

Congress approves the amendment to the outsourcing regime

Labor & Tax – April 21th, 2021

On April 20, 2021, the Senate of the Republic approved the amendment proposed to the subcontracting regime.

The most important labor and tax aspects are the following:

1. **Subcontracting personnel is prohibited**, with subcontracting of personnel being understood as a provision of services in which an entity or individual provides or makes available to another entity its own employees for the other entity's benefit.
2. **Contracting specialized services** will be permitted only if such services or tasks are not part of the corporate purpose or main economic activity of the contracting party, and as long as the contracted party is listed in a public registry.
3. **Complementary or shared services or tasks provided between companies of the same corporate group will also be considered as specialized** as long as they are not considered within the corporate purpose or the main economic activity of the company that receives such services or tasks.
4. **Individuals or entities providing personnel outsourcing services will be required to complete a registration process** before the Labor Ministry and to renew such registration every three years. To be registered, individuals or entities must prove to have complied with all their tax and social security obligations. Provisions applicable to the registration process will be issued by the labor authorities in a 30-day period after the law amendment has been published.
5. **A joint and several liability** is recognized between the individual or entity who engages the specialized services or specialized works and the contractor who fails to comply with the obligations resulting from the relationships with its workers.
6. **As a legal requirement for an employer substitution** to occur, the assets of the company or establishment are to be transferred to the substitute employer.
7. **The amount of profit sharing to be paid to employees, will be capped to three months of salary** or the average amount received by the employee in the last three years; being applicable the amount that results more favorable to the employees.

8. **Economic sanctions** could result for employers who benefit from personnel subcontracting arrangements in violation of the new provisions of the Mexican Labor Law.
9. **For tax purposes**, it is established that tax invoices issued for disallowed subcontracting of personnel will not have legal effects (i.e., non-deductible expense for income tax purposes and inability to claim a value added tax credit on such expense).
10. The use of simulated schemes of provision of specialized services or the execution of specialized works, as well as the subcontracting of personnel, **will be considered a tax criminal offense**.

As soon as the amendment is published in the Official Gazette, individuals or companies that act under a subcontracting regime, will have 90 calendar days to perform the following actions:

- Companies rendering subcontracting services will need to complete the registration process before the Labor Ministry.
- Companies with a personnel subcontracting arrangement in place will be allowed to transfer its employees to the beneficiary company without need of transferring assets to the substitute employer as long as the latter recognizes the employment conditions of employees, including seniority.

New provisions under labor and social security law will enter into force the day following their publication in the Official Gazette. Modifications to the tax provisions will become effective on August 1, 2021, regardless of the date of publication of the reform, which is expected to occur at the latest on May 1.

Consequently, it is necessary that the companies finalize their analysis with the purposes of assessing the way in which they will comply with these new provisions regarding insourcing and outsourcing arrangements.

In case of doubt or comment, do not doubt to contact.

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