



Tax and Legal Services

Tax Alert 33/2020

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The importance of timely checking the materiality and existence of the operations carried out by taxpayers

From the fiscal year 2020 onwards, the Mexican Federal Tax Code (FTC) raises a number of legal cases in which the tax authority can invalidate the taxpayers' digital seal certificates and thus make it impossible for them to invoice and continue carrying out their operations, even without the fiscal authority having initiated the exercise of its verification powers.

This power to cancel digital seal certificates arises as an overriding necessity founded that the SAT (the equal for Mexico's IRS) has detected a large number of companies that invoice non-existent transactions, through the issuance and disposal of tax receipts that meet all the requirements established by the FTC and with verifiable money

flows, even though the concepts or operations that are materially reflected in them are not carried out, that is to say, the goods were not sold, the services were not provided, or the transactions do not correspond to the quantities supported by the aforementioned receipts.

The existence of companies dedicated to the sale of digital tax receipts (CFDI's) is undeniable since they even reached the point of advertising in recognized and widely circulated magazines at a national level, offering the sale of invoices.

In this order of ideas, Article 69-B of the FTC establishes that when the tax authority detects that a taxpayer has been issuing invoices without having the assets, personnel, infrastructure or

material capacity, directly or indirectly, to provide the services or produce, commercialize or deliver the goods covered by such receipts, or that said taxpayers are not located, the non-existence of the operations covered by such receipts shall be presumed.

The tax authority shall publish in the Official Journal of the Federation and on the website of the Tax Administration Service, on a quarterly basis, a list (well known a "SAT blacklist" of those taxpayers who have failed to distort the simulation of operations detected by the tax authority.

Both individuals and legal entities who have given any tax effect to any tax receipt issued by

a taxpayer included in the list referred to in the fourth paragraph of Article 69-B will have thirty days following its publication to prove to the authority itself, that they actually acquired the goods or received the services ware of those tax receipts, or they shall proceed within the same time limit to correct their tax situation, by means of the corresponding declaration or supplementary declarations, which they must submit in terms of the FTC.

It is important to note that the transactions referred to in the above tax receipts will be considered as simulated acts or contracts for the purpose of the offences foreseen in the FTC.

The FTC notes that a penalty of two to nine years in prison shall be imposed to any which, by itself or by interposite person, issues, disposes, buys or **acquire tax receipts that cover operations considered** non-existent, false or **simulated legal acts.**

Unfortunately, the legal assumption established by the legislator in the FTC makes no distinction between accomplished or non-accomplished taxpayers, but parts from the general principle that everyone is a tax evader and imposes an obligation on the taxpayer seeking to deduct the CFDI, to check the materiality and/or existence of the service received or the purchased good, having as consequence the omission and/or lack of verification, the cancellation of digital seal certificates for issuing invoices (CFDI's).

In this order of ideas, from fiscal year 2020 onward, the Article 17-H Bis of the FTC was added to indicate that in the case of digital seal certificates for the issuance of digital tax receipts over the Internet, prior to the cancellation of such certificates, turning them ineffective, the tax authorities may temporarily restrict their use when they detect that they consist on taxpayers who have given a tax effect to CFDI's, and which, after the thirty-day period provided for in Article 69-B of FTC, did not establish the actual

acquisition of the goods or receipt of the services, nor did they correct their tax situation.

Those who have been temporarily restricted from the use of their digital seal certificate may have the right to submit the request for clarification to remedy the detected irregularities, or to undermine the reasons for the application of such measure, in which they may provide the evidence to their discretion, so that, the day following the application, the use of that certificate is restored.

The tax authority must issue a decision on such proceedings within a maximum period of ten days; until the relevant decision is issued, the tax authority shall allow the use of the digital seal certificate for the issuance of digital tax receipts over the Internet.

Where it is determined that the taxpayer did not remedy the irregularities detected or did not call into question the reasons for the provisional

restriction of their digital seal certificate, within ten days the authority shall issue a decision to terminate the digital seal certificate.

Given the relevance of this tax provision for the continuity of the operation of companies, we consider it important for these to implement and activate a protocol or attention mechanism in the event that one of its suppliers is included in the list of taxpayers referred to in Article 69-B (commonly known as the “SAT blacklist”).

This tax provision requires us to rethink the way companies are documenting their operations, so it would be advisable that, from the origin of each transaction made by the companies, they integrate a “defense file” that includes, among other documents, the copy of contracts and/or purchase orders, receipt and/or log of the goods acquired and/or the services received, copy of the registration list regarding the access of the suppliers to the company.

In extreme cases, even photos of the acquired goods and/or services received.

Our tax consulting and tax controversy litigation professionals are on your command to help you implement the creation of a “defense file” as well as to help you litigate before the tax authority if necessary.

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Contact:

Gonzalo Gómez

Partner in Charge of Taxes and Legal Services

Cluster BC - Sonora

gogomez@deloittemx.com

Tel. 664 622 7950

www.deloitte.com/mx

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www.taxathand.com



Aguascalientes

Universidad 1001, piso 12-1
Bosques del Prado
20127 Aguascalientes, Ags.
Tel: +52 (449) 910 8600
Fax: +52 (449) 910 8601

Cancún

Avenida Bonampak SM 6, M 1, lote 1,
piso 10, 77500 Cancún, Q. Roo
Tel: +52 (998) 872 9230
Fax: +52 (998) 892 3677

Chihuahua

Av. Valle Escondido 5500
Fracc. Des. El Saucito E-2, piso 1,
31125 Chihuahua, Chih.
Tel: +52 (614) 180 1100
Fax: +52 (614) 180 1110

Ciudad Juárez

Baudelio Pelayo No. 8450
Parque Industrial Antonio J. Bermúdez
32400 Ciudad Juárez, Chih.
Tel: +52 (656) 688 6500
Fax: +52 (656) 688 6536

Culiacán

Insurgentes 847 Sur, Local 103
Colonia Centro Sinaloa
80128 Culiacán, Sin.
Tel: +52 (33) 1454 2000

Guadalajara

Avenida López Mateos Norte 2405, piso 29
Colonia Italia Providencia
44648 Guadalajara, Jal.
Tel: +52 (33) 3669 0404
Fax: +52 (33) 3669 0469

Hermosillo

Blvd. Eusebio Francisco Kino No. 315
Piso 8, Suite 804, Colonia Lomas del Pitic
83010 Hermosillo, Son.
Tel: +52 (662) 109 1400
Fax: +52 (662) 109 1414

León

Paseo de los Insurgentes 303, piso 1
Colonia Los Paraísos
37320 León, Gto.
Tel: +52 (477) 214 1400
Fax: +52 (477) 214 1405 y 1407

Mérida

Calle 56 B 485 Prol. Montejo Piso 2
Colonia Itzimna
97100 Mérida, Yuc.
Tel: +52 (999) 913 4032
Fax: +52 (999) 913 4052

Mexicali

Calzada Francisco López Montejano 1342
Piso 7 Torre Sur
Fracc. Esteban Cantú
21320 Mexicali, B.C.
Tel: +52 (686) 905 5200
Fax: +52 (686) 905 5231 y 5232

Ciudad de México

Paseo de la Reforma 505, piso 28
Colonia Cuauhtémoc
06500 México, D.F.
Tel: +52 (55) 5080 6000

Monclova

Blvd. Harold R. Pape # 307-C
Colonia Guadalupe
25750 Monclova, Coah.
Tel: +52 (866) 190 9550
Fax: +52 (866) 190 9553

Monterrey

Av. Juárez 1102, piso 40
Centro
64000 Monterrey, N.L.
Tel: +52 (81) 8133 7300

Puebla

Edificio Deloitte, Vía Atlixcayotl 5506, piso 4 Zona
Angelópolis
72190 Puebla, Pue.
Tel: +52 (222) 303 1000
Fax: +52 (222) 303 1001

Querétaro

Avenida Tecnológico 100-901
Colonia San Ángel
76030 Querétaro, Qro.
Tel: +52 (442) 238 2900
Fax: +52 (442) 238 2975 y 2968

Reynosa

Carr. Monterrey-Reynosa 210-B, PA
Fracc. Portal San Miguel
88730 Reynosa, Tamps.
Tel: + 52 (899) 921 2460
Fax: +52 (899) 921 2462

San Luis Potosí

Av. Salvador Nava Martínez 3125, 3-A
Fracc. Colinas del Parque
78294 San Luis Potosí, S.L.P.
Tel: +52 (444) 102 5300
Fax: +52 (444) 102 5301

Tijuana

Misión de San Javier 10643, Piso 8
Zona Urbana Río Tijuana.
Tijuana B.C., 22010
Tel: +52 (664) 622 7878
Fax: +52 (664) 681 7813

Torreón

Independencia 1819-B Oriente
Colonia San Isidro
27100 Torreón, Coah.
Tel: +52 (871) 747 4400
Fax: +52 (871) 747 4409



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