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6% VAT withholding for certain services: advance version of normative criterion 46/IVA/N

As a result of the reform to several tax laws, published by decree on December 9, 2019 in the Federal Official Gazette (FOG), article 1-A, section IV of the Value Added Tax Law (VATL) provides for the following:

- » The 6% VAT withholding is compulsory for entities or individuals engaged in business activities who receive services whereby personnel is made available to the contracting party or any related party thereof, regardless if such personnel performs its duties at the premises of the contracting party or any related party thereof, or off-premises, and whether or not the personnel is under the management, supervision, coordination or dependence of the contracting party, no matter the denomination given to the contractual obligation.

In such cases, the 6% VAT withholding will apply to payments effectively covered.

Additionally, the Fiftieth Transitional article of the Tax Miscellaneous Resolution 2020 (TMR 2020), published on December 28, 2019 in the FOG, provides that such 6% withholding must be applied over payments effectively covered as of fiscal year 2020.

Subsequently, on January 31, the advance version of the Amendment to Annex 7 of the First Amendment Resolution to the TMR 2020 was published in the Tax Administration Service (TAS) website. Such advance version includes normative criterion 46/IVA/N, aimed at clarifying the cases in which the 6% VAT withholding is compulsory, as provided in article 1-A, section IV of the VATL, in force as of January 1st.

The advance version of normative criterion 46/IVA/N is available in the following link:

<https://www.sat.gob.mx/normatividad/58905/versiones-anticipadas-de-las-rmf>

It is worth mentioning that, according to the last paragraph of rule 1.8 of the TMR 2020, the TAS shall disclose in advance, and for informative purposes only, general rules to facilitate compliance with fiscal obligations. Benefits included in those rules will apply from their publication in the TAS website, unless a specific date is set for such purposes. In this regard, the definitive text of normative criterion 46/IVA/N remains pending, until its publication in the FOG.

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Finally, also on January 31, the TAS published five frequently asked questions related to the 6% VAT withholding, in order to further clarify the point in question. These questions present three scenarios in which withholding is appropriate, and two cases in which it is not.

Full text of such questions is available in the following link:

<http://omawww.sat.gob.mx/documentossat/Documents/PreguntasFrecuentesArticulo1A.pdf>

Due to the tax reform published in the FOG on December 9, 2019, which entered into force on January 1st, with some exceptions, a number of normative criteria and general rules related to such reforms should be expected in the coming months.

For information regarding this subject, please do not hesitate to contact us at 9178 7000 or through the following e-mail: contacto@ritch.com.mx