

CCN NEWSFLASH

Mexico amends income tax law governing sales of Mexican real property

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On November 12, 2021, a Decree amending various provisions of the Mexican Income Tax Law and related regulations was published, effective January 1, 2022. The Decree includes changes to article 160 of the Income Tax Law and establishes that for purposes of proceeds from the sale of Mexican real property, the source of wealth is in Mexican national territory when such property is in Mexico. This means that non-Mexican residents who pay taxes abroad are now required to pay Mexican income tax ("ISR") on income from the sale of real estate in Mexico. Further, tax residents abroad may also be subject to the payment of ISR when they acquire real estate in Mexico.

With respect to income tax payable by tax residents abroad, the reform to the fifth paragraph of article 160 of the Income Tax Law establishes that, when the tax authorities conduct an appraisal (exercising its powers of oversight and verification) that results in a valuation exceeding 10% of the amount of the purchase price, the total difference will be considered as income to the purchaser residing abroad. The tax would then be determined by applying a 25% rate on the total of such difference, with no deductions allowed, which must be withheld and paid by the seller if the seller is a Mexican tax resident or a foreign tax resident with a permanent establishment in Mexico. In this manner, the seller will take on the purchaser's obligation to make the required tax payment. Thus, the obligation becomes a joint responsibility of the seller and purchaser. It is important to note that the amendment is consistent with the provisions governing gratuitous acquisitions, which also generate a 25% tax on the value of the agreed consideration charged to acquiring parties who reside abroad.

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