



Legis Tributum Analysis

TAX TREATMENT OF ROYALTY PAYMENTS TO A NON-TAX RESIDENT

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Introduction

Currently, multiple multinational companies have new business development areas or personnel dedicated to finding and developing competitive advantages, so that companies in the same group in different countries benefit from these advantages.

This type of bond between companies is purely commercial and where the company that benefits from that methodology, knowledge, reputation, among other things, must pay a price or commonly known as a royalty.

In this newsletter, we will approach the issue of what the tax treatment is in each of the countries when they pay royalties to a non-tax resident in the country, with the purpose of exposing different tax legislations in Latin American countries in relation to this topic.

This analysis pursues the objective of showing the generalities in the tax field, so we suggest that in case of contracting royalties, the advice of experts be requested since some peculiarities of its contracting may result in tax treatments. different from those presented in this bulletin

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Tax Treatment of Royalty Payments to a Non-Tax Resident in Brazil.

Royalty is an English term used in Brazil to denote a fee charged by the owner of a product patent, production process, trademark, or other intellectual property, as well as by the author of a work, in exchange for the right to use or commercialize it.

In Brazil, Royalties are payments received by a legal entity for granting another the exclusive rights to use and commercialize a property. These rights include tangible items, but predominantly involve intellectual properties such as trademarks, patents, technologies, compositions, and even literary works.

What type of tax is levied on royalties?

When a Brazilian taxpayer pays royalties to a non-resident, IRRF (Withholding Income Tax at Source) at a rate of 15% applies. This means the income is considered solely subject to withholding tax, and the payment is made net of this tax. Additionally, the Brazilian taxpayer (importer) is required to pay an additional 10% related to CIDE (Economic Domain Intervention Contribution) to their respective State- Member of the Federation.

Who is the taxpayer?

If the rightsholder is a non-resident, IRRF shall be paid by the Brazilian sender (the tax responsible party), but deducted from the amount payable to the rightful recipient, who is the beneficiary abroad.

What is the general tax rate, and are there any benefits available?

IRRF is levied at a 15% tax rate when the holder/recipient is located abroad. If the holder/recipient is Brazilian, the tax burden may vary from 14,53% to 43,25%.

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Brazil

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How and when the tax must be paid?

When it comes to royalties paid within Brazil, the taxable event occurs monthly, with payments due according to the deadlines for PIS (Social Integration Program), COFINS (Contribution for Social Security Financing), IRPJ (Corporate Income Tax), and CSLL (Social Contribution on Net Profit) taxes. However, for IRPJ and CSLL under the Presumed Profit regime, the taxable event occurs quarterly. Regarding royalties paid abroad, the IRRF taxable event is daily, due on the day of payment or currency exchange closure.

What are the main obligations for the royalty payer?

The payment of royalties shall be formalized through a contract between the parties. Only through this formal agreement may the payer proceed with the actual payment to the beneficiary and arrange for currency exchange, if necessary. Additionally, the payer is required to report the amounts paid to the beneficiaries in the Tax Accounting Record- ECF, to be submitted by July of the following year.

What is the procedure to avoid double taxation?

Brazil has agreements in place to avoid double taxation with the following countries: South Africa, Argentina, Austria, Belgium, Canada, Chile, China, South Korea, Denmark, United Arab Emirates, Ecuador, Slovakia, Spain, Philippines, Finland, France, Hungary, India, Israel, Italy, Japan, Luxembourg, Mexico, Norway, Netherlands, Peru, Portugal, Czech Republic, Russia, Singapore, Sweden, Switzerland, Trinidad and Tobago, Turkey, Uruguay, Ukraine, and Venezuela.

The standard rule is that royalties are taxed in the country of the rightsholder. However, if there is a requirement to pay tax in the country of the payer, the amount may often be offset against the tax liability in the beneficiary's country.



Tax Treatment of Royalty Payments to a Non-Tax Resident in Perú

Royalties in Peru represents a mechanism for compensating the use of intellectual property such as patents, trademarks, copyrights, and software.

Peruvian Income Tax Law (LIR) defines royalties as payments for the use of patents, trademarks, designs or models, plans, secret processes or formulas, and copyrights on literary, artistic, or scientific works, as well as any compensation for the leasing of software and the transmission of knowledge, whether secret or not, of technical, economic, financial, or other nature related to commercial or industrial activities.

What type of tax is levied on royalties?

In Peru, royalties are subject to income tax. This tax applies to income of Peruvian source obtained by natural and legal persons, both residents and non-residents in the country. Royalties are considered as second-category income according to Article 32 of the Income Tax Law.

Who is the taxpayer and who pays the tax?

The taxpayer of the income tax on royalties is the owner of the trademark. The owner can be a natural or legal person, resident or non-resident in Peru.

In the case of royalties paid, the user of the intangible asset is obliged to withhold the tax.

What is the general tax rate, and are there any benefits available?

For non-residents in Peru the tax rate is 30%

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How and when the tax must be paid?

For the payment of tax on royalties, the first step is to withhold the tax and then the payment is made using Form 617.

The withholding must be paid along with the monthly settlement of tax obligations.

What are the main obligations for the royalty payer?

Main obligations include:

- a. Calculating the tax
- b. Withholding the tax
- c. Declaring and paying the withheld tax
- d. Delivering the withholding certificate to the beneficiary
- e. Keeping a record and documentation of the payment of royalties and the corresponding tax withholding, such as:
 - Payment receipts
 - Submitted declarations
 - Withholding certificates

What is the procedure to avoid double taxation?

If a reduced rate under a Double Taxation Treaty applies, the payer (user of the trademark) must have the following documents:

- I. Certificate of fiscal residence: The beneficiary must provide a certificate of fiscal residence issued by the tax authority of his/her country of residence.
- II. Presentation to SUNAT: The payer must present the certificate of residence and any other required documentation to SUNAT to apply the reduced treaty rate.

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Tax Treatment of Royalty Payments to a Non-Tax Resident in México

Royalty payments made by legal entities and individuals resident in Mexico to nonresident entities or individuals are subject to Mexican income tax at source, in accordance with the Income Tax Law royalties are payments of any kind for the use or temporary enjoyment of industrial or intellectual property

What type of tax is levied on royalties?

Royalty income obtained by foreign residentes is subject to federal income tax at source.

Royalties are not taxed by local taxes and state or municipal contributions.

Who is the taxpayer and who pays the tax?

The foreign resident, as a legal entity or an individual, is subject to pay Mexican income tax at source, as the case may be.

Mexican resident individuals or legal entities that make the royalty payment must withhold the applicable income tax, at source.

What is the general tax rate, and are there any benefits available?

Income tax rates are calculated by applying to the different types of royalty income obtained by foreign residents, as follows:

1% in the following cases: Royalties for the temporary use or enjoyment of aircraft that have a concession or permit from the Federal Government to be commercially exploited, provided that such assets are used directly by the lessee in the transportation of passengers or goods.

5% in the following cases: Royalties for the temporary use or enjoyment of railroad cars; of containers, trailers or semi-trailers that are imported on a temporary basis (one month); vessels that have concession or permit from the Federal Government to be commercially exploited, provided that such assets are used directly by the lessee in the transportation of passengers or goods.

25% in the following cases: Royalties other than those included in the preceding paragraph (applicable to certain concepts previously indicated in item 2.).

35% in the following cases: Royalties for the use or temporary enjoyment of patents; certificates of invention or improvement; trademarks; and tradenames.

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How and when the tax must be paid?

Residents in Mexico that pay royalties to foreign resident individuals or legal entities must withhold the appropriate withholding tax, according to the different applicable tax rates on the income obtained without any deduction (gross basis).

Individuals and legal entities or entities resident in Mexico will pay the income tax withheld at source to the tax authority (the Tax Administration Service or SAT), by means of the respective declaration, through the "Declarations and Payments" platform, no later than the 17th day of the calendar month immediately following the month in which the payment of royalties was made.

What are the main obligations for the royalty payer?

The main tax obligations for the royalty payer resident in Mexico at source are:

- (I) to withhold the appropriate income tax rate, as applicable, on the gross income obtained by the foreign resident;
- (II) to file the tax return for the income tax withheld to the tax authorities, no later than the 17th day of the calendar month immediately following the one in which the royalty payment was made.

What is the procedure to avoid double taxation?

The benefits of the Treaties to Avoid Double Taxation will only be applicable to taxpayers that prove they are residents of the country concerned and comply with the provisions established in such Tax Treaty.

For such purposes, foreign taxpayers who wish to prove their tax residence in a country with which Mexico has entered into a treaty to avoid double taxation in effect, may do so in the following manner:

- By means of the proof or certificate of residence or documentation issued by the foreign authorities which will be valid for one year; or,
- By means of the certification issued by the competent authority of the country concerned, with which the taxpayers certify the filing of their income tax return for the last fiscal year (or the penultimate fiscal year, as the case may be).

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Tax Treatment of Royalty Payments to a Non-Tax Resident in Uruguay

This bulletin refers to the payments that Uruguayan companies, taxpayers of the Income Tax on Business Activities, make to individuals or legal entities abroad, i.e., those who do not have domicile or residence in Uruguay, for royalties.

It is essential to consider that there may be variations in the application of the general tax rate, depending on whether the recipient country of the royalty payment has a current agreement to avoid double taxation with Uruguay.

What type of tax is levied on royalties?

Royalties are subject to income tax.

Who is the taxpayer and who pays the tax?

The taxpayer is the person who does not have domicile or residence in Uruguay.

The taxpayer of the tax obligation, i.e., the one who must withhold and pay the tax to the General Tax Directorate (DGI), is the one who pays the royalties abroad.

What is the general tax rate, and are there any benefits available?

The general tax rate is 12% without exemptions.

If the royalty is paid to a taxpayer of a country with which there is a double taxation agreement, the applicable rate must be analyzed in each individual case, applying the provisions of Article No. 12 of each agreement.

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How and when the tax must be paid?

The tax is paid through withholding and must be remitted to the tax authority in the month following the payment or accrual of the royalty, whichever occurs first, according to the expiration schedule established by the General Tax Directorate (DGI).

What are the main obligations for the royalty payer?

The main obligations of the taxpayer of the tax obligation are:

Calculate, withhold, and pay the tax to the DGI.
Submit the corresponding informative tax return.
Provide the withholding receipt.

What is the procedure to avoid double taxation?

The specific situation must be analyzed according to the international agreements in force with Uruguay.

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Tax Treatment of Royalty Payments to a Non-Tax Resident in Chile

Tax applicable to Chilean source income from the use of royalties, obtained by natural or legal persons that have neither residence nor domicile in Chile.

In general, it can be noted that the term royalties relates to the participation that the owner of a right has in the profits that a third party obtains from the use of the right received from its owner.

What type of tax is levied on royalties?

The art. 59, of the Income Tax Law (ITL), establishes a single withholding tax with a general rate of 30%, on the total amounts paid or credited into account, without any deduction, to individuals that have neither residence nor domicile in Chile, for the use, enjoyment or exploitation of brands, patents, formulas and other similar benefits, whether they consist of royalties or any form of remuneration.

The Law contemplates reduced rates for certain specific royalties and for countries with DTA

Who is the taxpayer and who pays the tax?

The taxpayer is the beneficiary of the remuneration, that is, those who do not have domicile or residence in Chile and who receive income from a Chilean source.

This tax, which affects non-residents in Chile, is withheld by the payer of the income who has the obligation to deposit the amount withheld as Additional Tax into fiscal treasury.

What is the general tax rate, and are there any benefits available?

In general, the additional tax is 30%, unless they are in one of the exceptional circumstances that the law itself contemplates or, by regarding of the obligations acquired in a treaty to avoid double taxation, it may reach 10%.

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Chile

How and when the tax must be paid?

The tax must be declared and paid within twelve days of the month following the month in which the income from which the withholding has been made was paid, distributed, withdrawn, remitted, credited into account, or made available to the interested party. For this purpose, Form 50 of Monthly Declaration and Simultaneous Payment must be used.

What are the main obligations for the royalty payer?

The main obligation of the payer of a royalty is to withhold the additional tax that affects the operation, declare and pay said tax.

He must also present an annual affidavit with the total amounts withheld and the beneficiary information of the income. If it is a related party abroad, it must be evaluated whether it is applicable to prepare a Transfer Pricing Study and present the respective affidavit.

What is the procedure to avoid double taxation?

Have a certificate of residence from the country of the beneficiary of the royalty and present an annual affidavit detailing the payments made abroad.

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Tax Treatment of Royalty Payments to a Non-Tax Resident in El Salvador

Payment of royalties for non-residents in the country. Tax legislation establishes the percentages for this type of remuneration as income tax and tax on the transfer of goods and services (IVA).

Local legislation does not clearly define what a royalty is, but it does determine that payments for the use of trademarks, trade names, use of inventions constitute income, and for tax on the transfer of goods and services purposes it establishes that it constitutes a generating event for the import or import of services such as consultancies, trademarks, patents, as long as they are used in El Salvador.

What type of tax is levied on royalties?

Income tax -20% for non-residents
IVA -13%

Who is the taxpayer and who pays the tax?

The subject of the tax is the beneficiary of the royalty payment and is subject to tax withholding.

What is the general tax rate, and are there any benefits available?

20%- income tax
13%- IVA

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El Salvador

How and when the tax must be paid?

At the time the payment or crediting of royalties was made, the tax must be withheld and therefore the payment is in that month.

What are the main obligations for the royalty payer?

The royalty payer in El Salvador has the obligation to withhold the corresponding tax, declare it and pay it to the tax authorities within the established deadlines and if he does not make the withholdings he is jointly and severally liable.

What is the procedure to avoid double taxation?

There is no procedure to avoid double taxation. There is a special agreement to avoid double taxation only with Spain.

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Tax Treatment of Royalty Payments to a Non-Tax Resident in Costa Rica

Our country's tax system is based on the principle of territoriality, which means that all income from Costa Rican sources is taxed. According to the provisions of Article One of the Income Tax Law, income from Costa Rican sources comes from services rendered, goods located, or capital used in the national territory.

Articles 52 and 53 of the Law also establish a tax levied on all Costa Rican-source income or profit destined abroad. This tax is triggered when the income or profit is paid, credited, or in any way made available to people domiciled abroad.

Likewise, Article 54, paragraph c) of the same Law states that income derived from the rendering of personal services or the performance of functions of any nature, developed or managed within the territory of the Republic, is considered income of Costa Rican origin.

What type of tax is levied on royalties?

Income Tax is under the heading of Capital Income and Capital Gains and Losses, specifically Income Tax.

Who is the taxpayer and who pays the tax?

The Costa Rican Income Tax is scheduled. It taxes the income and wealth of Costa Rican origin differently, assuming that royalties are subject to the tax on remittances abroad. The non-domiciled (beneficiary of this type of wealth) pays the tax.

What is the general tax rate, and are there any benefits available?

The tax rate on royalties generated by a non-domiciled person is 25%.

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Costa Rica

How and when the tax must be paid?

Fifteen calendar days after the month in which the taxable event occurred.

What are the main obligations for the royalty payer?

The payer will receive the royalty invoice amount minus 25%. However, the obligation, which is joint and several, will be of the payer of the service in Costa Rica, who must withhold and pay the Treasury on behalf of the foreign supplier the withheld remittance. Not making such withholding in due time and form may expose them to risks from covering a tax that is NOT theirs, plus interest and penalties.

What is the procedure to avoid double taxation?

Currently, Costa Rica only has four treaties in effect: the Arab Emirates, Mexico, Germany, and Spain. The procedure is to require the foreign supplier to extend the certification of tax residency so that when the Costa Rican payer must demonstrate to the Treasury why the tax rate was reduced, they can prove that they are a person who is taxed in that country and that they comply with the conditions and requirements established in the agreements.

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Tax Treatment of Royalty Payments to a Non-Tax Resident in Panamá

In Panama, royalties paid to non-residents are subject to income tax withholding. This implies that the payer must deduct and withhold the corresponding tax at the time of remitting such amounts to the non-resident beneficiary, in whatever form the payment is made.

What type of tax is levied on royalties?

In Panama, royalties are subject to income tax.

Who is the taxpayer and who pays the tax?

The subject of the tax is the beneficiary of the royalty payment (the non-resident). However, the obligation to withhold and pay the tax falls on the payer resident in Panama.

However, it is important to note that this withholding duty will not apply in the event that the natural or legal person whose domicile is outside the Republic of Panama has registered as an income taxpayer with the Panamanian tax administration (Dirección General de Ingresos).

What is the general tax rate, and are there any benefits available?

To calculate the amount of the withholding, the amounts that have been paid, drawn, credited or credited to the taxpayer during the year must be added to the amount paid, drawn, credited or credited to the taxpayer during the year and on 50% of this total the current income tax rate will be applied, which in the case of legal entities would be 25%.

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How and when the tax must be paid?

The tax withheld on royalties must be paid to the Panamanian tax authorities within ten days following the date of withholding, on which the payment or crediting of royalties was made.

What are the main obligations for the royalty payer?

The royalty payer has the obligation to withhold the corresponding tax, declare it and pay it to the tax authorities within the established deadlines. In addition, he must keep a detailed record of the transactions and provide the required information to the tax authorities.

What is the procedure to avoid double taxation?

To avoid double taxation, the beneficiaries of royalties can avail themselves of the agreements to avoid double taxation. This implies the presentation of the corresponding documentation that demonstrates the fiscal residence in a country with which Panama has an agreement in force.

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 Brazil	From the calendary year 2024 onwards, the rules governing the deductibility of expenses related to royalty payment become less restrictive for taxpayers opting for IRPJ (Corporate Income Tax) and CSLL (Social Contribution on Net Profit) taxation under the Actual Profit method. Previously, deductibility was limited to just 5% of the payment amount. However, payments, credits, deliveries, uses, or remittances classified as royalties are not deductible if their deduction would result in double non-taxation under any of the following circumstances: a) The same amount is considered deductible as an expense for another related party; b) The deducted amount in Brazil is not considered taxable income for the beneficiary under their jurisdiction's legislation; or c) The amounts are intended to directly or indirectly fund deductible expenses of related parties, resulting in situations described in items "a" or "b".
 Perú	According with Peruvian regulations, for the deduction of the cost/expense for royalties in favor of a non-domiciled entity in the income tax of the taxable year, the amount of royalties must be paid within the deadline for filing the income tax return for the mentioned fiscal year.
 México	It is important to identify which is the tax residence of the foreign resident individual or legal entity, as recipient of the taxable income at Mexican source, when royalty payments are made, in order to determine the specific withholding tax rate and verify when and how the Income Tax Law or the Treaty to Avoid Double Taxation is applicable, as the case may be.
 Uruguay	In conclusion, the payments that a Uruguayan company, a taxpayer of IRAE, makes to an individual or legal entity abroad for royalties, are subject to income tax at the general rate of 12%. The tax will be withheld and paid to the tax authority by the Uruguayan company in the month following the payment or accrual of the royalty, whichever occurs first. A reduced rate may apply if there is a current DTT with the recipient country of the payment.

 Chile	Although the general rule in Chile is that the payment of royalties abroad is taxed with the additional tax at a rate of 30%, the legal regulations have many variants that could significantly lower said tax rate, either due to the type of royalties or by application of agreements to avoid double taxation. Therefore, for each particular case, a detailed analysis must be performed to determine the correct tax effects.
 El Salvador	The payment of royalties generates the payment of non-resident taxes of 20% of taxes (on the amount of the royalty), except with a resident in Spain who receives the royalty payment, for which a reduced rate of 10% can be applied. The payment of 13% IVA is generally absorbed by the local entity, since it represents a creditable right.
 Costa Rica	Royalties in CR have not only generated adjustments for disallowance of expenses when the remittance is not retained abroad, but also if this royalty is paid based on imported goods, the value of the royalty should be part of the customs value at the time of importing such goods, we have had cases at the customs level.
 Panamá	The tax treatment of royalties paid to non-residents in Panama must be handled with precision to comply with local tax obligations and take advantage of the benefits of international agreements to avoid double taxation. It is essential that companies and individuals involved in these payments keep themselves informed about the current regulations and seek specialized advice to ensure proper compliance.

COUNTRY	ASSESSMENT	RETENTION RATE	ARE THERE INTERNATIONAL TREATIES THAT OFFER A REDUCED RATE?
Brasil 	Income Tax	IRRF is levied at a 15% tax rate when the holder/recipient is located abroad. If the holder/recipient is Brazilian, the tax burden may vary from 14,53% to 43,25%.	Some agreements stipulate that the maximum tax rate that may be levied is 15% for royalties derived from the use or right to use industrial or commercial trademarks, and 10% for other types of royalties.
Perú 	Income Tax	For non-residents in Peru it is the equivalent of 30%	The agreements established with: Canada, Chile, Brazil, Korea, Japan, Mexico, Switzerland and Portugal insinuate that they cannot exceed 15%; while in the Andean Community, royalties on an intangible good will only be taxable in the Member Country where the good is used or has the right to use it.
México 	Income Tax	There is no general tax rate established on royalty income earned by foreign residents, but there are various tax rates ranging from 1% to 35%, depending on the type of royalty.	Mexico has more than fifty Treaties to Avoid Double Taxation with several countries, in force, which have established different reduced withholding tax rates applicable to royalty income, depending on the country concerned.
Uruguay 	Income Tax	The general tax rate is 12% without exemptions.	There are agreements with several countries that offer the application of a reduced rate, but each case must be analyzed individually.
Chile 	Income Tax	In general, the additional tax is 30%, unless there is a treaty to avoid double taxation, and it can reach 10%.	In general, the additional tax is 30%, unless there is a treaty to avoid double taxation, and it can reach 10%.
El Salvador 	Income Tax	20%- income tax 13%- IVA	Only with a specific country: Spain. In the case of royalties it establishes a reduced rate of 10%.
Costa Rica 	Income Tax	The tax rate on royalties generated by a non-domiciled person is 25%.	Currently, Costa Rica only has four treaties in effect: the Arab Emirates, Mexico, Germany, and Spain.
Panamá 	Income Tax	In the case of legal entities it would be 25%.	Panama has international treaties with 17 countries, which offer a reduced rate for withholding taxes on royalties.

Final Comments

Considering the above for different Latin American countries, we can mention that in all of them royalties paid to a non-tax resident in the country are taxed, under the premise that they are a source of wealth.

Even though there is no international meaning to the concept of royalties, in most countries it is defined as payment for receiving the right to use a patent, trademark and intellectual property.

In addition to what has been mentioned in each country, the corresponding legislation must be taken into account if there are formal requirements for the registration of trademarks or patents, since they could be an essential requirement to demonstrate the materiality of the operations.

An additional point is the determination of the value of the royalty, which must first be in accordance with the will of the parties, however when this operation involves related parties, in some legislations it will require evidence that the terms and considerations were agreed considering transfer prices.

We hope that this general information is useful and introductory, once again emphasizing professional advice that reviews specific situations.