

TAX NEWSLETTER

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Administrative Ruling No. 015-029 published in the Official Gazette of the Bolivarian Republic of Venezuela No. 42.128, on May 17th 2021.

➤ Most outstanding aspects in the new Regulations that establish the corresponding procedure for the Declaration, Self-settlement and Payment of the levy for Science, Technology and Innovation and the Obtaining of the Electronic Certificate of Solvency of the Levy.

➤ Levy for Science, Technology, Innovation and their applications.



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Most outstanding aspects in the new Regulations that establish the corresponding procedure for the Declaration, Self-settlement and Payment of the levy for Science, Technology and Innovation and the Obtaining of the Electronic Certificate of Solvency of the Levy.

Mandatory Registration

In order to obtain the electronic certificate of solvency of the levy, requestors have to register in the System for the Declaration and Control of the Levy in Science, Technology and Innovation (SIDCAI)

Likewise, non-taxable entities that require the electronic certificate of solvency of the levy must be registered.

Supporting document for the calculation

The National Fund for Science, Technology and Innovation (FONACIT), in order to calculate the amount of the levy, will rely on the data provided by the taxpayer in the "Form DPJ 99026 Legal Entity Definitive Income Tax Return (ISLR)", submitted to the National Integrated Service of Customs and Tax Administration (SENIAT) ", proceeding to the sum of boxes 711 called: total net income (territorial source), 780 called: net income (extraterritorial source) and 970 called: own income from the activity (exempt / exonerated income).

Other revenue to be considered

Furthermore, there will be part of the tax base for the purposes of the levy to science, technology, innovation and their applications, income from exchange rate differential, income from interest, income from dividends obtained, income from the placement of securities whatever its denomination, operational income, among others.

No tax exemption

The exemptions established for Income Tax or for any other type of tax, rate or exaction, will not apply to the payment of levies for science, technology, innovation and their applications.

In case of failure to fulfill the tax liability

"FONACIT" and the taxpayer, in case of failure to fulfill the payment of the levy for science, technology, innovation and their applications, must impute the payment of the tax liability, when this occurs, in the following order: (i) fine; (ii) default interest and (iii) levy, in accordance with what it is provided by article 44 of the Constituent Decree through which the Organic Tax Code (COT, by its Spanish initials) was enacted.

Fine Application

Once the due date has expired and the taxpayer has not self-settled, declared and paid the levy, there will be a mere right to apply the fine equivalent to fifty percent (50%) of the amount of the levy due, based on the full evidence represented in the "Form DPJ 99026 Legal Entity Definitive Income Tax Return (ISLR), filed before the National Integrated Service of Customs and Tax Administration (SENIAT).

Most outstanding aspects in the new Regulations that establish the corresponding procedure for the Declaration, Self-settlement and Payment of the levy for Science, Technology and Innovation and the Obtaining of the Electronic Certificate of Solvency of the Levy.

Opening of an administrative penalization procedure

The opening of the administrative penalization procedure provided by article 57 of the Decree with Rank, Value and Force of Law of Reform of the Organic Law of Science, Technology and Innovation, will proceed exclusively in the cases that the "FONACIT" carries out "in situ "control, supervision, inspection and investigation of the taxpayers and determine the existence of indications that make presume the breach of the levy, as there is no agreement with the "DPJ Form 99026 Legal Entity Definitive Income Tax Return (ISLR), filed before the National Integrated Service of Customs and Tax Administration (SENIAT)" or force majeure or fortuitous event has been argued before the maturity of the fiscal year.

Glitch in the SIDCAI domain

In case of glitch in the "SIDCAI" that prevent notification of the payment, it will be reported within three (3) subsequent working days to the e-mail address locti.fonacit@gmail.com.

Request for the electronic certificate of solvency of the levy

The documents to request the electronic certificate of levy solvency for the first time are the following:

- a) Articles of incorporation and the last statutory shareholder meeting.
- b) Tax Identification Number (TIN)
- c) Income Tax Returns (ISLR) for the last three (3) years.
- d) Proof of the Bank deposit or electronic transfer of the levy payment.

The above documents must be uploaded to the "SIDCAI" in portable document format (PDF).

For requesting the electronic certificate of solvency of the levy of the fiscal year following the last certificate issued, the Income Tax Return (ISLR) of the corresponding fiscal year and the bank deposit or electronic transfer of the payment of the levy will suffice.

Not a taxpayer

The companies that do not apply as a taxpayer of this levy may request the electronic certificate of solvency of the levy after complying with the required documents.

Information Updating

The information filed by the taxpayer at the time of registration must be updated in the "SIDCAI" once a year, or each time it is modified. In case of failure to fulfill with this rule, the request for the electronic certificate of solvency of the levy will not be processed.

Taxpayer Status

FONACIT, within three (3) working days following the date of receipt of the request for the electronic certificate of solvency of the levy, will proceed with the issuance of a report that reflects the status of the taxpayer.



Most outstanding aspects in the new Regulations that establish the corresponding procedure for the Declaration, Self-settlement and Payment of the levy for Science, Technology and Innovation and the Obtaining of the Electronic Certificate of Solvency of the Levy.

Notification of omissions

FONACIT will inform via email to the requestor of the electronic certificate of solvency of the levy, about any omission or lack observed within five (5) working days following the date of receipt of the request.

The requestor must correct the omissions or faults that have been noticed, within five (5) days following their notification.

Issuance of the electronic certificate of solvency of the levy

The electronic certificate of solvency of the levy will be issued once the Tax Collection Management of “FONACIT” verifies compliance with the procedures and requirements set forth in this Ruling, within eight (8) working days following the date of receipt of the request for said Certificate.

FONACIT Electronic Signature

Once the electronic certificate of solvency of the levy has been reviewed and validated, it will be issued backed by the electronic signature of the President of “FONACIT”.

Validity of the certificate

The electronic certificates of solvency of the levy will have a validity of one (01) year in accordance with the fiscal year to which it corresponds to comply with the obligation of the levy.

Repeal

This Ruling will come into force as of its publication in the Official Gazette of the Bolivarian Republic of Venezuela and repeals Administrative Ruling No. 015-002 dated June 18, 2015, published in the Official Gazette of the Bolivarian Republic of Venezuela No. 40,804 dated December 7, 2015, as well as repealing the content of Administrative Ruling No. 015-003 dated June 18, 2015, published in the Official Gazette of the Bolivarian Republic of Venezuela No. 40,804 dated December 7, 2015, which collides with this Administrative Ruling No. 015-029.

Levy for Science, Technology, Innovation and their applications

The levy for science, technology, innovation and their applications will come from legal entities, private or public ones, domiciled or not in the Republic that carry out economic activities in the national territory, in accordance with the provisions of article 23 of the Science, Technology and Innovation Act (LOCTI), published in Official Gazette No. 6,151 Special Issue dated November 18, 2014.

Who is obliged to comply with the levy?

Those legal entities, private or public ones, domiciled or not in the Bolivarian Republic of Venezuela that carry out economic activities in the national territory and have obtained annual gross income of more than one hundred thousand tax units (100,000 UT) in the immediately preceding fiscal year, which are indicated below (Article 25 LOCTI):

1. Stock companies (Incorporated) and limited liability companies.
2. Partnerships in collective name, in simple limited partnership, communities, as well as any other partnerships, including irregular or de facto ones.
3. Associations, foundations, corporations, cooperatives and other legal or economic entities not mentioned in the previous paragraphs.
4. Permanent establishments (premises), centers or fixed bases located in the national territory.



What is the calculation basis (tax basis) for the amount of the levy?

The amount of the levy will be calculated taking as the tax basis the gross income of the fiscal year immediately prior to the one to which the obligation corresponds (article 5 Partial Regulations of the LOCTI).

What is considered Gross Income for the purposes of calculating the levy?

Gross income will be understood as the revenue, income and wealth that, from a regular, accidental or extraordinary way, the taxpayers accrue for any activity they carry out, provided that they are not obliged to restore them for any reason, without admitting costs or deductions of any kind. (Article 26 First Paragraph LOCTI).

Gross income refers to the economic benefits obtained by taxpayers for any activity they carry out, without taking into consideration the costs or deductions incurred to obtain said income. For this purpose, the exemptions or exonerations provided by other laws for the calculation of the levy will be excluded from the tax basis of the levy (Article 2 numeral 4 Partial Regulation LOCTI).

In accordance with the definition of Gross Income provided for in the Decree - Law, those income that must be returned in full will not be part of the calculation of the levy, without admitting costs or deductions, therefore, they will be part of the taxable base for the purposes of the levy for science, technology, innovation and their applications, income from exchange rate differential, income from interest, income from dividends obtained, income from securities placement whatever their denomination, operating income, among others. (Article. 3 Fourth paragraph of Ruling No. 015-029).

The final sentence No. 1646 issued by the Seventh Superior Court of Tax Litigation of Caracas, on October 31, 2013, establishes the following regarding the gross income considered for the calculation of the levy:

"Now, in view of what has been stated by the Tax Administration and in order to establish the true scope of the taxable base of the aforementioned levy, the accounting treatment of the gross income must be distinguished from the fiscal or tax treatment that is given to them.

This taking into account that for accounting purposes, companies must certainly make their records in accordance with the Generally Accepted Accounting Principles, however the fiscal or tax treatment must take into account the Constitutional Tax Principles of Universal recognition, such as Legality, Economic Capacity, Tax Justice, Non-Confiscation of the tax, among others.

Consequently, the taxable base of the aforementioned tax must not include the revenue that the taxpayer is obliged to restore for any reason, or any other income not actually earned in the financial year, since they do not constitute manifestations of the taxpayer's ability to pay, even when such events must be considered and recorded from the accounting point of view as gross income. So it is declared."

What is the percentage for calculating the levy?

1. Two percent (2%) when the economic activity is among those covered by the Law for the Control of Casinos, Bingo Parlors and Slot Machines, as well as any area related with the industry and trade of ethyl alcohol, alcoholic beverages and tobacco.
 2. One percent (1%) in the case of private-capital companies when their economic activity is among those covered by the Hydrocarbons Act and the Gaseous Hydrocarbons Act, and includes mining, processing and distribution.
 3. Zero point five percent (0.5%) in the case of state-capital companies when their economic activity is among those provided for in the Hydrocarbons Act and the Gaseous Hydrocarbons Act, including mining, processing and distribution activities.
1. Zero point five percent (0.5%) in the case of any other economic activity. (Article 26 LOCTI).

When the taxpayer carries out concurrently several activities of those established above, his levy will be calculated by applying the percentage that corresponds to the activity that generates the highest gross income (Article 26 second paragraph LOCTI).

When must the levy be filed and paid?

During the second quarter after the close of the fiscal year in which the gross income that constitutes the calculation basis for compliance with the obligation was generated (Article 27 LOCTI - Article 6 LOCTI Partial Regulation).

To whom should the levy be filed?

This levy will be settled, paid and filed before the National Fund for Science, Technology and Innovation (FONACIT).

Levy for Science, Technology, Innovation and their applications

How to register in the FONACIT system?

For these purposes, taxpayers must register in FONACIT, according to the following steps:

1. Enter the website of the System for declaration and control of the levy for Science, Technology and Innovation (SIDCAI): <http://www.sidcai.fonacit.gob.ve>
2. Click on the "**new users**" window.
3. Enter the data of the Tax Identification Number (TIN) of the company.
4. Enter the email address of the company (preferably Gmail) so that the "SIDCAI" sends a password.
5. On the access data screen, the confirmation code, company data, legal representative of it and the data of a user associated with the company's domain must be entered.

Note: Non-taxpayer companies that require the electronic certificate of solvency of the levy must be registered.

How shall the payment be made?

The payment of the levy must be made in the name of FONACIT through one of the following banks: Banco de Venezuela - checking account No. 0102 0552 29 00 00037743, Banco Banesco - checking account No. 0134-0389-95-3891400227 - Bank Provincial checking account No. 0108-0582-11-0100048642. Once the payment has been made, send the receipt to FONACIT, by email: locti.fonacit@gmail.com

How do we obtain the Certificate?

Administrative Ruling N ° 015-029 dated May 17, 2021 published in Official Gazette N ° 42,128, establishes that the electronic certificate of solvency of the levy will be issued once the Collection Management of "FONACIT" verifies compliance of the procedures and requirements set forth in this Ruling, within eight (8) working days following the date of receipt of the request for said Certificate.

What would be the penalty for not filing the return?

Taxpayers who do not submit the return or submit it with a delay of more than one (1) year will be penalized with the closure of the establishment, for a period of ten (10) continuous days and a fine equivalent to one hundred and fifty (150) times the official exchange rate of the currency of greater value, published by the Central Bank of Venezuela (article 103 numeral 1 Organic Tax Code).

What would be the penalty for not complying with the payment of the levy?

Fine equivalent to fifty percent (50%) of the amount corresponding to the levy, taking into account the amount of the sum affected by the breach, which may be increased or decreased in response to existing aggravating or mitigating circumstances (art. 50 LOCTI).

(i) fine; (ii) default interest and (iii) levy, in accordance with the provisions of article 44 of the Constituent Decree through which the Organic Tax Code was issued. Sixth paragraph of Article 3 Ruling No. 015-029.



Breach to comply with tax liabilities within the due dates provided by the Calendar of Special Taxpayers and other tax provisions will be penalized in accordance with the Organic Tax Code. Consult with our experts about the periodic review service of compliance with formal tax duties and avoid the risks of tax contingencies due to financial penalties and measures to close premises, in the event of a possible inspection procedure by the Tax Administration.



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We build lasting relationships, that is why our commitment is to provide an exceptional service to our client. Contact us.

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