IMPORTANCE OF THE MATERIALITY OF TAX OPERATIONS IN MEXICO

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Abstract

The tax authorities in Mexico, due to the improper use of Digital Tax Receipts over the Internet and based on the electronic tax information issued by taxpayers that generate tax evasion, establishes the scheme of Simulated Operations with two aspects, the Companies that Bill Operations Simulated and the Companies that Deduct Simulated Operations, based on article 69-B of the Fiscal Code of the Federation, in which taxpayers are required to demonstrate the materiality of the acts they carry out, that is, the reality of their fiscal operations . The objective of the investigation is to demonstrate the importance of taxpayers adequately and sufficiently documenting the materiality of their operations. Through qualitative research, it is concluded that reviews beyond accounting are necessary for the Tax Administration Service, organizations must prove the materiality of their operations with the following documents obtained from their providers: the veracity of the digital tax receipt online; investigate its administrative, operational and fiscal aspects; the physical location of the establishment; the corporate purpose; your financial capacity; the business model; compliance with your tax obligations; verification of the presumption of non-existence of operations; analysis of contracts and agreements; collection of evidence on purchase orders, orders and bids; and public documents.

Key words

Issuance, Deduction, Simulated Operations

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Introduction

The issuance of valid tax receipts in Mexico has evolved over time, from paper invoices generated by printers authorized by the tax authorities, to digital tax receipts. The electronic invoice was born in 1997 due to the need of the private initiative for a legal scheme that would allow its use, the Electronic Invoice Committee was created, which integrated 45 large companies with a common goal, the use of digital tax receipts (CFD) (Posada and Delfin, 2014). Previously, in 1986, the AMECOP (Mexican Association of Product Codes) emerged, currently AMECE-GS1 (Mexican Association of Standards for Electronic Commerce) in charge of promoting and developing business models based on standards, such as identification by code of bar, electronic invoice, electronic product code (EPC) and electronic product catalog (AMECE-GS1 México, s/f; Morales and Hernández, 2017).

The need for the Electronic Invoicing Committee and the technology provided by AMECOP gave results, in 2004 the Tax Administration Service created the Advanced Electronic Signature (FIEL) and in 2005 authorizes the first digitized invoice, the Digital Tax Receipt (CFD) in its version 1.0, as well as allows the invoicing modality through third parties. In 2010, version 2.0 of the CFD began and the figure of Authorized Certification Provider began; for the year 2012 comes the next version of CFD 2.2, it will also be the last year of life for printed invoices. Internationally, Mexico is recognized as a leader in electronic invoicing (Facturama, n.d.).

For the year 2014 all taxpayers are required to invoice electronically and the CFDI appears for receipts. As of 2017, CFDI versions 3.2 and 3.3 can be used interchangeably. In 2022, CFDI versions 3.3 and 4.0 have a coexistence period. The change in billing version 4.0 brings with it new parallel versions: Withholdings and Payment Information (2.0), Payroll CFDI (1.2), Carta Porte (2.0) and Payment Reception Complement (2.0). In 2023, version 3.3 officially disappears on March 31, except for the Payroll CFDI, which extends its adaptation period until June 30.

The tax administration in Mexico has been driven by the great needs of the country, and has gone through a pronounced evolution without losing sight of the main objective of increasing public revenue, as well as having greater control and administration of collection. The Tax Administration Service (SAT) and the Federal Government have adopted various schemes to promote voluntary and responsible compliance with tax obligations (Tax, 2018).

During the analysis of financial operations and how to integrate them into electronic media, the biggest challenge, due to the volume of information and because it is considered the most faithful representation of the income of any economic entity, would be those documents in which that acts of commercialization of goods and services are covered: Billing.

The authorization for taxpayers to declare their income through the issuance of Digital Receipts over the Internet (CFDI) from the year 2014, brought with it a problem, the improper use of invoices, the tax system must take appropriate measures. The tax authority, according to the analysis of the electronic tax information sent by the taxpayers, determines that there are two relevant figures in tax evasion, exposes for the first time the concept of Simulated Operations, with two main aspects, the Companies that Bill Simulated Operations (EFOS) and Companies that Deduce Simulated Operations (EDOS), derived from this, a procedure embodied in article 69-B of the Federal Tax Code (CFF) arises, which implies demonstrating the materiality of the acts carried out by taxpayers , that is, the reality of fiscal operations.

Literature Review

Materiality has to do with a material quality, external surface or appearance of things (Española, 2021), from the fiscal field, materiality lies in the fact that the activities covered by the tax receipts questioned by the authority have actually been executed, whether whether to provide services or sell goods

The Business Reason refers to the act or transaction in which the reasonably expected economic benefit is less than the tax benefit obtained in that operation. There will be a reasonably expected economic benefit when the taxpayer's operations seek to generate income, reduce costs, increase the value of the assets that they own, improve their position in the market, among other cases, that is, there must be a business justification for perform any operation. (NRA, Nuñes Rosas and Associates, 2021)

Taxpayers seek tax benefits through deductions, exemptions, non-recognition of a cumulative gain or income, crediting of contributions, re-characterization of a payment or activity, a change in tax regime, among other cases. (NRA, Nuñes Rosas and Associates, 2021).

The presumption is a legal fiction established as a legal mechanism, which under certain conjectures takes an event for a proven fact, being within the assumptions provided by law; It is an evidentiary mechanism, it is the result that the law or the judge deduces from a known fact, to know the truth of another unknown (Beltrán L., 2020)

Companies that Bill Simulated Operations (EFOS). In simulated operations, a group of companies or individuals agree to issue among themselves digital tax receipts over the Internet for supposed contracted services. The EFOS are those taxpayers or companies identified by the authority as Billing Companies for Simulated Operations, which in collusion with taxpayers registered as EDOS (Companies that Deduct Simulated Operations), give life to the illegal market of the so-called "trafficking of tax receipts", which is nothing more than to generate in a virtual way and without economic substance, a series of operations that try to pretend to be a legal act that was not actually held.

For a company or legal entity to be classified as EFOS, it is necessary to carry out an investigation procedure against that taxpayer; during said investigation, the provider is classified as presumed EFOS, if at the end of the process it is concluded that this taxpayer has simulated operations, sold invoices, or is not located, then it becomes a DEFINITIVE EFOS capable of involving any of their clients in serious tax and criminal problems.

The intention of these companies is to convince taxpayers that by purchasing these invoices they will reduce their taxes, in exchange for a commission, which is regularly a percentage of the amount of the invoice. (Murcia L., Vega Z., and Sánchez G.m 2019, pp. 9-10).

Companies that Deduct Simulated Operations (EDOS). The companies that deduct simulated operations (EDOS) are the clients of the EFOS, invoice sellers. These companies use one or several invoice providers with simulated operations, they are difficult to detect because they comply with their tax obligations in a timely manner; they deduct relatively high amounts for the type of company in the activity they carry out. The amounts paid by the EDOS for apocryphal invoices, are returned to the companies so as not to decapitalize them, through loans or increases in shareholder capital. When the SAT detects EDOS companies, it reviews them by requesting the necessary legal documentation to verify the materiality of the expense: notarial deeds, lease contracts or property deeds, copies of the receipts issued to their clients, accounting policies and auxiliary records of the Electronic accounting, invoices, contracts, form of payment verifiable in bank account statements, originals, not obtained online. In the case of intangible services, they must be covered by the CFDI, contract, proof of payment, business reason for which the service was requested and benefit obtained with the expense; what the service consists of, time and place where it was performed, names and identification of the people who provided the service and the benefit obtained (Murcia L., Vega Z., and Sánchez G., 2019, pp. 12- 13).

A document is the written record, either physically or virtually, that captures the characteristics of a fact or circumstance. It is the evidence of a relevant fact, a text written on paper (or another material support such as cardboard) or a file stored on an electronic medium (Westreicher, 2020). The documents will have two characteristics: private and public. The first are internal, only interested individuals intervene in them. Public documents involve a public official duly authorized to attest; for example, deeds and notarial acts, among others.

Verdict. Resolution issued by certified professionals in certain areas such as appraisers, public brokers and public notaries.

Presumption of non-existence of operations covered by tax receipts. The terms of article 69-B of the Fiscal Code of Feceration establish the presumption of the non-existence of operations covered by tax receipts issued by taxpayers who lack assets, personnel, infrastructure or material capacity, directly or indirectly, to provide services, produce, market or deliver the assets covered by such receipts, or that said taxpayers are not located by the tax authorities.

In this case, the tax authority will proceed to notify taxpayers who are in said situation through their tax mailbox, as well as by publication in the Official Gazette of the Federation (DOF), in order for those taxpayers to express before the tax authority what is appropriate to their right and provide the documentation and information they consider pertinent to distort the facts that led the authority to notify them.

Legal acts that lack a business reason and that generate a direct or indirect tax benefit, as indicated in article 5 of the CFF (Chamber of Deputies of the H. Cogreso de la Unión, Nov. 11, 2021), will have the tax effects that correspond to those that would have been carried out to obtain the economic benefit reasonably expected by the taxpayer.

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In the exercise of its powers of verification, the tax authority may presume that legal acts lack a business reason, based on the facts and circumstances of the taxpayer known under said powers, as well as the assessment of the elements, the information and documentation obtained during them. It is considered that there is a reasonably expected economic benefit, when the taxpayer's operations seek to generate income, reduce costs, increase the value of the assets that they own, improve their positioning in the market, among other cases. In order to quantify the reasonably expected economic benefit, the information related to the operation under analysis will be considered, including the projected economic benefit, to the extent that such information is supported and reasonable. For the purposes of this article, the tax benefit shall not be considered as part of the reasonably expected economic benefit.
The expression business reason will be applicable regardless of the laws that regulate the economic benefit reasonably expected by the taxpayer. The effects that the tax authorities grant to the legal acts of the taxpayers due to the application of this article, will be limited to the determination of the contributions, their accessories and corresponding fines, without prejudice to the investigations and criminal liability that may arise. in relation to the commission of the crimes provided for in this Code (Chamber of Deputies of the H. Congress of the Union, Nov. 11, 2021).

Goal and Methodology

This research is of a qualitative nature, according to Pastor, A. (2015) builds a reality within fiscal sociology that is linked to accounting theory considering what was exposed by Alegre (2021), since it analyzes the origin of an idea as an element fundamental within the accounting sciences, so the research is developed as a way of understanding some accounting processes that converge within a fiscal reality. It was investigated regarding the materiality of the operations, and the requirement of the authority to demonstrate it. The concepts used during the investigation are based on the Federal Tax Code (CFF) to demonstrate how the tax authority presumes the non-existence of the operations covered by the Digital Tax Receipts online CFDI when they lack certain elements. It is based on an extensive documentary review in law, magazines, e-books and other electronic media.

Findings

Companies must have trained personnel to ensure that their operations are not exposed to being considered non-existent and can demonstrate in any circumstance the materiality of the operations they carry out. The documents are evidence prepared by those in charge of the different business areas, they must be truthful in their content, be updated and supported to be presented as evidence if necessary. In the same way, it is important to take into account that CFDIs do not represent sufficient elements to prove the existence and validity of an operation. Before any operation that they celebrate, it is convenient to observe the following:

Table 1. Elements of the materiality of operations

Elements of the materiality of operations	**Description**
1. Suppliers It is advisable to investigate the following indicators a. Physical location.	- Location. - Social object. - Financial capability. - Business model. - Opinion on compliance with tax obligations. - Verify that it is not on the list of presumed or definitive items in article 69-B. of the CFF.
2. Analyze contracts and agreements with suppliers of goods and services	Define the object of the contract, capacity of the representatives, deadlines, deliveries, among others. Establish penalties in case of non-compliance. Comply with the certain date requirement when required. In the case of provision of services, detail the type of service, its deliverables and the periodicity of these.
3. Collect documentary evidence of the acts performed, such as::	- Purchase orders. - Orders. - Tenders. - Warehouse entry notes. - Weighing (receipts). - Publications in social networks. - Inventory control. - CFDI of acquisition and sale. - Insurance policies. - Photographs - Videos - Audio
4. Internal control	Implement an internal control system accompanied by function and procedure manuals.
5. Safeguard the deliverables and material evidence at the end of the transaction.	- Negotiation emails and sending information for your quote - Signed proposal for professional services - Contract of service - Reports of detected errors - Work papers

Source: (Cámara de Diputados del H. Cogreso de la Unión, Nov. 11, 2021)

Table 2. Elements to consider non-existent operations

Elements to consider non-existent operations	**Description**
Asset	In article 69-B of the CFF, reference is made to the fact that one of the assumptions to be able to presume the non-existence of operations lies in the lack of assets.
Infraestructure	The lack of infrastructure for the development of commercial, industrial or service activities grants the presumption power to the authority to determine that the taxpayer does not have the necessary elements to carry out operations.
Recurso humano	The absence of human resources gives rise to the presumption of non-existence of operations.
indirect material capacity	The indirect lack of assets, infrastructure and human resources, when they are not available directly, is the reason for non-existence of operations.
Address not found	The impossibility of the authority to locate the taxpayer, presupposes the non-existence of operations.

Source: (Cámara de Diputados del H. Cogreso de la Unión, Nov. 11, 2021)

The consequences of not being able to prove the materiality of the operations entail, according to the Fiscal Code of the Federation (Chamber of Deputies of the H. Congress of the Union, 2021 July 31) to: 1) The restriction on the use of the Digital Seal Certificate (article 17-H BIS of the CFF); 2) Establish joint and several liability to the shareholders. (article 26 CFF); 3) Issuance of the negative compliance opinion, for not having disproved the presumption of article 69-B of the Federal Tax Code; 4) The secret of the name, denomination or company name and password of the RFC for the EDOS is not kept (article 69 CFF; 5) An infraction is established in accordance with article 83, section XVIII of the CFF, by giving tax effects to Evidence of a definitive EFO and failure to demonstrate materialization within 30 days; 6) Section XVI of article 84 of the CFF establishes a penalty between 55% and 75% of the amount of each tax receipt.

On this point, it is necessary to highlight that the materiality of the operations can be proven by means of public documentation, by private documents, by the inspection of compliance with tax obligations, that the tax domicile is where the taxpayer declared it, among others.

Conclusion

To demonstrate the materiality of an operation, the authority focuses on data collected through questionnaires, documents, quotes, photographic and audiovisual evidence, contracts, and additional information provided by taxpayers or by third parties related to said acts, such as notaries public, a law firm or an accounting firm.

In conclusion, companies in Mexico, in addition to complying in a timely manner with their tax and accounting obligations, must verify the material existence of the third parties with whom they carry out operations to avoid falling into the assumption of simulated operations that are presumed non-existent by the authority. It is also important to consider that the SAT carries out periodic reviews to identify possible Companies that Deduct Simulated Operations (EDOS) and Companies that Bill Simulated Operations (EFOS).

Likewise, the risks of being within a presumption are latent because the tax authority has adopted this procedure to intensify acts of review, it is important that taxpayers make sure that the accounting records reflect the economic substance of the operations carried out, considering that Financial Information Standards (NIF) must be applied to meet the expectations of tax legislation.

All used equations should be captioned.

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