



**SAT**

Servicio de Administración Tributaria

**GUIDELINES TO DETERMINE  
WHETHER A TAX PAID ABROAD  
QUALIFIES AS INCOME TAX FOR  
PURPOSES OF ARTICLE 6, FIRST  
PARAGRAPH OF MEXICAN  
INCOME TAX LAW**

The following is an unofficial English version of the official letter number 900-2012-7839, dated 12 January 2012, through which the Head of the Large Taxpayers Division of the Mexican Tax Administration Service informed the heads of the large taxpayers subdivisions about the guidelines applicable to the determination of whether a tax paid abroad qualifies as an income tax for purposes of article 6, first paragraph, of the Mexican Income Tax Law.

That official letter was published on the Mexican Tax Administration Service's website on 18 January 2012.

## **GUIDELINES TO DETERMINE WHETHER A TAX PAID ABROAD QUALIFIES AS INCOME TAX FOR PURPOSES OF ARTICLE 6, FIRST PARAGRAPH OF MEXICAN INCOME TAX LAW**

**First.** In determining the allowance of a credit concerning a tax paid abroad against the income tax levied by Mexican Income Tax Law (MITL), it shall be necessary to review the fulfillment of the requirements pursuant to article 6 of the MITL.

**Second.** For purposes of article 6 of the MITL, the analysis as to the allowance of the relevant credit shall begin by verifying if the amount paid abroad qualifies as an income tax paid due to income sourced abroad providing that such income is subject to tax under the MITL.

**Third.** In case the amount paid abroad does not qualify as an income tax, further analysis shall not be carried out. Therefore, the amount not qualifying as an income tax shall not be creditable against the income tax levied by the MITL.

Conversely, if the amount qualifies as an income tax in terms of Guideline Second, the first requirement set forth in article 6 of the MITL shall be deemed to be fulfilled. Thus, the compliance with other requirements shall be verified.

**Fourth.** For purposes of Guidelines First, Second and Third, in determining whether the amount paid abroad fulfills the requirement of being (I) a tax, (II) levied upon income and (III) paid in respect of taxable income under the MITL, the following criteria shall be met:

- I. The amount paid abroad shall be considered as *tax* provided that:
  - a) Its payment derives from a legal provision whose application is general and binding.
  - b) Its payment does not derive from the alienation or the use, enjoyment or exploitation of a good, the provision of a service or obtaining a direct, specific or personal benefit.
  - c) Its payment is not a consequence for the termination of an obligation derived from a fee (*derecho*<sup>1</sup>), a public work tax (*contribución de mejora*<sup>2</sup>), a social security

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<sup>1</sup> Contributions set forth in the Mexican Federal Tax Code for using or benefiting from public property belonging to the Nation, which may not be freely transferred to third parties (*bienes del dominio público*), as well as for receiving services provided by the State in conducting the duties that correspond to it under public law, except when such services are provided by decentralized entities or agencies and, in the latter case, when the consideration is not set forth in the Mexican Federal Fees Law (*Ley Federal de Derechos*).

contribution or a levy (*aprovechamiento*<sup>3</sup>), as defined in articles 2 and 3 of the Mexican Federal Tax Code.

- d) Its payment is not for the termination of an obligation derived from surcharges, fines or inflationary adjustments of a contribution or a levy, as defined in articles 2 and 3 of the Mexican Federal Tax Code.

II. The amount paid abroad considered as *tax* in accordance with section I, shall be deemed to be *income tax* provided that:

- a) The subject of the tax consists in income obtained by the person who is liable to tax.
- b) In case there is a lack of clarity as to whether the subject of the tax consists in income obtained by the person who is liable to tax, the determination as to whether the tax base measures income obtained shall be necessary.

For the analysis of the abovementioned subsections a) and b), the following shall be taken into account:

- 1. The legal tax regime shall allow deductible figures similar to those set forth in the MITL or, as an alternative, shall foresee the necessary means to allow the determination of net income.
- 2. The legal tax regime shall acknowledge that income is obtained and deductible figures are applied, in similar moments to those established in the MITL.

III. The amount paid abroad and deemed to be an *income tax* according to sections I and II, shall be considered as *paid in respect of income subject to tax under the MITL* to the extent that such income is covered by the classes of income foreseen as taxable income under such law.

**Fifth.** In case the amount paid abroad does not fulfill the requirements set forth in sections I and II of Guideline Fourth, such amount may be considered as *income tax* provided that the subject of the tax, and in case of doubt, its tax base, is *substantially similar* to the one established in the MITL.

**Sixth.** As to the allowance of crediting the amount paid abroad under the preceding Guidelines, the following shall not be relevant:

- I. The title or name of the tax.
- II. The nature of the tax according to the country's position in which such tax is levied.
- III. The nature of the tax according to third countries' position. Nevertheless, in case of doubt, such understanding shall be considered as a reference.

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Fees also include contributions levied by decentralized public agencies for providing services for which the State is exclusively responsible.

<sup>2</sup> Contributions established in the Mexican Federal Tax Code paid by individuals and legal entities that directly benefit from public works.

<sup>3</sup> Revenue received by the State for performing functions in accordance with public law which do not include contributions, revenue derived from financing, and income obtained by decentralized entities and state-owned enterprises.

IV. If the tax is levied by the federal or central government, or any of their political subdivisions.

**Seventh.** In case the amount paid abroad is not considered as an *income tax paid with respect to income subject to tax under the MITL*, according to these Guidelines, such amount shall not be creditable, neither totally nor partially.

**Eighth.** For purposes of article 6, first paragraph of the MITL, the person who paid the amount which fulfills the criteria established in Guidelines Fourth and Fifth, shall be the same person who intends to claim the credit, in terms of the aforesaid legal provision.

**Ninth.** In case the tax paid abroad is covered by a double tax convention entered into by Mexico and in force, the credit of the relevant amount shall be allowed in terms of such convention, without applying the analysis in accordance with these Guidelines.

Notwithstanding, these Guidelines shall be applied in case a credit is claimed under article 6 of the MITL.

**Tenth.** In case a country with which Mexico has entered into a double tax convention establishes a new tax, the analysis according to these Guidelines may be taken into account by Mexican Competent Authorities<sup>4</sup> in order to determine if such new tax qualifies as identical or similar to those covered by the relevant convention.

**Eleventh.** The preceding Guidelines shall enter into force on February 1, 2012.

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<sup>4</sup> I.e., the Large Taxpayers Division of the Mexican Tax Administration Service, competent authority for interpreting and applying tax conventions.