



FISCAL

CO-OWNERSHIP AS A VIABLE FISCAL LEGAL OPTION FOR BUSINESS ACTIVITIES IN MEXICO

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ABSTRACT

When an entrepreneurship is planned, it is necessary to do it from all possible approaches to systematically reduce the threats and weaknesses that the proposal could present, for this reason, the present work objective is to study co-ownership as a viable fiscal option for the optimization of the resources of the individuals who carry out business activities. For this purpose, the resolution of a comparative case study was made, showing clearly the tax benefits that can be obtained by the individual who receives income from co-owned business activities, demonstrating that the distribution of total income among co-owners decreases the tax base and saves resources that can be used to support the family economy, or strengthen the finances of the company to make it more competitive.

KEYWORDS : entrepreneurship, fiscal strategy, co-ownership**INTRODUCTION**

Our tax laws contain complex procedures for the determination and payment of taxes as a consequence of the constant modifications to the Mexican Tax System, reason why frequently when the entrepreneur intends to create a new business project, consider seeking professional advice for the correct choice to constitute their business, taxing, and the existence of possible legal options to minimize the tax burden.

All taxpayers must present their respective tax burden and tax obligations, this activity may vary depending on the form and regimen in which is constitute the business. This has contributed to creating confusion in terms of the best and most appropriate way to tax and, as a consequence, the lag in the substantial development of companies.

In this sense, it's important to point out that it is not necessary, to constitute a moral person to carry out a business, our legislation contemplates alternatives to obtain important financial benefits to those entrepreneur or business owners who wish to form a working group.

One of these alternatives is co-ownership, a legal figure that correctly applied as a fiscal strategy allows to work in groups without the necessity to constitute them self-has a moral person, subcontracting unnecessary obligations that lead to a greater expenditure in taxes payments.

The Federal Civil Code (CCF) establishes the co-owner legal figure in its articles from 938 to 979. Broadly speaking, this ordinance establishes that "co-ownership occurs when a thing or a right belongs pro-undivided to several people, being called co-owners to Each of these".

For its part, the Federal Fiscal Code (CFF) in its article 27, The Income Tax Law (ISR) article 92, first paragraph and 108, first paragraph and the Law of Value Added Tax (VAT), article 1 and 32; regulate in fiscal matters all those incomes obtained in co-ownership.

Luna (2011), considers that despite the complexity represented by the study of the co-ownership legal figure, it represents a useful tool in business decision making, which includes tax benefits. Whereas Padilla (2011), says that being an entrepreneur and acting in society as a person implies contracting obligations that are often unnecessary, but operating individually as a natural person is complicated due to the economic, political and fiscal dynamics that prevails in the country. In many cases, the taxpayer who intends to carry out a business

negotiation asks what juridical figure is the most convenient to carry out business activities, especially when they consist of a group of people. In these cases, an "economic unit", such as co-ownership, would be the appropriate suggestion.

METHODOLOGY FOR THE STUDY

To carry out the research, the qualitative descriptive method was used, as it is the most appropriate. Since it is a work based on theoretical principles, various legal systems were revised, articles and books whose authors have a reputation in the subject. In addition to being qualitative, it is documentary, because, through the research and compilation of this series of secondary sources, it was possible to emit a point of view.

With the purpose of analyzing the fiscal provisions that regulate the figure of co-ownership, Mexican regulations were reviewed such is the case of the Federal Civil Code, the Fiscal Code of the Federation, the Law of Income Tax and the Law of Value Added Tax. Subsequently, an analysis of the different criteria of authors such as Luna (2011) and Sánchez (2008) was carried out.

DATA ANALYSIS

After reviewing Mexican regulations, it was observed a high level of complexity interpreting tax provisions that establish the obligation to determine the different types of taxes of legal figures such as co-ownership.

The Mexican regulations attribute an aliquot to each co-owner, from the arithmetical point of view based on an idea of proportion (Bernard, 2001), a premise that allows seeing that this division represents a segmentation of taxable bases, and therefore fewer taxes paid.

A summary of the tax obligations in relation to the Income Tax (ISR) to which taxpayers who obtain income derived from co-owned business activities are subject, as well as the obligations in terms of the Value Added Tax (VAT).

Income Tax (ISR): a) The subject of the tax is the co-owner, not the co-ownership; b) All co-owners must register with the Federal Register of Taxpayers, one of them as a common representative and the others as represented; c) The common representative must comply with obligations to keep accounts, keep the vouchers that cover the respective seats, issue and keep vouchers of the income obtained through co-ownership, and comply with the obligations regarding withholding taxes; d) The designated common representative will

perform on behalf of all the co-owners the making of provisional payments; e) The common representative, in addition, will determine the profit or financial loss of the year but will accumulate only its proportional part, that is, those represented will accumulate, in turn, the proportional part that corresponds to them; f) Those represented will credit in that same proportion, the amount of the provisional payments made by the representative for the purposes of the fiscal year tax.

Value Added Tax (VAT): a) The subject of the tax is the co-owner, not the co-ownership; b) The common representative will make the payment of the tax on behalf of all co-owners for all the operations carried out through co-ownership.

Individuals who are taxed in joint ownership and obtain income from business activities must present provisional income tax (ISR) payments on account of the annual tax, no later than the 17th day of the month following that in which the who got the income. The same assumption applies to the final monthly payments of the Value Added Tax (VAT).

The Income Tax Law (LISR) requires the co-owner to pay the tax in the form of an advance payment each month on account of the annual tax, and the total tax at the end of the fiscal year, by means of an annual declaration. In addition, it allows the income obtained in co-ownership to be divided among the members that make it up so that each one of them has the information to determine their provisional tax payments, as well as the annual tax, and that each co-owner credits the tax of the provisional payments paid by the representative against the fiscal year, in proportion to their income.

For purposes of the Value Added Tax (VAT), it will be only the representative of the co-ownership who must determine and receive the final monthly payments of said tax based on the income actually collected and the expenses actually incurred each month. To do this, the total of the tax that would have been transferred as creditable is considered, provided that the other requirements established in the law are met for such purposes since the total of the acts performed is taxed by the law of Value Added Tax. (LIVA)

Likewise, some revised publications of expert authors on the subject helped to understand the legal status of co-ownership in a broad manner and from different contexts.

One of the highlights is Luna (2011), who in her work called "Legal and Fiscal Regime of Co-Ownership and the Marital Society" considers that the timely use of the figure of co-ownership represents a useful tool in decision-making, which It brings with it a series of tax benefits.

This reinforces the opinion of authors such as Reyes (1999), who affirms that the purpose of the application of tax legal options, "is the optimization of resources for compliance with the lowest possible tax burden within the legal margins, without get to incur in illicit, looking for the best alternatives for compliance within the legal standard, "and Cardenas (2011) that states that in our tax legislation there are multiple benefits that often disinformation are not applied by taxpayers, which denominates as "legal and fiscal alternatives to optimize the taxpayer's resources".

Regarding the generation of benefits for the exploitation of the commercial co-ownership, the opinion of authors such as Padilla (2011) and Sánchez (2008), allowed to corroborate the fiscal viability of carrying out business activities through this figure, the which generates considerable savings by minimizing the payment of taxes, information that ensured its timely approval.

CONCLUSIONS

The opinion of the reviewed authors confirms that the figure of co-ownership represents a viable option for the business organization that generates important tax benefits that are mainly reflected in a considerable decrease in the tax burden of natural persons.

The analysis from the hypothetical case of a company (mercantile society), which is taxed as a moral person, made up of two partners; partner "A", and partner "B". In the case of co-ownership, at least two individuals are required: "Natural person" A ", and natural person" B ". Each member, by virtue of its aliquot part, participates at the rate of

50% of the capital of the company. While in the co-ownership, each co-owner participates in the contribution of the capital of the business negotiation at the rate of 50%, that is, in part proportional.

It should be noted that for purposes of calculation and determination of Income Tax (ISR) and Value Added Tax (VAT), the mechanics, rates, and rates in force in the legislation corresponding to each tax were used for the fiscal year of 2017.

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