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Panama's Multinational Headquarters Regime Law: Recent Amendments

The Panamanian Government has made recent changes in order to enhance the advantages offered to multinational headquarters for establishing and operating offices in Panama. The government, by the publication of Official Gazette No. 28641 on the 25th of October 2018, has enacted Law 57 of 2018 to amend Law 41 of 2007, which created a special regime for the establishment and operations of offices of multinational headquarters and created the Commission of Offices of Multinational Headquarters. These amendments consist of adding several provisions enhancing the scope of their activities and making their operations more competitive and attractive, and went into effect in January 2019.



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The most important new provisions are as follows:

- The services authorized under Item 4 of Article 4 of Law 41 of 2007 are extended to the provision of technical and financial assistance and other kinds of support to legal entities of the same enterprise group, including, without limitation, financial management services, risk analysis, due diligence compliance, custody and filing documentation, document and data processing center, treasury services and loans between entities of the same group.
- It stipulates that the main purpose of a multinational legal headquarters establishing an office in Panamanian territory is to provide services to the enterprise group to which it belongs.
- According to amendment of Article 12 of Law 41 of 2007, the following are the parameters required to be considered by the Commission for Offices of Multinational Headquarters in order to grant the License of Office of Multinational Legal Headquarters:
 - a) The assets of the multinational entity;
 - b) The places where the multinational entity has offices operating;
 - c) The activities or commercial operations the multinational entity is engaging in;
 - d) The listing of its shares in a local or foreign stock exchange;
 - e) The minimum number of full-time employees and the annual operation expenses of the Office of the Multinational Headquarters in

the Republic of Panama, both to be in accordance with the nature of the business it is to engage in; and

- f) An entity holding a License of Office of Multinational Headquarters may only engage in activities that render income subject to the fiscal provisions of Law 41 of 2007.
- As for the applicable Fiscal Regime, the following modifications are stipulated:
 - a) Income tax on taxable income arising from services provided by the Office of Multinational Headquarters shall be five percent.
 - b) The income tax shall be declared upon an affidavit of the annual income deducting expenses incurred in salaries and remunerations of all of its employees, including those employees who are exempt from income tax.
 - c) The amount paid abroad as income tax or similar disbursement on taxable income earned in the Republic of Panama for services provided to non-residents, as well as taxes retained by taxpayers of the Republic of Panama since that income tax may be credited to its income tax.
 - d) When a fiscal credit is applicable, the Office of Multinational Headquarters shall have to pay at least 2 percent of the income tax, but the credits may not be applicable to other subsequent fiscal periods and are not to be reimbursed.
 - e) Any Office of Multinational Headquarters engaging in activities that increase the profitability of the commercial operations of the

- legal entities in its group shall submit in its statement of income tax applicable to said increase of the arm's length amount of assets used and the risks involved. The respective costs and deductions shall then be arm's length applicable to the income involved, and the net result shall be subject to a five percent tax rate.
- Starting January 1, 2019, the individuals or legal entities engaging in operations with related parties having a License of Office Multinational Headquarters shall be subject to the transfer price regime according to the provisions of Article 762-D of the Fiscal Code.
 - The price of the transfer shall also be applied to any operation conducted by an Office of Multinational Headquarters with related parties established in the Republic of Panama or with related parties that have a fiscal domicile in other jurisdictions or established in the Colón Free Zone, the Panama-Pacific Special Economic Area, Offices of Multinational Headquarters, Ciudad del Saber or any other free zone or special economic area.
 - According to the amendments, the Offices of Multinational Headquarters are exempt of income tax on dividends, complementary tax and tax on branches, regardless of their being local or foreign source or exempt.
 - Even though an Office of Multinational Headquarters is not bound to have a fiscal team in its personnel, it must document its activities in invoices or equivalent documents, which may enable the Income Tax Authority (*Dirección General de Ingresos*) to control, register, subject to accounting and oversee the transactions it has carried out.
 - It is emphasized that they are not bound to pay the tax stipulated in Article 1004 of the Fiscal Code because they are not required to have a Notice of Operation.
 - Capital gains in the transfer of shares and securities issued by an Office of Multinational Headquarters are subject to the provisions of the Fiscal Code and Decree 170 of 1993. If income tax is applicable to the profits obtained, it shall be at a fixed rate of two percent, and the buyer must retain one percent of the total value of the sale by way of an advance settlement of the income tax on capital gains.
 - Article 23 of Law 41 of 2007, as amended, shall stipulate the following in respect of the income of the Office of Multinational Headquarters:
 - a) The individual or the legal entity deriving a benefit from a documented or not documented service or action provided by an Office of Multinational Headquarters must retain a rate of five percent of the amount to be remitted to the legal entity holding the License of Office of Multinational Headquarters, provided always that said services be related to producing income of a Panamanian source or preserving it, and that its value has been considered by the person receiving it as a deductible expense. Similarly, individuals or legal entities living outside of the Republic of Panama shall be subject to pay such income tax to the extent that the services provided are related to producing the income of a Panamanian source.
 - b) Individuals or legal entities having a domicile outside of the Republic of Panama shall be subject to income tax on the interests, commissions and other charges due to loans or financing used in the Republic of Panama.
 - c) The legal entity that benefits from the service, loan, financing or action involved must retain a rate of five percent of the 50 percent of the amount to be remitted to said person living outside of the Republic of Panama, unless the individual or legal entity domiciled outside of the Republic of Panama has registered as taxpayer with the Tax Authority (*Dirección General de Ingresos*).
 - The employees of the Office of Multinational Headquarters are exempt from income tax, social security contributions and education insurance on the salary and other labor remunerations, including salary in kind, when said salaries and labor remunerations are paid, assumed and recognized as personnel expenses in the accounting of the entity holding a License of Office of Multinational Headquarters.
 - When five years have elapsed after obtaining a visa as permanent personnel of the Office of Multinational Headquarters in the Republic of Panama, the foreigner who may so desire may choose to obtain a permanent resident visa, but after obtaining that visa, said foreigner shall be subject to income tax, social security contributions and education tax on the amounts of money received as salary and other remunerations, including salary in kind.
 - The License of Office of Multinational Headquarters may be cancelled if it is proven that it engages in activities that are not authorized by its license, and thereupon, said Office of Multinational Headquarters shall also be liable to payment of outstanding taxes with the respective sanctions, surcharges, interests and penalties stipulated by the Fiscal Code.
 - Legal entities holding a License of Office of Multinational Headquarters that have a fiscal agreement with the Ministry of Economy and Finance must cancel said agreement and must implement the changes stipulated by Article 12 of Law 41 of 2007 by June 30, 2021.
 - In the Republic of Panama, any Office of Multinational Headquarters entitled to legal stability for investments under Law 54 of 1998 shall be automatically exempt from income tax on income derived from services provided, including services provided to a taxpayer in the Republic of Panama, until the expiration date of its legal stability. 