Tax Newsletter

Timely news and information on national tax issues

New Tax Haven Guide and its implications on operations with entities domiciled in the United States

Each year, the Tax Authority of El Salvador issues a new version of the "Guide for Facilitating the Recognition of Tax Havens," whose purpose is to facilitate compliance with the obligations regulated in the Tax Code and other tax laws.

The Guide that will go into effect in 2019 was issued this past September. The main changes to the Guide are as follows:

a) **The list of Countries, States or Territories with low taxation is modified, with the addition of the following:** Democratic Republic of East Timor, Republic of Palau, Kyrgyz Republic, Turkmenistan, **and the States of Texas and Washington of the United States of America.** These last two states join South Dakota, Delaware, Florida, Nevada and Wyoming, which in previous years had already been considered as jurisdictions of zero taxation by the Salvadorian Authorities.

b) **Trust companies and Limited Liability Companies (LLC) are added to the list of entities that could be considered as tax havens (low or zero taxation).**

In order to determine whether this tax treatment is applicable to the sample list of companies described in the Guide, the taxpayer should evaluate: (1) whether any of these entities is established, domiciled or located in a Country, State or Territory not named in the Guide, but has an Income Tax exemption, (2) whether it pays Income Tax at a rate lower than 80% that would be generated and paid in El Salvador and, (3) whether it is protected by Law or Administrative Provision under a preferential tax regime of low or zero taxation.

In this respect, it is extremely important that Salvadorian companies that are subsidiaries or branches of U.S. companies or that conduct commercial transactions with related companies or suppliers domiciled in the U.S. review the changes introduced by the new Guide, with the purpose of evaluating the possible effects on their operations. In particular, it is important to remember that the percentage of the Income Tax withholding on payments of services or dividends to parties that are non-residents of the country could vary (from 20% or 5% to the rate of 25%, as the case may be) based on how the Guide classifies each jurisdiction.

For example, a Salvadorian company that up until December 31, 2018 pays dividends to its holding company domiciled in Texas or pays services to a related company established in Washington, would be obligated to withhold 5% and 20%, respectively, for Income Tax on such payments. However, due to the change in the classification of these two states, these same transactions could be subject to 25% Income Tax as of January 1, 2019. This same change in the withholding rates could also occur in the payment of services to a supplier that does not form part of the same business group of the Salvadorian company, if such supplier is established as a Limited Liability Company (LLC).

In regard to the Transfer Pricing regime, the changes to the classification made by the Guide could result in new parties subject to tax who for tax purposes must:

1) Be considered as related parties. This is due to the fact that the Salvadorian legislation requires that, in addition to the companies that have a shareholding relationship, the independent third parties that are established or domiciled in jurisdictions classified as tax havens must be treated as related parties for purposes of the Transfer Pricing regulations; or

2) Be excluded from the sets of comparable companies. This situation results from the fact that the local regulations do not permit the inclusion in sets of comparable companies, of those that have been established or are domiciled in jurisdictions considered as tax havens.

For further information or if you have any questions please do not hesitate to contact us.

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Regulatory Summary

New General Administrative Provision DACG No.DGA-015-2018

On November 14, 2018, the General Customs Office (*Dirección General de Aduanas* - DGA) published on its transparency site, in the section on "Other Regulatory documents," the **new "General Administrative Provision DACG No.DGA-015-2018,"** addressed to DGA officials and employees, Customs Civil Service aides and users of the Customs Service, which was issued on September 27, 2018 and is in effect as of October 1, 2018.

The new provision mentioned above substitutes "General Administrative Provision DACG No.DGA-014-2018," dated September 11, 2018 and has the purpose of "*regulating the Export, Re-export, and Transit process, in its various forms, whose border crossing of departure is the La Hachadura Land Customs Office.*"

A summary of the content of the new "General Administrative Provision DACG No.DGA-015-2018" is presented as follows:

a) **It establishes a series of definitions related to:** acceptance of the Declaration of Goods, ARIVU, Self-determination, Customs Authority, Customs Civil Service Aides, CIEX, Declaration of Goods, Declarant, Customs Clearance, DMTI, DUT, Export, Consolidated Export, Temporary export for outward processing, temporary export with re-importation in the same state, risk management, Customs Seal, Non-Intrusive Inspection Service, Superintendency for Tax Administration (SAT), among others.

b) As part of the most relevant General Provisions, the following can be mentioned:

- It is established that the Metalío Land Customs Office will operate as a pre-check facility or control prior to reaching the La Hachadura border crossing.

- The definitive exports and re-exports generated at the customs delegations of the Free Trade Zones and Bonded Warehouses must be processed in accordance with that established in DACG No. DGA.09-2014.

c) Additionally, the following aspects are established:

- minimum requirements for Exports and Re-exports;
- procedure for the presentation of documents at the Metalío Land Customs Office;
- explanation of the selection procedure for the Declarations of Goods;
- process to be followed at the La Hachadura Land Customs Office.

d) Finally, it establishes that as of the month of November, only those operations that have satisfactorily completed their customs clearance process at the Metalío Land Customs Office will be sent to the departure Customs office (La Hachadura Land Customs Office).

To consult the new "General Administrative Provision DACG No.DGA-015-2018," click on the following link:
https://www.transparencia.gob.sv/institutions/dga/documents/otros-documentos-normativos

Tax Calendar
December 2018

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2	3	4	5	6	7	8
9	10	10	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

December 14

VAT

- Declaration and payment of the Tax on the Transfer of Movable Goods and the Rendering of Services (F-07)

FINANCIAL INCOME AND TRANSACTIONS

- Monthly declaration of Payment on Account, Tax Withheld on Income from Financial Transactions, and the Special Contribution for Citizen Security and Coexistence (F-14)

SPECIFIC AND AD VALOREM TAXES

- Declaration and payment of Specific Taxes, Ad Valorem Taxes and Special Contribution (F-06)

OTHER OBLIGATIONS

- Report on Donations (F-960).
- Report on Specific and Ad Valorem Taxes on Producers and Importers of Alcoholic Beverages, Potable Ethyl Alcohol and Beer, Carbonated Beverages, Isotonic Beverages, Fortified Beverages or Energy Drinks, Juices, Nectars, Soft Drinks and Concentrated or Powder Mixtures for the Preparation of Drinks (F-955)
- Report on Specific and Ad Valorem Taxes on Producers and Importers of Firearms, Ammunitions, Explosives and Similar Items, Producers of Tobacco and Producers, Importers and those that clear fuels through customs (F-988)
- Monthly Report of Sales to Producers, Distributors or Retailers of Tobacco and Tobacco Products (F-956)

December 21

VAT

- Monthly Report on Withholdings, Collections, and Advances on Account of VAT (F-930)

PRINTING PRESSES

- Monthly Report on Documents Printed for Taxpayers of the VAT (F-945)

NOTE

- December 24-31, Christmas holidays

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