



Supreme Court of Justice provisionally suspends TAT resolution on recognition of carry-forward losses as a tax credit

The Third Chamber of the Supreme Court of Justice (CSJ) of Panama has issued a provisional suspension measure regarding resolution No. TAT-RF-011 of the Administrative Tax Court (TAT), issued on February 26, 2024, in which a loss carry-forward was recognized as a tax credit and therefore its assignment was approved.

This fact dates back to a company that submitted an application to the Panama Tax Administration (DGI, for its acronym in Spanish) for the recognition of the assignment of tax credit for carry-forward losses generated during the years 2016, 2017, 2018, 2019 and 2020.

The company supported the request with Article 698-A of the Tax Code, which allows the deduction of tax losses in the following five years at the rate of 20% per year and argued that Article 83 of the Tax Procedure Code, which refers to the assignment of tax credits, does not prohibit the carry-forward of losses from being considered as a tax credit and therefore can be assigned.

However, the DGI rejected the request through an administrative act, indicating that the losses did not qualify as tax credits and cited that in any case Article 698-A of the Tax Code stipulates that "*the right to deduct losses is non-transferable.*" Subsequently, the company filed an Appeal for Reconsideration before the DGI and an Appeal before the Tax Administrative Court (TAT).

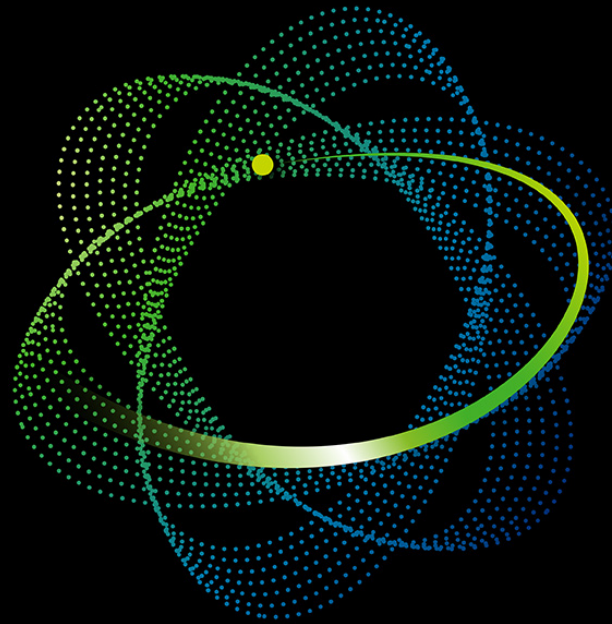
Finally, this court favored the taxpayer, although it should be remembered that Magistrate Anel Jesús Miranda Batista presented a vote saving arguing that the loss carry-forward regime does not meet the requirements to be considered a tax credit.

Taking this as a precedent, the magistrates of the Third Chamber of the CSJ ordered the provisional suspension of the resolution indicating that the implementation of this could cause serious economic damage to the tax administration and that the order to credit a significant amount in favor of certain companies could negatively affect tax revenues and the fiscal interests of the State.



In addition, they specified that the evidence presented suggests that the administrative act could be vitiated by irregularities that compromise its legality.

It should be noted that this provisional measure does not imply an advance of the final ruling. The Third Chamber reviews the merits of the case at the appropriate procedural time to issue a final decision on the legality of the TAT resolution.



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