



▶ PREVENTIVE MEASURES FOR COMPANIES REGARDING FEDERAL TAX MINISTRY (“SAT”) POLICIES AS OF MAY 1, 2014.

It is common that technological evolution allows the SAT to create more efficient systems, procedures and control measures regarding each taxpayer. Companies have also used these technological advances to be more efficient, comply with their tax obligations in a more efficient manner and avoid tax related contingencies.

Notwithstanding the above, many companies continue to be constantly subjected to enforcement actions without being able to avoid these constant bothers. Regarding refunds, the tax authorities deny, rejects or desists without any reason whatsoever. Many refunds are setting off audits or other verifications actions and this delays payment of refunds. Additionally regarding compensations, the mechanism for authorization has become even more complex and everyday there are more rejections by the tax authorities.

2014
M A Y

Changing gears, audits and verification actions have become more severe and has resulted in the constant suspension or cancellation of certified public accountants (CPA) that issue expert opinions regarding companies. In the maquiladora industry and especially in the energy, electronic, telecommunications, textile, automotive, medical, aerospace and personal consumer sectors; audits or verification of compliance actions regarding foreign trade have increased.

CORPORATE SIMULATIONS.

Furthermore, a group of companies that share the same tax address, shareholders or partners, agents for tax purposes or tax related notifications are received by the same person, regardless if they are related parties or otherwise. It has been detected that in this grouping, business people have used multiple entities or corporate names to divide their operations, even using treasuries to distribute funds between these groups of businesses.

TRANS-BORDER TRANSACTIONS.

Finally, trans-border transactions were detected whereby Mexican entities carry out “apparent” business with affiliates in the United States and invoice goods and services, while generating a 0% rate for exporting services.

It was constantly presumed by corporate groups, that audits or compliance verification actions or denials of refunds or permanent surveillance was a result of various factors, even when the taxpayer complies with its tax obligations, but it had not been detected that the most important factor in all these problems had its origins in the Federal Taxpayer Registry (“RFC”). We must recall that taxpayers, according to their category or activity have the obligation to register before the RFC. This is an obligation that, until today, was simply a requirement in the field of taxpayer duties, however, the RFC is the cause of the majority of the above referenced problems.





THE NEW RFC.

The certification of maquila companies for Added Value Tax (“IVA”) shall greatly depend on its approval regarding the requirements of the new RFC. Refunds and compensations shall also have to flow by the RFC and practical problems generated by constant reviews must be resolved.

As of May of 2014, the tax authorities decided that taxpayers in the country, that until today had registered their address before the RFC, could not be considered as being in compliance with their tax obligations because of simply notifying the tax authorities pursuant to the provisions under article 27 of the Federal Tax Code, as the RFC shall have additional authority.

VALIDATION AND GRADING BY THE RFC

It shall be until the SAT validates and grades the address and operations when all the information shall be considered as valid. The SAT considers that it is necessary to comply with 15 requirements in order to consider that the RFC has sufficient elements to “release” the taxpayer. We must remember that this “release” shall have the effect of stopping audits, accelerating refunds and compensations and generally less pressure on the taxpayer.

REPOSITIONING.

Articles 10 and 27 under the Federal Tax Code, binds taxpayers to state the address where the company is located or where the company's activity is carried out, however, until it is not "validated and graded" by the SAT, the address shall not be considered proper until the repositioning procedure is carried out and until such time, the taxpayer shall be considered as in compliance. We must recall that as of this date, mere verification of the address as located shall not suffice for it to be considered as validated and under the authority of the RFC with the same administrative burden of the above referenced issues.

GPS AND 360° VISION.

Actually, in order to secure release from the RFC, in addition to the "re-positioning" it shall be necessary to pass the test with a GPS locator, which is nothing more than the taxpayer's geographical information controlled by the SAT. If these two tests are passed, compliance of the integral view 360 degrees program shall be required that cross references all types of information from various sources.

We should recall that the tax authorities qualifies taxpayers as low, medium or high risk and many of the audits or enforcement actions, issues regarding refunds, determining tax assessments, rejecting deductions, among others are a result of this risk qualification. Pursuant to the above, the taxpayer must comply strictly with these requirements in order to prove to the authorities that such taxpayer fully complies with its tax obligations, in order to clearly distinguish itself from taxpayers who are delinquent, evasive or who simulate transactions as set forth under the applicable legal framework.

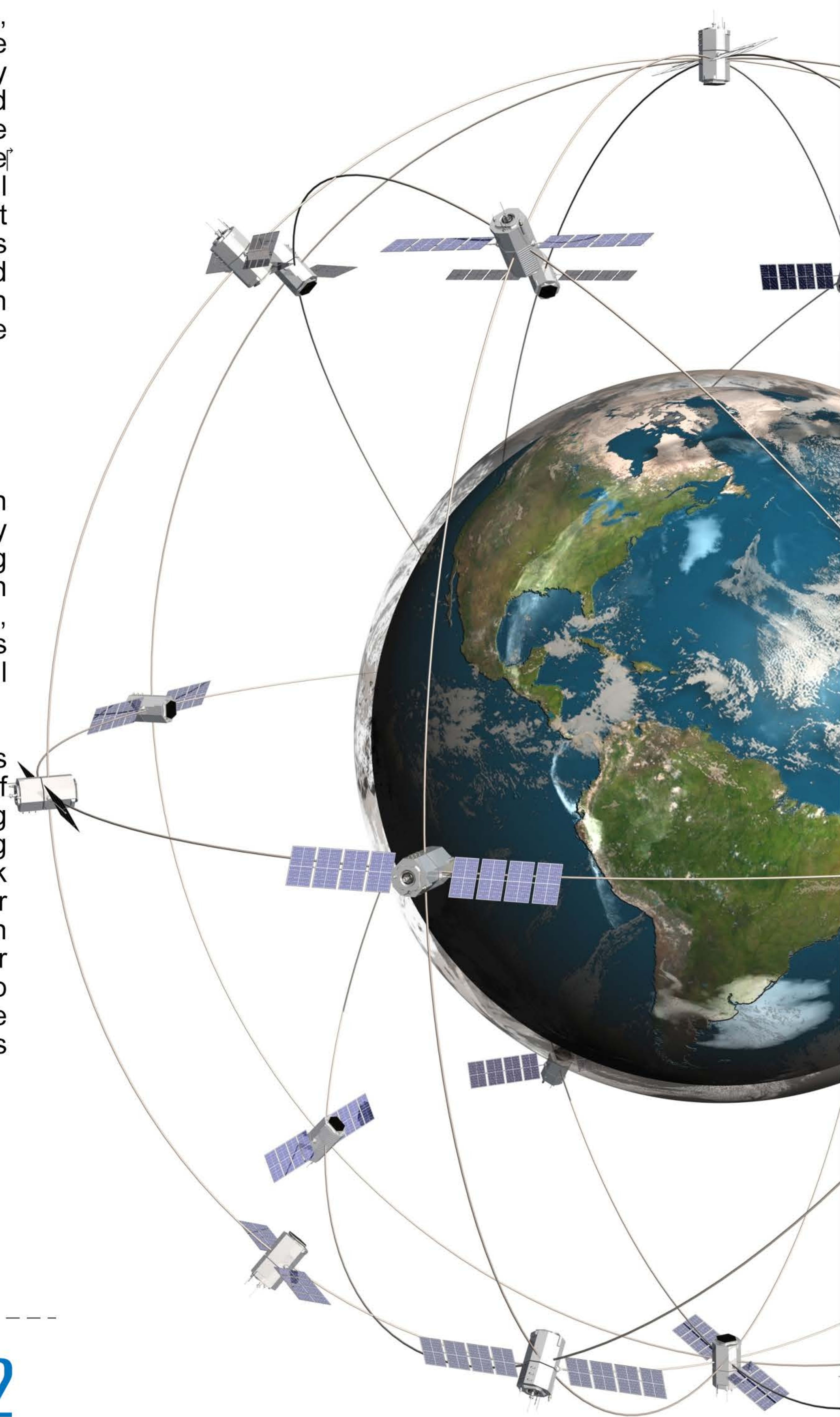
Taxpayers Shall Face Greater Pressure

1 Taxpayers that have more than one entity or individual registered at the same address.

Companies or individuals that have their physical operations elsewhere or have stated a different tax address.

3 Companies that have accountants' or lawyers' offices or other virtual offices as their tax address.

Companies that have been denied a refund or compensation during the last 5 fiscal years.





5

Companies that have a tax address where no income is generated and even if other revenue generating branches or locations are registered elsewhere.

14

Companies whose operations transforms into another enterprise, in other words, closing and creating another company with the purpose of evading their tax obligations using the same shareholders, activities or tax address.

6

If the companies have received a foreign trade audit and any asset has been encumbered or a tax assessment determined over such assets.

7

Companies or individuals that have definitive or unsecured tax assessments.

16

Taxpayers that have their company address where the activities set forth under the corporate purpose cannot be carried out.

8

Companies or individuals who are not up to date on their tax returns

9

Companies that simulate their transactions with desks and computers but do not have an actual operation.

18

Companies that use multi-company schemes, in other words, corporate groups that have various entities at the same address.

10

Companies that do not have personnel and physically carry out transactions that require employees.

11

Companies that lack infrastructure, assets and issue invoices.

18

Companies that use buildings for the operations, using the majority of the building but that have only registered one floor or one office within such building.

12

When the lack any concept set forth under article 69 B of the Federal Tax Code.

13

Companies or individuals that have contracted warehouse storage with third parties to store their wares.

20

Taxpayers that simulate transactions or contracts or dilapidate their assets upon request for compliance of their tax obligations from tax authorities.

15

Taxpayers with unverified locations or hide their address in the United States with the intent to evade their tax obligations.

17

Companies that operate as related parties or have contracts with public sector entities, either by way of government contracts or direct services providers.

19

RECOMMENDATIONS

Comply with tax obligations, it is the responsibility of all taxpayers. If compliance of such obligations generates a decrease of tax enforcement pressure, these changes should be welcomed.

Preventive measures have become a company's and taxpayer's duty, that should be satisfied responsibly, for the greater development of the country. Complying implies not only being responsible on a day to day basis, but getting ahead of changes and modifications to the benefit of the company's efficiency. For such purposes, it

is convenient to carry out a corporate tax related diagnosis in order for the tax address to be properly qualified by the RFC, complying with all requirements of the "re-positioning" and updating the geographic location and 360 degree SAT system.

The above, shall allow your organization to be classified as compliant (low risk) and may enjoy all the benefits offered by the tax authorities for properly satisfying its tax obligations.

FOR MORE INFORMATION PLEASE CONTACT US

Lic. Iván Argote
Manager Legal Practice
argotei@grupofarias.com

MD. Isabel Rodríguez
Corporative Risk Practice
rodriguezi@grupofarias.com

Lic. Estela de León
Senior Attorney
deleone@grupofarias.com

Dr. Adolfo Solís
Partner Tax Litigation Practice
adolfos@grupofarias.com

Lic. A. Valentina Monjarás
Senior Attorney
monjarasa@grupofarias.com

The information contained in this newsletter, has the purpose of generating spontaneous and punctual compliance of taxpayer obligations. Its content does not imply any obligations to the reader and does not imply any opinion from the tax authorities, it only seeks to provide the taxpayer with information with the purpose of generating better decisions. Its execution must always take into consideration the opinion and advice of tax experts and professionals an analyze each specific situation. Nobody should make decisions based on the content of this newsletter and this newsletter should not be deemed as a guide for tax obligations compliance.