

Agency Confirms Application of Royalty Tax on Remittances Abroad

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Brazil's General Taxation Coordination System (COSIT) has issued a ruling that harmonizes the application of the 10 percent royalty tax (CIDE) on royalty payments abroad when the Brazilian payer bears the costs of the 15 percent withholding tax applicable to the transaction. COSIT is the body in charge of making the Federal Revenue Department (FRD) superintendences' positions on tax matters uniform throughout Brazil.

COSIT's Solution of Dissent (Solução de Divergência) 17/2011, published in Brazil's official gazette on July 5, confirms the FRD's official position that when the Brazilian payer of royalties abroad bears the costs of the applicable 15 percent withholding tax, CIDE is levied on the royalty amount plus the grossed-up withholding tax.

A translation of the summary of Solution of Dissent 17/2011 reads:

The amount of the withholding tax levied on values paid, credited, delivered, used or remitted

abroad is included in the tax base of the Contribution for the Intervention in the Economic Domain (CIDE), regardless if the payor bears the cost of the withholding tax.

COSIT's solution of dissent confirms two recent private letter rulings issued by the FRD. However, it revokes a 2005 letter ruling that held that the amount of the withholding tax, when borne by the Brazilian payer, should be excluded from the tax basis. In practical terms, COSIT's position increases the CIDE due since the withholding tax is added to the tax base; nevertheless, it seems more in accordance with applicable laws.

COSIT's position is binding on all FRD superintendences, which means that any request for a ruling on the matter must be resolved in accordance with Solution of Dissent 17/2011. Although FRD field offices and field tax agents are not legally bound by the solution of dissent, they can be expected to follow it during a tax audit. ◆

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