TOTAL ANNULMENT OR JUST FOR SPECIFIC PURPOSES?

IN TAX AUDITS, THE ANSWER CAN CHANGE THE OUTCOME OF THE CASE

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- The Regional Plenary Courts determined that the lack of or improper legal grounds establishing the tax authority's competence in an act delegating powers constitutes a formal irregularity, resulting in annulment for specific purposes rather than total annulment.
- This criterion allows the authority to remedy the defect and issue a new act, meaning that the taxpayer's tax contingency remains.

The Regional Plenary Courts resolved a conflict of criteria between two Courts of Appeals. The issue was what happens when the act by which the tax audit authority delegates to other officials the power to communicate the facts or omissions detected during a review fails to properly establish the applicable legal provisions.

One court regarded this as a formal defect, leading to an annulment for specific purposes, while the other treated it as lack of authority and completely revoked the correspondent determination.

The first criterion prevailed, setting a precedent that the absence or improper statement of the legal basis for authority in that act of delegation is a formal irregularity, which results in the corresponding act being set aside so that a new one may be issued in which the authority correctly identifies the articles that allow it to delegate its powers.

WHY DOES IT MATTER?

With a total annulment, the resolution disappears entirely; however, with an annulment for specific purposes, the authority may correct the defect and reissue the act, meaning the tax contingency is not eliminated.

This point is especially relevant considering that the passage of time increases the contingency as inflation adjustments and surcharges continue to accrue, which could be even counterproductive for the taxpayer.

It is important to consider that the binding precedent refers only to the delegation of powers, not to whether the official has the authority to issue the act itself; these are different scenarios that, where applicable, must be argued separately.

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