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a llamada planificación fiscal despierta muchas controversias. En el Journal of Taxation (WG&L), correspondiente a February, 2022, en la sección Partnerships, S Corporations & LLCs, aparece un artículo de Richard M. Liptona, titulado *[Tribune Media: A Split Decision For The Chicago Cubs' Leveraged Partnership Transaction](https://www.westlaw.com/Document/I3d78f43f79ae11ec9f24ec7b211d8087/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0)*, en el cual se lee: “*The Tax Court stated that its decision in Tribune Media was ‘split‘ because the taxpayer won in part and the IRS won in part, but in fact this decision is a huge victory for taxpayers. The transaction that the taxpayer utilized inTribune Media was carefully structured to conform to the terms of the disguised sale regulations that the IRS has promulgated, and the Tax Court did not allow the IRS to avoid the consequences of its own regulations. The court also refused to allow the IRS to utilize generalized anti-abuse rules and the judicial doctrines to recharacterize a transaction that adopted a structure that is expressly contemplated in the Code and regulations. And the court also refused to allow the IRS to disregard a collection guarantee that was issued by a taxpayer where the guarantor had sufficient assets to honor the guarantee if ever called upon to do so, even though the likelihood that such guarantee would be called was remote. ―Moreover, the part of the decision that was a ‘loss‘ for the taxpayer focused on whether a subordinated loan made by an owner of an entity to that entity should be treated as debt or equity for tax purposes. This aspect of the decision followed well-trod ground and applied principles that have been outstanding for decades. Although one could quibble with how the various factors were applied by the Tax Court in this case, \*16 the determination that the Sub Debt had to be treated as equity rather than debt for tax purposes should not come as a complete surprise to tax practitioners. ―However, tax planners should be very pleased that the Tax Court refused to accept the IRS' arguments which were aimed at recharacterizing a carefully-structured transaction that followed all of the rules and regulations to obtain a tax benefit. Was the transaction structured to obtain a tax-free distribution of cash to the Tribune – of course it was! Did the regulations allow for this treatment – of course they did! And was this transaction the result of careful tax planning that took into account the terms of the applicable regulations –obviously, it was. The court respected the transaction because its substance was the same as its form, and that form was specifically addressed in the regulations. The court did not allow the IRS to use broad anti-abuse rules and the judicial doctrines in a situation in which the tax results of a transaction were expressly set forth in the applicable law*.”

El punto en el cual se apoyó la judicatura consistió en la expresa consagración de la estrategia en la regulación tributaria. No puede haber un reproche jurídico por obrar conforme a las disposiciones.

Sin embargo, al margen de lo legal está lo ético y lo moral. Puede suceder que las personas entiendan que las reglas permiten una disminución de impuestos a la que no debería haber derecho. Entonces reprocharán la regla y a quien la aplique. Por esto hay contadores con las manos sucias.

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