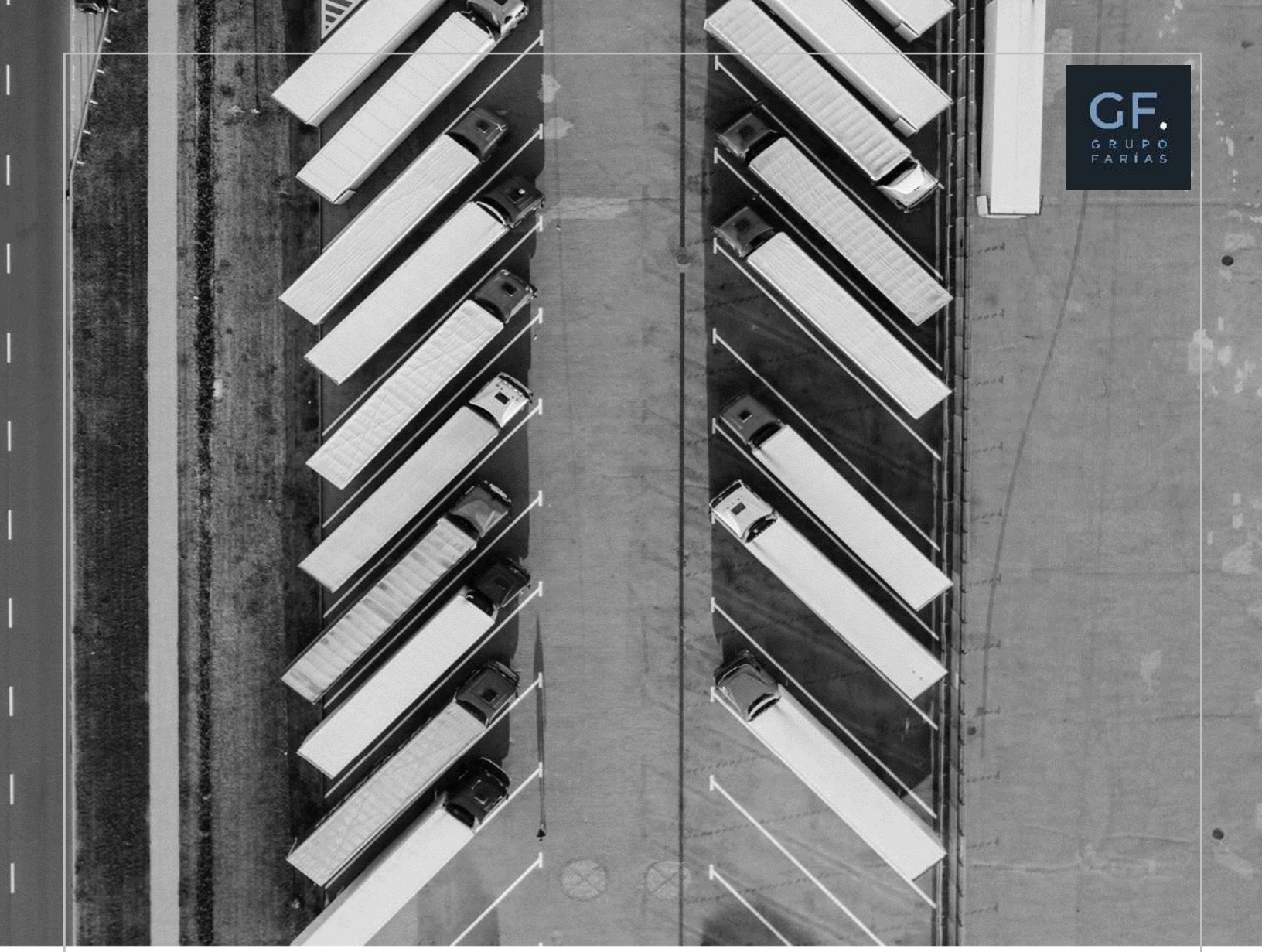

Inland bill of lading (carta porte). Exceptions to its use

What parties are not obliged to use it?

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What parties are not obliged to use it?

Many doubts and questions have arisen due to the implementation of the inland bill of lading in our country, upon January 1, 2022; however, there is a brief legal gap (vacatio legis) as of March 31, 2022, because it seems that the inception thereof has not been clear. Most of these doubts arise from non-technical information issued by the tax authority; however, in this document we will lay out that inland bill of lading is not required in all cases, because that document is not focused on goods covered pediment; domestic-origin goods; companies' internal relocation of goods, goods under bailment or when they have been sold and do not form part of the company's assets.

Firstly, we must remember that the inland bill of lading has always existed in our country and the main function was to evidence the legal stay of goods when they were transported through the national territory by carriers, as established in article 146 of the Customs Law and second article of the resolution which updated the inland bill of lading dated December 16, 2021. Domestic merchandise did not have to comply with the use of inland bill of lading precisely because they are of national origin, in which case a Transportation Digital Tax Receipt ("CFDI de traslado") was sufficient for their transportation, without confusing that pursuant to the aforementioned second article, the federal public and private transportation law, does not make a differentiation as to whether the merchandise is of a domestic or foreign nature.

Article 146 of the Customs Law outlines how to evidence the legal stay and possession of merchandise, and that is reason it provides that the owner, possessor or holder of a merchandise to evidence such legal stay must have the corresponding customs documentation, using for purpose the inland bill of lading as an element of evidence if merchandise is not transported with the import pediment. This leads us to reflect that foreign-origin goods in all circumstances must be able to evidence legal stay, -a such obligation is satisfied with the import pediment-, but an inland bill of lading not required in all cases. This is so provided by rule 2.7.1.51, fourth paragraph, which states that during transportation of foreign goods the obligation to evidence legal stay in Mexico "may" be observed with a Transportation Digital Tax Receipt and inland bill of lading supplement that includes pediment number; however, if owner, possessor or holder does not carry along such transportation documents, it must carry and exhibit the pediment pursuant with article 146 section I of the Customs Law.

This is reinforced by article 103, sections XXII and XXIII of the Federal Tax Code, which upon 2022 includes the crime of “smuggling” in the event that goods or merchandise are transported by any means of transportation within national territory, without being accompanied by a digital tax receipt of the income or transportation types, as appropriate, to which the inland bill of lading supplement is attached, unless such legal stay is evidenced by an import pediment. If the legal stay is evidenced with an import pediment, then fourth paragraph of rule 2.7.1.51 no longer applies and the crime is deactivated.

Here it is important to mention that the crime of smuggling has been historically applied to goods of foreign origin, not to domestic goods, since the concept of “smuggling” refers to the possession or legal stay of goods that entered the country without complying with the formalities of custom clearance , i.e., “smuggling” only applies to the transportation of foreign trade goods, but not for domestic goods, since illegality requires the intention (state of mind, mens rea)(a cognitive element) to clandestinely introduce a product into the country in violation of law and the desire (volitional element to omit the payment of import duties; which allows us to conclude, that it will only be deemed “smuggling” the transportation of foreign goods without pediment or without digital tax receipt and inland bill of lading if this option was chosen.

Consequently, it will be inappropriate to apply the crime of “smuggling” to the transportation of “domestic” goods, because it is a concept related to goods of foreign origin, and domestic goods have this obligation, but only when they form part of their assets and are transported by their own means, as indicated in the first paragraph of rule 2.7.1.51. Therefore, the question that any company should ask itself is: What is the asset the rule is referring to that is to be transported by its own means? Undoubtedly, the answer is the fixed assets, because “fixed” assets is the only one that can be transported by its own means; such as vehicles (cargo, passengers, people), machinery (backhoe excavators, drills), and equipment (forklifts, etc.), which even use towing trucks or transportation vehicles for its transportation, as indicated by rule 2.7.1.51.

Even if our interpretation is stricter, rule 2.7.1.51 tells us how to evidence the transportation of “goods and merchandise”. To understand this, we must analyze Article 2 section III of the Customs Law which defines “goods” as products, articles, effects and any other good. Article 42 section III of the Tax Code also makes a distinction between “goods” and “merchandise”. Section V, paragraph e) of the same article only refers to “goods” and section VI of the same article, refers to “goods” without including merchandise. On the other hand, VAT law, in article 1, indicates as a taxable event the conveyance of “goods” without including merchandise, then, if the “good” and “merchandise” are not the same, then the question; what does rule 2.7.1.51 intends to encompass? All products - whether domestic and foreign- or only those forming part of the assets; or only to those transported by their own means or to all?

If we apply hermeneutics to these rules, it is evident that there is a distinction between “merchandise” and “good”, between “national” and “foreign”, between “fixed asset” and “current asset” and “transported by its own means”, because the rule focuses on pointing out the concept of “merchandise” (referring to those of a foreign nature) which were already regulated under article 146 of the Customs Law (which is not surprising), but also to the “goods”, which can be: A) those that are already in a definitive regime in Mexico because were imported under pediments A1 or C1; A3 regularizations or P1 reissuance, or B) when they are eminently of a domestic nature.

In the event of section A) above, naturally there are rules to transport foreign goods if the pediment is not carried (digital tax receipt + inland bill of lading), but if they are of national origin, an inland bill of lading will not necessary in all cases, because the condition to make it compulsory is that same form part of the assets and they are transported by their own means.

Hence, the “goods” and “merchandise” that are transported have strict, and not lax, rules; for that reason if a foreign merchandise “without pediment” must have a digital tax receipt and an inland bill of lading supplement and in the case of domestic merchandise, only when same forms part of the assets and are transported by their own means; therefore, if the pediment (foreign) is carried or if it does form part of the assets or are transported by its own means, (domestic) then the aforementioned inland bill of lading will not be required.

Indeed, the rule clearly states that goods must “form” part of their “assets”, which implies, that if a merchandise that is transported does not “form part” of their assets (fixed assets, not current assets), then an inland bill of lading is not required. Please note that the rule uses the word “assets” without specifying whether the same are fixed or current, but clearly with the analysis of the entire rule it is evident that rule refers to fixed assets, such as machinery, equipment, vehicles, etc., that “are transported by their own means”.

Therefore, it is logical to conclude that the same exception of the inland bill of lading applies to merchandise or goods under bailment, since they are not part of the assets of the company, they may be transported simply with a transportation digital tax receipt.

The same thing happens with companies that make legal sales of their assets, which also do not require an inland bill of lading, if they sold their goods. To reach this conclusion we must analyze rule 2.7.1.51, which indicates that the *"owners, possessors or holders of merchandise or goods that form part of their assets, may evidence the transportation of the same, when they are transported with their own means, including tow trucks and armored vehicles for the transportation of funds and securities, within Mexican territory by land, railway, sea or air, by means of the printed representation, on paper or in digital format, of the digital tax receipt of transportation type issued by themselves, to which Inland bill of lading supplement must be affixed".*

Please note that there are material, virtual or legal sales. Therefore, an inland bill of lading supplement should not be used for a legal sale when "price and good" have been stipulated; because as has been insisted, the condition of the rule is that the merchandise or goods form part of its assets and ,consequently, even assuming that the concept "asset" used by the rule includes current assets, at the moment a person agreed to a sale; such transaction was invoiced and the merchandise paid, automatically is no longer part of the assets and; therefore, the inland bill of lading is only required when the merchandise is part of the asset, not when derived from the sale, since it is already owned by someone else (buyer) even if the seller transports same.

Rule 2.7.1.51 in its second paragraph demonstrates the previous theory, because this rule is not applicable to carriers or intermediaries, since them, as they have always done, must document the transaction with the inland bill of lading supplement without exceptions, as has been done during the last three decades and as confirmed in the Resolution being updated through which the inland bill of lading for federal transportation and ancillary services; being a logistics operation, what is being sought, is to verify that whatever is being transported has legally entered into country or that it is made in Mexico complying with the corresponding regulations.

Also, we must not exclude from our analysis that the before last paragraph of article 29 of the Federal Tax Code, which provides support for rules 2.7.1.51 to 2.7.1.57, and from them the inland bill of lading is extracted. However, this provision simply indicates that the SAT may establish administrative facilities to issue the tax receipts that taxpayers must use, without this meaning that the law expressly requires an inland bill of lading in the transportation of goods or merchandise, i.e., the regulation of the inland bill of lading comes from rules and not in the law, which would allow any taxpayer to question whether rules 2.7.1.51 to 2.7.1.57 exceed the law, pursuant to article 33 section I, subsection g), of the Federal Tax Code.

Finally, to conclude we can point out that the inland bill of lading is not enforceable in all cases, so the following must be analyzed: A) that the definitions used are related to foreign trade, B) that the crimes foreseen for not having inland bill of lading supplement during the transportation of merchandise or goods, are also foreign trade related and are neutralized with the use of the import pediment; C) that the definitions of “goods” and “merchandise” used have an important connotation to distinguish between domestic and foreign ones, D) that the provisions established in rules 2.7.1.51 to 2.7.1.57 regulating inland bill of lading, exceed the law, E) that the merchandise under bailment does not form part of the assets, F) that the assets definitions refers to the fixed assets and G) that the merchandise that have been sold cease to form part of the assets of seller and; therefore, do not require an inland bill of lading. Hence it is concluded, that the rule pertaining to inland bill of lading admits exceptions without it being a general rule.

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