



**2014.**  
**THE IMPACT OF  
RECENT REFORMS ON  
THE MEXICAN  
ECONOMY**

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Ernesto Velarde-Danache, Mexican Notary Public and Attorney licensed only in Mexico, was admitted to practice in 1982. He holds an LL.M from the University of Cambridge, of Cambridge, England.

Ernesto has spoken about doing business in Mexico in many different countries such as the United States, Canada, Italy, France, Portugal, England, Spain, India, Mexico, the Republic of Ireland, Switzerland, Netherlands, China, Singapore and Korea.

He has helped more than 300 companies start business in Mexico.





## **SUBSTANTIAL REFORMS TO MEXICAN LEGAL SYSTEM**

- **Over the past year, Mexico witnessed a variety of reforms passed after the signing of the “Pacto por Mexico” (agreement struck by the country’s three main political parties)**
- **The PRI, the PAN and the PRD approved education, energy, political, fiscal, and telecommunications legislation.**
- **Our president Enrique Peña Nieto made the reforms the centerpiece of his administration, brokering the pact as a means to push through legislation.**

- **Their bureaucracy. red tape and tramitology dramatically reduced.**
- **Mexico and most of its 32 states have systematically modernized their legal system**
- **Education.** modernized the system. better teachers. improved teaching programs. less corrupted leaders.
- **Telecommunications.** removal of restrictions for the participation of foreign investors
- **Energy.** modification to the energy sector to open up investment in pemex and cfe
- **Federal Labor Law.** the very exciting and long awaited reform.

- **Energy Reform: Opening to Private Investment**
- **On December 12, 2013 Mexico's Congress passed landmark energy reform,**
- **Bringing end to a 75-year state monopoly on petroleum.**
- **PEMEX will be converted into a public "Productive Company"**



## TO SUMMARIZE :

- **The reform addresses three key aspects as follows:**
  - 1) **Authorizing private investment for exploration and extraction of hydrocarbons under contracts (i.e., production sharing agreement) with the federal government, as further exposed.**
  - 2) **Authorizing oil processing and refining by private companies as well as gas processing, oil and oil derivatives transportation, storage and distribution.**
  - 3) **authorizing private investment for electricity generation, commercialization, transmission and distribution under contract with cfe.**

- **The 2014 Tax Reform contains many significant changes which can become a problem if you do not have the appropriate knowledge.**
- **These reforms directly affect the area of Human Resources of all the organizations.**
- **Our general recommendation is to review in detail with your lawyers and CPA all that related to the concepts and mandatory changes with respect to the recent tax reform.**



# **THE TAX REFORM - RELEVANT ASPECTS FOR HR DEPARTMENT**

- **Increase of expenses.**
- **Modification of payments salaries.**
- **Profit Sharing (PTU) – Outsourcing (Some companies “few” have started to pay the employees of the outsourcing entities.**



- The reduced rate applicable in the “border zone” is increased from 11% to 16%**
- The Senate cancelled the preferential treatment and homologated the VAT.**
- With this change it eliminates the inequality that is produced on similar operations carried out in the rest of the Mexican Territory.**

## **INCOME TAX (ISR) RATE INCREASE**

- **Escalated Rate from 30% to 35%**
- **The rate of 30% to those that receive earnings for up to 750 thousand pesos per year;**
- **The rate of 32% to those that receive earnings for up to 1 million pesos;**
- **The rate of 34% to those that earn from 1 million to through 3 million pesos annually; and**
- **The rate of 35% for those that earn 3 million pesos and above annually.**

- The creation of the Universal Pension Law and the Unemployment Insurance Law
- Objective: establish universal social security mechanisms.

## The Universal Pension Law.

- The purpose is to create a universal pension to cover those individuals who cannot obtain a tax-related pension.

### **The requirements set for having access to such a pension are:**

- To reach the age of 65 years as of 2014 and not being a retiree.
- Residence in national territory.
- Be registered by the National Population Registry.
- Have a monthly income equal to or less than fifteen minimum daily wages (\$971.40).

## **Unemployment Insurance.**

- **The legislation proposes the creation of a new branch for a mandatory social security regime for unemployment.**
- **This insurance will cover employees who are registered by the IMSS in the mandatory regime of the Social Security Law.**

## **In order to gain access to unemployment benefits, the following requirements must be met:**

- **Having paid social security contributions for at least 24 months within a period no longer than 36 months, following affiliation to IMSS, as of the date when the last monthly payment for such benefit was made.**
- **Having been unemployed for at least 45 calendar days.**
- **Not receiving any other monetary income for retirement, pension, unemployment support, or any other similar reasons.**
- **Proof of meeting some requirements set in the promotion, placement and training programs under the care of the Ministry of Labor and Social Welfare, basically tending to facilitate the re-employment.**

- **Tax deduction on salary for the hiring of senior citizens.**
- **A tax stimulus is granted to those that hire senior citizens, consisting in the tax deduction of 25% of the paid salary to those persons with 65 years of age or older.**



## **IMMEDIATE TAX DEDUCTION OF 100%**

- **The machinery and equipment for the generation of energy which comes from renewable sources or systems of efficient cogeneration of electricity, as well as in the facilities for people with disabilities continue with the 100% tax deduction.**
- **Additionally the immediate tax deduction of the goods of fixed assets, as well as the investments of special machinery and equipment.**





## **Deduction of Automobiles.**

- **The top tax deductible amount is reduced to \$130,000.00 pesos, and for lease to \$200 pesos daily per vehicle.**

## **Social Security Fees.**

- **The social security fees of the employees paid by the employers will not be tax deductible.**



## **Food Coupons**

- The food coupons granted to the employees will be tax deductible when provided through electronic wallets.

## **Restaurant Meals**


- The maximum tax deduction is reduced to 8.75%.



**❑ 47% of the exempt compensation amount paid to employees will be deductible for employers**

**❑ For concepts related to:**

- **Social provision**
- **Savings fund**
- **Separate payments**
- **Annual gratifications**
- **Overtime**
- **Vacation and Sunday premium**
- **amongst others**

- 
- ❑ The amended Income Tax Law provides however that if the fringe benefits paid in a given year are not reduced from the payments made in the immediately previous tax year, they will be tax deductible at 53 %.**
  - ❑ It also establishes that the nondeductible portion of such payments shall be further deductible for the purposes of determining the base of the mandatory profit sharing payouts.**

- **Payment of salaries greater than \$2,000.00 pesos must be carried out through nominative check or electronic transfer, amongst others. No cash.**
- **Payroll and invoices must be in “CFDI”**
- **“CFDI”: Digital Tax Invoices through Internet.**
- **The idea is to apply a CFDI to all invoice that includes a tax withholding as proof and guaranty the tax deduction,**

- **In that manner aside the payroll invoices to also applies for the transfer of goods, prizes and payments to foreign residents.**
- **Payroll Invoices. All employees must have “RFC” and “CURP”**
- **Same applies to those cases where underage employees are hired.**
- **The idea is to apply a CFDI to all invoice that includes a tax withholding as proof and guaranty the tax deduction,**

### IN THE PRACTICE

- **Some companies are confused with this type of system.**
- **Carrying out the payment electronically and to physically have the proof of deposit, this did not accredited the different concepts of the ordinary salary, such as, vacation, Christmas bonus, overtime, etc.**
- **The above caused uncertainty since it shall be difficult to prove the payment of such concepts in a future labor lawsuit;**
- **The majority of the employees are in disagreement of not having his/her payroll receipt.**

- **With the 2013 Tax Reform the company cannot make tax deduction on the PTU.**
- **The taxable base used in order to calculate the 2014 PTU will be exactly the once determined on Article 10<sup>th</sup> of the Mexican Income Tax Law (LISR).**
- **Article 10<sup>th</sup> of the Mexican Income Tax Law states that the tax profit will be obtained reducing from all of the accumulated earnings obtain the fiscal year, the authorized deductions. From the obtained result the PTU paid in the tax year will be reduced, in its case.**
- **The tax losses from previous years that are pending to be applied will be reduced from the tax profit of the corresponding year, in its case.**



**PROFIT SHARING (PTU) – OUTSOURCING  
(ARTICLE 15 OF THE MEXICAN FEDERAL LABOR LAW IN EFFECT)**

**Article 15-A. The work in the subcontracting regime is that by means of which an employer named contractor executes tasks or renders services with its workers under its control, in favor of a hiring party, individual or entity, that establishes the tasks of the contractor and supervises him in the performance of the services or the execution of the hired tasks.**

**This type of work, must comply with the following conditions:**

- **Cannot cover all of the activities, the same or similar in their entirety, that are performed in the work place.**
- **Must be justified by its special nature.**
- **May not include tasks that are the same or similar that are performed by the rest of the workers at the service of the contractor.**


**If all of the conditions are not complied with, the contractor will be considered as the employer for the purposes of the Mexican Federal Labor Law., including the obligations with respect to social security.**

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- **the contractor will be considered as the employer for the purposes of the Mexican Federal Labor Law.,**
- **including the obligations with respect to social security.**



**WHAT ARE THE MAIN ASPECTS OR THE HIGHLIGHTS OF THE LABOR REFORM THAT MAKE MEXICO A MORE COMPETITIVE PLAYER IN THE WORLD ARENA?**

- **First time it is reformed in 42 years**
- **The concept of outsourcing is now regulated**
- **Ability to hire for a trial period, seasonal, initial training**

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- **Agreement for an indefinite period of time, for one, three and for up to six months**
  - **Cap of one year for back salaries**
  - **Contracting work and paying by the hour**
  - **New causes of discrimination like sexual orientation, social condition, age, marital status, pregnancy are incorporated.**



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**THANK YOU !**