



Tax Flash 21/2016 | Tax and Legal Services | May 26<sup>th</sup>, 2016

## Companies' certification regarding VAT and Excise Tax. Requirement to submit electronic accounting before SAT

On May 9, it was published in the Official Gazette the First Resolution of Amendments to the General Rules on Foreign Trade for 2016 that will enter into force 30 days after its publication, adding among other topics, a Title 7 entitled "Integral Certification Scheme" which regulates, among others, registration within the Business Certification Scheme regarding Value Added Tax and Special Tax on Production and Services (VAT and Excise Tax)[1], to obtain several benefits, among others:

- The application of a tax credit in transactions focused in customs regimes for temporary importation for processing, transformation or repair in maquila programs or exportation; tax deposit to undergo the process of assembly and vehicle manufacture, processing, transformation or repair in trade zone, and strategic trade zone.

- Obtain a VAT refund within a period that shall not exceed 20 days from the application.
- The immediate inscription in the Registry of Importers of Specific Sectors.

Among the requirements that shall be fulfilled in order to be part of the abovementioned certification, we can point out the following: being up to date in the compliance of tax obligations, the staff must be registered before the Mexican Institute of Social Security, every establishment that executes activities linked with the maquila program or exportation must be registered before the Tax Administration Service (SAT), have an updated e-mail for mailbox tax purposes and handle the accounting in electronic media and submit it monthly through the SAT website, according to Article 28, III and IV of the Federal Tax Code (FTC) and rules 2.8.1.6 and 2.8.1.7 of the Miscellaneous Regulations.

Regarding this last requirement, (monthly submission of the electronic accounting), we must remember that a large number of taxpayers filed a constitutional lawsuit (amparo) claiming the unconstitutionality of such obligation. As a result of this trial, and attending to the jurisprudence of the Second Chamber of the Supreme Court of Justice of the Nation when resolving the contradiction number 277/2014, the final suspension was granted to the taxpayers, which means that they are not longer binded to submit the accounting information electronically to the SAT, until the unconstitutionality claimed is definitively solved.

Therefore, even when the requirements in order to be part of the Business Certification Scheme under the modalities of VAT and Excise Tax establishes that the interested parties shall keep the records of the accounting information in electronic means and submit it on a monthly basis through the SAT website, those taxpayers that were granted with the suspension referred in the last paragraph, are not binded in order to fulfill this requirement, according to a resolution issued by a Federal Court where it releases the taxpayer to fulfill the obligation regarding the fraction IV of Article 28 of the FTC.

Our recommendation is to analyze each case in which tax and/or customs authorities intend to require the fulfillment regarding the obligation to submit monthly the accounting information through electronic means to the SAT website, in order to define the correct strategy in order to avoid a damage against the interests of the Company.

Therefore, we consider that there are enough elements to defend the position of the taxpayers, so that they can continue with the benefits of the certification, without having the obligation to comply with the requirement of sending by electronic means the monthly accounting information as long as those taxpayers have been granted with the final suspension referred herein.

We suggest to approach our specialists in the field of Foreign Trade and Customs, as well as Tax Litigation, in order to analyze the situation and establish the appropriate means to mitigate the risk of compromising any benefits or obligations that were to be complied for the purpose of that substance.



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