

INTERNATIONAL BAR ASSOCIATION

RECENT DEVELOPMENTS IN INTERNATIONAL TAXATION

MAY 2019

REPUBLIC OF PANAMA

CARLOS MOLINO DIEZ
FABREGA MOLINO
cmolino@fmm.com.pa

FABREGA MOLINO
BMW Plaza, 9th floor
50 Street
Panama City
Tel: +507 3016600

GENERAL RULE

The Panamanian tax system is based on the territoriality principle wherein only transactions from Panamanian sources are subject to taxation. Therefore, those transactions performed or executed outside the fiscal Panamanian territory are all tax-exempted.

1. LAWS RELATED THE FAMILY TAX PATRIMONY AND MAIN RESIDENCE.

The Panamanian Government has enacted the Executive Decree 363 of December 4, 2018, (hereinafter identified as “the Decree”) in where the Ministry of Economy and Finances regulates the exemption of payment of the tax on real estate properties adhered to the concept of family tax patrimony or main residence, introduced in the Panamanian law by means of Law No. 66 of October 17, 2017, hereinafter referred to as the “Law”.

In this regard, the Decree uses the same definition of family tax patrimony set forth in the Law, defining it as any real estate property intended for permanent use by the owner for housing purposes with his family, living under the same roof. The following persons may adhere to this benefit:

1. Spouses, with or without children, single father or mother with children, legal guardians, ascending or collateral relatives responsible for minors living under the same roof, retirees and pensioners.
2. Legal persons through their legal representative or proxy, provided that the final beneficiaries are natural persons identified as members of the family.
3. Trustees or proxies, provided that the final beneficiaries are natural persons identified as members of the family.

On the other hand, the main residence is defined as the real estate property of permanent use by the owner, with housing purposes, that do not constitute family tax patrimony, which allows a single person or a single person living with other adults to benefit from the exemption up to the amount of US\$120,000.00.

By virtue of the foregoing, any domestic or foreign natural or legal person having a NIT may adhere to the tax benefits set forth for family tax patrimony or main residence, provided that it complies with the requirements established in the Law and Decree for that purpose, such as the filing of a simple application and sworn declaration through the e-Tax system, copy of the personal identification card, birth certificates of the minors, copy of the deed, copy of the public deed of acquisition, among other requirements that may apply depending on the applicant.

As from January 1st, 2019, the following progressive rates shall apply to the property tax:
Rates applicable to the family tax patrimony or main residence:

Rate	Taxable amount
0.00%	Up to US\$120,000.00
0.50%	From US\$120,000.00 to US\$700,000.00
0.70%	On the excess of US\$700,000.00

Rates applicable to additional real estate properties:

Rate	Taxable amount
0.00%	Up to US\$30,000.00
0.60%	From US\$30,000.00 to US\$250,000.00
0.80%	From US\$250,000.00 to US\$500,000.00
1.00%	On the excess of US\$500,000.00

Registering a real estate property as family tax patrimony or main residence entails waiving to any other type of exemption that the property currently enjoys; therefore, it is important to carry out a careful assessment of the property before adhering to the family tax patrimony or main residence concepts, with the purpose of analyzing the best type of exemption for the taxpayer.

In tax matters, the main benefits introduced by the Law and the Decree are the following:

1. The property tax is considerably reduced.
2. The family tax patrimony terminates, but it may be modified and become a main residence.
3. It sets forth an exemption of the property tax for the first housing purchase with a value between US\$120,000.00 and US\$300,000.00, for 3 years, even if the property is not new.

The Executive Decree 363 of December 4, 2018 entered into effect on December 5, 2018, while the benefits of the family tax patrimony and main residence will enter into effect on January 1st, 2019.

2. REMOVAL OF PANAMA AS A NON-COOPERATIVE JURISDICTION FOR TAX PURPOSES OF THE EUROPEAN UNION

The Republic of Panama was removed from the list of non-cooperative jurisdictions for tax purposes of the European Union, also known as the blacklist. The decision was made in Brussels by the Ministers of Finance, since Panama established regulations and filled requirements in matters of fiscal transparency.

The 92 countries were evaluated according to these indicators: fiscal transparency, good governance and real economic activity and the existence of a zero corporate tax rate. The European Union valued the progress of Panama in terms of transparency and tax cooperation, assessing aspects such as the adoption of the automatic exchange mechanism consistent with the objectives of the Common Reporting Standard, promoted by the Global Forum of the Organization for Economic Cooperation and Development (OECD); adherence to the Convention on Mutual Administrative Assistance in Tax Matters, and the Inclusive Framework of the Project on the Erosion of Taxable Bases and the Transfer of Benefits (BEPS).

3. NEW TAXES AND INCENTIVES TO THE MULTINATIONAL CORPORATION HEADQUARTES (SEM)

Regional or Headquarters offices are corporations which from Panama territory carry out operations or render services to their main offices or subsidiaries in other countries. "SEM" corporations may operate as a foreign company registered in Panama or as a Panamanian company wholly owned by the "mother" multinational company.

The following are some of the benefits to SEM Corporations Corporate tax incentives, as amended by means of the Law No. 57 of October 24, 2018.

- Income Taxes (ISR): It is established that the SEM Company must pay Income Tax in the Republic of Panama, on the net taxable income derived from the services rendered, at a rate of five percent (5%).
- They may include within their deductible expenses those incurred in concept of labor remuneration, which will proceed even when the worker receiving the salary is exempt from income tax.
- Exoneration of Taxes on Goods and Services: (ITBMS): As exporters of services, insofar as those services are given to entities of the company group outside the Panamanian territory.
- ITBMS will only be caused when the person or company that receives the service generates taxable income in Panama.

ITBMS forms. The company SEM must submit the ITBMS form on an occasional basis, when it has received services from non-resident suppliers in Panama, and the service is provided in Panamanian territory. The form will be presented for the purposes of declaring the withholding of ITBMS carried out.

- Dividend tax and surtax, and use of Fiscal equipment: SEM companies will be exempted from the payment of dividend tax, supplementary tax and branch tax, regardless of whether they are derived from local, foreign or exempt sources. Additionally, they will not be subject to the use of fiscal equipment; however, they must document their activities through invoices or equivalent documents that allow the General Directorate of Revenue to register, account and control the transactions carried out.
- The operations that the SEM companies carry out with related companies, whether they are established in Panama or are fiscal residents of other jurisdictions or are established in the Colon Free Zone or operate in the Petroleum Free Zone, the Special Economic Area, Panama Pacifico, Headquarters of Multinational Companies, City of Knowledge or in any other free zones or in a special economic area established or to be created in the future, will be subject to the transfer pricing regime, as established in the Tax Code.

- With reference to the capital gains, they will be taxable calculated on the profits obtained at a fixed rate of two percent (2%).
- The taxpayer of Panama, natural or legal person, who benefits from a service or act, documented or not, provided by a SEM, must apply the five percent (5%) rate on the amount to be issued to the company with SEM license. The foregoing shall apply in the event that said services or acts affect the production of income from a Panamanian source or the conservation thereof and its value has been considered as a deductible expense by the person who received it.
- Executives with a SEM visa will be exempted from the payment of income tax, social security contributions, educational insurance for salaries, remuneration for work and salary in kind, when said salaries and remunerations are paid, assumed and recognized as personnel expense in the accounting of the SEM Company.

Tax Incentives to Executive Employees

- Exemptions of Income Taxes (ISR): There will be no income taxes when executive employees receive salaries, as long as they are holding a Personal Visa "SEM".
- Exemptions of Taxes for import household goods: There will be no payment taxes to those executive employees that want to import their household goods on their first flight to Panama, as long as they are holding a Personal Visa "SEM".
- Exemptions to be affiliate to the Panamanian Social Security: Executive employees, as long as they are holding a Personal Visa "SEM", they will not have to be affiliated to the Panamanian Social Security.

4. CONCLUSION

Panama does not have any major updates in its Tax-Regime other than decree laws that update the Tax law in compliance with international conventions and new implementations for the payments of tax.