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MOVING INTO THE DIGITAL ERA: RELEVANT REFORMS TO THE MEXICAN FEDERAL TAX CODE ARTICLE 18

*David Moussali Cole**

ON June 28, 2006, the Federal Tax Code of Mexico¹ (FTC) underwent a number of reforms after publication of the decree of reforms to the Federal Tax Code in the Official Journal of the Federation (*Diario Oficial de la Federación*). The importance of the changes made to the Tax Code is fundamental since the tax system in Mexico is evolving into a new era. In the future all the procedures with the Tax Administration Service of Mexico (SAT), also known as the *Servicio de Administración Tributaria*, will be done through digital documents, instead of paper documents. Another important reform to the FTC was that Title VI of the Tax Code related to the contentious administrative trial was derogated and was incorporated into a new law—the Federal Law of the Contentious Administrative Procedure, which was published in the Official Journal of the Federation on December 1, 2005.

This article will concentrate on article 18 of the FTC, which relates to writs presented upon the Tax Authorities. Article 18 underwent some changes with the recent reform to the fiscal code.

The SAT has made a great effort to make the taxation system in Mexico take a great leap into the future by passing from the paper era to the digital era with respect to Tax Authority documents. This is especially true with respect to writs presented upon the SAT which are regulated in article 18 of the FTC.

The first paragraph of article 18 of the FTC used to require every writ presented to the Tax Authorities be signed by the interested party or by any person who is legally authorized to do it, unless the person who completed the petition does not know or cannot sign, then a fingerprint will suffice. But, the new article 18 of the FTC requires all promotions made upon the Tax Authorities to be presented in a digital document that contains the advanced electronic signature of the interested person. The

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1. Código Fiscal de la Federación [C.F.F.] [Federal Tax Code], *as amended*, Diario Oficial de la Federación [D.O.], 30 de Diciembre de 1980 (Mex.).

mentioned paragraph makes an exception to the taxpayers that are exclusively dedicated to agriculture, cattle herding, fishing or lumber activities, by referring them to article 31 of the FTC because of a legislative error. In reality, there is no exception to the rule since the actual article 31 does not make an exception for anyone to make promotions in a different way. The first paragraph of article 18 also says that the SAT will determine which promotions will be presented in a printed document through the publication of general rules.

This change is a giant step for a developing economy, such as Mexico, because legal systems in Latin America have their roots in continental European law², especially in the Napoleonic Code, which provides that the legal process must be followed by the presentation of written legal documents upon the authorities³. This shift in the Tax Code demonstrates a huge move into the future for legal processes set upon the administrative authorities of Mexico. The change was made in order to give the SAT a more efficient way to maneuver its matters. Since all the documents will be digitalized, it will be easier for such documents to arrive at the destination to which they were sent, and it will permit various public officials to access the documents from a database instead of filing a request for documents with another part of the administrative body of the institution.

The second paragraph of the former article 18 of the FTC established that all writs should be presented in the forms that the Ministry of Finance and Public Credit had approved in the number of copies that the official form required and should accompany the promotion with all the attachments that may be require. It also established that when there were not any approved forms, the document should be presented with the number of copies that the tax authorities indicated and must have certain requirements.

In the second paragraph of article 18 of the FTC in the new Code, it is established that it is not necessary anymore to present the writs in a printed document. Now the taxpayers must send the writs in an electronic way via the Internet to the email accounts that are approved by the SAT. Although, the writs now need to be made in a digital document, they still have to fulfill similar requirements as the ones previously established in the Code.

To be accepted by the Tax Administration, legal writs must still meet certain requirements. The former legislation used to require that the documents had to be written, have the name of the person or the entity, including its fiscal domicile and its tax identification number; indicate the authority to which the writ is directed to and purpose of the promotion; it had to designate a domicile to receive notifications and the name of the persons who are authorized to receive them. The new legislation has

2. HUGO CARRASCO IRIARTE, 1 *DERECHO FISCAL (TAX LAW)* (Iure ed., 5th ed. 2005).

3. FERNANDO SAINZ BUJANDA, 1 *NOTAS DE DERECHO FINANCIERO [NOTES ON FINANCIAL LAW]* 3 (1973).

made a relevant change by failing to mention that the writs must be presented in a written document, meaning that they must not be presented in paper, and instead of soliciting a domicile necessary for notifications and people authorized to receive them it has made a bold move in to the digital era by requiring the writs or promotions to have an email address to receive notifications.

Both the old and the new legislations establish penalties in case the writs do not fulfill the requirements indicated by the FTC. The most relevant penalty being is that the writ will be considered as if it were not presented. The old version of article 18 used to say that if any of the requirements was not met by the legal documents presented, the tax authorities will require the person that presented the writ to comply with the requirements in a period of ten days. It also mentioned that in case the writ was not presented in the approved form that was necessary, the tax authorities will accompany the summons it has emitted with the respective forms and in the number that is necessary. But, the new legislation establishes that in the case that the interested party does not put its name (person or entity), tax domicile, tax identification number, the authority to whom it is directed to or the purpose of the writ, the tax authorities must send a summons that must be answered within ten days, and if the taxpayer does not list an email address to receive notifications, the promotion will be considered as if it were never presented upon the tax authorities. It is also important to note that whenever the article, both in the old and new versions, establishes that the summons must be answered within a legal term and it is not answered, the writ is considered as if it were never presented upon the administrative authority.

The new version of article 18 of the FTC also mentions that notarized deeds and powers must be presented in a digital document when they are accompanied with a digital writ. In the case where the interested party has a certificate of an advanced electronic signature and accompanies his promotion with different documents to notarized deeds or powers, and these are not digitalized, the promotion must be presented in a printed document fulfilling all the requirements mentioned in the article. The article also emphasizes that the written document must have the email address of the person who presents such document.

It is important to mention that the new provisions concerning article 8 of the FTC are not in force in the present due to article 2 of the Transitory Dispositions of the Federal Tax Code—the decree by which various dispositions of the Federal Tax Code are reformed, added and derogated—that was published in the Official Journal of the Federation on January 5, 2004. Article 2 of the Transitory Dispositions mentioned establishes that the provisions in article 18 of the Federal Tax Code will enter into force until the SAT dictates the writs that must be presented by electronic means and the writs that must be presented using printed documents.

With these types of reforms, one of the most important developing economies in the world is at the vanguard of technology in relation to public administration services, such as the ones being provided by the SAT. With this type of reforms, such as the one made to article 18 of the FTC, the Mexican Government is seeking to give taxpayers a more efficient and effective service in relation to taxes.

Digital technology reforms bring about a better and more transparent service to the people because they no longer need to stand in huge lines at the offices of the tax authorities, and they also ensure their transaction was completed, since they can trace the movements of money they make to pay taxes through the websites of banks that allow taxpayers to fulfill their duties of the Mexican State. The reform to article 18 of the FTC is a great example of how the Mexican Government is seeking to have a more effective tax system.

In conclusion, by implementing digital technology solutions to tax problems countries can help the taxpayers fulfill their tax obligations in an easier manner and with less expense. This great step Mexico has taken by reforming article 18 of the FTC has brought about a technological revolution by replacing paper documents with digital documents. The changes that seek to be implemented in the Mexican tax system are a development of the recent changes the tax system has been receiving because it is now common for people to pay their taxes by transferring money through wire transfers to the SAT. Another public policy implemented by the SAT is to have offices assisting taxpayers in the case that they do not have the means to pay their fiscal obligations in an electronic way. The reform to article 18 of the FTC was a great decision in order to bring about a new revolution within the Mexican tax system and it will help Mexico provide the taxpayers with a great service comparable to the services given by tax administrations in developed countries.