

Issuance of Certificate in case of Capitalization of Liabilities

Tax – January 18th, 2021

On December 8, 2020, the Decree that amends, adds, and derogates various provisions of the *Mexican Income Tax Law, the Value Added Tax Law and the Federal Fiscal Code* (the "Decree") was published on the Federal Official Gazette ("DOF", as per its acronym in Spanish). Such Decree entered into force on January 1st, 2021 and contemplates the amendment of article 30 of the Federal Fiscal Code ("FFC"), which establishes the documentation that taxpayers must keep and the respective deadlines.

Derived from the foregoing, in the specific case of capital increases due to the capitalization of liabilities, taxpayers must keep the meeting minutes in which such acts are recorded, as well as the document that certifies the liability's accounting existence and its value. Said certification must contain the requirements listed in rule 2.8.1.23. of the Tax Miscellaneous Resolution for 2021, published in the DOF on December 29, 2020.

As established in said rule, the aforementioned certification must be issued by a registered Public Accountant and contain the applicable information listed in sections I to XVII, among which the following concepts stand out:

- Information regarding the person with whom the obligation was generated and the document through which the liability was originated.
- Documentation in which it is proved that the resources were actually delivered.
- The liability's increases or decreases, as well as the corresponding interest rate.
- Value of the liability at the capitalization date.
- Number and value of the shares or equity quotas granted as a result of the liability's capitalization, as well as the name of the partner or shareholder.
- Notice regarding the modification or incorporation of members or shareholders referred to in subsection VI of section B of article 27 of the FFC, presented by the entity that capitalized the liability.

The last paragraph of the aforementioned rule indicates that both the certification in question and the applicable documentation in terms of sections I to XVII of such rule must be kept at the disposal of the tax authorities and must be provided to them in case it is required in the exercise of their powers of verification.

For any additional information, do not hesitate to contact our expert team on tax issues, who can be of assistance.

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