

April 25, 2023



# Civil offset is not a payment mechanism for VAT purposes – Mexican Supreme Court of Justice

On March 15, 2023, the Second Chamber of the Mexican Supreme Court of Justice (SCJN) resolved the contradiction of criteria 413/2022, which had the purpose of determining whether the civil offset is a means of payment of Value Added Tax (VAT).

For further information, the jurisdictional authorities, as well as the files from which the contradiction derives, were the following:

 Plenary in Administrative Matters of the Sixteenth Circuit.

Contradiction of criteria 3/2022.

 Fourth Collegiate Circuit Court of the Auxiliary Center of the Tenth Region, with residence in Saltillo, Coahuila, in support of the Eleventh Collegiate Court in Administrative Matters of the First Circuit.

DA: 286/2021

Auxiliary file: 559/2022

In summary, the judges of the Second Chamber of the SCJN unanimously resolved by a 5-vote, that the civil offset is not a means of payment of VAT, and therefore cannot give rise to a request for a refund of the balance in favor, nor can it give rise to the crediting of the tax.

As a result, this criterion will prevail as jurisprudence once it is published. Therefore, it will be mandatory for the judiciary, and may be applied by other jurisdictional courts in Mexico.

With the reservation of knowing the integral content of the Court ruling, as well as its corresponding jurisprudence, we consider that this determination could violate human rights and guarantees related to legal certainty, legality, and non-retroactivity of laws.

In the future, this decision will be applied by the tax authority to deny requests for refunds derived from credit balances or to deny VAT crediting derived from transactions where there was no cash flow in the payment of the tax.

Likewise, there is uncertainty as to whether the tax authority will seek to review - through its powers of verification or judgment of injury - those transactions that could have been satisfied through civil offset, in order to recover such amounts.

Thus, we consider it appropriate to identify the transactions consummated and in process of refund or that have been credited under these terms to determine the contingencies and alternatives that may be caused by the aforementioned determination.

This is due to the following points that we understand generate concern among taxpayers:

- 1. Will the jurisprudence be applied retroactively as of the date it was published?
- 2. Will the Tax Authority be able to recover the refunds of credit balances already made?
- 3. Should transactions in which the offsetting has been used as a means of payment of VAT be regularized?
- 4. What regularization alternatives can be implemented for the past and in the future?

We hope that the information contained in this bulletin will be useful. We are at your service to expand our

comments in relation to the legal alternatives that will allow you to counteract the effects of the abovementioned determination on a case-by-case basis.

We are at your service for any question or additional clarification you may require in relation to the foregoing.

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