

BLOQUEO FISCAL Impuesto al Valor Agregado Nulidad de la determinación de oficio.

PROCEDIMIENTO FISCAL. Régimen especial de fiscalización. BLOQUEO FISCAL. Impuesto al Valor Agregado. Nulidad de la determinación de oficio. Revocación. Control de declaraciones juradas. Determinación del período base en el caso de los tributos anuales y de los que no lo son. INTERPRETACIÓN DE LA LEY. Consideración de las consecuencias que se derivan de la aplicación de los diferentes criterios. Art. 117 de la ley 11.683. Intención del Legislador al sancionar la ley 23.905

"Peña, Orlando c/ Dirección General Impositiva" – CSJN – 22/02/2011

"Tanto en el caso de las gabelas de liquidación anual como en aquellas que no lo son el régimen especial establecido por la ley 23.905 requiere de la constatación de las declaraciones juradas presentadas por el contribuyente en el "período base" con una doble finalidad: por un lado, para circunscribir las facultades de verificación de Fisco respecto de los anteriores a aquel, por el otro, para permitirle al Estado extender la presunción de inexactitud de ese "período base" a los restantes anteriores no prescriptos aunque, en este último caso, con las limitaciones fijadas por el art. 125, tercer párrafo, para los tributos que no son anuales." (Del dictamen de la Procuradora Fiscal, compartido por la CSJN)

"Corresponde dilucidar cuál es el "período base" que delimita el alcance de las tareas de fiscalización en caso de los tributos anuales y de los que no lo son. En el primer caso, será el último período anual por el cual se hubieran presentado declaraciones juradas o practicado liquidaciones con anterioridad al inicio de la fiscalización que lógicamente, puede o no coincidir con el último ejercicio fiscal vencido dependiendo de si el contribuyente presentó o no su declaración jurada. Para el caso de los tributos que no son anuales, el "período base" abarcará los ejercicios vencidos durante el transcurso de los últimos doce meses calendario anteriores al inicio de la fiscalización en los que se hubieran presentado declaraciones juradas o practicado liquidaciones (arg. art. 117 ley 11.683)." (Del dictamen de la Procuradora Fiscal, compartido por la CSJN)

"Se encuentra fuera de debate que la inspección se inició el 26/08/98. Asimismo, el Fisco afirmó, sin merecer negativa de la contraria, que la última declaración jurada presentada en el impuesto al valor agregado con anterioridad a esa fecha fue la correspondiente a febrero de 1997, encontrándose entregadas las anteriores hasta enero de 1996. En consecuencia, considero que asiste razón al apelante cuando afirma que el "período base" que se encuentra habilitado para fiscalizar comprende el tributo de febrero de 1997 hasta marzo de 1996, siendo éstos los períodos fiscales cerrados durante el transcurso de los últimos doce meses calendario anteriores al inicio de la fiscalización y por los cuales el contribuyente presentó sus respectivas declaraciones juradas." (Del dictamen de la Procuradora Fiscal, compartido por la CSJN)

"No puedo pasar inadvertido que seguir la línea interpretativa dada por las instancias anteriores con respecto a la aplicación del bloqueo fiscal sobre los tributos que no tienen un ejercicio anual, conduce a resultados disvaliosos, que no fueron los queridos por el legislador. En primer término, implica compeler al organismo recaudador a fiscalizar la situación del responsable por los últimos doce ejercicios inmediatos anteriores al inicio de la inspección para ambar a un resultado que indudablemente, será infructuoso a los fines del régimen. En efecto, la determinación de oficio que pueda practicarse arrojará un saldo que al no haber declaraciones juradas presentadas, no podrá ser luego contrastado con la posición del contribuyente. Tomando inoperantes las presunciones de los arts. 118 y 120 de la ley de procedimientos tributarios. A la vez, como ocurre en la especie, conduce a paralizar al fisco en el ejercicio de sus facultades, puesto que al no poder efectuar el cotejo que impone el citado art. 118 de la ley –el que deberá arrojar una diferencia de 5% o \$10.000 respecto de la base imponible, o del quebranto declarado por el contribuyente, según el art. 3° del decreto 629/92- se verá imposibilitado para avanzar sobre los períodos anteriores no prescriptos." (Del dictamen de la Procuradora Fiscal, compartido por la CSJN)

"En la interpretación de la ley no debe prescindirse de las consecuencias que se derivan de cada criterio, pues ellas constituyen uno de los índices más seguros para verificar su razonabilidad y su coherencia con el sistema en que está encargada la norma (arg. Fallos:

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David Kirk



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