

**Analysis of the application of grammatical and systematic legal interpretation methods to article 36, section II of the ITL in Mexico****Análisis de la aplicación de los métodos de interpretación gramatical y sistemática del artículo 36, sección II de la ITL en México**

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**Abstract**

The laws are of public order so it can be assumed that any natural person can understand and apply them in a correct way; but this in real practice does not happen like that. Therefore, this article presents a descriptive study to show the discrepancy that exists in the application of grammatical and systematic legal interpretation methods of article 36, section II of the Income Tax Law in Mexico. To achieve the above objective, a review of the existing literature was made with respect to the interpretation of the legal norms and the Income Tax Law, specifically the aforementioned article. Subsequently, a hypothetical example of an investment in a new car is presented and the amount to be deducted is determined by the method of grammatical interpretation and the systemic method; The results are analyzed in which the discrepancy in the amounts to be deducted can be observed when applying the methods already mentioned; which represents an area of opportunity to clarify in the current legislation of article 36, section II of the Mexican Income Tax Law.

**Methods, Legal, Interpretation****Resumen**

Las leyes son de orden público por lo que se puede suponer que cualquier persona física puede entenderlas y aplicarlas de una forma correcta; pero esto en la práctica real no sucede así. Por lo anterior, en el presente artículo se expone un estudio de tipo descriptivo para mostrar la discrepancia que existe en la aplicación de los métodos de interpretación jurídica gramatical y sistemática del artículo 36 fracción II de la Ley del Impuesto sobre la Renta en México. Para lograr el objetivo anterior, se realizó una revisión de la literatura existente con respecto a la interpretación de las normas jurídicas y de la Ley del Impuesto sobre la Renta, específicamente el artículo ya mencionado. Posteriormente, se presenta un ejemplo hipotético de una inversión en un auto nuevo y se determina el monto a deducir mediante el método de interpretación gramatical y el método sistemático; se analizan los resultados en donde claramente se puede observar la discrepancia en los montos a deducir al aplicar los métodos ya citados; lo cual representa una área de oportunidad para aclarar en la legislación vigente del artículo 36 fracción II de la Ley del ISR en México.

**Métodos, Interpretación, Jurídica**

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## Introduction

Deductions are allowable expenses that individuals or corporations make to subtract from their income and thus generate a basis to pay income tax (Congress of the Union, 2016), however in all the content of the Tax Law the Income (LIS) there are articles that interpreting them in one way or another generates a different meaning when applied in practice.

Although the laws are of public order, which means that any person has the ability to understand them, this is not the case, so problems arise for individuals leaving them in a paradigm of anxiety to know if they are well understood or do not (Carbonell, 2017).

Referring to a particular case, one can cite the application of article 36, section II of the ITL; which focuses on explaining that not understand what you mean actually use two methods of legal interpretation, exposing them in that the difference in the result of its interpretation generates in practice a higher or lower payment of income tax by of the taxpayers.

The main objective of this article is to analyze the two methods of legal interpretation that adhere to the study of the precept in question, to identify the difference that exists in its meaning and apply to a practical example of investment in automobiles.

## Theoretical framework

### Methods of legal interpretation

(Carbonell, 2017) Establishes that the legal language is very specialized so its domain requires a lot of concentration and constant learning, is to find a reasonable balance between the use of legal technicalities and the common language used by citizens.

The interpretation to the legal norm is used because in the same is not clear to arrive at a correct application, in the fiscal area the law is generating source of obligations, the tribute as an obligation of economic character in charge of the governed so that in this case for the taxpayer to reach their obligations in an adequate and harmonious way with the tax authority (Nava, 2010) is a priority.

However, the legal interpretation is to establish the true meaning within the scope of a rule or set of rules, according to (Castillo, 2003) the interpretation of legal rules is to know with certainty that the provision says as well as understand its cause and effect.

(Díaz, 2004) Says that interpretation is also called hermeneutics and this is the science that is responsible for unraveling the language, that is, interpreting it.

However, the interpretation to the legal norm implies the scope to explain what immediately in its meaning or content is not clear, however there are different methods of interpretation to the legal norm; The methods of grammatical and systematic legal interpretation in table No. 1, which will be used for the interpretation of article 36, section II of the ITL, are described below.

Method	Explanation
Grammar	Is the one who proposes to find the meaning of a rule from its literal meaning attributed to the terms used in the wording by the legislator.
Systematics	This interpretation seeks to extract from the text of the norm a statement whose meaning is consistent with the general content of the ordering to which it belongs.

**Table 1** Explanation of methods of grammatical and systematic legal interpretation  
*Source: Own Elaboration based on (Carbonell, 2017)*

In this sense, the grammatical method is used in the case of tax burdens as well as those that fix infractions and sanctions; this method is used by the followers of the absolutist school, who only recognizes in the norms the literal scope of the words used (Burgoa, 2010).

On the other hand, the systematic method must be interpreted with all the set of rules that constitute the context of which it is part and not in isolation, this method is used by the supporters of the objectivist school which considers that the law is going adapting to social changes that the facts must adapt to the law (Fernández, 2006).

(Niño, 1975) establishes that the criteria to interpret the fiscal law is focused on two trends, a) interpretation in favor of the treasury that is based on the fact that the State must protect the liberty and rights of individuals and b) interpretation in favor of freedom fiscal: that the legislator is the creator of the legal norm and this is part of the public power then it is the state which must suffer the consequences for issuing a dark or deficient standard.

For its part (Zertuche, 1990) considers four forms of interpretation by their results: a) declarative, b) restrictive, c) extensive and d) evolutionary.

The declarative interpretation adheres to the letter of the law, says that the strict interpretation has the virtue of highlighting the effects, errors, obscurities or lacunae of the law.

The restrictive interpretation means that the scope that is attributed to the legal norm is more limited than that which appears in the expression, that is, there is a limitation to the meaning of the words.

Extensive interpretation broadens the meaning of a provision, including in its scope of factual assumptions that according to the literal interpretation would not enter with it and that legislative thinking because its imperfection does not reflect the effective scope thereof.

On the other hand the evolutionary interpretation maintains a disposition to a new meaning and different to its historical meaning, this kind of interpretation consists of considering the political, economic and social factors present at the moment of the application of the legal norm.

### **Practical Case: investment deduction in automobiles**

The Income Tax Law (ITL) is a regulation that establishes the income and deductions that are allowed for the calculation of income tax for natural and legal persons, fulfilling in the case of deductions certain requirements that must be observed the taxpayers so that they can be applied correctly.

However, the interpretation of the tax regulations in the case of deductions allows taxpayers to reduce their profit or increase their tax loss as the case meets the requirements established by the same legal rule, however there may be discrepancies in the interpretation to the normativity, which entails in making the correct or incorrect calculation of the tax.

Such is the case of the deduction of investments in automobiles, article 25 of the ITL (Congress of the Union, 2016) establishes the deductions that are allowed by the legal and physical persons, thus stipulating in fraction IV that the investments are deductions allowed for taxpayers as long as they comply with the rules established in section II of Title II of the ITL.

It is worth mentioning that Article 32 of the ITL stipulates that an investment is that of fixed assets, expenses, deferred charges and disbursements made in pre-operative periods by moral and physical persons.

For this purpose, Article 31 of the ITL establishes that investments may be deducted by applying the maximum percentage established by the ITL in each fiscal year, as allowed by article 34, fraction VI of the ITL, a 25% allowable deduction for automobiles, buses, cargo trucks, tractors, lifts and trailers.

However in Article 36, Section II of the ITL establishes the regulations that will be subject to the deduction of investments of automobiles that will be up to an amount of \$ 175,000.00 pesos, and that in electric cars the allowed deduction will be up to an amount of \$ 250,000.00 pesos.

In this sense it is understood the deduction that natural and moral persons are allowed up to the moment of an amount of \$ 175,000.00 and of \$ 250,000.00 thousand pesos depending on the case, the result of the application the maximum percentage allowed by the original law of the investment as put the article 31 of the ITL (Congress of the Union, 2016), having as a result that the deduction is the result of multiplying the original amount of the investment by the maximum percentage in the law, which in the case of automobiles will be 25%.

### Case study

Now in a first interpretation to the regulations that establishes fraction II of article 36 of the ITL, the original amount of the investment is taken as the amount of \$ 175,000.00 taking into account that the limit amount of the investment is the amount mentioned, thus leaving a cap amount to apply the maximum percentage.

In this sense suppose that the company X, S.A buys a car whose original amount of the investment is \$ 250,000.00 the calculation of the deduction would be made as seen in table No. 2.

Concept	Amount
Original Amount of the Investment	\$250,000.00
Less	
Limit of Art. 36 fraction II	\$175,000.00
Limit of Art. 36 fraction II	\$75,000.00

**Table 2** Determination of the maximum amount of the deduction in investment in automobiles case A  
Source: Own Elaboration based on (Congreso de la Unión, 2016).

As described in table No. 2, the original amount of the investment exceeded what is stated in the regulations of article 36, fraction II of the ITL, with an amount that is not allowed, in this interpretation of \$ 75,000.00, as shown in the table No. 3 the application of the percentage allowed to deduct.

Concept	Amount
Amount allowed to deduct	\$175,000.00
X	
Deduction percentage	25%
Annual deduction	<b>\$43,750.00</b>

**Table 3** Determination of the deduction Case A  
Source: Own Elaboration based on (Congreso de la Unión, 2016)

So in this example the deduction that the annual company is allowed is \$ 43,750.00 since the original amount of the investment allowed with this first interpretation is \$ 175,000.00

However, in what is established in article 36, section II of the ITL, in this interpretation it is not clear that what it wants to refer to is the original amount of the investment but rather it is limited in establishing that the deduction allowed in these assets is for the amount of \$ 175,000.00 thousand pesos.

Now in a second interpretation (what will be called case B) to article 36 section II of the ITL on automobiles does not establish that the original amount of the investment allowed in the purchase of automobile investments is \$ 175.00.00 pesos, per what is limited to saying that the allowable deduction will be up to an amount of the amount mentioned above, having a sense that the limit indicated by the regulations will depend on the deduction that results from applying the original amount of the investment to the maximum percentage allowed by law and not in the original amount of the investment, as shown in tables No. 4 and 5.

Concept	Amount
Amount allowed to deduct	\$250,000.00
X	
Deduction percentage	25%
Annual deduction	\$ 62,500.00

**Table 4** Determination of the deduction Case B  
Source: Own Elaboration based on (Congreso de la Unión, 2016)

Concept	Amount
Deduction	\$62,500.00
Less	
Limit of Art. 36 fraction II	\$175,000.00
Allowable deduction	\$62,500.00

**Table 5** Determination of the maximum amount of the investment deduction in automobiles Case B  
Source: Own Elaboration based on (Congreso de la Unión, 2016)

It can be seen that in this interpretation the amount of the limitation of \$ 175,000.00 pesos is based on the comparison with the deduction and not on the original amount of the investment, since the original amount of the investment allowed is the total value of the vehicle.

### Analysis of the results

As can be observed in both interpretations there is a difference for the proper application of the rule, thus leaving a dilemma for the taxpayer of how to apply Article 36, Section II of the ITL. In this order of ideas and noting that the deduction is the result of applying the maximum percentage to the original amount of the investment, then what was referred to in the second interpretation would apply, however to arrive at this conclusion, the methods of legal interpretation to be able to make a better application to the precept.

The method of grammatical interpretation applied to article 36, section II of the ITL, would be explained in which it consists in understanding the law in a natural and obvious sense, it could be observed that the second interpretation would have a logic, since the sense that the limitation of the original amount of the investment is for the amount of 175,000.00 thousand pesos, but rather it is understood that the limitation of said amount is on the deduction. With respect to this method of interpretation, the maximum amount indicated by the regulations of article 36, fraction II of the ITL will be the deduction that results from applying the maximum percentage established in the law to the original amount of the investment, so that it is ultimately compared to the amount allowed to be deducted.

On the other hand, in the method of systematic interpretation as explained in Table No. 1, a limitation would be seen in the original amount of the investment as established in article 36, fraction of the ITL, which says that in the case of the investment in aircraft the deduction will be calculated considering as original amount of the investment the amount of \$ 8, 600,000.00

In this case, as explained in the method of systematic legal interpretation in extracting a sentence from the text to find a meaning to the rule, for the limitation of investments in airplanes it is clearly established that the original amount of the investment as a limitation to obtain the corresponding deduction.

Now, the deduction of cars is included in the article of the deduction of aircraft, so it would be understood what the legislator tried to say in the regulations of the car deduction is based on the original amount of the investment, without However, when applying the grammatical legal interpretation method, this meaning is not seen, leaving a dilemma by applying the method of systematic legal interpretation.

So in this case the taxpayer moral person would leave it in a clear limitation in applying Article 36, fraction II of the ITL, having an impact on not correctly fulfilling its obligations.

## Discussion of the results

It can be seen as already commented on the discrepancy that exists in the application of the two methods of legal interpretation, however the effect that would be clear is on the amount of tax payment (ISR) which in an interpretation would be paid more and applying the other interpretation would pay less.

In the event that the taxpayer has income of \$ 100,000.00 and that only the investment for automobiles is deducted, the calculations would be described as follows:

- A) Applying the systematic legal method the calculation of the tax would result in a higher taxpayer base, as described in table No. 6.

Concept	Quantities
Income	\$100,000.00
Deductions	\$43,750.00
Basis for paying the tax	\$56,250.00

**Table 6** Determination of the basis for the calculation of the ISR by the systematic method in the deduction in investment in automobiles (case A)

Source: Own Elaboration based on (Congreso de la Unión, 2016)

- B) Now applying the grammatical legal method, the tax calculation would result in a lower taxpayer base, as described in table No. 7

Concept	Quantities
Income	\$100,000.00
Deductions	\$62,500.00
Basis for paying the tax	\$37,500.00

**Table 7** Determination of the basis for the calculation of the ISR by the grammatical method in the deduction in investment in automobiles (case B)

Source: Own Elaboration based on (Congreso de la Unión, 2016)

As can be seen if the systematic method is applied, the basis for applying the tax is greater than applying the grammatical method that is less, in this context the taxpayer would fall into an uncertainty of how to correctly apply Article 36, Section II of the ITL and bring consequences as indicated by the Federal Tax Code for incorrectly deducing an expense (Congreso de la Unión, 2017)

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**Conclusions**

It is seen that the application of a method of legal interpretation is obtained different results, it is shown that the lack of clarity in Article 36, section II of the ITL gives guidelines to the application of the same generate disputes with the treasury authority.

In this sense, it would be important for the legislator to clarify the regulations established by rule 36, section II of the ITL, since it leaves a dilemma of interpretation on the part of the taxpayer and tends to fall into an error of application of the deduction of investments in cars and generate fines at the same.

Coupled with this, as explained above in a grammatical interpretation, what could be understood in article 36, fraction II of the ITL is an allowable deduction and not a limitation on the original amount of the investment, since in a logical sense the comparison does not it would be about the original amount of the investment but rather about the deduction that is obtained from applying the maximum percentage allowed by the law on the original amount of the investment.

However, applying the systematic legal interpretation method, it would be understood that the limitation established in article 36, fraction II of the ITL is on the original amount of the investment.

Said then the previous thing, proposes to the legislator to modify what establishes the article 36, fraction II of the ITL to expose that the original amount of the investment in the purchase of automobiles will only be allowed up to 175,000.00 pesos if it is the case or but effectively clarify that the allowable deduction once applied the maximum percentage established in law will be 175,000.00 pesos.

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