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Update on New Maquiladora Requirements

Legal Update
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By Luis G. Reséndiz

In prior articles we discussed the new requirements to qualify as a maquiladora for income tax and permanent establishment purposes under Mexico's new income tax law (the New LISR). Over the last few weeks, Mexico's Tax Administration Service (SAT) has signaled that it intends to apply the new requirements strictly.

The new requirements include: (i) 100 percent of the items provided by the foreign resident to be subject to maquila process must be imported temporarily and re-exported once the maquila process is finished and (ii) all of the maquiladora's income must come from maquila operations. The presidential decree published on December 26, 2013, includes language suggesting that maquiladoras could perform other activities that do not meet the requirements (i.e. part of the production could stay in Mexico or the maquiladora could receive income from non-maquila activities) as long as the maquiladora has systems to clearly separate those activities from its maquila activities. However, SAT seems to have a different interpretation.

SAT is likely to require that all the activities performed by maquiladoras meet the new elements. Therefore, to comply with the requirements stated above (i) 100 percent of the items provided by the foreign company receiving the maquila services must be re-exported out of Mexico once the maquila process is finished and (ii) the maquiladora must earn all of its income from maquila activities. The exportation out of Mexico may be "virtual", e.g. transfers within Mexico to another maquiladora may be allowed. Also, scrap and waste may remain in Mexico as long as the appropriate paperwork is filed. If any part of a maquiladora's operations fails to meet these requirements (for example, some of the products manufactured with the items provided by the foreign company are sold in Mexico or if the maquiladora earns any income from activities that are not considered maquila), none of the maquiladora's activities will receive any of the income tax and permanent establishment benefits available.

Companies using a maquiladora structure that are selling part of their production in Mexico, earning part of their income from non-maquila activities, or that otherwise do not fully comply with the new requirements must analyze their options. First, they must determine the maquiladora structure still offers the most advantages to operate in Mexico. If it does, the company must restructure its operations. Companies may need to operate two entities in Mexico, one maquiladora to carry out all the activities that meet all the new requirements to qualify as a maquiladora and one non-maquiladora to conduct all other operations. Failure to undertake this restructuring will jeopardize the maquiladora benefits for all the operations in Mexico.

All maquiladoras must be in full compliance with the new requirements by July 1, 2014. Therefore, companies using a maquiladora structure must analyze their operations now to have time to complete any necessary restructuring prior to July 1, 2014.