



JA Del Río

Trends in fiscalization and Master Plan.

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Speakers



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Master Plan for Fiscalization

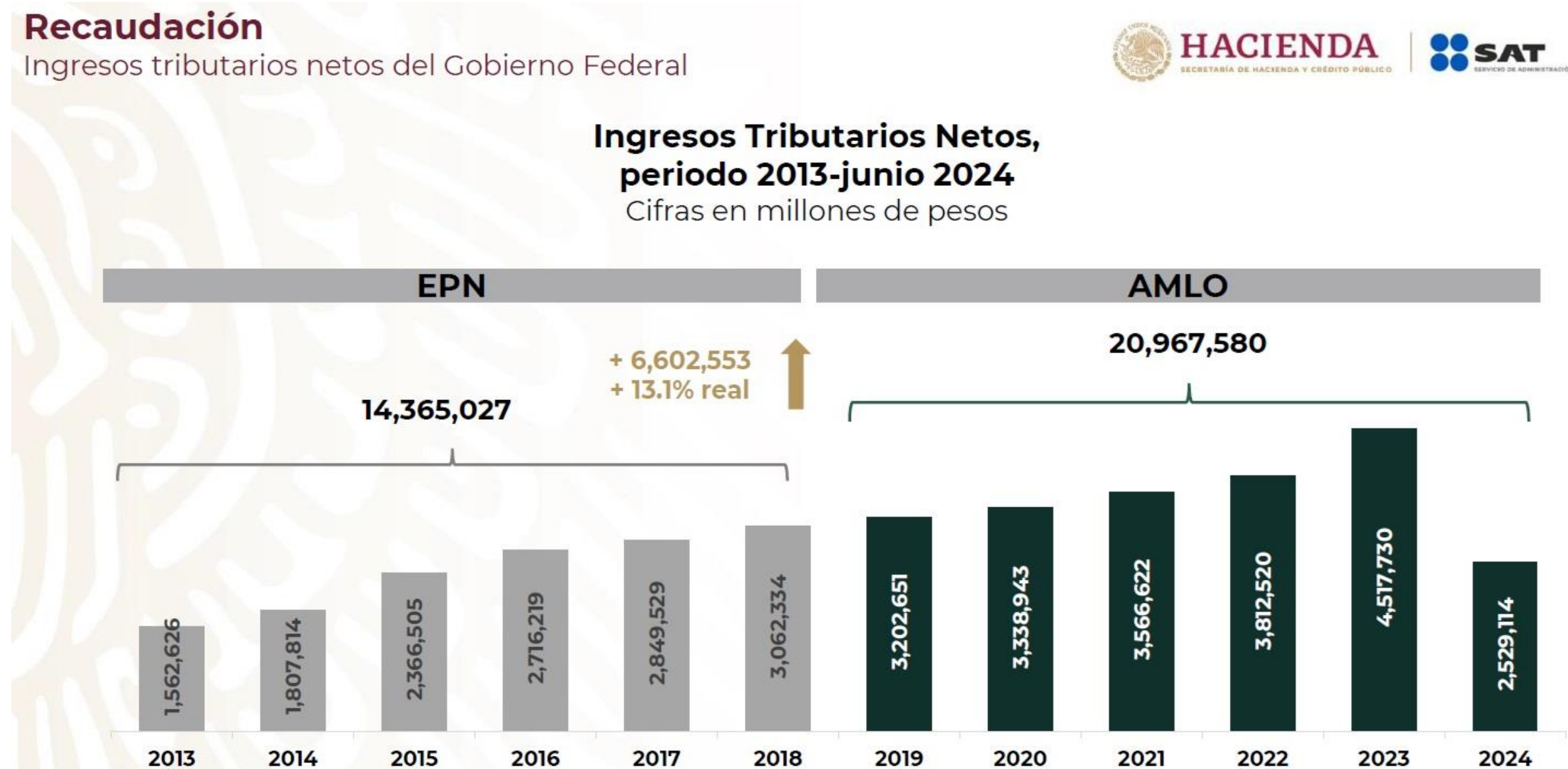
Actions to Recover Tax Credits from Taxpayers through the Implementation of Collection and Fiscalization Actions:

- Restriction of Digital Stamp Certificates (CSD) for Taxpayers with Simulated Operations
 - Let's remember that in Mexico, invoicing is electronic, making the use of the Digital Stamp Certificate (CSD) essential. In this regard, the tax authority has the power to cancel them if it detects that simulated operations have taken place, either due to non-payment of any contribution or failure to meet a fiscal obligation.
- Monitoring of taxpayers who fail to meet deadlines for the payment of their tax obligations.
- Use of AI (Artificial Intelligence) for Improved Planning in Collection Processes.
 - Use of Artificial Intelligence (AI). Through the implementation of "graph" analytics models and "machine learning," it aims to classify high-risk taxpayers, identify complex networks of tax evasion and avoidance, as well as detect inconsistencies in Digital Tax Receipts over the Internet (CFDI).

Master Plan for Fiscalization

This AI technology is used generally for oversight but will focus primarily on the following sectors and activities that tax authorities consider high-risk:

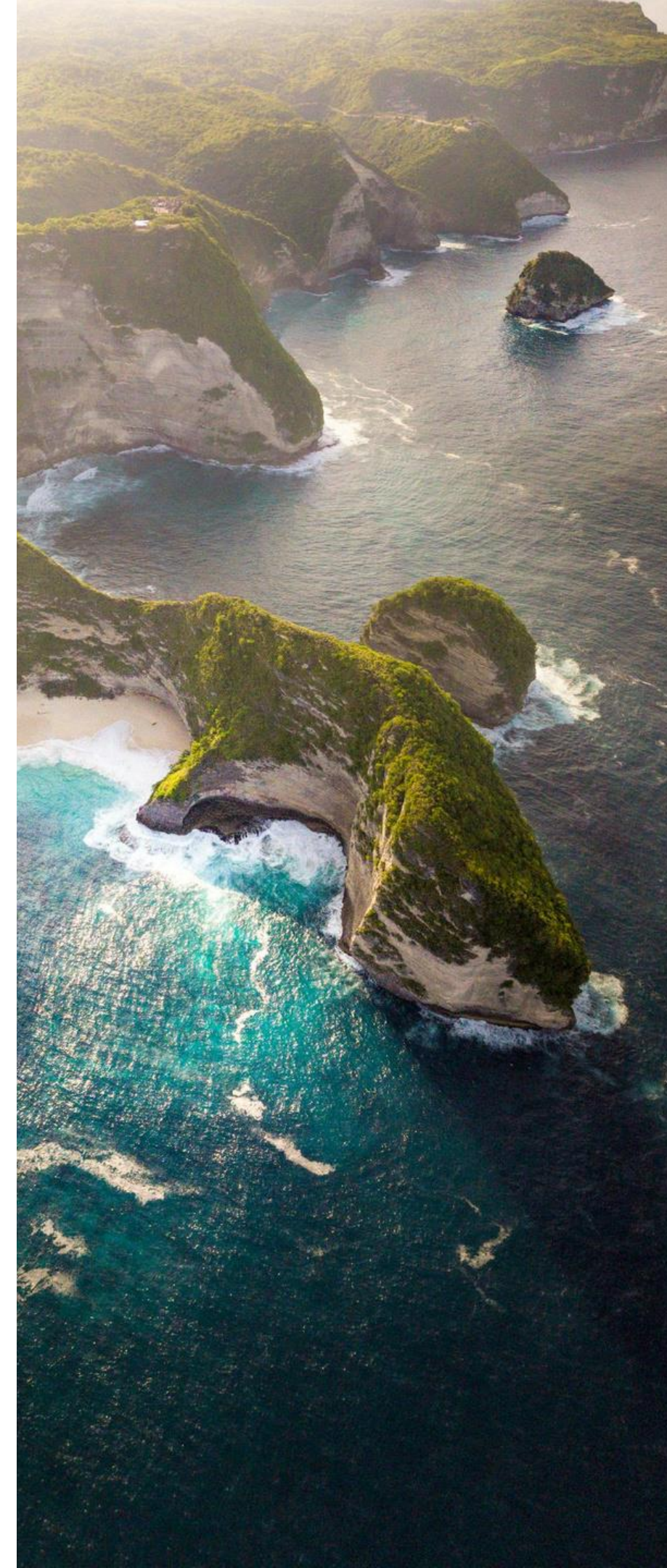
- Automotive
- Construction,
- Electronics,
- Digital platforms
- Logistics,
- Among others



Trends in Fiscalization

Main inconsistencies that may trigger this type of review:

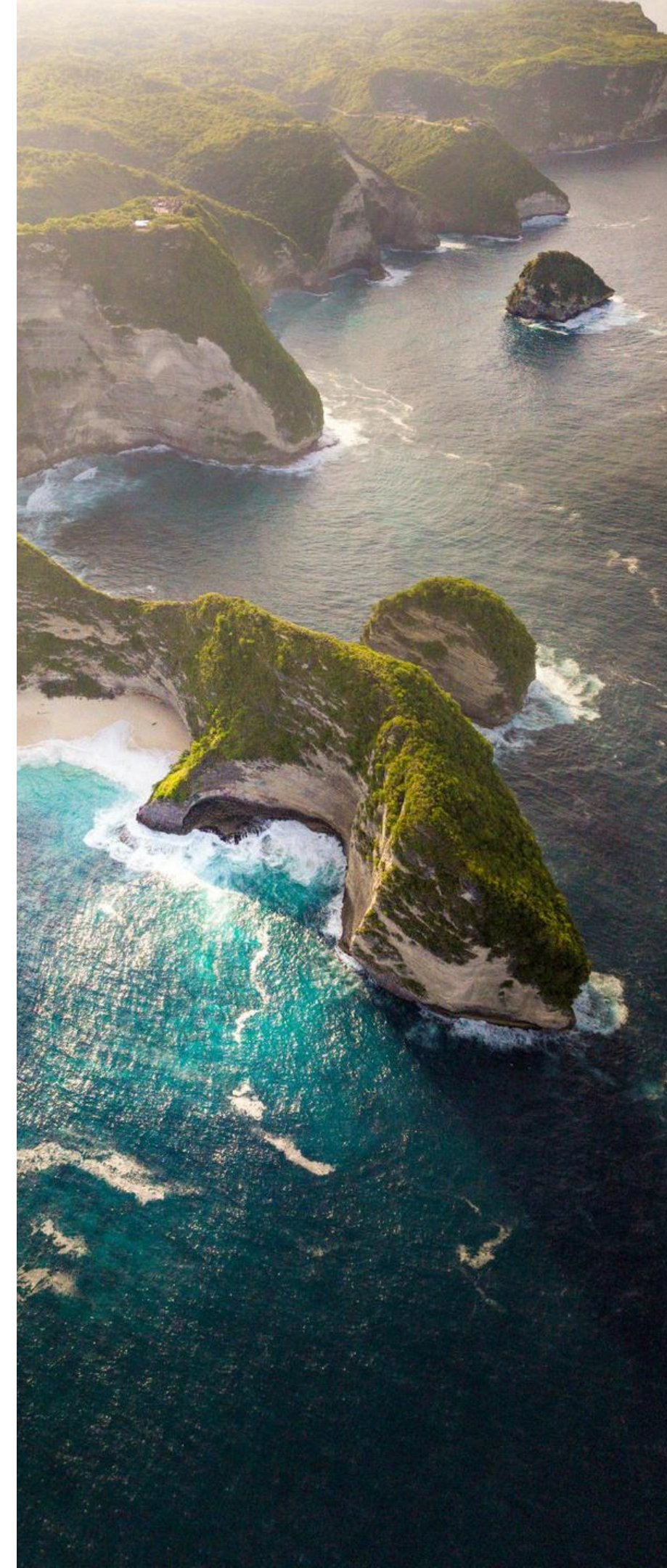
- Differences in income reported on the annual tax return.
- Discrepancies between the CFDI received and deductions for expenses and purchases.
- Variations in withholdings for wages and salaries compared to those reported based on payroll CFDI.
- Payments to suppliers listed under Article 69-B of the Federal Tax Code.
- Unusual behavior in the determination of taxes or the taxpayer's compliance.



Trends in Fiscalization

Recommendations:

- Submit or clarify any invitation letter given by the authorities.
- Work on identifying differences, or inconsistencies according to the observations provided by the authority.
- If clarifications can be substantiated, provide the necessary information to counter any differences through a written document (working papers, accounting records, agreements, payment receipts, reconciliations of differences, etc.).
- If the difference is not amended, penalties and temporary restrictions on the Digital Stamp Certificate, and the possibility of scheduling an audit for the determination of tax credits may arise.



Trends in Fiscalization

Attention to Invitation Letters

- They do not constitute a formal verification process.
- We recommend to attend it within 15 days.
- Response is made through a clarification in the Tax Authority Website.
- The authority is not obligated to provide a response.

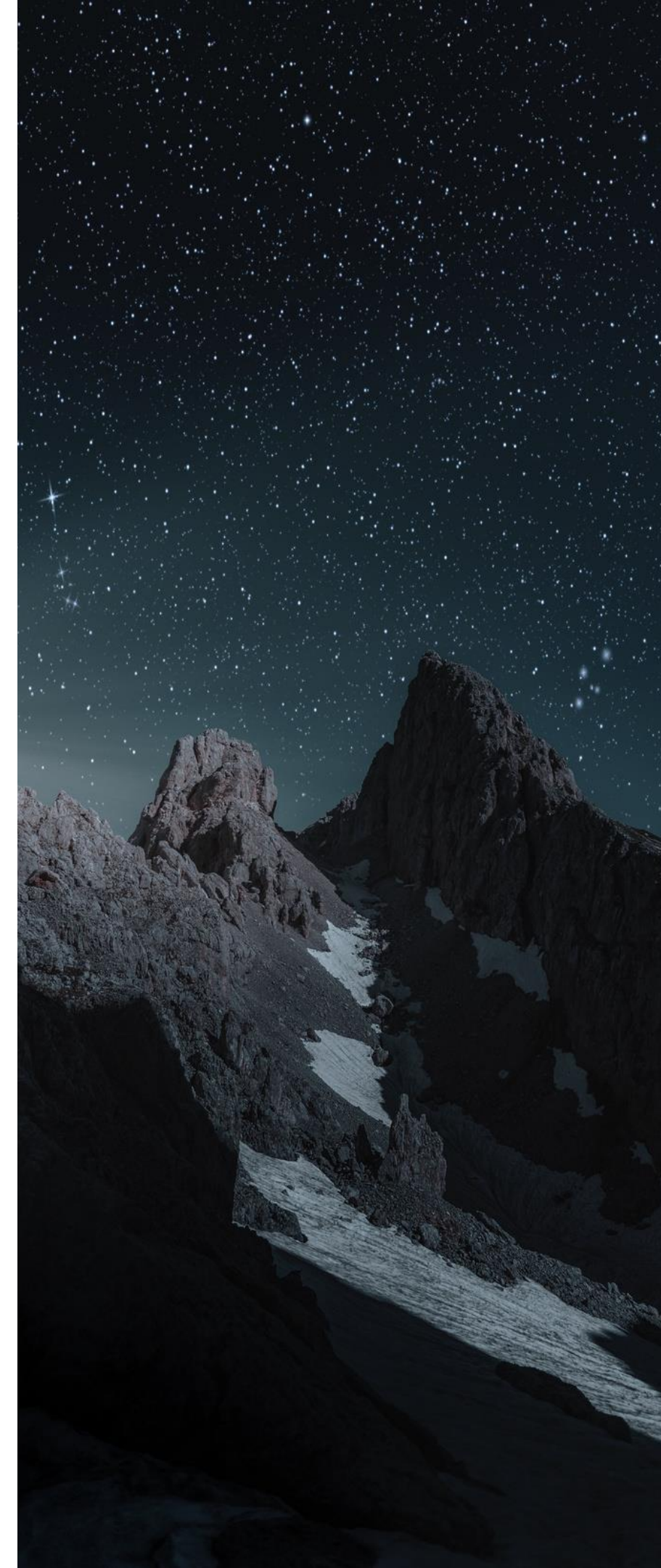
If the invitation letter is not answered the tax authority may initiate a formal verification review, in which they can determine:

- Differences not paid,
- Penalties may be imposed,
- Temporary restrictions on the Digital Stamp Certificate.

Trends in Fiscalization

Activities that the tax authority has already detected from taxpayers, which may generate an Audit:

- Use of private pension plans and assimilated to salaries to evade the correct payment of payroll
- Corporate restructures and the tax effects in spin-offs, mergers and international restructures
- Sale intangibles
- Improper applications of credit balances, VAT on operations at a 0% rate, non-object VAT and import VAT
- Improper application of losses and tax stimulus.
- Abusive use of treaty benefits
- Undervaluation based on incorrect customs valuation, tariff classification and inconsistent declarations in the petitions.
- Non compliance on IMMEX programs, temporary imports and import permits.



Labor Updates



Schedule

1. Registry of Specialized Service Providers (REPSE)	2. Employee Profit Sharing (PTU)	3. "National Fund for Workers" Consumption (FONACOT)	4. Employment subsidy
	5. Social Security Digital Mail	6. Reform of the General Law to Prevent, Punish, and Eradicate Crimes in the Matter of Human Trafficking	7. Labor Reform Initiatives

Labor Updates

Registry of Specialized Service Providers (REPSE)

Second Article, Section VII	Definition of registration renewal.
Sixth Article	Use of an information technology platform for registration and renewal.
Eight Article	Requirements for registration and renewal, including tax and social obligations.
Ninth Article	Procedure for monitoring registration and renewal.
Tenth Article	A period of 20 business days for the resolution of applications.

Employee Profit Sharing (PTU)

On April 23, 2021, Section VIII was added to Article 127 of the Federal Labor Act (LFT), which established that the amount of Profit Sharing (PTU) would have a maximum limit of three months of the worker's salary, or the average received in the last three years, whichever is more favorable for the worker. On July 7, 2023, the Mexican Social Security Institute (IMSS) published in the Official Gazette (DOF) the criterion number 02/2023/NV/SBC-LSS-27-IV from the Technical Council, which determines that the following will be considered improper tax practices regarding social security :

- Those who do not include in the Social Security Salary payments that exceed the maximum amount of Profit Sharing (PTU).
- Those who pay the PTU outside the established deadline (60 days after the submission of the annual tax return).
- Those who advise, counsel, provide services, or participate in the execution or implementation of the aforementioned practices.

National Fund for Workers' Consumption (FONACOT)

Step	Description
Online Registration	Fill out and submit the registration application on the FONACOT website with the Advanced Electronic Signature (FIEL).
In-person Registration	Visit the Fonacot Office, request the registration forms, and submit documents.
Verification Visit	FONACOT conducts a visit to the company after approving the submitted documentation.
Approval and Signing of Affiliation	Signing of the affiliation agreement with FONACOT to activate the service.

Labor Updates

Employments subsidy

Provide an employment subsidy to support low-income workers and reduce the impact of the income tax (ISR). It is worth mentioning that it applies to salaries of up to \$9,081.00 per month. It does not apply to salaries in the Free Trade Zone of the Northern Border.

Social Security Digital Mail

On June 7, 2024, a decree was published in the Official Gazette (DOF) reforming Article 286 M, establishing that the Institute will carry out notifications, summons, demands; request or solicit reports or documentation, or issue resolutions and inform individuals about matters of interest through the IMSS Mailbox.

The documentation obtained through this electronic means has the same legal effects as documents signed manually.

The reform of the General Law to Prevent, Punish, and Eradicate Crimes in the Matter of Human Trafficking

Publication Date: June 7, 2024.

Main Objectives of the Decree.

- **Prevention, Punishment, and Eradication:** Strengthening Measures Against Human Trafficking Crimes.
- **Protection and Support for Victims:** Improvement of Protection and Support Mechanisms for Victims.

Labor Reform Initiatives

- **Reduction of the Workweek: 40 hours per week** - The new President Claudia Sheinbaum makes it clear that this change is a priority, but suggests it be implemented gradually.
- **Increase in Paternity Leave Days:** Reform to Article 132 of the Federal Labor Law from 5 to 20 days; if the baby or the mother has complications, it can be extended up to 30 days.
- **Increase in Seniority Bonus from 12 to 15 days:** Proposal to increase the salary days to 15 was received, with no progress since April 2023 – proposed by the MORENA party.
- **Increase in Vacation Premium:** Currently, the Federal Labor Law, in its Article 80, establishes that workers have the right to a bonus of no less than 25 percent on the wages they are entitled to during the vacation period. The proposal seeks to reform this provision to increase it to 50 percent.
- **Christmas Bonus:** An initiative was submitted in the Chamber of Deputies aimed at increasing the days of Christmas Bonus to which workers are entitled, raising it from an equivalent of 15 to 30 days of salary. It is pending to be reviewed by the Legislative Studies Committee.
- **Chair Law:** The proposal, known as the “Silla Law” also seeks to prohibit employers from requiring workers to remain standing for the entirety of the workday or to take a seat periodically during the performance of their duties. This was approved on October 2 in the Chamber of Deputies.

ITS

Key Points on MLI 2024 Implementation in Mexico

- **Effective Date:** 2024.
- **Impact on Mexican Companies:** MX CO with foreign subsidiaries, treaty abuse.
- **Key Changes:**
 - **Arbitration:** Completely excluded.
 - **Friendly Procedure:** Mexico has reserved its position.
 - **Hybrid Instruments:**
 - U.S. interpretation applies / transparency specifications in treaties.
 - Articles 4-A and 4-B of Mexican Local Law.
 - **Permanent Establishment.**
 - **Principal Purpose Test (PPT):**
 - Main benefit of application is fiscal.
 - Documentation required.
 - Affects payments from Mexican companies to foreign entities.
 - Considerations for capital gains or dividends and purpose of structure.
 - Substance may not be sufficient.



BEPS 1.0 – Adoption in Mexico

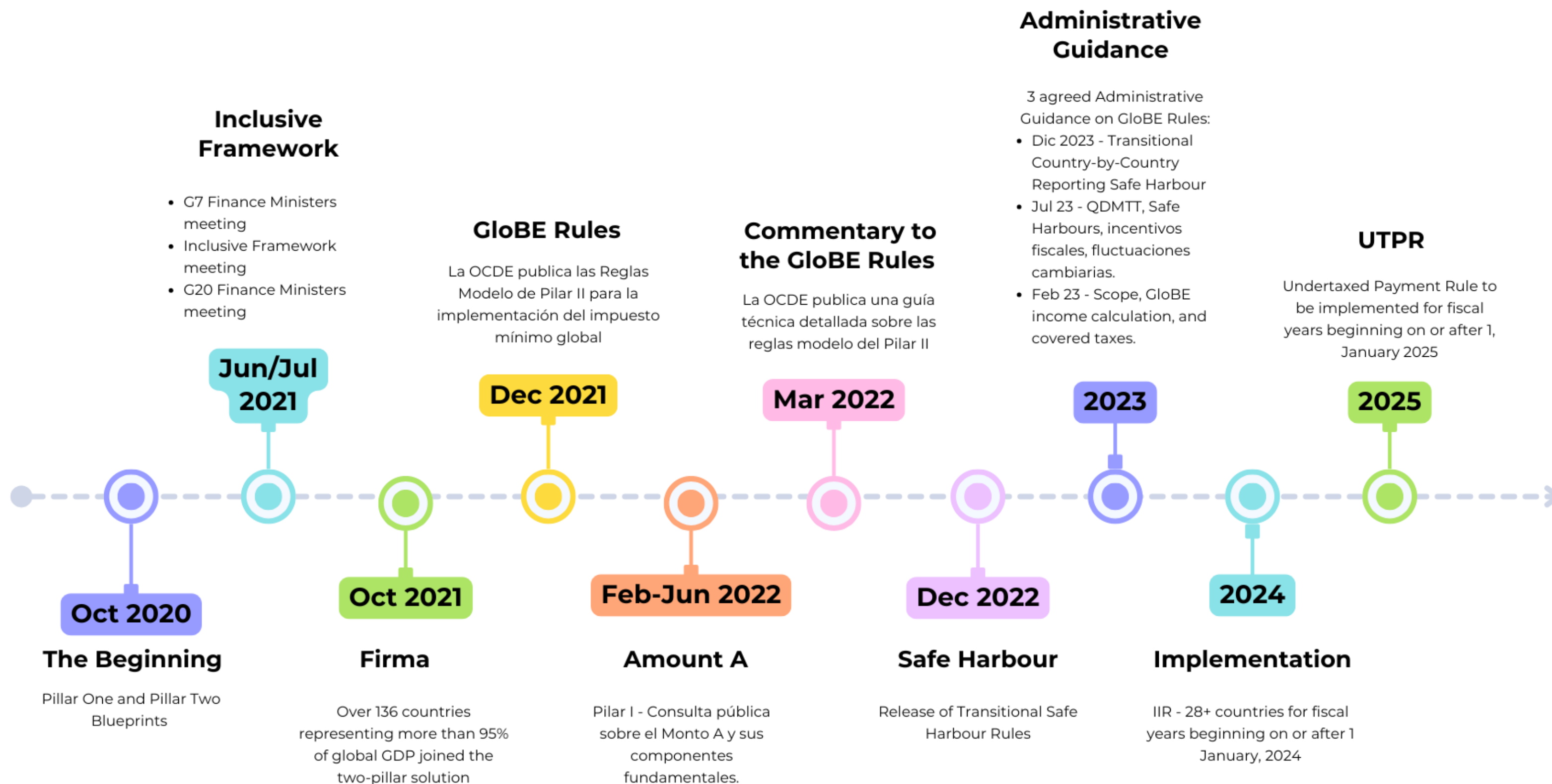
	Actions 8-10 Transfer pricing		Action 15 MLI	
2014	2016	2020	2024	2026
<p>Action 2 Hybrid Mechanisms</p> <p>Action 6 Prevention of tax treaty abuse</p>		<p>Action 1 Digital Economy</p> <p>Action 2 Hybrid Mechanisms (reloaded)</p> <p>Action 3 CFC</p> <p>Action 4 Limitation on interest deductions</p> <p>Action 7 PE Status</p> <p>Action 12 Mandatory disclosure rules + Mexican GAAR</p>		<p>Pillar II?</p>

Origin and Historical Context of BEPS 2.0

Aims to reduce tax competition between countries, limit tax evasion, and create a more level playing field for businesses.

- It is the new **OECD/G20** initiative.
- BEPS 2.0 aims to reduce tax competition between countries, limit tax evasion, and create a more level playing field for businesses.
- This initiative seeks to address the fiscal challenges arising from the **digitalization of the economy** and to tackle the issues left unresolved under BEPS 1.0.
- It emerged in the context of growing concern over Base Erosion and Profit Shifting (BEPS).
- One key objective is to establish a **global minimum tax rate of 15%** to ensure that multinational companies pay a minimum level of taxes, regardless of where they operate.
- Developed within the OECD **Inclusive Framework**, where over 140 jurisdictions worked together to create a fairer and more equitable tax system.
- Pillar II is a response to **international tax competition** that has allowed some companies to pay extremely low tax rates, eroding the tax bases of many countries.

Timeline for BEPS 2.0 Implementation



General Aspects of Pillar II

Scope

- Multinational enterprises (MNE) with a turnover of more than EUR750 million.
- Identify Constituent Entities (CE) and Excluded Entities within the MNE Group.

Effective Tax Rate (ETR)

- Jurisdictional basis calculation.
- Determine GloBE Income or Loss of each CE based on its financial accounts.
- Determine Adjusted Covered Taxes.

Minimum Tax (Top up Tax)

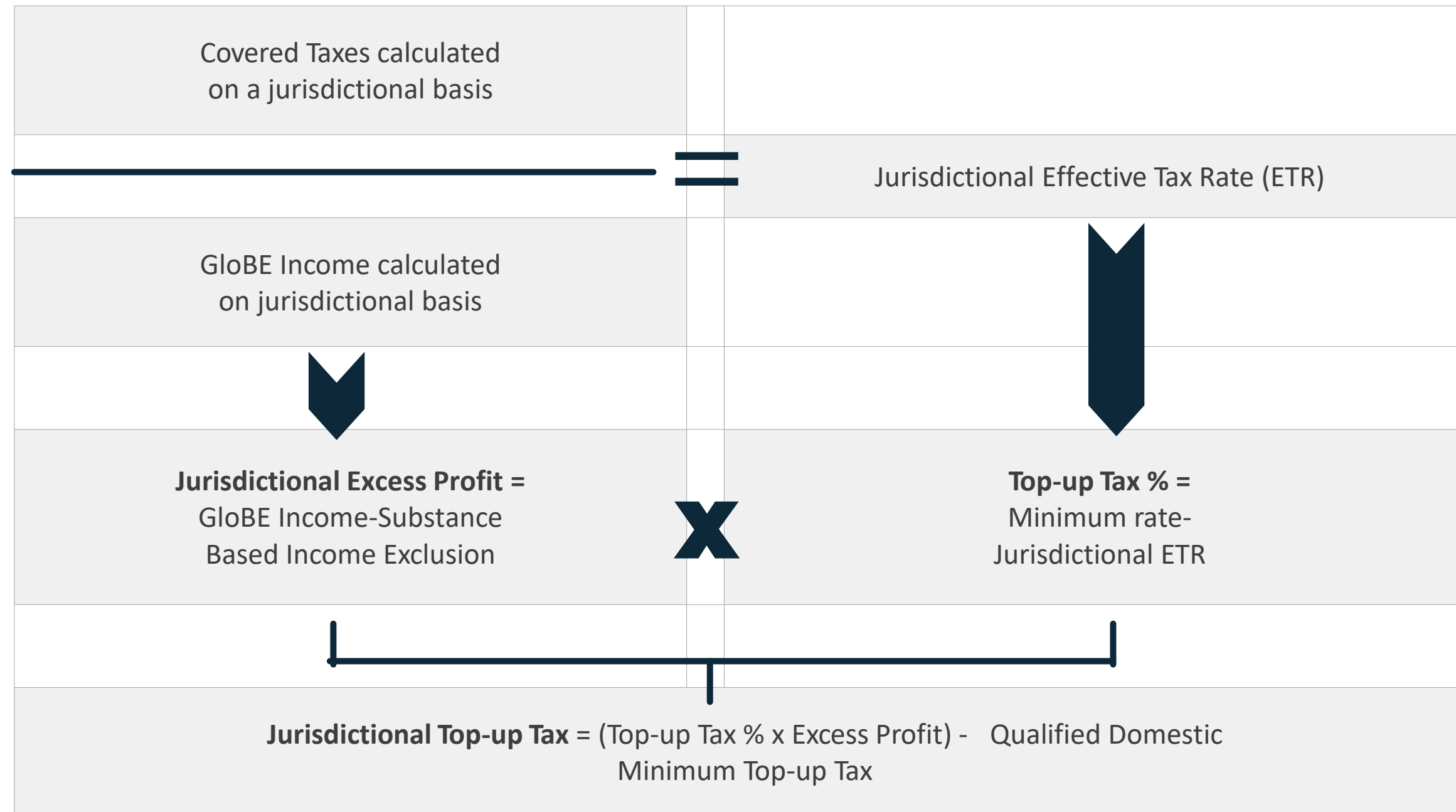
- Mechanism intended to ensure that MNEs pay a minimum ETR of 15% in each jurisdiction.
- Exemptions, e.g. CbCR Safe Harbour or permanent Safe Harbour (De minimis test, simplified ETR test and routine profits test).

Tax collection

- Qualified Domestic Minimum Top-up Tax (QDMTT).
- Income Inclusion Rule (IIR).
- Under Taxed Profit Rule (UTPR).

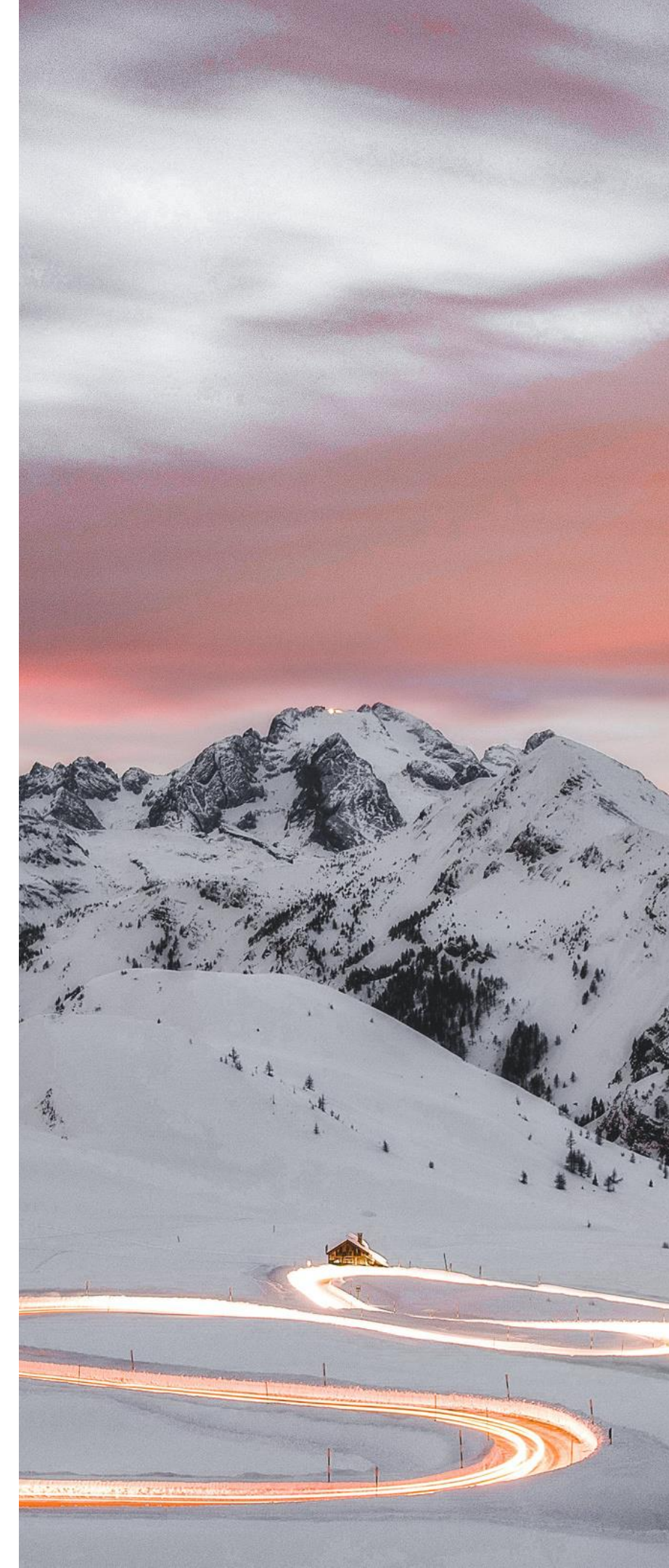
Top-up Tax = Difference between the 15% minimum rate and the ETR in the jurisdiction

Step 4. Computation of the ETR and Calculation of the Top-Up Tax



Relevant Legal Resolutions 2024

- Regarding deductions such as royalties, technical assistance or transfer of technologies, the taxpayer must prove the service has the following elements such as received directly by the supplier, not through a third party, that it has the technical knowledge to render it, and that the service is effectively given.
- A recognition and difference between what it is a “standardized software” and it if can be considered as a royalty, depending on the conditions of such service.



Foreign Trade Fiscalization Trends



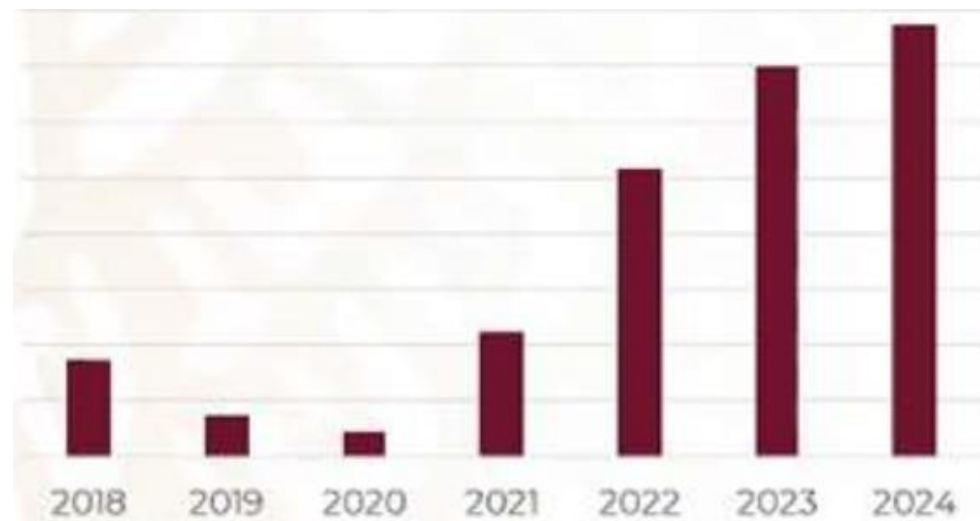
New VAT Certification Obligations

- a) Maintain inventory control as outlined in Annex 24, sections A and C.
- b) The necessary **information must be submitted electronically within 48 hours**, sourced from the corporate system. All other information must be provided by the time the customs declaration is paid.
- c) It is essential to grant online access to the customs authority to comply with IMMEX obligations.

VAT Verification Procedures

Numeralia

During 2023, the number of supervisory visits to companies in the VAT and IEPS categories increased by 35% compared to 2022. Additionally, as of July 2024, there has been a 10% increase in the number of visits conducted in 2023



As of September 2024 (3326 VAT Certified companies)

Frequent Non-Compliance Issues

✓ Inventory Control

Failure to account for all operations. Not recording losses and waste.

✓ Unlocated Merchandise

Merchandise temporarily protected under the program cannot be found.

✓ Merchandise Returned After Deadline

Imported goods were returned after the deadline established by law, or were not returned at all.

✓ Infrastructure

Failure to provide documentation proving the legal use and enjoyment of the infrastructure.

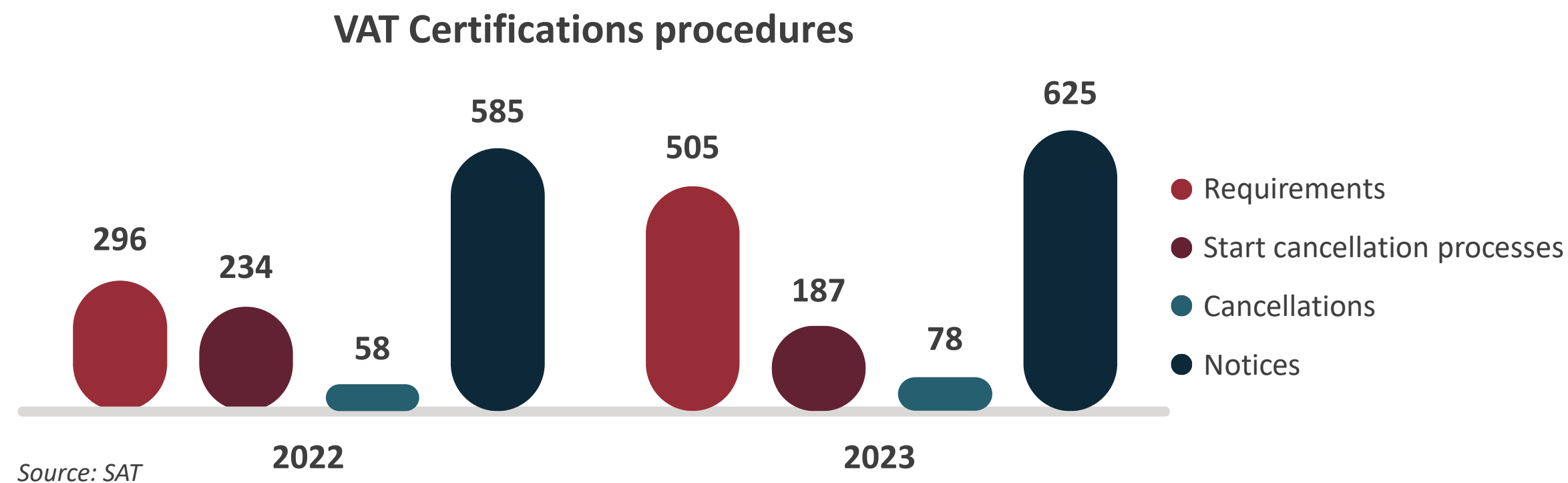
Alert of Compliance: Compliance VAT Verification Procedures

Tax authorities Trends:

- 19-point compliance verification visits
- Letters of Request compliance obligations

Consequences of losing VAT certification:

- They will not be able to access it again until 2 years have passed.
- 100% payment of VAT and IEPS for the temporary importation of merchandise.



Maquiladoras 2025 Main Tax and Transfer Pricing Challenges



Maquiladoras 101



Maquiladora's Tax Benefits in Mexico

Permanent Establishment Protection To The Foreign Company	Additional Deduction Of Exempt Wages	VAT / IEPS Certification***
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Maquiladora's Essential Tax Requirements in 2024

Compliance with Transfer Pricing Obligations when determining your taxable income, consider the following:

Safe Harbor Computation

The higher of 6.5% on costs and expenses or 6.9% on assets

Advance Pricing Agreement (APA)

QMA until 2024

2025?

M&E Ownership Requirements:

At least 30% of the machinery and equipment must be owned by the Foreign Resident.

Other Maquila Income:

Other maquila income should not exceed 10% of the total maquila operation income.

Notice of Property Disposal:

In the case of the disposal of movable and immovable property, a notice about the income obtained must be submitted in January.

Filing of DIEMSE:

Submit the DIEMSE Informative no later than June 30.

APA and Current Status

QMA SAT - IRS agreement for 2020-2024 fiscal years



The screenshot shows two web pages. On the left is the SAT website page titled "Resoluciones para empresas que prestan servicios de maquila" with a navigation menu and a section for "Ejercicios 2020 a 2024". On the right is an IRS news article titled "Renewal of the Qualified Maquiladora Approach Agreement" dated September 18, 2024, with a sidebar for "Businesses and self-employed".

SAT Website Content:

- Logo: SAT SERVICIO DE ADMINISTRACIÓN TRIBUTARIA
- Page Title: Resoluciones para empresas que prestan servicios de maquila
- Navigation: Inicio, Operación de maquila, Transformación, Enfoque calificado para maquila (QMA)
- Section: **Ejercicios 2020 a 2024**
- Text: En 2024 el SAT y el IRS renovaron por segunda vez en la administración 2018-2024, el QMA alcanzado entre las autoridades competentes de Estados Unidos y de México en 2016.
- Text: El acuerdo de renovación mantiene los elementos centrales del marco de precios de transferencia del QMA aplicable a los ejercicios 2019 y anteriores, ya que las autoridades competentes determinaron que produce resultados conforme al principio de plena competencia.

IRS News Article Content:

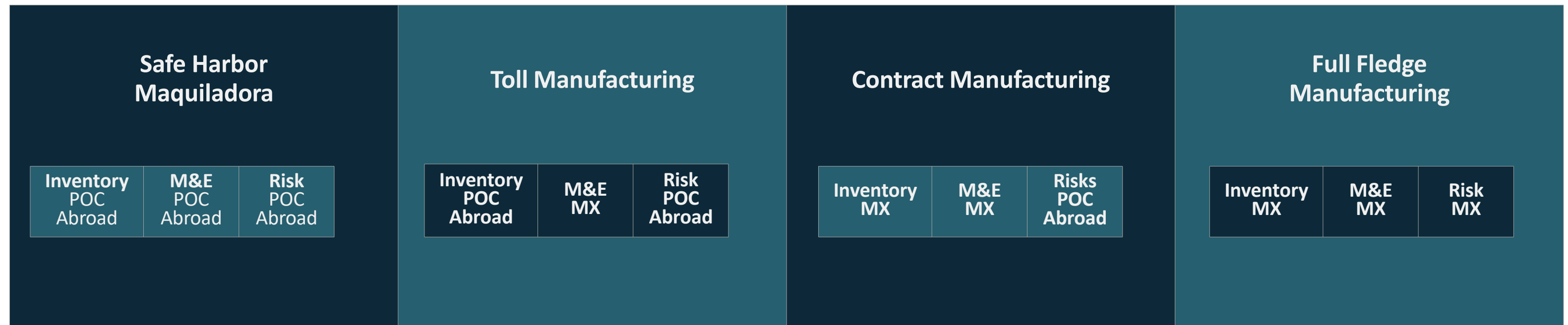
- Title: **Renewal of the Qualified Maquiladora Approach Agreement**
- Date: September 18, 2024
- Category: **Businesses and self-employed**
- Text: The IRS and Mexico's **Servicio de Administración Tributaria (SAT)** have agreed to again renew the **Qualified Maquiladora Approach Agreement (QMA)**, a coordination arrangement previously renewed between the U.S. and Mexican competent authorities in 2020 (2020 Renewal QMA). The 2024 renewal applies for the Mexican taxable years ending December 31, 2020, through December 31, 2024. The QMA allows a U.S. taxpayer to avoid double taxation on the contract manufacturing and assembly functions performed by its **maquiladora** if the Mexican taxpayer enters into a unilateral advance pricing agreement (APA) with the Large Taxpayer Division (**Administración General de Grandes Contribuyentes**) of the SAT under terms negotiated in advance between the competent authorities.

Steps when getting your APA resolution.

What are the options for maquilas after 2025 ?

2025 APA - Safe Harbor Transition

2025 Manufacturing Options***



Next Steps

1

Be alert for the publication of any decrees or rules.

2

Conduct a comparative analysis of your current situation Vs Safe Harbor.

3

Evaluate alternatives for 2025 and beyond.

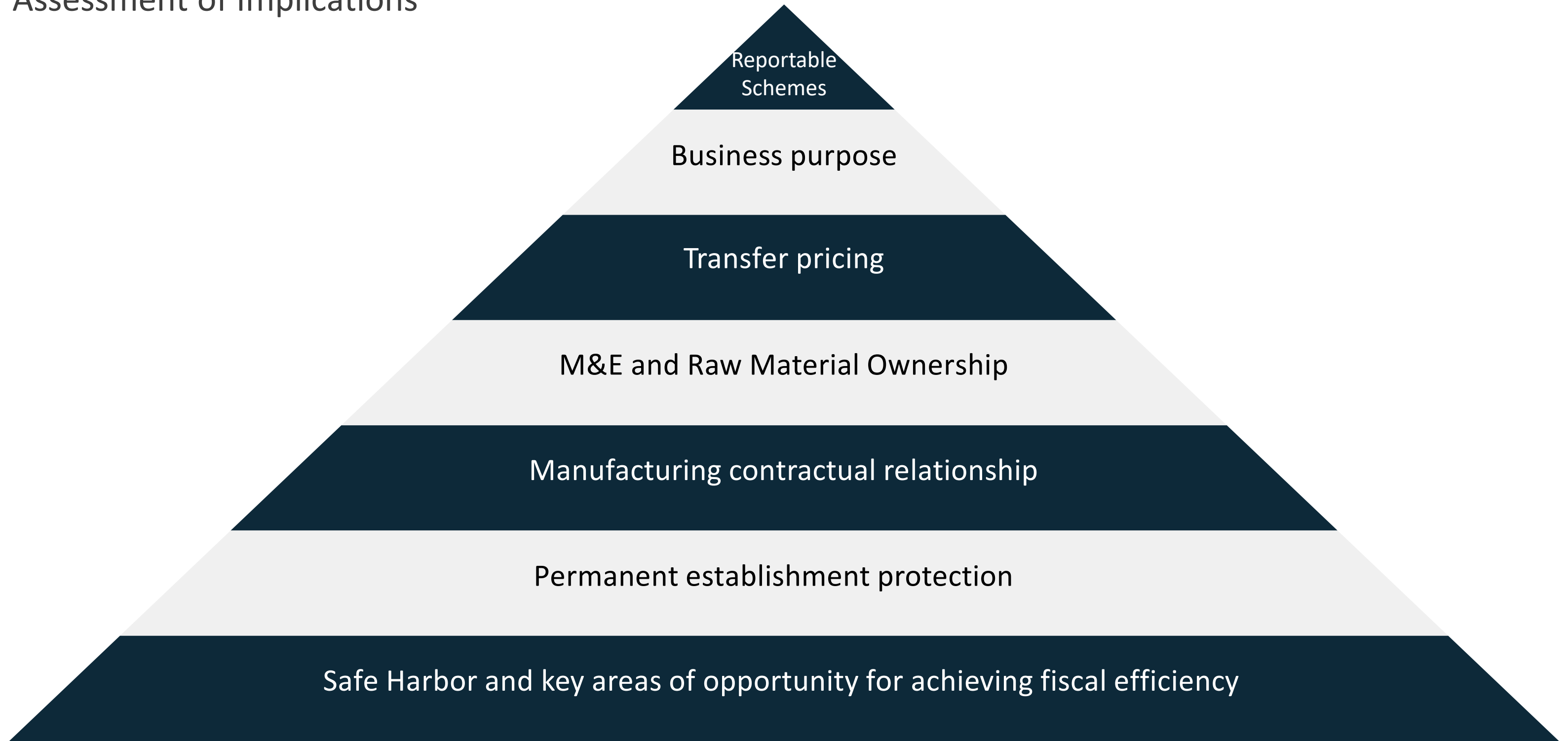
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5

Assess tax implications of any manufacturing model transition.

Main Topics

Assessment of Implications



Safe Harbor



Safe Harbor Taxable Profit

It will be considered that companies engaged in maquila operations comply with their transfer pricing obligations and that their Permanent Establishment (PE) does not have a PE when determining their taxable income:

Safe Harbor

As the higher amount resulting from applying 6.9% on assets or 6.5% on costs and expenses.

Taxable Profit		
Items	Assets	Cost & Expenses
Base	56,740,863	73,067,579
Percentages	6.90%	6.50%
Taxable Profit	3,915,120	4,749,393
Greater taxable income		4,749,393



6.5% over Cost & Expenses

	Cost & Expenses
(-)	Book Depreciation & Amortization
(-)	Currency loss, inflation, AAI
(-)	Income tax of the year
(-)	Profit Sharing PTU provision
(+)	Tax Depreciation
(+)	PTU of the year
(+)	Foreign residents' wages, when those are related to the maquila operation, and the stay is for more than 183 days
(=)	Safe harbor basis
(x)	6.5% rate
(=)	Taxable income

6.9% Over Assets

(+)	Mx Financial assets
(+)	MX fixed assets
(+)	Foreign resident's inventory
(+)	Foreign resident's fixed assets
(=)	Safe Harbor Base
(x)	6.9% rate
(=)	Taxable income

Factors that Directly Impact Maquila Income

A/R with related party	Tax effect
Safe Harbor	6.9% over asstes Directly on average for calculation of maquila income
APA	Turnover > 60 days, SAT considers an 'interest' (additional adjustment).

Machinery & Equipment	Attention
Safe Harbor	The information must come from foreign accounting (not from pedimentos).
&	Include fixed assets that are actually used in the maquila operation.
APA	Consider only the months used in the fiscal year.

Inventory	Attention
Safe Harbor	The information must come from foreign accounting (not from pedimentos).
&	Only raw materials should be included
APA	Inventory management to achieve 'just in time'.

Costs & Expenses	Attention
Safe Harbor	Segregation of other maquila activities
&	Review that the costs of other maquila activities are not included in the base
APA	



Let's Talk!

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