

Unconstitutionality of article 29-A of the FTC (invoice cancellation)

Mexico City, October 27, 2023

In October 25th's hearing, the Supreme Court of Justice ruled on the unconstitutionality of article 29-A, fourth paragraph, of the Federal Tax Code ("FTC"), which prescribes that an invoice can only be cancelled within the fiscal year in which it was issued, provided that tax provisions do not set a shorter time limit and that the recipient accepts such cancellation (A.R. 683/2023).

The Court concluded that the limitation set forth is incompatible with the compliance system for tax obligations, as in the case of the filing of annual income tax returns that occurs in March and April of the immediate next year, and moment in which the transactions covered by the invoices deploy their tax effects.

The Court also upheld that the provision ignores the dynamism of commercial transactions, which can face errors not only in the issuance of an invoice, but also before situations such as the termination or default of contracts, cease of service rendering, among others.

The effects of the ruling only benefit the claimant and are limited to the provision which sets forth that, unless the tax dispositions set a shorter time limit, invoices can only be cancelled within the year in which they were issued. On these grounds, the Court asserts that if there were any other provisions that set a time limit for the cancellation of an invoice beyond the fiscal year in which it was issued, such provisions shall be abided.

To this date, the administrative tax regulation (rule 2.7.1.47.) allows for the cancellation of an invoice no later than within the month in which the annual income tax return in which the invoice was issued shall be filed, however, the Court recognized that such administrative regulation is not a remedy for the unconstitutionality of the provision set forth in the FTC.

Even when the effects of this ruling do not benefit third parties, it constitutes a relevant precedent considering that, as of 2022, a fine for cancelling invoices outside the legal time limit entered into force; this fine ranges from 5% to 10% of the value of the invoice (articles 81-XLVI and 82-XLII of the FTC). The constitutionality of this fine was not analyzed by the Court.

If you require assistance regarding the implications and legal consequences that derive from this ruling, please do not hesitate in reaching out to any of the following: Denise Lester (Tax Litigation Partner - dlester@galicia.com.mx) and/or Aaron Schabes Cano (Tax Associate - aschabes@galicia.com.mx).

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