

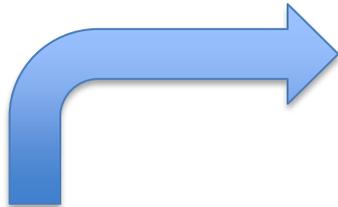
TAX FRAUD CASE: NON-REAL TRANSACTIONS



Manuel Ramírez Borjas
INER - SUNAT

- ❑ Internal Regulations
 - IGV Law
 - Tax Criminal Law
- ❑ Procedures
- ❑ Tax Fraud Crime Case: Non-real Operations
 - Facts detected in the audit
 - Analysis carried out in the audit
 - Audit results
 - Criminal Complaint

INTERNAL REGULATIONS ART. 44 IGV LAW



Any payment receipt or debit note issued that does not correspond to an actual transaction will require payment of the tax stated therein by the person responsible for issuing it.

PAYMENT RECEIPTS
ISSUED FOR NON-
REAL
TRANSACTIONS



The person receiving the payment voucher or debit note will not be entitled to tax credit or any other right or benefit derived from the General Sales Tax arising from the acquisition of goods, provision or use of services, or construction contracts.

INTERNAL REGULATIONS

ART. 44 IGV LAW



It is
considered
as a non-
real
operation

A situation in which, although a Payment Voucher or Debit Note is issued, the taxed transaction recorded therein is non-existent or simulated, allowing it to be determined that the transfer of goods, provision or use of services, or construction contract never took place.

That in which the issuer appears on the Payment Receipt, having used his name and documents to simulate said operation.

INTERNAL REGULATIONS

TAX CRIMINAL LAW – ARTS. 1 AND 2



Anyone who, for his own benefit or that of a third party, using any artifice, deception, cunning, trick or other fraudulent method, fails to pay in whole or in part the taxes established by law.



Deprivation of liberty of not less than 5 (five) nor more than 8 (eight) years and with 365 (three hundred sixty-five) to 730 (seven hundred thirty) days-fine.

Hiding, totally or partially, assets, income, rents, or recording totally or partially false liabilities, to cancel or reduce the tax payable

Failure to deliver to the tax creditor the amount of tax withholdings or collections that have been made within the period established by the relevant laws and regulations.

INTERNAL REGULATIONS

TAX CRIMINAL LAW – ART. 4



Tax evasion shall be punished with a prison sentence of not less than 8 (eight) nor more than 12 (twelve) years and with 730 (seven hundred thirty) to 1460 (one thousand four hundred sixty) days-fine when:

Obtain exemptions or exemptions, refunds, credit balances, tax credits, compensation, returns, benefits, or tax incentives by simulating the existence of facts that allow you to enjoy them.

It simulates or causes states of patrimonial insolvency that make it impossible to collect taxes.

Non-real Operations: Procedures



Carrying out prior procedures with respect to the audited taxpayer, which are carried out to determine whether there are potential non-real transactions:

- ✓ Verify the RUC registration date, accurately determine the taxpayer's CIU, and identify the company's legal representatives, shareholders, and directors.
- ✓ Determine background information for non-real operations, returns by SFMB of the Exporter, failure to appear before Sunat , being part of the "False Invoices" application and for the crime of tax fraud.

Non-real Operations: Procedures



- ✓ Prepare a supplier ranking to identify the taxpayer's main suppliers.
- ✓ Analysis of supplier information: Compliance profile, focusing on the analysis of VAT paid (based on IGV Payment Declarations and Payment Receipts), total declared income (based on IGV and IR Declarations), total income based on information from the Electronic Sales Registry, total bank transactions based on the ITF, total declared purchases (based on IGV Payment Declarations), total purchases reported based on the supplier's Sales Registry, and total purchases attributed to the supplier based on information from electronic records.
- ✓ Analysis of information based on RUC (Tax Identification Number) and background information allows for identifying whether the taxpayer is in a State of Deregistration or Temporary Suspension, as well as in a State of Unavailable or Unfound status. It also allows for identifying links between suppliers through the same legal representatives, partners, addresses, etc.

Non-real Operations: Procedures



- ✓ Verify that the audited taxpayer's purchases have been declared as sales by the suppliers.
- ✓ To support the effective execution of the acquisitions, a request for support will be issued taking into account the economic sector to which the taxpayer belongs.
- ✓ Analysis of the Purchase Record and purchase payment vouchers provided by the taxpayer.
- ✓ Payment analysis: You should verify whether the payment was made by wire transfer, check, etc., or if it is pending.
- ✓ Request for Information from Third Parties: Municipalities, Ministries and Banks.
- ✓ Cross-checking information with suppliers to verify and obtain supporting documentation and information that proves the veracity of commercial transactions with the audited taxpayer.

Non-real Operations: Procedures



- ✓ Statements must clarify and confirm any information or inconsistencies observed during the audit.

Other procedures:

- ✓ Seizure: When the conditions for obtaining evidence or elements of proof that lead to proving non-real operations are not present.
- ✓ Check the marketing chain: second supplier chain.
- ✓ Graphotechnical examinations in the event of documents containing controversial facts, to establish the authenticity of the document.

TAX CRIME CASE: NON-REAL TRANSACTIONS



1. SECTION: RESTAURANTS

- Tax period: 2011-01 to 2012-12.
- Tribute: IGV - INCOME.
- Scheduling reason: Inconsistencies detected in suppliers not declaring sales or reporting in DAOT.

Initial assessment:

- The taxpayer was a restaurant and had 15 related companies.
- Different company names and different partners and legal representatives.
- The accountant was the same person in all companies.
- The observed supplier had conducted transactions with all of the related companies.

HOW DID THE GROUP OPERATE SUNAT

MANAGEMENT

**Financial and Accounting
Administration**

**To 100% of the Group's
companies**

COMPANY OWNER OF THE BRAND

Rent use of the brand

**To 100% of the Group's
companies**

REAL ESTATE COMPANY

**Owner of some premises that she
rents**

**To 100% of the Group's
companies**

LOGISTICS COMPANY

**Make purchases of goods for the
group of companies**

**To 100% of the Group's
companies**

FACTS DETECTED IN THE INSPECTION



- ✓ It was detected that the companies operated under a franchise model (but it was simulated).
- ✓ It was discovered that the money was being handled through an operator from the same group.
- ✓ He did not show bank statements; several of the companies did not have checking accounts.
- ✓ They had a warehouse responsible for distributing merchandise to all the restaurants; the purchase of supplies and other goods was centralized by a single company.

FACTS DETECTED IN THE INSPECTION



- ✓ A single supplier of purchase invoices, which represented 50% of the annual purchases of all the companies in the group
- ✓ Invoices were issued daily on average between 10 and 12 invoices per company for amounts less than S/ 3,500.00 to avoid using bank payment methods.
- ✓ There were no sender's shipping guides despite the fact that they were various products.
- ✓ All payments were in cash; there was no supporting cash receipt for payment to the supplier.

CABECERA - CUALQUIER otro 5M
JOSE VALLEJO CANTU 357
CALLE TERNERAS 10 JUNIO
CALLE SANCHEZ 10 JUNIO
CALLE VARELA 10 JUNIO

CLIENTE: PRESIDENCIA - GENERALIDAD VALENCIANA
FORLADOR: VALENCIA

DIRECCION: S-46/1001-A
CALLE: PLAZA DE MANIS
TIPO: TRANSFERENCIA

| CANTIDAD | CONCEPTO - REFERENCIA | PRECIO | IMPORTE |
|----------|-----------------------|--------|---------|
| 1 | CHOCOLATE VAND 2/4 | 3'66 | 3'66 |
| 2 | BURGO DE AZIAR 3/4 | 2'69 | 5'38 |
| 1 | FLAN DE HUEVO | 2'69 | 2'69 |
| 1 | YOGURTH GRIEGO | 2'69 | 2'69 |
| 5 | PATA DE BURGO 1/4 | 1'57 | 7'85 |
| 2 | BURGO DE AZIAR | 2'69 | 5'38 |
| 1 | PASAS | 1'85 | 1'85 |

ACTIONS CARRIED OUT IN THE INSPECTION



- ✓ 15 companies linked to the group were scheduled for audits.
- ✓ Information was cross-referenced for 2011 and an audit was conducted for 2012 – IGV tax for the supplier who supplied more than 50% of the products.
- ✓ For not displaying bank statements, the banking secrecy of the group of linked companies that had bank accounts and the companies that managed the finances was lifted.
- ✓ Requests were issued seeking substantiation of the transactions for the suspicious acquisitions.

ACTIONS CARRIED OUT IN THE INSPECTION



- ✓ Accounting documents were seized after not providing all the requested information.
- ✓ Statements were taken from workers of the various associated companies.
- ✓ Information was requested from Public Registries, Immigration, and other sources to determine the degree of ties between the individuals listed as partners or legal representatives of the various companies.

RESULTS OF THE INSPECTION



- ✓ The audited taxpayers did not substantiate the purchases from the main supplier for the years 2011 and 2012, the amount observed was S/ 30,000,000 (taxable base).
- ✓ They did not keep the Kardex Book where the acquired assets are recorded.
- ✓ There were invoices issued by the supplier with a date prior to the authorization of the payment vouchers (physical).
- ✓ The taxpayers did not provide proof of having received the goods from their supplier in warehouses or at each location.
- ✓ The purchases were paid for in cash and there were no cash receipts.

RESULTS OF THE INSPECTION



- ✓ A total of 20 demonstrations were conducted where workers did not know the managers listed on their RUC forms and indicated that a third party, who did not appear on the form, was the owner.
- ✓ No cash outflows were detected in the bank statements for payments to the supplier who made the largest percentage of sales to the group's companies.
- ✓ During the seizure, no information was found about the main supplier that would prove the purchase or payment to the supplier. The information found corresponded to other transactions that were not subject to observation.
- ✓ It was detected that there were coincidences in trips abroad for the partners listed on the RUC form.

RESULTS OF THE INSPECTION



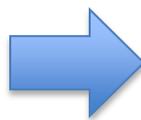
- ✓ The tax credit for operations with the observed supplier was repaired, determining taxes to be paid for the IGV (section a) of article 44 of the IGV Law).
- ✓ Regarding Income Tax, the cost and/or expense recorded in the books and records was repaired (articles 20 and 37 of the Income Tax Law).
- ✓ The taxpayer challenged the amounts and they were declared UNFOUNDED, then they were appealed out of time before the Tax Court.
- ✓ The case was the subject of a criminal complaint for tax fraud by submitting false payment receipts, improperly obtaining a IGV tax credit and an improper income tax deduction.

CRIMINAL COMPLAINT



Modalities Detected:

✓ Improper obtaining of IGV tax credit



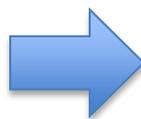
Payment vouchers of purchases for non-real transactions

✓ Cost and/or expense deducted fraudulently



Payment vouchers of purchases for non-real transactions

✓ Use of third parties people to hide true identity



Existence of a de facto administrator, who holds the power to direct and manage the company

THANKS
SO MUCH!

Manuel Enrique Ramírez Borjas

División de Rentas Internacionales y Precios de Transferencia
Gerencia de Fiscalidad Internacional (GFI) – INER

mramire3@sunat.gob.pe

Av. Arenales N.° 335-357, Lima 1

Tíf.: 634-3131 anexo 23256

www.sunat.gob.pe



 SUNAT  @SUNAToficial  SUNAT  SUNAT