

Tax Controversy Insights

Relevant Criteria of the Court of Appeals

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The review work exercised by the Court of Appeals for Internal and Customs Taxes (TAIIA) is fundamental to guarantee the rights of taxpayers.

According to the rulings available for consultation for the period May - October 2021, on average the TAIIA issued approximately 13 to 14 monthly rulings, of which for the same period 15 were revocations in favor of taxpayers, 14 modifications and 50 confirmatory rulings against taxpayers.

We would like to share with our clients some of the most relevant criteria related to the rulings issued for this period:

A. In favor of the taxpayers:

1. REF: 159-2021-Inc. I2103004TM of November 30, 2021 - Duality of Criteria.

The statement made by the DGII translates into a duality of criteria since the position adopted oscillates between the lack of verification of the effective existence of the operations and for not demonstrating the indispensability of these, which results in a violation of the principle of legal certainty which seeks to know which the criterion is adopted in a clear and unequivocal manner. Likewise, there is inconsistency between the resolution issued as there is no coherence between the basis of the objection and the information requirements to which it adheres to support the rejection of the mentioned operations.

2. REF: 133-2021-Inc. C2105040M of October 27, 2021 - Errors in the documents do not mean non-compliance with the legal requirements.

For the correct classification of the infraction, the conduct carried out by the offender must be clearly, precisely and unequivocally adapted to what was previously described in the sanctioning norm, a situation that did not occur in the present case, since the apparent formal non-compliance on which the appellant relapsed, was to erroneously consign the number and date of authorization of assignment of correlative numbering, and range of correlative numbering authorized different by the Tax Administration, which is different from not consigning such data, and incurring in issuing documents without complying with the legal requirements demanded by the Tax Code, in such sense what happened consisted of an error or inaccuracy in the tickets issued, but it cannot be considered that the tickets do not contain number and date of authorization of assignment of correlative numbering, and range of authorized correlative numbering, since it has been effectively evidenced that the same contain such data, only erroneously, in such sense the fact occurred in the present case is not framed to the precepts previously fixed by the legislator, that is to say, in article 239, literal b), of the Tax Code. It is concluded that an extensive interpretation was given to the norm.

3. REF: 124-2021-Inc. R2105035.TM of October 26, 2021 - Relevance of the Time Period for evaluation of evidence by the General Directorate of Internal Taxes.

This court observes that between the written submission of evidence and the appealed resolution, there is a period of two hours and fifty-five minutes, that is to say, during such period of time the Tax Administration states that it analyzed, reviewed and compared integrally the documentation submitted by the appellant consisting of 1297 pages of documents. Taking into account the above, with respect to the actions of the Tax Administration, it is observed in the appealed resolution the existence of a merely formal development of the stage of evaluation of the evidence, a situation that has caused prejudice to the plaintiff company, since it limited its right of defense, since the sanctioning and tax assessment resolution did not include the evaluations made to the documentary evidence submitted, since in such ruling the General Directorate affirms that the documentation submitted was the same that the appellant company submitted during the tax audit, This denotes a weak appreciation of the evidence in question, without a real verification and analysis with the detail and depth required by due process, especially when it is observed that in order to reach such conclusion the General Directorate had less than three hours to make the assessment of the evidence submitted, a situation of special relevance when observing the volume of the documentation, which has violated the rights of defense and contradiction of the appellant, legal certainty, due process and the principle of material truth.

B. Against taxpayers:

1. REF: 063-2021-Inc. R2007007.TM of June 01, 2021 - Fiscal precincts and extraterritoriality.

The Fiscal Precincts mentioned in the Organic Law of CEPA, are part of the national territory in them, goods or services are received with suspension of duties and taxes, by a legal fiction, but in no way are such precincts considered to be outside the national territory for any other legal effect or application. It should not be lost sight of the fact that extraterritoriality has specific effects, in this case customs, only in relation to the handling, custody, deposit and dispatch of goods that are under customs control, so that such extraterritoriality does not imply the granting of a special tax treatment for the purposes of application of internal taxes. Consequently, the activities carried out at the Airport, for the development of the international air passenger transportation service, cargo transportation, charge service, among others, by the appellant company, are considered services carried out in the country, and not in foreign territory, constituting such activities as income tax generating events, in accordance with the provisions of articles 1, 2 first paragraph, letters b), c) and d) of the referred Law, in relation to article 9 letters c), d), e) and f) of its Regulations.

2. REF: 092-2021-Inc. R2009003.TM of August 12, 2021 - Acquisition cost for the determination of capital gain.

The appellant company has not proven the acquisition cost of the machinery sold, nor the deduction of the depreciation that according to law corresponded to it, because the deed presented did not delimit the unit value of the same, without presenting annexes, appraisals or any other documentation that accredits the unit value of each good. Therefore, although the deed of sale presented accredits the ownership of the social appellant with respect to the property sold in the fiscal year audited, it is not possible to determine the acquisition cost of the same, nor how the value declared by the appellant as the basic cost of the property was established, since the financial institution transferred the machinery to the appellant for a global value.

Our Team

Our understanding of the business and business world along with the experience of our consultants, made up of a legal and fiscal team, allows us to provide the most timely and appropriate support in the management of Tax Controversy.

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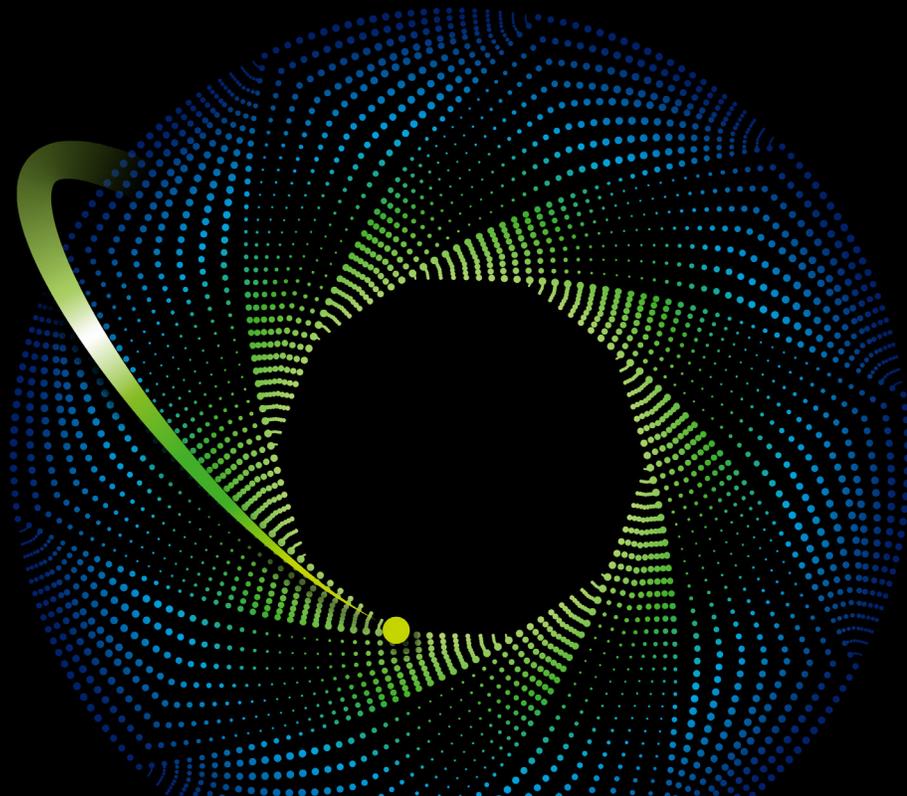
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