

Refunds of recoverable VAT balances generated on fixed asset investment projects

On September 25, 2014, the Fifth Resolution of Amendments to the Miscellaneous Tax Resolution for 2014 was published on the Tax Administration Service (SAT) website.

This resolution includes, among others, a new rule related to VAT refunds, which is described as follows:

1. Refunds of recoverable VAT balances generated on fixed asset investment projects

Rule **I.4.1.9** establishes that taxpayers that engage in fixed asset investment projects consisting of purchasing or manufacturing goods (including the provision of services or the granting of the temporary use or enjoyment of goods related to the purchase or manufacturing of goods) may obtain the rulings on their refund claims for recoverable VAT balances generated on such investments within a maximum period of 20 business days, provided that:

- I. The creditable VAT on the referred investments represents at least 50% of the total creditable VAT reported by the taxpayer
- II. The recoverable balance requested exceeds MXN 1,000,000.



III. The acquired assets correspond to new acquired goods or goods imported permanently, starting January 2014, meaning as new goods those defined as used for the first time in Mexico

IV. All the purchases in question have been paid for check, credit card, debit card, charge card or wire transfer

The resolution also establishes that the refund request must be filed through the electronic refund request form (FED) and using process form 178/CFF "Request for the Refund of Recoverable VAT balances generated on fixed asset investment projects" contained in Exhibit 1-A.

Exhibit 1-A includes a list of information that must be attached to the refund request including, among others, the following:

- The taxpayer's statement of financial position of the immediately prior year or the most recent monthly period reported on
- Accounting recognition and documentation supporting the investments and demonstrating the taxpayer's legal ownership of the goods
- Official documentation supporting the concession or authorization received from the corresponding administrative authorities
- Documentation supporting that the investment was made in fixed assets that will be used in activities that are subject to the payment of VAT or, when applicable, that it will be used to perform activities that are partially taxed and include an estimate of the taxable portion
- An estimate of the recoverable balances that will be generated
- Freely written document signed by the taxpayer's legal representative
- The investment project containing:
 - i. General description of the project;
 - ii. Estimate of the total amount to be invested in the project from beginning to end;
 - iii. Sources and terms and conditions of financing with the corresponding working papers and accounting records;
 - iv. Blueprints for physical locations;
 - v. Information on the suppliers involved in the project and that represent at least 70% of the creditable VAT;
 - vi. In the case of construction projects, the construction notice granted by the IMSS must also be included.

The first refund request filed by the taxpayer will be resolved within the regular term of 40 business days and subsequent requests will be resolved within a term of 20 business days. Also, prior to filing their first request, taxpayers may ask the tax authorities for an advance review of the information and documentation they have at that time.

The benefit referred to in this rule shall not apply when:

- a) Information on the taxpayer requesting the refund is published on the SAT website as provided for under articles 69 and 69-B of the Federal Tax Code (FTC);
- b) The tax receipts supporting the refund request were issued by taxpayers included in the publication or the list of taxpayers set forth in articles 69 and 69-B of the FTC;
- c) The certificates issued by the SAT were cancelled during the period to which the refund request corresponds;
- d) It is detected that a partner, shareholder or legal representative of a corporate entity (or that previously formed part of a corporate entity) has received notice that it has issued tax receipts without the ability to provide the services, or to produce, sell or deliver the products for which the receipts were issued, as set forth in article 69-B of the FTC;
- e) In the preceding 12 months the taxpayer has received rulings in which refund requests were rejected in full or in part and the amount of the rejected refunds exceeds MXN 5,000,000 or more than 20% of the amount of VAT being claimed;
- f) The taxpayer requesting the refund, its suppliers and third parties with which the supplier engages in transactions, and which generate 90% of the creditable VAT in question, have not filed an information return on third party transactions (DIOT), or the DIOTs for the period corresponding to the refund request have been filed either incompletely or with inconsistencies.

In the case of VAT on transactions between related parties or group companies the taxpayer must provide proof of the payment, remittance or crediting of the VAT passed on in such transactions.

This administrative benefit shall be applicable through completion of the investment project as long as the taxpayer continues to comply with the related eligibility requirements.

Effective date

This Resolution comes into effect on the date of its publication in the *Official Gazette*.

It is important to mention that the resolution as currently issued is still a draft and it is therefore necessary to wait for the official publication of the resolution in the *Official Gazette* to know the final rules applicable in this regard.

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