

## Proportionally deductible by the employer payments which in turn are exempt income in Mexico

## Deducibles proporcionalmente por el patrón los pagos que a su vez sean ingresos exentos en México

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### Abstract

The present investigation was Conducted in the City of Monclova, Coahuila, in 2017, with the objective of analyzing the unconstitutionality of the proportional deductibility of the exempt income paid by the employer to workers based on Fraction XXX of Article 28 of the Law on Income Tax , the problem was born in 2014 With the reform, This expense is limited to the proportional deduction, but why? deduct proportionally, and as established by the procedure in rule 1.3.3.1.29. ACCORDING to section IV of Article 31 of the Constitution, the principle of legality is violated in Its modality of legal reserve by imposing a procedure on the basis of income tax, an essential element That must be provided by law in at a formal sense and material. A case study with a procedure ACCORDING TO FMR is presented. As a result, the unconstitutional is proven With tax,

### Proportionality, Deductibility, Exempt

### Resumen

La presente investigación, se realizó en la Ciudad de Monclova, Coahuila, en el año 2017, con el objetivo de analizar la inconstitucionalidad de la deducibilidad proporcional de los ingresos exentos pagados por el patrón a los trabajadores con base en la fracción XXX del Artículo 28 de la ley del Impuesto sobre la Renta, la problemática nació en el año 2014, con la reforma, este gasto está limitado a la deducción proporcional, pero por qué? deducir en forma proporcional, y como lo establece el procedimiento de la regla 1.3.3.1.29. De acuerdo a la fracción IV del Artículo 31 de la Constitución, se viola el principio de legalidad en su modalidad de reserva de ley al imponer un procedimiento a la base del impuesto sobre la renta, elemento esencial que debe estar previsto en ley en sentido formal y material. Se presenta caso práctico con procedimiento de acuerdo a RMF. Como resultado se demuestra la inconstitucional con leyes fiscales, Laborales, Constitucionales, Resolución Miscelanea Fiscal, Código Fiscal y Amparo.

### Proporcionalidad, Deducibilidad, Exentos

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## Introduction

This research is in order to analyze the unconstitutionality of proportional deductibility of exempt income paid by the employer to the workers.

## Reason

The first of January 2014, entered into force a new law on income tax, which states in section XXX, Article 28, the partial deductibility which until 2013 was 100% deductible. From 2014 is limited the deductibility of payments which, in turn, are exempt income for the worker as: social welfare, savings banks and savings funds, annual bonus, overtime, Sunday bonus, among others, since which will be deductible up to the amount resulting from applying the factor 0.53 to the amount of payments or up to the amount resulting from applying the factor of 0.47 when benefits have decreased the previous fiscal year (Pachuca, 2018).

It is necessary that the taxpayer or pattern perform tax calculations immediately preceding exercise and exercise to compare the two years and identify the factor if it decreased the factor of exercise then the deductible portion be with the 0.47 and if the factor is higher than the immediate year then the factor is above 0.53, this factor is multiplied by the total exempt income paid to workers will result in deductible value.

Resolutions issued pursuant to this subsection g), fraction I of the Fiscal Code Federation Article 33 provides: regards subject, object, basic rate or rate not generate additional obligations or loads to those in own tax laws (Calvo & Montes, 2018). According to the Omnibus Tax 1.3.3.1.29, which establishes the procedure for determining the deductible and non-deductible part by imposing a procedure that is responsible to the tax laws rather than the rule as mentioned.

## Justification

This research will benefit businesses in Mexico that have workers, is a current topic relevant and applicable, provide knowledge and can solve a specific issue, because it has legal and constitutional fiscal support.

That he lacked the Lawgiver? it failed to analyze and harmonize labor law, RMF, Tax Code, Income tax, identify which are structural to achieve its purpose and even mandatory deductions labor law, ¿since when are deductible? since he was born the tribute, there is no reason to limit the total deductibility.

## Problem

Until 31 December two thousand and thirteen, taxpayers or employers deducted 100%, expenditures for wages and salaries and exempt supplies, but from 2014 the XXX fraction of Article 28 of the Law on Income Tax was modified causing an injury to the employer to deduct proportionally approve salaries and benefits exempt up to 0.53 or 0.47, respectively.

## Hypothesis

H1. If the taxpayer or income or exempt employer pays its employees benefits tax may deduct only a proportion either 0.53 or 0.47.

Ho. If the taxpayer or employer pays exempt income or benefits to their workers can fiscally deduct the total benefits exempt.

## Goals

General objective and two specific objectives to determine the line to follow is presented.

## Overall objective

Identify the unconstitutionality of proportional deductibility of exempt income to avoid limiting the deductibility.

## Specific objectives

- Identify the proportionality of deductible and non-deductible exempt ingresos
- Analyze the unconstitutionality of proportional deductibility.

## Brand Theorist

### *Background*

I agree to the Political Constitution of the United Mexican States provides in Article 31, Section IV, the obligation to contribute to public expenditure in proportion and equitable. "Mexicans are liable to: contribute to public expenditure and the Federation and the Federal District or state and municipality of residence of the proportional and equitable manner provided by law."

Article 28, Section XXX of the Law of Income Tax, by providing that will not be fully deductible payments are considered exempt income for the worker violates the principle of tax proportionality in Article 31, section IV of the Constitution, because it encourages the quantification of a foreign tax on real taxable capacity of the deceased, to the extent not taken into expense account to consider structural deductions and are necessary and indispensable for the attainment of its objects, as well being required by the Constitution and the Federal Labor Law, without fiscal symmetry is a valid reason to justify limiting claimed.

### *Federal labor law*

Now Article 80 of the Federal Labor Law LFT provides that workers are entitled to no less vinticinco percent premium over wages that apply during holiday period (Anaya, 2017).

As you can see from reading this article; premium can be increased through bilateral individual or collective bargaining; which is this article that the employer is required to pay the worker.

Article 87 also LFT, workers are entitled to an annual bonus to be paid before 20 December, equivalent to fifteen days' wages, at least (Anaya, 2017). When the worker has less than a year it must pay in proportionally according to the LFT itself.

### *Social Security Act IMSS*

The salary contribution base is integrated with payments made in cash for daily fee, gratuity, perceptions, food, housing, bonuses, commissions, benefits in kind and any other cantidado of benefit provided to the worker for his work.

Some concepts according to the provisions of the Social Security Act in Article 27. As stated in article excludes benefits must be integrated either taxable or exempt as is the Christmas gift or gratuity, holiday bonuses including an obligation (LIMSS, 2018).

### *Law of income tax*

According to fracc. I, Article 28 of the Law on Income Tax provides: as a requirement for deductions of being strictly necessary for the purposes of the activity of the taxpayer, unless it is not onerous donations or remunerative to meet the requirements of this law and the general rules for the purpose by the Tax Administration.

Disbursements of Fraction XXX of Article 28 Income Tax Law, considered structural deductions and lining feature essential and necessary for the collection of revenue and negatively affect gross profit manner and therefore its ability to contribute to that articles 82, 84 of the Federal Labor Law is concerned, the employer is required to pay their workers on the one hand and on the other the collective agreement or custom derivative (Martinez, 2013).

### *XXX fraction Article 28 Income Tax Law*

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. The factor to 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, the concepts of exempt income (Figure 1) are presented.

### *Omnibus Tax 3.3.1.29.*

Procedure to quantify the proportion of free to total revenue remuneration (RMF, 2017). For the purposes of Article 28, Section XXX of the Income Tax Law, to determine whether exercise decreased the benefits provided for workers who in turn are exempt income for these workers, for those granted in the fiscal year immediately above shall be subject 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 to its employees in the exercise.

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.

This rule violates the principle of tax law, in its standby mode constitutional law in Section IV of Article 31 of the Constitution, which requires a procedure on the basis of income tax, it affects an essential element that must be provided a law in the formal sense and not contain material fraction XXX procedure of Article 28 of law income tax. Who issues this procedure is the rule 1.3.3.1.29(Pardo, 2014).

Do not.	exempt supplies
1.	Wages and salaries.
2	Stripes and wages.
3.	Perks and bonuses.
4	Indemnifications.
5.	Holiday bonus.
6.	Prima Sunday.
7.	Awards for punctuality or attendance.
8.	OCT participation
9.	Life insurance.
10.	Medical expenses reimbursement, dental
11	Social Security.
12.	Medical insurance.
13.	Background and savings.
14.	Pantry vouchers, restaurant and petrol
15	Transport help.
16.	union fee paid by the employer.
17.	Pension fund contributions.
18.	Seniority premiums (contributions).
19.	Expenses year-end party and others.
20	Disability benefits.
21	Scholarships for workers and / or their children.

22.	Rental assistance, school and glasses.
2. 3.	It helps for funeral expenses.
24.	Subsidized interest loans.
25.	Extra hours.
26.	Retirements, pensions and assets.
27.	Contributions paid by the employer

**Table 1** Concepts exempt benefits paid to workers by the employer according to the rule I.3.3.1.29, Fiscal Miscelane resolution.

**Research Methodology**

The procedure carried out by taxpayers at the Federal level to identify the proportion deductible and non-deductible presented, as required by the oft rule 1.3.3.1.29: Table 1: sets exempt concepts received by workers, and Table 2: determining the ratio of the current exercise with the previous financial year.

Data from the current year that is the year in which the calculation is performed is as follows: with the procedures laid down that rule, numeral case study as a replacement in Table 3 is presented. Total year-exempt income and total taxable and exempt income. Also in Table 4: determination of the quotient is free income between total taxable and exempt revenue equals the ratio is divided.

Table 5 and 6: procedmiento the same as the current exercise is performed, but data from the immediately preceding year. Once you have both quotients that is current and earlier, compares to identify if it exceeds the ratio of the current year is multiplied by the exempted income for the year is 0.53 as stated in Table 7: and the result will be the deductible portion. In the event of being a lower ratio the ratio of 0.47 is applied as deductible in the year.

quotient =	Total compensation and benefits paid to workers exempt
	Total compensation and benefits paid by the taxpayer
<b>Yes</b> Exercise ratio <ratio of the previous year = Ratio 0.53 nondeductible	
<b>Yes</b> Exercise ratio > or = ratio of the previous year = Ratio 0.47 nondeductible	

**Table 2** Deductible proportion of exempt income. Table according to the proportion of free income established rule 1.3.3.1.29(Hernandez, 2017)

Those who do this procedure? precisely the economic companies with workers and pay their workers exempt income, this effect has national legal, labor presence, social security and tax, and legal protection. The procedure was performed according to the above rule, also the practical case.

**Kind of investigation**

This research is descriptive, considering the specific characteristics of taxpayers who have both workers and pay their workers exempt income and benefits.

A qualitative approach because documentary and tax laws, legal, labor, constitutional, Omnibus Tax and Amparo, magazines among other information was taken, to argue the unconstitutionality applies.

**Results**

Case study is presented in Table 3. The determination of the total that is taxed and exempt income paid exercise to determine the proportion, and in Table 4: the proportion was determined 0.0661 exercise. Table 5: determination of total revenue that is exempt taxed paid for the immediately preceding period to determine the proportion occurs, and logging 6: ratio that resulted from the immediately preceding year that resulted 0.0313 determined. Once the ratio of the current year is determined with the immediately preceding fiscal year compared to identify whether increased or decreased, in this case increased from 0.0313 to 0.0661 thus follows according to the case 0.53. Finally, in Table 7. deductible and non-deductible portion according to the proportion of the current year that was higher is determined and equals \$ 35,019.00, thus the annual process with oft rule is performed.

Concept	taxed	Exempt	Total
Salary	923.233.		923.233.
Seventh day	154.387.		154.387.
Holidays	31.240.		31.240.
Gratification	7,371.	33.169.	40.539.
Prima Vac.	4,770.	3,039.	7,810.
PTU paid	10.134.	29.866.	40,000.
<b>Total</b>	<b>1131135.</b>	<b>66.074.</b>	<b>1197209.</b>

**Table 3** Case study data for the current year. numeral case study presents the Fracc. I FMR that the taxpayer must determine the total income and exempt income paid according to procedure.

Ratio = Exempted from total wages.
\$ 66.074 / \$ 1,197,209.00 = 0.066190

**Table 4** Proportion of the current year. Which it is 0.66190, procedure: total exempt income between total total income that is taxed and exempted according to the procedure of RMF

Concept	taxed	Exempt	Total
Salary	931.923.		931.923.
Seventh day	152.807.		152.807.
Holidays	21.206.		21.206.
Gratification	7,591.	30.773.	38.364.
Prima Photos, Map		5,301.	5,302.
PTU paid		0.	
<b>Total</b>	<b>1113527</b>	<b>36.074.</b>	<b>1149602.</b>

**Table 5** Case study data immediately preceding year. The Fracc, RMF II of the taxpayer must determine the total income and exempt income paid according to the procedure

Ratio = Exempted from total wages.
36.074. / 1149602 = 0.031379778

**Table 6** To determine the proportion of the immediately preceding financial year is exempt total NCOME between total total income that is taxed and exempted according to the procedure of RMF

Concept	Quantity
Wages exempt supplies	\$ 66.074.
Percentage nondeductible	47.00%
Exempt non-deductible	\$ 31.055.
Wages exempt supplies	66.074.
deductible percentage	53.00%
exempted deductible	35,019.
<b>Total Exempt income</b>	<b>\$ 66.074.</b>

**Table 7** Once the ratio of the current year is determined with the immediately preceding fiscal year compared to identify whether increase or decrease, in this case the ratio of the current year increased therefore follows according to the case 0.53

**Conclusions**

According to the tax law, in this case the rule contained in Article 28 XXX fraction Income Tax Law.violates the principle of tax law, in its standby mode constitutional law in Section IV of Article 31 of the Constitution, which requires a procedure on the basis of income tax, it affects an essential element that must be provided in a law in formal and material sense not contain the procedure. This means that the law must contain the procedure and lacks this, and oft rule emits a procedure relating to the tax base which is precisely where the principle of legality by not being competent is violated.

According to the Federal Labor Law is obliged to pay workers exempt income considered structural, solining the feature essential and necessary for obtaining income negatively affect gross profit manner and therefore its ability to pay referred to Articles 82, 84 of the LFT. So why proportionally deduct the exempt income?

For payments IMSS benefits including free are integrated into the base salary contribution as an obligation, this indicates that there harmonically obligation to pay the exempt income and they both integrate the wage increase quotas, ie this area affects entire labor sphere of the governed.

According to Article 33, Section I, paragraph g) of the Tax Code of the Federation is not required to generate additional to those in the law charges, less issue a procedure within its jurisdiction in this case the XXX fraction of article 28 Income Tax Law. and this is what caused(Calvo & Montes, 2018). As developed in the methodology and procedure in the case study led addition to those established in the law charges.

According to Article 77 of the Law on income tax, non-deductible amounts significantly affect that reduce the net tax profit UFIN therefore the CUFIN ie account, causes an injury to the involvement of tribute and the dividintos at the time of removal(Calvo & Montes, 2018).

According to Table 7. The deductible does not exempt the amount of \$ 31,055.00 concepts amount, the income tax increase to pay for the amount of: \$ 9,316.50 equivalent to 30% for purposes of corporations, and individuals physical what set the rate.

### It is proposed

That the legislature amend the XXX fraction of article 28 of the Law on Income Tax to be considered deductible to one hundred percent as it was before 2014, since the methodological procedures and argument unconstitutional and the grievance was shown to cause the taxpayer proportional deduction and thus the legislator why not apply power.

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