

The deduction of social welfare in income tax since the reform of 2014**La deducción de la previsión social en ISR desde la reforma de 2014**

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Abstract

Tax reform applicable from 2014, as part of the package of "structural reforms", axis of the outgoing Government, brought about various changes in the laws and a resurgence in the implementation thereof, resulting in control measures which constitute a whole plan of espionage to the taxpayer, through the issuance of more and more complete and sophisticated digital receipts. This material is about amendments that have represented an economic harm to workers and employers, which relate to social welfare. The purpose of this paper is to expose the effect caused the partial removal (or "death foretold") of social security in Mexico; contributing with reflections on the impact to employees, patterns and even the accounting profession. To this end, follows the deductive method, starting with concepts and history, to locate in the context, the above involvement To this end, the deductive method Follows, starting with concepts and history, to locate in the context, the above Involvement.

Social welfare, wages, deduction, exemption**Resumen**

La reforma fiscal vigente desde 2014, como parte del paquete de "reformas estructurales", eje del saliente gobierno, trajo consigo diversos cambios en las leyes y un recrudescimiento en la aplicación de las mismas, derivando en medidas de fiscalización que constituyen todo un plan de espionaje hacia el contribuyente, a través de la expedición de comprobantes digitales cada vez más completos y sofisticados. El presente material trata sobre las modificaciones que han representado un daño económico hacia trabajadores y patrones, las que se refieren a la previsión social. El propósito de este trabajo es exponer el efecto causado ante la eliminación parcial (o "muerte anunciada") de la previsión social en México; aportando reflexiones sobre el impacto hacia trabajadores, patrones e incluso, la profesión contable. Para ello, se sigue el método deductivo, iniciando con conceptos y antecedentes, para ubicar en el contexto, la mencionada afectación.

Previsión social, deducción, exención, salarios

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Introduction

It is common to read in a timely warning, the old fashioned way to get a job, "salary plus benefits treat" ... or sometimes "above the law benefits" ... What are those benefits? By law, we can understand the Christmas bonus, vacation and vacation pay, in their minimum amounts established by the Federal Labor Law (LFT); What then are the "superior" to the law? We are talking in this case of vouchers and the savings fund, among the most recurrent; such additional benefits are certainly known as "social welfare". Although later some definitions of this concept will be explored, suffice it to say, simply, that it is ancillary to salary compensation for a specific purpose, and unlike the latter, that prior to 2014 had the appeal of representing a deduction for the employer and at the same time, an exemption for the worker; thus they benefit both resulted.

This is the central point trying to tackle this material. Simply can expose the following: A pattern (considered as such according to the LFT), hires a new manager for the branch just opened; to this end, agree to a monthly payment of \$ 30,000.00, but made up \$ 26,000 as salary, \$ 3,000 savings fund and the remaining \$ 1,000 as a pantry; the tax treatment to be considered as welfare and assuming that the limits established laws of income tax and Social Security even before 2014 are not exceeded, concluded that only 26,000 were taxed salary for both contributions. very different case to what would happen if that same employee with the same salary of \$ 30,000.00 per month is hired by such amount as wages in full, in which case,

It is important to note that, to date, even the Social Security Act provides exemptions for these payments, but not the Law of Income Tax. Since 2014, Article 28 XXX fraction of the Act establishes a deductible limit these benefits 53%, and may even be 47% (case will be discussed below); which significantly restricts employers to make such payments. What is the impact on worker performance ?, restriction only covers social welfare or includes "law" ?, what about the social nature of these payments ?, this restriction affects deductibility wage levels paid, as the example discussed? In a practical way, reasoned and critical will be analyzed the effects of this tax provision,

Framework

Although social security has existed in our legal field, being an important part in labor relations, for at least twenty years ago; it was not until the 2002 reform that was included in the Income Tax Law a definition of it, still valid today:

Article 7. (...) For the purposes of this law, it is considered welfare expenditures made aimed to meet contingencies or present or future needs as well as provide benefits for workers or partners or members cooperative societies, aimed at overcoming their physical, social, economic or cultural, enabling them to improve their quality of life and that of his family. (Law on Income Tax, 2018).

Carefully reviewing this definition, apparently copied from a thesis of court years earlier, one can distinguish the following elements:

- Meet contingencies or present or future needs. That is, it is of a preventive nature, hence its name, tries to anticipate eventualities worker.
- Provide benefits for employees, partners or members of cooperative societies. clarification is made, since in cooperative societies partners or members legally qualify as workers too.
- Tending to their physical, social, economic or cultural development. This is the part that requires identification of each provision and the objective pursued; If you are looking overcoming physical support it can be treated by uniform to create sports teams among staff; If it is the social aspect (although by definition the whole social security is), it may be enrollment in a recreational club or creating one within the company; the economic question is obvious and here we can talk about the savings fund or health insurance among others; The cultural issue is perhaps the most ambiguous so broad that it is, ie, talk about culture is equally refer to the payment of a full season in fine arts that subscription magazines of various kinds,

– Improving the quality of life of workers and their families. That is, although the law even today continues stating that payments must be the worker, it is intended that the benefits cover his family, which is a sensitive part for anyone, by which the restriction on the deductibility that here exposed, it is serious.

We can see that this definition, although it represents a semantic reference, accuracy suffers when it touches the cultural theme, which makes it somewhat ambiguous. Other definitions found in the literature are:

The set of rules and benefits that entail lifting of the economic, social, cultural and comprehensive level, which are provided by employers for such purposes and do not constitute remuneration for services, since they are not awarded based on these, but to complement and increase the field of psycho-physical and social development of the worker. (Becerril, 1995).

Cultural theme again mentioned, with some levity, regardless of its size, even more, "integral".

"... The social welfare is the set of services that are delivered to the worker and not a compensation for their services, rather they are a supplement which aims to ensure the well-being of the worker and his family." (Contributors Tax Practice, 1999).

This definition could antojarse simpler, however, it contains interesting things: It is true that is not properly remunerated, albeit indirectly it was, because it was an income which no income tax is withheld and thus represented a savings, surplus for the worker in his pocket; speaking of the integral well-being, without listing the areas covered, it is acquired at the same time greater semantic forcefulness.

These definitions help us understand the nature of social welfare benefits, now, to complement the idea, it is convenient to locate, What are these benefits ?; then the following enumerative list is displayed, but not limited to:

- a) Food stamps.
- b) Awards for punctuality.
- c) Attendance Awards.
- d) Retirements.

- e) Disability benefits.
 - f) Lunch service.
 - g) Saving Fund.
 - h) House-room for workers.
 - i) Reimbursement for medical and funeral expenses.
 - j) Support for school supplies.
 - k) Support for school uniforms.
 - l) Support for income-room house.
 - m) Help for marriage expenses.
 - n) Transportation assistance.
 - o) Scholarships for workers' children
 - p) Petrol vouchers.
 - q) Sport Fund; etc.
- (Ramirez, 2000).

Can appreciate the wide range of benefits, with which each pattern, according to their economic capacity could make a pension plan, as the Income Tax Law established until 2014. In fact, this list includes concepts that are equal under the Social Security Act and the institute itself provides them other than just for the pattern; so that social welfare is not exclusively private type; although in this material only we will refer to the latter type.

Background.

In Section XII then article 24 of the LISR effect until 2014, and in various sections of Article 77 were envisaged for purposes of deduction and exemption respectively, the following fringe benefits:

Social welfare benefits	Deducibility for the pattern of article 24 LISR fractions:	Exemption for the worker, article 77 LISR fractions:
retirements	XII	III
fatalities	XII	IV
Disability	XII	III
medical and hospital services	XII	IV
Disability benefits	XII	SAW
educational scholarships to workers or their children	XII	SAW
Savings funds	XII	VIII
Children care centers	XII	SAW
cultural and sporting activities	XII	SAW
Other "of a similar nature"	XII	SAW

Table 1 Practical Tax Magazine No.194 (Contributors Tax Practice, 1999)

This table lists the social welfare benefits with corresponding legal reference for current deduction and exemption in the Income Tax Law shows up before 2014.

2014 tax reform

One of the campaign promises of the government that is a few months to complete, was not to raise taxes. Indeed, we began six years with a rate of 30% for corporations and even the rate for individuals was a slight decrease this year; to date there have been no increases. However, to raise more there is only the option to increase taxes, in this case over nearly six years has resorted to the following:

- a) Strengthen control measures, consolidating digital tax receipts and sending electronic accounting.
- b) Restrict certain deductions, such as the present case.
- c) Do pay income tax to taxpayers who were exempted by establishing complicated requirements to fulfill, as in the case of private schools.

Among others, these three actions have been implemented to increase revenue. For the subject matter of this analysis, we refer to the second, by which this government has thwarted deduct 100% that had the welfare until 2014. The text analysis is as follows:

Article 28. For the purposes of this title shall not be deductible:

(...)

XXX. Payments which in turn are exempt income for the worker, up to the amount resulting from applying the factor of 0.53 to the amount of such payments. Factor this paragraph shall be 0.47 when the benefits provided by taxpayers for their employees which in turn are exempt income for these workers, in the exercise in question, not decrease with respect to those granted in the previous fiscal year. (Law on Income Tax, 2018).

We know that in fiscal interpretation is essential, which is why we encourage it in the classroom during the undergraduate level at all costs, as the basis for a critical criterion of professional opinion. Thus, in this case, the provision in comment tells us that 53% of the benefits for the worker RESULTING exempt shall not be deductible. the blow to the deductibility of such items is evident.

However, as a consolation prize, it is expected that this non-deductibility can down 6 percentage points, to 47%, provided that such benefits do not decrease, ie, whether the same or increase, compared to fiscal year immediately previous. Which leads us to conclude on the following points:

- Deductibility of social security, which once could be 100%, now becomes in closed number, half only.
- As a sign of respect for the social spirit of these benefits, it is contemplated that it is possible to extend this deduction, if employers increase the payment of such benefits, ie, increasing savings fund, food stamps and other pay many concepts here they have been listed.

It is pertinent to make the following observations:

- Is it feasible to put pressure on employers to increase these payments, taking into account their own financial situation, in order to achieve greater deductibility?
- Is this relevant in a country where unemployment is still considerable?
- Speaking at the legal text of "exempt income for workers" is included only to social security or concepts as exempt from aguinaldo part, vacation pay, profit sharing, etc. are also mixed, as provided by Article 93 of the Income Tax law, and, what from the beginning had been classified as "minimum benefits law"?
- Can this "consolation prize" to serve as an incentive for the employer to pay these benefits?
- Are these measures being paid to the workforce?
- This way, you searching the Government of the Republic increased productivity, as a bastion of gross domestic product?

Effect for the worker

Clearly the greatest damage of these legal changes corresponds to the interests of working. In LISR until before 2014 the benefits mentioned were completely free and deductible pattern 100%. According to the Law on Income Tax (ISR) Article 28, Section XXX states that exempt income paid to workers could only be deductible by 53% or 47% as appropriate.

The limiting established therein is applicable to: or disbursements made by a subordinate relationship. or in respect of which are exempt income for workers.

Also, the Fiscal Resolution 2016, the rule 3.3.1.29 establishes the procedure for determining whether the total exempt income paid to workers may deduct 53% or 47% according to the following:

I.the quotient obtained by dividing the total remuneration and other benefits paid by the taxpayer to its workers and which in turn are exempt income for purposes of determining income tax of the latter, made during the year, the total will be obtained remuneration and benefits paid by the taxpayer for their workers.

II.the quotient obtained by dividing the total remuneration and other benefits paid by the taxpayer to its workers and which in turn are exempt income for purposes of determining income tax of the latter, made in the immediately preceding year will be obtained from total wages and benefits paid by the taxpayer to its workers, made in the immediately preceding year.

III.When the determined ratio under Section I of this rule is less than the quotient resulting under Section II, it is understood that there was a decrease in the benefits provided by the taxpayer for workers who in turn are exempt income income tax for such workers and which may not be deducted 53% of payments which in turn are exempt income for the worker.

$$\text{quotient} = \frac{\text{Total Compensation and benefits paid to free workers in the exercise.}}{\text{Total compensation and benefits paid by the contributor to its employees in the exercise.}}$$

$$\text{quotient} = \frac{\text{Total Compensation and benefits paid to free workers in the previous year.}}{\text{Total compensation and benefits paid by the contributor to its employees in the previous year.}}$$

Effect pattern

Speaking of benefits that are exempt income for the worker, according to the wording of Article 28, section XXX of the Income Tax Law, includes not only the provision of social welfare benefits ("above the law benefits"), but as While the LFT those provides for employment relationships such as bonus, bonus holiday, etc. include ("Provision of law").

This then limited to any remuneration received by the worker exempt since they are no longer deductible at 100%.

This means that any employer, to hire a worker and agree on compensation, this will necessarily be composed of taxed and exempted concepts and in the case of the latter, your deduction is limited by the current law.

This situation can be considered serious if we consider that in our country may be in many others, employers often look for ways to evade their tax and labor obligations and that, in this arrangement, analyzed in this material, these malpractices are favored since the payment of wages exempt, not being fully deductible results in an impairment in finance employer.

Effect for the accounting profession.

Discussed above, we can see that the big loser in this story is the worker and the employer this reform is almost imperceptible, but not for the third involved in this as in other situations in the business world: the counter.

Even before the Income Tax Law 2014 set a number of requirements to be met to achieve the deductibility and exemption from social security themselves to be covered in a written plan. This pension plan should contain, for each service, the basis for its calculation, its nature, the considerations for granting, etc. Well, from the reform that has been analyzed, these plans no longer exist, accounting for the accounting profession a decrease in the income of many offices that were responsible for designing pension plans and, according to current law it is a service that no longer exists.

This involvement in the services offered by our profession is one more that has resulted from the tax reform of 2014, if we consider the non-compulsory tax audit by a certified public accountant.

An attempt to backtrack.

In research conducted for the preparation of this material it was found an initiative presented to the Senate to repeal XXX fraction of article 28 LISR, same as shown below:

INITIATIVE BY THE XXX FRACTION OF ARTICLE 28 OF THE LAW OF INCOME TAX Repealed. THEREFORE I Isaiás González Cuevas, SENATOR MEMBER OF PARLIAMENTARY GROUP OF REVOLUTIONARY PARTY INSTITUTION IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 164 OF REGULATION OF THE SENATE OF THE REPUBLIC, SUBMIT FOR CONSIDERATION BY THE PLENARY SESSION OF THE SENATE OF THE REPUBLIC, THE FOLLOWING INITIATIVE DRAFT DECREE REPEALING XXX FRACTION, ARTICLE 28 OF THE LAW OF INCOME TAX BASED ON THE FOLLOWING:EXPLANATORY STATEMENT

The tax system is part of the instruments available to the state for up resources to finance public spending and thus provide society with the goods and services demanded. In this regard, tax policy is a key instrument in the set of public policies.

Tax collection, however, not only serves as an instrument for generating revenue; the tax system can also pursue other social goals, such as improving the welfare of citizens belonging to disadvantaged social groups, when used as an instrument for redistributing income and reducing inequality. In addition, you can transcend mere collection objectives and get down to promoting investment in specific economic sectors and job creation, in that regard, tax collection is a promoter of economic activity objective, as an indirect mechanism to increase revenue.

Tax policy can have these three attributes can be tax collection, when generating direct revenue, it may be promoter of economic activity which generates indirect income and can also be used as an instrument of income redistribution. The purpose of this initiative is to recover for Mexico's tax system, the balance of these three objectives of tax policy; raising, promotion of economic activity and employment, as well as equity and social justice. The purpose of this initiative is to repeal the XXX fraction of article 28 of the Law on Income Tax (Income Tax Law), to eliminate the tax law limits the deduction of social welfare expenses by companies for the benefit of workers.

The concept of tax deduction forms part of the tax policy and refers to indirect support, generally self-applications, granted to sectors of the economy or taxpayers through the tax system. Thus, tax deductions do not involve an expenditure of resources or income previously obtained by the state but allow taxpayers to beneficiaries decrease the tax base and thereby free up resources to finance other activities or benefit specific social groups and / or boost certain sectors of the economy.

Within these assumptions of social benefit and impetus to specific sectors of the economy, are the contributions of Social Welfare made by employers to increase the total remuneration of workers without increasing labor costs of enterprises without affecting the income of the federation, releasing short-term resources for working capital of companies and propping present consumption of workers, while ensuring their future welfare, all of which benefits the performance of the economy, acts in favor of social justice and in the same collection.

Mario Master of the Cave defined social security as "the financial support granted to workers and their families should befall the lack of means to subsist by natural or involuntary reasons" resulting from accidents, illness, strikes forced, disability, old age or death. Cave added that under this figure the work acquired its higher dimension, projected at two successive moments of life: first, it is the human source of wages, whose mission is to ensure workers a decent daily existence and second time , is the engine assignments future when this activity becomes difficult or impossible.

In our economy have lived, over time, different episodes that have eroded the purchasing power of wages of Mexican workers, real wages have fallen by the dynamics of inflation, so many companies and unions workers have agreed different ways to compensate for this situation and find the ideal way to improve the living standards of their workers agreeing various social welfare benefits.

According to the provisions of Article 4, fifth paragraph of the Law on Income Tax (Income Tax Law); "For the purposes of this law, it is considered welfare disbursements made that are intended to meet contingencies or present or future needs as well as provide benefits for workers or partners or members of cooperatives, aimed at physical, social, economic or cultural improvement, enabling them to improve their quality of life and that of his family. In no event shall be deemed to social welfare expenditures made for people who do not have the character of workers or partners or members of cooperative societies ". Social welfare aims, give greater benefits to workers than those established in the labor law.

However, following the entry into force of the tax reform of 2014, the deductibility of benefits under social welfare has been reduced from 100% to 53% or 47%, which has affected the workers who receive it, as the cost of increased payroll and employers have reduced the granting of these additional benefits that favorably impacted the standard of living of workers.

When the tax reform came into force, grouped in the coparmex (COPARMEX) entrepreneurs estimated that by decreasing the deductibility of benefits would increase payroll costs between 4 and 15 percent. One semester later, costs rose and companies according to sindicatos sought to mitigate this effect by productivity bonuses and benefits stratification differentiating between production and administrative employees.

Moreover, this tax collection bias of the tax reform of 2014, partially meets the objective of raising, since it does not meet the target promoter, fiscal policy does not pay to promote formal employment and investment, which is affected economic and employment growth, so on balance, this tax collection effort, paradoxically does not strengthen the collection, nor investment and consumption in the domestic market is stimulated.

Three years after its entry into force, reducing the deductibility of social benefits granted by companies to their workers has had the adverse effect of even more precarious labor market and erode the purchasing power of the formal sector of the economy.

Another unwanted effect of this decline, consiste that companies slowed the pace of new hires, and also the reduction of the deductibility focuses on current salary received by the worker, because their benefits are lower.

In incorporating limits deductibility entrepreneurs, it was established to limit deductions necessary expenses for income, including non-deductibility of payments made to workers who are exempt income stands, partially or complete for these, as well as the non-deductibility of the workers' dues paid by the employer and contributions to pension and retirement funds. Prior to the 2014 tax reform, companies deducted 100% of the additional social benefits to wages.

This tax collection tax policy bias can be seen in the wording of Article 28 of the Income Tax Law:

For the purposes of this title shall not be deductible:

Section I, "Payments for income tax by the taxpayer himself or third parties or contributions in subsidized part or originally apply to third parties, in accordance with the provisions, except in the case of contributions paid to the Instituto Mexicano del Seguro social by employers, including those under the Unemployment Insurance Act.

Second paragraph: "Nor are deductible amounts from the subsidy for employment that delivers the taxpayer, in his capacity as holder, persons who provide personal subordinate services and accessories of contributions, except for the surcharges have been paid indeed, even with compensation. "

This means they are not deductible contributions to the Mexican Social Security Institute, ie social security contributions, by the worker, who are paid by the employer.

In the XXX fraction of article 28 of the Income Tax Law, the deductibility of payments which, in turn, are exempt income for the worker (such as social security, savings banks and savings funds, annual bonus, overtime, premium proprietary it limited among others, since only be deductible, up to 53% of such payments, or when benefits have not decreased from the previous fiscal year, to 47%.

It is noteworthy that these limits the deductibility include specific patterns according to the provisions of the Federal Labor Law, such as overtime, bonus items are required, compensation, etc. In addition, the Law on Income Tax (ITL) before the reform, some of these payments were exempt, ie, it was not a benefit that the employer grants and can avoid.

In addition, there were also benefits under collective agreements, which were exempt, based on the rules that were established in the Income Tax Law, for example, savings funds and social security, to the extent that met the limits established and requirements of generality, were deductible and could not be removed by being established in the contracts.

In the case of benefits, these were established in order to ensure the welfare of workers; in this sense if companies pursue that purpose, which is to provide social security for workers and their beneficiaries, no social sense to penalize employers that provide.

Social Security benefits, alluded, are described in Article 93 of the Income Tax Law and does not constitute payment for a service rendered, but delivered to complement and enhance the field of physical, social and cultural development of the worker; Moreover, granting them to workers is a stimulus that leads to greater productivity and helps underpin the competitive position of companies; This not only benefits the worker, but above all companies in the long run, to have satisfied employees who perform work while raising the quality of formal jobs. In addition to macro scale, consumer benefits and is a source of dynamism of the economy.

In addition, the distribution of these benefits is another realistic goal, which is to compensate the purchasing power of wages eroded by inflation and also set out in collective labor contracts reason that entrepreneurs have to follow otorgándolas.

Article 31, section IV, of the Constitution of the United Mexican States, stated that should contribute proportionately and equitably, this means that the contribution of corporations and individuals should be performed without being affected so excessive income taxpayers, however now we can see that many of the taxes that contribute to the state, directly affect the productive sector and the most vulnerable sector of the population, ie workers.

This measure to limit the deductibility of social welfare benefits established in the XXX fraction of article 28 of the Law on Income Tax has generated since its entry into force, that controversy is generated, therefore, there have been several requests amparo in different instances of the judiciary, which have reached the Supreme Court of justice of the Nation. The First Chamber of the highest court of our country, issued a thesis of jurisprudence, where it is considered that there are deductions structural which the legislature must recognize in compliance with the principle of tax proportionality for the resulting tax adjustment to contributive capacity of cause; and also, by the principle of contradiction,

According to the above, there is judgment issued by the First District Court in Administrative Matters in the Federal District, which in its analysis considered that the payments made by the employer on behalf of their workers constitute a deduction of a structural nature and, therefore, not being from its deductibility the principle of tax proportionality laid down by section IV of Article 31 of the Constitution of the United Mexican States, by failing to recognize the impact that such expenditures have on the income earned is contravened by the pattern object ISR.

For its part, the Second Chamber of the Supreme Court said in 2016 regarding deductions on income tax and based on the theory of symmetry in terms of taxes, and abandoning the principles of fairness and proportionality, that the limitation on deductions is not against the principles of tax justice, because although it is employers' expenses for income generation of workers, the fact is that structural deductions may be limited as long as they are rational and reasonable. With the above was determined to be constitutional limiting the deduction of protection and social security, and employee benefits and thus the continuity of granting social benefits to workers is discouraged, since companies are affected.

It is clear that the current tax scheme benefits workers, for the amounts that the employer intended his favor; if such remuneration does not exceed seven minimum wages, is not subject to any tax burden.

The possibility of deducting these amounts does not constitute a benefit for employers, as noted, since as reiterated simply recognizes that the payment of wages and benefits deriving from labor laws are strictly necessary in which must be incurred to generate revenue for the company. It is monetary resources that by abandoning the financial sphere of the company may not be subject to a tax burden for the company.

The possibility granted by law to tax deductible expenses to employers is an essential recognition of the mechanics ISR so the utility actually obtained in the fiscal year is taxed, being a view contrary to that of the Supreme Court of Justice Nation.

In this regard, according to the XXX fraction of article 28 of Income Tax Law, all free benefits for workers are not deductible for employers in the proportion resulting from applying the factor 0.53 to the amount of those payments, which means that it is only deductible 47 percent of those benefits. This procedure, however, does not reflect the true tax situation of companies, since imposes determine a utility that really does not report its operation, on the understanding that payments a company makes for expenses of welfare certainly They transcend determining their ability to pay.

The judgment of the Supreme Court interprets this controversial article, away from the criteria of equitable and proportional taxation. But the constitutionality of Article 28 is still subject to interpretation, it turns out that to support the tax collection target State, is not satisfied with the provisions of Article 31, section IV, constitutional.

It is important to note that in April 2016, the Courts First and Second District, both of Assistant Center of the First Region of the Judiciary of the Federation in administrative matters in the Federal District, granted an injunction to a company against Article 28, section XXX of the Law on Income Tax 2014; to resolve the judgments of indirect amparo filed against the said fraction, he came to the conclusion that social welfare expenses are "... indispensable and necessary to obtain income ...", as referred concepts that make up the wage in the broad sense referred to articles 82 and 84 of the Federal Labor Le.

So, to be mandatory and formal expenditures for the employer (whether arising from the Act itself, an individual contract, a collective agreement or custom) that negatively affect gross profit, owes its deductibility recognized 100 percent, as proposed by the present initiative.

That court granted the amparo considering that said fraction is unconstitutional, because the principle of proportionality are violated tax contained in Article 31, section IV, of the Constitution. This precise statement that the limitation is disproportionate, because it is a restriction on the deduction of a necessary and indispensable expenditure, which prevents them recognize the nature of expenses involved to the detriment of wealth subject of the income earned by the taxpayer. Therefore, they are likely to reduce the tax base, which contravenes the provisions of Article 31 paragraph IV Constitutional.

The tax collection target of the measure in question, is fully understandable, because the Federal Government has the need to obtain the maximum possible tax revenue, and must compensate tax revenues that came from the Business Flat Tax. But meeting the other objectives of the tax collection policy can reimburse the public coffers without affecting economic growth and the lack of new hires and the granting of social benefits, which benefits workers and the limitation on deductions of benefits directly it affects labor because discourages companies to grant additional benefits to those granted by law.

Tax revenues bloom, with increasing economic activity and employment, by rising domestic sales and abroad, when this happens increase productive investment in the public and private sectors, the deductibility 100% strutting aggregate consumption and source higher tax revenues.

What actually happens is that companies are paying more tax annual and monthly income. Unable to derive a large part of payments to workers, higher income tax is generated, but also companies are affected your monthly cash flow, since the Law on Income Tax requires making monthly payments of ISR, same as determined based on a coefficient of utility and as this ratio is greater by not allowing deduction of various items, will be affected the normal operation of enterprises to be depleted its working capital.

What is this initiative is to pay in solving serious problems that directly affect a significant number of our population, the micro and small industries and the Mexican working class.

The same income tax law provides in Article 10 that the same amount is not deductible for calculating the annual tax (ISR) can be subtracted from the basis for calculating the profit sharing. As we can see, although the law sought to reduce the negative effect of the application of the factor of non-deductibility through an incentive in the basis for the PTU, finally providing benefits Social Security workers has a negative effect on liquidity companies.

As can be seen, the same Income Tax Law establishes the amount to be exempt in the benefits that are given to workers. In addition, the Federal Labor Law establishes the minimum benefits that must be granted to an employee, among which include: vacation pay, bonus, overtime, the workers' participation in company profits, among others, so the company or the employer must pay such benefits and exempt what is established.

Due to the limitation of the deduction of benefits paid to workers, many employers or companies filed defenses against this application because it violates the principle of proportionality laid down in Article 31 of the Constitution of the United Mexican States .

It is noteworthy that, for purposes of determining the PTU, the non-deductible amount to be taken in this connection, it should decrease the taxable income.

Thus it can be seen that once calculated the ratio, the employer or company will suffer financially because, by having workers may not deduct a portion of the payments made to them, increasing the amount of income tax to pay, which violates the principle of proportionality.

Founded on the provisions of article 1 of our Constitution as regards the granting of guarantees of human rights, stating expressly that all national legislation must not be inconsistent with the provisions of this article so; the State has an obligation to the progressive realization of the rights recognized in our Constitution.

According to the third paragraph: "All authorities, within the scope of their powers, have an obligation to promote, respect, protect and guarantee human rights in accordance with the principles of universality, indivisibility and progressiveness. Consequently, the state must prevent, investigate, punish and remedy human rights violations in the terms established by law".

In addition, in the Constitution of the United Mexican States as provided for in Article 31, section IV, it is the duty of Mexicans "contribute to public expenditure and the Federation and the States of Mexico City the municipality in which they reside, in the proportional and equitable manner provided by law. "

The above principles of this initiative reiterates that the main objective of this initiative is to establish an equitable structure based on the principles of fairness and proportionality, with the sole purpose of strengthening the finances of Mexicans, that spending workers them better quality of life and businesses are strengthened to continue the development and promotion of employment and investment.

For the foregoing founded motivated and I submit for consideration of that sovereignty as follows:

XXX decree repealing fraction of article 28 of the Law on Income Tax

Sole Article. XXX fraction of article 28 of the Law on Income Tax to read as follows repealing:

Article 28. For the purposes of this title shall not be deductible:

I. to XXIX. ...

XXX. repealed

XXXI

Transient

ONLY. This Decree shall enter into force on 1 January 2018, when published in the Official Journal of the Federation.

Given in the Assembly Hall on July 26, 2017 (Gonzalez, 2017).

This reference is valuable, and for this reason, was transcribed in its entirety, because it represents a strong evidence that that provision is contrary and adversely affects the interests of the country as regards employment and actors involved. Moreover that this initiative was presented by a member legislature party that is still in power, author and promoter of reform.

Results.

Having set the background, the current text, the implications for the worker, the implications for the pattern, and the impact for the accounting profession; and a sample of nonconformity in establishing this kind of negative provisions, it is clear that Article 28, section XXX of the Income Tax Law, violent financial situation of those involved, and indirectly, employment at the national level as a whole .

Conclusions.

With all this, one can conclude the following:

a) The social welfare benefits, as indicated by its name, seek to anticipate the needs of workers and their families in various aspects; what makes them an important addition to their remuneration and that affects the welfare and productivity at work.

b) Before 2014, these benefits were deductible for the employer and the worker exempt in full compliance with certain requirements integrated into a written plan. From 2014 the deductibility of income for the worker are exempt (including social security and other income established by the LFT) is removed and the plan is limited.

c) This change seriously affects the interests of working because, on the one hand, having less exempt income, withholding income tax is higher; and on the other hand, the pattern may be unwilling to pay compensation whose free deductibility is not 100%.

d) Indirectly, the accounting profession also suffers damage, since it is no longer required to design pension plans, service used to be provided by many firms. similar to that resulting from the non-binding opinion by an authorized prosecutor, also following the 2014 reform public accountant situation.

e) The provision has been analyzed here has been fought in courts and they have decided that not against the Constitution; however, an initiative to the Senate was also presented seeking to repeal it, by going against national and particular interests of workers and employers.

f) We are a few months after a change of government at the federal level which has been described as the hope to give our country a new face in many ways. Indeed, beyond messianic promises, for the national good it is expected that at least legal barbarities as set forth in this opportunity be corrected.

References.

Becerril, A. (1995). *Previsión social*. México: ISEF.

Colaboradores de Práctica Fiscal. (1999). Estudio integral de la previsión social. Primera parte. *Práctica fiscal*, 14-27.

González, I. (26 de Julio de 2017). Iniciativa por la que se deroga la fracción XXX del artículo 28 de la ley del impuesto sobre la renta. *Iniciativa por la que se deroga la fracción XXX del artículo 28 de la ley del impuesto sobre la renta*. Ciudad de México, Ciudad de México, México: Sin Editorial.

Ley del Impuesto Sobre la Renta. (2018). México: ISEF.

Ramírez, F. (2000). Manejo integral de salarios y previsión social. *Prontuario de actualización fiscal (PAF)*, 21-40.