

## Use of invoices with non-existent operations and their fiscal and criminal consequences in construction companies located in the city of Chetumal, Quintana Roo

### Uso de facturas con operaciones inexistentes y sus consecuencias fiscales y penales en las empresas constructoras ubicadas en la ciudad de Chetumal, Quintana Roo

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#### Abstract

The construction sector is one of the most important for a country due to the large investments and the sources of employment that this generates, both private and governmental, since they are benefited by the works carried out. But within this sector there is corruption, since some investments of both foreign and national sources of wealth have illicit origins, carried out in an improper manner, tax evasion and, in the case of the present investigation, the use of Tax Receipts with non-existent operations. In order to determine the use of invoices with non-existent operations and their fiscal and criminal consequences in companies located in the city of Chetumal, Quintana Roo, a field investigation was carried out by applying a research instrument with a quantitative approach to 11 construction companies, which answered a series of questions and the result gave an answer to the research question and the hypothesis that will be presented later.

#### Resumen

El sector de la construcción es uno de los más importantes para un país por las grandes inversiones y las fuentes de trabajo que esto genera, tanto particulares, como de gobierno, ya que se ven beneficiadas por las obras realizadas. Pero dentro de este sector existe la corrupción, ya que algunas inversiones de fuentes de riquezas tanto extranjeras como nacionales tienen procedencia ilícita, realizado de manera indebida, evasión de impuestos y, en el caso de la presente investigación, el uso de Comprobantes Fiscales con operaciones inexistentes. Para determinar el uso de facturas con operaciones inexistentes y sus consecuencias fiscales y penales en las empresas ubicadas en la ciudad de Chetumal, Quintana Roo, se llevó a cabo una investigación de campo aplicando un instrumento de investigación con enfoque cuantitativo a 11 empresas constructoras, las cuales respondieron una serie de preguntas y el resultado dio respuesta a la pregunta de investigación y a la hipótesis que se presentará posteriormente.

#### Construction, Corruption, Tax receipts

#### Construcción, Corrupción, Comprobantes fiscales

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## Introduction

The author Soto (2003) mentions that corruption is an act that has been carried out for many years all over the world, causing a problem for governments because it clearly affects the economy of a country, negatively affecting investment, growth and equality of the population since some citizens obtain illicit benefits affecting certain sectors of the population.

Tax evasion faced by Mexico is one of its biggest problems, despite the fact that over time different methods and ways of combating it have been created, according to the author Barajas, et. al. (2011) the practice of evasion through invoicing has been one of the most difficult phenomena to deal with due to the different ways in which it is presented.

According to the National Polytechnic Institute (2011), the business activity that is most involved in tax evasion and where there is a lot of corruption is in the construction sector, as it has the highest percentage of evasion.

According to Llaque (2014), Peru has experienced an increase in economic activity in the construction sector, but this increase has not been correlated with tax collection, which is justified by the introduction of incentives and benefits, but above all by the new evasion and/or avoidance practices that taxpayers are using in the development of their activities.

Talavera (2015) mentions that one of the most sensitive business activities in terms of tax evasion in Mexico is the construction industry, since this sector enjoyed a regime in which the rate applied was proportional to the amount of income and for this no authorisation was required for construction companies to be subject, in other words, the tax was paid according to their income and not on profits.

For Avila (2018) the reasons why these acts are committed is due to the lack of information on the part of taxpayers, high tax rates, distrust towards the corresponding authorities for collection, the way in which they realise where these resources go, etc. without realising the damage they do to society itself.

This economic phenomenon according to the World Bank (2020) occurs all over the world, but the places where it is more susceptible are those that have weak institutions and are being affected by some internal conflict and this results in the existence of funds with illicit or criminal activities diverting resources illegally, affecting society and making it poorer.

## Research problem

Corruption refers to moral impurity, as the word itself has derivations which are "to ruin, contaminate, mistreat or destroy", therefore, when we think of corruption we can say that they are acts that intentionally break or evade the laws.

In Mexico, one of the most affected economic activities is the construction sector, and one of the most common corruption processes is tax evasion with invoices that reflect non-existent activities.

Therefore, the sector has had many controversies for both the Mexican government and the population itself due to the diversion of resources that have been found and this in turn the ease of having invoices to hide their real income or expenses.

At the moment of carrying out the works it is important to have fiscal receipts where the expenses for the purchase of materials, additional expenses or any other cash flow are mentioned with the purpose of tax deduction, this according to the Mexican laws is an obligation of the companies to emit them before the tax authorities.

But are all construction companies corrupt, no, not all of them are evading the law, some are going to the letter with their obligations, but, there is a small sector of this industry that are corrupt or have little knowledge of the laws and this is where the following question arises, Why is it important for a construction company to be aware of article 69-B of the Federal Fiscal Code, as well as the criminal and fiscal consequences of using invoices with non-existent operations when deducting its expenses? This is where our problem is focused.

*Scope and limitations**Scope*

- This research aims to analyse the factors that give rise to the use of invoices with non-existent activities and the consequences faced by the companies in the construction sector that are involved.
- The research covers only companies in the construction sector with at least one project or one year of service performed, located in the city of Chetumal, Quintana Roo.
- Limitations
- Scarce economic resources would be an important factor in this project, since the research does not have economic support and the construction companies are located in different areas of the city, so transportation would be a major factor.
- Information not provided or managers and accountants not willing to answer the questionnaire applied.
- Construction companies do not exist or are no longer active at present.

Objectives of the research: General and Specific

*General objectives*

To investigate the importance of Article 69-B of the Federal Fiscal Code in order to know the fiscal and penal consequences of construction companies located in the city of Chetumal, Quintana Roo for the use of invoices with non-existent operations to deduct their expenses.

*Specific*

To analyse the scope and application of Article 69-B of the Federal Fiscal Code with respect to construction companies in the city of Chetumal, Quintana Roo.

To examine the fiscal and legal regulations applicable to invoices with non-existent activities, with emphasis on the sanctions and consequences for construction companies in the city of Chetumal, Quintana Roo.

Investigate the preventive measures that have been implemented by the authorities and regulatory institutions to combat the use of invoices with non-existent activities in the construction sector.

*Tax evasion*

For the authors Aguirre and Sánchez (2019) mention that evasion is the act of not paying a contribution and therefore it is equivalent to evading the obligation to contribute by violating the laws that regulate it by providing false information or hiding certain income to considerably reduce the payment of taxes.

On the other hand, Rodriguez (2021) mentions that tax evasion is the act of not paying or omitting to pay a contribution, by not doing so it is considered to be an avoidance on the part of the taxpayer, evading the law that obliges him/her to pay the tax authorities.

*Inexistent transactions*

According to the authors Hernández, Armendáriz and Torres (2018) found in Fránquiz (2021), non-existent operations are tax receipts used by taxpayers to credit their expenses or activities for tax purposes without having the corresponding personnel or assets.

According to the authors Tosca, Martínez and Silva (2022) mention that Camargo (2012) defines non-existent operations as a reduction of a tax amount produced within a country by those who, being obliged to pay it, do not do so and instead use this act to obtain benefits by means of fraudulent vouchers.

**EFOS AND EDOS**

The author Murcia et al. (2019) mentions that there are companies dedicated to invoicing, in Mexico these companies that make invoices with non-existent operations, these companies are known as EFOS and those that deduct simulated operations are known as EDOS, together they form an illegal market of operations that never happened.

According to Tosca, Martínez and Silva (2022) the EFOS are companies that invoice simulated operations, while the EDOS are companies that deduct with simulated operations. This type of company has avoided its tax obligation, since carrying out these operations reduces the payment of its taxes considerably, contributing less than what it is obliged to pay to the state.

*Corruption in project management*

According to the authors Saldarriaga and Andrade (2019), the Nule Group, which was involved in the work of phase III of Transmilenio, suffered delays for three years and in the end went bankrupt for 2.2 billion pesos due to the multiple diversion of advances of the work for the interests of the businessmen.

In 2017 in the District of New York a trial against the Brazilian company Odebrecht took place, according to the author Rodriguez (2017) mentions that the company was accused of bribing public officials to influence the procurement of public works, thus proving the amount of 84 million pesos in the years 2009 and 2011.

*Importance of construction companies*

According to the Mexican Chamber of the Construction Industry in the publication "Los retos de la Infraestructura en México 2013-2018" they mention that the construction industry impacts 63 of the 79 productive sectors. To understand this, for every 100 pesos allocated to construction, 43 are used to purchase services and materials for its productive chain (CMIC, 2012).

That is why INEGI (2018) mentions that in Mexico there are a total of 19,501 construction companies being a sector that works in several activities either to build homes or in its case restore them, build hotels, some buildings, streets, parks, shopping centres, dams, hospitals, banks, among others.

*Invoices with non-existent operations*

The author Avalos et al. (2022) explains that construction companies carry out these acts because having a lot of income they have to pay more taxes, in this case ISR and VAT, but when they buy invoices from companies that carry out real operations their expenses increase considerably, causing their real income to be altered and thus paying less tax, which is tax evasion.

According to the author and public accountant Porporatto (2020), invoicing with non-existent operations is an economic problem that exists all over the world, as it is complex due to the unfair and unfair competition from those who carry out these illicit acts, because it is not only used to evade taxes, but also to launder assets.

According to Murcia, Vega and Sánchez (2019) tell us that, according to tax analysts, the use of invoices with non-existent operations has become one of the main problems facing Mexico's public finances, since, until the end of 2016, tax evasion cost Mexico the equivalent of 2.8% of GDP.

*Why is it difficult to identify simulated transactions?*

According to Rico and Verónica (2021), Ureste, Castillo and Roldan (2018) mention that companies that simulate this type of activity are incorporated in accordance with the General Law on Commercial Companies (LGSM), since they are incorporated before a notary public, registered in the RFC, have an established tax domicile, have an advanced electronic signature and issue tax receipts through the SAT website.

According to the Ministry of Finance and Public Credit (2019), false or apocryphal invoices are found in all countries of the world and it is often difficult to identify them because their structure is very similar to a normal validated invoice, the elements that make it up are done correctly, but the rest of the content is what makes it false because they are operations that do not exist or have been modified.

Código Fiscal de la Federación, Article 69-B, notification process and publication of results.

According to article 69-B of the C. F. F. F. states that when the tax authority detects that a taxpayer issues a tax voucher without having the means to carry out operations to secure the voucher, it will assume the absence of the operation in his favour.

In this case, the taxpayer will be notified through the tax mailbox, as well as in the Official Journal of the Federation, in order to allow taxpayers to demonstrate to the tax authority what is appropriate to their legislation and to provide documents and information considered to disprove the facts. To do so, taxpayers have a period of fifteen days from the last notification they have been given.

Once the period to provide the documentation has elapsed, the authority, within a period not exceeding fifty days, will assess the evidence and defences that have been notified by the taxpayer.

Construction companies take advantage of these acts to be able to make certain expenses deductible, which is why they use the accreditation of materiality, according to the Income Tax Law (2023) mentions that the deductions that must be authorised must be strictly indispensable for the company's business, and the author Fortis (2022) stresses that deductions are taxpayers' rights, but now these expenses must be accredited much more. García (2020) describes the measures taken by this tax authority, which are: sending official letters to notaries and directors to review them in depth, analysing and concluding if there is false information, sending the information to the Financial Intelligence Unit in order to detect irregular transactions, providing information to the FGR (Attorney General's Office) and carrying out more in-depth audits with rulings.

### *The most vulnerable taxes in Mexico and the consequences of tax evasion*

Like all countries in the world, public spending is highly dependent on the nation's revenues, and in Mexico these revenues can include the following: Taxes, social security contributions, improvement contributions and duties; by focusing on taxes according to SAT (2015) they are one of the payments that can be either in cash or in kind that helps to strengthen a country's economy.

### *Tax evasion and corruption in construction companies*

In Mexico, the construction industry, after the extraction of raw materials, is where most bribes and acts of corruption exist, according to OECD (2017), found in Mexicans against corruption and impunity (2019), and the investment that is made here is so large that certain income can be hidden, which is difficult to detect.

According to the author Cruz (2020), apocryphal invoices are used to cover the expenses incurred by the company's workers. As is well known, construction companies have a large number of administrative and machinery personnel, as well as those who carry out heavy work, in this case the bricklayers, and this lights up the green lights in the industry because the expenses for per diems can be deducted for tax purposes.

But corruption is not only present where there is money involved, it can arise even before starting a construction project; in order to carry out a construction project, a series of procedures are needed that take a long time to complete. According to doing business in Mexico (2016), in order to obtain a project, companies must complete 15 procedures that are divided into before, during and after construction.

According to the city council of Benito Juárez (2019) there are many hotels, bridges, roads, etc. these buildings are built for foreign tourists who visit the state to give a more beautiful view to the place; to make these works other procedures are needed.

When analysing all these movements, it takes a long time to carry out each procedure, and this is where one of the answers to the question asked to the construction companies arises: what leads them to commit these acts of corruption?

The Mexican Institution against Corruption and Impunity (2019) public officials are the ones who take advantage of this situation of the company as they force them to pay certain amounts of money in order to obtain the necessary procedures to be able to continue with the works.

### *Cumbersome processes for real estate development in Mexico*

The author Castro (2018) mentions that the documentation to carry out construction works is part of the contractual obligations that contractors and subcontractors must have, such as plans, specifications and all the necessary documents that serve for the correct support of the construction or installation of each element.

To carry out a project there is a process, according to the author of the Rock (2020) are phases that the company goes through from the beginning to the end, which are: the beginning of the project, organization and preparation, implementation and finally is the closure, but to do all this you also need instruments that are laws, codes, regulations and programs, all this movement for companies becomes complex conducive to enter into corrupt acts.

## **Methodology**

### *Approach*

The approach that will be used is quantitative, as mentioned by the authors Hernandez, Fernandez and Baptista (2014) the quantitative approach is one that seeks an understanding and explanation from the perspective of the participants in subject phenomena and a relationship with its context as it is implemented in studies that have been little explored or have not been conducted so far.

In the case of this research, this approach was used because the number of construction companies in the city of Chetumal, Quintana Roo is not sufficient to apply surveys, so it was decided to use interviews applied to each of the companies subsequently located to obtain the necessary information to answer the problem statement.

### *Type of research*

The type of research carried out is descriptive, according to the author Bernal (2016) descriptive research helps to select the fundamental parts of the subject of study, in this case the construction companies, taking as a basis or guide the research questions already identified, it is as mentioned by the authors Hernández, Fernández and Baptista, interviews, surveys, observations and documentary reviews as appropriate, being a descriptive approach.

### *Subjects of the study*

The subject of the study are the companies in the construction sector, which have had or have at least one construction project carried out. These companies must be exclusively dedicated to the civil engineering sector because they are the ones that obtain infrastructure projects such as the construction of roads, hotels, squares, etc. and are not only dedicated to the purchase and sale of materials.

Likewise, these companies have professionals such as engineers and accountants, personnel who have advanced knowledge about the works and how to carry out administrative movements such as the payment of workers, payment of taxes, invoices, how to obtain permits, how to obtain the works, among others.

### *Universe*

The universe of this research project are the companies of the civil engineering construction sector located in the city of Chetumal, Q. Roo. Companies that are previously registered with the Mexican Chamber of the Construction Industry (CMIC).

### Population

The field research will be focused on the city of Chetumal, Q. Roo, in which there are 25 companies according to the INEGI website in the DENUE section with a construction sector. However, it will also be applied to companies dedicated to the construction sector that are not listed in the DENUE, as the INEGI section has outdated data and therefore there are companies that are no longer active as of 8 October 2023.

### Sample

According to the author Bernal (2016), he teaches us the formula to determine the size of the population, which is as follows:

$$n = \frac{S^2}{\frac{E^2}{Z^2_{\alpha/2}} + \frac{S^2}{N}}$$

**Figure 1** Sample formula, data obtained from author Bernal from the book Research Methodology.

Where:

n: sample no.

S: population standard deviation

E: estimation error

Z/2: confidence level or margin of confidence

N: number of construction companies located in the city of Chetumal, Q. Roo.

Substituting the data, we obtain the following:

$$n = \frac{0.5^2}{\frac{0.05^2}{1.96} + \frac{0.4^2}{25}} = 23.47$$

**Figure 2** Sample formula, own elaboration with data obtained from the author Bernal from the book Metodología de la investigación.

Bernal's formula resulted in a sample of 23.47, which rounded up would be 23 construction companies to be interviewed.

### Research instrument

This instrument was taken from the author Paz (2022) from his thesis entitled Fiscal compliance with the presumption of non-existent operations and their fiscal and criminal consequences; case of a construction company.

The instrument consists of 24 questions and is divided into five sections which ask about general data, the tax impacts that may exist in the construction industry, the company's knowledge of tax regulations and reforms, the impact of non-existent operations on the company and the impacts of companies that deduct non-existent operations.

### Results

Despite the fact that the National Statistical Directory of Economic Units (DENUE) page on the INEGI website showed 25 registered companies in the consultation carried out on 10 November 2022, when the field research was carried out, it was found that 18 construction companies were no longer working and consequently only 7 were still active. The research instruments were successfully applied to 6 companies and through other options (internet, telephone) 4 more were applied, although some of the active companies refused to carry out the questionnaire for particular reasons.

Everything was done in order to find out if each of them had knowledge about article 69-B of the Federal Fiscal Code, and as it could be observed in each of the graphs, most of them have complete knowledge about this article and the criminal consequences that exist for the use of non-existent operations in the CFDI.

The result is as follows:

- 10 out of 11 construction companies consider or are fully aware that the construction sector is one of the areas where they are most likely to be involved with purchases of tax receipts.
- 6 out of 11 companies consider that the reform mentioned in article 69-B is effective with respect to the penalties they may face for the use of invoices with non-existent transactions, but 5 of them answered that it is not very effective.

- And, only 1 company out of all those surveyed was not aware of the penalties that could result from the misuse of a CFDI, the reason for this being that it has only been operating as a construction company for a few years.

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### Conclusions

The research question of this project was answered: Why is it important for a construction company to be aware of article 69-B of the Federal Tax Code, as well as the criminal and fiscal consequences of using invoices with non-existent operations when deducting expenses? and the general hypothesis which is "Having adequate knowledge of and complying correctly with the provisions of Article 69-B of the Federal Tax Code by construction companies in Chetumal significantly and importantly reduces the tax and criminal consequences that they would have for the use of invoices with non-existent operations when deducting expenses", giving as an answer that it is important to know about Article 69-B because although some companies know its importance and the consequences of this type of act, there is another sector where they do not and it is here where we consider that the question and hypothesis applies.

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