

CERTIFICATION TO AVOID VAT ON TEMPORARY IMPORTS

5.2.13. For purposes of Articles 28-A first paragraph of the Value Added Tax Law and 15-A first paragraph of the Special Production and Services Tax Law, companies that are current in their tax and customs compliance may obtain the VAT and SPST certification to which the aforesaid articles refer, under types A, AA and AAA, provided that they:

I. Enter and complete, in the Digital Window, the "Request for Certification for VAT and SPST Purposes" at the website www.ventanillaunica.gob.mx, in accordance with the instructions to register certified companies for VAT and SPST purposes.

II. Have the inventory control pursuant to the provisions prescribed by the SAT.

III. Submit the positive opinion on the filer's tax compliance set forth in Article 32-D of the Code and the Miscellaneous Tax Rules, issued within 30 days prior to the filing date of the request, as well as that of the partners, shareholders, legal representative, sole administrator or members of the board of management, as the case may be.

IV. Are not listed, upon filing the request, on the list of companies published by the SAT pursuant to Articles 69 and 69-B, third paragraph of the Code, except as provided in section VI of said Article 69.

V. Have current digital stamp certificates and have not been shown to have violated any of the provisions of Article 17-H, section X of the Code during the last 12 months.

VI. Submit the records for all personnel registered with the Mexican Social Security Institute (IMSS) and provide the supporting documentation of the payment of employer-employee contributions to the IMSS for at least 10 employees, using the input code for the last two-month period of the immediately preceding tax year, with the payment receipt issued by the referenced deposit system (SIPARE); and in the case of subcontracted workers under Article 15-A of the Federal Labor Law, they must evidence that the companies have the positive opinion of tax compliance under Article 32-D of the Code and the Miscellaneous Tax Rules, issued within 30 days prior to the filing date of the request, and evidence that they fulfill the obligation to withhold and submit the employees' income tax.

VII. Enclose, as indicated in the instructions, documents evidencing the investment in national territory.

VIII. Report on the "Request for Certification for VAT and SPST Purposes" the name and address of foreign clients and suppliers with which they carried out foreign trade operations in the immediately preceding tax year.

IX. Allow personnel of the General Foreign Trade Audit Administration (AGACE) access at all times to conduct the initial inspection visit, the compliance verification visits, and to comply with the parameters of the customs regime in which foreign trade operations are carried out.

The following must be observed, in addition to the foregoing requirements:

I. For purposes of taxpayers operating under the temporary import regime with an IMMEX program authorized by the Ministry of Economy (SE), the following

requirements must also be met:

- a)** To have a current program as of the date of the request.
- b)** To have registered with the SAT all domiciles or establishments in which activities associated with the maquila or export program are carried out.
- c)** To have the necessary infrastructure to carry out IMMEX program operations, the industrial process or service according to the program type, for which the customs authority may conduct inspections at any time at the domiciles or establishments where operations are undertaken.
- d)** To evidence that, during the last 12 months, the value of merchandise processed and returned during such period represents at least 60% of the value of temporary imports of components during the same period.
- e)** To evidence that the company is legally entitled to use or enjoy the site or sites where the production processes or performance of services is carried out, as applicable, for a term of at least one year from the filing date of the request.
- f)** To describe the activities relating to the production processes or performance of services according to the program type, describing the process from arrival of the merchandise, storage, the production process and return, attaching photographs, according to the instructions of this rule.
- g)** To evidence that the company has a maquila contract, purchase agreement, purchase or service order, or currently firm orders evidencing the continuity of the export project. For companies that request an IMMEX program from the SE for the first time, or that have been operating for less than one year, the program shall not be subject to the requirements set forth in subsection d), except in the case of the companies indicated in the following paragraph.

In addition, companies that temporarily import and return merchandise under the tariff sections listed in Annex I TER of the IMMEX Decree, or under the tariff sections listed in Annex 28 of these Rules, when allocated to the manufacturing of goods in the garment sector classified under Chapters 61 and 63 and tariff section 9404.90.99 of the General Import Tax Tariff Schedule (TIGIE), or allocated to the manufacturing of goods in the footwear sector under Chapter 64 of the TIGIE, must comply with the following requirements and enclose the supporting documentation:

- a)** To have undertaken operations under the IMMEX program for at least 12 months prior to the request.
- b)** To evidence that during the last 12 months, the value of merchandise processed and returned during such period represents at least 80% of the value of temporary imports of components during the same period.
- c)** Submit the records for all personnel registered with the IMSS and provide the supporting documentation of the payment of employer-employee contributions to the IMSS, using the input code for three two-month periods of the immediately preceding tax year, with the payment receipt issued by SIPARE for at least 20 employee, in addition to those set forth in section VI of the general requirements.
- d)** The partners and shareholders, legal representative, sole administrator or members of the board of management of the company must evidence that on their annual returns for the two tax years prior to the request they reported taxable income for the tax authority for income tax purposes.
- e)** To list the carriers and bonded warehouses, if any, with which foreign trade operations

are carried out.

f) To have minimum fixed capital stock, or as applicable machinery and equipment, of at least 4 million pesos.

II. Taxpayers operating in the tax deposit regime for vehicle assembly and manufacturing must also:

a) Have a current authorization and not be subject to a cancellation procedure.

b) Adequately meet the requirements of Rule 4.5.30.

III. Taxpayers operating under the regime for the manufacturing, processing or repair in a bonded warehouse or strategic bonded warehouse must:

a) Have a current authorization and not be subject to a cancellation procedure.

b) Comply with the guidelines determined by the customs authorities for the control, oversight and security of the warehouse and the foreign trade merchandise.

Taxpayers that meet the aforesaid requirements shall be registered and active under type A, while those seeking the benefits established for types AA or AAA must evidence the following requirements on the form prescribed for such purpose:

Under the AA type, companies that also evidence the following may be certified:

I. At least 40% of the value of their operations undertaken in national territory, with respect to their primary activity in the immediately preceding tax year, were with suppliers that as of the filing date of the request have the positive opinion on tax compliance provided in Article 32-D of the Code and the Miscellaneous Tax Rules, issued within 30 days prior to the filing date of the request, and as of the request filing date they are not listed in the publications referenced in Articles 17-H, section X, 69 except for section VI, and 69-B, third paragraph of the Code.

II. During the last five years or more, they have carried out operations under the regime for which the VAT and SPST certification is sought, or during the immediately preceding tax year they had an average of 1,000 employees registered with the IMSS, or their machinery and equipment is above 50,000,000 pesos.

III. No deficiency has been determined by the SAT in the last 24 months before the filing date of the request or they evidence being subject to the proceeding set forth in the third to last paragraph of this rule, or the payment has been made, as the case may be.

IV. No ruling denying a VAT refund request has been issued in the last 12 months from the filing date of the corresponding certification request.

Under type AAA, companies that evidence, in addition to those provided for the type A certification, that:

I. At least 70% of the value of their operations undertaken in national territory, with respect to their primary activity in the immediately preceding tax year, were with suppliers that as of the filing date of the request have the positive opinion on tax compliance provided in Article 32-D of the Code and the Miscellaneous Tax Rules, issued within 30 days prior to the filing date of the request, and as of the request filing date they are not listed in the publications referenced in Articles 17-H, section X, 69 except for section VI, and 69-B, third paragraph of the Code.

II. During the last seven years or more, they have carried out operations under the regime for which the VAT and SPST certification is sought, or during the immediately preceding tax year they had an average of 2,500 employees registered with the IMSS, or their machinery and equipment is above 100,000,000 pesos.

III. No deficiency has been determined by the SAT in the last 24 months before the filing

date of the request or they evidence being subject to the proceeding set forth in the third to last paragraph of this rule, or the payment has been made, as the case may be.

IV. No ruling denying a VAT refund request has been issued in the last 12 months from the filing date of the corresponding certification request.

Companies that intend to file for types AA and AAA and that have tax deficiencies pending payment may seek the certification provided that they request the deferred installment payment authorization for unpaid taxes and additions to tax, without the term exceeding 12 months from the authorization granted by the SAT.

The Central Foreign Trade Legal Affairs Administration (ACALCE) shall rule on the certification request in a period of 40 days from the day following the date entered on the acknowledgement generated by the electronic customs system. In the case that the customs authority finds that any requirement is missing, it shall electronically request the filer, one time only, to provide the missing information or documentation, for which the taxpayer shall have a period of 15 days to attend to the requirement; otherwise, the request shall be deemed withdrawn.

The 40-day period shall be computed from the time that all of the aforesaid requirements are met. After such period, if no ruling is entered, the ruling shall be deemed unfavorable. If an inspection finds that the taxpayer does not have the necessary controls to carry out its production processes or services, a new request cannot be sought during six months after the respective ruling is issued.

5.2.14. Companies that obtain the certification for VAT and SPST purposes, type A, shall have the following benefits:

I. Tax credit in operations allocated to the customs regime for temporary importation for manufacturing, processing or repair in maquila or export programs; tax deposit for vehicle assembly and manufacturing; manufacturing, processing or repair in bonded warehouses and strategic bonded warehouses, pursuant to Annex 22.

II. VAT refund in a period not to exceed 20 days from the day following the filing date of the respective request, pursuant to Article 22 of the Code.

III. The term of the certification shall be for 1 year.

Moreover, persons who obtain the certification for VAT and SPST purposes, type AA, in addition to the benefits of type A, shall have the following benefits:

I. VAT refund in a period of not more than 15 days from the day following the filing date of the respective request, pursuant to Article 22 of the Code.

II. If, before the authority exercises its inspection powers, the taxpayer appears before the ACALCE and files a statement describing the irregularities found, determining any unpaid taxes or fees, the authority shall grant a period of 30 days to correct its situation pursuant to the legal provisions, in accordance with Article 73 of the Code. After said period, if the taxpayer has not exercised this right, the authority shall proceed with its inspection powers.

III. When the customs authority, before exercising its inspection powers, detects an alleged failure to pay taxes and fees on foreign trade operations, it shall notify the taxpayer through an invitation letter. If the taxpayer does not attend to the invitation or does not remedy all irregularities indicated in the term granted by the authority, it may begin to exercise its inspection powers at any time.

IV. In the case that the customs authority learns that the causes for suspension in the roster of specific importers and exporters set forth in Rule 1.3.3 of this Ruling have

occurred, it shall follow the respective procedure, regardless of the section at issue.

V. The term of the certification shall be two years, which shall be renewed automatically, provided that a renewal notice is filed within 30 days before the term expires and the taxpayer continues to comply with the registration requirements and obligations set forth in Rule 5.2.16.

Companies obtaining the certification under type AAA shall have the following benefits:

I. Tax credit in operations allocated to the customs regime for temporary importation for manufacturing, processing or repair in maquila or export programs; tax deposit for vehicle assembly and manufacturing; manufacturing, processing or repair in bonded warehouses and strategic bonded warehouses, pursuant to Annex 22.

II. VAT refund in a period of not more than 10 days from the day following the filing date of the respective request, pursuant to Article 22 of the Code.

III. If, before the authority exercises its inspection powers, the taxpayer appears before the ACALCE and files a statement describing the irregularities found, determining any unpaid taxes or fees, the authority shall grant a period of 60 days to correct its situation pursuant to the legal provisions, in accordance with Article 73 of the Code. After said period, if the taxpayer has not exercised this right, the authority shall proceed with its inspection powers.

IV. When the customs authority, before exercising its inspection powers, detects an alleged failure to pay taxes and fees on foreign trade operations, it shall notify the taxpayer through an invitation letter. If the taxpayer does not attend to the invitation or does not remedy all irregularities indicated in the term granted by the authority, it may begin to exercise its inspection powers at any time.

V. In the case that the customs authority learns that the causes for suspension in the roster of specific importers and exporters set forth in Rule 1.3.3 of this Ruling have occurred, it shall follow the respective procedure, regardless of the section at issue.

VI. Monthly consolidated declarations may be filed.

VII. With respect to Articles 59, section I, 185-A and 185-B of the Law, Rule 4.3.2 and Annex 24, they may evidence compliance with such obligation provided that they have an inventory control reflecting the allocation, applications and balances of raw materials, to be sent as prescribed by the SAT.

VIII. They may undertake the customs clearance of merchandise for temporary importation, without declaring or sending the serial numbers on the declaration, electronic document, invoice, shipping document or attached list, provided that they keep an updated record of such information in the inventory control system that generates the automatic reports requested by the authority.

IX. They may elect the customs clearance for export at their domiciles, provided that they meet the guidelines issued for such purpose by the General Customs Administration (AGA), as published at the website www.aduanas.gob.mx.

X. The term of the certification shall be 3 years, which may be renewed automatically, provided that a renewal notice is filed within 30 days before the term expires and the taxpayer continues to comply with the registration requirements and obligations set forth in Rule 5.2.16.

5.2.15. Companies that have obtained the certification pursuant to Rule 5.2.13 may request the renewal within 30 days prior to the expiration of the term, provided that they evidence that they continue to meet the registration requirements for the type in question

and the obligations set forth in Rule 5.2.16. They must enter the "Request for Renewal of the Certification for VAT and SPST Purposes" at the Digital Window, and the ACALCE shall rule on the renewal request in a period of 20 days from the day following the date entered on the acknowledgment generated by the electronic customs system. The notice shall be subject to the provisions of the electronic notice chapter of the Law. After such period, if not ruling is entered, the respective ruling shall be deemed favorable.

In the case that the customs authority detects the failure to meet any requirement, it shall request the missing information or documentation one time only, which the filer shall have a period of 15 days to address; otherwise, the request shall be deemed withdrawn.

The 20-day term for the ACALCE to rule on the request shall be computed from the date on which all of the aforesaid requirements are met. The term to which this rule refers shall not apply in the case of the automatic renewal to which Rule 5.2.14 refers.

5.2.16. Entities that obtain the certification to which Rule 5.2.13 refers shall be subject to ongoing compliance with the following obligations:

I. Permanent compliance with the certification requirements, with the corresponding type.

II. To notify the General Taxpayer Services Administration (AGSC), in a period of not more than 5 days, of any change in company name, tax domicile, or the domicile or domiciles where the production process is to be performed, or changes in partners, shareholders or members, sole administrator or board of management and legal representatives.

III. To update the data on the Request for Certification for VAT and SPST Purposes, in the case of the change or modification of carriers, bonded warehouses and the list of domestic and foreign clients and suppliers linked to the production process, no later than 30 days after the change or addition is made.

IV. To undertake foreign trade operations with carriers with the harmonized alphanumeric carrier code (CAAT) registration.

V. When two or more entities with certification for VAT and SPST purposes, in any of the types provided in Rule 5.2.13, are merged, and one of them survives the merger, the ACALCE must be notified 10 days in advance of the effective date of the merger, and the surviving company shall not be eligible for the benefit of automatic renewal and must request renewal under the corresponding type

VI. When a new company results from the merger or division of companies having the certification for VAT and SPST purposes, and one or more companies with a current certification for VAT and SPST purposes disappear, the company resulting from the merger or division must file a new request for VAT and SPST purposes with the ACALCE, in accordance with Rule 5.2.13 of this Ruling.

VII. Taxpayers with IMMEX programs must electronically register the companies with which they enter into virtual transfer declarations, as well as the taxpayer registration (RFC) data on the companies with which they engage in sub-maquila processes, according to the rules published by the SAT for such purposes.

VIII. Companies operating under the tax deposit regime for vehicle assembly and manufacturing must electronically register the companies with which they undertake transfer records.

IX. To allow the customs authorities to physically inspect plants to verify compliance with the certification requirements.

X. To be in ongoing compliance with the payment of employer-employee contributions

with the IMSS and that they are paid using the input code in the SIPARE system.

5.2.17. The ACALCE may cancel the certification granted pursuant to Rule 5.2.13 of this Ruling, for any of the following causes:

I. When failure to comply with any of the registration requirements under the applicable type is evidenced.

II. When customs authority personnel are denied access to the initial inspection and compliance verification inspections.

III. When the proceeding to suspend registration in the roster of specific importers or exporters is concluded, the irregularity cannot be disproved.

IV. Failure to evidence during inspections that the company has the necessary infrastructure to undertake the manufacturing or maquila process, industrial process or service pursuant to the program type.

V. When the obligations set forth in Rule 5.2.16 are not met.

VI. When it is not evidenced that the temporarily imported merchandise was returned abroad, transferred or allocated to another customs regime.

VII. When the customs authorities find that the merchandise temporarily imported under the IMMEX program is not at the authorized domiciles.

VIII. When the legal presence of foreign trade merchandise of more than 100,000 pesos is not evidenced, and the tax deficiency determined by the SAT is not paid.

IX. When the terms authorized by the SAT to pay outstanding tax deficiencies are not met, pursuant to the third to last paragraph of Rule 5.2.13.

X. When a proceeding is begun to cancel the authorization to operate under the customs regimes subject to certification.

For these purposes, the customs authority shall give electronic notice of the start of the proceeding, stating the causes therefor, order the suspension of the effects of the certification granted under Rule 5.2.13, grant a period of 10 days to offer the evidence and arguments the company deems appropriate. The customs authorities must enter the corresponding ruling in a period of not more than four months following notice of the start of the proceeding.

Taxpayers whose certification has been canceled cannot seek it again until 24 months have passed from the effective date of the cancellation ruling.

Two. Companies wishing to request certification for VAT and SPST purposes during 2014, pursuant to Rule 5.2.13, must request certification according to the following timetable, corresponding to their tax domicile and considering the jurisdiction of the Regional Foreign Trade Audit Administration (ARACE):

ARACE	Period
Certified companies under Rule 3.8.1, part L and companies operating under the tax deposit regime for vehicle assembly and manufacturing	April 1 – 30
North Pacific	April 15 – May 15
Northeast	June 3 – July 3
North Central	July 7 – August 7
Central	August 7 – September 8
West and South	September 22 – October 22

Entities that have the authorization to manufacture, process and repair merchandise

in customs warehouses and strategic customs warehouses may file their request in any of the 6 periods.

If the request is not filed in the period corresponding to the tax domicile, it may be filed in other periods. However, the computation of the 40 days to issue the ruling shall start October 22, 2014, unless filed at a later date, in which case it shall begin as from the filing date.

Companies with the authorization in the registry of certified companies pursuant to Rule 3.8.1, part L and companies operating under the tax deposit regime for vehicle assembly and manufacturing, that do not file their request in the established period, may request it in the corresponding period according to the tax domicile.

The registration instructions for certified companies for VAT and SPST purposes shall be published in not more than 40 days after these rules are published.