

# NEWSFLASH

## **New Decision Cancels Mexican Value Added Tax Withholding Obligations in V5 IMMEX Transactions**

Rule 3.8.9 of the General International Trade Rules for fiscal years 2012 to 2015 (currently Rule 7.3.3 of the General Foreign Trade Rules for 2023) enabled parties to carry out operations through code “V5” customs declarations “pedimentos” by companies with authorized IMMEX programs and certifications. Such operations feature transfers of temporarily imported goods from an IMMEX company to a Mexican resident, so that such Mexican resident may permanently import such goods based on their sale by a non-Mexican resident company that does not have a Mexican permanent establishment.

In this regard, the above Rule required importers residing in Mexico to pay the value added tax (VAT) for the permanent importation of the goods, as well as to withhold and pay the VAT in full for the sale of the goods, expressly pointing out that such are located in Mexico at the time of the sale.

In these terms, on July 12, 2022, a complaint was filed with the Regional Plenary on Administrative Matters of the Central-North Regional Circuit, arguing a possible contradiction in judicial reasoning between cases decided by the Fourth and Sixth Collegiate Courts of Administrative Matters of the First Region, based in Mexico City.

On the one hand, the Fourth Collegiate Circuit Court held that the virtual return of temporarily imported merchandise pursuant to a V5 customs declaration applies for all legal purposes, so the sale is not carried out in Mexican territory since the merchandise is fictitiously out of the country, and, consequently, not subject to VAT withholding obligations. On the other hand, the Sixth Collegiate Circuit Court held that the virtual return of the merchandise abroad applies only for logistical purposes, so that the merchandise never actually leaves the country and, therefore, as considered by such Court, the sale takes place in Mexican territory and is subject to VAT withholding in addition to the importation VAT.

Subsequently, on October 5, 2023, the Regional Plenary Court on Administrative Matters of the Central-North Region discussed the contradiction of reasoning case 38/2023 and approved as binding precedent by 2 votes in favor and 1 opposed that, in operations carried out through customs pedimentos with V5 codes, the obligation of a Mexican resident to withhold VAT from

a foreign resident without a Mexican permanent establishment does not apply for sales of imported goods based on their permanent importation.

The Regional Plenary Court on Administrative Matters of the Central-North Region considered that the virtual return of goods temporarily imported in accordance with the IMMEX Decree has broad, uniform and consistent legal effects, including tax effects for the payment of VAT, and that by virtue of such legal fiction, it is understood that the goods returned abroad, where the sale takes place. While it is true the goods remain in Mexico, such is only for practical and logistical reasons so as to avert the need to physically transfer the finished goods abroad, as the individual or entity who will acquire such for permanent importation is a Mexican resident.

It is important to note that the publication of the final ruling on the contradiction of reasoning is still pending to be issued, as the magistrates requested to add additional text to the draft decisions, which must occur within a period of 10 business days following the court's session. Note, however, that the conclusion reached by the Plenary Court will not change.

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