
Latin American Tax Newsalert

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MEXICO

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Mexican Government amends the Miscellaneous Foreign Trade Rules affecting the Maquila program ("IMMEX")

On June 30th, 2011 a modification to the Miscellaneous Foreign Trade Rules was published in Mexico's Official Gazette. Among other modifications, the revised rules apply Value Added Tax (VAT) to the sale of goods by foreign principals to Mexican entities acting under a Maquila structure. According to the new rules, from a Mexican VAT standpoint, the sale of a virtually exported good would be considered an internal sale subject to VAT withholding to be remitted by the resident purchaser. This represents an important change in the VAT treatment of virtually exported/imported goods in Mexico.

Background – Maquila program

As mentioned in our previous Newsalerts, the Maquila program ("IMMEX") has been subject to a number of amendments and modifications during the past several months.

IMMEX is intended to promote foreign investment by granting tax, transfer pricing, and custom duty benefits to foreign entrepreneurs establishing limited risk production in Mexico.

In general, IMMEX allows a Mexican entity to import, on a temporary basis, goods used in the assembly or manufacture of finished or semi-finished goods, without paying custom duties and VAT. IMMEX also allows the import of Machinery and Equipment free of Mexican VAT, to the extent that the resulting products are physically or virtually exported.

A Mexican Maquiladora's taxable income may be determined according to certain "safe harbor" provisions, and may benefit from a reduction in the effective corporate income tax and flat tax rates, provided that certain requirements are met. Additionally, statutory permanent establishment relief may apply for Maquila-related activities carried out by the foreign principal in Mexico.

Nonetheless, the tax incentives associated with IMMEX would apply only with respect to finished goods that are either physically or virtually exported (as permitted pursuant to certain Mexican rules).

What has changed under the amended rule?

A Mexican entity acting under the IMMEX program, duly registered as a "Certified Entity", would be allowed to transfer temporarily imported goods (owned by a foreign resident) to other Mexican resident entities for their definitive importation.

Under amended rule 3.8.4, a Mexican resident entity, receiving temporarily imported goods from a foreign resident, must now withhold and remit VAT, in accordance with Article 1-A, Section III, of the Mexican VAT Law, when the sale of goods takes place in Mexico.

Therefore, a company resident in Mexico, receiving temporarily imported goods from a foreign resident, must withhold and pay the VAT. Since the sale of goods takes place in Mexico, the VAT should be treated as an input VAT for the Mexican purchaser. Note that under this rule there should be no final/incremental VAT cost for the foreign resident principal.

Commentary

- According to this new rule, internal supplies of virtually exported goods are considered to be carried out by non-residents that are not established in Mexico. Thus, it could be concluded that these suppliers (foreign principals) would continue to be treated as not having a permanent establishment for tax purposes in Mexico.
- From a VAT perspective, the VAT withheld by the Mexican acquirer of the goods is recoverable. Note however, that the credit would only apply in the month in which it is remitted (which means that there is no cashless reporting, as is the case for certain service imports). The VAT rate for these transactions would be the normal 16%. However, buyer's resident in the border zone might be able to receive authorization to utilize the lower border zone rate of 11%.
- Administratively, the rule would require the nonresident seller to separately state VAT in the invoice, and follow the invoicing rules applicable to nonresidents that do not have a permanent establishment.

Taxpayers should carefully monitor the application of this rule in practice. We will issue future Newsalerts as necessary.

For more information, please do not hesitate to contact:

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