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Journal-Law and Economy

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Presentation of the content

In the first article we present, *Oversight and public finances in Mexico*, by GUTIÉRREZ-RANGEL, Héctor Fabián, ESPINOSA-MOSQUEDA, Rafael and TAMAYO-CONTRERAS, Porfirio, with adscription in the Universidad de Guanajuato, in the next article we present, *Analysis of the simplified trust regime RESICO*, by ANDRADE-OSEGUERA, Miguel Ángel, PAREDES-BARRÓN, Adriana, BÁRCENAS-PUENTE, José Luis and RAMÍREZ-BARAJAS, Alejandro, with adscription in Universidad Tecnológica del Suroeste de Guanajuato, in the next article we present, *Simulated operations. An analysis of their treatment and tax impact*, by RAMÍREZ-BARAJAS, Alejandro, ALMANZA-SERRANO, Ma. Leticia, ANDRADE-OSEGUERA Miguel Ángel and GÓMEZ-BRAVO Maria de la Luz, with adscription in the Universidad Tecnológica del Suroeste de Guanajuato, in the last article we present, *Official preventive prison in Mexico contravenes human rights recognized at the international level*, by GASPAR-RODRÍGUEZ, Dulce Cristal & LOZANO-DE LEÓN, José, with adscription in the Universidad de Guadalajara.

Content

Article	Page
Oversight and public finances in Mexico GUTIÉRREZ-RANGEL, Héctor Fabián, ESPINOSA-MOSQUEDA, Rafael and TAMAYO-CONTRERAS, Porfirio *Universidad de Guanajuato*	1-9
Analysis of the simplified trust regime RESICO ANDRADE-OSEGUERA, Miguel Ángel, PAREDES-BARRÓN, Adriana, BÁRCENAS-PUENTE, José Luis and RAMÍREZ-BARAJAS, Alejandro *Universidad Tecnológica del Suroeste de Guanajuato*	10-22
Simulated operations. An analysis of their treatment and tax impact RAMÍREZ-BARAJAS, Alejandro, ALMANZA-SERRANO, Ma. Leticia, ANDRADE-OSEGUERA Miguel Ángel and GÓMEZ-BRAVO Maria de la Luz *Universidad Tecnológica del Suroeste de Guanajuato*	23-28
Official preventive prison in Mexico contravenes human rights recognized at the international level GASPAR-RODRÍGUEZ, Dulce Cristal & LOZANO-DE LEÓN, José *Universidad de Guadalajara*	29-35

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Oversight and public finances in Mexico

Fiscalización y finanzas públicas en México

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Abstract

The general objective of the research is to describe the impact of audit management on public finances and tax revenues. According to Organization for Economic Development Cooperation (OCDE, 2022), Mexico lags behind other countries in terms of tax revenue, and tax evasion is considered one of the factors that contribute to this situation. Evasion makes it possible to hide profits and avoid paying the corresponding taxes, which affects state finances and limits the government's ability to promote social programs and improvements. Fiscal policy is a fundamental tool for the economic development and financial stability of a country. In this context, an explanatory qualitative methodology was used, which generated evidence to conclude that auditing acts in Mexico have allowed an increase in tax revenues with a positive effect on public finances; however, still below the average collected by member countries of the OCDE. It is proposed to improve tax education by providing information on the rights and obligations of taxpayers and greater transparency informing how the proceeds are invested and training businessmen in the use of technologies to facilitate the payment of taxes.

Fiscal, Audit, Income

Resumen

El objetivo general de la investigación es describir el impacto de la gestión de fiscalización en las finanzas públicas y los ingresos tributarios. De acuerdo a los datos de la Organización para la Cooperación y del Desarrollo Económico (OCDE 2022), México se encuentra rezagado en comparación con otros países en términos de ingresos tributarios, y la evasión fiscal se considera uno de los factores que contribuyen a esta situación. La evasión permite ocultar ganancias y evitar el pago de impuestos correspondientes, lo cual afecta las finanzas estatales y limita la capacidad del gobierno para impulsar programas y mejoras sociales. La política fiscal es una herramienta fundamental para el desarrollo económico y la estabilidad financiera de un país. Es este contexto, se utilizó una metodología cualitativa explicativa, la cual generó evidencia para concluir que los actos de fiscalización en México han permitido un incremento en los ingresos tributarios con efecto positivo en las finanzas públicas; sin embargo, aún por debajo del promedio recaudado por países miembros OCDE. Se propone mejorar la educación tributaria brindando información sobre los derechos y obligaciones de los contribuyentes y mayor trasparencia informando en qué se invierte lo recaudado y capacitar a los empresarios en el uso de tecnologías para facilitar el pago de los impuestos.

Fiscal, Auditoria, Ingresos

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Introduction

According to the Organisation for Economic Co-operation and Development (OECD) study on tax statistics in Latin America and the Caribbean (2020), Mexico is among the countries with the lowest tax revenues, collecting only 16.1% of Gross Domestic Product (GDP) in 2018, which is significantly low compared to the average. Furthermore, the Economic Gazette of the Government of Mexico (2020) highlights that one of the main challenges in terms of taxation in the country is the high rate of the informal economy. In 2019, the informality rate reached 56.6% and represented 23% of GDP. Despite the tax reforms implemented by the Mexican government, it has failed to increase the taxpayer base and tax revenues.

The informal economy operates outside the law and is characterised by practices such as evasion, avoidance and smuggling. The Centre for the Study of Public Finance (2018) notes that people working in the informal economy negatively impact tax collection, generating considerable losses for the state. However, the potential of the informal sector in terms of tax collection is also recognised, so it is necessary to seek its reduction and formalisation, as explained by Sobarzo (2017).

It is undeniable, as mentioned by Osorio and Atondo (2020), that countries need economic resources to finance their public expenditures, and most of these resources come from taxes established in their tax systems. However, there are situations such as the informal economy, fraud, tax evasion and omission that affect tax collection potential. Therefore, states are forced to implement various enforcement mechanisms to combat these problems. As Tibabisco (2018) explains, tax control helps to prevent tax evasion in commerce and industry, and these controls must be led by the administration with the aim of generating an impact on culture and society, fostering a real commitment on the part of citizens to contribute to public spending.

In relation to tax evasion, Gómez and Morán (2020) define it as the main obstacle facing public finances in Latin American and Caribbean countries. However, they see potential in access to new technologies and information systems, such as electronic invoicing or automatic collection mechanisms, which offer better prospects for the future. Improvements in tax legislation related to the digital economy and advances in international taxation and information exchange between countries are also seen as areas of opportunity to address the problem of evasion across geographical borders.

In this context, a detailed description is given of the effects of the enforcement strategy in Mexico and the impact on the increase in tax revenues, which has led to sound public finances that allow the generation of basic services for Mexican society. Although there has been improvement, informality, tax evasion and low average tax collection compared to OECD member countries remain a problem.

Conceptual framework

The Internal Revenue Service defines auditing as the set of activities whose purpose is to ensure that taxpayers comply with their tax obligations, guaranteeing the correct, full and timely payment of taxes.

Pursuant to Article 31 section XI of the Organic Law of the Federal Public Administration, the Ministry of Finance and Public Credit has the competence to collect taxes, contributions for improvements, duties, products and federal benefits, as well as to monitor and ensure compliance with tax provisions. This power is mainly delegated to the Tax Administration Service (SAT), which is responsible for enforcing tax and customs laws to ensure a fair and equitable contribution to public spending. In addition, SAT is in charge of auditing taxpayers to ensure compliance with tax and customs provisions, promoting voluntary compliance and providing relevant information for the design and evaluation of tax policies. With these powers, the Ministry of Finance and Public Credit can apply the necessary techniques to those taxpayers who do not comply with their tax obligations.

ISSN: 2524-2113

On the other hand, the Administrative Enforcement Procedure (PAE) or economic-coactive procedure, established in Articles 145 to 196-B of the CFF, is a mechanism that allows the tax authority to collect unpaid tax credits in a voluntary and timely manner by the taxpayers, although it does not directly resolve the controversy.

According to Article 31, section IV of the Political Constitution of the United Mexican States, Mexicans are obliged to contribute to public expenditure in a proportional and equitable manner, in accordance with the laws in force, both at the federal level and in the Federal District or in the State and Municipality where they reside.

The term economic informality refers to activities carried out by persons or companies that are not registered with the authorities and therefore not subject to tax regulation. This implies the lack of tax records and a regulatory system for these activities.

Several studies, such as those by Gómez and Samaniego (2008), highlight that informality is characterised by the carrying out of economic activities in places that are not formally established, such as private homes or rudimentary premises, as well as the offering of goods and services in public places without complying with the corresponding regulations.

Garzón et al. (2006) point out that public expenditure is understood as an instrument of the state to acquire goods and services destined to the production of public goods, with the objective of determining the displacement of resources towards an investment, or vice versa.
Tax evasion refers to the failure of taxpayers to comply with their tax obligations due to various reasons, such as delinquency, fraud and smuggling. Evasion has a direct impact on tax collection and on the country, and in Mexico, it has been favoured by the lack of a tax culture in society and the inefficiency of the tax administration, as mentioned by Ayala (1993) and other authors.

Literature review

According to Osorio et al. (2020), the state needs revenue to satisfy the needs of citizens, so taxes and contributions are created. Tax collection aims to distribute national income to finance public policies and services. García (2016) states that auditing helps to improve collection efficiency by analysing the origin, use and destination of public resources.

Reforms in tax auditing policies in Mexico sought to increase revenue collection through auditing without new contributions. García (2016) shows an increase in revenue collection, but the planned objectives are not achieved. Lara (2009) mentions structural problems in the Mexican tax system, such as income concentration, the informal economy and special regimes. Despite the effectiveness of tax control, informality in Mexico is high, especially exacerbated by the Covid-19 pandemic. However, the informal economy could also be a potential source of tax revenue. The Centro de Estudios de las Finanzas Públicas (CEFP, 2018) highlights that revenues from non-taxed activities could be resources for the public treasury.

Bermúdez (2021) investigated the impact of informal tax participation on tax collection in Mexico. He concluded that informality represents a serious problem for public finances by reducing the tax base. Rodriguez (2014) studied informality in Colombia and found that reducing income tax rates is more effective than increasing taxation and reducing payroll tax rates in reducing the informal economy.

In addition to structural problems, the Mexican tax system faces political and administrative challenges. Lara (2009) highlights the excessive bureaucracy and lack of transparency in the implementation of public policies, which leads to a negative perception of taxpayers and to tax evasion and avoidance practices. Domingo (2010) criticises the approach of reducing income taxes and strengthening consumption taxes, ignoring taxpayer behaviour and generating polarisation in tax reforms.

ISSN: 2524-2113

A study conducted by Meza and Mosqueira (2023) points out that the Ministries of Finance in Latin America must modernise in order to meet fiscal objectives and promote sustainability for society. In their analysis of regulations, they highlight the creation of legal entities to audit taxpayers who evade taxes, implementing new technology, which becomes a challenge for these countries and above all to guarantee the transparency of resources.

Rojas et al. (2019) warn, through their study in Chile, that a tax reform should consider not only increasing tax rates, but also addressing education and changing the negative perception of taxation, in order to achieve effective participation in social progress.

Methodology

The methodological approach used in this research is based on the qualitative paradigm, where the researcher becomes a research instrument, performing listening, observing and writing tasks (Rodríguez, Gil and García, 1998, p.122). Furthermore, Sampieri (2014) defines the qualitative research method as one that focuses on the formulation of questions and hypotheses from the collection and analysis of data, allowing for the exploration of facts and their interpretation. In this study, the data collected will be analysed and interpreted in order to obtain relevant conclusions and proposals.

This project is based on solid evidence with the objective of understanding the reality of the fiscal situation in Mexico, especially with regard to income tax collection. For this purpose, a desk study approach will be used, using third party sources such as archives, reports, studies and official publications. Official data, objective academic data and consultations on the SAT website, among other sources, will be consulted in order to gather relevant and adequate information.

This research has an explanatory scope, based on a qualitative approach, as it allows us to delve deeper into the causes and irregularities of the research problem.

It is important to highlight specific problems in the Mexican context, such as tax evasion and avoidance, lack of tax payment culture, inefficient tax administrations, lack of awareness of regulations and the absence of more effective tax policies. In addition, the increasing levels of informality will be analysed. Hernández, Fernández and Baptista (2014) define explanatory studies as those that seek to explain why a phenomenon occurs and under what conditions it manifests itself.

Likewise, the type of correlational research will be taken into account. According to Sampieri et al. (2014), this approach allows us to explore the relationship or degree of association between two or more concepts, categories or variables in a specific sample or context. Data published in official websites on the different tax reforms implemented in Mexico will be analysed in order to assess their negative or positive impact on taxpayers' compliance with their tax obligations.

Results

This section will present the results of the research, emphasising that the most relevant and pertinent information was collected from several official sites, such as the Tax Administration Service's website and the Organisation for Economic Co-operation and Development (OECD). First, the total number of active taxpayers according to the official website of the Tax Administration Service was analysed. Taxpayers are key elements in the collection process, as they declare their income and expenditures to the authorities as a result of their economic activities, thus complying with the obligation to pay the corresponding taxes.

Figure 1 shows the total number of natural persons providing services within the regulations. It is important to note that in these years the numbers were low, which represents an alarming situation for the government and tax collection agencies. Tax reform was implemented as a strategy to increase revenues and provide better services to society. A marked difference can be observed between the figures presented in graphs 1 and 2, due to the fact that the Tax Reform in 2014, which was characterised by offering new opportunities for small businesses to become formalised.

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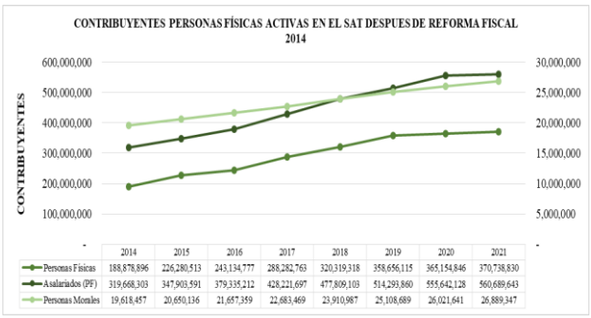
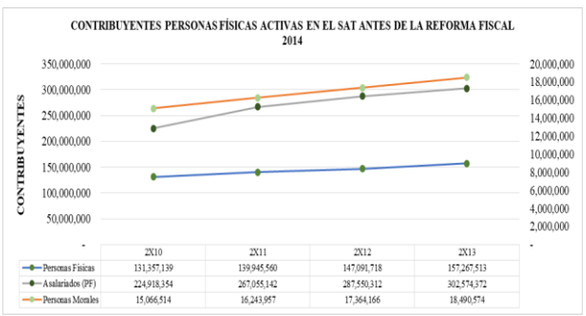


Graphic 1 List of individuals active in the SAT
Source: Own elaboration based on SAT open data (2023)

As can be seen, while in 2013 there was a total of 1,582,582 active legal entities and 16,625 large taxpayers, in 2014 there was an increase of 5.78% in the number of individuals incorporating new taxpayers, as well as an increase of 2.92% in the number of active large taxpayers, according to SAT data. In addition, an increase was observed in the years 2015 to 2021 respectively.



Graphic 2 List of individuals and companies active in the SAT before the 2014 Tax Reform
Source: Own elaboration based on SAT open data (2023)

With the implementation of the new taxation scheme for individuals called the Tax Incorporation Regime (RIF), facilities were provided to individuals who were in the Small Taxpayers Regime and had an income of no more than two million pesos. The objective was for these individuals to provide their services in a formal manner and within the legal framework, in addition to receiving training to promote tax culture and compliance with obligations.

The 2014 tax reform motivated new taxpayers to provide their services in a regular manner and reduce informality rates in the country. These results were reflected from 2014 onwards, with a gradual increase in tax collection thanks to the participation of new taxpayers. In terms of active legal entities, the figures also showed a significant increase until 2021.

Among the changes introduced by the 2014 reform for these taxpayers are the establishment of a single marginal rate of 30% for the calculation of ISR payments, as well as a reduction allowed in deductions on certain items.

Taxes are the lifeblood of a society; therefore, a state can only exist if it has the capacity to collect them. Throughout its history, Mexico has had low tax revenues due to various factors. It is important to analyse the figures of the total revenue collected in order to know the behaviour of these revenues, as we can observe in graphs 3 and 4, from 2010 to 2013 tax revenues were low in comparison with the figures obtained in the following years.

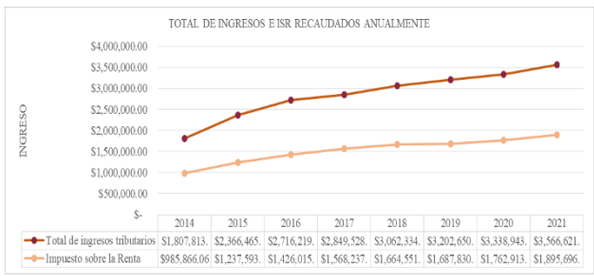


Figure 3 List of individuals and companies active in the SAT
Source: Own elaboration based on SAT open data (2023)

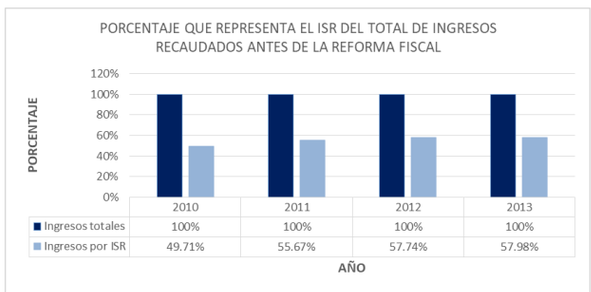


Figure 4 List of individuals and companies active in the SAT before the 2014 Tax Reform
Source: Own elaboration based on SAT open data (2023)

Graph 5 shows more clearly the percentage growth of tax collection, comparing one year and another, showing a clear improvement in the period in which improvement strategies were implemented that favoured the collection of these taxes and encouraged taxpayers to comply with their obligations.

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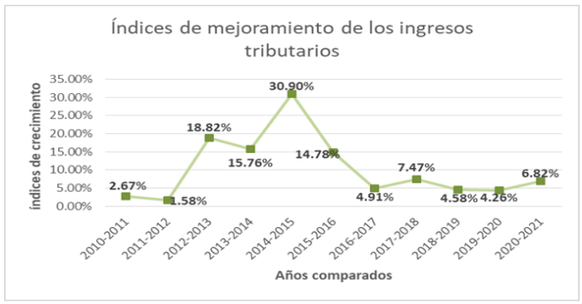
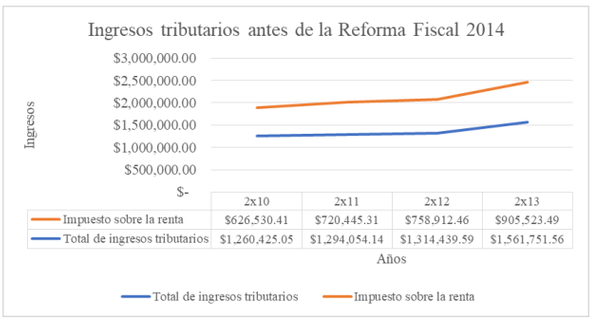


Graphic 5 List of individuals and companies active in the SAT before the 2014 Tax Reform
Source: Own elaboration based on SAT open data (2023).

One of the taxes with the greatest weight in the country's economy is income tax, which is a major source of revenue.

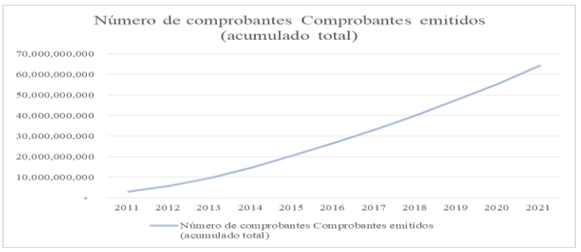
It is possible to observe in graph 6 the behaviour of Income Tax; it is one of the most important in the collection of taxes in Mexico, representing 50% or more of this percentage over the years, with the Tax Reform of 2014 it was possible to formalise the workers of businesses and companies; increasing the ceiling of the marginal rate of the tax up to 35%, in addition to limiting the authorised deductions of the same taxpayers, which favoured the economic development of the country during the following years.



Graphic 6 Income Tax Revenues in Mexico
Source: Own elaboration based on SAT open data (2023)

As can be seen in Graph 7, the authority's control strategies tend to decrease due to their complexity, i.e. the implementation of the digital tax receipt (CFDI) to support the operations of economic entities is regulated by the authorities using frontier technology, which has allowed for greater control and collection of tax revenues.

Similarly, Graph 8 shows how the use of digital tax receipts (DFDI) has been increasing, allowing the authorities to have more tax revenues and how the control strategies are focused on the use of new technologies.



Graph 7 Use of digital tax receipts. Own elaboration based on SAT open data (2023)

Discussion and conclusion

According to Osorio and Atondo (2020), the collection process in Mexico faces challenges related to tax evasion and tax fraud. To address these problems, various enforcement tools are used, such as coercive collection, audits and electronic reviews. According to the research, these enforcement efforts are having a positive effect, and an increase in the tax base is observed thanks to the implementation of such strategies.

On the other hand, Rodríguez (2014) highlights the possibility of reducing the informal sector by lowering income tax (ISR) rates, which would strengthen state finances. The research shows that after the reforms carried out in 2014, the Mexican government's coffers increased by 15.14% in the first year.

In relation to Rojas et al.'s (2019) warnings about the need to maintain the reform and digitise the system, it was shown that the advances in collection derived from the acts of taxation had an immediate and sustained impact through the effective SAT and the virtual SAT

The Centro de Estudios de Finanzas Públicas (2018) also highlights the impact of informality on taxation, as it is estimated that the Mexican state loses approximately 955 billion 882 million pesos per month in taxes, which has a negative effect on Gross Domestic Product (GDP). However, the research also shows a steady increase in the number of taxpayers, especially among wage earners and large taxpayers, which meets the objective of the tax reforms implemented in 2014.

This research concludes that the implementation of the tax reform in Mexico has brought benefits, such as increased revenues and tax base. In terms of control strategies, the following stand out:

- Improving transparency, accountability and auditing processes as strategies to achieve sustainable development and reduce poverty in the country.

- Hold public servants accountable and apply sanctions in case of non-compliance with their obligations, promoting equality and avoiding abuse of power.

- Establish internal and external control bodies to fight corruption and oversee public resources, such as the Ministry of Finance and Public Credit, the Federal Superior Audit Office, the Ministry of Public Administration, among others.

Although tax reforms have allowed for a greater increase in tax collection and taxpayer registration, there are still important challenges in Mexico, such as putting an end to the informal economy and tax evasion. This would allow Mexico to be at the average level of tax revenues in OECD member countries. Undoubtedly, it is important to provide more training to taxpayers and professionals on the use of the Tax Administration Service (SAT) technologies and platforms in order to contribute to better control and transparency of the exercise of the revenues collected for greater economic growth and social development.

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Analysis of the simplified trust regime RESICO

Análisis del régimen simplificado de confianza RESICO

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Abstract

Individuals and corporations acquire tax obligations when they initiate an economic activity. The obligation of individuals and legal entities to contribute to public spending is established in Article 1 of the Federal Fiscal Code, where the applicable provisions are indicated; it is the main basis for the contributions classified as taxes, social security contributions, improvement contributions and duties, mentioned in Article 2 of the Federal Fiscal Code. The timely and proper payment of the respective taxes avoids being subject to certain tax credits, updates and surcharges. The SAT is continually looking for ways for taxpayers to comply with these obligations, adapting tax regimes to facilitate this process. The RESICO Simplified Trust Regime is an example of this, which establishes who can and cannot pay taxes, the requirements and procedures to comply with tax obligations. This analysis contributes to the generation of knowledge on the scope of this new tax regime.

Fiscal Regime, Taxes, Contributions

Resumen

Las personas físicas y morales adquieren obligaciones fiscales cuando inician una actividad económica. La obligación de las personas físicas y morales de contribuir al gasto público se establece en el artículo 1 del Código Fiscal de la Federación, donde se señalan las disposiciones aplicables; es la base principal de las contribuciones clasificadas como impuestos, aportaciones de seguridad social, contribuciones de mejoras y derechos, mencionadas en el artículo 2 del Código Fiscal de la Federación. El pago oportuno y correcto de los impuestos respectivos evita ser sujeto de ciertos créditos fiscales, actualizaciones y recargos. El SAT busca continuamente la manera de que los contribuyentes cumplan con estas obligaciones, adecuando los regímenes fiscales para facilitar este proceso. Ejemplo de ello es el Régimen de Fideicomiso Simplificado RESICO, que establece quiénes pueden y quiénes no pueden tributar, los requisitos y procedimientos para cumplir con las obligaciones fiscales. Este análisis contribuye a la generación de conocimiento sobre los alcances de este nuevo régimen fiscal.

Régimen Fiscal, Impuestos, Contribuciones

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Introduction

Individuals and corporations acquire a series of obligations in tax matters when they start economic activities, and one of them is to contribute by paying taxes. It is important to be up to date with the nine regimes that the authority establishes to comply with such obligations.

In this paper, we analyze the information corresponding to the Simplified Regime of Trust RESICO, in order to understand the change of taxpayers who were taxed in the Tax Incorporation Regime (RIF) and the activities it generates. Likewise, the benefit of paying taxes in this new modality is also analyzed.

Based on the obligation of Mexican citizens to contribute to the nation's public spending through the payment of taxes, social security contributions, contributions for improvements and duties, as mentioned in Article 2 of the CFF, the basis for the appearance of the new tax regime is established. (CDHCU, Codigo Fiscal de la Federacion, 2021)

Problem statement

The lack of knowledge on the part of taxpayers with respect to the tax reforms generated for the year 2022, generates uncertainty at the time of making financial decisions regarding the economic activities that both individuals and companies carry out. The appearance of new tax regimes brings new procedures that modify the way in which accounting operations are recorded, which generate the financial information that allows calculating the amount of taxes contributed to public spending.

Justification

The importance of being constantly updated, in relation to the reforms that take place in the country (Mexico), is the responsibility of all taxpayers. The lack of knowledge does not exempt the tax liability of individuals and legal entities engaged in commercial activities, so it is necessary to inform, analyze and understand the new Simplified Regime of Trust RESICO, which establishes new guidelines for compliance with tax obligations.

Objectives

General

Analyze the information regarding the Simplified Trust Regime RESICO, to generate knowledge about the established tax obligations, and that the taxpayers who pay taxes under this regime comply with their contributions in due time and form.

Specific

- Analysis of RESICO information.
- Identification of the tax obligations that taxpayers have to comply with their tax obligations in a timely manner.

Frame of Reference

Individuals

The Simplified Trust Regime is an administrative simplification for the payment of income tax (ISR) in a simple, fast and efficient way. The objective of this new scheme is to reduce the rates of this tax so that people with lower incomes pay less. This proposal of the Tax Administration Service (SAT) is based on international best practices.

The proposal is oriented to individual taxpayers who receive annual income of less than 3.5 million pesos invoiced according to their economic activity, belonging to one of the four tax regimes that make up the Simplified Trust Regime:

1. Business and professional activities.
2. Tax Incorporation Regime.
3. Use or enjoyment of real estate (lease).
4. Agricultural, Livestock, Fishing or Forestry Activities.

This regime benefits 82 percent of individual taxpayers.

It is important to note that salaried workers will not participate in this regime but will remain under the Wages and Salaries Regime.

ISSN: 2524-2113

Starting in 2022, individuals under this new scheme will be required to pay between 1 and 2.5% of their income. Due to these small ISR payment rates, taxpayers will not be able to deduct any type of expense. This is due to the fact that, even with the possibility of deduction, the effective income tax (ISR) rate for individuals was 25.4% during 2020, which represents ten times more than the maximum rate of the Simplified Trust Regime.

The new Simplified Trust Regime will use as a basis the income invoiced and collected, which will reduce the taxpayer's accounting work without requiring the support of third parties. The SAT, as it does annually, will make the calculations and will offer the pre-filled annual return that will be practically ready, only to be compared and paid. (SHCP, 2022)

Legal entities

The Simplified Trust Regime will include legal entities constituted only by individuals who are not associated with other legal entities, whose total income for the year does not exceed 35 million pesos, among other requirements.

According to economic censuses and information from the SAT registries, there are more than 2 million legal entities that are constituted as micro, small and medium-sized companies that promote economic activation and boost competitiveness.

What will the administrative simplification be like?

Income and expense information will be preloaded on the returns for easy tax determination.

What are the benefits?

The purpose of this new regime is to provide greater liquidity to these companies. In other words, it intends to provide companies with more cash for their immediate expenses.

How is this liquidity obtained?

Two ways:

1. Currently, corporations, being suppliers, pay taxes once their sales are invoiced even if their creditors, to whom they sell, do not pay at the time of invoicing.

How does this change with the new Simplified Trust Regime? Starting in 2022, these entities will pay taxes only when they have income from invoices actually collected.

2. When companies buy machinery and certain investments that they use for their activity, they can deduct it in order to pay lower taxes. With the new Simplified Trust Regime, they will continue to deduct, but in less time and at higher rates. (SHCP, 2022)

Who can be taxed.

Individuals

If you are an individual whose annual income does not exceed 3.5 million pesos and you carry out the following activities:

- Business and professional activities (mechanic shops, printing shops, restaurants, cafeterias, economic kitchens, canteens, bars, grocery stores, miscellaneous, mini-shops, schools, day care centers, hardware stores, hardware stores and repair shops, among others; as well as lawyers, accountants and doctors, among others).
- Tax Incorporation Regime.
- Use or enjoyment of real estate (lease of apartments, houses and commercial premises, among others).
- Agriculture, Livestock, Forestry and Fishing.

In addition, they may obtain income from salaries and interest, provided that the total income does not exceed 3.5 million pesos per year.

Legal entities

If you are a company that is registered under the General Regime, that files the annual income tax return, as well as monthly interim returns and reports the income and expenses invoiced in each period, you must be taxed under the Simplified Trust Regime.

ISSN: 2524-2113

Please note that if you are a legal entity you must reside in Mexico and be **constituted only by individuals** whose total income in the immediately preceding fiscal year does **not exceed the amount of 35 million pesos**, or be a legal entity resident in Mexico, only constituted by individuals when you start operations and you estimate that your income will not exceed such amount. (SHCP, 2022)

Those who cannot be taxed.

Individuals.

When you are a partner, shareholder or member of legal entities or when they are related parties, except when:

- They are partners, shareholders or members of legal entities that pay taxes under the Non-Profit Legal Entities Regime of the Income Tax Law, provided that they do not receive any distributable surplus from this tax.
- Are partners, shareholders or members of legal entities constituted as institutions or civil societies with the purpose of managing savings funds or savings banks, as well as savings and loan cooperative societies constituted to regulate the activities of such entities; even when they receive interest from such legal entities.
- Are members of production cooperative societies comprised solely of individuals engaged exclusively in agricultural, livestock, forestry and fishing activities, provided that such members comply on their own account with their tax obligations.
- Residents abroad who have one or more permanent establishments in the country.
- Those with income subject to preferential tax regimes, i.e., income that is not taxed abroad or is taxed at an income tax rate lower than 75% of that which would be payable in Mexico.
- Taxpayers that apply other tax benefits or incentives, for example, those that by decree receive tax incentives from the northern and southern border region.

The following assumptions are assimilated to salaries:

- Fees to board members, directors, supervisory and advisory committees, administrators, statutory auditors and general managers.
- Fees that are preponderantly rendered to a borrower.
- Fees for services rendered to companies or individuals with business activity when they communicate in writing to the borrower that they choose to pay the tax under the regime of assimilated to salaries.
- Individuals with business activities when they communicate to their borrower that they choose to pay the tax under the regime of assimilated to salaries.

Legal entities

- When one or more of its partners, shareholders or members participate in other commercial companies where they have control of the company or its administration, or when they are related parties.
- That carry out activities through trusts or joint ventures.
- That for the activities they carry out, they must pay taxes as:
  - Credit Institutions in the General Regime of Law.
  - In the Optional Regime for Group of Companies.
  - In the Coordinated Regime.
  - In the Regime for Agricultural, Livestock, Forestry and Fishing Activities.
  - In the Non-Profit Corporate Entities Regime.
  - In the Regime of Production Cooperative Societies that choose to defer their income.

ISSN: 2524-2113

- Taxpayers that cease to be taxed under the Simplified Trust Regime. (SHCP, 2022)

Methodology to be developed

Information analysis

In order to analyze the information, answers are given to the most common questions that arise as doubts on the part of taxpayers: (PRODECOM, 2021)

Who can be taxed under this new tax regime?

What is the base income amount to be taxed under this regime?

Can I be taxed under this regime if I receive another type of income?

What tax benefits will individuals in the Primary Sector have?

Who cannot be taxed under this Tax Regime?

Who cannot be taxed under this Tax Regime?

Which tax regimes disappear with the entry into force of the Simplified Trust Regime?

What about the Tax Incorporation Regime?

What are the events for which the exit from the Tax Incorporation Regime is updated?

What obligations must be fulfilled?

Individuals

Article 113-E establishes that the persons that may be taxed in the RESICO are:

- Natural persons who carry out the following commercial activities:
- Business and professional activities (including agriculture, livestock, fishing and forestry).
- Derived from the Tax Incorporation Regime.
- Professional Services
- Persons who grant the temporary use or enjoyment of property.

Provided that their income obtained in the immediately preceding fiscal year does not exceed 3.5 million pesos, or when they initiate activities where the aforementioned amount is not exceeded. (CDHCU, INCOME TAX LAW, 2021)

To determine the amount of income for the immediately preceding fiscal year, income billed in the fiscal year is considered. (SEGOB, 2021)

If in addition to performing the activities mentioned above, and income is obtained from salaries and/or interest, it is possible to be taxed under this regime, provided that the total income does not exceed 3.5 million pesos. (CDHCU, INCOME TAX LAW, 2021)

Taxpayers who have exclusively agricultural, livestock, forestry and fishing activities and whose income does not exceed $900,000.00 pesos that they have actually collected, will have the benefit of not paying ISR on the income from such activity. In order to enjoy the tax exemption, 100% of the income must be presented. (CDHCU, INCOME TAX LAW, 2021)

The persons who will not be able to apply the provisions of RISCO are:

- The partners, shareholders or members of legal entities, or when they are related parties. A related party is considered when two or more persons participate directly or indirectly in the management, control or capital of the other, or when a person or group of persons participates, directly or indirectly, in the management, control or capital of such person, or when there is a relationship between them in accordance with current legislation.
- Be a resident abroad with one or more establishments in the country.
- Taxpayers are subject to preferential tax regimes when they are not taxed abroad, or when the income tax actually incurred and paid is lower than the tax incurred in Mexico.

ISSN: 2524-2113

- The following cases where they are assimilated to salaries:
  - Fees to members of boards, directors, supervisory, advisory or administrative boards, commissioners and general managers.
  - Fees that are preponderantly rendered to a borrower.
  - Fees for services rendered to companies or individuals with business activity, when they communicate in writing that they opt for the system of assimilated to salaries.
  - Individuals with entrepreneurial activities who communicate to their borrower that they opt for the system of assimilated to salaries. (CDHCU, INCOME TAX LAW, 2021)

The tax regimes that disappear with the entry into force of RESICO, due to the fact that this new regime contemplates the mechanics of payment of the aforementioned activities, are as follows:

Tax Incorporation Regime

Regime for agricultural, livestock, forestry and fishing activities. (SEGOB, 2021)

With the entry into force of the RESICO, the Tax Incorporation Regime (RIF) disappears; therefore, individuals who used to pay taxes under the aforementioned regime must migrate to the new regime.

The assumptions under which the RESICO output is updated are as follows:

- When the income from the activity itself, salaries and interest are greater than 3.5 million pesos.
- Failure to comply with any of its tax obligations established in the regime.
- When the taxpayer omits the presentation of three or more monthly payments in a fiscal year, consecutive or not, as well as not presenting its annual return. (CDHCU, INCOME TAX LAW, 2021)

Taxpayers who cease to pay taxes under RESICO due to noncompliance with their tax obligations may not return to pay taxes under this regime.

In the event that income in excess of 3.5 million pesos has been obtained, ISR must be paid in accordance with the provisions of the Business and Professional Activities regime, or in accordance with the Rental Income Regime, as applicable, as of the following month in which the event occurs.

Individuals who have ceased to be taxed under RESICO for having exceeded the maximum amount of 3.5 million pesos of income, may be taxed again under this regime, when their income in the immediately preceding year does not exceed such amount and they are up to date with their tax obligations. (CDHCU, INCOME TAX LAW, 2021)..

Legal entities

Pursuant to Article 206 of the Income Tax Law (LISR), the RESICO must be paid by entities resident in Mexico only constituted by individuals, whose total income in the immediately preceding fiscal year does not exceed the amount of 35 million pesos or entities resident in Mexico only constituted by individuals that initiate operations and that estimate that their total income will not exceed the referred amount. (CDHCU, INCOME TAX LAW, 2021)

Taxpayers who are taxed under the General Regime or those who were under the Income Accumulation Option, which was repealed, must be taxed under RESICO, provided they comply with the requirements established in the new regime. (PRODECOM, 2021)

ISSN: 2524-2113

Article 106 of the Income Tax Law mentions that when the income obtained from the beginning of the fiscal year until the month in question exceeds the amount of $35,000,000.00, the trust regime will cease to apply and will be taxed in terms of Title II of the Income Tax Law, as of the following fiscal year in which the referred amount was exceeded.

The legal entities that cannot be taxed under the RESICO are:

- Those whose partners, shareholders or members participate in other commercial companies where they have control of the company or its management, or when they are related parties.
- Those that carry out activities through trusts or joint ventures.
- Credit, insurance and bonding institutions, general deposit warehouses, financial leasing companies and credit unions; those who pay taxes under the Optional Regime for Groups of Companies; the Coordinated Companies and those who pay taxes under the Regime for Agricultural, Livestock, Forestry and Fishing Activities, as well as those who are under the Regime for Non-Profit Entities.
- Production Cooperative Societies.
- Those who cease to be taxed in accordance with the provisions of the Trust Regime. (CDHCU, INCOME TAX LAW, 2021)

Identification of tax obligations

Individuals

The obligations that must be complied with in accordance with Articles 113-G and 113-H of the Income Tax Law are as follows:

- Register with the RFC.
- Generate e.signature and activate the tax mailbox.
- Issue CFDI for all income received.
- Obtain and keep the CFDIs that cover expenses and investments.
- Filing monthly and annual returns.
- To be active in the RFC.
- Be up to date with their tax obligations.

In the event of resuming activities, the income for the immediately preceding fiscal year must not exceed 3.5 million pesos.

Not being on the definitive list in terms of article 69-B of the CFF. (CDHCU, INCOME TAX LAW, 2021)

Article 69-B mentions that when a taxpayer is detected by the tax authority, issuing vouchers without having the assets, personnel, infrastructure or material capacity, directly or indirectly, to render the services or produce, market or deliver the goods covered by such vouchers, or when such taxpayers are not located, it will be presumed that the transactions covered by such vouchers are non-existent. (DEPUTIES, 2021)

According to Article 113-J of the LISR, . When the taxpayers referred to in Article 113-E of this Law carry out business or professional activities or grant the temporary use or enjoyment of goods to legal entities, the latter must withhold, as a monthly payment, the amount resulting from applying the rate of 1.25% on the amount of the payments made to them, without considering the value added tax, and must provide the taxpayers with the tax voucher stating the amount of the tax withheld, which must be paid by such legal entity no later than the 17th day of the month immediately following the month to which the payment corresponds. (CDHCU, INCOME TAX LAW, 2021)

The manner in which this withholding is performed is exemplified as follows:

Mario provided professional services to a company for $20,000.00.

The determination of income tax withheld for services is shown in the following table:

Service Provision	$20,000.00
(X) Income tax withholding rate	1.25%
(=) Income tax withheld	**250**

Table 1 Calculation of Income Tax withholding per legal entity
Source: Own elaboration

ISSN: 2524-2113

In accordance with Article 113-E of the Income Tax Law, the taxpayers referred to in this article will calculate and pay the tax on a monthly basis no later than the 17th day of the month immediately following the month to which the payment corresponds, and must file the annual tax return.

Taxpayers shall determine the monthly payments considering the total income received for the activities referred to in the first paragraph of this article and covered by the digital tax receipts by Internet effectively collected, without including value added tax, and without applying any deduction, considering the following table:

Amount of income supported by tax receipts actually received, excluding value added tax (pesos per month)	Applicable rate
Up to 25,000.00	1.00%
Up to 50,000.00	1.10%
Up to 83,333.33	1.50%
Up to 208,333.33	2.00%
Up to 3,500,000.00	2.50%

Table 2 Applicable rate for payment of monthly income tax
Source: (CDHCU, INCOME TAX LAW, 2021).

Article 113-F mentions that once the taxpayer has filed and, if applicable, paid the monthly ISR, it must calculate the ISR for the year, for which it will consider the total income effectively received in the corresponding year, covered by the CFDIs, to which it will apply the rate specified in the following annual table:

Taxpayers may deduct from the resulting amount the income tax paid in the monthly returns referred to in Article 113-E of this Law and, if applicable, the income tax withheld in accordance with Article 113-J of this Law.

Amount of income supported by tax receipts actually received, exclusive of value added tax (annual pesos)	Applicable rate
Up to 300,000.00	1.00%
Up to 600,000.00	1.10%
Up to 1,000,000.00	1.50%
Up to 2,500,000.00	2.00%
Up to 3,500,000.00	2.50%

Table 3 Annual Income Tax Article 113-F LISR
Source: (CDHCU, INCOME TAX LAW, 2021).

The advantages of RESICO taxation:

- A predetermined return will be prepared with the information obtained from the tax receipts issued, so it must be checked for correctness and, if necessary, the necessary modifications must be made to determine the income tax payable and generate the line of capture.
- For the determination of income tax, low tax rates are applied, the maximum rate being 2.5%.
- You can be taxed under this regime, even if you are not required to have a professional title to develop your activity, which was not allowed in the RIF.
- If, due to the type of activity carried out, there are no or minimal deductions, it is advisable to opt for this regime. (PRODECOM, 2021)

Value Added Tax (VAT)

In order to comply with tax obligations, the concept of VAT must be considered.

There is no mechanism other than the payment of VAT; monthly payments are determined in accordance with the provisions of the VAT Law.

A practical example is shown in the following table:

Concept	Amount
Value of Events or Activities	$1,000,000.00
Value added tax carried forward	$160,000.00
Less: creditable value added tax	$70,000.00
Same: Tax payable	$90,000.00

Table 4 Example of VAT determination
Source: Own elaboration

Legal Entities

Article 207 of the Income Tax Law states that income is considered effectively received when it is received in cash, goods or services, even when it corresponds to advances, deposits or any other concept, regardless of the name by which it is designated.

ISSN: 2524-2113

Likewise, the income is considered received when the taxpayer receives credit instruments issued by a person other than the person making the payment; in the case of checks, the income is considered received on the date the check is cashed or when the taxpayers transfer the checks to a third party, except when such transfer is by proxy. It will also be understood that the income is effectively received when the creditor's interest is satisfied through any form of extinction of the obligations.

The legal entities referred to in Article 213 of the Income Tax Law, in addition to the obligations established in other articles of this Law and in other tax provisions, shall comply with the obligations set forth in Chapter IX of Title II of the Income Tax Law:

- To keep accounting records in accordance with the CFF.
- Issue, deliver, obtain and keep the CFDI's of all income, expenses and investments.
- Formulate statement of financial position.
- File an annual tax return within the first 3 months following the end of the fiscal year.
- In the case of dividend payments, provide tax receipts showing the amount of income tax withheld from the persons to whom the dividends are distributed.

Article 208 of the Income Tax Law mentions the following authorized deductions that taxpayers may make:

I. Refunds received or discounts or rebates made, provided that the corresponding income has been accrued.

II. Acquisitions of merchandise, as well as raw materials.

III. Expenses net of discounts, rebates or refunds.

IV. Investments.

V. The interest paid derived from the activity, without any adjustment, as well as those generated by capital borrowed, provided that such capital has been invested for the purposes of the activities of the legal entity and the corresponding tax receipt is obtained.

VI. Employer's contributions paid to the Mexican Social Security Institute.

VII. Contributions made for the creation or increase of reserves for personnel pension or retirement funds, complementary to those established by the Social Security Law, and seniority premiums established under the terms of this Law. The amount of the deduction referred to in this section shall be in accordance with the provisions of Article 25, Section X of this Law.

Deductions for investments are established in Article 209 of the Income Tax Law, with the maximum authorized percentages as follows:

A. For expenses and deferred charges, as well as for expenditures made in pre-operating periods, are as follows:

I. 5% for deferred charges.

II. 10% for expenses incurred in pre-operating periods.

III. 15% for royalties, for technical assistance, as well as for other deferred expenses, with the exception of those indicated in section IV of this article.

IV. In the case of intangible assets that allow the exploitation of public property or the rendering of a concessioned public service, the maximum percentage shall be calculated by dividing the unit by the number of years for which the concession was granted, the quotient thus obtained shall be multiplied by one hundred and the product shall be expressed as a percentage.

B. Fixed assets by type of asset are as follows:

I. In the case of constructions:

ISSN: 2524-2113

a. 20% for properties declared as archeological, artistic, historical or patrimonial monuments, in accordance with the Federal Law on Archeological, Artistic and Historical Monuments and Zones, which have a restoration certificate issued by the National Institute of Anthropology and History or the National Institute of Fine Arts.

b. 13% in other cases.

II. In the case of railroads:

a. 10% for train fuel supply pumps.

b. 10% for railroad tracks.

c. 10% for railroad cars, locomotives, railcars and railcars.

d. 20% for track leveling machinery, rail levelers, track grinders, motorized jacks for lifting the track, remover, sleeper inserter and drillers.

e. 20% for communication, signaling and remote control equipment.

III. 25% for office furniture and equipment.

IV. 20% for vessels.

V. In the case of airplanes:

a. 25% for those engaged in agricultural aerial spraying.

b. 20% for others.

VI. 25% for automobiles, buses, cargo trucks, tractor-trailers, forklifts and trailers.

VII. 50% for desktop and laptop personal computers; servers; printers, optical readers, scanners, bar code scanners, digitizers, external storage units and computer network hubs.

VIII. 50% for dies, dies, molds, dies and tooling.

IX. 100% for livestock and vegetables.

X. In the case of telephone communications:

a. 10% for transmission towers and cables, except fiber optic cables.

b. 20% for radio systems, including transmission and handling equipment that uses the radioelectric spectrum, such as digital or analog microwave radio transmission, microwave towers and waveguides.

c. 20% for equipment used in transmission, such as internal plant circuits that are not part of the switching and whose functions are focused on the trunks that reach the telephone exchange, including multiplexers, concentrators and routers.

d. 25% for telephone switchboard equipment used for switching calls using technology other than electromechanical.

e. 20% for others.

XI. In the case of satellite communications:

a) 20% for the satellite segment in space, including the main body of the satellite, transponders, antennas for the transmission and reception of digital and analog communications, and monitoring equipment on the satellite.

b) 20% for satellite equipment on the ground, including antennas for the transmission and reception of digital and analog communications and equipment for satellite monitoring.

XII. 100% for adaptations made to facilities that imply additions or improvements to fixed assets, provided that such adaptations are intended to facilitate access to and use of the taxpayer's facilities by persons with disabilities, as referred to in Article 186 of this Law.

XIII. 100% for machinery and equipment for the generation of energy from renewable sources or efficient electricity cogeneration systems.

XIV. 50% for conventional bicycles, bicycles and motorcycles propelled by rechargeable electric batteries.

ISSN: 2524-2113

a. For machinery and equipment other than those mentioned above, the following percentages shall be applied, according to the activity in which they are used:

I. 20% in the generation, conduction, transformation and distribution of electricity; in the milling of grains; in the production of sugar and its derivatives; in the manufacture of edible oils; in maritime, river and lake transportation.

II. 10% in the production of metal obtained in the first process; in the manufacture of tobacco products and natural coal derivatives.

III. 13% in the manufacture of pulp, paper and similar products.

IV. 13% in the manufacture of motor vehicles and parts thereof; in the construction of railroads and ships; in the manufacture of metal products, machinery and professional and scientific instruments; in the manufacture of food and beverage products, except grains, sugar, edible oils and derivatives.

V. 20% in leather tanning and leather goods manufacturing; in chemical, petrochemical and pharmacobiological product processing; in rubber and plastic product manufacturing; in printing and graphic publishing.

VI. 20% in electric transportation; in fixed infrastructure for the transportation, storage and processing of hydrocarbons. VII. 25% in the manufacture, finishing, dyeing and printing of textile products, as well as clothing.

VIII. 25% in the mining industry; in aircraft construction; and in land transportation of cargo and passengers.

IX. 25% in air transportation; in the transmission of communication services provided by telegraphs and radio and television stations.

X. 33% in restaurants.

XI. 25% in the construction industry; in agriculture, livestock, forestry and fishing activities.

XII. 35% for those destined directly to the research of new products or development of technology in the country.

XIII. 50% in the manufacture, assembly and transformation of magnetic components for hard disks and electronic boards for the computer industry.

XIV. 20% in other activities not specified in this article. The deduction percentages will be applied to the original amount of the investment, even if it has not been paid in full in the fiscal year in which the deduction is applicable.

The expenses and investments that are not deductible are specified in Article 28 of the Income Tax Law, among which are the following:

- Contributions, except for contributions paid to the IMSS by employers.
- Employment subsidy.
- Gifts and hospitality.
- Representation expenses.
- Penalties and indemnities
- Provisions for assets or liabilities
- Consumption in restaurants or bars.
- Customs services
- Travel and per diem expenses, etc.

The requirements that authorized deductions must comply with are mentioned in Article 210 of the Income Tax Law, and state that:

- That they have been effectively disbursed.
- Strictly indispensable.
- In the case of investment deductions, apply the provisions of Section II, Chapter II, Chapter II of Title II of the Income Tax Law.
- To be subtracted only once.

ISSN: 2524-2113

- That premium and financial payments are made in accordance with applicable laws.

- When the payment is made in installments, the deduction will be made at the time of the installments actually paid.

- In the case of transactions carried out on or before the last day of the fiscal year, the requirements for each deduction established by the Income Tax Law must be met, and in relation to obtaining the receipts, these must correspond to the period of the provisional payment.

The provisional payments that taxpayers must make are established in Article 211 of the Income Tax Law, which refers that no later than the 17th day of the month immediately following the month to which the payment corresponds, by means of a tax return to be filed with the authorized offices. The provisional payment will be determined by subtracting from the total income effectively received obtained in the month in question, the authorized deductions effectively paid corresponding to the same period and the PTU, and if applicable, the tax losses occurred in previous years that have not been reduced; the result will be subject to the 30% rate established in Article 9 of the Income Tax Law, and the provisional payments previously made will be credited against the provisional payment. The following table shows an example of the calculation of the Provisional Payment.

	Concept	Month
	Income from prior periods	$100,000
(+)	Income for the period	$400,000
(=)	Total taxable income	$500,000
	Purchases and expenses of prior periods	$ 80,000
(+)	Purchases and expenses for the period	$350,000
(=)	Total purchases and expenses	$430,000
(-)	OCT	0
(-)	Tax losses	0
(=)	Taxable basis of provisional payment	$ 70,000
(*)	Rate established in Art. 9 of the Income Tax Law	30%
(=)	ISR incurred	$ 21,000
(-)	Provisional payments made previously	$ 6,000
(=)	Provisional payment for the month of February.	$ 15,000

Table 5 Provisional Payment
Source: (PRODECOM, 2021)

For the calculation of the tax for the year, the provisions of Article 212 of the Income Tax Law are used.

Authorized deductions applicable in terms of the Simplified Trust Regime, PTU and tax losses pending to be applied will be deducted from the accumulated income. To the above result, the 30% rate will be applied, and the following credits may be made against the annual tax:

- Provisional payments.

- Taxes paid abroad and, if applicable, withholdings on dividend distributions, as shown in the following table:

	Concept	Month
	Revenues actually collected	$25,000,000
(-)	Deductions actually taken	$23,000,000
(=)	Taxable income before employees' statutory profit sharing	$2,000,000
(-)	PTU paid	$500,000
(=)	Taxable income for the year	$1,500,000
(-)	Tax losses	$1,000,000
(=)	Tax result	$500,000
(*)	Rate established in Art. 9 of the Income Tax Law	30%
(=)	ISR for the year	150,000
(-)	Provisional payments	$120,000
(=)	**ISR payable**	**$30,000**

Table 6 Annual ISR
Source: (PRODECOM, 2021)

In the event that there is a tax loss, it will be determined when the income actually received is less than the authorized deductions and its amount is increased by the PTU paid in the year. Losses generated may be reduced within the following 10 years, until they are exhausted.

Results

Taxpayers in this regime focus on the payment of income tax in a quick and efficient manner mainly for micro, small and medium-sized companies, which also acquire some benefits, among which are. Low income tax rates, facilities for administrative matters, automated calculation of taxes and the possibility of scheduling their returns.

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The RESICO has certain characteristics that benefit taxpayers (individuals and corporations), among which are: the payment of 1% to 2.5% of income, without deduction of any type of expense, the taxpayer is entitled to deductions for taxable income, a scheme for the deduction of short-term investments, VAT is creditable, and the profit ratio obtained from the previous fiscal year is no longer used.

Conclusions

The new scheme aims to avoid cumbersome procedures and without the support of third parties, by simplifying them, a minimum income tax rate of 1% is sought as long as the annual income is less than 300,000 pesos, and a maximum rate of 2.5% for those who obtain income of 2 million 500,000 and up to 3 million 500,000 pesos.

This regime is intended to broaden the taxpayer base. In this context, the Trust Regime will also maximize the simplification of the filing of tax returns for corporations.

The use and exploitation of the technological tools available to the SAT, facilitates the preloading of information, the provisional and annual returns, the calculations for the determination of the tax, also allowing the payment in electronic means, this combined with the new regime, makes the taxpayer to comply with their obligations in a timely manner.

In conclusion, the Simplified Trust Regime (RESICO) is aimed at individuals engaged in business activities, professional services, leasing and AGAPES (Agriculture, Livestock, Fishing) primary activities, with income not exceeding 3.5 million pesos per year, and legal entities with any type of activity whose income does not exceed 35 million pesos.

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Simulated operations. An analysis of their treatment and tax impact

Las operaciones simuladas. Un análisis de su tratamiento e impacto fiscal

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Abstract

According to the Taxpayer Defense Attorney (PRODECON), the issuance and improper use of tax receipts has been a matter of great concern for the Mexican tax authorities, since, at the moment when some taxpayers incur in this bad This practice affects the interests not only of the public treasury, but of society in general as revenue collection is reduced, since it must be remembered that according to article 31, section IV of the Political Constitution of the United Mexican States, "it is the obligation of the governed contribute proportionally and equitably to the public expenses of the Federation, the States, Mexico City and the Municipality in which they reside". The improper use of tax receipts motivated the reform to the Federal Tax Code (CFF), to add article 69-B, which seeks to combat this malpractice of some taxpayers, establishing in said legal system the cases in which the tax authority must consider the presumption of non-existence of operations covered by Vouchers

CFDI, EFO, EDO, Simulation

Resumen

De acuerdo con la Procuraduría de la Defensa del Contribuyente (PRODECON), la emisión y el uso indebido de comprobantes fiscales, ha sido un tema de suma preocupación para las autoridades tributarias mexicanas, ya que, al momento en que algunos contribuyentes incurren en esta mala práctica afectan intereses no sólo del erario público, sino de la sociedad en general al verse reducida la recaudación de ingresos, pues hay que recordar que conforme al artículo 31, fracción IV de la Constitución Política de los Estados Unidos Mexicanos, "es obligación de los gobernados contribuir de manera proporcional y equitativa para los gastos públicos de la Federación, de los Estados, de la Ciudad de México y del Municipio en que residan". El uso indebido de comprobantes fiscales motivó la reforma al Código Fiscal de la Federación (CFF), para adicionar el artículo 69-B, que busca combatir esa mala práctica de algunos contribuyentes, estableciéndose en dicho ordenamiento legal los supuestos en que la autoridad fiscal debe considerar la presunción de inexistencia de operaciones amparadas en Comprobantes Fiscales Digitales por Internet (CFDI's).

CFDI, EFO, EDO, Simulación

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Introduction

The simulation of operations through digital tax receipts (CFDI) is one of the fastest growing operations in Mexico. There are taxpayers who profit from the issuance of digital tax receipts, which are known as ghost companies or simulated operations invoicing companies (EFOS), because they invoice operations, purchases or services that were never actually carried out.

On the other hand, by purchasing those invoices or digital tax receipts issued by an EDO, the acquiring taxpayers or economic entities are becoming companies that deduct simulated operations (EDOS), with the intention of simulating an increase in their operating expenses and thus decrease their taxable base and, consequently, pay less taxes.

Acquiring and deducting a CFDI that covers a simulated operation seems to be an intentional act. However, even when this possibility exists, it is very complicated for companies to know if they have an "EFO" supplier and even more so for those companies that handle a large volume of suppliers.

The benefit of issuing and acquiring CFDIs that cover simulated transactions seems to be very clear. For the issuer, the benefit lies, in the first instance, in the charge for the issuance of the CFDI, which will be determined in proportion to the amount covered by the CFDI issued. And, secondly, the possibility of "laundering" the amount of money covered by the CFDI. On the other hand, the benefit of acquiring a CFDI that covers a simulated transaction lies in the possibility of increasing the acquirer's operating expenses, thus decreasing its taxable base and consequently decreasing its tax burden. In this way, the taxpayer erodes its income tax (ISR) taxable base, even generating losses that would cause it not to pay such tax in several periods. With respect to value added tax (VAT), the aggression to the tax authorities is stronger because it implies that balances in favor are generated, which are offset against the same tax (no tax is paid) or, worse, that a refund is requested for a VAT that does not actually exist.

Detection of simulated transactions by the tax authority

There is no reference as to when the practice of issuing and deducting tax receipts that cover simulated transactions began. However, it was in the 2014 tax reform where amendments were made to the Federal Tax Code incorporating Article 69-B to the Tax Code, which defines a procedure to detect and combat taxpayers who have issued apocryphal tax receipts. Unfortunately, as of today, the detection of an EFO is not possible through the CFDIs issued. Since they comply with the formal elements authorized by the tax authority. This makes it necessary to investigate the existence or, failing that, the simulation of the operation that supports the EFO.

In this order of ideas, it is important to define a "simulated, false or non-existent operation" in order to be able to detect it.

According to the Procuraduría de la Defensa del Contribuyente, a simulated transaction corresponds to the issuance of a CFDI by a company (individual or legal entity) that does not have the assets, personnel, infrastructure or material capacity to provide the services or produce, commercialize or deliver the goods covered by the receipt issued.

Taking as a reference PRODECON's definition of a simulated transaction, the tax authority must corroborate that the issuer of a CFDI that covers a transaction of this type does not have the assets, personnel, infrastructure or material capacity to provide the services or produce, market or deliver the goods covered by such issued voucher. For such purpose and in a first attempt to identify taxpayers that could constitute a potential EFO, the tax authority considers the following characteristics or any combination thereof:

- Recently created companies (2 or 3 years).
- The address stated in the Federal Taxpayers Registry does not show any economic activity or corresponds to small apartments, houses or vacant lots.
- There are no employees, machinery, equipment, inventories, nor is any real productive factor evidently observed.

ISSN: 2524-2113

- In the same domicile there are two or more taxpayers, some of which are usually their suppliers, who to a great extent have the characteristic that they are not located and that they have the same partners and that they are used as part of the flow to return the money of the simulation.

- They do not declare or declare an insignificant profit margin.

- They are not located at their domicile or they are located, but in the verifications they attend only once and disappear, in addition to the fact that a third party regularly attends.

- They share with several companies an email, partners and legal representative, or there are several emails, but they share a domain.

- The legal representatives or the partners or shareholders do not declare or their income is insignificant.

- The partners or shareholders are young people who do not demonstrate the origin of the capital supposedly invested or, in the case of legal entities, they are recently created, which have a minimum life span.

- The domicile declared by the legal representatives is that of the company itself.

- Most of them invoice intangibles (consulting, training, technical assistance, etc.).

- They make purchases from companies that are recently created.

- The deposits they receive from their clients are withdrawn practically immediately to make supposed payments to intermediate taxpayers also created to simulate the operation and to return the money to the clients in cash or transfer to accounts not linked to accounting in the name of shareholders or third parties, the previous operation can be in several layers.

It is worth mentioning that the actions carried out for the identification of any of the above mentioned characteristics or any combination of them by the tax authority, is not considered as the beginning of the tax verification faculties granted by articles 27 paragraph C and 42 of the Federal Tax Code.

Actions of the tax authority once an alleged EFT taxpayer is identified

Once the alleged EFO taxpayer has been identified, the tax authority, under the powers granted to it by article 42 of the CFF, may carry out any or any combination of the following list of actions:

- Obtain information from the informative declarations of operations with third parties (DIOT) to know links between the EFO taxpayer and the clients and suppliers of the same, to generate the taxpayer rolls by type of misconduct at the national level.

- Derived from cross-checks with the databases it integrates at the national level, it will review audit records, select the most representative matters to define the taxpayers that will be subject to an audit act.

- The review method will be a Home Visit and in the case of taxpayers subject to a tax audit, the procedure established in article 52-A of the Federal Tax Code will be observed. Exceptionally, in the case of taxpayers who are not located, the review method will be a desk review.

- In the case of requests for refund of credit balances, in which the knowledge area detects that the applicants deduct EFOS operations, they must schedule home visits observing the provisions of the ninth and tenth paragraphs of article 22 of the aforementioned Code.

ISSN: 2524-2113

- The authorities must identify and analyze 100% of the service providers and request the service rendering contracts executed with the provider(s), in order to initiate domiciliary visits to the service providers, placing special emphasis on the intangible suppliers, i.e., those that have rendered services, consultancy, training, technical assistance, preparation of manuals, etc., requesting the contracts or documents that cover the operation, in order to detect the most important ones, which even when they do not meet the characteristics of an EFO, domiciliary visits must be made.

- Questionnaires must be designed to demonstrate the non-existence of the invoiced transactions, which must be recorded in the audit minutes or in the official report of observations, as the case may be.

In an enunciated but not limited manner, the questionnaires should contain the following:

In case of operations of tangible goods:

- Place where the goods are stored
- Name and RFC of the suppliers
- Place where the merchandise is picked up and delivered.
- Name of the carrier, form of payment for the service and supporting documentation.
- Insurance payment and supporting documentation
- Amount of payment of wages, freight, maneuvering, etc.
- Procedures to be carried out to make purchase orders, requesting to specify the means used and the supporting documentation.
- Procedures to be carried out to fulfill customer orders, specifying the means used and the supporting documentation.
- Documents that demonstrate the physical verification of the merchandise.
- Request an explanation of inventory control and supporting documentation.
- Form of payment to suppliers and supporting documentation.
- Request a list of assets, indicating whether they are owned or rented and the supporting documentation.

In the case of provision of services or intangibles:

- For what purpose the service was requested
- By what means and for what reason the supplier(s) were contacted.
- Specify what the service consisted of, how and when it was provided.
- Name(s) and RFC of the person(s) who provided the service.
- Method of payment
- In what way did the service acquired have an impact on the obtainment of income?
- Who benefited from the contracted service
- What benefits did it represent for your company
- Profile of the service providers (academic degree, preparation, training, trades, experience, etc.).

ISSN: 2524-2113

Tax treatment of a taxpayer identified as an EFO

Once the tax authority detects that a taxpayer has been issuing receipts without having the assets, personnel, infrastructure or material capacity, directly or indirectly, to render the services or produce, commercialize or deliver the goods covered by such receipts, or that such taxpayers are not located, it will be presumed that the transactions covered by such receipts are non-existent. And based on article 69 B of the CFF, it must notify the taxpayers that are in such situation through its tax mailbox, the Tax Administration Service's web page, as well as through publication in the Official Gazette of the Federation, so that such taxpayers may state before the tax authority what is in their best interest and provide the documentation and information that they consider pertinent to disprove the facts that led the authority to notify them. For this purpose, the interested taxpayers will have a term of fifteen days as from the last of the notifications that have been made.

Taxpayers may request through the tax mailbox, on a single occasion, an extension of five days to the term provided in the preceding paragraph, to provide the respective documentation and information, as long as the request for extension is made within such term. The extension requested in these terms will be understood to be granted without the need for a pronouncement by the authority and will begin to be computed as from the day following the expiration of the term set forth in the preceding paragraph.

Once the term to provide the documentation and information and, if applicable, the extension term has expired, the authority, within a term that shall not exceed fifty days, will evaluate the evidence and defenses that have been asserted and will notify its resolution to the respective taxpayers through the tax mailbox.

Within the first twenty days of this term, the authority may require additional documentation and information from the taxpayer, which must be provided within ten days after the notification of the requirement through the tax mailbox becomes effective. In this case, the aforementioned fifty-day period will be suspended as from the effective date of the notification of the summons and will be resumed on the day following the expiration of the ten-day period. Likewise, a list will be published in the Official Gazette of the Federation and on the Tax Administration Service's website, of the taxpayers that have not refuted the facts imputed to them and, therefore, are definitively in the situation referred to in the first paragraph of this article. In no case will this list be published before thirty days after the notification of the resolution.

The effects of the publication of this list will be to consider, with general effects, that the operations contained in the tax vouchers issued by the taxpayer in question do not produce and did not produce any tax effect.

The tax authority will also publish in the Official Gazette of the Federation and on the Tax Administration Service's web page, on a quarterly basis, a list of those taxpayers that manage to disprove the facts attributed to them, derived from the means of defense presented by the taxpayer.

If the authority does not notify the corresponding resolution within fifty days, the presumption with respect to the tax receipts observed, which gave rise to the procedure, will be null and void.

Tax treatment to a taxpayer identified as EDO

Individuals or legal entities that have given any tax effect to the tax receipts issued by a taxpayer identified by the tax authority as an EDO, will have thirty days following the date of such publication to prove before the tax authority that they effectively acquired the goods or received the services covered by such tax receipts, or they will proceed within the same period to correct their tax situation, through the corresponding complementary tax return or returns.

ISSN: 2524-2113

In the event that the tax authority, in the use of its verification powers, detects that an individual or legal entity did not prove the effective rendering of the service or acquisition of the goods, or did not correct its tax situation, in the terms provided in the preceding paragraph, it will determine the corresponding tax credit or credits. Likewise, the transactions covered by the aforementioned tax receipts will be considered as simulated acts or contracts.

Conclusions

According to figures provided by the SAT, between 2014 and 2020, 8,204 EFOS were identified, which issued 8,827,390 tax vouchers covering simulated transactions for an approximate amount of 1.6 billion pesos, equivalent to $354,512,000.00 pesos of tax evasion (close to1.4% of the national GDP).

Given that the tax evasion in the case of EFOS and EDOS comes from the use of false documents, it can be argued that there is the figure of tax fraud contemplated in article 108 of the CFF with its corresponding penalties. In addition to the above, section IV of article 109 of the same code, equates the simulation of acts to the detriment of the federal tax authorities as tax fraud.

Notwithstanding, the economic impact that the issuance of tax receipts that cover simulated operations has for the federal treasury and the penalties with imprisonment considered for such effect, the issuance and deduction of this type of receipts is slowly decreasing. Proof of this are the 10878 taxpayers that to date have been fully identified as EFOS, and another 143 identified with presumably non-existent operations in the process of tax inspection.

In this sense, and in order to address this problem, the powers of the tax authority must be expanded, updated and make adequate use of technological tools that allow them to quickly identify and process EFOS and EDOs taxpayers for the benefit of their tax collection work.

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Official preventive prison in Mexico contravenes human rights recognized at the international level

La prisión preventiva oficiosa en México contraviene los derechos humanos reconocidos en el ámbito internacional

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Abstract

The main objective of this article is to analyze whether the precautionary measure of unofficial pretrial detention in Mexico contravenes internationally recognized human rights, based on the provisions of the Political Constitution of the United Mexican States, the American Convention on Human Rights, the International Covenant on Civil and Political Rights, and some rulings handed down by the Inter-American Court of Human Rights (García Rodríguez et al. vs. Mexico, Tzompaxtle Tecpile and others vs. the Mexican State and Rosendo Radilla Pacheco vs. Mexico), in which this topic is addressed, and in which the Mexican State has been ordered, among other things, to adapt its internal legal system on informal preventive detention. It will have a descriptive scope, since it is a non-experimental transectional design, of a dogmatic-legal type, since it will analyze whether the informal preventive detention established in articles 19 of the Constitution and 167, third paragraph, of the National Code of Criminal Procedures, violate human rights established in international treaties and in the Constitution itself.

Prison, Precautionary, Contravene, International, Sentences, Preventive, Treaties, Convention, International

Resumen

Este artículo tiene como objetivo principal analizar si la medida cautelar de prisión preventiva oficiosa en México contraviene los derechos humanos reconocidos en el ámbito internacional; esto, tomando como base lo establecido por la Constitución Política de los Estados Unidos Mexicanos, la Convención Americana Sobre Derechos Humanos, El Pacto Internacional de Derechos Civiles y Políticos, y algunas resoluciones pronunciadas por la Corte Interamericana de Derechos Humanos (Caso García Rodríguez y otro Vs. México, Tzompaxtle Tecpile y otros vs el Estado Mexicano y Rosendo Radilla Pacheco vs México), en las que se aborda dicho tópico, y en las que se ha ordenado al Estado Mexicano, entre otras cosas, adecuar su ordenamiento jurídico interno sobre prisión preventiva oficiosa. Tendrá un alcance descriptivo, pues se trata de un diseño no experimental transeccional, de tipo dogmático-jurídico, ya que se analizará si la prisión preventiva oficiosa establecida en los artículos 19 constitucional y 167, párrafo tercero, del Código Nacional de Procedimientos Penales, violan derechos humanos establecidos en los tratados internacionales y en la propia constitución.

Prisión, Cautelar, Contraviene, Internacional, Sentencias, Preventiva, Tratados, Convención, Internacional

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Introduction

The elimination of automatic pre-trial detention in Mexico has been the subject of debate among various justice operators such as the Supreme Court of Justice of the Nation, the LXV Legislature of the Senate of the Republic, human rights organisations, the Inter-American Court of Human Rights (IACHR Court) and jurisdictional bodies, as there are positions in favour and against its application, since the pro persona principle is the guiding principle between the Political Constitution and the International Human Rights Treaties to which Mexico is a party. Therefore, the purpose of this article is to analyse whether this figure contravenes the human rights norms established in international treaties.

The Inter-American Court of Human Rights has ordered Mexico to adapt or modify its legal system, including the constitutional provisions relating to informal pre-trial detention, so that this figure complies with the international human rights standards contained in the American Convention. On 10 June 2011, the Official Journal of the Federation published a constitutional reform on human rights, focused on creating a change in the culture of the legal system in Mexico, which establishes informal pre-trial detention, based on respect for the dignity of persons.

The aim of this article is to carry out an analysis of the application of informal pre-trial detention in Mexico, given that Article 19 of the Constitution, as well as Article 167 of the National Code of Criminal Procedure, establishes the automatic imposition of this precautionary measure for various crimes; However, the Inter-American Court of Human Rights condemned Mexico in its judgement published in November 2022 in the case of "Tzompaxtle Tecpile and others vs the Mexican State", and in April 2023 in the case of "García Rodríguez vs the Mexican State".

In both judgments, the Court established that the imposition of the precautionary measure of pre-trial detention will only be legitimate if it is justified, so that in order for this measure to be justified, the principle of proportionality must be taken into account, which derives both from the Political Constitution of the United Mexican States and from the National Code of Criminal Procedure, The Inter-American Court was clear in condemning the Mexican State with regard to the imposition of pre-trial detention ex officio, as well as in the various international treaties and instruments that protect human rights, and therefore, according to the aforementioned judgments, the Inter-American Court was clear in condemning the Mexican State with regard to the imposition of pre-trial detention ex officio; Concluding in the aforementioned rulings that the imposition of pre-trial detention should only obey two legitimate purposes, which are: In this regard, the Inter-American Court of Human Rights pointed out that there are two types of procedural risks, one of obstruction and the other of abduction, and that national legislation also adds the risk to the victim, witnesses or experts. 001 JP. 3ª issued by the Primer Tribunal de Alzada en Materia Penal de Tlalnepantla, published in the Periódico Oficial "Gaceta del Gobierno", section one, on 15 June 2023, under the heading: "Preventive measure of pre-trial detention. In this order of ideas, this criterion, in the main, exposes that the Mexican authorities must attend the provisions of Human Rights of national character, but also those of international character, as the 1st article of the Political Constitution of the United Mexican States constrains.

Constitutional supremacy

Constitutional supremacy is a principle of constitutional law that establishes that the Constitution is the supreme norm and that all other legal norms must be subordinated to it without being superimposed on it, since the guarantee that a law is not contradictory to the Constitution or does not exceed the limits established therein is essential for such law to have legal validity.

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However, with regard to the issue at hand, throughout history, with the Constitutions of 1857 and 1917, as well as with the 2011 reform, article 1 of the Constitution established the hierarchy of norms, including international treaties within the national legal order, Therefore, at one point, treaties were placed on the same level as federal and state laws, and below the Constitution. Later, international treaties were placed below the Constitution, followed by federal and state laws, without the latter having binding force (SCJN, 2010). Consequently, with the constitutional reform of 2011, international human rights treaties are on the same hierarchical level as the Federal Constitution, but note that these are not all the treaties to which the Mexican state is a party, but only those that contain human rights norms.

Although it is true that there was a rivalry between constitutional supremacy and international conventional law in Mexican law, this occurred at the time when the regional system for the protection of human rights, of which Mexico is a part, emerged, which was adopted in the American Convention on Human Rights, Mexico resisted, as the interpretation given to the principle of national sovereignty and its congruence with the international policy of non-intervention until 2010 did not allow the Mexican state to adopt this regional system, despite having accepted the competence of the IACHR in December 1998 (Becerra, et al. , 2016).

Therefore, the international human rights treaties to which Mexico is a party and the Constitution, since the 2011 reform of article 1, are on the same level of hierarchy; of course, their applicability is guaranteed by the pro persona principle. Now, these treaties are analysed by the Mexican State before being accepted, in order to ensure that they are within the legal framework established by the Mexican Constitution, in order to accept them. Likewise, in the event of a contradiction between the Constitution and an international human rights treaty, the latter should prevail. In this way, an equal level is established between the Constitution and international treaty law with regard to human rights.

In accordance with the above, with respect to the control of conventionality, this obliges judges ex officio to analyse the norms or precepts of the law or treaty that could be detrimental to a fundamental right, and to attend to the pro persona principle (which binds judges to resolve each case in accordance with the interpretation most favourable to the individual, Article 1 of the Constitution), This is where it is assumed that the control of conventionality must be a hundred percent guarantee for the protection of fundamental rights, such as the presumption of innocence established in article 20, section B, section I, of the Constitution and the right to personal liberty established in article 7 of the American Convention on Human Rights.

In view of this constitutional supremacy, and given that Article 1 of the Federal Constitution states that: "In the United Mexican States all persons shall enjoy the human rights recognised in this Constitution and in the international treaties to which the Mexican State is a party..." (Constitución Política de los Estados Unidos Mexicanos, 2023), it can be interpreted that the constitution and international treaties on human rights have the same rank of applicability, and therefore both form a block of constitutionality in light of the article in question, which is why they must be respected, since at present these treaties are binding for the Mexican state and the operators of the judicial order. Nevertheless, Mexican judges refuse to inapply Article 19 of the Federal Constitution and declare unconstitutional the third paragraph of Article 167 of the National Code of Criminal Procedure, which establishes automatic or unofficial pre-trial detention, as to date this measure continues to be applied, with the result that it is the Constitution which does all the work of the Public Prosecutor's Office in terms of the justification for obtaining pre-trial detention for the offences established in Article 19, This avoids the fatigue of having to justify, even in a circumstantial manner, that the person being prosecuted committed the crime in question, so that they are automatically deprived of their liberty, making an advanced sentence, as stated by the Supreme Court Justice Arturo Zaldívar, in the plenary session of the Supreme Court of Justice of the Nation on the 25th of October 2022.

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Control of conventionality

Currently, Mexican legislation, specifically article 19 of the Constitution, establishes a list of offences for which it is the obligation of the body imparting justice in criminal matters to automatically impose official pre-trial detention as a precautionary measure, taking into consideration that this provision is of a constitutional nature. On the other hand, as mentioned above, in June 2011, article one of the Political Constitution of the United Mexican States was reformed, establishing that in Mexico all persons shall enjoy the human rights recognised in the Constitution itself and in the international treaties to which the country is a party. This constitutional reform obliges all authorities to promote, respect, protect and guarantee human rights in accordance with the principles of universality, interdependence, indivisibility and progressiveness. Furthermore, the text of the aforementioned numeral establishes that the normative interpretation of human rights will be made in accordance with the constitution and international treaties, favouring at all times the broadest protection of persons.

Based on the above, it is considered that the precautionary measure of unofficial pre-trial detention, established in article 19 of the Mexican Constitution, is unconstitutional, in accordance with the provisions of various international instruments, which are recognised in article 1 of the Constitution, such as the American Convention on Human Rights, in article 7.5, and the International Covenant on Civil and Political Rights, in article 9, which since the aforementioned reform, the human rights recognised in these international instruments are considered to be constitutional. As well as various judgments of the Inter-American Court of Human Rights, which are binding on the Mexican State, given that Mexico recognised the contentious jurisdiction of this Jurisdictional Body in 1998, such as Bayarri v. Argentina, as well as the Judgment of the Case of García Rodríguez and another v. Mexico, issued in San José, Costa Rica. Mexico, issued in San José Costa Rica, on 12 April 2023, which declared "the State of Mexico is responsible for the violation of the rights to personal integrity, personal liberty, to judicial guarantees, to equality before the law and to judicial protection..." (Inter-American Court of Human Rights, Inter-American Court of Human Rights, 1998).

"(Inter-American Court of Human Rights, IACHR_CP-25/2023); also making it clear that pre-trial detention is a valid precautionary measure; however, it has said that it is a precautionary measure that can be imposed as long as it is proportional, necessary, exceptional, which cannot be determined by the type of crime and the seriousness of the conduct and cannot be used as an anticipatory punishment.

Hence, it is clear that in the Mexican constitutional framework there are norms that are on the same level, which establish, on the one hand, pre-trial detention and, on the other hand, that this precautionary measure should not be imposed automatically, that is, that its application should be exceptional, proportional and necessary, through an exercise of weighing up by the jurisdictional authority.

Thus, what happens when there are norms of the same level that conflict because they regulate a human right differently, as in this case, since on the one hand there is Article 19 of the Constitution that establishes the unofficial detention, contravening the principle of presumption of innocence, specifically in the possibility of continuing his trial in freedom, and on the other hand there are norms of the same system of constitutional rank, in accordance with Article 1 of the Constitution, such as the American Convention on Human Rights, The constituent, the reforming power of the constitution, foresaw this situation and determined that the way to resolve this type of conflict is through a principle called pro homine or pro persona. This principle obliges the jurisdictional authority, i.e. the judge, to examine this parameter in order to ask himself which of the two protects the person more? When does one of the norms of the parameter protect the person more, when it expands a human right or restricts the authority less to get involved with that human right?.

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According to the scholar Carbonell, M. (2016), the Control of Conventionality is a virtual creation or legal creation of the Mexican Jurist, Sergio García Ramírez, Judge of the Inter-American Court of Human Rights, who in that capacity, for the first time in a vote, when resolving the case Myrna Mack Chang vs. Guatemala, proposed this concept of Control of Conventionality, which was developed in other individual opinions of the same Judge of the IACHR, finally adopted by this Body in 2006, when deciding the case of Almonacid Arellano et al. v. Chile, as in paragraph 124 of that judgment, the Court assumes this doctrine of Control of Conventionality, the Court assumes this doctrine of the Control of Conventionality, which with the passage of time is improving, shaping and extending, applying it also in cases against the Mexican State, as in the case of Rosendo Radilla Pacheco v. Mexico, when this judgment was issued, it left obligations for the Mexican State.

Carbonell, M. (2016), points out that the control of conventionality is similar to the control of constitutionality, since instead of taking the constitution as a parameter for the control of constitutionality in this case, international treaties and conventions to which Mexico has been a party, which contain human rights, are taken, since these instruments are the parameter for exercising the control of conventionality.

The first is that the Inter-American Court has pointed out that the control of conventionality is informal, since it derives from an objective duty of the state, having signed an international convention, the state must preserve that right even if the lawyers do not invoke it or request it. The second characteristic is that, according to the Inter-American Court, this control must be of a diffuse nature, i.e. it must be carried out by all judges.

Informal pre-trial detention

Informal pre-trial detention is a precautionary measure used to ensure the presence of the accused in the criminal proceedings and to prevent him from absconding or hindering the investigation, and to protect the victim, witnesses and experts (National Code of Criminal Procedure, 2022), which is applied automatically without an individualised analysis of the need for the measure. In particular, it has been pointed out that pre-trial detention violates the right to personal liberty, the presumption of innocence and due process of law.

The basis for informal pre-trial detention is established in Article 19 of the Constitution: "The judge shall order informal pre-trial detention, in cases of.... "(Congreso de la Unión, Constitución Política de los Estados Unidos, Mexicanos, 1917), establishing a catalogue of crimes for which the simple fact of a citizen being charged or prosecuted for one of the crimes listed in this article automatically obliges the judicial body, by constitutional mandate, to impose this precautionary measure; a situation which, in view of the control of conventionality and constitutional supremacy, is totally incongruent and in violation of international human rights and those set out in the Constitution of the United States of Mexico itself.

Acknowledgements

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Conclusions

After a thorough analysis of Articles 1, 19 and 20, paragraph B, Section I, of the Federal Constitution, Article 167 of the National Code of Criminal Procedure and the provisions of the American Convention on Human Rights, the International Covenant on Civil and Political Rights, various judgments issued by the Inter-American Court of Human Rights, as well as the criteria upheld by the Supreme Court of Justice of the Nation, in accordance with the principle of constitutional supremacy, the control of conventionality and the pro persona principle, we conclude that Mexico must change its legal system.

ISSN: 2524-2113

In view of the fact that international human rights treaties have constitutional rank in the light of Article 1 of the Political Constitution of the United Mexican States, they are binding for the Mexican authorities, judges and prosecutors, so much so that it has been established by the Constitution itself, and it is in this circumstance that these international treaties must be respected.

It is considered that the Constitution and the Treaties are clear and Mexico is obliged to comply with them. In addition, it is not proposed that the concept of pre-trial detention be completely eliminated, as only its officiousness with respect to certain crimes, since the concept of justified pre-trial detention would still be alive, in which it is the Public Prosecutor's Office, who is the investigating body of the crimes and who will have to justify the need for precautionary measures, In this way, the Public Prosecutor's Office, who is the body investigating the crimes, will have to justify the need for preventive detention, in order to be granted the precautionary measure of preventive detention, and not only for minor crimes, but also for major crimes, as with the informal measure, the judge by constitutional mandate must grant it automatically, and thus the Public Prosecutor's Office will have no choice but to do its job well and not remain in the comfort that the constitution gives it and start investigating, gathering the evidence necessary to justify the measure to be imposed.

In conclusion, it is considered that it is necessary to adapt the Mexican constitutional order and the norms that derive from it, and that regulate informal pre-trial detention, to international treaties, in order to protect the human rights of due process, the presumption of innocence and personal liberty, of the persons accused or prosecuted for a crime, as this figure transgresses these rights and contravenes the American Convention on Human Rights as well as the International Covenant on Civil and Political Rights, considering that this will strengthen due process and the progressiveness of human rights.

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Introduction

Text in Times New Roman No.12, single space.

General explanation of the subject and explain why it is important.

What is your added value with respect to other techniques?

Clearly focus each of its features

Clearly explain the problem to be solved and the central hypothesis.

Explanation of sections Article.

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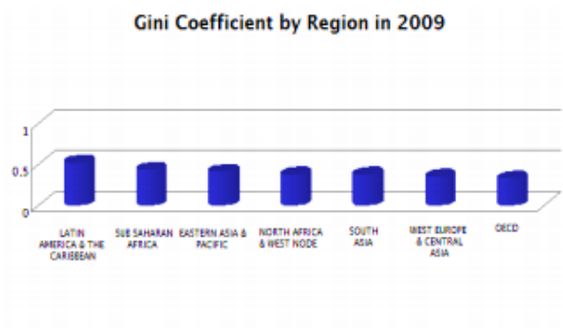

Graphic 1 Title
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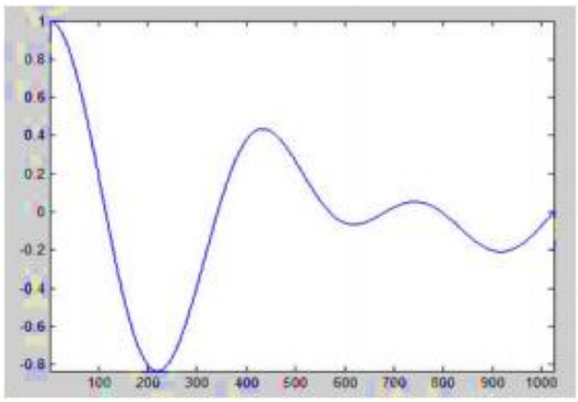

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Explanatory variable	Coefficient	Probability
Log (GDP)	2.137862	0.0110
Unemployment	0.652732	0.0004
R^2 0.281790		

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For the use of equations, noted as follows:

$$Y_{ij} = \alpha + \sum_{h=1}^{r} \beta_h X_{hij} + u_j + e_{ij} \qquad (1)$$

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Methodology

Develop give the meaning of the variables in linear writing and important is the comparison of the used criteria.

Results

The results shall be by section of the Article.

Annexes

Tables and adequate sources

Thanks

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Conclusions

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