

February 2020

As we previously informed you, as of January 1, 2020, Section IV of Article 1-A of the Value Added Tax Law ("VAT Law") entered into force. This provision establishes the obligation to withhold 6% of VAT on certain services. However, on such date no Rules were issued to narrow down its scope. This has created confusion among the taxpayers.

On January 31, 2020, the Tax Administration Service (as per its acronym in Spanish "SAT") published an anticipated version of Annex 7 (legal criterion) of the Tax Administrative Rules with the purpose of clarifying in which cases the VAT should be withheld. The legal criterion is pending to be published in the Federal Official Gazette.

The legal criterion "*46/VAT/N VAT 6% withholding referred to in Article 1-A (IV) of the VAT Law*", establishes in general terms the following:

- + That the bill issued by the Mexican Federal Executive Power referred to outsourcing, however, it was later modified by the Chamber of Deputies.
- + It establishes that the withholding is applicable as follows:
 - When a legal entity or an individual with business activity, as a contractor, receives services in which personnel is made available to it, it should be understood that the withholding is applicable when the functions of the personnel are used directly by the contracting party or a related party of the same.
 - On the other hand, no withholding shall be made to services where personnel perform functions which are used directly by the contractor.

In this regard, it is considered that one of the elements that may be used to determine whether or not VAT withholding is applicable is related to whom uses the functions of the personnel, whether the contractor, a related party or the contractor. We suggest reviewing each contract to determine if VAT withholding is applicable.

It is not the purpose of this communication to advise or counsel on any situation nor is intended to not pay in whole or in part any contribution or not to withhold any contribution against the Mexican tax provisions nor should it be used for such purposes.

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