

TAXPAYERS WHO OFFSET DEBTS COULD BE SERIOUSLY AFFECTED BY THE CASE LAW THAT LIMITS THE CREDITING OF VAT

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RESUMEN EJECUTIVO:

- As we informed you in [March 2023](#), as of May 12, 2023, it is mandatory for all Courts the judicial precedent by which the Second Chamber of the Mexican Supreme Court of Justice determined that civil offset is not a means of payment of VAT, nor can it give rise to a request for a balance in favor or crediting.
- This case law has generated uncertainty regarding its application and possible effects on taxpayers who offset debts.



Last May 12, 2023, the judicial precedent 2a./J. 19/2023 (11a.) issued by the Second Chamber of the Mexican Supreme Court of Justice was finally published, which essentially states that, although the civil offset is a means of extinguishing the principal debt, it cannot be considered as a means of payment for VAT purposes and, therefore, if the offset is used for the VAT portion, it cannot be credited nor can a refund of the credit balance derived therefrom be requested.

In this regard, although the precedent refers to the VAT Law in force in 2019 and 2020, the truth is that the scope and binding nature of the criterion has generated multiple questions regarding its application by the Courts and, of course, by the tax authority.

Some harmful consequences that could arise for taxpayers that use or have applied the figure of offset in their transactions are mainly:

- + Uncertainty as to the possibility of applying the judicial precedent towards the past, which could result in audits by the authority, with respect to the last five fiscal years, in which the rejection of the offset VAT crediting is determined and, consequently, to the determination of tax credits.
- + Refusal of refunds in process.
- + Audits to previously authorized refunds in which verification powers were not exercised.

- + Analysis of a possible change in the taxpayers' way of operating who, on a daily basis, use the compensation; evaluation of the possible risks in case of not doing so.
- + Possible absorption of VAT as a cost since it must necessarily be paid in cash.
- + Evaluation of the operational issues and possible risks in the case of applying options such as offsetting the principal amount and paying the VAT in cash.

In this sense, we recommend all our clients carefully analyze the impact that such jurisprudence may have on their different operations in order to foresee and mitigate possible VAT risks. Santamarina + Steta will be pleased to advise you.



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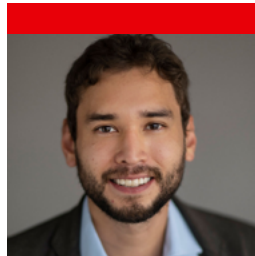
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