

MEMORANDUM TO CLIENTS

LAW NO. 12,844/2013 – ALTERATION TO THE MOMENT THE ELECTRONIC SUMMONS' TERM STARTS COUNTING

Date 07/23/2013

Law no. 12,844/2013 was published on July 19, 2013, altering the way the term of summons served by email (e-CAC) starts counting, by including letter *b* to article 23, item III, of Decree no. 70.235/72¹.

Previously, the legislation considered the summons to have been acknowledged after the lapse of fifteen days, as from the moment it was received at the taxpayer's email inbox or on the date recorded in the magnetic or equivalent means used by the tax debtor.

With the new rules, if the taxpayer checks the email attributed to him by the Tax Authorities during the fifteen-day term, the acknowledgment of the summons is considered to have occurred on the date the email was checked, regardless of whether the tax debtor opens the correspondence referring to the summons or not.

In sum, the cognizance by email can take place in the following ways (whichever happens first): *(i)* after 15 days have elapsed from the date the summons was sent to the tax domicile; *(ii)* on the date the email was checked; or *(iii)* on the date recorded in the magnetic means used by the taxpayer for receiving the summons.

¹ "Article 23. (...)

(...)

§ 2. The summons shall be deemed to have been served:

(...)

III – if by electronic means:

- a) 15 (fifteen) days as of the date recorded in the proof of receipt at the tax domicile of the tax debtor;
- b) on the date on which the tax debtor checks the email attributed thereto by the Tax Authorities, if it occurs prior to the term provided for in letter a; or
- c) on the date recorded in the magnetic or equivalent means used by the tax debtor;"

It is of note that Law no. 12,844/2013 was published on July 19, 2013 and, pursuant to its article 49, item V², the new counting came into force on the date of its publication, already producing effects for any inbox verification by taxpayers on such a date.

It is possible that the Federal Revenue Office of Brazil may soon publish a non-statutory rule with further operational details as to the mentioned legal alteration.

Should you require any further information on the above matter, please feel free to contact us.

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² “Article 49. This Law shall come into force:

(...)

V – on the date of its publication for the other provisions, producing effects as to article 27 from the date Law no. 12,783, of January 11, 2013, comes into force”