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# **RINOE Journal-Public Economy**

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### **Scientific Objectives**

Support the international scientific community in its written production Science, Technology and Innovation in the Field of Social Sciences, in Subdisciplines of Structure and scope of government; Taxation, Subsidies, and Revenue: Efficiency, Optimal taxation, Incidence, Externalities redistributive effects, Environmental taxes and subsidies, Personal income and other Nonbusiness Taxes and subsidies, Business taxes and subsidies, Tax evasion; Fiscal policies and behavior of Economic Agents: Household, Firm; Publicly provided goods: Public goods, Publicly provided private goods, Project evaluation, Social discount rate; National government expenditures and related policies: Government expenditures and health, Government expenditures and education, Government expenditures and welfare programs, Infrastructures, Social security and public pensions, National security and war, Procurement; National budget, Deficit, and Debt: Budget, Budget systems, Deficit, Surplus, Debt, Debt management; State and local government; Intergovernmental relations: State and local taxation, Subsidies, and Revenue, State and Local budget and expenditures, Interjurisdictional Differentials and their effects, State and Local Borrowing, Intergovernmental relations, Federalism; Miscellaneous issues: Governmental loans and credits, Governmental property, International fiscal issues.

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RINOE Journal-Public Economy is a Journal edited by RINOE® in its Holding with repository in Taiwan, is a scientific publication arbitrated and indexed with semester periods. It supports a wide range of contents that are evaluated by academic peers by the Double-Blind method, around subjects related to the theory and practice of Structure and scope of government; Taxation, Subsidies, and Revenue: Efficiency, Optimal taxation, Incidence, Externalities redistributive effects, Environmental taxes and subsidies, Personal income and other Nonbusiness Taxes and subsidies, Business taxes and subsidies, Tax evasion; Fiscal policies and behavior of Economic Agents: Household, Firm; Publicly provided goods: Public goods, Publicly provided private goods, Project evaluation, Social discount rate; National government expenditures and related policies: Government expenditures and health, Government expenditures and education, Government expenditures and welfare programs, Infrastructures, Social security and public pensions, National security and war, Procurement; National budget, Deficit, and Debt: Budget, Budget systems, Deficit, Surplus, Debt, Debt management; State and local government; Intergovernmental relations: State and local taxation, Subsidies, and Revenue, State and Local budget and expenditures, Interjurisdictional Differentials and their effects, State and Local Borrowing, Intergovernmental relations, Federalism; Miscellaneous issues: Governmental loans and credits, Governmental property, International fiscal issues with diverse approaches and perspectives, That contribute to the diffusion of the development of Science Technology and Innovation that allow the arguments related to the decision making and influence in the formulation of international policies in the Field of Social Sciences. The editorial horizon of RINOE® extends beyond the academy and integrates other segments of research and analysis outside the scope, as long as they meet the requirements of rigorous argumentative and scientific, as well as addressing issues of general and current interest of the International Scientific Society.

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## **Presentation of the content**

In the first article we present, *State Taxes in Guanajuato*, by PAREDES-BARRÓN, Adriana, SILVA-CONTRERAS, Juan and ANDRADE-OSGUERA, Miguel Ángel, with adscription in the, Universidad Tecnológica del Suroeste de Guanajuato, in the next article we present, *Tax treatment of dividends and alternative for shareholders. Tax treatment of dividends and alternative for shareholders*, by BÁRCENAS-PUENTE, José Luis & ANDRADE-OSGUERA, Miguel Ángel, with adscription in the Universidad Tecnológica del Suroeste de Guanajuato, in the next article we present, *Accounting and fiscal impact of the micro and small companies of Huejutla of Reyes Hidalgo*, by ROMERO-ESCUADERO, Carmina, HERRERO-VÁZQUEZ, Laura Leticia, ESPINOSA-HERNANDEZ, Abraham and RIVERA-MORALES, Claudia Eunice, with adscription in the Universidad Tecnológica de la Huasteca Hidalguense, in the last article we present, *Expert technical evaluation model for modeling and monitoring services of Technology Information and Communication services in a Social Security Institution of the Federal Public Administration*, by ZAMORA-SOTELO, Carlos, with adscription in the Universidad Iberoamericana.



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State Taxes in Guanajuato

Impuestos Estatales en Guanajuato

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Abstract

This article entitled State Taxes in Guanajuato briefly and precisely develops the taxes that are contributed in said state to comply in a timely manner, each tax includes the necessary elements to be understood and applied by the reader to their current tax situation such as who are the people who must comply with said tax, what will be applied and what percentage or rate should be applied to determine the amount to pay, in such a way as to help a healthy tax culture in our State and Country.

State taxes, Tax situation, Rate, Tax culture

Resumen

El presente artículo titulado Impuestos Estatales en Guanajuato desarrolla de manera breve y exacta los impuestos con los que se contribuye en dicho estado para cumplir en tiempo y forma, cada impuesto incluye los elementos necesarios para ser comprendidos y aplicados por el lector a su situación fiscal actual como quienes son las personas que deben cumplir con dicho impuesto, sobre qué se aplicará y qué porcentaje o tarifa se debe aplicar para determinar la cantidad a pagar, de tal manera que se ayude a una cultura tributaria sana en nuestro Estado y País.

Impuestos Estatales, Situación fiscal, Tarifa, Cultura tributaria

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## 1. Introduction

This article sets out in a general way the concept of taxes, elements that make them up for a better understanding considering that the majority of taxpayers in the State of Guanajuato fall into non-compliance with their obligations in tax matters due to bad or no information in said matter coupled with the difficulties that arise in such compliance. (newspaper el Correo, 2019) Said investigation will provide the citizens of the State of Guanajuato with the necessary information to understand and comply in a timely manner with the state taxes that are their responsibility.

### 1.1 Justification

This article will provide citizens of the State of Guanajuato with the necessary information to understand and comply in a timely manner with the state taxes that are their responsibility.

### 1.2 Problem

Most of the taxpayers in the State of Guanajuato fall into non-compliance with their obligations in tax matters due to the bad or no information in this matter, together with the difficulties that arise in such compliance. (newspaper el Correo, 2019)

### 1.3 Hypothesis

Taxpayers in the State of Guanajuato would comply with their tax obligations if they obtained clear and precise information on the procedure to carry it out.

### 1.4 goals

#### 1.4.1 General Objective

Identify and Determine State Taxes in the State of Guanajuato based on the State revenue law.

#### 1.4.2 Specific objectives

- Identify the subject, object, base, rate or rate and time in taxes for Guanajuato. (Guanajuato finance law, 2019)
- Determine the process for the generation of the payment or accreditation of said taxes. (Guanajuato finance law, 2019)
- Provide a basis for the taxpayer to fulfill their obligations. (Guanajuato finance law, 2019)

## 2. Theoretical framework

### 2.1. Definition of Tax

Taxes are a contribution (payment) in cash or in kind, of a mandatory nature, with which we cooperate to strengthen the country's economy. Taxes, in all economic systems of countries, serve to provide resources to the government so that it can achieve the objectives proposed in its planning. (Tax concepts)

### 2.2. Destination

Tax collection is intended to satisfy certain needs of a collective nature such as: public education, the administration of justice, security, public hospitals, infrastructure and public road services, programs and projects to support social development and economic, needs that each person could not pay for alone, but that, on the other hand, can be met with the contributions of all. These services incur costs and thanks to our contributions the Federation has the necessary resources to: have schools with teachers who contribute to your teaching; enjoy libraries, hospitals and sports centers; the maintenance of the streets of the city in which we live and their lighting; to build and fix roads; to have a fire service, police and military, who take care of maintaining our security. (Tax concepts).

### 2.3. Elements of the Tax

#### Subject

This can be of two types: active subject and taxable person. The active subject is the one who has the right to demand the payment of taxes. Thus in Mexico the active subjects are: the Federation, the states and the municipalities. The taxpayer is any natural or legal person who has the obligation to pay taxes in the terms established by law. However, it is necessary to note a difference between the taxpayer and the taxpayer, since many times confusion is generated, as happens for example with indirect taxes. The taxpayer is the one who has the legal obligation to pay the tax, while the taxpayer is the one who actually pays the tax.

#### Purpose

It is the activity or thing that the Law indicates as the reason for the tax, in such a way that it is considered as the generating event of the tax.

**Base**

It is the taxable amount on which the tax amount is determined, for example: the amount of income received, number of liters produced, the annual income of a taxpayer, others.

**Share**

It is the amount of money that is received per tax unit, in such a way that it is set in absolute amounts. In case the amount of money received is as a percentage per unit then it is talking about the rate. (Taxes in Mexico)

**Principles governing Taxes****Legality**

It refers to the fact that the contributions (taxes, rights, social security contributions and improvement contributions) must be established by the competent authority and in the Law, which establishes all the elements of the contribution.

**Proportionality**

The establishment of a contribution must attend to the existence of said wealth, since otherwise, the contribution is improper.

**Equity**

It is defined as equal treatment for the equals and unequal treatment for the unequal, that is, that all people who place themselves in the same legal assumption of causation must comply with their obligation to contribute and the same terms. (Principles of contributions)

**Tax Classification****Direct**

They are those that tax income, wealth, capital or equity and that directly affect the subject of the imposed, therefore it is not possible that the phenomenon of translation occurs. According to the repercussion criterion, the legislator intends to reach the true taxpayer by eliminating all types of intermediaries between the payer and the treasury. An example of direct taxes in Mexico is the Income Tax.

These taxes can be classified in turn as personal and real. The personal are those that take into account the conditions of the people who have the character of taxpayers. Real taxes are those that fall on the object of the tax, without taking into account the situation of the person who owns it. These are subdivided into taxes that are levied on the person considering them as an object and those that are levied on things.

**Indirect**

They are those that fall on production and consumption expenses, therefore their main characteristic is that they are transferable to the final consumer.

Among the main indirect taxes applied in Mexico are the Value Added Tax and the Special Tax on Production and Services. (Taxes in Mexico)

**Taxes in Mexico****Federal Taxes****Income Tax (ISR)**

This is a tribute that is applied to all people who have obtained income except donations and inheritances.

It is a direct tax because it directly taxes the sources of wealth. Income Tax is applied to legal and natural persons, as well as to foreign residents who have income from Mexico. The income tax rate varies between 1.9% and 30%. (Taxes in Mexico)

**Value Added Tax (VAT)**

It is a type of indirect tax that taxpayers do not pay directly. This is collected through a third person, who ultimately reaches the end consumer. VAT is applied to most of the products you can buy. The VAT has different rates depending on what is bought or sold, these being 0%, 11% or 16%. (Taxes in Mexico)

**Special Tax on Production and Services (IEPS)**

It is a tribute that is paid for the production and sale or importation of alcohol, gasoline, beer and tobacco. It is very similar to VAT, since in the end the tax is paid by consumers.

Legal and physical persons are subject to this tax whenever they acquire any of the goods that we have defined in the previous paragraph. IEPS rates vary based on the percentage of alcohol in the beverage (from 26.5% to 53%), while gasoline rates vary by state. (Taxes in Mexico)

### **Business Flat Rate Tax (IETU).**

This is a tax that is applied and levied on legal and physical persons residing in the country. The main activities that are taxed in the tax are the sale of goods, the granting of the temporary use of goods and the provision of independent services. It is a tax that has a rate of 17.5%. (Taxes in Mexico)

### **Automobile Tax New (ISAN)**

It is a tribute that is in charge of establishing that vehicles that run on rechargeable electric batteries, electric vehicles that have an electric combustion engine or vehicles that run on hydrogen do not pay taxes. (Taxes in Mexico)

### **State Taxes**

They are those that are applied within the borders of each state and that are not transferred to others. In other words, each state has a different tax rule in which the taxes charged are specified. (Guanajuato finance law, 2019)

### **State Taxes in Guanajuato**

#### **Payroll Tax**

#### **Object**

This tax is subject to expenditures made in cash or in kind, for remuneration for subordinate personal work, regardless of the designation given to them, provided within the territory of the state; payments in money or in kind made to administrators, directors, commissioners or members of the directive, supervisory or administrative councils of any kind or type of companies or associations; and payments to individuals for fees, for the provision of independent personal services or for business activities, when they do not cause Value Added Tax because they are assimilated to salaries, in accordance with the Income Tax Law . For the purposes of this tax, the following are considered remunerations for subordinate personal work:

I. Payment of wages and salaries; II. Payments for overtime work; III. Payments of prizes, bonuses, bonuses, incentives, incentives and aid; IV. Compensation payments; V. Payments of bonuses and bonuses; SAW. Employer participation payments to the savings fund; VII. Seniority premium payments; VIII. Workers' profit sharing payments; IX. Commission payments; X. Payments in cash or in kind, directly or indirectly granted for the canteen and food services provided to the workers; XI. Pantry payments either in cash, kind or vouchers; XII. Transportation service payments, either directly or indirectly provided to workers; XIII. Insurance premium payments for medical or life expenses; XIV. Payments made to people for the services they provide to a borrower, provided that said services are carried out at the facilities or on behalf of the latter, for which the Value Added Tax is not payable; XV. Payments in goods and services, including the house, in addition to those in which the reservation of the right of your domain; and XVI. Any other indicated in this provision that is delivered in exchange for subordinate personal work, regardless of the name given to it.

### **Subject**

Individuals and legal entities that make expenditures referred to in the previous article are subject to this tax, as well as economic units when the referred payments are made through them, when their domicile or that of their premises, establishments, agencies or branches , is located in the territory of the State or when the service is provided within it. The Federation, the State, the Municipalities, their parastatal and para-municipal entities, and the autonomous bodies, are obliged to pay this tax.

Individuals, legal entities and economic units that contract the provision of taxpayer services, whose domicile is located within or outside the territory of the State, are obliged to withhold and pay this tax, so that they make workers available, provided that the service personnel is provided in the territory of this Federal Entity.

In these cases, the obligated subjects must deliver the corresponding withholding certificate to the individual or legal entity or economic unit in question.

They are jointly liable with the taxpayers of this tax, the individuals and legal entities that contract the provision of services, when the service providers do not comply with your obligation to pay the Tax About Payroll.

### Base

The base of this tax is the amount of the expenditures made in money or in kind, for remuneration to subordinate personal work, regardless of the designation given to them, provided within the territory of the state; payments in money or in kind made to administrators, directors, commissioners or members of the directive, supervisory or administrative councils of any kind or type of companies or associations; and payments to individuals for fees, for the provision of independent personal services or for business activities, when they do not cause Value Added Tax because they are assimilated to salaries, in accordance with the Income Tax Law ; as well as expenditures when individuals or legal entities contract the provision of services from taxpayers domiciled in another Federal Entity, the performance of which generates the provision of subordinate personal work within the territory of the State, in terms of the provisions of articles 6 and 9 of this law.

### Rate

This tax will be determined in accordance with the rate established annually by the Income Law. (Guanajuato finance law, 2019)

### Cedular Tax Subject and Object

Individuals who, in the territory of the State of Guanajuato, obtain income in cash, goods, credit, services or any other type, for carrying out the following activities, are obliged to pay the scheduled taxes established in this Law: I For the provision of professional services; II. For the granting of the temporary use or enjoyment of real estate, located in the territory of the State; III. For carrying out business activities: a) General Regime; and b) Regime of Tax Incorporation; IV. For the sale of real estate. Individuals not resident in the State, who carry out the aforementioned activities, are also required to pay these taxes.

### Rate

This tax will be determined in accordance with the rate established annually by the Income Law. (Guanajuato finance law, 2019)

### Incorporation Regime Fiscal Subject and Object

Taxpayers who exclusively carry out business activities, who dispose of goods or provide services for which it is not required for their professional title, and whose income obtained in the immediately preceding fiscal year, would not have exceeded \$ 2,000,000.00, may apply the provisions of Section II, Chapter II, Title IV of the Income Tax Law, corresponding to the Tax Incorporation Regime, complying with the obligations of this schedule tax.

### Base

The taxpayers referred to in the previous article, will calculate and pay the tax bimonthly, which will have the character of definitive payment, no later than the twenty-second day of the months of March, May, July, September, November and January of the next year. For these purposes, the fiscal profit of the two-month period in question will be determined by subtracting from the total income referred to in article 36, obtained in said two-month period in cash, goods or services, the authorized deductions referred to in the Article 33 of this Law, which are strictly indispensable for obtaining the income referred to in this section, as well as the expenditures actually made in the same period for the acquisition of assets, expenses and deferred charges and the participation of workers in the profits of the companies paid in the exercise, in the terms of article 123 of the Political Constitution of the United Mexican States. To determine the tax, the taxpayers referred to in the previous article will consider the income when they are actually collected and will deduct the expenditures actually made in the year for the acquisition of fixed assets, expenses or deferred charges.

### Rate

The tax profit obtained in accordance with article 36 of the Finance Law for the State of Guanajuato will be subject to the rate established annually by the Income Law.

The tax to be determined may be reduced according to the percentages and according to the number of years they have

Taxing in the regime provided in Article 35. (Guanajuato Finance Law, 2019)

### **Tax for Acquisition of Used Motor Vehicles Object**

The object of this tax is the acquisition of motor vehicles used by any title and that do not cause the value added tax.

### **Subject**

Natural and legal persons who acquire the motor vehicles indicated in the previous article are obliged to pay this tax.

### **Base**

The basis for the payment of this tax will be the highest price that results between the value of the operation and the one set by SATEG in the value tables that annually authorizes for this purpose, and that must be issued during the first quarter of the fiscal year. , taking as reference the commercial purchase prices that govern between the merchants of the branch, or the one determined by SATEG itself through an appraisal.

### **Rate**

This tax will be incurred and settled at the rate established annually by the Income Law, on the taxable base determined in accordance with the preceding article. (Guanajuato finance law, 2019)

### **Tax on Lotteries, Raffles, Sweepstakes and Contests Object**

The object of this tax is the income obtained from prizes from lotteries, raffles, raffles and contests organized by the decentralized public bodies of the federal public administration, the purpose of which is to obtain resources to allocate them to public assistance. For the purposes of this tax, the refund corresponding to the ticket that allowed to participate in lotteries is not considered as a prize.

### **Subject**

Individuals or legal entities that obtain income derived from prizes from lotteries, raffles, raffles and contests paid in the territory of the State are subject to this tax.

### **Base and Rate**

This tax will be determined in accordance with the rate established annually by the Income Law for the State of Guanajuato, on the taxable base, consisting of the total amount of income obtained from the prizes corresponding to each ticket or whole ticket, without any deduction. (Guanajuato finance law, 2019)

### **Taxes for lodging services Object**

The object of this tax is the payment for the provision of services of: I. Accommodation in:

- a. Hotel establishments, hostels or motels; and
- b. Apartments and houses, totally or partially.

II. Camps;

III. Mobile home stops; and

IV. Shared time.

The provision of accommodation services is understood to be the granting of shelter or accommodation in exchange for a consideration in money or in kind, whatever the name with which it is designated. For such purposes, the service is understood to be rendered, when it is carried out, within the territory of the State, regardless of the place or medium where the payment or consideration for said services is agreed or made.

### **Subject**

They are obliged to pay this tax, the natural or legal persons that provide the services referred to in the previous article, who must transfer the amount to the people who receive the services subject to this tax. In case of non-compliance with the payment of this tax and when the consideration for hosting services is covered through a natural or legal person in its capacity as intermediary, promoter or facilitator, it will be jointly and severally liable for the payment of this tax.

**Base**

The taxable base of this tax will be the total amount of the payment or the consideration received for the services rendered, object of this tax not including food, other related services and the Value Added Tax.

For the purposes of the preceding paragraph, the hosting service provider must itemize the corresponding tax in the voucher issued in accordance with the applicable tax legislation.

In the case of hosting services provided under the timeshare system or mode of use, the amount of the payments received in installments will be based on the tax, considering only the itemized amount of the hosting service.

**Rate**

This tax will be incurred and settled, applying to the taxable base referred to in the previous article, the rate established annually by the Income Law. (Guanajuato finance law, 2019)

**Vehicle Ownership or Use Tax.****Subject**

Individuals and legal entities who own or use private transport vehicles are obliged to pay the tax on the possession or use of vehicles, provided that the State issues the license plates to said vehicles. For the purposes of this tax, it is presumed that the owner, by whatever title, is the holder or user of the vehicle.

**Base**

All vehicles, including motorcycles, will have an exempt amount of \$ 500,000.00. When the total value of the vehicle is greater than the amount exempt, the tax caused will be the amount that results from reducing the exempt amount to said value and applying to the excess the corresponding rate established in the Income Law.

**Rate**

In the application of the rates established in the Revenue Law, the result will be the tax caused in the calendar year in which the vehicle is considered as new, as that corresponding to the model year, in the terms of sections I, VI and VIII of article 63 of this Law. In the years after the aforementioned, the tax caused in the year of calculation will be obtained by multiplying the amount obtained from the previous fractions by the factor indicated in the annual decrease table. (Guanajuato finance law, 2019)

**Tax on the final sale of alcoholic beverages****Object**

The purpose of this tax is to tax the final sale of alcoholic beverages in closed containers carried out in the territory of the State of Guanajuato, in establishments open to the general public with the exception of beer in all its presentations, mead and products of its fermentation. For the purposes of this tax, alcoholic beverages will be understood as those that at a temperature of fifteen degrees Celsius have an alcoholic strength of more than three degrees Gay Lussac up to fifty-five degrees Gay Lussac, including brandy and alcoholic beverage concentrates even when have a higher alcohol content, in accordance with the Special Tax on Production and Services Law.

**Subject**

Natural or legal persons who carry out the final sale of alcoholic beverages in closed containers carried out in the territory of the state of Guanajuato, in establishments open to the general public, except for beer in all its presentations, are required to pay the tax. mead and products of its fermentation.

**Base**

The base of this tax will be the price received for the final sale, reducing the Value Added and Special Tax on Production and Services.



## Rate

This tax will be incurred at the time the income is actually received and on the amount obtained from it and will be determined according to the rate established in the Income Law. (Guanajuato finance law, 2019)

## 3. Conclusions

According to experimental research carried out in Guanajuato, such as that exposed by C.P. Miguel Ángel Andrade Oseguera in his work entitled "Tax Culture in Guanajuato" it has been determined that the majority of taxpayers with business activity, specifically small and medium-sized companies, fail to comply with their tax obligations due to ignorance of the same or due to lack of support from the competent authorities, the bad image of the same that cause fear and mistrust or the expense involved in hiring a third party to carry out the calculation and payment of tax obligations. (Oseguera M. Á., 2012)

Therefore, the main objective of this research work is to provide the taxpayer of the State of Guanajuato with the necessary information to comply in a timely manner with their tax obligations.

Finally, this research is a tool for the disciplinary field in tax accounting by clearly exposing the elements necessary to enforce state taxes in Guanajuato.

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Tax treatment of dividends and alternative for shareholders. Tax treatment of dividends and alternative for shareholders

Tratamiento fiscal de los dividendos y alternativa para los accionistas. Tax treatment of dividends and alternative for shareholders

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Abstract

In simple terms, a shareholder is a person who puts their money at risk by providing it to a business, what we call investment, which, if it generates profits, these are distributed in proportional parts to each partner, called dividends. In this way, the payment of dividends to shareholders represents the fair remuneration to the risk assumed. Dividend income is regulated in the Law on Income Tax and its correlation with the General Law of Commercial Companies, through precise guidelines. However, average business practice does not follow these provisions. Indeed, shareholders have money during the year in amounts on considerable amounts, without following any legal formality; thus facing fiscal and financial consequences. On the one hand, then, there is a reasonable right to remuneration and, on the other hand, compliance with the law. That is why alternatives to the old problem, of the checks without verification, set up as fictitious dividends.

Shareholder, Dividend, Alternative

Resumen

En términos simples, un accionista es una persona que pone en riesgo su dinero aportándolo a un negocio, lo que llamamos inversión, misma que, si genera utilidades, éstas se distribuyen en partes proporcionales a cada socio, llamadas dividendos. De esta manera, el pago de dividendos a los accionistas representa la justa retribución al riesgo asumido. El ingreso por dividendos se encuentra regulado en la Ley del Impuesto sobre la Renta y su correlación con la Ley General de Sociedades Mercantiles, mediante lineamientos precisos. Sin embargo, la práctica empresarial promedio no sigue estas disposiciones. En efecto, los accionistas disponen de dinero durante el año en cantidades en ocasiones considerables, sin seguir formalidad legal alguna; enfrentando de esta manera consecuencias fiscales y financieras. Por un lado se tiene, entonces, el razonable derecho a la retribución y, por otro, el cumplimiento a la ley. Es por ello que deben plantearse alternativas al añejo problema, de los cheques sin comprobación, configurados como dividendos fictos.

Accionista, Dividendo, Alternativa

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## Introduction

It is common in business practice, specifically speaking of legal entities, that one or more of the shareholders request money for various personal purposes, throughout the year. This provision of resources is fully justified under the argument that they are owners of a part of the company and deserve this compensation for the capital invested in it.

This argument is irrefutable and this is the reason why this material proposes to expose alternative solutions, since, on the one hand, as business advisers, we have the obligation to solve problems, which in this case refer to the need to have money; but, on the other hand, the verification that such withdrawals or checks must have in accounting. The accounting record that is usually made is to charge the account of various debtors (subaccount, name of the shareholder or of a "person of trust") or charge the aided and invented account "expenses to be verified"; both records are incorrect, fallacious, and will invariably cause financial and fiscal problems.

What are these withdrawals of money to shareholders really? They are dividends. In effect, they are dividends, as contemplated by the Income Tax Law, only that, by not complying with the legal formalities, in professional jargon they are known as "fictional dividends" (fictitious). This material will explore the tax treatment of dividends, in light of the requirements established by the Income Tax Law and the formalities contemplated in the General Law of Commercial Companies; the consequences of carrying out this bad business practice; and alternative solutions are proposed, exploring legal foundations that can help us meet the financial needs of shareholders, without facing financial and tax consequences.

### 1. Concept of dividend, commercial procedure for its payment and tax treatment

Let's start by reviewing a definition of dividend that is very clear:

"Amount to be distributed among the shareholders of a company, deducted from the profit obtained by the company during each fiscal year." (Carrasco Iriarte, 2016).

In this way, it is pointed out that this amount comes from the profit obtained by the company during each year, therefore, if we do not close the year yet, it could not be considered a dividend.

What is the legal procedure for the payment of dividends?

As a matter of principle, as said, it is not possible to speak of the decree and subsequent payment of dividends without the existence of profits in the legal entity; Now, once the financial year is closed and favorable results have been determined, it is necessary to make a consensual decision to pay dividends; This is done at an ordinary shareholders' meeting. If we take as a basis the applicable provisions for the public limited company, the most common type of company in our country, the LGSM, has:

*Article 178.- The General Assembly of Shareholders is the Supreme Body of the Company; may agree and ratify all the acts and operations thereof and its resolutions will be carried out by the person that it designates, or in the absence of appointment, by the Administrator or by the Board of Directors. The bylaws may provide that the resolutions taken outside of the meeting, by unanimous vote of the shareholders representing all the shares with voting rights or the special category of shares in question, will have, for all the legal effects, the same validity as if they had been adopted in a general or special assembly, respectively, provided they are confirmed in writing. In what is not provided for in the statutes, the provisions of this law will be applicable in what is relevant. ((General Law of Commercial Companies, 2020).*

This article designates the assembly as the supreme body of the corporation and the resolutions taken in it must be fulfilled; although it is expected that there may be decisions outside the meeting, in which case the shareholders must unanimously to prove their validity.

"Article 179.- The General Shareholders' Meetings are ordinary and extraordinary. Both will meet at the registered office, and without this requirement they will be void, except in unforeseeable circumstances or force majeure." (General Law of Commercial Companies, 2020).

There are ordinary and extraordinary assemblies, due to the matters dealt with in them; They are the first to which we will refer.

"Article 180.- Ordinary assemblies are those that meet to deal with any matter other than those listed in Article 182." (General Law of Commercial Companies, 2020).

That is, by elimination, it is understood that the extraordinary ones are more specific and it exclusively deals with the matters referred to in article 182, which is beyond our subject.

Article 181.- The Ordinary Assembly will meet at least once a year within the four months that follow the closing of the fiscal year and will deal, in addition to the matters included in the agenda, of the following: I. - Discuss, approve or modify the report of the administrators referred to in the general statement of article 172, taking into account the report of the commissioners, and take the measures that it deems appropriate.

II.- Where appropriate, appoint the Administrator or Board of Directors and the Commissioners; III.- Determine the emoluments corresponding to Administrators and Commissioners, when they have not been established in the statutes. (General Law of Commercial Companies, 2020).

This order reveals precisely the issues to be discussed at the ordinary meeting, to be held within the four months following the close of the fiscal year (December + four months = April); first of these matters is the report of the administrators, where the financial statements are located, as indicated in the aforementioned article 172:

Article 172.- Corporations, under the responsibility of their administrators, will present to the Shareholders' Meeting, annually, a report that includes at least:

- A. A report from the administrators on the progress of the company in the year, as well as on the policies followed by the administrators and, where appropriate, on the main existing projects.
- B. A report in which they state and explain the main accounting and information policies and criteria followed in the preparation of financial information.

- C. A statement that shows the financial situation of the company at the closing date of the year.
- D. A statement that shows, duly explained and classified, the results of the company during the year.
- E. A statement showing the changes in the financial situation during the year.
- F. A statement that shows the changes in the items that make up the corporate equity, which occurred during the year.
- G. The notes that are necessary to complete or clarify the information provided by the previous statements.

To the above information, the report of the commissioners referred to in section IV of the article will be added. 166. (General Law of Commercial Companies, 2020).

This is the legal framework that dictates the way in which we must proceed to decree and pay dividends; however, the problem is that shareholders need resources during the year and hardly wait until April to hold the meeting. Hence the problem that has arisen.

To complement, the aforementioned section IV of article 166 of the same law, establishes:

Article 166.- The powers and obligations of the commissioners are: (...)

IV. Submit an annual report to the Ordinary General Shareholders' Meeting regarding the veracity, sufficiency and reasonableness of the information presented by the Board of Directors to the Shareholders' Meeting itself. This report must include, at least:

- a) The opinion of the Statutory Auditor on whether the accounting and information policies and criteria followed by the company are adequate and sufficient, taking into account the particular circumstances of the company.
- b) The opinion of the Commissioner on whether these policies and criteria have been consistently applied in the information presented by the administrators.

- c) The opinion of the examiner on whether, as a consequence of the foregoing, the information presented by the administrators accurately and sufficiently reflects the financial situation and results of the company. (General Law of Commercial Companies, 2020).

It is then about the opinion that, as a monitoring body, the commissioners must render regarding the veracity, sufficiency and reasonableness of the financial information.

Once we have reviewed the commercial aspect of the payment of dividends, it is necessary to explore its tax treatment, namely:

Article 10. Legal entities that distribute dividends or profits must calculate and pay the tax that corresponds to them, applying the rate established in Article 9 of this Law. For these purposes, the dividends or profits distributed will be added with the tax. on the rent to be paid in the terms of this article. To determine the tax that must be added to dividends or profits, these must be multiplied by the factor of 1.4286 and to the result the rate established in the aforementioned article 9 of this Law will be applied. The tax corresponding to distributed profits referred to in article 78 of this Law, will be calculated in the terms of said precept. (Income tax law, 2020).

In this case, the comments will be included at the end of this quote (article 10 of the LISR), in order to have the complete panorama on this.

Continuing:

In the case of the distribution of dividends or profits through the increase of social shares or the delivery of shares of the same legal person or when they are reinvested in the subscription and payment of the capital increase of the same person within 30 calendar days following their distribution, dividend or profit shall be understood to be received in the calendar year in which the reimbursement is paid by reduction of capital or by liquidation of the legal entity in question, in the terms of article 78 of this Law. You will not be obliged to pay the tax referred to in this article when the dividends or profits come from the net tax profit account established by this Law.

The tax referred to in this article will be paid in addition to the tax for the year referred to in article 9 of this Law, it will have the character of definitive payment and will be found out before the authorized offices, no later than the 17th day of the immediate month. following the one in which the dividends or profits were paid. When the taxpayers referred to in this article distribute dividends or profits and as a consequence pay the tax established in this article, they may credit said tax in accordance with the following:

I. The accreditation may only be made against the income tax for the year that is paid by the legal entity in the year in which the tax referred to in this article is paid. The amount of the tax that cannot be credited in accordance with the preceding paragraph, may be credited up to the next two years against the tax for the year and against the provisional payments thereof. When the tax for the year is less than the amount that had been credited in the provisional payments, only an amount equal to the latter will be considered creditable against the tax for the year. When the taxpayer does not accredit the tax referred to in the fourth paragraph of this article in an exercise, and may have done it in accordance with it, he will lose the right to do so in subsequent years up to the amount in which he could have made it.

II. For the purposes of article 77 of this Law, in the fiscal year in which they credit the tax in accordance with the previous section, taxpayers must reduce the net tax profit calculated in the terms of said precept, the amount that results from dividing the tax credited between the factor 0.4286. For the purposes of this article, the participation of workers in the profits of the companies will not be considered dividends or distributed profits.

The legal entities that distribute the dividends or profits referred to in article 140, sections I and II of this Law, will calculate the tax on said dividends or profits by applying the rate established in article 9 of this Law on them. This tax It will be final. (Income tax law, 2020).

Note that the legal text mentions "calculate and find out" the tax, and not "calculate and pay";

What is the difference? Throughout the LISR, as well as others, the term “find out” is used, referring to the payment made on behalf of third parties, the person making said payment being a mere withholding agent. Thus, it is called "payment" when it is a self-tax and it is called "whole", when it is a foreign tax, as a result of a withholding (ISR for wages, VAT on fees, etc.). That is why, in this case, the tax that is withheld due to the payment of a dividend is “found out”, as this is an income for the person who receives it. This withholding must be made by adding the income tax it generates to the dividend paid; carrying out, for this, a multiplication. The dividend is multiplied by the factor 1.4286, where is this obtained from? If we start from the fact that to calculate income tax, the dividend plus the income tax generated must be taken as a basis, we have that, at the current income tax rate, 30%:

Part of income that generates tax = 30  
Part of income that does not generate tax (difference) = 70; Therefore,  $30/70 = 0.428571428$ ; Rounding to the ten thousandth (4 decimal places) = 0.4286; This is the part that represents the income tax of the total income, now, to "add" to it, just add the unit to this result and we have:  $0.4286 + 1 = 1.4286$ , factor that marks the law.

To calculate the tax, this paragraph establishes that the dividend paid must be multiplied by this factor and subsequently by the current rate; which means a costly tax for the taxpayer, since tax is levied on tax; a simple example clearly demonstrates this:

Assume a paid dividend of \$ 100,000.  
 $100,000 \times 1.4286 = 142,860 \times 30\% = 42,858$  of ISR; Net shareholder payment:  $100,000 - 42,858 = 57,142$  Effective income tax rate that causes the dividend:  $42,858 / 100,000 = 42.86\%$ ; Exceeding the 30% that it would cause, if it is an income other than the dividend; derived from this factor.

The same applies to capital reductions, in terms of article 78 of the LISR, that is, not only when dividends are paid as a result of the normal operation of the legal entity, but also when a partner retires and their contributions and / or dividends due are paid to them. In the latter case, it is clarified what proceeds when dividends are reinvested.

This expensive ISR has an exception, which is mentioned in the third paragraph: It will not be paid if the dividends come from the net tax profit account (CUFIN)... definitely that it is imperative to review what it refers to, seeking to adhere to this benefit.

Before analyzing the CUFIN, let us see an example regarding the accreditation of income tax paid for dividends, to which this cited article refers.

Data:

Dividend or profit not from CUFIN			1,000,000
For	Pyramidation Factor	1.4286	1,428,600
For	Article 9 LISR fee		30%
Equal to	Tax to pay		428,580

Table 1

Application of fraction I:

Year 1

Against the tax that is charged in the fiscal year in which the tax corresponding to the dividend is paid.

Next two exercises:

- From provisional payments.
- If the tax for the year is less than the amount of the provisional payments, the credit is only considered to be made up to the tax incurred.

Year 1:

Case			
	i)	ii)	iii)
Taxes workout	2,000,000	333,333	0
Rate	30%	30%	30%
Tax charge	600,000	100,000	
Accreditation	428,580	100,000	-
Tax to be credited	0	328,580	428,580

Table 2

Year 2:

	ii)	iii)
Tax to be credited	328,580	428,580
Provisional payments	500,000	500,000
Tax credited in provisional payments	328,580	428,580
Provisional payments without accreditation	171,420	71,420
Tax caused in the year	300,000	100,000
Tax effectively credited	300,000	100,000
Balance due to (Favor)	-171,420	-71,420

Table 3

Year 3:

	ii)	iii)
Tax to be credited	28,580	328,580
Provisional payments	200,000	400,000
Tax credited in provisional payments	28,580	328,580
Provisional payments without accreditation	171,420	71,420
Tax caused in the year	250,000	200,000
Tax effectively credited	28,580	200,000
Balance due to (Favor)	50,000	-71,420
Tax paid by the dividend, which can no longer be credited	-	128,580

Table 4  
(Hernández Campos, 2020)

Fraction II:

Tax credited between the factor of: (0.4286 for 2020) Equal to Amount of section II art. 10 to be subtracted from UFIN

So, if article 10 itself, in its sections I and II, prevents crediting the tax that has been paid (because it does not come from CUFIN), the reader might ask, what is the damage then? It is financial, since, as long as it is credited in the year itself or in the following years, the disbursement (very expensive, by the way), must be done at the time of its receipt, through withholding.

We will leave the comment for later regarding article 140 sections I and II referred to in this article 10, since it is part of the alternative solutions to the problem that arises in this material.

Let's analyze the Net Tax Income Account.

2. Net Tax Income Account (CUFIN)

Article 77. Legal entities will keep a net tax profit account. This account will be added with the net tax profit for each year, as well as with the dividends or profits received from other legal entities resident in Mexico and with the income, dividends or profits subject to preferential tax regimes in the terms of the tenth paragraph of article 177 of this Law, and it will be decreased with the amount of dividends or profits paid, with the distributed profits referred to in article 78 of this Law, when in both cases they come from the balance of said account. For the purposes of this paragraph, dividends or profits in shares or reinvested in the subscription and capital increase of the same person who distributes them are not included, within the 30 calendar days following their distribution. To determine the net tax profit referred to in this paragraph, the amount resulting in the terms of section II of article must be reduced, if applicable. 10 of this Law (Income Tax Law, 2020).

We must not lose sight of the fact that this article 77 is located within the obligations of legal entities (Chapter IX), that is to say that keeping this account is an obligation, in addition to carrying with it the benefit that we already mentioned.

Is it another account in our accounting? What type and nature? What is its movement? In reality, it does not affect the assets, the liabilities or the capital, much less the results; so it should be considered a memorandum account; it is added and decreased (or loaded and credited), with the following:

- a) It is added:
- With the UFIN for the year.
  - With dividends or profits received from other legal entities resident in Mexico.
  - With income, dividends or profits subject to preferential tax regimes.
- b) It decreases:
- With dividends or profits paid from CUFIN.
  - With the profits distributed by capital reduction, also coming from CUFIN.

Now, what is the meaning of the balance that this account shows? In other words, what is the purpose of carrying the CUFIN, beyond representing an obligation?

Interpreting and analyzing the additions and decreases, we reached the conclusion that the CUFIN serves to record dividends or profits that have already paid ISR, hence its importance, that is, once we pay a dividend, if there is a sufficient balance in CUFIN, It makes us suppose that he has already paid ISR and that is why the LISR exempts him from the payment.

Continuing with the text of article 77 in comment:

The balance of the account provided for in this article that is held on the last day of each fiscal year, without including the net tax profit thereof, will be updated for the period from the month in which the last update was made and until the last month of the exercise in question.

When dividends or profits are distributed or received after the update provided for in this paragraph, the account balance on the date of distribution or receipt will be updated for the period from the month in which it is made the last update and until the month in which dividends or profits are distributed or received. (Income tax law, 2020).

This paragraph establishes the way to update the CUFIN balance. Now, to calculate the UFIN (net tax profit, not to be confused with CUFIN), this article provides:

For the purposes of the provisions of this article, the net tax profit for the year is considered to be the amount obtained by subtracting the result fiscal year, the income tax paid under the terms of article 9 of this Law, the amount of non-deductible items for the purposes of said tax, except those indicated in sections VIII and IX of article 28 of the aforementioned Law, the participation of the workers in the profits of the companies referred to in section I of article 9 thereof, and the amount determined in accordance with the following paragraph. (...)

When the sum of the income tax paid in the terms of article 9 of this Law, the non-deductible items for income tax purposes, except those indicated in sections VIII and IX of article 28 of this Law, the participation of the workers in the profits of the companies referred to in section I of article 9 of the same, and the amount determined in accordance with the previous paragraph, is greater than the fiscal result of the year, the difference will be reduced from the account balance of net tax profit that is had at the end of the year or, where appropriate, of the net tax profit that is determined in the following years, until it is exhausted. In the latter case, the amount that is decreased will be updated from the last month of the year in which it was determined and until the last month of the year in which it is decreased. (Income tax law, 2020).

Calculation that we can outline as follows:

Taxes workout

- (-) ISR for the year
- (-) Non-deductible (except provisions for the creation or increase of supplementary reserves for assets or liabilities; reserves for severance pay to personnel and for seniority and employee payment premiums)
- (-) PTU
- (-) "Negative UFIN" from previous years

This would be the calculation that we would literally extract from the legal text, however, it is worth making the following reflections:

1. If the calculation of the fiscal result already has reduced the PTU, when subtracting it in the calculation of the UFIN, would it be subtracted twice?
2. In the subtraction of the non-deductible ones, which one does it refer to? Only those of article 28 of the LISR? Are those that do not meet tax requirements included?
3. Within this calculation scheme, should the subtraction of the accreditation referred to in section II of article 10 of the LISR be included?

Well, as regards the first reflection, we would be in the presence of a double subtraction, to do it as provided by law. In this case, the SAT Normative Criteria provides:



36 / ISR / N Net tax profit for the year. In its determination, the participation of the workers in the profits of the company should not be subtracted from the fiscal result of the year. Article 77, third paragraph of the Income Tax Law provides that the net tax profit for the year is considered to be the amount obtained by subtracting the tax result for the year, the income tax paid in the terms of article 9 of such Law, the amount of non-deductible items for the purposes of said tax, except those indicated in article 28, sections VIII and IX of the aforementioned Law, the participation of workers in the profits of the companies referred to in article 9, section I of the same Law, and the amount determined in accordance with the fourth paragraph of the analyzed article.

In this regard, article 9, second paragraph of the Law in question establishes the procedure to determine the fiscal result of the year. In particular, section I of the referred paragraph indicates that, as part of said procedure, the tax profit will be obtained by decreasing the total accumulated income obtained in the year, the deductions authorized by Title II of such Law and the participation of workers in the utilities of companies paid in the fiscal year, in the terms of article 123 of the Political Constitution of the United Mexican States. Therefore, due to the fact that in the fiscal result of the year the participation of the workers in the profits of the companies paid in the year is already reduced, in accordance with article 9, second paragraph of the Income Tax Law, it should not said participation to be subtracted again to determine the net tax profit for the year referred to in article 77, third paragraph of the analyzed Law, because it is one of the exceptions referred to in the aforementioned paragraph. (Compilation of normative criteria of the SAT, 2020).

Before continuing with this analysis, it is necessary to be clear about the nature of these regulatory criteria, for this, we must cite article 35 of the Federal Tax Code (CFF):

Article 35.- The duly empowered tax officials may make known to the various agencies the criteria they must follow regarding the application of tax provisions, without thereby creating obligations for individuals and will only derive rights from them when they are published in the Official Gazette of the Federation. (Fiscal Code of the Federation, 2020).

That is, according to this, such criteria do not represent obligations to individuals, only to employees of government agencies, in this case, SAT; instead, they only constitute rights to taxpayers, in a similar way to administrative rules (called miscellaneous rules) and administrative facilities; both of which will be studied in due course. In conclusion, the correct thing is to adhere to the provisions of the aforementioned criterion, since it is what the tax authority considers appropriate.

Regarding the second reflection, article 117 of the LISR Regulations (RISR) establishes:

"Article 117. The non-deductible items referred to in Article 77 of the Law are those indicated as non-deductible in said Law." (Income tax law, 2020).

In this sense, to build the UFIN calculation scheme, we must only consider the non-deductible items contemplated in article 28 of the LISR, and not those that are also not deductible but whose proof that protects them does not meet tax requirements.

Finally, in this third point of reflection, in adherence to article 10 section II of the LISR in question, the ISR is susceptible of accreditation, sufficient reason to include it in the formula that is being defined.

In summary, according to the revised considerations, the UFIN calculation scheme would be as follows:

Fiscal result (adding PTU, to nullify the effect of a subtraction)

- (-) ISR for the year
- (-) Non-deductible, of those considered in article 28 of the LISR (except provisions for the creation or increase of complementary reserves for assets or liabilities; reserves for compensation to personnel and for premiums for seniority payments and PTU)
- (-) PTU
- (-) "Negative UFIN" from previous years
- (-) Amount to be credited according to article 10 section II of the LISR

Up to now, there has been talk about the causation of ISR in the payment of dividends to partners or shareholders; mentioning that it is an expensive tax that the legal entity that distributes them must withhold and find out, since they are “pyramid-shaped” multiplying them by a factor before applying the 30% rate; likewise, if these dividends come from the balance of the net tax profit account (CUFIN), there is no obligation to pay ISR, since precisely this account records the profits that have already paid tax; derived from this, the importance of knowing the details of the CUFIN could be appreciated. This account, regulated by article 77 of the LISR, has precise provisions regarding its charges and payments; from whose record the net tax profit for the year (UFIN) should be highlighted, concluding the correct calculation mechanics.

3. Accreditation of the ISR withheld from the individual shareholder

To begin with the analysis of this section, let us now place ourselves on who receives the dividend, the partners or shareholders. These can be natural or legal persons, and in each case the tax effects are different, as follows:

- a) If the partner or shareholder is a legal entity, income from dividends cannot be accumulated, as long as they are received from other legal entities resident in Mexico, as established in the last paragraph of article 16 of the LISR, to be reviewed later.
- b) If the partner or shareholder is a natural person, the dividend income is cumulative to the others received in the year, according to article 140 of the LISR.

Article 140. Individuals must add to their other income, those received from dividends or profits. Said natural persons may credit, against the tax determined in their annual return, the income tax paid by the company that distributed the dividends or profits, provided that the person making the accreditation referred to in this paragraph considers as accumulative income, in addition to the dividend or profit received, the amount of income tax paid by said company corresponding to the dividend or profit received and also have the proof and the tax receipt referred to in section XI of article 76 of this Law.

Effects, the tax paid by the company will be determined by applying the rate of article 9 of this Law, to the result of multiplying the dividend or profit received by the factor of 1.4286. Notwithstanding the provisions of the preceding paragraph, individuals will be subject to an additional rate of 10% on dividends or profits distributed by legal entities resident in Mexico. The latter will be obliged to withhold the tax when they distribute said dividends. or profits, and they will find out together with the provisional payment of the corresponding period. Payment made pursuant to this paragraph will be final.

In the cases referred to in section III of this article, the tax that the legal person withholds will be found out no later than the date on which the declaration for the corresponding fiscal year is presented or should have been presented. It is understood that the income is received by the owner of the security and, in the case of social shares, the person who appears as the owner of the same. (Income tax law, 2020). To exemplify this accreditation, let's follow the material from Mtro. Edgar Ulises Hernández Campos, colleague from the Colegio de Contadores Públicos de León, AC:

Data:

	Concept	Amounts
	Perceived dividend	875,000
(+)	ISR paid by PM	375,008
(=)	Tax base for dividends	1,250,008
	Concept	Amounts
	Perceived dividend	875,000
(x)	Factor	1.4286
(=)	Dividend base	1,250,025
(x)	Article 9 LISR fee	30.00%
(=)	ISR paid by PM	375,008

Table 5  
Accreditation:

	Concept	Amounts
	Perceived dividend	875,000.00
(+)	ISR paid by PM	375,007.50
(=)	Tax base for dividends	1,250,007.50
(-)	Lower limit	1,166,200.01
(=)	Excess over lower limit	83,807.49
(x)	% on excess of lim. lower	34.00%
(=)	Marginal tax	28,494.55
(+)	Fixed fee	304,204.21
(=)	Annual income tax	332,698.76
(-)	ISR paid by PM	375,007.50
(=)	ISR in charge (in favor) of the exercise	(42,308.74 )

Table 6  
(Hernández Campos, 2020)

It is then one more credit, this time for the individual shareholder who paid ISR by withholding, since his dividend did not come from CUFIN.

4 Alternatives to continue paying shareholders without financial or tax consequences

Until now, it has been said that paying dividends without following the legal procedure (and without them coming from CUFIN, in addition), even with the accreditation mechanisms for those who pay and for those who receive, brings financial consequences, as they represent a disbursement at the time of distribution.

What is the tax consequence?

Article 140 of the LISR itself provides it, in the following lines:

For the purposes of this article, the following are also considered dividends or distributed profits:

I. The interests referred to in articles 85 and 123 of the General Law of Mercantile Societies and the participations in the profit that are paid in favor of bondholders or others, by mercantile companies resident in Mexico or by national credit companies.

II. Loans to partners or shareholders, except for those who meet the following requirements:

a. That they are a normal consequence of the operations of the legal entity.

- b. That a term of less than one year is agreed.
- c. That the agreed interest is equal to or greater than the rate established by the Federal Income Law for the extension of tax credits.
- d. That these agreed conditions are actually met. (Income tax law, 2020).

This article begins by mentioning the withholding established since 2014, of 10% for this income; but even more, the aforementioned fractions establish two of the cases in which some "items" are also considered dividends. The first refers to two articles of the General Law of Mercantile Societies (LGSM), which we must review:

Article 85.- In the social contract it may be stipulated that the partners have the right to receive interest not greater than nine percent per year on their contributions, even when there are no benefits; but only for the period of time necessary for the execution of the works that according to the purpose of the company must precede the beginning of its operations, without in any case said period exceeding three years. These interests must be charged to general expenses. (General Law of Commercial Companies, 2020).

As stipulated, the contributions made by the partners may accrue interests no greater than 9% of these, even without any profits, but without exceeding three years; if exceeded, they are dividends.

Likewise, article 123 of the same law stipulates:

Article 123.- The bylaws may establish that the shares, during a period that does not exceed three years, counted from the date of the respective issue, have the right to interest not greater than nine percent per year. In such case, the amount of this interest must be charged to general expenses. (General Law of Commercial Companies, 2020).

In reality, it is the second fraction that represents the greatest conflict in business practice in our country; We are talking about those money outflows that shareholders make frequently throughout the year to carry out personal expenses and that the accounting treatment of "loans" is given, commonly charging various debtors or the controversial account "expenses to be verified". In this case, the aforementioned section II considers such operations as dividends, unless the four established paragraphs are complied with.

Now, the damages caused by this malpractice do not end there, section III of the same article 140 also establishes: (...)

"III. Disbursements that are not deductible in accordance with this Law and benefit the shareholders of legal entities. " (Income tax law, 2020).

In other words, non-deductible expenditures that benefit the shareholders of legal entities are also considered dividends; Obviously this fraction speaks of those money outflows to which we refer, which in no case will have a deductible tax receipt.

This is how this practice causes two negative effects: It is not deductible, since there will never be any proof; and, second, it is a "fictitious" dividend, subject to a "pyramidal" ISR.

What alternatives can be considered so that even continuing with these outflows of money, these items are correctly recorded in accounting and the financial and tax consequences that have been exposed are avoided?

Two alternatives can be considered:

- a. Fees to members of the board of directors. That is, modify the articles of incorporation to create the council, if there was a sole administrator (generally contraindicated by many commercial lawyers); in such a way that shareholders are included by assigning them a specific function, whose development is feasible. In this regard, the deduction limits established in section IX of article 27 of the LISR must be taken care of.

- b. Deduction for wages. It can be implemented instead of the previous paragraph or in combination, but referred to different people. In theory, any member of the council could be on the payroll as well, as long as it is not the legal representative. For this alternative, care must be taken to comply with labor and social security obligations; perhaps for this reason it may be more expensive than the previous alternative, however, there are benefits such as medical service and benefits.

There will be cases in which even using both options the need for money is not "covered"

For the shareholder, however, making the corresponding calculations and taking care to update them, they can provide a viable, legal and worthy solution to be taken into account.

## Conclusions

You can conclude the following:

- a. Dividends are the remuneration to which a shareholder is entitled for the capital invested in a legal entity; it is delivered once the fiscal year is closed and profits have been obtained, through the formalities of an ordinary meeting in the month of April of the following year. Fiscally, income is taxed multiplying it by the factor 1.4286 and later by the rate of 30%, which makes it an expensive income tax; however, if the dividend comes from the CUFIN balance, no tax is paid.
- b. The net tax profit account (CUFIN) registers the profits that have already paid ISR, is kept in memorandum accounts and is subject to updating.
- c. There are ISR accreditation mechanisms when this tax is paid as CUFIN dividends do not come, both for the legal entity that pays them and for the individual shareholder. However, the financial damage persists, since the disbursement must be made at the time of payment.

- d. Not following the legal procedure mentioned in subsection a), but making money outflows during the year, without any verification, is classified as a “fictional dividend”, in addition to not being deductible. As a legal alternative to this practical problem, the payment to council members or the payment of salaries can be configured, with the necessary fiscal limitations and precautions.

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Accounting and fiscal impact of the micro and small companies of Huejutla of Reyes Hidalgo

Impacto contable y fiscal de las micro y pequeñas empresas de Huejutla de Reyes Hidalgo

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Abstract

The topic "Accounting and Fiscal Impact of Micro and Small Companies of Huejutla of Reyes, Hgo, was applied for its study to the food sales sector, the objective of this research is to understand the behavior of SMEs when using an accounting and fiscal regulation, for this research the mixed method was applied, for the qualitative part it was necessary to have a closer approach with the owners. and for the quantitative part, 314 surveys were applied with the support of 33 students. INEGI 2015 mentions that there are 394 food sales businesses, among the most outstanding data we find that of the 314 companies, 300 are micro-companies, that 74% of the people have not formalized their business, in relation to the IMSS 92% do not has its company registered and 8% registered is equivalent to 69 workers, 75% express that they do not know that the deposits reflected in the financial system cause taxes, 85% do not invoice the general public. In general, the results show a profile of resistance to compliance with the provisions of art. 31 Section IV, of the Political Constitution of the United Mexican States.

SMEs, Awareness, Knowledge, Accounting-Tax

Resumen

El tema “Impacto Contable y Fiscal de las Micro y Pequeñas empresas de Huejutla de Reyes, Hgo, enfocado al sector de la venta de alimentos, tiene como objetivo el estudiar el comportamiento de las pymes ante el uso de una normativa contable y fiscal, para esta investigación se aplicó el método mixto, se aplicaron 314 encuestas. Como dato sobresaliente encontramos que 300 de estas son microempresas, es decir la base de la economía la mueven las microempresas, y arrojaron lo siguiente, que el 74% de las personas no tiene formalizado su negocio, en relación al IMSS el 92% no tiene registrada a su empresa y el 8% registrado equivale a 69 trabajadores, el 75% expreso que no saben que los depósitos reflejados en el sistema financiero causan impuestos, el 85% no realiza facturas con el público general. De manera general los resultados muestran un perfil de resistencia al cumplimiento de lo dispuesto por el art. 31 Fracción IV, de la constitución Política de los Estados Unidos Mexicanos.

Pymes, Normativas, Economía

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Introduction

This work is focused on the study of two variables awareness and knowledge that the entrepreneurs of the micro and small companies of Huejutla de Reyes Hidalgo have, about the existence of an accounting and fiscal regulation, highlighting that the Micro and small companies (Mipe) have as It is challenging to face a globalized market, however the characteristics of these are of a lack of organizational structure and above all with a profile of resistance to change.

(Frankl, 2020, p. 42) mentions with his phrase: "When we cannot change the situation we face, the challenge is to change ourselves." Let's not forget that what is a challenge today, tomorrow will not be ”

(Official Gazette of the Federation, February 28, 2013) "The criteria for classifying companies in Mexico are determined based on the number of workers employed in them and by sector".

Size	Sector		
	Industry	Commerce	Services
Micro	0-10	0-10	0-10
Little	11-50	11-30	11-50
Median	51-250	31-100	51-100
Big	251 onwards	101 onwards	101 onwards

**Table 1** Classification of companies in Mexico by number of employees  
*Source: (INEGI, 2005)*

The mype in Mexico, constituted 99.7% of the total of companies, and generators of employment of 79% of the population, and generate income equivalent to 23% of the Gross Domestic Product (GDP), the above is a clear sign that You should pay attention to these types of companies and see them as what in reality are the basis of the Mexican economy.

INEGI, (2006, p. 12), According to the latest Economic Census published by the National Institute of Statistics and Geography (INEGI), of the universe of economic units in Mexico: a) 95.2% are microenterprises, b) they generate 45.6 % of employment, and c) contribute 15% of the added value of the economy.

Ruiz, (2010, p. 12), Secretary of the Economy in Mexico. The mype represent for the nation 99.8% of the 4'007,100 economic units, 52% of Gross Domestic Product and 72% of formal jobs, and are a potential for the sustainable and sustainable development of the nation.

I emphasize that this research was focused on MSM companies, that is, micro and small companies are included, of which the results showed that 893 jobs were generated out of 314 food businesses, but an important data is that 300 are micro companies and 4 are small businesses, this indicates that the market in Huejutla, as in the rest of the country, is driven by micro-businesses, taking into account that there are levels of micro-businesses, including simple taco stands, small inns, lunch boxes, sale of tamales, atole, cakes, corner businesses, restaurants, rotisseries, pizzerias, the famous cheap dining rooms, the business selling Zacahuil, and let's add the infinity of informal businesses selling cakes, basket enchiladas, those who ride their bicycle carts selling the atoles and tamales etc., these formal and informal micro-enterprises are identified by their limitations, an example is that many of them do not even c They have a name as part of their corporate image. But even so, these are the ones that really move the economy, they generate at least one job and in most cases the owner also performs several functions, since they do not have the resources or the conditions to establish a division of labor, as do the big enterprises.

The micro-enterprises in the interviews show that they are reluctant to implement organizational changes, they prefer to inject their few resources into the raw material that gives movement to the business, which gives employment to family members, it was also obtained that our authorities must to take as a reference the promotion of strategies, including injecting them capital under an accompaniment to strengthen them, considering that they are the basis of our economy.

Micro-enterprises are a niche to flourish, there is much to do for them, that is, to strengthen the advantages such as having a closeness with clients, having an entrepreneurial attitude, a fighting spirit, because they know that a financial system will not be waiting for them to grant a credit at low rates, they know that they have to keep up with the competition, which is their greatest impulse, that their advertising is done by themselves in their dealings with customers, on the other hand there are their weaknesses, not having the enough resources for its development and to face a globalized market, for this the government is currently giving the support that allows a more competitive, freer market and this gives us the growth of the gross domestic product.

In Mexico as of June 30, 2009, the size is determined based on the total number of staff in the organization and the level of annual sales, leaving up to 10 workers for micro-enterprises and with an annual sales amount of up to four millions of pesos.

Secretary of Economy, (2010, p. 12) The Secretary of Economy trusts that it is a tool for the mypes to take advantage of the federal or state development programs adequately, avoiding granting these benefits to companies that, although due to their minimum number of workers is small, but due to its billing level of millions of pesos, it is considered large. This new classification is intended to avoid considering them as micro, small or medium-sized companies.

This study showed that within the administrative weaknesses is the resistance to the application of accounting and fiscal regulations, even though the authority has always existed a legality that obliges the owners of micro-enterprises to contribute to public spending. Article 31 Fraction IV of the constitution "contribute to public spending in a proportional and equitable manner" On the other hand there are also contributions from economists such as Adam Smith who reinforced the constitutional mandates through his theoretical tax principles in the 18th century and that still have after -cendency mentioning the principle of justice, certainty, comfort and economy, interpreting that the contribution must be easy to digest, that is, timely, proportional, without exceeding their economic capacities.

## Objective

Study the behavior of the mypes of Huejutla de Reyes, of the food turnover; due to their awareness and knowledge to comply with accounting and tax obligations.

## Method and Instrument

The instrument used to collect the data was a survey structured by 26 items with multiple choice answers, the questions were classified into the following sections: Module I., covers the general data of business owners, Module II, referring to consciousness made up of 6 items, Module III, covers fiscal knowledge with 17 items, Module IV, accounting knowledge with 3 items.

As a means of verifying the application of the survey, photos were taken that evidenced the visit to the companies, the information was reinforced with the interview with 10 entrepreneurs, this mixed technique allowed to visualize the characteristics of the food sales businesses, such as size, infrastructure, appearance, reactions, and feelings of the owners, etc.

## Sampling and sample size

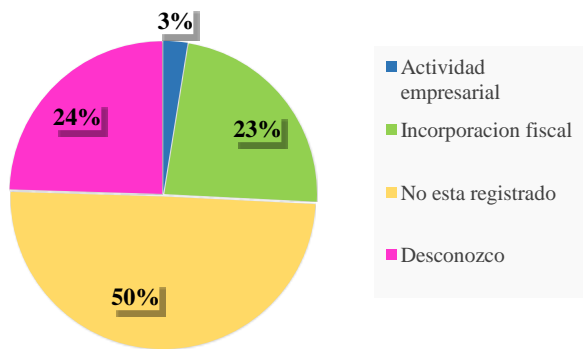
For this study the target population were the companies located in the municipality of Huejutla de Reyes Hidalgo, which according to the Municipal Development Plan 2016-2020 is made up of 6 subregions: 1.Huejutla municipal head, 2.- Teacal 3.-Chililico , 4.-Coacuilco, 5.-Tehuettlan, 6.- Chalahuiyapa and these in turn are made up of 187 towns. According to (INEGI 2015) there are 394 companies in the food sector, of which the survey was applied to 314, according to the formula to calculate the sample size of finite populations, a confidence level of 95% was obtained, For the collection of information, 33 students were trained to apply the instrument with the freedom to choose the business, each one was responsible for capturing the results to an online digital platform, later the capture and evidence of the surveys was reviewed to support that they meet the reliability requirements.



Scope

Hernández Fernández & Baptista, (2010), This study was through the mixed method, for the qualitative part, the experiences of the entrepreneurs are taken into account, the photographs taken, these complement the quantitative data that the application of the survey.

Analysis of the information

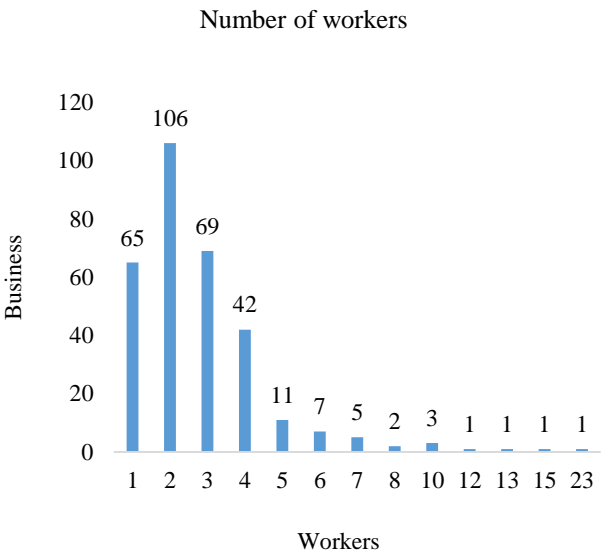


**Graphic 1** How do SMEs in the food sector participate in public spending?  
Source: Own Elaboration

Twenty-three percent of the companies are registered in the tax incorporation regime (RIF), 3% are registered in the business activity regime, 50% are not registered in any regime and 24% do not know that they must be registered in a regime, This GRAPHIC states that of 313 companies surveyed, only 26% are complying with the payment of taxes, and 74% do not participate.

Giannatale, Ramirez, Smit (2008), Formal companies will have an annual net profit that is 18% lower than they currently obtain in the informal sector, despite their larger size, they choose to triple their investment in capital and increase the number of workers by 24% and thus be able to face costs and fiscal responsibilities. Informal companies would not be able to obtain greater benefits than they currently obtain operating as informal. Extracted The RIF was born as a result of the tax reform for 2014, and its objective was to combat informality, it captures taxpayers who in the annual period do not exceed \$ 2'000,000.00 and the purpose of the scheme is to allow them to comply easily with its tax obligations, which would in turn bring access to social security services, create an entry point for businesses to formality, both in the fiscal and social security fields.

Before this reform, there was the small taxpayer regime (REPECOS) which consisted of paying a fee such as ISR and VAT tax, did not consider the IEPS, and only consisted of looking for the corresponding income range and from there it was determined the quota, and they went to pay, this regime was eliminated because it did not include in its rules supporting operations with invoices, purchases and income were exempt from invoicing, an act that broke the chain of fiscal verification, which generated spaces for evasion and tax avoidance that were taken advantage of by some taxpayers who unduly pay taxes under this regime.

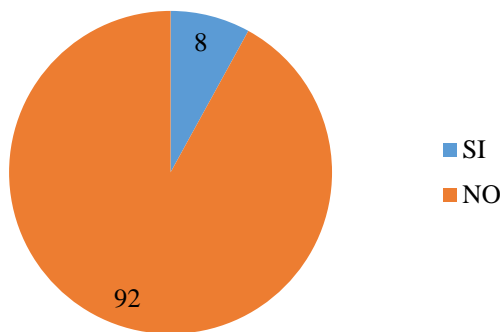


**Graphic 2** Types of companies based on the number of workers  
Source: Own Elaboration

Number of companies surveyed	Number of workers per company	Workers Employees
65	1	65
106	2	212
69	3	207
42	4	168
11	5	55
7	6	42
5	7	35
2	8	16
3	10	30
1	12	12
1	13	13
1	15	15
1	23	23

**Table 2** Types of companies based on the number of workers  
Source: Own Elaboration

We can see that of the 314 companies focused on the food sector, there are 893 jobs, 4 are small companies and 300 are micro companies. This result shows that microenterprises are the ones that really move the economy, and those that are generating at least one job.

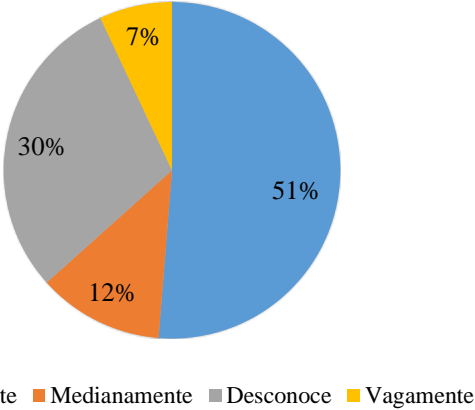


**Graphic 3** Workers have social security benefits  
*Source: Own Elaboration*

Eight percent of the companies are registered with the Mexican Institute of Social Security (IMSS), and 92% are not registered. 8% active corresponds to 69 companies and ninety-two percent corresponds to 824 companies.

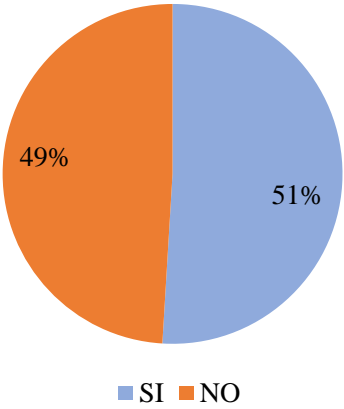
The 1917 Constitution includes the commitment to guarantee and apply preventive health measures, which is why Mexico is a pioneer in social security matters, and it was until 1943 when the Social Security Law was promulgated, during the Cardenista administration. With this Law, the Mexican Institute of Social Security was created, which becomes the most important institution in matters of health and social security, which had the following benefits: occupational accidents and diseases; non-occupational diseases and maternity; disability, old age and death, as well as involuntary unemployment in advanced age.

The interest in protecting the working class, we can see that it has been a priority, however our results show that for the microenterprises of Huejutla de Reyes Hidalgo it is not the most important.



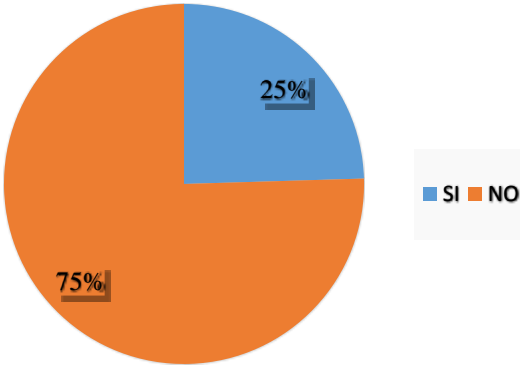
**Graphic 4** Are you aware that if you do not comply with the payment of taxes, the authority can generate sanctions?  
*Source: Own Elaboration*

Fifty-one percent of the companies mention being aware, 12% moderately, 30% unknown and 7% vaguely that if they do not comply with the payment of taxes, they can obtain sanctions from the authority.



**Graphic 5** They know that they must support operations with vouchers (invoices for purchases, sales, investments, expenses)  
*Source: Own Elaboration*

Fifty-one percent of the companies mention being aware, 49% are not aware, that they must support operations with tax receipts.



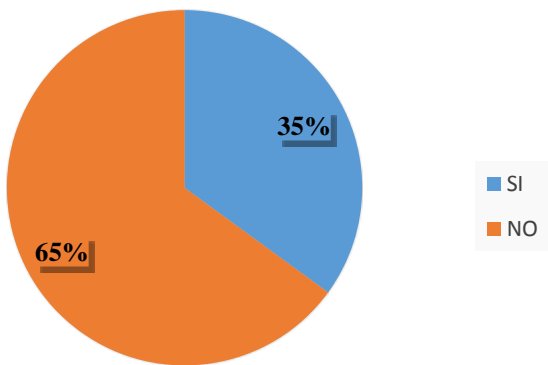
**Graphic 6** The deposits that appear in the bank statement are part of your income that you must declare before S.H.C.P  
*Source: Own Elaboration*

25% know that the bank statement deposits are part of their income that must be declared and 75% do not know.

Article 41 of the Federal Tax Code (CFF) informs us that if taxpayers, regardless of their size, do not pay their taxes, do not issue invoices, do not support their operations with tax receipts, evade the income that is reflected in the account statements, etc. they are entitled to sanctions by the authority, however the results obtained in graphs 4,5,6 reflects that the authority based on art. 33 of the CFF, “obligations it has with taxpayers”, it can be seen that it needs to work more to improve the results of the study variables, which is the knowledge and awareness of taxpayers in this case to micro-enterprises and if necessary to establish accompaniment strategies.

Article 33 of the Federal Tax Code

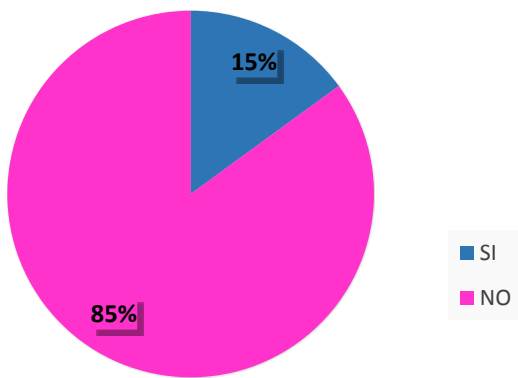
- Free assistance to taxpayers to explain tax provisions, in plain language, away from technicalities, if deemed necessary with brochures.
- Maintain offices in various parts of the national territory to guide taxpayers.
- Establish trustees to represent taxpayers



**Graphic 7** Does your company use banking point of sale terminals to strengthen sales?  
Source: Own Elaboration

Sixty-five percent of companies do not use bank POS terminals, while only 35% of companies do.

As part of a collection project and to give taxpayers billing facilities, the SAT and the Association of Banks of Mexico, implemented a new way of billing for when payments are made with credit or debit cards to which the Banks will add the federal taxpayer registry to the chip of the credit card and this will issue the xml of the invoice and it will be available on the platform of the tax administration system When the immediate invoice mechanism is used and the taxpayer declares amounts of income lower than those deposited to cover the debit of these cards, we will be in a fiscal discrepancy table based on article 91 of the Income Tax Law.



**Graphic 8** Do you generate invoices for the amounts of sales to the general public?  
Source: Own Elaboration

Fifteen percent of the companies did generate invoices for the amounts of sales to the general public and 85% of the companies answered that they did not. Food micro-businesses state that they issue invoices only if the customer requests them, otherwise this generates a higher tax, and affects their profits.

It is alarming to see the handling of these bad practices since if the authority discovers them it can make use of its faculties, however in the case of the sale of food the indirect VAT tax is 8%, for the general public when it reaches the amount of \$ 300,000.00 per year, and this is an added cost that the customer will have to pay for each diner that is why, in order not to affect sales by raising the price, they prefer not to issue invoices.

## Conclusions

This study was carried out in Huejutla de Reyes Hidalgo under the mixed method, aimed at companies in the food sector, the results show little participation in compliance with accounting and tax regulations, due to the lack of awareness and knowledge, that the executives, for this study 314 surveys were applied, which yielded an important data that 300 are micro-companies and 4 are small companies, this indicates that the food trade in Huejutla de Reyes Hidalgo is under the control of micro-companies, to which we would have to take care and work together with the authorities, chambers of commerce, educational institutions, which we have the responsibility of encouraging them to change their organizational structures, to promote an accounting and tax culture, through strategies such as the economic support that is being granted, but with a follow-up that helps them capitalize on their assets.

Based on data from INEGI 2015, three hundred and ninety-four food sales businesses are registered, of which 74% have not formalized their business before the Ministry of Finance and Credit (SHCP), and of that 74% only 8 % have their workers registered with the IMSS, that is, only 69 workers have social security. As part of the work we have for this sector of micro-enterprises is to work together educational institutions, authorities, chambers of commerce, etc., to generate the implementation of projects focused on the administrative part, such as the management of simple accounting, which Without so much obstacle they can make the payment of taxes in an uncomplicated way, nor with so much cumbersome procedure that scares them and that makes them resist compliance with accounting and tax regulations.

The tax collecting authorities must make an analysis of the microenterprise scenario, since we can see that there is little participation in the payment of taxes and management of accounting, for this it is retaken that if for small and large companies the The situation of applying accounting and tax regulations, even more so for micro-enterprises that are struggling to survive, to keep up with their competition, that is, if the authority expects the participation of the tax, they should start by analyzing the forms of collection to give them a different treatment, appropriate to their possibilities.

Taking into account that there are levels of buses, and there are cases where it is preferable that there is an adaptation between the active and passive subject, allowing them to enter the game, to stay on the bench as mere spectators and they do not want to migrate to be part of formal trade. The replacement of the REPECO regime by the fiscal incorporation regime as a measure to improve tax collection as of 2014, was attractive due to the proposal of the existence of a fiscal stimulus for the benefit of taxpayers, however I consider that it should not have been 100% eliminated REPECO, because if the decision made by the authority to eliminate it was to prevent taxpayers from continuing to evade the exemption of invoices that was allowed in that regime, that was only a matter of complementing. Within REPECO, payment was also facilitated by seeking a fixed fee according to their sales, it is something that Microenterprise taxpayers were motivated to pay, it was facilitated and that is an aspect that the authority should not lose sight of. if you want to achieve the maximum collection.

Another way to improve collection, and comply with art. 31 Fraction IV of the Political Constitution of the United Mexican States, (CPEUM) is to make another classification based on the type of income of microenterprises, which could enjoy a tax scheme similar to REPECO, that is, that applies to businesses that effectively remain in a struggle for survival, it is clear to us that not all micro-enterprises are at the top of annual income of \$ 4,000,000.00

In relation to the banking system, seventy-five percent express that they do not know that the deposits reflected in the financial system cause taxes, here the law is very demanding, we cannot generalize to microenterprises, not all of them can have knowledge of this concept, if some They do not have the financial resources to divert them to have a bank account where they deposit their sales. In the interviews, the entrepreneurs commented that the banks agree with the SHCP and that they better not get into trouble.

Thirty-five percent of the companies use the banking point of sale terminal tool, while only 65% of the companies do not use it, remember that the income that is captured through this means is not possible evade them, they would automatically have to enter the taxable base.

Another result was that 85% do not invoice the sales of the general public, these are consumers who are not registered in the SAT, and who do not require the invoice, for this graphic the owners expressed that they have clients that do require a invoice to verify their food expenses either because they work in government agencies or private companies and it serves to verify the expense or to deduct it in their company, in these cases if they issue the invoice but the client is told that they will add to their cost VAT, being an erroneous action, since VAT must be included in the cost. The complicated thing about the 85% that does not bill the general public is that there is a very clear evasion of income tax, likewise, when food businesses exceed \$ 300,000.00 per year they have to pay VAT for sales to the general public and the rate is Very high, for the food sector 8% is established, therefore in these cases they prefer not to invoice so as not to increase the price to customers, because it is observed that the value added tax is not included in their costs. These bad practices are carried out by a lack of knowledge and above all lack of awareness.

I would also like to leave this section as a reflection for the authority that I consider also has the responsibility to carry out these actions, as it is possible that by making use of tax secrecy, large companies are waived taxes and in the case of micro-companies that struggle to survive, they are not given a treatment proportional to their characteristics, because on the one hand they are considered micro-businesses up to \$ 4,000,000.00 per year, but on the other hand the law tells us that after \$ 300,000.00 of income from public sales in In general, they are affected with a percentage of 8% of VAT, for the food sector, a percentage that affects the cost of each diner, and that is why they prefer not to declare it. Environmental conditions do not affect companies of different sizes in a uniform way. On the contrary, in general terms, small companies suffer more from environmental obstacles than large ones (World Bank, 1997; Brunetti et al., 1998; Schiffer and Weder, 2001). Specifically, smaller companies report having more problems than larger ones in terms of financing, taxes and regulations, inflation, corruption, crime and anti-competitive practices. However, there do not seem to be differences in the impact of the availability of infrastructure, political stability or the functioning of justice on companies of different sizes.

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**Expert technical evaluation model for modeling and monitoring services of Technology Information and Communication services in a Social Security Institution of the Federal Public Administration****Modelo técnico experto de evaluación para servicios de modelado y monitoreo de servicios de Tecnología de Información y Comunicación en una Institución de Seguridad Social de la Administración Pública Federal**

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**Abstract**

Social security services are transcendental worldwide activities with significant impact on critical variables for the rest of the productive apparatus and consumption of a nation. The indicators of this category are always significant to locate the level of development and social consciousness of a country. Expert opinion assessments of the modeling and monitoring of Information Technology and Telecommunications services are intended to provide an assurance initiative as an external control system intended to guarantee the organizational continuity of Information Technology services, and serve as a countermeasure to guarantee the goals and objectives of public organizations related to social security services that are to be provided to a significant portion of Mexico's citizens. This study focuses on one of the major social security institutions in Mexico, which uses the capability assessment model and the specifications of best practices related to assurance model framework provided by COBIT.

**Resumen**

Los servicios de seguridad social son actividades trascendentales a nivel mundial con impacto significativo en variables críticas para el resto del aparato productivo y de consumo de una nación. Los indicadores de esta categoría son siempre significativos para ubicar el nivel de desarrollo y conciencia social de un país. Las evaluaciones de opinión de expertos del modelado y monitoreo de los servicios de Tecnología de la Información y Telecomunicaciones tienen como objetivo proporcionar una iniciativa de aseguramiento como un sistema de control externo destinado a garantizar la continuidad organizacional de los servicios de Tecnología de la Información, y servir como una contramedida para garantizar las metas y objetivos del público. organizaciones relacionadas con los servicios de seguridad social que se brindarán a una parte significativa de los ciudadanos de México. Este estudio se centra en una de las principales instituciones de seguridad social en México, que utiliza el modelo de evaluación de capacidades y las especificaciones de las mejores prácticas relacionadas con el marco del modelo de aseguramiento proporcionado por COBIT.

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## Introduction

Social security services in Mexico have always been entirely located in the fields of economics, as well as administration and politics, which, together with education, represent the two most critical sectors of the economy for the federal administrations, and form a central point for the mobilization of interests and a fundamental aspect to structure the offer of the federal government. Social security services that provide services to the population with the capacity of economic resources for payment [1] are based on World Bank studies and other research [2]. The development and access to Information Technologies to improve the results of social security services to the population is the factor with the greatest incidence on welfare that every State should provide the population.

This study primarily describes the operational model of modeling and monitoring services of Technology Information and Communication services in a Social Security Institution of the Federal Public Administration of Mexico. This model is intended to be a response to the results of the "General Report of the Public Account 2014" [3], where the results of the evaluation on Information and Communication Technologies (ICT) of the Institution—which is the subject of this study—issued a maturity capacity assessment of level 2 (repeatable), thus implying a high risk in the continuity of the services. The study's secondary goal is to propose an external control system to "evaluate and monitor" the functioning of the model as a response to the ICT assurance framework proposed by the assurance reference framework established in COBIT [4].

## Analysis Factors

The study of the operational model of the modeling and monitoring services of information and communications technology services consisted of modeling the schema of service operations in order to identify the components that make up the model, evaluate their operation and deployment activities, evaluate the technology to ensure the availability of the assets involved in the model, as well as the risk factors that affect the operation of the model, along with the measures that must be adopted by the institution to achieve compliance with the objectives and benefits established in the specification of the services involved.

The social security institution enabled the modeling of the critical computer applications that would allow the Institute to correctly establish and unify the catalog of ICT services in order to carry out the identification, definition, knowledge transfer, and maintenance of the components that make up the offered services. Likewise, it would allow for the discovery and modeling of the enabling elements of ICT (processes, people, applications and infrastructure) to correctly identify the ICT elements that support the critical applications of the Institute. With this modeling information, the managed services are linked with the critical applications of the institution, along with all the elements that support and enable said services.

The objectives of the application of the model were:

- Describe the services offered in a comprehensible manner for non-specialized personnel, placing special care in avoiding the use of technical language.
- Create guidelines to guide and direct the internal and external clients of the Institution.
- Collect other policies and conditions for the management of critical ICT services, as well as the responsibilities associated with each of these.
- Register the current clients of each critical ICT service.
- Availability of the central service desk and all personnel who have direct contact with customers.
- Increase the confidence of the Institution when it comes to renewing or extending the contracts for the providing of services.
- Identify those responsible for each service to avoid "management vacuum" situations, in which the client does not know who to turn to for advice.

## Processes Involved:

Following the principles of the General Application of Information Technologies, Communications, and Information Security Administrative Manual (*MAAGTICSI* for its Spanish initials) [5] and ITIL v3 best practices, I considered the following processes:



- 1. Incidents
- 2. Requirements
- 3. Levels of Service
- 4. Catalog of Services
- 5. Assets and Configurations
- 6. Events
- 7. Availability
- 8. Problems
- 9. Changes
- 10. Knowledge
- 11. Suppliers
- 12. Budget
- 13. Capacity
- 14. Demand

For the processes aligned to *MAAGTICSI*, and heeding the best practices of ITIL v3, working meetings were conducted with the people in charge of the DTED and a team of specialists from Neixar, and the following are the requirements identified:

The recollection of information to detect the existing processes operating under the umbrella of the Director of Institutional Technology, the identification of relationships between the critical applications of the Institution, the identification of responsible parties of the operation, and the service levels of the critical applications.

The processes are then designed with the information obtained, along with the definition of the scope, objective, roles and responsibilities, levels of service, integration with other processes, flow diagram of the process, and other particular characteristics thereof.

The processes were delivered according to the phases that were established in the annex, with only a couple processes being switched. Once the Head of Planning of Services approved the processes, they were assigned according to the structure defined by the Institution for the management of the *MAAGTICSI* processes, according to the following sub-processes:

- Services Catalog Management
- Demand management
- Budget Management
- Availability Management
- Capacity Management
- Service Level Management
- Vendor Management

- Configuration Management
- Incident Management
- Service Request Management
- Problem Management
- Change Management
- Event management
- Knowledge Management

The operational model was then established as follows:

Initial component of the model

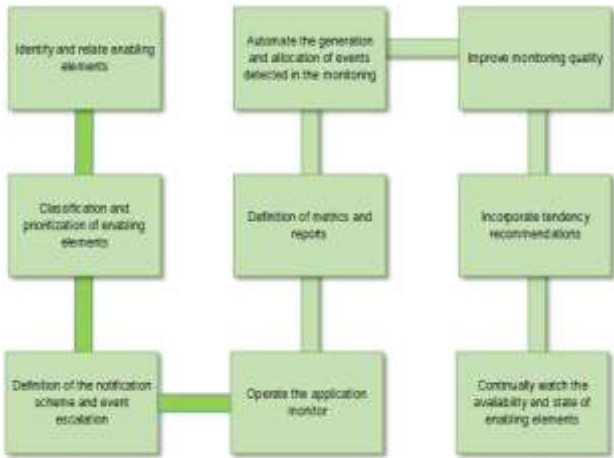


Figure 1 Initial Component of the Model  
Source: Personal Collection

Model complements

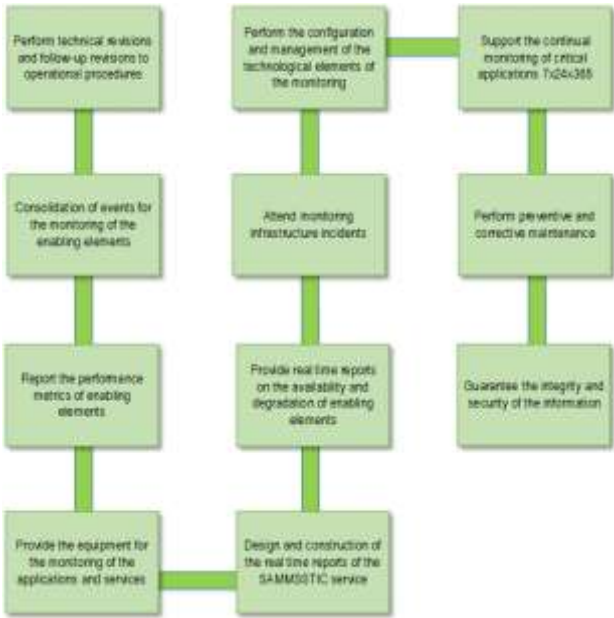


Figure 2 Model Complements  
Source: Personal Collection

The services administered by the model also acknowledge the following components:

- 1. Process framework aligned to *MAAGTICSI* and ITIL v3 best practices.



2. Modeling and monitoring of the Institutions' critical applications and ICT services.
3. Central Service Desk enabling.

The Institution also required the creation of a Central ICT Service Desk that would function as the only contact point to attend to the requirements and anomalies presented in the Institution's critical applications.

The Institution deployed the required software tools with along with their accompanying licensing and support contracts from the service provider; the IT Service Management platform is contained within these tools. This platform is used for the operation of the Central Service Desk, which provides assistance and support for personal computer equipment issues—these computers are provided via the Personal Computer Equipment Administration Service (SAECP) contract. These tools and components will enable and strengthen the capabilities of the operation of the Central Service Desk, incorporating a model of integration with specialized suppliers to monitor follow-ups and solving failures or service requests for ICT (which are under the responsibility of the different vendors).

This will allow the correct measuring of the service levels and guarantee the *availability and continuity* of the services. Likewise, the automation of follow-up and support processes of the different critical applications of the Institution would be implemented, thus guaranteeing the adherence to *MAAGTICSI* principles and ITIL v3 best practices, as well as strengthening the catalog of services of the Technology Department. Once the model is implemented the Institution would be able to:

- Implement and automate a bidirectional integration model with the specialized service desks of the ICT service providers, which would allow for maintaining a unified workflow for the follow-up requests of the users of the Institution. This would allow for the monitoring and measurement of service levels related to the follow-up and resolution of these requests, and supporting the identification of the root cause of events that affect or degrade the availability and continuity of critical computer applications. The number of specialized service desk integrations needed would be based on current contracts.

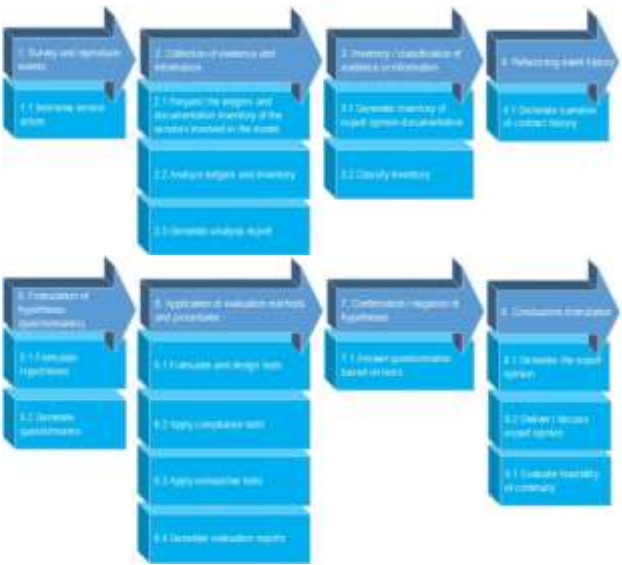
- Define and implement the Central Service Desk management processes, incorporating all best practices in order to comply with *MAAGTICSI*, ITIL v3 and the regulations of the Institution.

- Enable a logical and conceptual design of a unified CMDB, which allows the Institution to identify and update the information of the configuration elements of the Critical Applications, which are managed by the different vendors, in an automatic manner. The implementation of the CMDB will be in the technological platform owned by the Institution.

- Maintain an updated Catalog of ICT Services, which allows for the management of the relationships and interdependencies of the configuration elements, both with the services provided through third parties, as well as with the management and operation processes of the Central Service Desk.

- Define, enable and automate the metrics and indicators that will be used in the reports that will allow the Institution to monitor compliance of the service levels established with the various vendors.

The second component of the case study in this research implements an external control system to "evaluate and monitor" the operation of the model as a response to the ICT assurance framework supported by the assurance framework established in CoBIT for Assurance®.



**Figure 3:** External Control System based on CoBIT for Assurance  
Source: Personal Collection

1. **Survey and reproduce events:** A thorough review of all the different elements that make up the entire execution history of the services contained in the service model will be performed. This will allow for a subsequent replay, which will be used for a complete evaluation of the service execution.
  - 1.1. **Interview service actors.** Integrate and document interviews with the different parties involved in the contract established by the organization's contract provider, as well as those responsible for the processes and services impacted by it, understanding their point of view regarding the execution and achievement of the objectives.
 

**Inputs:** Environmental factors, contract subject to assurance, IT needs, organization needs, organization strategy, policies and organizational procedures, requirements, IT goals, goals of the organization, expectations of the stakeholders.

**Tools:** Expert judgment, interviews with stakeholders, review of the IT governance framework.

**Outputs:** Documentation of stakeholder requirements, documentation of interviews with suppliers.
2. **Collection of evidence and information:** Gather all documents that make up the development of the target of the contract in accordance with the deliverables and reports of the services included in the model
  - 2.1. **Request the ledgers and documentation inventory of the services involved in the model.** Gather the technical, administrative and legal reports generated during the supervision service from the organization, as well as documents that are used as support in the development of deliverables, compliance with the objectives, and scope of the assurance contract.
 

**Inputs:** Technical report, administrative ledgers, legal ledgers, documentation of the services contemplated in the model, deliverables, project management documents, reports of expert opinions.

**Tools:** Documentation analysis and information exploitation.

**Outputs:** Inventory of classified, identified and structured documentation.
  - 2.2. **Analyze ledgers and inventory.** Evaluation of the different documents requested in point 2.1 and each of them will be classified according to corresponding matches
 

**Inputs:** Project ledgers, documentation inventory.

**Tools:** Documentation analysis and information exploitation.

**Outputs:** Document correspondence list for the services subject to assurance.
  - 2.3. **Generate analysis report.** Generate a document where the different classified elements are listed, as well as their corresponding degree of compliance with the services included in the model.
 

**Inputs:** Corresponding documentation for the assurance contract, project ledgers, documentation inventory

**Tools:** expert analysis techniques.

**Outputs:** Analysis documentation.
3. **Inventory / classification of evidence or information:** Perform inventory of documents belonging to the assurance service.
  - 3.1. **Generate inventory of expert opinion documentation.** Gather each of the documents that are subject to the assurance contract, which will support the development of deliverables, meeting of objectives and scope, technical, legal and administrative terms, and enabling the generation of an inventory of different documents developed in the assurance service.
 

**Inputs:** Document analysis, project ledgers, documentation inventory.

**Tools:** Information analysis, tools and techniques of auditing and field expertise.

**Outputs:** Inventory of all documentation pertaining to the contract.

- 3.2. **Classify inventory.** Classify the inventory developed in point 3.1 it according to the characteristics of its elements, to facilitate its manipulation at the time of evaluation.  
**Inputs:** Inventory of all the documentation related to the service model  
**Tools:** Information analysis, data management techniques, tools and techniques of auditing and field expertise.  
**Outputs:** Identified, classified, and structured inventory of all documentation related to the contract.
4. **Refactoring event history:** Create a narrative based on the documentation and evidence available in regards to the assurance contract.
- 4.1. **Generate narrative of contract history.** Generate a chronologically arranged ledger, taking into account the administrative, technical and legal elements, and establish the events that were developed over course of the contract until the moment of the assurance service.  
**Inputs:** Identified, classified and structured inventory of all documentation related to the contract.  
**Tools:** Information analysis, data management techniques, tools and techniques of auditing, field expertise, ledger format.  
**Outputs:** Ledger document taking into account the administrative, technical and legal elements.
5. **Formulation of hypotheses (questionnaires).** Generate the inductive, deductive and necessary statistical hypotheses necessary for the evaluation, and subsequent conclusion.
- 5.1. **Formulate hypotheses.** State the different hypotheses that, through their verification, will allow an evaluation of the fulfillment of the service model.  
**Inputs:** Factual history, documentation inventory, international standards, internationally accepted best practices, contract subject to assurance, audit principles.  
**Tools:** Document analysis and expert judgment.
- Outputs:** Hypotheses raised
- 5.2. **Generate questionnaires:** Formulate the questions that allow the verification of the hypotheses raised in point 5.1  
**Inputs:** Suggested hypotheses, documentation inventory, international standards, internationally accepted best practices, contract subject to assurance, audit principles, document inventory, factual narrative.  
**Tools:** Expert judgment, formulation of questions.  
**Outputs:** Questionnaires for hypotheses proofs.
6. **Application of evaluation methods and procedures.** Review the mechanisms used for the design of the exhaustive tests, their compliance, and their execution, thus allowing for the generation of the findings report.
- 6.1. **Formulate and design tests.** Generate mechanism and design of compliance and exhaustive tests that allow the evaluation of each of the hypotheses.  
**Inputs:** Hypothesis raised, questionnaires for the verification of hypotheses, international standards, internationally accepted best practices, contract subject to assurance, audit principles, factual narrative.  
**Tools:** Expert judgment, analysis of documentation.  
**Outputs:** List of compliance and exhaustive tests to be executed.
- 6.2. **Apply compliance tests.** Determine the existence of evidence and deliverables that support the fulfillment of the service model.  
**Inputs:** Selection of compliance tests to be applied, international standards, internationally accepted best practices, contract subject to assurance, audit principles, products / deliverables and documentation derived from the contract, inventory of documents, narrative of facts.  
**Tools:** Interviews, document reviews, product / deliverable reviews, information analysis.  
**Outputs:** Results of compliance tests.

- 6.3. **Apply exhaustive tests** Evaluate the degree of compliance of each of the deliverables and obtain evidence, according to the characteristics determined within the service model, and that allow for the generation of its evaluation.  
**Inputs:** Selection of exhaustive tests to be applied, international standards, internationally accepted best practices, contract subject to assurance, audit principles, products / deliverables and documentation derived from the service model, document inventory, factual narrative  
**Tools:** Interviews, document reviews, product / deliverable reviews, information analysis.  
**Outputs:** Results of exhaustive tests.
- 6.4. **Generate evaluation reports.** Document all findings, supported by the exhaustive and compliance tests.  
**Inputs:** Results of compliance tests, results of substantive tests, international standards, internationally accepted best practices, contract subject to assurance, audit principles.  
**Tools:** Information analysis and result graphs  
**Outputs:** Reports of evaluation results.
7. **Confirmation / Negation of hypothesis.** Statements on the hypotheses, thus determining if each one of the proposals is either true or false.
- 7.1. **Answer questionnaires based on tests.** Respond to the hypotheses generated through the questions posed within the questionnaires associated to each of these, based on the report of the tests generated in point 6.4.  
**Inputs:** Questionnaires for the verification of hypotheses, reports of evaluation results, contract, contract subject to assurance, principles of audit, inventory of documents, narrative of facts.  
**Tools:** Report analyses.  
**Outputs:** Questionnaires for the verification of resolved hypotheses.
8. **Conclusions Formulation.** Generate statements of compliance through the documents of the expert opinion, including the technical, legal and administrative aspects.
- 8.1. **Generate the expert opinion.** Generate the reports where the compliance of each one of the different hypotheses is declared, classifying the legal, administrative and technical aspects of each one.  
**Inputs:** Questionnaires for the verification of hypotheses solved, contract subject to assurance, audit principles, inventory of documents, narrative of facts.  
**Tools:** Tools and techniques of auditing, documentation and information analysis.  
**Outputs:** expert technical opinion.
- 8.2. **Deliver / discuss expert opinion.** Present the results of the administrative, legal and technical reports with the different stakeholders on behalf of the organization: those responsible for the processes affected by the contract and the vendor. Identify the elements presented therein and, if required, specify what necessary steps need to be taken for there to be an agreement by each of the parties.  
**Inputs:** Expert technical opinion.  
**Tools:** Reviews.  
**Outputs:** Comments by interested parties, expert technical opinion adjusted.
- 8.3. **Evaluate the feasibility of continuity.** Based on the resulting opinions from the process of point 8.2, evaluate the opportunity to continue with the contract and achieve the objectives and benefits as planned; and, if not, inform all parties so that the necessary actions are taken.  
**Inputs:** Adjusted expert technical opinion, comments from stakeholders, procedures and organizational policies, environmental factors, applicable regulations, international standards, internationally accepted best practices, contract subject to assurance.  
**Tools:** Expert judgment, information analysis.

**Outputs:** Feasibility of continuity of the model.

- 8.4. **Generate technical opinion of continuity.** Determine the activities that will be carried out in order to complete and fulfill the assurance contract and achieve fruition.

**Inputs:** Feasibility of continuity.

**Tools:** Expert judgment.

**Outputs:** Continuity technical report.

The expert and technical opinions have strict adherence to the methodology, standards and frameworks included in the target of the service model and technical proposals of the vendors, therefore, in the annex and technical specifications of the service, the aforementioned points must be specified.

Using a representative sampling technique, satisfaction surveys and questionnaires of all parties involved were assessed, and the result was that 95% of the products / services defined within the scope of the contract were delivered.

All parties involved must carry out the handling of evidence and official documentation, which reflects communication during the development of the delivery of services, with impeccability and formality in accordance with the approved communication plan. Availability of the logs, databases and applications that allow for the assurance, must be available in order to access the necessary information to validate the SLA.

The Institution involved has implemented systems and external control processes through third-party outsourcing mechanisms for the technical supervision of contracts with great technical and logistical complexity. However, these external control systems contain traditional compliance mechanisms for compliance evaluation and supervision of activities by trained personnel to perform control verifications, better known as assurance checklists. These personnel do not necessarily have the technical skills, experience and knowledge to be able to carry out a complete and sufficient evaluation of the technical compliance and good functioning of the assets that they are supervising.

In this sense, the external control system used for the development of this case study offers an action protocol with four critical success factors that demonstrate its usefulness for the management of the evaluated service model:

- The participation of specialized experts in the review of operations and technical compliance showed that knowledge and experience is important when detecting deviations and breaches by service providers of the institution.
- The application of the evaluation and certification protocols of the service model gave the Institution the possibility of managing the service model in strict compliance with its original mandates, thereby allowing for an effective rendering of accountability on the use of public resources.
- The evaluation and certification protocols included the participation of specialists to provide certainty and transparency to the process of accountability at the beginning, and at the end, of the application of the assurance system.
- It Allowed the authorities of the institution to have an application tool that allowed the following capabilities at all times:
  - Know the risks and critical success factors of the contract
  - Know the status of compliance and service delivery as a result of technical evaluations carried out during the development of the provision of services
  - Gather, classify, and assign an electronic ID number to all the technical, administrative and legal documentation of the project for its later integration into electronic storage media, eliminating the use of physical papers.

## Results

Existing baselines prior to the application of the expert services model to the modeling and monitoring services of Information Technology and Communications services in the Institution:

- Never had an assurance framework-based evaluation system been applied to the technology services of the Institution.
- Compliance with the objectives and benefits of the services had never been verified through any method, tool or procedure.
- No action protocol had ever been executed to verify, validate or certify compliance with the specifications of the service model, as well as its conditions and specifications.
- Prior to the application of the service model, no civilians had ever been invited to witness the transparency and accountability of the exercise of the public budget pertaining to any contract related to ICT.
- Before the application of the expert technical evaluation model, no deviations were detected in the compliance of the service model by the officials involved with the functions of operating and administering the model of institutional services.

The application of the external control system—known as the Pakal System—in the CONACYT resulted in the following scenarios:

- Verification of compliance with objectives and benefits established in the service model.
- The establishment of a baseline of process capabilities, people and technology involved to improve the quality and maturity of the services involved.
- The application of technical and legal action protocols for the validation and certification of compliance, through the instrument known as “expert opinion of evaluation and judgment” by application of the scientific method.
- Civilians were summoned, through the representation of academics and scientists from two universities, one public and one private, to validate the results through a closing protocol
- During the application of the evaluation model, eighty-six deviations were detected that were corrected during the development of the delivery of the services, contributing to the achievement of the objectives and benefits specified in the justification thereof.

- The service model administrator evaluated and verified the benefits provided by the expert technical evaluation model by providing all the elements of information and action protocols needed to obtain compliance and certify the achieving of the objectives and benefits established in the justification of outsourcing for the benefit of the users and the Institution.
- The experience of applying the expert technical evaluation model to the services experienced by the contract administrator indicates approval and satisfaction of the fulfillment of the objectives for which they were implemented.

## Conclusions

The design and application of the expert technical evaluation model *to the modeling and monitoring services of the Information and Communication Technologies services in the Social Security Institution*, demonstrates that it is an adequate tool to verify the hypotheses raised in this research. This in the sense of verifying the usefulness that this model can serve as an instrument for governance in terms of ICT services and procurement for a federal government agency of Mexico.

The results of the study show that the expert technical evaluation model fulfills the objectives and purposes of the institution for which it was applied to. The aforementioned model works correctly for the purposes that it was designed and constructed for, and that it is very useful to the institution for the purposes of transparency and accountability before the law, as expressed by public officials of the entity.

The main contribution and innovation of the expert technical evaluation model is the evaluation protocol that was established, which allows for the detection of omissions and deviations in compliance with the specifications of the contract. This protocol generates observations and recommendations for immediate settlement and correction by all those involved.

The expert technical evaluation model is an external control system that establishes, through a method and action protocols supported by regulations, an intervention model to supervise and ensure compliance with the provisions of the law through expert evaluations through the generation of expert opinions.

The hypothesis of the research study raises the possibility of the model being used as a tool that contributes—through methods, processes, and technological tools—to the compliance of norms, dispositions, and laws in matters of acquisitions and responsibilities of the public administration. The model, being an external control system, is a set of elements that affects the supervision, surveillance and assurance of compliance with standards and legal provisions. The hypothesis does not propose that its main objective is to verify the impact that the system has on the behavior of public servants when the external control system is applied: this area of study can be the subject of another research project.

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- [5] The *MAAGTICSI* is a manual that establishes the administrative dispositions regarding information technology and communications, and information security, which must be followed by the dependencies and entities of the federal public administration (APF), as well as the Attorney General's Office of the Republic of Mexico. The manual defines and approves the processes that govern the operation of the ICT and information security units of the Federal Public Administration institutions in order to increase the operational efficiency and improve the delivery of services to society.

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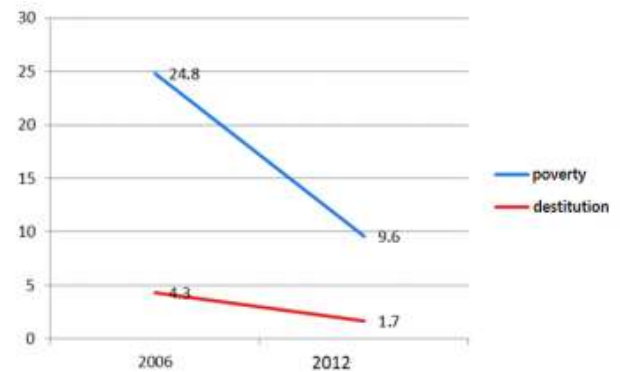
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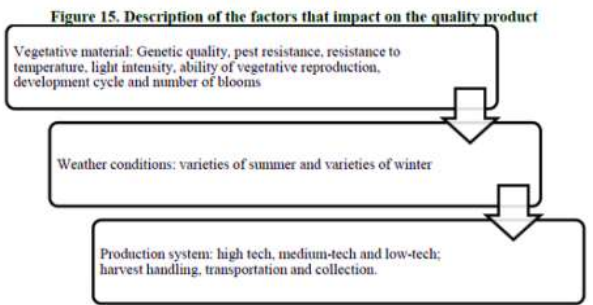


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