

ADMINISTRATIVE PRESUMPTIONS AND THE MATERIALITY OF TRANSACTIONS IN RELATION TO TAXPAYER LEGAL CERTAINTY IN THE APPLICATION OF ARTICLE 69-B OF THE MEXICAN FEDERAL FISCAL CODE

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ABSTRACT

Article 69-B of the Mexican Federal Fiscal Code has become one of the central legal mechanisms used by the Mexican State to combat simulated tax transactions. Through this provision, the tax authority may presume the non-existence of transactions when a taxpayer lacks the material resources, infrastructure, or operational capacity necessary to carry out the activities reflected in the corresponding tax receipts, a situation commonly associated with entities known as EFOS (companies that issue invoices for simulated operations).

Despite its relevance within the framework of tax enforcement, the practical application of this provision reveals a persistent tension between the effectiveness of fiscal oversight and the protection of taxpayers' legal certainty. This paper argues that, although the presumption established under Article 69-B has been considered constitutionally valid, its implementation raises important concerns due to the absence of clear evidentiary standards for determining the materiality of transactions.

The research follows a doctrinal and legal-argumentative methodology, examining statutory provisions, judicial precedents issued by the Supreme Court of Justice of the Nation and the Federal Administrative Justice Court, as well as official data published by the Mexican Tax Administration Service (SAT). The analysis demonstrates that although the presumption established by Article 69-B may be challenged before the courts, its administrative application frequently generates uncertainty regarding the evidentiary requirements imposed on taxpayers.

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The study concludes that the principal problem does not lie in the existence of the mechanism itself, but rather in the way in which it is operationalized within administrative practice, particularly in relation to evidentiary evaluation. In this context, the absence of clear criteria regarding the materiality of transactions contributes to a lack of legal certainty within the Mexican tax system.

KEYWORDS: *Article 69-B; Tax Enforcement; EFOS; Materiality of Transactions; Administrative Presumption*

INTRODUCTION

Tax enforcement mechanisms have progressively strengthened throughout the evolution of the Mexican tax system. Within the current framework, Article 69-B of the Federal Fiscal Code operates as a mechanism designed to counter the simulation of transactions through the issuance of tax receipts lacking real economic substance.

Nevertheless, its significance cannot be understood solely in terms of revenue collection. The issue extends beyond the detection of fraudulent schemes, as the introduction of this provision also affects taxpayers who may operate legitimately but find themselves within an administrative environment in which their operations may be presumed suspicious.

This situation reflects a broader fiscal policy context shaped by the General Economic Policy Guidelines for 2026, which emphasize increasing tax revenues through stronger measures against tax evasion (Secretaría de Hacienda y Crédito Público, 2026). Within this policy framework, Article 69-B becomes a strategic instrument.

This leads to an essential question:

Is it possible to strengthen tax enforcement without undermining the taxpayer's legal certainty?

This question guides the present study, which argues that although the presumption contained in Article 69-B is legally valid, its discretionary nature introduces potential risks, particularly in the absence of clear criteria for determining the materiality of transactions.

DEVELOPMENT.

Methodology. This study adopts a legal-argumentative methodology based on doctrinal review and legal analysis. The research does not merely examine the textual content of Article 69-B, but also evaluates its operation in light of statutory law, legal theory,

jurisprudence, and administrative practice. This approach makes it possible to identify both the formal validity of the provision and its practical implications.

The Presumption of Article 69-B: Between Effectiveness and Risk. Article 69-B establishes a legal

presumption that allows the tax authority to infer the non-existence of transactions when it determines that a taxpayer lacks the assets, personnel, or infrastructure necessary to carry out the activities reflected in the corresponding tax receipts (Federal Fiscal Code, 2025).

In theory, this presumption responds to a legitimate objective: combating organized schemes of tax evasion through entities that issue invoices for simulated transactions (EFOS). However, the normative construction of the provision reveals an underlying problem. The law does not define the concept of “materiality” nor does it establish the criteria through which it should be interpreted.

Tax law scholarship has defined the materiality of transactions as the set of elements that demonstrate the real existence of an economic operation beyond the mere issuance of tax receipts (Arrijo Vizcaíno, 2017). However, the absence of statutory guidelines regarding how this concept should be proven creates a wide margin of discretion for the tax authority, introducing uncertainty into the administrative procedure.

Burden of Proof and Materiality of Transactions. One of the most controversial aspects of Article 69-B lies in the allocation of the burden of proof to the taxpayer. In practice, this means that the taxpayer must demonstrate that the transaction actually occurred.

The existence of a tax receipt alone is not sufficient to prove the transaction. Additional elements must be presented in order to demonstrate the effective performance of the economic activity. While this requirement may

appear reasonable in theory, it becomes problematic in the absence of clear criteria regarding what evidence should be considered sufficient.

Consequently, taxpayers are often subject to an ambiguous evidentiary standard that depends largely on the interpretation adopted by the tax authority during the auditing process.

Jurisprudence: Formal Validation and Judicial Control. The Supreme Court of Justice of the Nation has confirmed the constitutional validity of Article 69-B, noting that the provision does not violate the taxpayer’s right to due process since it provides an opportunity to challenge the presumption and present evidence in defense.

However, judicial practice reveals a more complex reality. The Federal Administrative Justice Court has issued decisions in which the presumption was successfully rebutted, either through evidence demonstrating the materiality of the transactions or due to deficiencies in the evidentiary assessment conducted by the tax authority.

This contrast is significant: while the normative framework of Article 69-B has been formally validated, its practical application often requires judicial correction.

SAT Audit Powers and Their Relationship with Article 69-B. Article 42 of the Federal Fiscal Code establishes the verification powers granted to the tax authority to ensure compliance with tax obligations. These powers include the review of accounting records, on-site inspections, and the analysis of electronic records.

These auditing mechanisms constitute the operational foundation upon which the presumption established in Article 69-B is constructed. The presumption of non-existent transactions does not arise independently but is generally triggered by preliminary audit findings indicating inconsistencies in the taxpayer's operational capacity.

However, the use of these verification powers raises important concerns. While they enable the State to identify fictitious operational schemes, their application may also lead to premature conclusions when based on partial or preliminary information.

Doctrinal analyses have pointed out that the tax authority may sometimes rely on formal indicators—such as the absence of visible infrastructure or the inability to locate a taxpayer—without conducting a comprehensive examination of the underlying economic reality of the transactions. In such cases, the presumption may be activated based on insufficient evidence, which may later require correction through judicial review.

Criminal Implications of Article 69-B. The implications of Article 69-B extend beyond the administrative sphere and may also influence criminal proceedings. When simulated transactions result in harm to the federal treasury, the presumption established under this provision may serve as a starting point for investigations related to tax crimes.

Article 108 of the Federal Fiscal Code defines the offense of tax fraud, which occurs when a taxpayer uses

deceit or other unlawful means to avoid paying taxes or to obtain an undue benefit. Similarly, Article 109 establishes penalties for acts such as simulating legal acts or contracts for tax purposes.

Furthermore, Article 113 Bis specifically criminalizes the issuance, acquisition, or use of tax receipts that cover non-existent or simulated transactions.

Although these provisions demonstrate the seriousness with which the Mexican legal system addresses simulated invoicing schemes, the interaction between administrative presumptions and criminal liability raises important concerns. The presumption established under Article 69-B is administrative in nature, whereas criminal liability requires a higher evidentiary standard and must respect the presumption of innocence.

Therefore, the mere inclusion of a taxpayer in the lists derived from Article 69-B should not, by itself, constitute sufficient evidence of criminal responsibility. A clear distinction must be maintained between administrative procedures and criminal investigations.

Legal Certainty and Due Process in the Procedure of Article 69-B. The procedure established under Article 69-B raises significant questions regarding legal certainty and due process. These principles require that the exercise of public authority be based on clear and predictable rules.

Although the provision grants taxpayers a period to challenge the presumption, the practical effectiveness of this guarantee remains debatable. The burden placed upon taxpayers may

be extremely demanding, particularly when they must prove the materiality of transactions that the authority has already classified as non-existent.

This creates a procedural asymmetry in which the taxpayer must reconstruct the economic reality of past operations in order to rebut an administrative presumption already established by the authority.

The Taxpayer Defense Attorney's Office (PRODECON) has also identified several issues related to the evaluation of evidence within the procedure established by Article 69-B (PRODECON, 2020). Similarly, notifications through the tax mailbox and the publication of taxpayers' names in official lists, although legally valid, may limit the taxpayer's ability to effectively respond within the administrative process.

EFOS and the Scope of the Phenomenon. The phenomenon of EFOS represents a significant challenge for tax collection. Data published by the Tax Administration Service indicate that thousands of taxpayers have been included in the lists derived from

Article 69-B (SAT, 2024). However, not all cases end with confirmation of the presumption, as some taxpayers successfully rebut the presumption or obtain favorable rulings through judicial proceedings.

The Structural Tension of Article 69-B. The analysis conducted suggests that the problem cannot be reduced solely to the existence of simulated transactions. It also involves the risk of affecting legitimate economic activities carried out within lawful commercial operations.

Article 69-B reflects a structural tension between two objectives: strengthening tax enforcement and guaranteeing the legal certainty of taxpayers.

An overly rigid mechanism could allow fraudulent schemes to persist, while an excessively broad mechanism may adversely affect taxpayers' rights. Consequently, the difficulties associated with Article 69-B are not derived from the invalidity of the provision itself, but from the conditions under which it operates within administrative practice.

CONCLUSION

Article 69-B of the Federal Fiscal Code constitutes an important instrument within the Mexican tax system. Nevertheless, its application reveals the need to improve the criteria used to evaluate the materiality of transactions. The presumption established by the provision may be challenged in practice, as demonstrated through judicial review, which shows that its effectiveness ultimately depends on its correct application.

In order to understand this mechanism more fully, it is necessary to examine the concept of the materiality of transactions. Within tax litigation, the tax authority is empowered to presume the non-existence of a transaction when the taxpayer lacks the assets, infrastructure, or operational capacity necessary to perform the

activity in question. This presumption, established in Article 69-B, grants the Tax Administration Service the authority to challenge transactions during an audit.

Such determinations may have immediate consequences for companies falling under the EFOS classification, including the cancellation of their Digital Tax Certificate (CFDI).

Furthermore, the effects are not limited to the entities classified as EFOS. Taxpayers who conducted transactions with such entities—commonly referred to as EDOS—may also face tax adjustments if they are unable to demonstrate the authenticity and materiality of the transactions.

For this reason, the central issue is not the elimination of the procedure established in Article 69-B, but rather the improvement of its operational framework so that tax audits are not conducted at the expense of legal certainty.

Mexican tax legislation currently lacks clear evidentiary standards for proving the materiality of transactions. As a result, taxpayers frequently present accounting records, contracts, and bank statements as supporting documentation, assuming that such evidence is sufficient to demonstrate the authenticity of the operations. In practice, however, these documents are often deemed insufficient by the tax authority, leading to the rejection of deductions or the disallowance of transactions supported by invoices issued by entities classified as EFOS.

Doctrinal studies in tax law have emphasized that proving the materiality of transactions requires more than documentary evidence alone. It must be possible to demonstrate that the transactions actually occurred within economic reality.

An analysis conducted by the Federal Administrative Justice Court also emphasizes that tax receipts must be supported by additional elements capable of demonstrating the real existence of the operation and its connection with the taxpayer's economic activity.

From this perspective, the materiality standard requires a comprehensive evaluation of evidence rather than a purely formal verification of documentation. This evaluation generally involves three key elements: evidence of the transaction itself, expert opinions that provide technical assessments of the economic viability of the transaction, and operational evidence demonstrating that the activity was effectively carried out.

From a doctrinal standpoint, Article 69-B establishes an administrative presumption of a *iuris tantum* nature whose effectiveness depends on the evidentiary standard applied by the tax authority.

RESULTS AND PROPOSALS

Results. The analysis of Article 69-B of the Federal Fiscal Code reveals several issues regarding its application

in administrative practice. First, current Mexican legislation does not provide clear normative criteria for determining the materiality of transactions. This

legal gap creates a broad margin of interpretation for the tax authority, meaning that the recognition of materiality often depends largely on evidentiary assessments carried out during tax audits.

Second, the practical application of Article 69-B places a substantial evidentiary burden on taxpayers seeking to rebut the presumption established by the authority. In many cases, the tax authority retains broad discretion to consider documentary evidence insufficient, even when taxpayers believe such documentation adequately demonstrates the materiality of the transactions.

Finally, judicial practice confirms that courts play a crucial role in reviewing the evidentiary assessments carried out by the tax authority. This reinforces the need for stronger judicial oversight in order to correct potential administrative excesses and provide greater legal certainty for taxpayers affected by the ambiguity surrounding the concept of materiality.

Proposals. Progress toward a clearer normative definition of the concept of the materiality of transactions is essential in order to

reduce discretionary interpretation within tax enforcement.

Likewise, it is necessary to establish minimum evidentiary standards that clarify which elements may be considered sufficient to demonstrate the existence of economic operations.

Such measures would not limit the auditing powers of the tax authority, but rather contribute to greater legal certainty and more consistent enforcement of tax regulations.

Judicial oversight over administrative acts derived from Article 69-B should also be strengthened, particularly with respect to the evaluation of evidence presented by taxpayers.

Finally, the approach surrounding Article 69-B should evolve toward a preventive framework, allowing taxpayers to identify and mitigate potential tax risks before falling within the scope of the presumption of non-existent operations.

Under these conditions, the Mexican tax system could achieve a balance between effective tax collection and legitimate enforcement from the perspective of taxpayers.

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