

Asalariados vs principios de proporcionalidad y equidad tributaria en México

Salaried vs principles of proportionality and equity tax in Mexico

Princípios assalariados e fiscais da proporcionalidade e da equidade no México

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Resumen

En la actualidad la carga fiscal de los asalariados en México, en específico el Impuesto Sobre la Renta (ISR), representa 35 % del total de sus ingresos, en comparación con otros contribuyentes, como las personas físicas, quienes obtienen ingresos por actividades empresariales y profesionales y cuya carga fiscal les representa 15 % del total de sus ingresos.

La presente investigación es un estudio comparativo y descriptivo de las constituciones mexicana, española y colombiana, sobre las garantías individuales y los derechos humanos de los contribuyentes de cada país; además permite identificar y evidenciar la carga contributiva de los asalariados, que afecta de manera importante su patrimonio personal y familiar, como el derecho al mínimo vital, el principio prohomine, la proporcionalidad y equidad tributaria, entre otros, violentando sus derechos humanos, garantías individuales y demás disposiciones establecidas en la Constitución mexicana, máxima norma jurídica de aplicación estricta.

Palabras clave: asalariados, carga fiscal, proporcionalidad, equidad.

Abstract

Currently the tax rate of salary employee in Mexico, in particular the Income Tax (ISR by its name in Spanish), represents 35% of the total income, in comparison with other contributors, such as individuals who derive income from business and professional activities and whose tax rate represents 15% of the total income.

The present research is a comparative and descriptive study of the Mexican, Spanish and Colombian constitutions, on the Individual Guarantees and Human Rights of taxpayers in each country; it also allows to identify and highlight the employees tax rate, that significantly affects their personal and family heritage, the minimum vital, the pro homine principle, the proportionality and equity of tax, among others, violating their human rights, Individual Guarantees and other provisions established by the Mexican Constitution, maximum legal standard of strict application.

Key words: Salaried, tax rate, proportionality, equity.

Resumo

Atualmente, a carga fiscal dos trabalhadores no México, especificamente o Imposto de Renda (ISR), representando 35% da receita total, comparados a outros contribuintes, tais como indivíduos que ganham rendimentos provenientes da actividade de negócios e profissionais e cuja carga tributária representa-os 15% do seu rendimento total.

Esta pesquisa é um estudo comparativo e descritivo da mexicana, espanhola e colombiana constituições, sobre as garantias individuais e os direitos humanos dos contribuintes em cada país; também para identificar e destacar a carga fiscal dos trabalhadores, o que afeta significativamente os seus bens pessoais e familiares, tais como o direito a um salário mínimo, o princípio de homine, da proporcionalidade e da equidade fiscal, entre outros, violando seus direitos humanos, garantias individuais e outras disposições da Constituição mexicana, o mais alto padrão legal de aplicação estrita.

Palavras-chave: empregados, carga tributária, proporcionalidade, igualdade.

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Introduction

The Income Tax Law (LISR) of 2016 establishes in its regulatory framework several tax regimes applicable to natural persons resident in Mexico, irrespective of their source of wealth, as well as to residents abroad with source of wealth in national territory, All with respect to the main activity that allows them to earn income. The LISR distinguishes the different ways in which individuals obtain their income, as well as the different moments of causation and accumulation of them. The point of discussion and analysis of this investigation is in the different types of authorized tax deductions that said taxpayers can make of their taxable income, to obtain after said decrease the fiscal result or the taxable base, which serves to calculate and determine the Income Tax (ISR) charge, according to articles 96 and 106 of the LISR.

The structure of Title IV of the current LISR includes several chapters that define the different tax regimes of natural persons in Mexico, among which the following are the most important:

- Income from Wages and Salaries
- Income from Business and Professional Activities
- Income from Leasing and Granting the Use or Temporary Enjoyment of Goods
- Income from Disposal of Goods
- Income from Acquisition of Goods
- Income from Disposal of Shares on the Stock Exchange
- Interest income, among others.

The present comparative and descriptive study tries to show that the LISR establishes different mechanics for the determination of the taxable base that is used to calculate the SRI in charge, although the analysis focuses only on the title IV of the physical persons. As already mentioned, it contemplates several chapters with special treatments, exemptions and exceptions; In some cases there are physical persons who carry out the same activity but carry it out in a different way, which causes the tax treatment to be different and, therefore, generate tax inequality at the time of determining the taxable base and the ISR in charge.

The wage earner does not have legal and fiscal mechanisms that allow him to contribute to public spending in a proportional and equitable way, with respect to his ability to contribute, as defined by Jiménez (2014). Taxes, in order to be proportional, must be configured in a law so that whoever has to support them does so only according to their ability to contribute or their economic capacity, and that the amount that is borne by the subject is in accordance with Their ability to contribute. In other words, the obligated person must be able to do without a part of his income or income to be used for public spending, without implying that it affects everything that is necessary to satisfy the vital minimums that allow him to survive in a dignified manner.

In turn, Carrasco (2003) states that in proportionality it can be understood that the fiscal norm should be general, without exceptions and take into account the economic capacity of taxpayers. It also interprets in the same sense the importance of causing the tax in direct relation with the ability to pay or, in other words, with the capacity to contribute to public expenditure.

For his part, Reyes (1990) thinks that the principle of proportionality means that the tribute comprises equally all those individuals who are in the same situation or circumstance. In the particular case of this investigation a comparative analysis is carried out between two physical persons that carry out the same activity, but that by the type of contractual relation tax in different chapters or fiscal regimes contained in the current LISR.

According to the previous labor reform of 2014, the importance of protecting the purchasing power of workers through decent wages according to their functions and responsibilities was considered, considering the modifications made to the text of the Federal Labor Law. In theory, it seeks to protect the minimum benefits of law for the whole working class, specifically the salary and other perceptions that allow you to subsist and support your family. The opposite happened with the reform that occurred in the LISR from 2014 and that the date is still in force, on increasing the maximum rate from 30% to 35% and also to meet the personal deductions of the individuals established in article 151 Of the LISR. With this modification the possibility of lowering the taxable base or utility to determine the ISR to be paid by the taxpayer was reduced, which affects the pockets of the working class in our country.

Chapter I of Title IV of the LISR establishes the mechanisms with which natural persons who receive income for wages and, in general, for the provision of a subordinate personal service must be taxed; In this sense, it is important to identify the tax laws that regulate the collection of income, as well as those that are subject to income tax, in addition to assessing the effects and financial repercussions on the working class generated because the tax regime does not contemplate the Option to deduct from the taxable base some expense that was indispensable to obtain the income.

On the above, article 96 of the LISR states the following:

Those who make payments for the concepts referred to in this chapter are required to make monthly withholdings and amounts that will have the character of provisional payments on account of the annual tax. No retention will be made to persons who in the month only receive a general minimum wage corresponding to the geographical area of the taxpayer.

Withholding shall be calculated by applying to all income earned in a calendar month, the following:

TARIFA MENSUAL

Límite inferior	Límite superior	Cuota fija	Por ciento para aplicarse sobre el excedente del límite inferior
\$	\$	\$	%
0.01	496.07	0.00	1.92%
496.08	4,210.41	9.52	6.40%
4,210.42	7,399.42	247.24	10.88%
7,399.43	8,601.50	594.21	16.00%
8,601.51	10,298.35	786.54	17.92%
10,298.36	20,770.29	1,090.61	21.36%
20,770.30	32,736.83	3,327.42	23.52%
32,736.84	62,500.00	6,141.95	30.00%
62,500.01	83,333.33	15,070.90	32.00%
83,333.34	250,000.00	21,737.57	34.00%
250,000.01	En adelante	78,404.23	35.00%

Those who make payments for annual gratification, profit sharing, Sunday bonuses and holiday bonuses, may make the withholding of the tax in accordance with the requirements established in the Regulations of this Law; The provisions of that Regulation shall provide that the deduction may be made on other revenue received during the calendar year.

Those who make the withholdings referred to in this article, shall deduct from the totality of the income obtained in the calendar month, the local tax on income for wages and in general for the provision of a subordinate personal service which, if applicable, Had retained in the calendar month in question, provided that the rate of said tax does not exceed 5%.

Nowhere does the current tax rule mentions that indispensable deductions can be made from the income obtained by said taxpayers, and also the obligation to calculate the tax is transferred to the person who makes the payment of said concepts and not to the taxpayer himself, as happens in the Other tax regimes.

Development of the analysis to the normative dispositions

In order to contextualize the financial impact and the contributory capacity of wage earners in Mexico, it is necessary to analyze Chapter I of Title IV of the LISR, which establishes the current tax provisions of taxpayers individuals who earn income for wages and, in general, by the provision of a subordinate personal service. From the foregoing, what is established in article 95 of the LISR, which refers to the income received for the provision of a subordinate personal service, wages and other benefits deriving from an employment relationship, among other benefits, including those related to A separation and termination of the employment relationship.

In addition, the aforementioned article contemplates a series of incomes that are assimilated to wages:

- Remuneration and other benefits received by officials and workers of the federation, states and municipalities, as well as the armed forces.
- Advances and income received by members of cooperative societies, civil societies and civil associations.
- Fees to members of board of directors, supervisory administrators, among others.
- Timetables for people who provide services primarily to a borrower.
- Fees received by natural persons from legal persons to whom they provide independent personal services, among others.

It is mandatory for individuals to tax any of the aforementioned income in the tax regime commonly called salaried employees; It is important to specify that in the said regime, when determining the taxable base used to calculate the income tax according to the periodicity of obtaining the income (weekly, decennial, biweekly, monthly, etcetera), no deduction is contemplated. Must challenge the legislative and executive powers the reasons for unequal and inequitable treatment of wage earners compared to other tax regimes, such as individuals, who receive income from business and professional activities, since the latter are allowed Deduct all expenses and expenditures strictly necessary to obtain income.

It should be analyzed why wage earners can not deduct from their taxable income all those expenditures and expenditures that are strictly necessary to obtain income: transportation expenses, training and updating expenses, dress and footwear, among others; If they were not indispensable, the employee could not move to his place of work to perform his work, nor could perform his work in an efficient and quality way, nor could he work in accordance with the dress code required by the employer to whom Provides its service.

By denying employees the right to reduce all expenses and strictly necessary expenditures that had to be made in order to carry out their activities and to fulfill their labor obligations, of all the taxable income obtained in accordance with articles 95 and 96 of the LISR , The taxable base with which the ISR in charge is calculated and determined does not correspond to the taxpayer's actual and contributory capacity. This prevents it from being able to face this tax burden financially, since it does not recognize the financial and accumulation of wealth effect of all the expenses incurred.

The current LISR includes amendments that do not really address the proposals made by the State itself and its secretariats; Since this is the basis for the reform of said law, it is important to analyze the content of the explanatory memorandum of the new LISR and the arguments and considerations issued by the federal executive. This law aims at minimally safeguarding the taxpayers of said tax, and if the statement of reasons is considered to be the spirit of the law, what is contained in the explanatory memorandum is not consistent with the text of the LISR Approved and is in force.

Of the arguments spelled out, the following stand out:

The current ISR structure contains several preferential regimes and exception treatments that generate distortions, subtract neutrality, equity and simplicity, and create spaces for fiscal evasion and avoidance, which results in an important loss of fiscal resources.

It should be remembered that the intersection between the State's tax authority and the framework of the taxpayer's fundamental rights and freedoms leads to the determination of a parameter that represents the minimum of decent and autonomous subsistence protected constitutionally, in order to meet the most basic human needs.

According to criteria historically issued by the Judicial Power of the Federation, the minimum vital or existential minimum, emanates from the principles of human dignity and solidarity, in accordance with the rights essential to life, personal integrity and equality, in the modality of decisions of special protection to people in situation of manifest necessity.

The new LISR recognizes that the vital minimum, as a projection of the principle of proportionality tax, is a guarantee of the people, by virtue of which when designing the object of the tax and identify the capacity to contribute, a threshold must be respected corresponding to the resources necessary for the subsistence of the people.

Respect for the existential minimum and the principle of proportionality are reflected in the new LISR which is proposed through various tax mechanisms, deductions and exemptions, whose logic is the conservation of the basic conditions and social benefits necessary to People lead a dignified existence.

Likewise, by constitutional mandate, the legislator must respect the constitutional principles of generality, legality, equity and proportionality that govern the Mexican tax system and, without prejudice to this, accept that the minimum vital imposes a limit to the Mexican State's power of taxation to So that the necessary material resources of the people to lead a dignified life can not be affected.

Among the elements that must be considered to improve the ISR architecture is the restoration of the principle of fiscal symmetry. According to the Supreme Court of Justice of the Nation, fiscal symmetry is a principle of tax policy that establishes a link between taxpayers and balance between income and expenses, so that if a physical or moral person

The recognition of an income that will be taxed, to its counterpart that makes the payment - that generates that income - must correspond a deduction.

The spirit of the new LISR does in some way contemplate the protection of human rights and their guarantees as underpinned by Articles 1 and 31 of the Constitution, which are discussed below in a clear way to assess whether they are actually considered in the new LISR .

Once the explanatory statement is discussed by the Congress of the Union (Chamber of Deputies and House of Senators), an opinion is prepared for the creation of the new law. It is important to highlight some of the constitutional principles that the federal deputies recognize:

In human rights we find the following characteristics:

They are universal because they are for all people regardless of their origin, age, race, sex, color, political or religious opinion.

They are permanent because they can not be limited or suppressed; On the contrary, they evolve to be more inclusive.

They are progressive, since they satisfy the personal and collective needs in continuous transformation, they increase of the hand of the social, cultural, economic and political development of the societies.

They are pre-existing to the State or the fundamental norm and therefore must be recognized by the Constitution and in the case of reform can not be affected in its scope.

Therefore, it can be pointed out that the difference is that the individual guarantees are the limits of the performance of the public power enshrined in a precise way in a constitutional text and that human rights are prior and surpass the public power, reason why although Are not enshrined in a Constitution, the State constricts itself to recognize, respect and protect them.

None of these arguments were considered by the deputies or the senators, which led to the approval of a new LISR effective as of January 1, 2014, which is still the same. The determination of the taxable base of the employees according to what stipulates the chapter I of title IV of the current LISR, transgresses the established in the articles 1, 31 fraction IV and 123 of the current Mexican Constitution. In addition, this law does not allow you to calculate the income tax to the taxpayer (salaried) own, reason why the obligation to calculate and determine the ISR is transferred expressly to the employer, who makes payment for these services. This is established in Article 96 of the LISR: "Those who make payments for the different income or concepts referred to in said chapter I, are obliged to make monthly withholdings and amounts, which will have the character of provisional payments of the annual tax" .

The article also states that withholding is calculated by applying to TOTAL INCOME obtained in a calendar month the following table:

TARIFA MENSUAL

Límite inferior	Límite superior	Cuota fija	Por ciento para aplicarse sobre el excedente del límite inferior	
\$	\$	\$	%	
0.01	496.07	0.00	1.92%	
496.08	4,210.41	9.52	6.40%	
4,210.42	7,399.42	247.24	10.88%	
7,399.43	8,601.50	594.21	16.00%	
8,601.51	10,298.35	786.54	17.92%	
10,298.36	20,770.29	1,090.61	21.36%	
20,770.30	32,736.83	3,327.42	23.52%	
32,736.84	62,500.00	6,141.95	30.00%	
62,500.01	83,333.33	15,070.90	32.00%	
83,333.34	250,000.00	21,737.57	34.00%	
250,000.01	En adelante	78,404.23	35.00%	

Tarifa del Art. 96 LISR

The determination and calculation of the provisional ISR of the employee is made by the employer or who makes the payment for the service received. Below are two examples of individuals who receive income from wages and / or assimilated to wages, to identify the ISR collected in the period of a calendar month.

Table No. 1 Comparative table of the monthly salary of two wage earners

CÁLCULO DEL ISR MENSUAL ART. 96 LISR

	LISR VIGENTE		INGRESO REAL		LISR VIGENTE		INGRESO REAL	
TRABAJADOR	1	%		%	2	%		%
INGRESOS POR SALARIOS	10 200.00	100	10 200.00		11 200.00	100	11 200.00	
GASTOS Y EROGACIONES INDISPENSABLES	3 000.00		3 000.00		3 000.00		3 000.00	
DEDUCCIONES AUTORIZADAS	-				-			
UTILIDAD REAL	7 200.00		7 200.00	100	8 200.00		8 200.00	100
UTILIDAD FISCAL O BASE GRAVABLE	10 200.00				11 200.00			
LÍMITE INFERIOR EXCEDENTE DEL LÍMITE INFERIOR	8 601.51		4 210.42		10 298.36		7 399.43	
TASA DE ISR ART. 96	1 598.49		2 989.58		1 901.64		1 800.57	
IMPUESTO MARGINAL	0.1792		0.1088		0.2136		0.16	
CUOTA FIJA	286.45		325.27		901.43		128.09	
ISR CAUSADO	786.54		247.24		1,090.61		594.21	
	1				1			

	072.99	10.5	572.51	7.9	992.04	17.7	722.30	8.8
		2		5		9		1
INGRESO NETO								
MENOS EL ISR								
CAUSADO	9				9			
(LISR)	127.01				207.96			

Table 1 shows clearly and emphatically that the SRI caused by each of the employees does not correspond to their real contribution capacity according to the total income received less expenses and expenses that had to be made, and that these to their Were necessary to obtain income. In the first case, a worker obtains \$ 10 200.00 Mexican pesos and made indispensable expenses in the amount of \$ 3,000.00 Mexican pesos, but since he obtains income for wages and salaries, the LISR does not allow him to diminish any expense although this is indispensable, therefore , The tax base to determine the ISR is for \$ 10 200.00 Mexican pesos, but in fact it should be for \$ 7 200.00 Mexican pesos.

In the second case, the worker earned monthly income of \$ 11,200.00 Mexican pesos and also made expenditures and expenditures indispensable to obtain income in the amount of \$ 3,000.00 Mexican pesos, in this case his taxable capacity was to be \$ 8 200.00 Mexican pesos, attending To the tax principles enshrined in the Mexican Constitution. But it is not so, because the current LISR does not recognize such deductions as authorized and, therefore, the taxable basis for calculating the ISR is for \$ 11 200.00 Mexican pesos; In the latter case, the taxable income of the taxpayer affects its contributory capacity even more, as the example shows. Between the two there is a difference in gross income of \$ 1,000 Mexican pesos, but in reality according to the rate established in article 96 of the current LISR, the real difference according to the net income available to satisfy Their basic needs, which is \$ 80.95 Mexican pesos.

The foregoing evidences the affectation to the personal and family economy of the Mexican working class, and also violates the legal text established in articles 1, 31, section IV and 123 in section A of the Mexican Constitution. In the first case it transgresses individual guarantees and human rights, it is also clear that there is no protection to the right to a minimum, all contained in Article 1 of the Constitution, which says:

In the United Mexican States, all persons shall enjoy the human rights recognized in this Constitution and in international treaties to which the Mexican State is a party, as well as the guarantees for their protection, the exercise of which may not be restricted or suspended, except in The cases and under the conditions that this Constitution establishes.

The human rights norms shall be interpreted in accordance with this Constitution and with the international treaties of the subject, at all times favoring the persons the broader protection.

All authorities, within the scope of their competence, are obliged to promote, respect, protect and guarantee human rights in accordance with the principles of universality, interdependence, indivisibility and progressiveness. Consequently, the State must prevent, investigate, punish and repair human rights violations, under the terms established by law.

Slavery is prohibited in the United Mexican States. Foreign slaves who enter the national territory will, by this fact alone, attain their freedom and the protection of the laws.

Any discrimination based on ethnic or national origin, gender, age, disability, social status, health conditions, religion, opinions, sexual preferences, marital status or any other that violates dignity is prohibited. And aims to nullify or impair the rights and freedoms of individuals.

According to the previous text, the Mexican Constitution broadly protects the subject of human rights and individual guarantees, as well as international treaties and other applicable laws to encourage citizens at all times; It also mentions the obligation of all authorities to respect, protect and guarantee these human rights in accordance with the principles, which in the case of the present investigation are basic: universality and progressivity.

The principles of universality and progressivity contained in article 1 of the Mexican Constitution are fundamental to understand the scope they have in the area of human rights and individual guarantees to be respected by the Mexican state. For the above it is important to identify the normative criteria and the interpretations that the Mexican institutions do of the subject; In the Internet portal of the State Commission of Human Rights, Jalisco, the following definitions are established:

The principle of universality comes from the recognition of the dignity of all members of the human race without distinction of nationality, creed, age, sex, preferences or any other, so that human rights are considered prerogatives that belong to every person For the simple fact of being it.

The principle of progressivity establishes the obligation of the State to generate in each historical moment a greater and better protection and guarantee of human rights, in such a way that they are always in constant evolution and under no retroactive justification.

The same text of the article establishes that the norms relative to the human rights will be interpreted in accordance with this Constitution and with the international treaties of the matter favoring at all times to the people the greater protection. Hence two other important principles emerge, such as pro personae and the principle of consistent interpretation, which are explained below.

The Pro Person principle addresses the State's obligation to apply the broader rule when it comes to recognizing protected human rights and, at the same time, the most restrictive rule when it comes to establishing permanent restrictions on the exercise of rights or His extraordinary suspension.

The two principles are conclusive in that the state must at all times protect the rights and guarantees of its governed, invariably of the normative changes in other legal dispositions, whether fiscal, mercantiles, civil, among others, that can cause an impairment to Their rights already won and recognized by the maximum Mexican legal norm.

Moreover, with respect to the right to the vital minimum, this does not imply a duty for the tax legislator to specifically establish a specific exemption, deduction or mechanism, since it has a free legislative framework for the design of the Tax system. But through figures such as these can safeguard the right to vital minimum, which must represent a negative component to determine the impossible basis, linked directly to the taxpayer's ability to pay the taxpayer or obligor.

According to Fierro (2012), a broad vision of the fundamental right of vital minimum means to guarantee all positive or negative measures constitutionally with the purpose of avoiding that the subject obligated to the payment of a tax is reduced in its intrinsic value as a human being To have the minimum and necessary conditions that allow him to live with dignity. The foregoing in the area of tax interpretation of the Mexican courts has manifested itself as follows:

Thesis of Vital Minimum Principle

Tesis: P. VI/2013 (9a.)	Gaceta del Semanario Judicial de la Federación Décima Época 159821 4 de 11
Pleno	Libro 1, Diciembre de 2013, Tomo I Pag. 135 Tesis Aislada(Constitucional)

RIGHT TO THE MINIMAL VITAL. IN THE TAX FIELD, IT HAS A FOUNDATION IN ARTICLE 31, FRACTION IV, OF THE POLITICAL CONSTITUTION OF THE UNITED MEXICAN STATES

Although this Supreme Court of the Nation has ruled on the right of workers who receive a sum equivalent to the minimum wage, to which no contributions are imposed, in accordance with the provisions of article 123 of the Constitution, must not be lost Since this criterion was limited to discerning cases in which workers

should not see their assets depleted at a discount, without claiming a projection of such a criterion to other income items. In that sense, the right to the vital minimum is not an exclusive prerogative of the working class, nor its content is exhausted by exempting from attachment, compensation or discount to the minimum wage; On the contrary, it exerts an influence that transcends that area and, as far as tax matters, derives from article 31, section IV, of the Political Constitution of the United Mexican States.

In fact, the various postulates developed by this Constitutional Court in relation to the principle of proportionality allow us to appreciate that the right to the vital minimum, from a tax perspective, finds sustenance in this constitutional precept and has a broader projection than would correspond to it If it is limited to those who obtain income by the provision of a subordinate personal service. Thus, the said right is configured as a guideline for the legislator, by virtue of which he must refrain from imposing taxes on certain concepts or income, when this means leaving the person without means to survive. Consequently, as the right to the vital minimum in the tax field finds support in the aforementioned Article 31, section IV, constitutional, it can be specified that what is established in section VIII of section A of article 123 of that fundamental order, in the sense of That the minimum wage shall be exempt from attachment, compensation or discount, is nothing more than the manifestation of that right, which is broader in scope, in labor matters, and specifically in the case of workers who receive such wages.

RIGHT TO THE MINIMUM VITAL

We consider that as a member of the aforementioned principle, it is the Right to Minimum Vital and in this line of thought the First Chamber of the SCJN is pronounced, when it establishes that the right referred to is not only contained in the tax guarantees of article 31, section CPEUM, but also in 1º, 3, 4, 6, 13, 25, 27 and 123, all of the fundamental letter and as substantial reasoning expresses: "the enjoyment of the vital minimum is a budget without which the central coordinates of our Constitutional order are meaningless, so that the intersection between state power and the framework of fundamental rights and freedoms is the determination

of a minimum of subsistence dignified and autonomously protected constitutionally. This parameter constitutes the content of the right to the vital minimum, which, in turn, coincides with the competences, basic conditions and social benefits necessary for the person to lead a life free of fear and loads of misery, such So that the object of the right to the vital minimum includes all the positive or negative measures essential to prevent the person from being unconstitutionally reduced in its intrinsic value as a human being because he does not have the material conditions that allow him to lead a dignified existence. Thus, this right seeks to ensure that the person - center of the legal order - does not become an instrument for other purposes, objectives, purposes, goods or interests, however important or valuable they may be. RIGHT TO THE MINIMUM VITAL IN THE MEXICAN CONSTITUTIONAL ORDER. Ninth Period, Judicial Weekly of the Federation and its Gazette XXV, May 2007, p. 793. Thesis: 1a. XCVII / 2007.

No less important is the Pro Homine principle, a hermeneutical criterion that informs the whole structure of human rights and demands to resort to the broader norm or the more extensive interpretation when it comes to recognizing protected rights; And the more restrictive standard or interpretation when it comes to establishing restrictions on its exercise.

THE PRINCIPLE PRO PERSON

It implies the broader protection of fundamental rights, which is provided for in Article 5 (2) of the aforementioned International Covenant on Civil and Political Rights, in relation to Article 29 of the American Convention on Human Rights. It is important to indicate that this principle is established in the second paragraph of Article 1, CPEUM, when it states "The norms relating to human rights will be interpreted in accordance with this Constitution and the international treaties of the subject, favoring at all times the people the Broader protection "and this is corroborated by the SCJN, stating that" The fact that the constitutional text expressly contemplates the pro person principle is of unprecedented relevance as it

sets the standard for exercising control of conventionality and entails the mandate of its application , Not only for those who impart justice, but also for those who participate in the legislative and public policy process. However, this hermeneutical criterion was not unrelated to the system of interpretation prior to the aforementioned constitutional reform. "(The Pro Person principle, Supreme Court of Justice of the Nation, Gender Equity Program).

Steps to follow to exercise the control of ex officio convention in the field of human rights. "The judiciary, when exercising ex officio control over human rights, must carry out the following steps: a) Acting in a broad sense, which means that the country's judges - like all other state authorities Mexican-must interpret the legal order in light and in accordance with the human rights recognized in the Constitution and international treaties in which the Mexican State is a party, favoring at all times the people with the broadest protection; B) Interpretation according to the strict sense, which means that when there are several legally valid interpretations, judges should, based on the presumption of constitutionality of the laws, prefer that which makes the law according to the human rights recognized in the Constitution and In international treaties in which the Mexican State is a party, in order to avoid affecting or violating the essential content of these rights; And, c) Inapplication of the law when the above alternatives are not possible. This does not affect or break with the logic of the principles of division of powers and federalism, but strengthens the role of judges as the last resort to ensure the primacy and effective implementation of human rights established in the Constitution and in The international treaties of which the Mexican State is a party. STEPS TO FOLLOW IN THE CONTROL OF CONSTITUTIONALITY AND EX-OFFICIAL CONVENTIONAL IN THE MATTER OF HUMAN RIGHTS [TA]; 10a. Time; Full; S.J.F. And its Gazette; Book III, December 2011, volume 1, p. 552.

This principle is corroborated by the Fourth Collegiate Court in Administrative Matters of the First Circuit, establishing: PRINCIPLE PRO HOMINE. YOUR APPLICATION IS MANDATORY. The pro homine principle, which implies that legal interpretation must always seek the greatest benefit to man, that is to say, that

the broader norm or the extensive interpretation must be sought when it comes to protected rights and, on the contrary, to the norm Or the narrower interpretation when it comes to establishing limits to its exercise, is contemplated in articles 29 of the American Convention on Human Rights and 5 of the International Covenant on Civil and Political Rights, published in the Official Gazette of the Federation on the seventh and The twenty of May of one thousand nine hundred and eighty and one, respectively. However, since such treaties form part of the Supreme Law of the Union, according to Article 133 of the Constitution, it is clear that the aforementioned principle must be applied in a mandatory manner. [TA]; 9a. Time; T.C.C. ; S.J.F. And its Gazette; XXI, February 2005; P. 1744.

Judicial Weekly of the Federation and its Gazette. Tenth epoch, book XXVI, november 2013, volume 2, p. 1383 Thesis isolated (constitutional).

PRINCIPLE PRO PERSONAE. CONGRUENT WITH ITS INTERPRETATION BY THE SUPREME COURT OF JUSTICE OF THE NATION AND THE INTER-AMERICAN COURT OF HUMAN RIGHTS, IN PROCEEDINGS OR TRIALS IN WHICH, IN ADDITION TO THE STATE AUTHORITIES, ARE INVOLVED PEOPLE (PARTIES) WITH CONTRARY INTERESTS, SHOULD BE APPLIED BY THAT ALL THE HUMAN RIGHTS OF THESE ARE RESPECTED AND NOT ONLY THOSE WHO REQUEST THEIR PROTECTION.

Congruent with the interpretation of the principle pro personae has made the Supreme Court of Justice of the Nation, derived from thesis 1a. XXVI / 2012 (10a.), Published in the Judicial Weekly of the Federation and its Gazette, Tenth Period, book V, volume 1, February 2012, p. 659, heading: "PRINCIPLE PRO PERSONAE, THE CONTENT AND SCOPE OF HUMAN RIGHTS MUST BE ANALYZED FROM THAT", as well as the Inter-American Court of Human Rights, in the case of the Mapiripán Massacre v. Colombia (fund, reparations and costs, paragraph 106), is generally identified with the effective protection of the person and derives from the very purpose and purpose of the American Convention on Human Rights, which, in the words of the Court itself Interamericana, is based on common higher values, centered on the protection of the human being, is

equipped with specific supervisory mechanisms, is applied in accordance with the notion of collective guarantee, enshrines essentially objective obligations and has a special nature that makes it different Of the other treaties. Therefore, in proceedings or trials involving, in addition to state entities, persons (parties) with opposing interests, such as the amparo trial, in which the complainant, the responsible In most cases, there is a third party affected or third party concerned, the principle *pro personae* should be applied ensuring that all the human rights of individuals are respected and not only those who request protection. To accept otherwise, that is to say, that in order to protect the rights of only one of the parties to the trial, those inherent in the other would be violated, would denature the purpose pursued by the aforementioned principle, which is none other than tutelage and greater Extension in the protection of human rights as a hermeneutical criterion and collective guarantee.

SECOND COLLEGE TRIBUNAL ON ADMINISTRATIVE MATTER OF THE FOURTH CIRCUIT

The main objective of *Pro Homine* is to provide the greatest protection to the person, guaranteeing the full enjoyment of their human rights.

It is indispensable for the interpretation and application of norms, especially in those cases where by the normative obscurity there is the possibility of restricting human rights; There the use of the principle becomes more important. In this way, the application of the *Pro Homine* principle by legal operators as a standard for the interpretation of human rights becomes a guarantee for their protection.

In addition, article 31, section IV, constitutional, establishes the following.

They are obligations of the Mexicans:

IV. To contribute to public expenditures, both of the Federation, and of the States, of Mexico City and of the Municipality in which they reside, in the proportional and equitable manner provided by the laws.

This fraction reveals the legal basis of the way in which all Mexicans will contribute, highlighting the principles of proportionality and equity, both directly linked to the payment or contributory capacity for which the obligee has to pay the Taxes. To understand clearly the relevance of the two tax principles enshrined in the Mexican Constitution, it is necessary to analyze them considering the criteria of the federal courts charged with enforcing the laws.

Principle of proportionality

"Proportion is the disposition, conformity or correspondence due of the parts of a thing with the whole or between things related to each other." For Jiménez (2014), proportionality is the correct distribution between the quotas, rates or rates provided for in the tax laws and the economic capacity of taxpayers taxed by it.

I agree with this definition since the payment of the ISR contribution must go in direct proportion to the capacity to contribute, once the expenditures and expenditures indispensable and established in the law have been reduced without any distinction whatsoever.

The principle of proportionality is structured within fiscal law and addresses the following three elements:

- The economic capacity of citizens so that each of them contributes qualitatively to that capacity.
- A fair and adequate share of the income, profits or income received by each party as a determining factor in determining the taxable base.
- The sources of wealth available and existing in the country, among which should be distributed in a balanced way all tax burdens, in order that not only one or two support their totality.

With regard to payment capacity, taxpayers must contribute to public expenditure in accordance with their respective economic capacities and provide the Public Finance with a fair and adequate share of their income, profits or income.

Taxes must be in accordance with economic capacity: people with high incomes are taxed qualitatively higher than those of medium and small resources.

The principle of equality, according to its Aristotelian meaning, means "the application of justice to specific cases, is obtained by treating equal to and unequally to those who are not in equal circumstances."

In conclusion, equality is of all the taxable persons of the same tribute before the same law; They must receive the same treatment in relation to hypotheses of causation, accumulation of taxable income, allowable deductions, payment terms, etc., so that only the applicable tax rates vary according to economic capacity. Equity addresses equality in the regulation of all elements of the tax or contribution, with the exception of fees, fees or fees.

The principle of equity lies in the equality of all taxable persons of the same tax before the tax law, who in such conditions must receive the same treatment as regards allowable deductions, because it allows or not a deduction of the cumulative income of the Cause to determine the income tax, evidently has an impact on the amount of tax payable.

Article 123 section A constitutional establishes conclusively that workers have the right to decent work remunerated according to the activities performed. In order to verify these rights are stated in a literal way the fractions and paragraphs that contribute in the present investigation:

Everyone has the right to work that is dignified and socially useful; To this end, the creation of jobs and the social organization of work will be promoted, in accordance with the law.

The Congress of the Union, without contravening the following bases must issue laws on labor, which will govern:

A. Among the workers, day laborers, domestic workers, artisans and in general, any contract of employment:

I. The duration of the maximum day will be eight hours.

II. The maximum working night will be 7 hours. The following are prohibited: unhealthy or dangerous work, industrial night work and all other work after ten at night, under the age of sixteen;

III. It is forbidden to use the work of children under fifteen years of age. Those over this age and under sixteen will have the maximum working day of six hours.

IV. For every six days of work the operator should enjoy a rest day, at least.

SAW. The minimum wages that workers must enjoy are general or professional. The former shall govern in the geographical areas to be determined; The latter will be applied in specific branches of economic activity or in professions, trades or special works. The minimum wage can not be used as an index, unit, base, measure or reference for purposes beyond its nature.

General minimum wages should be sufficient to meet the normal needs of a family head, in the material, social and cultural order, and to provide for the compulsory education of the children. The minimum professional wages will be fixed considering also the conditions of the different economic activities.

Minimum wages shall be fixed by a national commission composed of representatives of workers, employers and government, which may be assisted by ad hoc advisory committees considered indispensable for the best performance of their functions.

VII. For equal work, equal wages must be paid, regardless of sex or nationality.

- VIII.** The minimum wage shall be exempt from attachment, compensation or discount.
- X.** The salary shall be paid precisely in legal tender, not being allowed to be effected with merchandise, nor with vouchers, tokens or any other representative sign with which the currency is intended to be substituted.
- XI.** When, due to extraordinary circumstances, the working hours must be increased, it will be paid as a salary for the time exceeded 100% more than what was fixed for normal hours. In no case the extraordinary work may exceed three hours a day, nor three consecutive times. Children under the age of sixteen will not be admitted to this class of work.
- XIII.** Companies, whatever their activity, will be obliged to provide their workers, training or training for work. The regulatory law shall determine the systems, methods and procedures.
- XXIII.** Credits in favor of workers for salary or wages accrued in the last year, and for indemnities, will have preference over any other in the cases of competition or bankruptcy.

This last constitutional article rescues some rights and working conditions that protect the workers, guaranteeing them decent treatment and, above all, a remuneration that is sufficient to support the basic expenses to be able to subsist the worker himself and his family dependents.

The Spanish Constitution also recognizes certain human rights that grant individual and legal guarantees to its citizens, among which the following articles stand out:

Article 14. Spaniards are equal before the law, and no discrimination based on birth, race, sex, religion, opinion or any other personal or social condition or circumstance may prevail.

Article 31. All contribute to the maintenance of public expenditures according to their economic capacity through a fair tax system, inspired by the principles of equality and progressivity that, in no case, will have confiscatory scope.

Public expenditure will make an equitable allocation of public resources, and its programming and implementation will respond to the criteria of efficiency and economy.

Personal or patrimonial benefits of a public character may only be established in accordance with the law.

Article 39. The public powers ensure the social, economic and legal protection of the family.

The public authorities also ensure the integral protection of children, the same as before the law regardless of their filiation, and mothers, regardless of their marital status. The law will allow the investigation of paternity.

Parents should provide assistance of all kinds to children born in or out of wedlock, during their minority and in other cases where they are legally appropriate.

Children will enjoy the protection provided in international agreements that ensure their rights.

Article 40. The public authorities shall promote favorable conditions for social and economic progress and for a more equitable distribution of regional and personal income, within the framework of a policy of economic stability. In particular, they will implement a policy aimed at full employment.

Likewise, the public authorities will promote a policy that guarantees professional training and retraining; Shall ensure occupational safety and health and shall ensure the necessary rest by limiting working hours, periodic paid holidays and the promotion of appropriate centers.

According to the aforementioned Spanish constitutional articles, certain legal regulations are identified that protect and guarantee the human rights of Spanish citizens independently if they are inside or outside Spanish territory, in addition the Spanish constitution itself contemplates the legal arguments established in the Universal declaration of human rights endorsed by the United Nations, as well as those contained in the International Covenant on

Economic, Social and Cultural Rights, also recognized by the United Nations. Mexico is also part of both international agreements.

According to the Spanish tax law, the current income tax for 2016 that is applied in Spanish territory, recognizes to the workers certain deductions that as every citizen does in the family, somehow favor them reducing significantly The taxable base to determine the tax payable, also have a reduction of up to 3 700 euros equivalent to approximately \$ 92 500.00 Mexican pesos, for which they do not pay any income tax.

The Colombian Constitution recognizes that the people must have the guarantee of a life security, coexistence, work, justice, equality, knowledge, freedom and peace, in Title II, Rights, Guarantees and Duties, Chapter II, De The fundamental rights, in its article 25: "Work is a right and a social obligation and enjoys, in all its forms, the special protection of the State. Everyone has the right to work in dignified and just conditions."

Taking into account the sense of equality of all Colombians, who has the right to decent work that contributes to a good quality of life, we ask: is the government generates and fosters equal right to live with dignity with the work effort ? From the free opinion we can say that the political and economic circumstances of a country limit the fulfillment of a constitution that is outside of a reality and that has not generated the propitious field to foment the aforementioned, therefore a constitutional reform is urgent , Since this Constitution of Colombia dates from July 20, 1991, when its second version was corrected.

In Colombia, the working class is recognized in the income tax law to reduce the taxable base of said taxes, where the hospitalization expenses and drugs of the worker, his spouse, children and even brothers who have some Physical or psychological disability, among others; In this way the state tries to guarantee the rights recognized in its constitution and in the universal declaration of human rights.

According to Fierro's (2012) analysis of the judgments published by the Colombian Constitutional Court regarding the nature of the social state and its link with human rights,

irrespective of its scope of application, whether civil, fiscal, criminal, etc. , Highlights the following:

- Right to subsistence.
- The social state of law, human dignity and the right to a minimum.
- Equal opportunities and favorable treatment for the weak.
- Social state of law and economic constitution.
- The fundamental right to life in dignified conditions.
- Minimum vital and minimum wage, among others.

All the aforementioned rights privilege the protection of the individual guarantees and of the human rights of the citizens, with a decent and sufficient salary that guarantees their decent subsistence and their right to the vital minimum.

CONCLUSIONS

In general terms, the guarantees enshrined in articles 1, 31, section IV and 123 in section A of the Mexican Constitution, establish the minimum rights of workers subject to a contract of employment, since in section IV, second paragraph That "general minimum wages must be sufficient to meet the normal needs of a head of the family in the material, social and cultural order and to provide for the compulsory education of the children," while Article 308 of the Federal Civil Code Within chapter 3 of the sixth title, states that: "food comprises food, clothing, room and sickness assistance."

With regard to minors, food also includes the expenses necessary for the primary education of the food user, and to provide him with some trade, art or profession that is honest and suited to his sex and personal circumstances: "Such a point is important since a worker The wage earner is faced with the task of providing his family and economic dependents with the possibility of satisfying the basic needs, even more if it is established within the Mexican Constitution as a guarantee enshrined in various articles the recognition to have a nutritious and sufficient quality food, Which is also an obligation of the state to guarantee it, protection of health, decent and decent housing, healthy recreation of children, access to culture and, above all, the guarantee to education enshrined in Article 3 of the Constitution.

As can be perceived, many are the rights and guarantees of Mexicans, but how to enforce them when workers' incomes are disproportionately affected by tax laws, especially by the LISR, which prevent them from achieving the stated objectives. By the different laws that protect the rights of workers and their families?

For its part, the Universal Declaration of Human Rights, paragraph 23, point 3, states that: "Every person who works has the right to equitable and satisfactory remuneration, which assures him and his family an existence in accordance with Human dignity and will be supplemented, if necessary, by any other means of social protection. " Whereas paragraph 25, point 1, states that: "Everyone has the right to an adequate standard of living adequate for his health and well-being, as well as for his family, in particular food, clothing and shelter, Medical care and necessary social services; It also has the right to insurance in case of unemployment, sickness, invalidity, widowhood, old age and other cases of loss of means of subsistence due to circumstances beyond its control".

In the same context is the International Covenant on Economic, Social and Cultural Rights, part three of article 7, section A, which states that: "The States Parties to the present Covenant (including Mexico) recognize the right of every person to the enjoyment of equitable and satisfactory conditions of work that assure him in particular:

(A) Remuneration providing at least to all workers the following:

i) Equal and equal pay for work of equal value, without distinction of any kind; In particular, women should be assured of working conditions not inferior to those of men, with equal pay for equal work;

(ii) Living conditions of dignity for themselves and their families in accordance with the provisions of the present Covenant;

Article 11 of the same Convention states that: 1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for themselves and their families, including adequate food, clothing and shelter, and a

continuous improvement of The conditions of existence. States Parties shall take appropriate measures to ensure the effectiveness of this right, recognizing to this effect the essential importance of international cooperation based on free consent.

Following these indications that emerge from international instruments, issued by an international organization of which Mexico is also a member, as is the UN, it makes more sense to point out the disproportionality and lack of equity in the obligation enshrined in Article 31, Already mentioned at the time of this work and also contradictory is the fact that the authority does not observe that after the reforms to our Magna Carta, article 1 of the aforementioned law elevates human rights to the level of protection Constitutional, together with article 133 of the same law, which states that the supreme law of our country are the Constitution, the laws of the Congress of the Union that emanate from it and all the Treaties that are in accordance with it, celebrated and that Are celebrated by the president of the republic, with approval of the Senate. Therefore, we must consider the idea of violating the fundamental rights of employees in proportion to those who perform the same activities, but other figures recognized by the LISR.

It is clear that what is contained in the Mexican Constitution and in the international treaties signed by Mexico regarding the subject of human rights and individual guarantees related to the principles of proportionality and tax equity are not covered by the current LISR because the law in question Does not really take into account the employees 'taxpayers' ability to deduct any deduction from the taxable base from which the tax has to be paid. This results in a financial impact on the worker's economy and on his own family and makes it impossible to Satisfaction of the basic necessities of food, clothing, shelter and health, all rights recognized within the principle to the vital minimum that any sovereign state must give to its governed ones.

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