

Important precedent regarding the deduction of expenditures for urbanization and infrastructure as operating expenses and not as cost of sales

Recently, our tax litigation department obtained a favorable ruling from the Specialized Chamber for Substantive Resolution Matters of the Federal Court of Administrative Justice, which declared the complete nullification of a resolution in which the tax authorities had denied the deductibility of expenditures made by one of our clients in the real estate sector for income tax purposes, specifically related to urbanization and infrastructure expenses.

According to local legislation in the majority of the country's states, real estate developers are required to transfer the ownership of urbanization and infrastructure works to the municipalities in order for the authorities to grant the necessary permits and licenses to carry out the construction of residential properties for future sale.

In the ruling that was declared illegal, the tax authorities had argued that the expenses in question were not strictly necessary for the company's business activities, as they were not directly related to its primary activity, namely, the sale of the developed properties. Furthermore, they contended that, if a deduction was to be made, it should be done as part of the cost of sales of the properties and not as an operating expense deduction.

In response to this, the Court ruled that the expenditures for urbanization and infrastructure are indeed strictly necessary, as the company would not have been able to obtain the required permits and licenses for the construction of the residential properties it sells as part of its core business without incurring such expenses and donating the works to the municipality, which is a legal obligation.

Finally, contrary to the tax authorities' position, the Court concluded that the expenditures for urbanization and infrastructure should be considered an operating expense deduction rather than included under the cost of sales mechanism, since these expenditures are not related to nor included in the sales price of the residential properties at the time of sale but are instead fully borne by the company.

At Von Wobeser y Sierra, we are pleased to share the success achieved in this matter and hope that this information will be useful to you.

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S I N C E R E L Y

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Mexico City, October 1, 2024.

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