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The importance of the date certainty in private documents

Dear Clients and Friends:

For some time, the courts of our country have established different criteria as to whether private documents, related to the verification of the taxpayers' compliance with their tax obligations, must have a date certain.

In view of the foregoing, by means of jurisprudence thesis 2a./J. 161/2019, published in the Gazette of the Judicial Weekly of the Federation on December 06, 2019, the Supreme Court of Justice of the Nation determined that the private documents that are submitted to the tax authority during the exercise of verification powers (home visit, cabinet review, among others), must contain the requirement of the "date certain" to demonstrate the acquisition of an asset or the execution of a contract or operation that affects its tax activities, without it being an obstacle to the foregoing that the tax legislation does not expressly require it, by indicating that such condition emanates from the evidentiary value that such documents are intended to achieve.

As a result, individuals must now absorb the operating cost of complying with the duty to have private supporting documents of a certain date (purchase and sale contracts, donations, among others), in order to ensure that their date cannot be earlier or later, that is, that they cannot be manipulated by the signing parties, with the firm intention that the tax authority can verify the existence of the legal acts executed by the individuals, and that they correspond precisely to the fiscal years being verified.

However, it should be noted that during the exercise of its verification powers, the tax authority must verify the certainty of the operations carried out by the taxpayers and that generate tax effects, being able to add (support) evidence and value to the other supporting documents, that is to say, that the private documents offered by the individuals in verification powers, may acquire evidentiary efficacy if they are supported by means of conviction that lead to full knowledge, being at the prudent discretion of the tax authority, as indicated in article 197 of the Federal Code of Civil Procedures, of supplementary application to the Federal Tax Code.

Therefore, we recommend taxpayers, first, to grant certain date to private documents either through registration in the Public Registry of Property or presentation to a notary public and, second, to keep the documents resulting from the transactions as agreed in the private documents that must contain certain date (purchase orders, invoices, e-mails, instructions, warehouse entries and exits, among others), in order that the tax authority has the possibility to assess such evidence in an administrative (supported) manner and, if necessary, to evaluate such evidence in an administrative way, invoices, e-mails, instructions, records of warehouse entries and exits, among others), so that the tax authority has the possibility of evaluating such evidence in an administrative (supported) manner and, if applicable, to grant a probative value in accordance with the interests of the individuals.

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