

### **Integration of the Collegiate Body with powers to apply the general anti-avoidance rule within tax audits**

Mexico City, January 16, 2023

On December 27, 2022, the Administrative Tax Rules ("ATR") for 2023 were published on the Official Federal Gazette, in which rule 2.1.52 was included, addressing the integration of the Collegiate Body empowered to approve the application of the domestic General Anti-Avoidance Rule set forth in article 5-A of the Federal Tax Code ("GAAR").

The GAAR was introduced to the tax legal framework in 2020, according with the explanatory memorandum of the Federal Tax Code, with the purpose of eliminating the inequity generated by taxpayers who execute legal transactions to configurate operations that lack a business reason and that have the sole objective of generating a more advantageous tax position.

This provision allows for tax authorities to assume, within an audit, that a legal transaction lacks a business reason when the quantifiable and reasonably expected economic benefit is lower than the tax benefit produced by the transaction. Based on this assumption, authorities can reclassify a transaction and asses the corresponding tax liabilities.

One of the conditions to which the applicability of the GAAR was constrained was for the auditing authority to obtain a favorable resolution issued by a Collegiate Body integrated by officials of the Secretary of Treasury and Public Credit ("STPC") and the Tax Administration Service ("TAS").

The regulation on the integration of the Collegiate Body had not been published, reason why the deployment of the GAAR was paralyzed. For this, rule 2.1.52. which entered into force on January 1st, 2023, means that the legal toolkit for the application of the anti-avoidance rule is whole and the authority will now be able to apply such within tax audits.

According to the published rule, the Collegiate Body will be integrated, mainly, by 3 Heads of Unit of the STPC and 5 of the TAS. Decisions will be taken by majority of attending members and in cases of draw, the representative of the General Legal Administration of the SAT will have the deciding vote.

In our opinion, the publication of this rule is a strong indicator that the tax authority will initiate the application of the GAAR within audits; moreover, recognizing a context where in face of the absence of new taxes, tax collection through audit procedures has proven to be a successful course of action for the tax authorities.

For this reason, we advise our Clients to keep in mind that the business reason of your transactions have, now more than ever, a vast transcendence in the fiscal spectrum, for which we advise a review on the economic and tax aspects of relevant transactions that take place in the ordinary course of business or, in a particular manner, transactions that took place in any specific fiscal year.



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