

TRANSLATION



Superintendencia
de Bancos de Panamá

May 21, 2012
Circular No. SBP-FECI-0056-2012

General Manager

Subject: Amendment to FECI Interpretation Criteria on
Factoring Agreements

Dear General Manager:

As you may know, and pursuant to Article 2 of Law 4 of 1994 and its amendments, the interest rate for domestic personal and commercial loans of over five thousand balboas (B/.5,000.00) granted by banks and financial entities as of the enactment of this Law must include and withhold annually an amount equivalent to one percent (1%) of the amount serving as the base for the calculation of interest.

Paragraph 3 of Article 10 of Law 4 provides that “a loan will be understood as any provision of credit to any natural person or legal entity.”

In consequence, the “factoring” concept was proposed for the consideration of the FECI Commission, the body that must apply Law 4 of 1994, as the means used by banks and financial entities to grant credit to the public in general.

In reference, we quote Dr. Sergio Rodríguez Azuero, author of “Banking Contracts: Their Meaning in Latin America,” who describes the factoring agreement as one “in which the factor’s basic transaction consists of acquiring unsecured credits from the client. There is an expectation of an eventual provision of ancillary services, but these are of secondary importance.”¹

“Velando por la Solidez del Centro Bancario Internacional”

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¹ Sergio Rodríguez Azuero. Banking Contracts. Their Meaning in Latin America. Fifth Edition. Page 664.

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Taking the above into consideration, the FECI Commission considers that, to the extent that a factoring agreement is similar to a loan agreement, providing the client's invoices as security, the operation will be subject to the 1% FECI withholding requirement.

Consequently, FECI Interpretation Criterion No. 35 is amended as follows:

“35. Loans granted to companies engaged in “factoring” are not exempt from the application of withholding. However, withholding is not required in the case of “pure factoring” operations – i.e. when the transaction is an unsecured purchase of invoices. These operations will be exempt from the FECI payment.

Nevertheless, when the factoring agreement is similar to a loan agreement, providing the client's invoices as collateral, the operation will be subject to the 1% FECI withholding requirement.”

The full text of Law 4 of 1994, with its amendments, including those added by Law 49 of 2009, can be seen at the following URL address:

http://www.superbancos.gob.pa/documentos/feci/leyes-y-decretos/ley_4_feci_de_1994.pdf (in Spanish)

We would greatly appreciate your providing these instructions to your staff so they may comply with the provisions of this Circular.

Best regards,

Alberto Diamond R.
Superintendent

/cga