

The Mexican Supreme Court of Justice has ruled that the offset of debts is not a form of payment of VAT for purposes of claiming a credit against VAT in charge

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On March 15, 2023, the Second Chamber of the Mexican Supreme Court of Justice ("MSCJ") issued a binding ruling stating that the value-added tax ("VAT") paid through the offset of debts is not creditable. According to the official statement issued by the MSCJ, the reasons for this ruling are:

- Although the VAT law provides for the offset of debts as a means by which a consideration is effectively paid, this does not mean that such offset may be used as a means of paying VAT.
- Under federal civil legislation, the offset of debts cannot be used to pay tax liabilities such as VAT, according to the MSCJ.

Although we do not agree with the interpretation held by the MSCJ, this criterion will be binding for all courts in Mexico once it is published in the Federal Judicial Gazette, and it will likely be held by the Mexican tax authorities in audit procedures and to resolve VAT refund requests.

This binding criterion will have a significant impact on day-to-day operations of companies that extinguish debts with their suppliers through the offsetting mechanism, and even in the case of intercompany transactions such as centralized treasury services, among others.

Once the definitive text of the criterion is available, we will be in position to expand our comments on the effects this decision will have on operations performed prior to its publication, as well as the best way to structure operations going forward.

For additional information with respect to this Alert, please contact our team.

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