

Compensation is not a payment for VAT crediting purposes

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PRACTICES Mexico, International, Tax

The Second Chamber of the Supreme Court of Justice of Mexico ("SCJM") recently resolved a contradiction of criteria regarding the issue of civil compensation as a means of payment for purposes of value added tax ("VAT") crediting.

By unanimous vote, there was confirmation of the criterion that determines that a compensation cannot result in a consideration that the transactions involved were effectively paid, which makes it impossible to credit them.

The criterion that prevails as jurisprudence is the following: "VALUE ADDED. THE INTERPRETATION OF ARTICLES 1, 1-B, 5, 17 AND 18, OF THE RELATED LAW, GENERATES THE NON-APPLICATION OF CIVIL COMPENSATION AS AN EXTINGUISHING FIGURE OF THE TAX OBLIGATION OF THE AFOREMENTIONED TAX, FOR WHICH REASON IT DOES NOT GIVE RISE TO A REQUEST FOR A BALANCE IN FAVOR OR CREDITING (LEGISLATION IN FORCE IN FISCAL YEARS 2019 AND 2020)".

The practical implication of the above will force taxpayers to review their operations and payment mechanisms (including treasury between companies of the same group), since in cases where a compensation was previously in effect, the existence of an effective payment is now required in order to ensure the crediting of such payment. It should be considered that the tax authorities could apply this criterion in transactions that have already been concluded.

The harmful effects of this jurisprudence will be reflected in several industries where the compensation mechanism is common in the relationship between customer and supplier, for example, in the retail sector.

The jurisprudence issued by the SCJM is mandatory for the Unitary and Collegiate Circuit Courts, the District Courts, and the Administrative and Labor Courts, both Local and Federal.

The resolution of the contradiction is still pending publication.

For any further information, please contact any of the attorneys listed below.

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