

Precedent that Rules the Impossibility of Requesting a Refund of the Remaining Value Added Tax Balance in Favor that Has Previously Been Credited

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The Central-North Regional Plenary of Administrative Circuit Courts ("Regional Plenary") issued the precedent named "**VALUE ADDED TAX. IMPOSSIBILITY OF REQUESTING A REFUND OF THE REMAINING VALUE ADDED TAX BALANCE IN FAVOR THAT HAS PREVIOUSLY BEEN CREDITED.**" ("Precedent"), that was published on the Judicial Gazette on February 16, 2024.

The Precedent originated from various rulings issued by Administrative Circuit Courts in Mexico City, where it was analyzed whether, in accordance with Article 6 of the Value Added Tax Law ("LIVA") in force in 2018, a taxpayer could request the refund of the remaining value added tax balance in favor that has been previously credited. While some Circuit Courts ruled that said refund was possible other ruled that it was not.

The Regional Plenary analyzed the legislative history of Article 6 of the LIVA and concluded that when a taxpayer opts to credit a value added tax balance in favor it is not possible to obtain a refund of its remainder, thus, said taxpayer must continue with the crediting process until the favorable balance is exhausted. Similarly, the Regional Plenary ruled that requesting a refund and crediting a valued added tax refund are mutually exclusive mechanisms.

Additionally, the Regional Plenary ruled that when a taxpayer opts to request the refund of a valued added tax balance in favor, they must request the refund of the total balance.

According to this Precedent, a taxpayer that has a value added tax balance in favor must decide whether to credit it in subsequent months until it is exhausted, or alternatively, request a total refund without the possibility of crediting a portion of the favorable balance and later seeking a refund for the remainder.

It is worth mentioning that the Regional Plenary acknowledges that there may be scenarios in which a taxpayer could face difficulties in crediting a favorable balance until it is exhausted, for example, if they no longer generated value added tax in subsequent periods. In such cases, the Precedent leaves the door open for taxpayers to bring said particularities before the tax authorities that must rule considering them.

The Mandatory is mandatory for Circuit Courts, District Courts, and Chambers of the Federal Administrative Justice Tribunal located in Mexico City, State of Mexico, Nuevo León, Sonora, Coahuila, San Luis Potosí, Sinaloa, Baja California, Guanajuato, Chihuahua, Tamaulipas, Querétaro, Zacatecas, Nayarit, Durango, Baja California Sur, Tlaxcala, and Aguascalientes.

We suggest reviewing the specific situation of valued added tax balances in favor to determine the best way to recover them, considering the aforementioned Precedent. For this purpose, we are at your disposal and ready to assist you.

Contact Us:

Nora Morales

Partner | morales@macf.com.mx
Tax

Enrique Ramírez

Partner | eramirez@macf.com.mx
Tax

Luis Monroy

Partner | lmonroy@macf.com.mx
Tax

Armando Elsharkawy

Partner | aelsharkawy@macf.com.mx
Tax