CARRILLO & ASOCIADOS

Deductibility of Certain Expenses in the Regime of Profits on Lucrative Activities

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Carrillo y Asociados details below the tax treatment of two expenses that may be useful to you, with the purpose of stating the several scenarios in which a taxpayer may find himself in upon deducting certain expenses of the taxable income in the regime of profits on lucrative activities.

1. Destruction of Inventory:

Numeral 17 of article 21 of the Tax Update Law (hereinafter TUL) states that the duly proven destruction of assets is considered a deductible expense, provided that:

- It is necessary or indispensable in order to keep the source that produces the taxable income,
- It corresponds to the annual tax period in which it is liquidated, and
- It is supported by the corresponding legal documentation.
- Regarding the last requirement, numeral 4 of article 22 of such legal body states what must be understood as support documents. The minutes signed by the auditor from the Tax Administration Superintendency, the sworn affidavit or the notarial minutes are not included in them; practice that is usually carried out upon the destruction of the inventory.

The participation of an auditor from the Tax Administration Superintendency and the notarial minutes or the sworn affidavit are requirements that the TUL's Regulations (numeral 3 of article 14) demand for the acceptance of a destruction of inventory as a deductible loss.

Notwithstanding the above, the TUL itself provides in letter d) of article 23, that the expenses that are not supported by the corresponding legal documentation are non-deductible expenses, and it states that such documentation is understood to be the one demanded by tax and customs legal provisions.

Derived from the above, we inform of the existence of a legal lacuna, since it is only the Regulations the one that states a procedure and additional documentation for the deductibility of the destruction of inventories. Nevertheless, the Regulations do not have the status of a law and the subject is not within the scope of the regulatory provisions; thus the Principle of the Legality of Taxation would be breached.

Thus, each taxpayer must carry out a cost-benefit analysis upon destroying the inventory, since it must be determined what is preferable: to draw up the corresponding minutes or face a tax objection. And even though it is recommended to have the destruction as documented as possible in case the Tax Administration Superintendency conducts a review, it is also possible to determine that the objection is questionable, based on the principle of the legality of taxation, if such objection is filed due to not having followed the procedure stated in the Regulations.

2. Interests

Numeral 16 of article 21 of the TUL states the payment of interests as deductible expense, with the limitations stated in article 24 of the TUL, which in general are the following ones:

Maximum deductible amount: interest rate times 3 the total net average asset presented by the taxpayer.

The interest rate on credits or loans in Quetzals cannot surpass the simple maximum annual rate determined by the Monetary Board for tax purposes.

For the deductibility of interests on loans abroad, the contracts must be executed with banking or financial entities registered abroad and authorized to carry out intermediation activities in the country where it was executed.

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