

## Comments regarding the definition of permanent establishment of a joint venture.

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Non-profit organizations, civil partnerships, business corporations, limited liability companies, cooperatives, rural production companies, etc. may enter into joint venture agreements; the federal government, the states and municipalities may also do so. State-owned companies may also exercise such right. Legally, the joint venture agreement is recognized as the group of individuals or business entities who gather in order to produce a business agreement to carry out a business transaction, where the general partner will have a share in its results, whether these are profits or losses, at the proportion agreed upon.

Individuals and business entities may also enter into joint venture agreements. However, the Mexican legal principles do not define a joint venture as a business entity. For tax purposes, the Income Tax Law (*Ley del Impuesto Sobre la Renta*) sets forth that a business entity includes, among other definitions, a joint venture whenever business activities are carried through it in Mexico; thus, a joint venture must comply with the tax regulations. The joint venture shall have legal existence for tax purposes when carrying business activities in Mexico, when the agreement is entered into under the laws of Mexico, or when the joint venture is a resident in Mexico. In this regard, whenever the laws make reference to a business entity, the joint venture is included, followed by the legend “A. en P.”, for its abbreviation in Spanish.

In tax law, the joint venture is a business entity bound to comply with the tax regulations. In commercial law, the General Corporation Law (*Ley General de Sociedades Mercantiles*) sets forth that the joint venture has no legal existence or corporate name, and these characteristics do not provide evidence of being classified as a business entity, but as an entity with no identity of its own. Business corporations have characteristics of their own, such as having legal existence, having a corporate name, and being Mexican corporations when incorporated under the Mexican laws.

A joint venture which remains in Mexico and is interested in extending its commercial alliances to favor its internal growth falls within the scope of a business entity and, with this, it acquires obligations before the tax government authorities, as it is subject to income tax in view that the source of income is located within the Mexican territory.

For tax law purposes, the joint venture shall have legal existence when carrying business activities in the country, when the agreement is entered into under the laws of Mexico, or when the residence in Mexico of the company or partnership is evidenced. In light of the above, the joint venture is bound to comply with the same tax obligations, under the same terms, and under the same legal provisions as those set forth in the tax laws for business entities.

Permanent establishment is considered to be any place of business where business activities are carried out, in whole or in part, including, among others, branches, agencies, offices, factories, workshops, premises, mines, quarries, or any site for the exploration, extraction or exploitation of natural resources.

When a non-resident operates in Mexico through an individual or business entity, it is considered that such non-resident has a permanent establishment in the country, in regards to all the activities that such individual or business entity performs for the non-resident, if such individual or business entity exercises the powers to enter into agreements in the name or on behalf of such non-resident, which are not related to the use or maintenance of premises for the sole purpose of storing or exhibiting goods or merchandise belonging to such non-resident; keeping stock of goods or merchandise for storing or exhibiting them or for their transformation by another individual or business entity; the use of a business place for the sole purpose of acquiring goods or merchandise for the non-resident; to carry out advertising, information supply, scientific research, placement of loans, or other similar activities; and the customhouse deposit of goods or merchandise of a non-resident in a public bonded warehouse, or the delivery of such goods or merchandise for their importation into the country.

Despite the above, it is considered that a non-resident has a permanent establishment in the country when it operates in Mexico through an individual or business entity who is an independent agent. Such agent acts in the name of the non-resident when it has stocks of goods or merchandise and makes deliveries on behalf of the non-resident; assumes risks; acts under detailed instructions or control; carries out activities that economically correspond to the non-resident; earns income independently from the results of its activities; and carries out transactions with the non-resident using prices or compensations other than those used by non-related parties in comparable transactions.

In this sense, a business entity or individual who enters into a joint venture agreement in Mexico with a non-resident falls within the scope of a permanent establishment for tax law purposes, even when the commercial principles may contravene the tax principles.