

LEGAL DEFENSE AGAINST TAX REFORMS

On December 23, 2021, a Decree was published in the Official Gazette of the State of Nuevo León, amending, adding and revoking several provisions of the Tax Law of the State of Nuevo León ("LHENL"), which includes the incorporation of Article 154 Bis, which broadens the purpose of the Payroll Tax ("ISN").

This incorporation establishes that all expenditures made for items that are assimilated to salary income, in accordance with the provisions of Article 94 of the Income Tax Law ("LISR"), consisting of, among others, the following, must be included as part of the ISN object:

- Income and advances obtained by members of production cooperative societies
- Advances received by members of corporations and civil associations;
- Fees paid to members of boards of directors, supervisory, advisory or any other type of board;
- Fees paid to directors, statutory auditors and general managers;
- Fees to individuals who render services predominantly to a borrower and which are carried out at the borrower's premises
- Fees paid to individuals who render personal services or business activities, when they choose to be taxed as assimilated
- Income obtained by individuals for exercising the option to acquire shares of the employer or a related party of the employer, at no cost or at a price lower than the market price



From the analysis of these tax provisions, we have noticed that, in our opinion, some of them contravene the fundamental rights of taxpayers since their entry into force, and therefore, they could be subject to challenge through an indirect amparo proceeding

The Amparo Law states that the general rules that cause prejudice due to their entry into force may be challenged within 30 business days from their entry into force; therefore, the filing of these lawsuits would expire on February 11, 2022

If a favorable ruling is obtained, the effect of the amparo would be that the aforementioned items, namely, payments made in terms of Article 94 of the Income Tax Law, would no longer be considered as part of the subject matter of the ISN.

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