

GRUPO FARIÁS®

TAX ATTORNEYS

# ELECTRONIC ACCOUNTING

2015 RULES FOR AMPARO  
(HABEAS CORPUS)



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The telematized, automated, and electronic systems that have been implemented by the Mexican Tax Administration (SAT, abbreviation in Spanish), exist for the purpose of having more control and surveillance of the taxpayer in his or her daily fiscal operations. Implementation in Mexico of electronic accounting is not original, i.e. Mexico was not the country that designed this tool, but the Inter-American Center for Tax Administrations (CIAT) had already made clear the need to implement in Latin America the so-called "fiscal cyberadministration," since in Europe and Asia, including south region of Africa, great progress has been made with this model.

The model of fiscal cyberadministration generated great expectations in Mexico almost a decade ago, and the first change to come was on January 5, 2004, when it was incorporated under Title I of the Tax Code, in a chapter called "electronic media." From that point the so-called tax e-government was carried into the business sector, telematizing its operations in three phases. The first, where all tax returns began to be sent by the web, eliminating physical submission in financial institutions. The second, incorporating digital means for sending tax returns, notices, written documents, and even defenses, electronically. In this phase electronic invoicing was included, already seen as an information exchange tool, adequate for SAT systems. Finally, the third phase that integrated this group was obtained with electronic accounting, which, after 2014, was joined together with the new powers of article 42, fraction IX of the Tax Code of the

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Federation (electronic fiscalization) and the tool to achieve this end (tax mailbox) 17K Tax Code of the Federation (CFF).

The implementation of this new mode, called "electronic accounting system," has already raised concerns because of the fact that individuals (personas físicas) and companies (personas morales) have to disclose their confidential information, which generated an alert beginning in 2015, due to the rule 2.8.1.4 of miscellaneous resolution 2015, published on December 30, 2014, which no longer contains amounts exempted from this obligation or relief to individuals as was estimated for 2016. In point of fact, the only parties relieved or deferred are: fiscal incorporation, which is taxed under Chapter III of Title IV; those of article 100, fraction II, both groups under the Income Tax Law; as well as the bond issuers who have a special timetable; and agricultural, forestry, livestock, or fishing activities with tax obligations under Title II, Chapter VIII of the Income Tax (ISR) Law, where interim payments of ISR were chosen to be made semiannually, also have a special period.

We should recall that the article creating the obligation to transmit accounting was in effect from July 1 of 2014 — 28, fraction III and IV of the CFF —, this is obtained from the forty third article of the miscellaneous tax resolution 2014, published on December 30, 2013, and from the second transitory article, fraction III of the Tax Code of the Federation (CFF) which stipulates (the first) "the provisions of article 28 fractions III and IV of the CFF, will be met from July 1, 2014" and with respect to the second precept states: "With regard to the provisions of article 28, fractions III and IV of the Tax Code of the Federation, the Rules of the Code and the general dispositions issued by the Tax Administration Service should provide for an entry into force by phased introduction of the obligations therein set forth,



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requiring a differentiation between different classes of taxpayers and considering the technological coverage in different regions of the country, starting with taxpayers with simplified accounting." We must not forget that in the second amendment to the Fiscal Miscellaneous Resolution 2014, it is stated in transitory article thirteen "that the provisions of rules 1.2.8.7 and 1.2.8.8, will be applicable for companies as of July 2014"; the rule 1.2.8.7 is that which is linked to article 28, fractions III and IV CFF, although this obligation was overcome with the new miscellaneous [resolution] 2015.

Although these rules were modified by subsequent amendments to the miscellaneous [resolutions], many taxpayers sought amparo (habeas corpus) from the District judges in their locality. If you are in this first group which appealed by self-executing form the standard for electronic accounting (first opportunity for amparo), our recommendation is to simply wait

to continue the process in Distrito Federal (DF), because there are the courts that handle this type of amparo (habeas corpus), and not worry about sending electronic accounting, because with the jurisprudence of the Second Chamber of the Supreme Court last November 27, 2014, within the procedure 277/2014, the sending is suspended for those who have the stay of the judgment. If you already processed the amparo (habeas corpus) and logically the suspension, but the judges in your area did not grant the suspension, you should not worry, because the suspension will be presented anew in order to apply the jurisprudence of our highest court and from 2015 forward you should not send the information denominated electronic accounting (account charts, trial balance, policies or auxiliary). Please note that there is an agreement of the Council of the Federal Judiciary whereby the emission of suspensions is suspended until the upper bodies of the country, in full, resolve the issue.

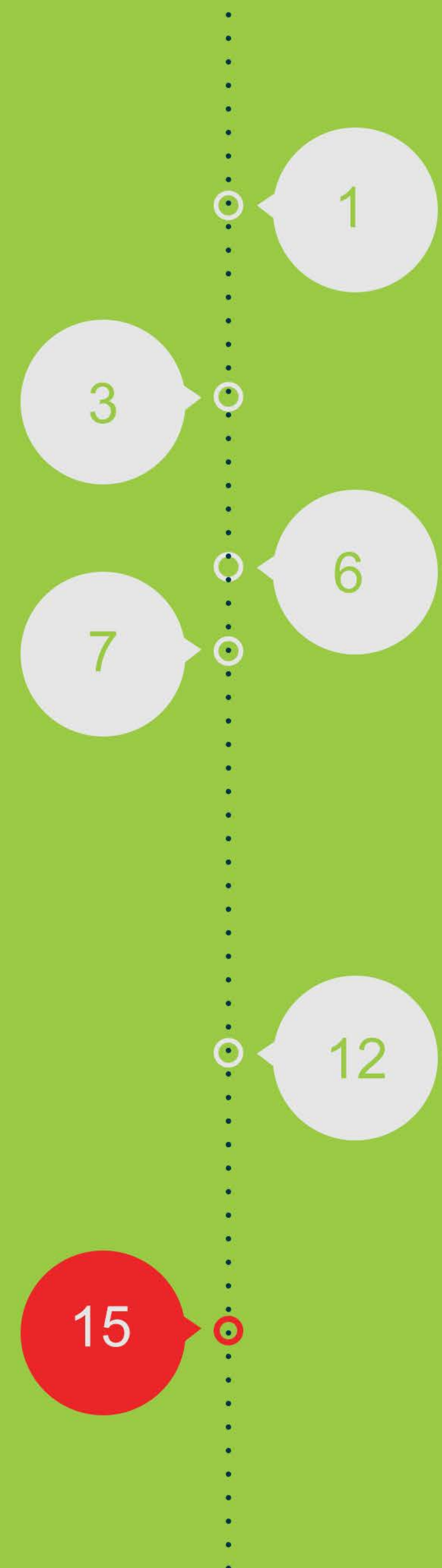


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If you did not already claim amparo (habeas corpus), but now want to do so or have already contracted our services, then, your amparo (habeas corpus) is called "other-executing." Remember that the first was called self-executing, but in reality nothing changes in content, but the appropriateness of the procedure, which we will watch diligently. This indirect amparo (habeas corpus) called other-executing requires the direct realization of the standard as a condition of submission. At the time you make the first submission of information by any means (web, tax mailbox, writing) either complete or incomplete, then, the standard has entered into its juridical field and from there you have only 15 days to seek amparo (habeas corpus). If you have already contracted our services, we recommend your waiting for our lawyers to contact you and guide you individually so that they indicate to you when and how in 2015 you should submit the information; but if you are going to contract us, then you must be very careful in this condition because in case of sending by mistake, accident, good faith or fear, without communicating it to our lawyers, you could lose the unique opportunity to claim the standard, if the time of 15 days is exceeded.

Remember that the indirect amparo (habeas corpus) is not an action against SAT or a particular act, but at the standard created by the legislature which is unconstitutional, and therefore, does not pose any risk from the tax authorities.



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Finally we remind those who enter the method of other-executing amparo (habeas corpus) on next February and before the 3rd or 5th of March, be they individuals or companies, should consider that the sending of accounting shall be suspended, but the obligation to maintain electronic accounting has no variations, because as said, some obligations are already in force since last April 3, 2014 (33, parts A and B and 34), the day after the rules of the Fiscal Code were published in the Official Gazette and others were created with the entering into effect of article 28, fractions III and IV of the Tax Code on July 1 of that same year.

If you are concerned about sending to SAT the information from volumetric controls, we invite you to see our newsletter specializing in that branch.



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