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FEDERAL TAXPAYER RIGHTS ACT

Dear clients and friends:

The **Federal Taxpayer Rights Act** (*Ley Federal de los Derechos del Contribuyente*) was published in the Federal Official Gazette on 23 June 2005 and came into effect on 23 July.

The following is a brief analysis of the most important aspects of the Act.

CHAPTER I General Provisions

The purpose of the Act is to regulate the basic rights of taxpayers and those jointly liable with them in their dealings with the tax authorities.

The Taxpayer Rights Act is supplemented by other tax legislation and the Federal Tax Code.

The following are the most important of the taxpayers' rights:

- a) The right to be informed and assisted by the tax authorities so that they can comply with their tax obligations and be aware of their content and scope.
- b) The right to be treated with respect and consideration by the tax office employees.
- c) The right to be treated less heavy-handedly by the tax authorities.
- d) The right to have their own information and the information of related third parties treated confidentially by the tax bureau employees. Such information may only be used in

accordance with the provisions of Section 69 of the Federal Tax Code.

- e) The right to have access to the records and documents in the taxpayer's file in the administrative archives provided that, on the date of the request, the procedures with which the files are related have been concluded. The confidentiality of information and data referred to in Section 69 of the Federal Tax Code must be respected.
- f) The right not to have to produce documents that are already in the possession of the tax authorities concerned.
- g) The right to put forward arguments and to produce as evidence documents and the administrative file for the action being contested.
- h) The right to be heard in the administrative proceedings before the ruling asserting a tax liability is issued.
- i) The right to amend their tax returns as a result of the tax authorities exercising their powers of inspection.
- j) The right in administrative law proceedings in the Federal Tax and Administrative Court to designate an address to receive notices anywhere in Mexico except when their address is located within the territory of the Chamber of the Court with jurisdiction.

The civil servant concerned will be held liable when the authorities breach the taxpayers' general rights, although this does not affect the legality of the authorities' actions (this would be the case with the breach of the rights in a), b), and c) above).

The Federal Tax Code also establishes penalties (including imprisonment) for violation of the right set forth in paragraph d) above.

Actions of the tax authorities that violate the general rights set forth in e), f), g), h), i), and j) are illegal. Accordingly, taxpayers may appeal to have them revoked or annulled.

CHAPTER II

Information, Publicity, and Assistance for the Taxpayer

The tax authorities must publish up-to-date texts of the tax regulations on their Internet pages and answer queries promptly.

The Federal Transparency and Access to Official Public Information Act provides that, at the request of the interested parties, the tax authorities, the Federal Tax and Administrative Court, and the courts of the Federal judicial system with jurisdiction in tax cases must provide the taxpayers with a copy of rulings on queries and court judgments.

The tax authorities will encourage taxpayers to issue valid receipts for their transactions by organizing tax lotteries with a variety of prizes that take into account means of payment other than cash.

Taxpayers will be exempt from fiscal liability if they act in accordance with the regulations issued by the tax authorities published in the Federal Official Gazette.

CHAPTER III

Rights in inspection proceedings

When the tax authorities start to exercise their inspection powers (with an inspection of the accounts and visits to the premises), they must inform the taxpayer of his right to file an amended tax return and of the benefits of so doing.

Taxpayers have the right to file an amended return from the time that the inspection begins. This right ceases to exist once they are notified of the ruling determining the amount of unpaid tax. The exercise of this right does not require authorization by the tax authorities.

Regarding the above, the law envisages several scenarios that we consider worthy of mention:

- a) If a taxpayer files an amended return while the tax authorities are still exercising their inspection powers and at least three months have passed since they began to exercise them, the visit to the premises or the inspection will be concluded if, in the opinion of the tax authorities based on their investigation, the taxpayer has correctly declared all the tax obligations under investigation in the period under review.

The tax authorities will inform the taxpayer in writing of the amendment and of the conclusion of the visit or inspection.

- b) If the taxpayer files an amended return after the conclusion of the exercise of the inspection and the tax authorities consider that in his amended return he has correctly declared all obligations found in the inspection, they will inform him of this within one month.
- c) When taxpayers file their amended return after the conclusion of the inspection and after the passage of five or more months of the six-month period available to the authorities to assess the amount of unpaid taxes, the authorities (provided that they have not yet issued their ruling) will have an additional month after the date on which the taxpayers file the amended final return in which to assess the amount of any taxes that may be unpaid.

No new omissions from the taxes inspected during the period under review may be assessed unless different facts are shown to exist. The existence of such facts must be supported by third-party information, data, or documents or by the review of specific concepts that have not been previously inspected.

If, as a result of the inspection, facts are discovered that may give rise to the assessment of higher taxes than those contained in the taxpayer's amended return or to taxes subject to

inspection which were not corrected by the taxpayer, the inspectors or tax authorities must continue with the visit to the premises or with the inspection envisaged in Section 48 of the Federal Tax Code. The tax authorities will issue the ruling assessing the amount of unpaid taxes.

Taxpayers who file an amended return will not be excused from paying the applicable fine as follows:

- a) A fine equivalent to 20% of the unpaid taxes when the taxes are paid together with the applicable charges for unpaid taxes after the start of the inspection procedure and before notification of the final report on the visit to the taxpayer's premises or the audit report.
- b) A fine equivalent to 30% of the unpaid taxes when the taxes are paid together with the applicable charges for unpaid taxes after notification of the final report on the visit to the taxpayer's premises or the audit report but before the ruling that assesses the amount of tax owed.

The tax authorities may inspect again the same facts, payments, and periods which the taxpayer was accepted to have correctly amended or for which unpaid taxes were assessed. However, the taxpayer will not incur any tax liability as a result of this inspection.

Actions of the tax authorities that violate established taxpayers' rights in the course of a review and enforcement procedure are illegal. Accordingly, taxpayers may appeal to have them revoked or annulled.

CHAPTER IV Rights in the penalty procedure

Taxpayers are presumed to act in good faith. The onus is on the tax authorities to prove the existence of the aggravating circumstances specified in the Federal Tax Code for the violation of tax law.

Taxpayers with an income in the preceding fiscal year of no more than 30 times the annual general minimum wage for their geographical area who provide security for the payment of their liability by means of an administrative law lien shall be appointed depositaries of the property. The business's stock in trade may not be attached unless it is foreign merchandise that is not proven to have been legally imported into Mexico.

CHAPTER V Means of defense open to taxpayers

The notice of actions ordered by the tax authorities must indicate the appeal or means of defense available, the term for filing, and the entity where the appeal or defense should be filed.

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If this requirement is not met, the taxpayer will be granted double the legal term in which to file an appeal or to bring an action under administrative law.

In administrative-law actions or in actions under administrative law brought before the Federal Tax and Administrative Court, taxpayers may submit in evidence the administrative file containing for the action being contested even though this may be forbidden in the Federal Tax Code.

The administrative file will be considered to be the file that contains all the documents pertaining to the beginning of the proceedings, the subsequent legal actions, and the contested ruling. It will not include private information or confidential official information.

The preliminary documents of a ruling in which the law does not specify a prior administrative procedure are not considered to form part of the administrative file.

Please contact us if you have any queries about the operation of the above law.

Yours faithfully

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