PTU COMPLIANCE GUIDE

Practical tips for employee profit sharing

Employee Profit Sharing (PTU) is a constitutional, non-waivable and acquired right. Incorrect calculation and payment generate individual claims, inspections, and significant economic burdens.

1. Who is obligated?

All companies with employees in their service, subject to the exceptions provided in the Federal Labor Law (newly created companies during the first year, the IMSS, public institutions with cultural or assistance purposes, among others).

2. Calculation base and percentage

PTU is calculated on taxable income in accordance with the Income Tax Law (with the particularities established by the Federal Labor Law). The applicable percentage is 10%, pursuant to the Resolution of the National Commission for Workers' Participation in Company Profits.

The distributable profit is divided into two equal parts:

- The first is distributed equally among all workers, taking into account the number of days worked by each one in the year, regardless of the amount of wages.
- The second is distributed in proportion to the amount of wages earned for work performed during the year.

3. Individual cap (Article 127, Section VIII of the Federal Labor Law)

Following the 2021 reform, the amount most favorable to the worker must be applied:

- Calculate 10% of profits in accordance with the applicable legal framework.
- Only when that amount exceeds 90 days (three months) of the worker's salary is the 90-day salary limit applied as the maximum.
- Exception: if the average PTU paid by the company to workers of the same category over the last three years is higher than 90 days, that average must be paid (as it is more beneficial to the worker).

For workers with less than three years of seniority, the three-year average corresponding to the category, position, rank or level they currently hold is used. Personal seniority is not a factor.

These parameters are minimums. Collective bargaining may establish more favorable conditions.

4. Workers entitled to PTU

- Those who have worked at least 60 days in the fiscal year are entitled.
- Temporary workers are included proportionally to the days worked.
- General directors, general administrators and general managers do not participate.
- Trusted employees do participate, except those under the exception above.

5. Key deadlines

- Companies must pay PTU no later than May 30 of the year following the fiscal year.
- Workers have one year from the date payment was due to claim it.

6. Compliance recommendations

- Correctly determine taxable income (close coordination between the tax and labor areas).
- Prepare the distribution project and make it available to the workers.
- Keep calculation documentation, lists, payment receipts and, where applicable, minutes of the Mixed Commission.

- Verify the individual cap (90 days or three-year average) before making payment.
- Document exclusions (general directors, etc.) with evidence of the position and functions.
- In case of doubt as to the scope of the rule, apply the interpretation most favorable to the worker.

7. Frequent errors

- Calculating on a base other than taxable income under the Income Tax Law.
- Omitting the three-month cap or the three-year average (Section VIII).
- Failing to include temporary workers who are entitled.
- Paying after the deadline or without keeping receipts.
- Applying the three-year average only to workers with full seniority, instead of by category/position.

A documented and timely PTU calculation, applying the amount most favorable to the worker, avoids most individual and collective disputes related to this concept.

Guidance document. The final calculation requires joint tax and labor review. Based on the Federal Labor Law and the STPS Guide (2022).