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New Tax Obligations in the Capitalization of Liabilities

Dear Clients and Friends:

On December 8, 2020, an amendment to the Federal Tax Code (CFF) was published in the Official Gazette of the Federation (DOF). As a result of such amendment, the content of the fourth paragraph of Article 30 was modified to establish that, in the case of increases due to capitalization of liabilities, the acts of the shareholders' meeting in which such acts are recorded, as well as the document certifying the accounting existence of the liability and the corresponding value thereof, must also be kept.

In relation to the certification mentioned in the previous paragraph, it is established that it must contain the characteristics issued for such purpose by the Tax Administration Service (SAT) through general rules. As a result of the above, on December 29, 2020, the Miscellaneous Tax Resolution for the year 2021 was published in the DOF, establishing rule 2.8.1.23 "Certification of accounting existence of the liability and the corresponding value thereof", which specifies that: (i) the certification under study must be issued by a Registered Public Accountant (Certified by the SAT); (ii) the minimum information that such certification must contain; and (iii) the obligation to keep at the disposal of the tax authority the corresponding certification and the documentation related thereto, in terms of the provisions of the tax provisions, as well as to provide it upon request of the tax authority in the exercise of its attributions.

Therefore, we invite taxpayers to carefully review the minimum information that the certification must contain, in order to properly document the capitalization of liabilities, and thus avoid that the tax authority subtracts value to them, leaving such capital increases without tax effects.

For further information, please contact:

Jose Luis Agredano Elizondo agredano@jfirmalegal.com

Alejandro Gonzalez Bataller alejandro@jfirmalegal.com

Hugo Garcia Gonzalez hugo@jfirmalegal.com

Jose Eduardo Rosales Niño eduardo@jfirmalegal.com

Ana Paula Treviño Gutierrez paula@jfirmalegal.com