

## **“THE NEW CREDIT SALARY SUBSTITUTIVE TAX” SOME LEGAL AND CONSTITUTIONAL ASPECTS**

*By: Raul Merigo; Hernández, Mérito & Hurtado S.C.*

Recently due to the so called “*Fiscal Reform*” promoted by Mexico’s Presidency and approved by Congress, a new tax has been created: The Credit Salary Substitutive Tax (ISCAS)

The ISCAS establishes a duty of 3% of the payroll of a company or anyone who makes payment due to a labor relationship, regardless of state taxes.

After reviewing its elements we have concluded that such tax has not been established within Mexico’s Constitution, in compliance of Article 31, section IV, due to a case of exemption that allows certain employers to forfeit payment of said tax.

ISCAS allows employers who have paid on their workers a Federal Compensation called “*Credit Salary*” (CAS), the option of not paying its duties, with the only condition that such CAS may not be reduced from the Income Tax amount to pay.

Based on the Income Tax Law CAS is determined by the daily wage that is paid, and is considered a governmental aid to low income workers. It is mandatory for employers to pay CAS to their workers according to charts contained in law. The employer can reduce its Income Tax payment by crediting all the CAS paid to its workers.

Therefore, ISCAS determines two options: either pay the 3% of all payroll, or do not pay such duty with the inconvenience of not being able to credit the CAS paid to its workers against the Income Tax due.

The unconstitutionality claimed consists in the fact that not all employers have workers with CAS on favor, or mentioned in other words, and therefore not all tax subjects can in fact avoid paying ISCAS. The formula is simple: In order to apply for the “*benefits*” of ISCAS, an employer must have within its payroll a low income employee.

It is the lack of equity that attracts our attention, considering the fact that ANY PERSON who makes work related payments (as salaries or any other expense in favor of employees) must pay ISCAS, but not all of them apply for the benefit of not paying such duty.

On January 16<sup>th</sup> Mexico's Revenue Service published in the Official Gazette the Income Tax Law's application guidelines and in such rulings the payments of CAS made by the employers were recognized as "*deductible*", which allows them to consider them as a company expense in order to reduce the tax base.

For these and much more constitutional reasons is that our staff has already filed injunctions against the recently published Federal Income Tax Law before our Federal District Courts, and are awaiting results but well convinced of an imminent unconstitutional declaration of the Third Transitory Article created by Congress on such law.