

## The three-month maximum limit established in the Federal Labor Law for the payment of profit sharing is constitutional



The Supreme Court of Justice of Mexico, in ruling on Amparo en revisión 633/2023, determined that the maximum limit for employee profit sharing (PTU) will be three months of the employee's salary or the average of the amount received for this concept in the last three years, choosing the option that most benefits the employee. This decision is based on the provisions of article 127, section VIII of the Federal Labor Law (LFT), as well as on the guidelines of the Guide to Comply with the Profit-Sharing Obligations, published by the Ministry of Labor and Social Welfare (STPS), hereinafter known as the Guide.

The Second Chamber concluded that the maximum limit equivalent to three months of salary for PTU is constitutional. This limit is not absolute, since it also allows considering the average of the participations received in the last three years, always prevailing the alternative that is more favorable to the employee.

Regarding employees who do not have three years of seniority, as is the case of the complainant, the LFT does not explicitly detail the implications of this situation. However, the Guide indicates that the lack of seniority should not be detrimental to the employee. Instead, the average amount of PTU corresponding to the last three years for the category or position currently held by the employee beneficiary should be considered. This point was examined because of the arguments of violation set forth in the amparo lawsuit.

Additionally, it establishes that the origin of the limit of three months of the employee's salary for the PTU comes from the labor subcontracting reform. This reform prohibits the subcontracting of personnel and only allows the subcontracting of services or specialized works, registered before the Registry of Companies of Services or Specialized Works (REPSE), if they are not part of the corporate purpose and main economic activity of the company receiving the service.

Therefore, during the period granted in the transitory norms, employers were forced to make the necessary adjustments. Among these measures was the transfer of those employees who were in a situation of subcontracting, a practice that the reform currently prohibits.

In this context, it is important to recognize that the PTU limit should not be analyzed in an isolated and independent manner, but as an integral part of the labor subcontracting reform.

It is also established that the provisions related to the payment of PTU are constitutional, because the Mexican Congress has the authority to legislate on labor matters and there is no constitutional or legal provision that prohibits it from regulating this aspect.

Companies that applied the limits for the payment of PTU in fiscal years, after the entry into force of the outsourcing reform, should review whether, for employees with less than three years of seniority, they applied the criteria established in this ruling. That is, if they considered the average amount of the last three years corresponding to the current category or position of the employee beneficiary, or if they adopted a different approach.

It is also important that companies, regardless of whether there is a union or not, must allow the Joint Commission for Profit Sharing to be formed with an equal number of representatives of both the employer and the employees.

The function of the PTU Joint Commission is to perform the individual calculation of the employees and to establish the criteria for profit sharing. This practice is of great help to companies since it allows them to be prepared for possible inspections by the STPS or revisions by the Tax Administration Service (SAT).

For further information about this bulletin, please contact any of the following professionals:

Legal - Labor

**Jacqueline Álvarez**  
jacqueline.alvarez@mx.ey.com

**Alejandro Caro**  
alejandro.caro2@mx.ey.com

**Yeshua Gómez**  
yeshua.gomez2@mx.ey.com

**Juan Carlos Curiel**  
juan.curiel@mx.ey.com

**Odette Guevara**  
odette.guevara@mx.ey.com

**Nancy Robles**  
nancy.b.robles@mx.ey.com

**Mónica Montemayor**  
monica.montemayor.mora@mx.ey.com

**EY**  
Assurance | Tax | Transactions | Advisory

**About EY's Tax Services**  
Your business will only succeed if you build it on a strong foundation and grow it in a sustainable way. At EY, we believe that managing your tax obligations responsibly and proactively can make a critical difference. Our global teams of talented people bring you technical knowledge, business experience and consistency, all built on our unwavering commitment to quality service – wherever you are and whatever tax services you need. We create highly networked teams that can advise on planning, compliance and reporting and help you maintain constructive tax authority relationships – wherever you operate. Our technical networks across the globe can work with you to reduce inefficiencies, mitigate risk and improve opportunity. Our 45,000 tax professionals, in more than 150 countries, are committed to giving you the quality, consistency and customization you need to support your tax function.

For more information about our organization, please visit [www.ey.com/mx](http://www.ey.com/mx)

© 2024 Mancera, S.C. EYGM Limited All Rights Reserved ©

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients.

This bulletin has been prepared by the professionals of EY and contains general comments on the application of various accounting, tax and financial standards, as applicable. Since the contents of this bulletin are informative in nature and do not represent a specialized study of any specific situation, this bulletin must in no case be construed as being professional advice on any concrete case. At EY, we are committed to providing you with reliable and timely information; however, we cannot guarantee that the contents of this document will be valid at the time you receive or consult this document, or that they will continue to be valid in the future. Therefore, EY assumes no responsibility whatsoever for any errors or inaccuracies that may be contained in this document and the decision to use the information contained herein is entirely the recipients. All rights reserved (currently being processed).