

Global Tax Alert

News from Americas Tax Center

Panama enacts legislation amending the multinational headquarters regime

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In Resolution No. 015-18 (published 28 December 2018, in *Official Gazette* No. 28685-A), Panama amended the requirements in Resolution No. 20-17 for obtaining multinational company headquarters licenses. Resolution No. 015-18 became effective on 1 January 2019.

Background

Law 57 of 2018 (the Law), published 25 October 2018, in *Official Gazette* No. 28641, amended the Multinational Headquarters (MHQ) regime, effective 1 January 2019. Law No. 66 of 2018 also introduced changes to the MHQ regime.

Financial and other activities allowed

To improve the competitiveness of the MHQ regime, the Law expanded eligibility for regime benefits by broadening the financial activities in which MHQ licensees may engage. Under the Law, the following activities are currently allowed under the amended MHQ regime: financial management, risk analysis, due diligence, document custody and recordkeeping, document processing centers and corporate financial services.

The Law also included administrative support, data processing and inter-related company loans as activities that may be conducted by MHQ companies. Additionally, the Law required MHQ companies to notify regulators if services were provided to regulated entities, such as banks and insurance companies.

MHQ license requirements

The Law established new requirements for companies to obtain an MHQ license. Companies must maintain a minimum number of full-time employees and a minimum amount of annual operational expenses, both of which must be adequate for the type of business they conduct.

Additionally, the Law established a transition period until 30 June 2021, for companies that obtained an MHQ license before 17 October 2017, to adjust their structures to comply with the new requirements. However, companies that obtained an MHQ license on or after 17 October 2017, must comply with the new requirements in effect as of 1 January 2019.

Tax provisions

For companies with an MHQ license, the Law replaced an income tax exemption with a 5% income tax on net taxable income derived from the rendering of services. Panamanian taxpayers benefitting from services or acts rendered by a company with an MHQ license must withhold 5% of the total sum to be paid, as long as: (i) the services or acts relate to the generation of local income or the conservation of its source (i.e., the maintenance of income considered as income produced in Panama); and (ii) the payment was considered a deductible expense by that Panamanian taxpayer.

In addition, the Law allowed companies with MHQ licenses to claim a tax credit for the amounts withheld by the Panamanian taxpayers, as well as those effectively paid abroad for services rendered by nonresidents. However, MHQ companies must pay at least 2% of the net taxable income generated in Panama, as a minimum income tax.

Companies with an MHQ license also must withhold 5% on 50% of the payments remitted abroad for services and acts provided by nonresidents. The company also must withhold 5% on interest, commissions and other charges generated by loans granted by a nonresident and used in Panama.

In accordance with the Law, legal stability for investments by companies with an MHQ license applies automatically (i.e., such companies are guaranteed a tax rate for a certain period).

The Law subjected transactions conducted by companies with an MHQ license and their related parties domiciled in Panama, abroad or under a preferential regime in Panama to the transfer pricing rules established in the Panamanian Fiscal Code, beginning in tax year 2019.

The Law maintained the exemptions for dividend tax, complementary tax and branch tax, regardless of the source of the income (local, foreign or exempt) and also established an exemption from the operation notice tax (i.e., annual tax on equity, essentially a commercial license) and the obligation to issue invoices through a fiscal printer.

The capital gains tax regime established in the Panamanian Fiscal Code applies to transfers of securities issued by companies with an MHQ license; the Law, however, established a reduced rate of 2%, which reduced the buyer's withholding obligation to 1% of the purchase price. The 1% withheld by the buyer is treated as capital gains tax paid in advance.

Additionally, the Law clarified that the salary received by an employee with an MHQ Permanent Personnel Visa is exempt from income tax, social security contributions and educational insurance in Panama. Employees with an MHQ Permanent Personnel Visa could opt for a permanent residence in Panama and keep working for a company with an MHQ license after five years. Those employees, however, will be subject to income tax, social security contributions and educational insurance on the salary they receive.

The Law repealed the provision that allowed MHQ companies to enter into tax agreements with the Ministry of Economy and Finance for paying taxes.

Resolution 015-18

The Resolution amends the requirements for obtaining MHQ licenses. To obtain an MHQ license under the Resolution, companies must: (1) be part of a business group with assets equal to or greater than US\$200 million; or (2) provide services to at least seven affiliates, subsidiaries or associated companies.

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