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SAT extends restructuring period for maquiladoras

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On 4 July 2014, Mexico's Tax Administration Service (SAT) published revised administrative rules that extend the period for maquiladoras to restructure their operations to meet the requirement that all of their income from productive activities be derived exclusively from maquiladora operations. The rules also clarify certain provisions applicable to maquiladoras to mitigate some of the adverse effects of the changes made to the regime in the new income tax law (ITL) and administrative rules that became effective in January 2014.

The ITL tightened the requirements for a company to qualify as a maquiladora for income tax purposes and to avoid being deemed a permanent establishment (PE) of its foreign principal, and limited certain benefits that were granted to maquiladoras. The requirements under the ITL include the following:

- A maquiladora must derive all of its income from designated maquila operations;
- The goods subject to transformation by the maquiladora must be imported on a temporary basis and then exported (either physically or under the "virtual" export program) once the maquila services are completed; and
- The nonresident receiving the maquiladora services must own at least 30% of the machinery and equipment (M&E) used in the maquiladora's operations, and the M&E may not be owned (currently or previously) by the maquila or a Mexican related party. (Maquiladoras that operated a maquila program before 31 December 2009 were given a two-year extension to comply with the 30% requirement.)

The most recent changes result mainly from the ongoing negotiation by the Mexican maquiladora industry association (INDEX) with the tax authorities.

Extension of deadline to segregate sales to the Mexican market

The ITL provides that, for a Mexican company to qualify as a maquiladora and be eligible for the special regime (including PE protection for its foreign principal), all income from its productive activities must be derived exclusively from the export of maquila services; income will be deemed to be derived exclusively from the export of such services if it is derived from the provision of maquila services (or activities related to such services) to foreign related parties. The administrative rules published on 30 December 2013 set a deadline of 30 June 2014 for maquiladoras with nonmaquila income from sales to the Mexican market to restructure or segregate their activities. Until that date, a maquiladora was able to consider that all of its income qualified as income derived exclusively from productive maquiladora activities, provided the maquiladora had accounting records that differentiated each type of income (and the costs and expenses associated with each type of income).

Maquiladoras have faced many challenges in restructuring their operations and segregating their sales to Mexican parties within the short six-month time frame provided by the December 2013 rules. As a result, the tax authorities now have extended the restructuring/segregation deadline to 1 October 2014. The extension will be granted if the maquiladora keeps accounting records that differentiate each type of income, as well as the relevant costs and expenses. No action will be needed for a maquila to qualify for the extension.

As from 1 October 2014, however, maquiladoras must comply with the requirement that all of their income from productive activities be derived exclusively from maquiladora operations.

The new rules also clarify that income from productive activities includes income derived from personnel services, the sale or lease of assets (whether personal or real property), the sale of scrap derived from materials used in the maquiladora operations, interest and other income related to the maquila operations, as long as this income is different from the income derived from the sale and distribution of products. These rules will apply if the following requirements are met:

- The sum of the relevant income (excluding income from the sale of personal and real property) does not exceed 10% of the total income derived from maquiladora operations;
- The maquiladora's accounting records segregate income from maquiladora operations and income from its other related activities, and identify each entity with which it carries out such activities;
- If operations are carried out with related parties, the maquiladora can demonstrate that the remuneration was agreed on arm's length terms, as required by the ITL; and
- The maquiladora discloses all information relating to the income in its annual information return.

The new rules also make the following clarifications:

- The maquiladora must disclose income from the sale of personal or real property to the central administration of transfer pricing; the disclosure must set out the business reason for the sale, the amount involved and the percentage that the sale represents of the total maquila income. The maquiladora must attach documentation related to the sale, as well as evidence that the property was used in the maquiladora operations.
- Income from personnel services must derive exclusively from parties related to the maquiladora.
- Where a maquiladora derives income from the leasing of real or personal property under a lease with unrelated parties, the maquiladora will have three years from the start of the term stated in the leasing agreement to complete the transaction (except in the event of force majeure, where the maquiladora must obtain authorization from the central administration of transfer pricing). The three-year limit will not apply to leasing agreements

signed before 1 January 2014 that contemplate a longer term, but in no case can an agreement be extended beyond the contract term.

- The maquiladora cannot apply the safe harbor or advance pricing agreement options under the ITL or take the additional deduction for exempt salaries in calculating its income tax liability with respect to income subject to the new rules.

Comments

Maquiladoras that are still in the process of restructuring their operations should welcome the three-month extension of the restructuring period, and the clarifications to the productive income rules will provide certainty to maquiladoras as to what types of income will be acceptable without risking the loss of their maquila status.
