

CERTIFIED TRANSLATION

[National emblem of the Republic of Panama]
Republic of Panama
Superintendency of Banks

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General Manager
In Your Office.

Dear Manager, Sir:

We hereby reiterate the criterion of interpretation of this Superintendency of Banks regarding the application of the retention established in Law 4 of 1994, as it has remained after the modifications introduced by Laws 25 of 1994, 28, 56 and 58 of 1995 and 64 of 1996, in loans granted to companies that operate in the Colon Free Zone.

1. Article 2 of Law 4 of 1994 provides that in the interest rates of personal and commercial loans, local, over B/.5,000.00, conceded by banks and financial entities, it shall be included and retained an amount equivalent to one percent (1%) annual on the same amount serving as basis for the calculation of interest.
2. In its turn, Article 13 of Executive Decree No. 29 of 1996, regulatory of Law 4 of 1994, provides that "*interbank loans, external loans, the financing through the issuance of bonds and securities and loans conceded to financial entities regulated by Law 20 of 1986*" (the emphasis is ours) are not subject to retention.
3. In the attention of previous consultations, this Superintendency has considered that the criteria having greater support to determine the qualification of a loan as either local or external are the juridical-taxing subordination of borrowers and the fiscal liability of the operation.
4. Thus, loans intended for an activity that generates liable income in Panama shall be local, and shall accordingly be subject to retention, provided that they are personal or commercial, over B/.5,000.00. On the other hand, those borrowers that receive no income from a Panamanian source are found exempted from the application of the retention.
5. In principle, to the effect of the exemption in the application of the retention, it is indispensable that the borrower engages exclusively in conducting external operations, abstaining from engaging in both types of operations (local and external).
6. Additionally, Article 11 of Executive Decree No. 274 of December 29 1995, regulatory of Law 28 of 1995, in connection with the taxing system of the Free Zones, introduces a notion of External Operations:

"External Operations:

- Those transactions of sales of national or foreign merchandise **for its export or re-export.**
- The handling of transportation, storage and correlated services with the movement thereof, as well as those commissions caused, in their turn, by the performance of activities by the agents of movement of merchandise.

- The transfers of merchandise inside a free zone or from one free zone to another, **intended for abroad.** ...” (the emphasis is ours).

As it can be noticed, under this notion prevails as extraterritoriality criterion the destination of the merchandise. In the event the merchandise leaves the Colon Free Zone for another country or another Panamanian Free Zone, the operation is considered external.

7. No exemption whatsoever arises from the mere location in the Colon Free Zone in favor of the loans conceded to those companies established there in attention to the fact that this zone makes a part of the national territory and the national jurisdiction. On the contrary, the general rule would oblige to consider the loan – personal or commercial over B/.5,000.00 – as taxed, without prejudice that the borrower could demonstrate subsequently any particular juridical – taxing condition of his or her operations, from which his or her qualification as an external operation and his tax exemption derives. When that is the case, the operation may also be considered as an “external operation” to the effect of the FECl and, as such, exempt from the retention.
8. Finally, it corresponds to the Bank to determine whether or not the borrower meets the condition generating liable income in Panama and /or whether the operation meets the notion of “external” established by Article of Executive Decree No. 274 of December 29 1995, to the end of qualifying the loan conceded to him or her as local or external, to the effect of the retention. To the effect of evidencing the condition as subject not generating liable income in Panama, it may be submitted the income tax statements of the borrower, mainly, without prejudice of any other documentation that provides elements of judgment in this respect. To evidence the condition as “external” of the operation, it may be submitted documentation that demonstrates the export of the merchandise.
9. **The Superintendency reserves, in all cases, the final opinion on the confirmation that the borrower is engaged exclusively to external operations.**

In accordance with Article 4 of Executive Decree No. 29 of 1996, it corresponds to each Bank to qualify the loans in accordance with the classification set forth in Article 29, letter “d” of the above referred Decree, as well as the criteria mentioned above.

There being no other particular, we remain,

Yours truly,

[Illegible signature]
Delia Cárdenas
Superintendent

[Round seal] REPUBLIC OF PANAMA – SUPERINTENDENCY OF BANKS –
Superintendent’s Office [National emblem of the Republic of Panama]

THE ABOVE IS A FAITHFUL TRANSLATION OF THE ORIGINAL DOCUMENT IN SPANISH PRESENTED TO ME. Panama, May 29, 2003. Mireya Delgado Debali, Certified Public Translator, Resolutions No. 209 and 304.