

CCN NEWSFLASH

Considerations in Mexico Relating to Taxpayers Conducting Presumptively Non-Existent Transactions

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Article 69-B of the Mexican Federal Tax Code sets forth a procedure to be followed by taxpayers who contract with suppliers of goods or services who, pursuant to public information published in the Official Journal of the Federation and on the Tax Administration Service website on a quarterly basis, are listed as companies that invoice simulated (non-existent) transactions (“EFOS” by its initials in Spanish). Compliance with the procedure is important because if the veracity of a transaction is questioned and cannot be proven to have actually occurred, then the taxpayer’s tax receipts from the EFOS are considered null with no tax effect, meaning that the expenses may neither be deducted for income tax purposes nor creditable for value-added tax purposes. These consequences can have retroactive effects for up to five years. Pursuant to the Mexican Federal Tax Code, taxpayers have 30 days to demonstrate the materiality of a transaction following the objection thereto by the tax authorities; that is, to verify they actually acquired the goods or services. Accordingly, it is advisable to proactively detect the existence of these types of transactions by taking the following actions: a) Establishing internal controls for the contracting of services or the acquisition of goods from suppliers, through personal knowledge of the suppliers, their assets, personnel, infrastructure, and capacity to carry out their business operations. b) In addition to maintaining digital tax receipts that evidence the transaction in question, taxpayers should also maintain files with all the information and documentation that fully evidence that the transaction actually occurred. c) Reviewing the list of taxpayers who invoice for allegedly non-existent operations as published on a quarterly basis in the Official Journal of the Federation and on the Tax Administration Service website to confirm whether transactions have been carried out with said taxpayers and if appropriate, evaluate the need to rebut and overcome the presumption of non-existence of a given transaction, or to correct the company’s tax filings, as applicable.

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