

Fees Payable To Non-Residents May Be Taxed In Mexico

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Mexico's new Income Tax Law considers that a source of income exists in Mexico, when professional services by a non-Mexican resident e.g. a US company, are rendered within Mexico. This means that Mexico may tax fees payable to non-Mexican residents. As a result of such Mexican tax provisions, non-resident companies sending their employees into Mexico to render services, even if contracted for in the outside of Mexico, should carefully plan and structure their operations.

Mexico will assume that all of the services are rendered in that country when evidence shows that at least part of the services were rendered in Mexico, unless the non-Mexican resident is able to show that part of the services were actually rendered outside of Mexico. In the former case, Mexican taxes will only apply to the part of the fees allocated to the services rendered in Mexico.

Unlike Mexican companies where the corporate tax is 35% of the net gain, with a number of allowed deductions e.g. operating costs, etc., the Mexican tax rate applicable to fees payable to non-residents is 25% of the total fee or gross payment, without any deductions allowed.

Also, unlike Mexican companies where taxes are paid directly by such company on the month following the receipt of the payment, with an annual tax return, in the case of payments to non-residents, if the payment is made by a Mexican resident e.g. a Mexican company or person, a withholding will be made by such party at the time of payment. This translates in the non-resident company actually being paid 25% less than its charged fee, and later facing the difficulty of having to claim for foreign tax credit. If the payment is coming from a non-resident e.g. a US parent company, the beneficiary of the fee will have to pay the Mexican taxes directly within fifteen (15) days from when the payment is made.

Nonetheless, there are some exceptions to the general rule. The main exception, which allows such payment of fees not to be taxed in Mexico requires that: (i) such fees be paid by a non-Mexican resident; and (ii) that the rendering of the services in Mexico be for a period of less than 183 days within any 12 month period.

Non-residents rendering services in Mexico are also required to issue receipts that meet Mexican tax requirements, including a breakdown of the value added tax. This means that in most cases, existing receipts are not good enough.

Keep in mind that services rendered outside of Mexico to a company resident of Mexico, are treated different. Primarily, they are not taxed in Mexico. In such cases, and in order for the payment to be tax deductible for the payor, receipts must include at least the name and address of the company issuing the receipt, the place and date of issuance, a description of the services, as well as the total amount of the fees covered by such receipt.

They must also include the name of the beneficiary of the service, as well as any other local requirement (from the law of the country where the issuer resides). Such receipts may even be issued in English.

In accordance with most international bilateral tax treaties entered by Mexico e.g. the US-Mexico tax treaty, Mexican law allows the application of lower tax rates (lower than the 25% gross rate) or other exceptions, some of which are not established by Mexican law itself. Unfortunately, in occasions such benefits are only allowed through a refund (after the higher rate is applied and payment has occurred) rather than the automatic application of the lower rate, or the exception.

This article is designed to provide information regarding the subject matter covered and is not to be considered as legal advice by the authors. Each case should be reviewed on an individual basis. Should you have any questions please do not hesitate to contact Jorge A. Garcia from our San Antonio Office at (210) 227-7591.