



## Tax Alert

SAT issues Institutional Tax Opinion No. 03-2023 on the applicability of the tax credit for the VAT and deductibility of the expense under the Income Tax of the lessee in the issuance of electronic tax documents -DTE- with the name and Tax Identification Number -NIT- of the lessor

On 29 December 2023, the Superintendency of Tax Administration -SAT- published opinion No. 03-2023 entitled "Electronic Tax Documents -DTE- issued with the name and tax identification number of the lessor and the applicability of the tax credit for the value added tax and deductibility of the expense from the income tax

by the lessee when there is a previously existing lease contract."

In opinion No. 03-2023, the SAT establishes that the electricity, water and telephone services acquired by the lessee of real property, when the invoices are issued in the name and NIT of the lessor, will be deductible in the determination of the Income Tax and the tax credit for the Value Added Tax -VAT can be recognized when the following is met:

The invoices for water, electricity and telephone services are issued in the name of the owner of the real property, who is also the lessor.



There is a lease contract and it establishes that the services will be paid by the lessee.

The address indicated in the invoices or FEL documents coincides with the address of the leased property.



The costs and expenses are useful, necessary, pertinent or indispensable for producing the income taxed under the Income Tax and they are related to the economic activity under the VAT.

The lessee proves that they made the corresponding payment of the invoices that support deductible costs and expenses or that constitute tax credits deriving from the electricity, water and telephone services subject to analysis.



Additionally, the tax credit for the VAT must comply with the other requirements established in article 18 of the VAT Law and its amendments. With respect to the deductibility of the expense, it must comply with the other applicable requirements established in article 21 of the Tax Update Law and its amendments.

We suggest that companies review all their leases for real property, to verify compliance with the points indicated above.

Finally, it should be considered that SAT's institutional tax opinions do not have a binding effect for a particular taxpayer, nor provide absolute legal assurance for taxpayers in general. These opinions only correspond to the SAT's interpretation of the tax laws; however, they demonstrate the uniformity of the oversight criteria that will be applied by SAT in its audits.

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