

# TAX REFORM

## INDIVIDUALS

### UNCONSTITUTIONALITY OF THE LIMITS TO PERSONAL DEDUCTIONS

Fiscal Area, January 2016.



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**On November 18, 2015, the “budget package” was published in the Official Gazette of the Federation it contained various amendments to multiple provisions; among them was a change to the Income Tax Law in relation to the limits of deductions for individuals continue, which provision may be challenged through an “amparo” lawsuit.**  
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Pursuant to the amendments in Article 151 of the Income Tax Law (LISR for its initials in Spanish *Ley del Impuesto sobre la Renta*), it has increased the cap amount to determine those personal deductions that may be effectuated by individuals, from four to five times of the general minimum salary computed for a one year period and from ten to fifteen per cent of the taxpayers’ income.

Likewise, they also apply to the following:

- They are excluded from general deductions limits, all supplementary retirement contributions directly paid for at the sub-account for supplementary contributions for retirement or at the personal retirement plans accounts, as well as any contributions made to the voluntary contributions sub-account.

In relation to paragraph above these are considered as personal retirement plans for all investment accounts and/or channels whose sole purpose is, to receive and manage resources to be exclusively used when the individual entitled to them reaches age 65 or in cases of disability or inability of said individual to perform remunerated personal work, provided that resources are administered in individualized accounts opened with insurance institutions,

credit institutions, brokerage firms, retirement management funds or investment fund operators having the authorization in the country and that may have previously obtained the Tax Administration Service authorization.

- Excluded from limitations to personal deductions are the payments disbursed for medical, dental or nursery fees, for analysis, clinical studies or prosthesis, hospital expenses and purchase or rental of re-habilitation equipment or devices.

In order for the aforementioned payments to be deductible, the following requirements must be fulfilled:

- ✓ To derive from those temporary, permanent, partial or total incapacities or inabilities referred to in the Federal Labor Law, or from a disability in terms of the General Law for Inclusion of People with Disabilities;
- ✓ The individual must have a certificate or statement as to the incapacity, or disability in question, issued by any of the corresponding public institutions; and
- ✓ The digital tax invoice must specify that the expenses covered by it are related to the kind of assistance of any incapacity, or disability in question, and must comply with any future requirements establish through the general rules.

On the other hand, the amendment to Article 151 of the LISR continues to limit personal deductions (expenses for the concept of interests deriving from mortgage credits, premiums on medical insurance policies, among others), consisting of the total amount of personal deductions (except for donations and complementary retirement contributions), shall not exceed the lowest amount between five minimum general salaries increased a year (\$133,298.00 Mex. Cy.) or a fifteen per cent of the total taxpayers' income.

We are of the opinion that the limitations to personal deductions violate the guarantees of tax proportionality contained in Article 31, section IV, of the Political Constitution of the United States of Mexico, as well as the human rights of private ownership and equality established in Articles 21 and 24 of the American Convention on Human Rights, because Article 151 of the LISR establishes a limit that prevents a true reflection of the contributive capacity of individuals and, on the other hand, it concedes a different treatment to taxpayers depending on the amount of their income, to effectuate the deductions foreseen in this Article being analyzed.

## REMEDIES

The legal remedy to challenge the unconstitutionality of Article 151 of the LISR is to bring an indirect injunction relief action (*juicio de amparo indirecto*) before the District Courts.

For the filing of the *amparo lawsuit*, the Amparo Law has established two possibilities: i) within 30 working days following the entry into force of the respective ordinance, when by doing so no detriment is caused to the individual within his (her) sphere of rights, (via a self-executing writ); or, ii) within 15 working days following the first action of enforcement of such legal provision (a hetero-applicative via).

It should be mentioned that the first possibility to file was the January 1<sup>st</sup>, 2016, when LISR came into force and therefore the deadline to file an amparo lawsuit was February 16, 2016.

Likewise, the second possibility or assumption occurs from the date of enforcement of Article 151, and therefore the 15 working day term would run from the date when the taxpayer files his (her) annual tax return.

On this particular issue, we deem it convenient to evaluate each specific case of each taxpayer, for the purpose of determining the implications from Article 151 of the LISR may have on him (her), in order to set out the conditions for the filing of an *amparo lawsuit*.

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Please feel free to contact us for any comments or queries that you might have in connection with this letter.

Best regards,

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