

Regulations applicable to tax incentives for the promotion of Mexican securities markets

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As reported in our [Client Alert](#) from January 10, 2019, a Presidential decree was published in the Official Gazette of the Federation on January 8, 2019, granting two tax incentives in the fixed income and equities securities markets, to foster the corporate bonds and initial public offerings markets in Mexico (the “Decree”). The 2019 Miscellaneous Tax Resolution (“RMF 2019”) was published on April 29, 2019, including special regulations applicable to such tax incentives, and providing detail on some items that were generally provided for in the Decree.

Corporate Bonds Incentive

For purposes of this incentive, it is clarified that the concept of bonds includes any debt obligations or securities available for trading on licensed stock exchanges under the Securities Market Law, issued in multiple series or in bulk form, and which represent an interest in a collective credit. Bonds will be deemed as publicly traded if they are placed through licensed stock exchanges and registered in recognized securities markets as determined by the applicable tax regulation (these include securities listed on the Mexican Stock Exchange (*Bolsa Mexicana de Valores*), the Institutional Stock Exchange (*Bolsa Institucional de Valores*) and the Mexican regulated derivatives market (*MexDer*)).

Foreign-resident holders must deliver to the resident in Mexico seeking to apply this incentive (intermediary or custodian) prior to receiving payment of the interest under the corporate bonds, an affidavit in writing signed by the foreign resident or its legal representative in Mexico, stating that such person is a resident of a country that has entered into a double taxation treaty or an information exchange agreement with Mexico.

Initial Public Offerings Incentive

For purposes of the application of this tax incentive, the value of the stockholders’ equity of the Mexican issuer must not exceed MX\$ 25’000,000,000.00 (~approx. US\$1’250,000,000.00)- and must be of no less than MX\$ 1’000,000.00 (~aprox. US\$50,000.00)-. Under the Decree, such calculation must be performed before the initial public offering.

The Regulations provide that the concept of “initial public offering” shall also include the sale of shares of a Mexican issuer that has not previously been listed, through over-allotment trades after its initial public offering.

An over-allotment trade is deemed as any distribution of securities in addition to those sold through an initial public offering, not in excess of the number of securities registered in the National Securities Registry. For these purposes, the following requirements must be met:

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- I. The underwriting agreement must contemplate the ability to perform over-allotment trades.
 - II. Over-allotment activities must not exceed thirty days from the pricing date of the stock in the public offering.
 - III. Any additional requirements that the National Banking and Securities Commission may determine from time to time through enabling regulations.

"Follow-on offerings" shall also be deemed as "initial public offerings", if the offered shares correspond to the same issuer and series of shares that were placed in the initial public offering.

This incentive will also be applicable to the sale of shares issued by a Mexican-resident entity, if such shares are purchased by a special purpose acquisition company (typically known in the market as "SPACs"), or have been received in exchange of shares as a result of a merger of the issuer and a SPAC whose shares are publicly traded, and comply with the following:

- IV. The target being acquired by the SPAC (the "Target") must not have been previously listed on a licensed stock exchange.
- V. The SPAC must not sell the acquired shares until its merger with the Target, or after two years since the acquisition of the shares.
- VI. The SPAC's shares must be publicly traded at least during a period of two years after the merger or acquisition.
- VII. The Target and the SPAC must jointly file a notice before the Tax Authorities.

The Regulations clarify that foreign-resident individuals and legal entities may also apply this tax incentive, if the issuer has issued shares acquired by investment vehicles incorporated in Mexico with a nature similar to Mexican Private Equity Trusts (typically known as "FICAP") that maintain a shareholding interest of no less than 20% in the issuer. For these purposes, the 20% shareholding interest shall be calculated prior to the initial public offering, and may consider, in addition to the shares owned by the FICAP, shares acquired by foreign legal entities similar to FICAPs, that are affiliates of such FICAP or its manager, and considered transparent for tax purposes outside of Mexico.

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