

Paying Taxes On Royalties In Venezuela

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Lighted list of considerations when structuring a license agreement to minimize local tax consequences in Venezuela

Under the Venezuelan Income Tax Law, the net income from royalties and other similar participations, received by beneficiaries not domiciled in this country, shall consist of 80% of the amount received for said contributions.¹

It is understood as royalty or analogous participation, the amount paid for the use or enjoyment of patents, trademarks, copyrights, procedures or rights for the exploitation or exploitation of national resources, fixed in relation to a unit of production, sale, exploitation and exploitation, whatever its name in the contract (Article 64, Venezuelan Income Tax Law).

There is an exception to this rule, and the exception is provided in Article 65 of the law. It states that the net income of taxpayers who have abroad provide technical assistance or technological services to persons or associations, which, for the purpose of producing income, set-up in this country or with them or third parties, whenever the modality of the payments or its name shall be named by the amount representing 80% of the gross income received by them for providing the technical assistance and 80% of the gross income received by them for providing technological services.

Therefore, the licensor must be very careful when he breaks down the technological contribution in a license agreement, because depending on the percentage of royalties that is stipulated for trademarks, for technical assistance, or for technological services, it will be reflected in the taxes to be paid.

Article 57 of the Venezuelan Income Tax Law defines technical assistance as supplying instructions, write, recordings, films and other similar instruments of technical nature, for the purpose of preparing a job or product to be sold or providing a specific service for the same purpose of being sold. The technical assistance referred to may include the transfer of technical knowledge, engineering services, research and development of projects, advisory and consulting and the supply of production procedures, formulas, data, information and technical specifications and providing of basic and detailed engineering elements there being understood as:

1. **Engineering Services:** The installation and supervision of the mounting, installation and start up of the machinery, equipment and production plants, the calibration, inspection, repair and maintenance of the machinery and equipment, and the carrying out of the test and trials, including quality control.

2. **Research and Development of Projects:** The manufacture and operation of pilot programs, laboratory research and experiments, exploration services and the planning of technical programming of productive units.

3. **Advising and Consulting:** The processing of purchases abroad, the representation, advisory services and the instructions given by technicians, and the providing of technical services for the administration and management of companies in any of the activities or operations of the latter.

For the purpose of Article 56, the law establishes that there are understood as technological services the concession for their use and for the exploitation of inventions

patents, models, industrial drawings and designs, improvements or perfecting, formulations, modifications or instructions, and all those technical elements subject to being patented.

In the case of technical assistance contracts and technological services abroad from abroad, which do not formalize the part of income corresponding to each concept, it shall be presumed that 20% of the entire income corresponds to technical assistance and 75% to the technological services (Article 60 of the Venezuelan Income Tax Law).

When there is a total amount or one not broken down of income corresponding to remunerations or fees for technical assistance and technological services, partially from abroad and partially derived from activities carried out in Venezuela, these shall be considered that the 80% of the income corresponds to the services from abroad and 80% to services carried out in Venezuela. The income assignable to Venezuela shall meet the costs and the deductions allowed by the Venezuelan Income Tax Law.

Article 66 of the Venezuelan Income Tax Law also states that the income from the concession of the use and exploitation of trademarks, commercial marks, services, conventional names, emblems, letter heads, symbols, slogans and other distinctive used to identify products, economic services or activities or those destined to stress properties or characteristics of same, may be allowed the costs and the deductions permitted by the law except if paid in the form of royalties to beneficiaries not domiciled in Venezuela.

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