

AMENDMENTS TO CUSTOMS AND FOREIGN TRADE LEGISLATION FOR 2024

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As we have commented in a timely manner, since November 2023, the foreign trade legislation in our country has undergone several changes that will affect economic operators in the current year 2024. The following are the topics we will discuss:

AMENDMENTS IN THE DURATION OF VAT AND IEPS (Special Tax on Production and Services) TAX CERTIFICATIONS AND THE PAYMENT OF ANNUAL FEES FOR THEIR RENEWAL.

As of October 31, 2023, through the Decree of Amendment to the General Rules of Foreign Trade for that year, the Authority has determined that the validity of all VAT/IEPS certifications, regardless of the category, must be renewed every year, with the exception, for the time being, of those companies that have just received their renewal for two or three more years just prior to the publication of this amendment. However, for the next renewal of their certification, all companies will be able to apply for certification for only one year.

As a result of the above, many certified companies proceeded to process in advance the renewal of their certification for the year 2024, many of these companies made the payment of fees for the renewal of their certification at the amount in effect at the time of requesting it at the end of 2023, in accordance with the amounts in effect in November 2023. Notwithstanding the above, if the requested renewal was for the year 2024, the Authority considers that the payment should have been made at the updated rate in the amounts established in Annex 19 of the Miscellaneous Tax Resolution published on December 29th, 2023, which came into effect on January 1st, 2024.

The fee paid in 2023 shown by the Federal Tax Act in November of that same year and the fee in force for 2024, as modified by the aforementioned Annex 19, shows a difference of \$ 2,000 on average, therefore, if a total of \$ 37,112 (thirty-seven thousand one hundred and twelve pesos) has not been paid for the renewal of the certification for 2024, we recommend contacting your consultant to make the additional payment and avoid further

nuisance from the authority regarding your certification.

AMENDMENTS RELATED TO THE PAYMENT OF CUSTOMS PROCESSING FEES

As we had already anticipated in previous letters, as a result of the amendment to article 49 section IV of the aforementioned Law, in export operations carried out as of December 30th, 2023, under the application of Free Trade Agreements that have negotiated the non-application of additional tariffs, fees or quotas to foreign trade operations between the parties, a fixed fee for customs processing fee of \$ 425.44 per operation must be paid, including export.

Overall, the increase in customs and foreign trade fees reflected in Annex 19 of the Miscellaneous Tax Resolution is an average increase of 5% for the current year.

IMPLEMENTATION OF THE DECLARATION OF JOINT AND SEVERAL LIABILITY IN VIRTUAL OPERATIONS WITH V5 CODE REQUESTS.

On December 12th, 2023, the “Sixth Resolution on Amendments to the General Rules of Foreign Trade for 2023 and Annexes 1 and 5” was published in the Official Gazette of the Federation, according to which Rule 7.3.3. XIII, Section XIII, First Paragraph, Subsection a), to establish the obligation for companies registered in the AEO Business Certification Scheme that, among their operations, perform virtual transfers of goods through requests with V5 code, to assume the joint and several liability of

Article 26, Section VIII of the Federal Tax Code, with respect to the compliance of tax obligations derived from the alienation of goods made by a resident abroad without a permanent establishment in Mexican territory, for which the publication establishes that they must fill out Form E15, “Manifestation of Willingness to Assume Joint and Several Liability under Rule 7.3.3., Section XIII”.

This amendment is the result of a ruling issued on October 5th, by means of which the Regional Plenum on Administrative Matters of the North Central Region resolved as jurisprudence, that in operations carried out through virtual requests with code V5, there is no obligation to withhold value added tax, since there is no alienation in national territory of the corresponding merchandise.

Therefore, this form must be submitted by the transferor of the goods through a clarification case on the SAT (Mexican Tax Authority) website, attaching the corresponding confirmation to the customs declaration that covers the return of the goods; It is important to point out that whoever receives the goods must, in turn, process a definitive import customs declaration, this mechanism came into effect on January 1st, 2024 and for the certified companies involved in these operations, it should not be lost sight of the possibility of filing defenses such as the amparo before the administrative requirement of the authority to voluntarily declare themselves as jointly and severally liable, in operations where the Supreme Court has already established that there is no withholding requirement.

IMPLEMENTATION OF THE AMENDMENTS TO THE USE OF THE EO AND PO IDENTIFIERS IN FOREIGN TRADE OPERATIONS.

These amendments were announced during the course of 2023. However, they became effective for customs operations as of December 29th, 2023.

The declaration of these EO identifiers (related to the origin certifier) and PO (identification of the supplier in origin of the merchandise) applies to those who introduce merchandise into the country with the exception of some regimes, as long as they apply preferential treatment derived from agreements and free trade treaties in which the AL (Merchandise originating in ALADI) and TL (Merchandise originating under Free Trade Agreements) identifiers are declared).

The PO identifier is intended to identify the name of the supplier at origin of the merchandise and its customs value, while the EO identifier is intended to identify the character of the subject certifying the origin in accordance with the applicable treaty, in order to distinguish whether it is one of the following:

1. Producer/Exporter (Example: T-MEC, FTA Chile, FTA-EU -Invoice Declaration Legend-)
2. Importer (Example: T-MEC)
3. Foreign Authority (Example: TLCUE -EUR1-, ALADI).

INCREASE IN THE NUMBER OF REASONS FOR REMOVAL FROM THE IMPORTER REGISTRY.

On December 28th, 2023, the General Rules on Foreign Trade Matters for 2024 were published in the Official Gazette of the Federation, with several modifications that became effective as of January 1st, 2024, including the following:

INCREASE IN THE NUMBER OF REASONS FOR SUSPENSION IN THE IMPORTERS' REGISTRY.

As a result of the publication of the aforementioned Rules, two new grounds for suspension in the registers have been added in numbers XLVI and XLVII, respectively, which cover the suspension if the customs authority determines that the VAT withholding due in the transaction has not been made, in particular, the withholding that should have been made in the case of purchases from foreign residents, and when, in the course of a procedure for verifying the origin of the products of a foreign supplier for which a preferential tariff has been requested, it is established that such products did not deserve the qualification of origin and the importer does not immediately correct his situation with regard to the tariff preference unduly enjoyed.

Regarding the cause of suspension for not having made the withholdings to residents abroad, it is important to analyze the means of defense and prevention against its enforcement, especially in cases of temporary regimes and suspension of import charges of goods as tax deposit and transfers of temporarily imported

goods as well as their returns where the Courts have already expressed that for such operations it is not considered that an import to Mexico was made and therefore it is not considered that there is an obligation of withholdings to residents abroad, especially in the case of V5 operations by certified companies that could access preventive injunctions against this administrative provision.

AMENDMENTS TO MISCELLANEOUS NOTICES IN THE IMPORT OF GOODS.

The notice forms for the import of goods using the Second Rule of the Tariff of General Import and Export Taxes are amended, as well as the notice form for the transfer of goods in submanufacturing.

AMENDMENTS TO THE OBLIGATIONS RELATING TO MAINTAINING THE AUTHORIZATION TO IMPORT GOODS THROUGH A PLACE OTHER THAN THE AUTHORIZED PLACE

Rule 2.4.2 section IV indicates the obligation to send the information on volumetric controls, in accordance with rule 2.8.1.6, section III of the RMF, in addition to sending the required report in accordance with form 283/CFF "Notices of volumetric controls", contained in Annex 1-A "Tax Procedures" of the RMF, as requirements to maintain the authorization to import hydrocarbons or petroleum products through a place other than the authorized place.

"DECREE EXEMPTING THE PAYMENT OF IMPORT FEES AND GRANTING ADMINISTRATIVE FACILITIES TO SEVERAL GOODS OF THE BASIC FOOD BASKET AND BASIC CONSUMPTION OF FAMILIES."

On December 27th, 2023, as part of the current administration's anti-inflation program, the Official Gazette of the Federation published the extension of the application of this Decree, which allows duty-free imports of several basic food basket products for the entire year 2024.

AMENDMENTS TO FOREIGN TRADE AND CUSTOMS OPERATIONS AS A RESULT OF THE CHANGES TO THE MISCELLANEOUS TAX RESOLUTION FOR 2024 (RESOLUCION MISCELÁNEA FISCAL PARA 2024)

On December 29th, 2024, the Tax Miscellaneous applicable for 2024 was published in the Official Gazette of the Federation, in which the following two points are highlighted:

- Use of complements detailed in the CFDIS that guarantee expenses on behalf of third parties.
- Non-existence of extensions for the application of penalties related to the complementary bill of lading of goods.

Regarding the expenses on behalf of third parties, a very recurrent figure in the operations carried out by importers and exporters with their customs brokers, it will be necessary that the corresponding supplement of expenses

on behalf of third parties correctly declares the full amount of resources received by the customs broker for concepts other than his fees and includes the relation of how such resources were disbursed, so that they are not considered as income.

Regarding the obligation to issue the bill of lading in the transportation of goods, for all domestic or foreign trade operations, this obligation was already being complied with by several taxpayers. However, the penalties related to the issuance of the consignment note complement, whether due to errors in the established information, failures in its transmission, or omissions, had been extended in application through the various publications of amendments to the Miscellaneous Tax Resolution and the General Foreign Trade Rules, for this year 2024 none of these regulations contemplates extensions for the application of such fines, so it is considered that as of January 1st of this year, such penalties are in force and are applicable.

As a result of the above, the 31-digit alphanumeric folio corresponding to the consignment note complement assigned by the SAT at the time of stamping the invoices must now be included in the notifications and documents for the crossing of foreign trade goods.

Finally, the possibility of using the waybill complement version 2.0 (until March 31st, 2024) has been extended, making version 3.0 mandatory until

April 1st, 2024, through the seventh provisional article of the Miscellaneous Tax Resolution 2024, so that during the first months of 2024, both versions will coexist. However, the failure to issue the Carta Porte in either version 2.0 or 3.0 during January, February, and March 2024, as well as its issuance and transmission with errors, is already punishable.

Version 3.0 will be mandatory as of April 1st, 2024, and it is advisable to be aware of the migration to version 4.0 when issued.

Here is the link to the abovementioned official publications:

https://www.dof.gob.mx/nota_detalle.php?codigo=5708369&fecha=13/11/2023#gsc.tab=0

https://www.dof.gob.mx/nota_detalle.php?codigo=5713259&fecha=29/12/2023#gsc.tab=0

https://www.dof.gob.mx/nota_detalle.php?codigo=5712945&fecha=28/12/2023#gsc.tab=0

https://www.dof.gob.mx/nota_detalle.php?codigo=5712635&fecha=27/12/2023#gsc.tab=0

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Please feel free to contact us if you have any questions or need clarification regarding this document.

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