

ClientAlert

Tax

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Mexico's online tax surveillance becomes operational

As part of the Tax Reform that became effective on January 1, 2014, the Mexican Congress passed a series of amendments to the Federal Tax Code for the purpose of modernizing and facilitating the compliance and enforcement of tax obligations. Such amendments gave tax authorities tremendous surveillance power over taxpayers, which we believe is contrary to human rights of privacy and legal certainty.

As of June 30, 2014, Federal Tax Authorities in Mexico ("SAT") may communicate with corporate taxpayers electronically by sending emails to a personal inbox kept in SAT's website called the Tax Inbox (*buzón tributario*).

That seems to be perfectly in line with modern forms of communication. However, when a taxpayer considers that SAT may serve all kinds of notices through the Tax Inbox, including notices of deficiency, initiation of audits, imposition of penalties or any other, some concerns start to arise.

Those concerns may become real issues when the Tax Inbox is considered in connection with a new obligation of keeping accounting records electronically.

Along with the provisions creating the Tax Inbox, Congress passed certain amendments obliging taxpayers to submit their accounting records electronically through SAT's website pursuant to certain rules that SAT was going to publish.

On July 4, 2014, such rules were issued by SAT and published in the *Official Gazette* and on July 11, 2014, some forms that were referred to in such rules were also published.

As a consequence of the foregoing, taxpayers are now obliged to submit their accounting records to SAT on a monthly basis without any further formality required from SAT.

We believe that the provisions obliging taxpayers to submit their accounting records electronically on a monthly basis are contrary to human rights of privacy and legal certainty, and that taxpayers may challenge such provisions with reasonable chances of success.



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The Mexican Constitution provides strong protection of human rights of privacy and legal certainty, and Mexican Courts are vigilant concerning such protection. Specifically, the Mexican Constitution provides that: *"Nobody can be molested in its person, family, domicile, papers or possessions, but by a written order of the competent authority, describing and supporting the legal cause of the procedure...and that "The administrative authority may practice visit to domiciles only to ensure that the sanitary and police regulations are met and to require the production of books and papers essential to verify the compliance with tax provisions."*

The reforms passed by Congress and the rules issued by SAT seem to ignore the afore-cited constitutional provisions, which has caused hundreds of taxpayers to seriously consider the convenience of going to court to challenge the constitutionality of the new provisions.

The concerns of taxpayers are not only those inherent to the fact of being constantly and inadvertently watched by an authority that is urgently attempting to collect taxes, but also to risks associated with a potential misuse of sensitive financial information.

For instance, public companies would be obliged to submit financial information to SAT that may have not yet been disclosed to Market Regulators, such as the SEC or the CNBV, and a dishonest act by a tax official, a hacker or any person obtaining illegal access to such financial information may seriously affect public companies or their investors and stakeholders.

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