

New regulations for tax benefits granted under special regimes in Panama

Law 27 of 2015 and Executive Decree No. 263 of June 2015



Article 7 of Law 27 of 2015 reestablishes Article 733-A of the Tax Code:

This article provides a limitation to the withholding exemption of which certain companies enjoy, regarding payments of dividends, interest, royalties, fees or others of similar nature made from Panama to the beneficiaries domiciled abroad and to the exemption regarding income tax of certain foreign branches:

- For a company governed by a special law that exempts withholding obligation on the payments aforementioned, this law will not be applicable if the beneficiary of the payment could credit, in the residence country, the tax that it would have paid in Panama, had the exemption not existed. The same limitation applies to the exemptions granted under special laws applicable to income tax for operations made in national territory by foreign branches.
- Special law refers to any law in force in Panama by which any preferential regime of legal incentives and/or taxes is established.

Important!

For this purposes, Agreements to Avoid Double Taxation are **not** considered as “Special Law”.

This provision was regulated by Executive Decree 263 of 2015:

To whom does it apply?

- To every entity covered by a special law that exempts it from withholding income tax on dividends, interest, royalties, fees or other charges of a similar nature paid to beneficiaries domiciled abroad.
- To foreign companies established as branches in Panama which are exempt from income tax due to their operations in national territory under a special law.

What should those entities do?

- Obtain and keep a formal opinion on file, from an independent expert who meets certain requirements, in case of a request by the Tax Authority.

What requirements must the formal opinion comply with?

- Transcribe the legal basis supporting why the beneficiary may not take the Panamanian tax as tax credit or that it can only allow to take it partially, as appropriate.
- Explain the facts that prevent the beneficiary from taking a tax credit or that could only allow it to take a portion of it, as appropriate.
- A statement from the person issuing the opinion whereby it assures it does not depend economically or has legal subordination concerning the payee, nor is related to the payee as family.
- Evidence proving that whoever issues the opinion has expertise in tax matters, according to the applicable legislation of the respective country.

For how long is this opinion valid?

- Up to one year counted as of the issuance thereof; or
- Until the conditions giving rise to the opinion change, whichever occurs first

What happens when the credit in the country of residence of the payee is partial?

- When the credit is partial, the Republic of Panama will exonerate the percentage of income tax that the other country does not allow the beneficiary to be credited, provided that the applicant proves the manner in which credit recognition takes place in its country.

Some special regimes to which this standard applies are:

- **Panama-Pacific Special Economic Zone;**
- **City of Knowledge;**
- **Regime of Multinational Corporations Headquarters (SEM);**
- **Petroleum free zones;**
- **Free Zones,** among others.

Conclusion aspects:

- **Deloitte shall give briefings on disclosure and training regarding the implications of this regulation.**
- This law amends Article 14, 30 and 331 of Decree-Law 1 of 1999 and Title II of Law 67 of 2011; amends Article 2 of Law 2 of February 1, 2011; and repeals Law 42 of October 2, 2000 and Executive Decree 1 of January 3, 2001.



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