

Additional obligations and implications derived from labor subcontracting reform.

Labor & Tax – January 17th, 2022

On April 23, 2021, amendments to the Federal Labor Law, the Social Security Law, the National Housing Fund Institute for Workers Law, the Federal Fiscal Code, the Income Tax Law, and the Value Added Tax Law, were published, aimed at regulating the labor outsourcing regimes in Mexico.

Said amendment, among other things, implied the imposition of new periodic obligations, as well as certain actions to be taken in accordance with the following:

Periodic social security obligations

The specialized service providers should obtain their registry before the Labor Ministry ("STPS" per its acronym in Spanish) through the registration in the Registry of Specialized Service Providers or Specialized Works ("REPSE" per its acronym in Spanish) in order to provide specialized services.

In this regard, companies have the obligation to report on a quarterly basis to the Mexican Social Security Institute ("IMSS", per its acronym in Spanish) and the National Workers' Housing Fund Institute ("INFONAVIT", per its acronym in Spanish) service agreements which were entered into in the past four months in which services are being provided by means of a personnel subcontracting arrangement between the parties or shared services company hiring only those employees who perform activities considered complementary.

It is important to note that information corresponding to the last quarter of 2021 should be uploaded no later than on January 17, 2022, and that specialized service providers who did not execute any service agreements to be registered in the corresponding quarter must inform the aforementioned Institutes of this fact.

For these purposes, the IMSS and INFONAVIT enabled digital platforms for individuals and companies registered before the REPSE to be able submit the requested information.

Ministry of Labor and Social Welfare

Companies registered before the REPSE have started to be subject to inspections by the STPS to verify and validate the information and documentation provided at the time of registration before the REPSE. Therefore, it is important to have all the necessary information and documentation to attend a visit by the authorities.

Employees' Profit Sharing

As a result of the amendments, several issues related to the determination of the Employees' Statutory Profit Sharing ("PTU" per its acronym in Spanish) to be paid during the 2022 tax year exists, for example, the calculation procedure, the determination of the foreseen caps, how to determine the PTU corresponding to employees who worked in more than one company during 2021, among others.

Income tax and value added tax

For the purpose of filing the 2021 annual return, it is necessary to verify the validity of the deductions as well as the accreditation of the value added tax ("VAT") related to payments made to specialized service providers during the 2021 tax year, especially with respect to those months in which the specialized service providers did not comply with all the requirements established by the reforms, such as obtaining the REPSE, among others.

Foreign Trade

It is important to mention that companies that have a VAT or IEPS (special tax on production and services) certification must submit the notice referred in section 22/LA of Annex 2 of the General Rules of Foreign Trade no later than January 21, 2022.

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

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