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ABOGADOS

**TAX TREATMENT TO FOREIGNERS THAT RECEIVE A SALARY FROM
ABROAD FOR SERVICES RENDERED IN MEXICO**

By: Horacio Heredia

According to the Federal Fiscal Code, all foreigners that keep a dwelling or house in Mexico will be considered as Mexican residents for tax purposes, and they will be subject to comply with all tax obligations, just as any Mexican national. If the foreigner has a dwelling in Mexico and abroad, he will be considered as a Mexican resident for tax purposes, if more than 50% of his total income derives from Mexico.

This provision will not affect foreigners that live in the US side of the border and work in Mexico, because instead of applying the local law (Mexican Income Tax Law), tax payers could apply the Treaty to Avoid Double Taxation signed by the U.S. and the Mexican government (the "Treaty").

Article 180, of the Income Tax Law, and article 15 of the Treaty, states that payments made by foreign companies to a foreign citizen should be income tax exempt if the following conditions are met:

1. The receiver of the payment must not stay in the other party's territory for one or more periods longer than 183 days within a period of twelve months.
2. That the salary or wages be paid by or on behalf of the employer not resident in the other party's territory.
3. The wages or salary payments must not be made by a permanent establishment or an employer's branch in the other party's territory.

We think it is difficult for the Ministry of Finance to detect foreign citizens' presence and assess any liability (to the individual or company) even though, in order to avoid this possibility, we suggest to record the days when the foreign citizen stays in Mexico according to the following tax guidelines:

1. The Mexican company where the work was performed must register as a part of its accounting procedures the name, address, and taxpayer identification for every foreign resident who works in the company. Also the name, address and corporate name of the foreign resident that makes the wage or fee payment; this registry must include the number of days that every individual has stayed in Mexico.

2. A copy of the documents that certify the tax identification number for every individual must be kept by the Mexican company, including a document certifying that the foreign resident has provided the required information to properly carry out the registry.
3. The Mexican company where the work has been performed must issue every three months (April, July, October and January) to every foreign resident, a certificate evidencing the information and stayed days in Mexico, pursuant to the registry above mentioned.
4. If the foreign citizen exceeds the 183-day limit, he/she will be obligated to pay taxes in Mexico.

If a foreign citizen exceeds the 183-day period mentioned above, the foreign company or individual who makes wage or salary payments must withhold and pay the applicable taxes. Also, the Mexican company where the work has been performed must pay the applicable tax, which must be paid within the first seventeen days of the next month at the authorized offices.

With respect to income from wages and salaries and in general from providing personal services as an employee, the source of income will be considered Mexican, when the services are provided in the country, and the income taxes will be assessed on the income received based on the following rates:

- The first \$125,900 pesos, received during the applicable calendar year will be exempt.
- Tax will be assessed at a 15% rate on income received during the applicable calendar year that exceeds the amount set out above and is no greater than \$1'000,000 pesos.
- Tax will be assessed at 30% on income received during the applicable calendar year that exceeds \$1,000,000 pesos.

The person paying the employee must withhold taxes if the payer is a resident in the country or resident abroad with a permanent establishment or fixed base in Mexico related to the service.

To summarize the above, if a foreign citizen does not reside in Mexico for more than 183 days, the citizen will not be subject to payment of Mexican income taxes.

Likewise, if the citizen resides in Mexico for more than 183 days and provides personal services as an employee, income tax will be assessed at the rates set out above.

The provisions established by the Federal Fiscal Code, that state that all foreigners that keep a dwelling or house in Mexico will be considered as Mexican

residents for tax purposes, and they will be subject to comply with all tax obligations just as any Mexican national, **do not apply**, because there is the possibility to apply the provisions of the Treaties to Avoid Double Taxation which, in general, establishes that a foreigner does not reside in Mexico for tax matters if he or she does not remain in Mexico for more than 183 days within a period of twelve months.

Tax obligations of Mexican companies that pay wages to foreigners:

- 1) Informative Tax Return of payments to foreigners with source of wealth located in Mexico (Format 28).

- 1) Foreigner Tax withholdings return (Format 29).

Please feel free to contact us if you require further information on this or any other matter pertaining to Mexican Law.

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