

MULTINATIONAL HEADQUARTERS REGIME

MANUFACTURING-RELATED SERVICES

LAW & REGULATION

By means of Law 159 of August 2020, the National Government created the special multinational headquarters regime for the establishment and operation of manufacturing-related services (hereinafter, EMMA) to boost the national economy through foreign direct investment. Also, recently the regulation of this regime was also enacted through Executive Decree No. 33 of February 2021.

This regime is a replica of the Multinational Headquarters regime, better known as SEM, providing the same benefits, and requesting the same requirements. However, the EMMA regime, as its name indicates, is focused on manufacturing services.

The following is a summary of the main provisions of Law 159 and the regulations of the EMMA regime.

Services provided

EMMA-licensed entities may only provide services to their related companies, i.e., companies that are part of the same corporate group. The following services may be provided individually or in combination:

1. Manufacturing of products, machinery, and equipment.
2. Assembly of products, machinery, and equipment.
3. Maintenance and repair of products, machinery, and equipment.
4. Remanufacturing of products, machinery, and equipment.
5. Packaging of products.
6. Product development, research or innovation of existing products or processes.
7. Analysis, laboratories, testing or other related.
8. Logistics, such as warehousing, deployment and distribution center for components or parties.
9. Any other similar services approved in advance

Third-party services

Entities with an EMMA license may delegate to third parties the execution of the services or activities for which they have been granted the license, provided that the following requirements are met:

- ▶ The supplier (third party) may perform all or part of the service or activity;
- ▶ The supplier must carry out the activity within the Republic of Panama;
- ▶ The EMMA-licensed entity must have mechanisms in place to control and supervise the outsourced activity;
- ▶ The entity with EMMA license may only count for itself the time incurred by the employees assigned by the supplier to perform the activity or activities corresponding to its company.

Requirements for the EMMA license

In addition to the information to be included in the EMMA license application form, entities interested in being part of this regime must comply with the following requirements:

- ▶ Apply through a company registered in the Panamanian Public Registry (foreign or Panamanian) that will engage solely and exclusively in the activities permitted under Law 159.
- ▶ Be part of a solid multinational company with a minimum¹ of assets.
- ▶ List the subsidiaries, affiliates, and associated companies to which the company will provide services from Panama.
- ▶ Mention the important international or regional operations of the multinational company.
- ▶ Highlight the relationship of the applicant company with the corporate group.

¹ The minimum amount of assets that a multinational entity must comply with will be determined by the Technical Secretariat of the multinational entities Commission.

Once an EMMA license is granted to the entity, it must comply with substance and reporting requirements to avoid violations and fines, additional tax assessments, or the loss of the EMMA license.

Substance

As with the SEM and Panama Pacífico special regimes, certain substance requirements must be met in order to keep the EMMA license:

- ▶ Execute within the Republic of Panama the activities for which the company was licensed
- ▶ Maintain an adequate number of qualified full-time employees dedicated to the execution of the authorized activity or activities.
- ▶ Incur in an adequate amount of operating expenses in the Republic of Panama which should be directly related to the authorized activities.

To avoid subjective amounts or terms, Law 159 and its regulation refer to the term “adequate” which is defined in the regulations as “that which is suitable, appropriate and sufficient for the execution of the activity or activities according to the characteristics of each entity and the nature of its business”.

It is important to emphasize that the EMMA-licensed entity may take into account all resources used (i.e. number of employees, expenses incurred) by its suppliers for purposes of determining compliance with the substance requirements, provided that the requirements for valid outsourcing of the activity(ies) are met, and it maintains records, books and documentation to demonstrate the appropriate level of qualified employees and operating expenses directly related to the performance of the authorized activity(ies).

Reports

The EMMA-licensed entity must submit annually within six months after the close of its fiscal period a report that involves a sworn statement of its activities and how it has complied with the requirements of substance.

The accounting or financial information presented in the report must be countersigned by a certified public accountant (CPA) in Panama.

The report will be made by means of an electronic form to be designed by the Technical Secretariat of the Commission and the information to be disclosed is yet to be determined.

Additionally, EMMA-licensed entities are required to report within thirty calendar days any changes related to the entity for which it was required registration through the Public Registry or information that was provided in the license application form. These changes includes change of address, telephone numbers, names and personal data of managers or proxies.

Benefits of the EMMA regime

Like the SEM regime, the EMMA regime has tax, immigration, and labor benefits, in addition to the legal stability of investments already known under Law 54 of 1998.

The tax benefits applicable to EMMA-licensed companies are as follows:

OBLIGATIONS	RATE/OBSERVATION
Income Tax	<ul style="list-style-type: none"> • 5% on the net taxable income derived from the services rendered. • 2% minimum if tax credit is requested for income tax paid abroad applies
Transfer Pricing	<ul style="list-style-type: none"> • Applicable to transactions with related parties that are: • Incorporated in Panama • Registered under other tax regimes • Incorporated abroad
Capital Gain	<ul style="list-style-type: none"> • 2% on capital gains obtained • 1% on the total value of the sale (advance payment and/or definitive tax)
ITBMS	7%, applicable to services rendered within the Panamanian tax territory.
Income Tax Withholding	<ul style="list-style-type: none"> • 5% if the beneficiary is a taxpayer in Panama • 2.5% if the beneficiary is a nonresident
Purchase report	Provide information on payments made to third parties.
Import	Applicable on manufactured, processed, assembled or remanufactured products as long as they are introduced into the Panamanian fiscal territory.
Exempt	<ul style="list-style-type: none"> • Dividend and complementary tax • Use of fiscal equipment • Notice of Operation • ITBMS on services rendered to non-residents • Imports (when the good is used for the execution of the activity).

Like the SEM regime, two types of immigration permits are established for foreign workers of EMMA entities: temporary personnel visa and permanent temporary visa. The regulation to the EMMA regime provides details about the requirements and procedures for each of the visas applicable under the EMMA regime and incorporates additional requirements for those foreigners who wish to apply for a permanent residence permit after five (5) years have elapsed since the approval of their initial visa.

The permanent residency may be granted to alien residents who are working with the EMMA entity as well as those who have finished working with the EMMA entity. Regarding the alien resident who is not working with an EMMA entity, the regulation requires the alien resident to present proof of investment in Panama of at least one hundred and fifty thousand balboas (B/. 150,000.00) either through a fixed term bank account, a real estate property or both.

The dependents of foreigners working for an EMMA entity also have immigration and labor benefits. Not to mention the customs regime for household goods and automobiles.

Innovations of the EMMA regime

Given its relationship with the SEM regime, multinational entities registered and licensed to operate in either regime (meaning SEM or EMMA regime) may choose to subscribe to the other regime without the need to provide all the documentation and information again. They will only need to submit a letter to the Technical Secretariat to refer to the existing information. The only requirement to allow a double license is that for each license a separate accounting is kept, and the substance requirements are also met separately.

The regulation introduces the creation of technical education centers for EMMA entities to develop and fund scholarship programs through a foundation. The specifications of this teaching center are not included in the regulation or in Law 159.

Penalties and Violations

EMMA entities could be penalized with maximum amounts of one hundred thousand dollars (B/. 100,000.00) if they commit infractions and receive more than three warnings, among other non-compliances. Their licenses could even be cancelled if they commit serious offenses such as violations to the provisions of Law 159 and its regulations. For certain cases, the regulations allow the application of administrative procedures to appeal the decision of the Technical Secretariat of the Commission.

Conclusions

The adoption of a new preferential regime points towards the objectives of the current government to boost the Panamanian economy through foreign direct investment using a model that has been very successful in our country. The enthusiasm of this new regime is perceived with the inclusion of an article in both Law 159 and its regulations on the principle of administrative efficiency that allows an expeditious process for multinational entities that as a result of the pandemic are implementing new operational strategies.

If you are interested in evaluating this regime for your company, do not hesitate to contact our team at BDO Legal, ready to support you from start to finish in this process.

For major and further reference, please reach out to **our experts**.

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