

Tax Practice Group Newsletter



Legal and Tax Compliance. Certain Date of Documents Evidencing Taxpayers' Transactions.

The Second Chamber of the Supreme Court of Justice (SCJ) issued the jurisprudential criteria 2a./J. 161/2019 (10a.) under the heading "PRIVATE DOCUMENTS. THEY MUST COMPLY WITH THE REQUIREMENT OF 'CERTAIN DATE' CONCERNING THE EXERCISE OF THE POWERS OF VERIFICATION, TO DEMONSTRATE COMPLIANCE WITH THE CONTRIBUTORS' TAX OBLIGATIONS", which derives from the ruling contradiction 203/2019.

In the ruling contradiction, the SCJ sought to determine whether private documents submitted by taxpayers to the tax authorities in the exercise of their powers of verification, must comply with the certain date requirement.

The SCJ determined that the documents that taxpayers are obligated to keep to evidence the date of acquisition of a good or the execution of a contract or operation must comply with the certain date requirement.

The SCJ specifies that a private document is considered to be of certain date: i) from the day on which it is incorporated or registered in the Public Registry of Property and Commerce; or, ii) from the date on which the document is presented to a public official by reason of his office; or, iii) from the date of the death of any of the signatories.

The SCJ sustains its determination under the premise that only the parties involved produce private documents, and therefore, such documents cannot give certainty

of the date specified therein, unless they meet the certain date requirement.

This, notwithstanding that secondary legislation does not require the private act to be executed or ratified before a trustworthy third party invested with public faith in order to provide certainty, nor that the tax legislation does not expressly state such requirement.

According to the SCJ, to consider the contrary would result in granting full probative value to private documents in which only the undersigned parties are involved.

For this reason, the documents that support the transactions carried out by taxpayers must be of certain date, so that the tax authority can verify the existence of the legal acts, and that they correspond precisely to the reviewed years.

Lack of compliance with the requirement of certain date of private documents, could result in a rejection of the applicable tax consequences, such as income tax deductibility, value added tax credit, among others.

In view of the foregoing, we recommend our clients to review and identify the documentation that supports their most relevant operations in order to mitigate the risk of the tax authority, in an audit, denying the existence of said operations under the premise that the documents supporting them lack a certain date.

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Tax

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