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Lawmakers endorse bill that toughens penalties for tax evasion

On September 10, the Senate endorsed the draft bill which amends, adds and repeals several provisions of the Federal Law against Organized Crime, the National Security Law, the National Code of Criminal Procedure, the Federal Tax Code and the Federal Criminal Code (“Initiative”), aimed at counteracting illegal tax practices. Subsequently, on October 15, the Chamber of Deputies approved the Initiative and turned it to the Executive for review and endorsement.

The most important aspects of this reform are as follows:

Federal Tax Code

The Initiative repeals the penalty of 3 months to 6 years imprisonment for the acquisition of apocryphal tax invoices, i.e., comprising non-existent transactions, as well as that which provides for 3 to 6 years imprisonment for the issuance or sale of such invoices.

Instead, by amending article 113 bis of the Federal Tax Code (FTC), the Initiative provides the following:

1. 2 to 9 years imprisonment for those that, either personally or through third parties, issue, sell or acquire tax invoices that cover non-existent or counterfeit transactions or simulated acts.
2. Same penalties shall apply to anyone who allows or publishes, by any means, advertisements for the acquisition or sale of such invoices.
3. Where the offense is committed by a public official, he will be dismissed from his position and disenabled from 1 to 10 years. Also, his prison term shall be increased by 3 to 6 years.
4. For the prosecution of such crimes, the Ministry of Finance and Public Credit is required to file an indictment. The offence may be prosecuted simultaneously with crimes involving transactions with illegally-sourced funds, as provided in the Federal Criminal Code and, therefore, give rise to asset forfeiture as provided in the National Asset Forfeiture Law, issued on August 9.

Federal Law against Organized Crime

According to the Initiative, where three or more individuals organize themselves to commit any of the following offenses, they will be considered members of organized crime:

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1. Smuggling and its equivalent, as provided in the FTC.
2. Tax fraud and its equivalent, as provided in the FTC, when the amount of fraud exceeds \$7,804,230.00 MXN pesos.
3. Offences referred to in article 113 bis of the FTC, mentioned above, when the amount covered by apocryphal invoices exceeds \$7,804,230.00 MXN pesos.

Federal Criminal Code

Regarding entities, one or more legal consequences may be imposed when they intervene in the issuance, selling, purchase or acquisition of apocryphal invoices, or where they allow or publish advertisements for such acquisition or selling.

National Code of Criminal Procedure

The Initiative provides several additions to article 167 of the National Code of Criminal Procedure, under which the following offenses will call for pretrial detention:

1. Smuggling and its equivalent, exclusively where aggravated.
2. Tax fraud and its equivalent, when the amount of fraud exceeds \$7,804,230.00 MXN pesos, and only where aggravated.
3. The issuance, sale, purchase or acquisition of invoices covering non-existent or false transactions, or simulated legal acts, as provided in article 113 bis of the FTC mentioned above, when the amount covered by apocryphal invoices exceeds \$7,804,230.00 MXN pesos.

Under the Initiative, for such offenses there would be no reparatory arrangements, nor a conditional suspension of proceedings.

On the other hand, the opportunity principle can only be applied in the event that the accused agrees to appear in court and provide reliable information that will contribute to the investigation and prosecution of the final beneficiary of the crime, provided that the latter will repair the damages.

National Security Law

Aside from the crimes already provided in the National Security Law, offenses against tax authorities, added to article 167 of the National Criminal Procedure Code under the Initiative, will also be considered threats to national security.

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Synthesis

In summary, penalties provided by the Initiative, as well as the regime under which such offenses will be considered, are as follows:

- » 2 to 9 years imprisonment for issuing, selling or acquiring apocryphal invoices, and publishing and allowing the publication of advertisements for their acquisition or sale.
- » Deprivation and disablement from 1 to 10 years, and an increase in the prison term by 3 to 6 years, where offenses are committed by public officials.
- » Where three or more people organize the commission of these crimes, they shall be treated as members of organized crime.
- » Such crimes will be considered as threats to national security and call for pretrial detention, without the right to conditional suspension of proceedings or to reparatory arrangements.

The transitory provisions of the Initiative provide that the Decree, once published, will enter into force on January 1, 2020.

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