



TERÁN ROJAS
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Tax requirements
for payments made to
abroad (US) suppliers

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There are two main groups of requirements related to payments to US suppliers. "Formal requirements" are the ones related with the invoice and payment.

The second group is called "Substance requirements" and includes the requirements needed to prove that the service exists and that there is not a special treatment between the related parties.

Following is
a brief description of them:

I. Formal requirements:

1. Invoice requirements.

- Name, address and TIN of the US supplier.
- Issue date and location.
- Name, address and RFC of Mexican entity.
- Quantity, unit of measure and description of service/product.
- Unit value.

2. Payment requirements: Wire transfer or nominative check to supplier bank account for payments over \$2,000 pesos.

II. Substance requirements:

There is not any exception related to which payment must/avoid following these rules, but Hacienda will put special attention to transactions depending of their frequency, high amounts and if it is a service, Hacienda will usually want to know who the beneficiary is and the amount paid.

Be aware that there are three main risks for the Mexican entity in case that Hacienda rejects these payments:

- a) They will be considered as non-deductible expenses
- b) They will require a withholding tax and/or
- c) They will be considered as dividend

The substance requirements are:

1. To have a contract that specifies the type of services and price.
2. To have evidence of the services provided.
3. To prove that the price is correct in accordance with a market transfer study.
4. In annual services over USD\$150,000 a transfer pricing study is required.
5. To withhold and pay income tax if it applies. Commerce acts and professional services do not require a withholding as long as they cover the following double tax treatment requirements (Mexican Domestic law requires a withholding tax for services): It is provided by an US Entity that has an IRS form 6166 to prove the fiscal residence of the supplier , and also the US entity is able to provide such services as part of its business activity shown in its bylaws.

As a final comment, all payments made to Non Mexican residents must be **reported as part of the company annual tax return** and for transactions made between related parties there is an obligation to give more details about them.

"That article may be contrary to the interpretation of the tax authorities".

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Noviembre 2016



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