

THE ENFORCEMENT OF THE INSTITUTIONAL CRITERIA PUBLISHED BY GUATEMALAN TAX AUTHORITY

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Since 2017, Guatemalan Tax Administration ("SAT") has been periodically publishing its institutional criteria regarding tax and customs topics as part of its renovation and transparency policies.

The topics included in such criteria are the result of an initiative of discussion panels organized by SAT where any interested taxpayer was able to participate and provide its opinion in connection with the relevant topic. The goal of the discussion panels was to debate topics of interest for the tax payers, aiming to facilitate compliance of tax and customs obligations, as well as providing a legal analysis to recurrent queries made to SAT.

By November 2018, SAT has published 21 institutional criterions on different topics of general interest on its website. including, among others:

- Value Added Tax (VAT) and Income Tax (ISR) derived from services rendered by foreign individual or entities outside Guatemalan territory.
- Payment of royalties and its treatment as a deductible expense.
- Exception to IRS withholding on payment of interests to non-resident banking and financing entities.
- The incidence on VAT on sales made to users of Free Zones and the way of documenting those operations.
- Generation of ISR in the capitalization of profits.

As to the application and enforcement of the institutional criteria, it is important to consider the following:

- The institutional criteria are useful to learn SAT's views on the interpretation of the regulatory framework in force in connection with specific tax and customs matters.

- Based on the principle of legality, the institutional criteria are not law and they do not have a binding effect in specific cases. Therefore, these cannot be considered superior to the current tax legislation, in the event of a possible contradiction or an inadequate interpretation of it.
- These institutional criteria do not replace the right of taxpayers have to request binding inquiries from the SAT. The above, taking into account that the result of the binging inquiry will be mandatory in specific cases, both for SAT and for the taxpayer who files it.

For more information, please contact us.



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