

Tax Alert

Decree 027 – 2015



Residency to individual and legal entities within Honduras shall be categorized as such according to the following:

In compliance with Decree 027-2015, Paragraph 15th and for tax purposes, a "resident" in Honduras will be the following:

- + Any person that currently lives in the country and is not a passenger in transit or a tourist in Honduras*
- + Any person that resided within the Honduran territory for a period over three (3) months in a calendar year and subject to the corresponding Income Tax. Also, any other case in which the residency is regulated by other legal dispositions that stipulate such.*
- + Any foreign person or ex-pat that through actions duly manifested their intention of acquiring a Honduran residency or, when their stay within the Honduran territory has been extended to a point where it shall be considered as a resident.*

Chapter I

Permanent Establishment

According to Article 3rd of the hereby Law, the following will be considered as permanent establishment:

A fixed place of business in which any natural or legal person, resident or domiciled in another country performs their business activities or part of them in Honduras; meaning, when the foreign entity in Honduras:

a. Has a fixed establishment of economic activity such as:

i. Any place of business of the economic activity

ii. Any branch, agency or office that acts on behalf or in representation of the company abroad

iii. Factories, shops, real estate or any other associated facilities; warehouse or deposits for merchandise intended to commercialize in the local market and not just for exhibition

iv. Mines, mineral deposits, quarries, forrests, factories and other centers to explote natural resources.

b. Those who have an office for:

i. Technical or financial consulting services or any other services of any nature intended to develop projects within or outside the country.

ii. Providing services to people that make public shows, such as: theater, movies, television and radio, musicians, athletes, travel agencies that sell flight tickets or sea transportation or any other mean of transportation to be used within the Honduran territory.

Notwithstanding the dispositions of the foregoing Numeral 1), it will be considered a foreign company has a permanent establishment in *Honduras when the company has an agent, person or entity that acts on its behalf and executes on a regular basis an economical activity in the country that is not within its regular business activities*, in any of the following cases:

- ✚ *When the company grants a power of attorney to execute contracts or engage in binding legal obligations with persons or companies they work for;*
- ✚ *Bind under a contract to execute economical activities on behalf of the foreign company or the people they work for.*
- ✚ *To pay for lease contracts, services or any other expenses related to the business economical activity.*

Chapter II

Independent Agents

When any of following conditions is met within the normal execution of its business activities, it will be considered as an independent agent:

- ✚ Have goods or merchandise, with which he makes deliveries on behalf of the resident abroad;
- ✚ Assume risks on behalf of the resident abroad;
- ✚ Acts subject to the general control of the resident abroad; and,
- ✚ Receives a fixed compensation as a result of its activities.

The term "Permanent Establishment" does not cover the following:

a. To use or maintain facilities with the only purpose to store or exhibit goods or merchandise belonging/property of the resident abroad;

b. To have any goods or merchandise belonging/property of the resident abroad, with the sole purpose of storing or exhibiting such so they can be subject to further transformation process by a third party;

c. The use of business facilities with the sole purpose of purchasing goods or merchandise for the resident abroad;

d. The use of a business with the sole purpose of performing previous or auxiliary activities for the resident abroad, such as propaganda, providing information, research and development, preparing financial loans or any other similar activities;

e. To store goods or merchandise property of the resident abroad in a bonded warehouse, or the delivery of such for importation to the country for that matter.; and

f. Natural persons that do not act as agents or representatives of a legal entity.

Chapter III

Income Tax implications

A. PAYMENT OF THE INCOME TAX

The income from agencies, branches and any other form of permanent establishment of a foreign company that operates in Honduras, shall be determined over the base of the Honduran and abroad income source, if applicable under the dispositions of Article 2nd of the Income Tax Law and its amendments. This means, any source of income from activities executed by this foreign entity, by the assignment of the goods or its use by the permanent establishment.

Its included within the list of goods, all those investments done in Honduras and abroad with resources generated by the permanent establishment, as well as any other goods assigned by headquarter office or any other permanent establishment.

Net Taxable Income

The Net Taxable Income of a permanent establishment is determined by deducting from the gross income the value of all the ordinary expenses needed to produce the income within a tax/fiscal period, such need to be duly supported, paid and incurred in compliance with Article 11th of the Income Tax Law and its amendments, and any other applicable legal framework.

Chapter IV

Implications for Non Residents

Tax payments for non-residents or non-domiciled natural or legal persons through permanent establishments.

All non-residents or non-domiciled natural or legal persons that obtain income from a Honduran source shall pay taxes according to Article 5th of the Income Tax Law and its amendments.

Chapter V

Power of the Tax Administration (DEI)

The Tax Administration (DEI) is empowered to enforce this Law and its Bylaws, and to assign any assets or resources to achieve such purposes within the following circumstances:



Accordingly, the Tax Administration is empowered to determine the price or value assigned to the corresponding operation, when such does not comply with arms length conditions; in other words notoriously below or above the prices of similar transactions in regular conditions.

Comments: about the procedures of the Tax Administration

The Tax Administration (DEI) through a general agreement, shall determine the procedures related to the tax treatment of permanent establishment in compliance with the disposition of the Tax Code, Income Tax Law and its amendments and any other legal framework applicable.

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CONTACT US

Rita María Silva
Country Managing
Partner

ritasilva@deloitte.com

Ninoska Rivera
Tax Manager

nrivera@deloitte.com