  
Kristal, B Tower, 1st floor, Suite 105,  
106, Col. San Luis, C.P. 20250,  
Aguascalientes, Ags.  
Tels. 52(449) 918-1722,  
52(449) 918-1723.

#### **AGUASCALIENTES**

M.D.F. Salvador Farías Higareda  
Las Américas Av. #105, Suite 103,  
Génova Tower, Fracc. La Fuente,  
C.P. 20230, Aguascalientes, Ags.  
Tels. 52(449) 915-1889,  
52(449) 918-7818.

#### **MÉXICO D.F.**

Lic. Victoria América Velázquez  
Gutiérrez  
Playa Olas Altas Av. #601  
Col. Reforma, Iztaccihuatl Sur,  
Delegación Iztacalco, C.P. 08840,  
México D.F.  
Tels. 52(55) 5633-2145,  
52(55) 5525-0875