

## Los errores en la valuación del activo fijo en los registros contables, propicia adeudos fiscales para los empresarios

*Errors in the asset valuation fixed in the accounting records, conducive debits tax for entrepreneurs*

**José Luis Chávez Chávez**

Universidad Michoacana de San Nicolás de Hidalgo, México

[jluischavez2@hotmail.com](mailto:jluischavez2@hotmail.com)

### Resumen

Con el presente trabajo se trata de crear conciencia tanto en empresarios como en contadores públicos a fin de que no alteren los activos de una empresa al tratar de pagar menos impuestos. Muchas veces son los mismos empresarios los que convencen a los contadores de mostrar cantidades inferiores a las que verdaderamente adquieren; dicha situación al ser demostrada por una autoridad fiscal bajo sus facultades de comprobación trae consigo consecuencias muy severas, desde la aplicación de un crédito fiscal para el contribuyente directo, hasta incluso responsabilidad solidaria para el contador o, peor aún, que se configure un delito fiscal.

Por eso en este trabajo se proponen mecanismos benéficos para las empresas sin que estas tengan que omitir sus ingresos; por el contrario, si declaran sus percepciones evitarán problemas futuros con la autoridad fiscal.

**Palabras clave:** activos, pasivos, empresa, facultades de comprobación, crédito fiscal.

## Abstract

With this work is awareness in businesses and public accountants so that they do not alter a company's assets to try to pay less taxes. Often are the same entrepreneurs who convince counters show quantities below which truly acquire; This situation being demonstrated by a tax authority under its powers of verification brings with it very severe consequences, from the application of a tax credit for the direct taxpayer, even joint and several liability for the counter or, worse still, that it turns into a tax crime.

So in this work are proposed mechanisms beneficial for companies without having them to ignore their income; on the contrary, if they declare their perceptions they will prevent future problems with the tax authorities

**Key words:** assets, liabilities, business, power of inspection, tax credit.

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## Introduction

The State has a direct relation with all taxpayers, whether individuals or companies, themselves that they are called as payers of taxes, Therefore, the State will always be the active subject, because this is who fixes the modalities of the obligations of all taxpayers, and they will be taxable by abide by the legal order imposed by the State.

Within the scope of accounting, there are many ways to characterize to taxable persons of the tax relationship in which we are immersed and they relate directly or indirectly to the audit powers of the State; Firstly we will find two sections such as: individuals (anyone) and legal entities (any company whether civil or commercial nature); However, this paper will discuss moral people and

in specific Marketing Companies, as it is a Limited Company, which can more easily fall into this kind of irregularities.

Secondly, there is a sub-division as the taxable person taxpayer or required direct, the taxable person forced solidarity, the taxable subsidiary or by substitution, the taxable person liable for warranty, or liability objective.

For this reason, commercial companies may be considered as taxpayers taxable since they have legal quality, which means that these can be regular subjects of rights and obligations.

All companies, as entities, have the obligation to pay the tax, and to give a proper enforcement need to take a formal accounting under the Tax Code of the Federation, by virtue of which they may consider both its assets (all property and rights available to a company) and its liabilities (all debts and obligations of a company); same as being wrong can be certain triggers for an authority to exercise powers to review and audit them determinarles or impose a tax credit.

As stated above, we know that is an obligation of all Mexicans physical or moral person to contribute to public spending whenever proportionally (a means) and equitable (all must comply) and Article 31 says in his fourth fraction of the Political Constitution of the United Mexican States; and the State must investigate taxpayers duly comply with this obligation to pay tribute; To achieve this, the State has two administrative powers of enforcement (which is done both at the home of taxpayers and through reviews of every kind of goods or locations), and one of determination (that can be managed by the authority when it determines that the taxpayer has not paid their contributions in due course), powers or procedures under which the state we reviewed our internal rules and we can request all documents, books, things, goods, transport, among other things with the obligation to be lifting a report stating where acts and omissions that have been present during the course of the visit.

If the authority determines that there are omissions or irregularities in the internal control of the company with regard to the information that the Treasury the taxpayer will then have the freedom to apply the taxpayer a tax credit due to the incompatibility between the actual documents

Company and the documents submitted to the Treasury, which damages and profits decline of this productive sector.

In view of this situation it has affected the company (in general) and has meant that entrepreneurs ask the counter frame numbers they think will be favorable regardless of the penalty that I mentioned before: tax credit.

Currently, the Federal Tax Code provides for a fine of \$ 124 to \$ 177 990.00 950.00 fraction XXX Article 81 and Article 82, respectively.

Therefore both employers and accountants must balance not only between the state and the taxpayer, but also between the taxpayer and its internal rules, in order to avoid possible conflicts between the Treasury and individuals, thus maintaining a harmonious relationship between the authority and the taxpayer. Thus prevents the authority to exercise its oversight and determination procedures or attribute responsibility to the partners or the meter being also subjects that are indirectly involved with the tax primary relationship, but both may be affected in their interests.

According to the above, it is intended to determine the accounting situation of a company (business person, corporation) throughout its domestic system -contablemente speaking-including assets and liabilities, the taxpayer will see benefit obligations to the treasury and even less feasible that the State exercise its power of inspection if they become omitted some income thinking that benefits more to the employer.

At present and in accordance with Tax Notes magazine in May 2015, 73.1% of companies moral people without adequate upgrade of its fixed assets, violate Financial Reporting Standards in force with regard to the re-expression of the states under the heading of financial fixed assets.

Similarly, in the outline of policy approaches of the Mexican Institute of Public Accountants, dated August 13, 2014, the imposition of caveats it is recommended to companies that do not re-express its fixed assets in accordance with Financial Reporting Standards in their respective dictaminación.

We know that there are various defenses to combat tax credits, since an administrative remedy is appeal for reversal, appeal for amendment, application for review and even judgment of nullity; however, this is to avoid resorting to legal means by an irregularity caused by poor accounting interpretation or neglect, which may bring more harm than good to a taxpayer (payment of fees to professionals who often do not resolve the conflict tax).

SAT, through their means of control in the financial year 2013, raised from fines for this item 28% of the total universe of violations throughout the country (interview the Secretary of Finance and Public Credit, Luis Videgaray, El Universal dated 22 November 2014).

## **STATE FINANCIAL REQUIREMENTS**

The state to achieve its primary purpose needs a financial activity which provides the economic balance of the country; To do this, there must be a standard tax character that has a punishable act and event; that is, there is a law that considers the tax burden and behavior that cause the tax burden of compliance is obliged tribute.

From that moment you can determine the enforceability of the conduct covered by the obligation.<sup>1</sup>

Therefore, the activities carried out by the State as essential to achieving your goals, according to political and economic ideas, are part of the financial system of the State.

## **CONTRIBUTIONS**

Within the relationship arising from the financial system of the State with the governed, there are two types of subjects, assets that are, according to article 31 section IV of the Constitution of the United Mexican States, the Federation, the Federal District, States, municipalities, being them who require the taxpayer to pay the tax and, in that sense, then there will be taxpayers who are required to comply with the constitutional obligation and that is the temporary tax payment.<sup>2</sup>

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<sup>1</sup> Delgadillo Luis Humberto, *Principios de Derecho Tributario*, cuarta edición, editorial LIMUSA, Noriega Editores, México 2004, p. 96.

<sup>2</sup> Article 31. The obligations of Mexicans: I..., II..., III..., IV. Contribute to public expenditure and of the Federation and the Federal District or the State and Municipality in which they reside, in the proportional and equitable manner provided by law.

There are three types of economic organizations: nonprofits, nonprofit and government. The first of them aim at providing services, manufacturing or marketing of goods, and acquire a benefit to be called "utility".<sup>3</sup>

The latter do not pursue profit, legally known as civil associations, can obtain profits revert to fulfill its objective, provide services or sell goods.

The third are government organizations, it refers to areas of federal, state, municipal, provincial and departmental governments.<sup>4</sup>

According to the general law of corporations, those entities from being held or involved in commercial transactions of a commercial nature are considered a predominantly economic order, and include: general partnership, limited partnership, partnership limited liability corporation, limited by shares, cooperative society.<sup>5</sup>

Therefore, all persons (natural or legal) are the taxpayers who treat their obligations to the procedures set by the tax law; in the Mexican tax system are three active subjects of this relationship: the federation, which is the legal person who accumulates the highest number of powers in tax matters; states or states, and municipalities.

According to this we can include a classification of taxes: Federal Tax, Estate Tax or of the States, Municipal Taxes.<sup>6</sup>

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<sup>3</sup> The utility characteristic of accounting information is the quality of fit the purpose of the user. These purposes are different in detail for each user, but the economic interest prevails among stakeholders are: company managers, investors, shareholders, employees, suppliers, creditors, government authorities, etcétera.

<sup>4</sup> Guajardo Cantú Gerardo, Nora E. Andrade de Guajardo, *Contabilidad financiera*, editorial McGraw Hill, México 2008, p. 5.

<sup>5</sup> Article 1 of the General Law of Commercial Companies, current text.

<sup>6</sup> Serra Tojas Andrés, *Derecho Administrativo*, editorial PORRÚA, segundo curso, doctrina, legislación, y jurisprudencia, vigésima primera edición corregida y aumentada por Andrés Serra Rojas, México, 2001, p. 43.

All contributions are essential characteristics for:

1. Its nature is purely personal.
2. They are cash contributions.
3. Your product should be allocated to cover the costs of public bodies.
4. The contribution should be proportional and equitable.
5. This obligation can be established only by statute.

It is a personal obligation to mention the constitutional provision invoked before (Article 31 fraction IV) corresponding to all Mexicans. Now, in our legal system can be Mexican by birth or naturalization; is a financial contribution that must contribute to the costs and infer that the contribution be given monetary pecuniary nature of today's economy, however, it is permissible in kind; It is for public spending, so the destination that has the contribution will be exclusively for public spending and for no other purpose; It is proportional according to the wealth of the person on whom it will affect; it is equitable because of the justice of the case of the application of the law equal to those found in similar circumstances; only through a law, because it addresses the principle of tax law, as a function of the legislative rules on the creation of a fiscal nature.<sup>7</sup>

We want to address the corporation as it is the one with better legal regulation and the case in which this research is based is the corporation, therefore before the regime that is necessary to comment that a corporation is a corporation governed under the General Law of Commercial Companies and whose characteristics are that capital is represented by registered shares. They are required to pay their share, either in cash or in kind partners.

It has a simultaneous formation process, ie the shareholders' meeting to make the draft statutes. Currently he needs at least two people to consolidate, and each partner will have shares in their favor, which are securities that attest to the participation of a partner in a corporation.<sup>8</sup>

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<sup>7</sup> Delgadillo Luis Humberto, *Principios de Derecho Tributario*, cuarta edición, editorial Limusa, México, 2004, pp. 58, 60.

<sup>8</sup> Op. cit, p. 9.

Has tax obligations such as the payment of income tax, value added tax, withholding others, state taxes, if you have employees pay 2% of payroll, which is the state tax payment of INFONAVIT, IMSS payment, and tax on transfer of ownership of real estate, among others.

However, payment for contributions born to perform the act itself and the taxable event, that is, when they enroll in the Federal Register of Taxpayers, which is the first contact between the public administration and taxpayers, by virtue of which the authority may have a relationship or list of all those who normally cause contributions.<sup>9</sup>

It is the duty not only corporations but by every physical or moral person to register with the register when they have to submit periodic declarations and issue vouchers for the activities they undertake.

## **NOW AND ESTABLISHMENT**

To develop its activities, a corporation must be clear about what the company is and what is the establishment. A company is the product of the general idea of the employer; unit understands everything, the meeting of all elements of material, human and spiritual order, capital, labor, will and genius of the employer; while establishing technical unit is complete in itself and independent of other possible establishments, all of which coexist within the company and those who concur in achieving the overall aim.<sup>10</sup>

Given the above, the labor law in Article 16 defines the company as the economic unit of production or distribution of goods or services, and the establishment as the technical unit as a branch, agency, etc., it is an integral part and contribute to attainment of the objectives of the company.<sup>11</sup>

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<sup>9</sup> Article 27 of the Federal Tax Code determines who are obliged to issue electronic invoices over the Internet for the acts or activities undertaken or income received and the Federal Register of causing.

<sup>10</sup> De la Cueva Mario, *El nuevo derecho del trabajo en México*, segunda edición, editorial Porrúa, México, 2004.

<sup>11</sup> Federal Labor Law, Article 16 current text.



Within the establishment where possible irregularities concerning this work originate whenever a relationship between the sole director of the corporation with the internal or external public accountant arises, as appropriate.

The tax obligations of the company are analyzed and studied by a public accountant who is required to file returns on time and legally, to the effect that there is no disappointment with the supervisory authority; The company also undertakes to provide all necessary information to use the meter in order to comply with the contributions.

Should such information not be accurate, even the authority can ask the accountant the information through their powers of verification, whether by virtue of a verification or review of an opinion, or verification or review of Cabinet.<sup>12</sup>

However, if the authority is not satisfied you can even go directly to the taxpayer generally making a home visit.

To avoid such disputes, the accountant should take into account the assets and liabilities of the company, defined as those with assets and liabilities that the company has.

### **ASSETS AND LIABILITIES OF A COMPANY**

Property, rights and liabilities of a company consist in the financial statements, which are the means which uses accounting for transmitting users (merchants, industrialists, service providers, government institutions, individuals or companies) the information necessary for decision making or result of the accounting process.

These elements will call assets and liabilities; assets are all assets and rights owned by the company; liabilities are all debts and obligations of the company.<sup>13</sup>

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<sup>12</sup> Article 42 of the Tax Code of the Federation, the current text.

<sup>13</sup> Lara Flores Elías, *Primer curso de contabilidad*, 16a edición, editorial Trillas, México, septiembre 1999, p. 13.

The performance of a public accountant for assets and liabilities is to be determined by a statement of financial position or balance sheet is the balance sheet showing information about the assets, rights and financial obligations of a company to a certain date; its main features are: it is a basic financial statement discloses assets, liabilities and stockholders' equity of a company, the financial information presented by this state should be to a certain date (December AD 31), it is made based on the balance of the balance sheet accounts (assets, liabilities and capital).

The accounts that are part of the liabilities: Suppliers, notes payable, Sundry creditors, mortgagees or mortgages payable, interest received in advance Revenue received in advance.

Now, when a counter has all the information in your hands, make a general balance to the actual situation in which a company is determined by determining whether the company has financial, or capacity, if the company is in danger of bankruptcy.

When information is displayed to the treasury through its annual statement, the authority, under the principle of good faith, trust the data it receives from the taxpayer, but when it crosses information with third and appears an irregularity in the accounting items The authority is empowered to visit the taxpayer to demonstrate or provide the necessary information in order to refute the authority's arguments.

## **POWERS OF CHECKING**

Tax authorities enhance audit procedures that can be performed both in the homes of the taxpayers as through reviews of all kinds of goods, production sites or in transit, as provided in Article 42 of the Tax Code of the Federation.

Doctrinally, it is an effective means of fiscal authority to meet the fiscal situation of taxpayers in the legal-tax relationship, and has the requirements to issue a written order, which is issued by a competent authority be established and motivated , hold the signature of the competent official,

identify your recipient, mark the place to review, the names of the agents authority shall practice visit, based on Article 38 and 43 of the Tax Code of the Federation.<sup>14</sup>

Therefore, when the authority is studying the tax situation of a company, and across the information with third parties to determine the irregularity, we subjected to a power test, which are those powers which has a supervisory authority to review the correct implementation obligations to pay the tax that taxpayers have obligations to the treasury.

To this end, the authority issuing the visitation order, which is notified by an inspector in the offices and raises an initial act which gives rise to the development of the visit, up partial reports which pointed omissions seen in the course of the visit, allow time for statements of the inspected, you can lift the acts deemed necessary provided there rectify various irregularities; asks the visited show you all the necessary documentation; if he refuses to hand, it should be noted in part for the purpose of it is circumstantial record.

Before closing, drawing up a document called Final Act, which determines whether or not the irregularity was remedied by the visited, and proceeds to impose a tax credit.

However, when it is the taxpayer who asks the accountant to determine minor amounts of which has indeed not only the direct responsibility of the direct or liable taxpayer, you can assign responsibility to counter that, improperly, decides Ignoring his client affecting not only the company but gaining a penalty which will be reflected in a tax credit.

## **FISCAL CREDIT**

They are tax credits which is entitled to receive the State or its decentralized bodies who come from contributions, its accessories or exploitation, including those resulting from responsibilities

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<sup>14</sup> Requisitos de legalidad, sin ellos la autoridad no puede efectuar visitas domiciliarias, en caso contrario, estará viciada la orden de visita.

that the State is entitled to require its officers or employees or individuals, as well as those laws that give them character and the State is entitled to receive as an employee.<sup>15</sup>

Flores Zavala, speaking of the birth of the tax credit, states: "No resolution authority is therefore necessary for a credit is generated, it automatically comes to the legal assumptions made".<sup>16</sup>

For there to be a tax credit is necessary for the taxpayer of tax liability incurred perform an act or an omission that is understood within the legal situation as defined by law, that is, there needs to be a fact while , there is a legal standard that is applicable, ie a legal fact.

The tax liability is not immediately enforceable, its enforceability acquires special nuances, it must be certain of the amount under a procedure called "determination".

Its main features are:

- a. It is an amount that is entitled to the State or its decentralized agencies.
- b. It arises by operation of law.
- c. It comes from contributions, exploitation or accessories.

However, when the substantive tax obligation has appeared with the adequacy of the event giving rise to the chargeable event, you must meet the default behavior by giving a consistent standard, it is necessary to clarify its meaning (quantum) of the obligation.

According to Article 6, 3rd paragraph of CFF, is for taxpayers determining contributions express charge, unless otherwise specified. If the tax authorities must make the determination, taxpayers provide them with the necessary information within 15 days of the date of accrual.

Then we have two types of tax assessment:

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<sup>15</sup> Artículo 4º del Código Fiscal de la Federación, texto vigente.

<sup>16</sup> Flores Zavala Ernesto, *Elementos de Finanzas Públicas Mexicanas*, Editorial Porrúa, Decimocuarta edición, México, 1999.

The first is self-determination, which is when the taxpayer is determined, and Heterodeterminación, which will be determined when the Authority by virtue of their powers of verification.

To the extent it is possible on some basis or based on estimated or assumed.

The determination based on certain runs, either by the taxpayer or the tax administration, with full control and verification of the operative event in terms of its features and elements, and also in terms of its economic size. It is uncertain fact and taxable values.

The determination of estimated basis exists when the tax authority determines the tax base by means of presumptions established by the law itself.<sup>17</sup>

There are three methods of determination:

1. **Objective method**, in which a fee or rate indicated in attention to weight, measure, volume or number of units of goods, which are subject to the tax.
2. **Indiciario method** in which certain data on the activity of the taxpayer are taken as reference, to establish their ability to pay or subject to tax in the case of consumption, so the signs are usually found in the abstract production, capital invested in the business or external signs of wealth.
3. **Declarative method** in which a tax credit is determined, through a formal statement of the taxpayer, which may apply or information.

The privileges of the tax credit is that the constituent amounts of tax credits are allocated to public spending, they have characteristics that differentiate them from other types of loans; and in that sense, the Federal Treasury has priority to receive payment of income credits from the Federation must have sensed.<sup>18</sup>

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<sup>17</sup> Article 55 to 63 of the Tax Code of the Federation, current text, in conjunction with Article 90 of the Law on Income Tax. current text.

<sup>18</sup> Article 149 Tax Code of the Federation, the current text.

When the tax authority determines a loan to the taxpayer, in this case a company that ignores tax assessment, the tax credit is legitimate.

However, to prevent the emergence of such irregularities, the authority needs to be aware of the real situation of the taxpayer and in case of any inconvenience, and be allowed go before a tax credit is issued, to appear before that authority to settle any dispute.

Within the regulations included in the tax law are those that are designed to ensure compliance with the substantive tax relationships and regulate relations between the government and individuals.

We found such procedures can use any taxpayer consultation, which is how the right to request taxpayers to request the tax authorities with respect to real and specific situations materialize. The tax authorities within a period not exceeding three months must provide a response for the situation in question, otherwise means that you do not go right or no reason has been granted.<sup>19</sup>

Or, if you think that the determination of the physical is not correct, you can use various procedures that serve to prevent the issuance of a tax credit for omission or action against the Treasury.

Called incitement of justice, and expects the tax authorities may, at its discretion, review of administrative decisions unfavorable to a particular individual character issued by his subordinates hierarchically, as provided for in Article 36 of the Tax Code of the Federation.

In case it is proved that the decision was taken in violation of the tax provisions can be changed only once or revoke the benefit of the taxpayer, provided that filed a defense does not have and which have elapsed deadlines that are available for it legally and without any prescribed tax credit.

Another window is justice that is the means by which the individual has the opportunity to go to the tax authorities in order to make the clarifications it deems appropriate in relation to the fines

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<sup>19</sup> Artículo 17 Ley Federal del Procedimiento Administrativo, texto vigente en relación con el artículo 34 del Código Fiscal de la Federación, texto vigente.

imposed for offenses related to arithmetic errors, RFC, failure to submit statements and documents.<sup>20</sup>

It is promoted within six days, and the authority must issue its in a period not exceeding six days from the date you have been properly integrated file.

## **SUGGESTIONS AND RECOMMENDATIONS**

1. It is very important that the professional accountancy have in mind that distort financial information of companies is a crime and that leads to double counting, which generates significant fines legally established tax laws.
2. The financial disorder that causes an inadequate valuation of fixed assets today is because of that 28% of these corporations have been involved in the determination of tax credits by the SAT, which has made the margin I look useful minimized by economic disruption and unnecessary infringements.
3. properly comply with tax guidelines, it gives reassurance to taxpayers and a plus for the professional accounting.
4. promote and comply with the regulations relating to financial reporting standards on the restatement of fixed assets, demonstrating the reliability of investors in companies.
5. Apply the tax and accounting techniques in business organizations properly, leading to greater transparency and ease of control practice for both the SAT and the taxpayer.

## **CONCLUSIÓN**

It can be seen that by ignoring a taxpayer irresponsibly and adjust amounts to an unreal situation that leads to the question of authority with respect to the real and concrete situation of a company, the authority can, through its powers check, review all books, accounts, records, and what I think is necessary in order to determine whether or not there is any irregularity in the internal records of the taxpayer, for it even takes information from third parties and crosses to check the type of

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<sup>20</sup> El art. 33-A DEL Código Fiscal de la Federación, texto vigente.

failure of the taxpayer, which leads him to pay unnecessary infringements that damage its economy.

In the course of this document, it was proved that to avoid oversight and power to review a tax authority is not advisable to ignore data, because the immediate consequence would be that the omission is established by virtue of the review functions and a tax credit is issued which, by the type of genealogy, we could not be challenged by existing and being dormant failure of the taxpayer, fostering distrust between partners and investors respectively.

Even the responsibility of the counter to this is not only jointly and severally liable with direct contributor, but also with their professional ethics, which can degenerate into the deprivation of his practice by the failure to Financial Reporting Standards.

Therefore it is worrying that in this noble profession is necessary to have the habit of responsibility and have the foundation for a proper work ethic, so to fully display the information that the taxpayer in case of revision, the tax authority simply not determine any tax credit through fines to bring the Tax Code of the Federation in force.

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