Maquiladoras and transfer pricing: when the safe harbor stops making sense



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Since the 2022 amendment to Article 182 of the Income Tax Law, maquiladoras can no longer negotiate a unilateral ruling with the SAT to determine their taxable profit. Since 2025, once prior rulings expired, the only compliance route in Mexico is the safe harbor. It works well for many operations, but in asset-intensive plants it can produce a taxable result well above what their actual function would warrant, and that is where alternatives are worth assessing.

How the safe harbor works

The maquiladora must report as taxable profit the greater of 6.9% of the value of the assets used in the operation and 6.5% of its operating costs and expenses, under the rules of Article 182. Complying with this regime is also what protects the foreign resident from having a permanent establishment in Mexico because of the machinery, equipment and inventory it provides (Article 181). The calculation is therefore not just a tax issue: an error can call the group's protection into question.

The problem for asset-intensive plants

The asset-based percentage penalizes operations with expensive machinery or recent investments, because profit is calculated on asset value rather than on the function the maquiladora actually performs. For those cases, although the Income Tax Law does not expressly provide for it, the SAT and the US IRS have agreed to accept bilateral advance pricing agreements (BAPAs) for maquiladoras meeting certain criteria, covering up to fiscal year 2029, which allow a methodology based on the maquiladora's functions and risks; the agreement should expressly confirm the absence of a permanent establishment. It is a longer and more costly procedure, and it is justified only when the difference from the safe harbor is substantial.

What to review now

The investment decisions many plants are making because of supply chain reconfiguration and new tariffs also change their asset and cost base. Before a significant investment, it is worth projecting the effect on the safe harbor and comparing it with the result a bilateral agreement would produce.

- Check that the safe harbor calculation correctly includes and values assets and costs.
- Confirm that the formal requirements for the Article 181 protection are met.

- Project the effect of planned investments on the taxable result.
- Assess, with numbers, whether a bilateral agreement is justified.
- Document related-party transactions that fall outside the maquila activity.

This note is for information only and does not constitute legal advice.

Let’s talk

We can assess the impact on your company and the options available.

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