

Mexico: Reforms to the subcontracting regime (Outsourcing).

On April 23, 2021, the reforms to the labor subcontracting regime, which had been under discussion, were finally published in the Federal Official Gazette.

The reformed laws which affect the private sector are: the Federal Labor Law ("LFT"), the Social Security Law ("LSS"), the Law of the National Workers' Housing Fund Institute ("LINFONAVIT"), the Federal Tax Code ("CFF"), the Income Tax Law ("LISR") and the Value Added Tax Law ("LIVA").

The following are the most relevant aspects of the reform:

I.1. LFT

- It includes the **express prohibition of the subcontracting of personnel**, which consists of "an individual or legal entity providing or making available its own workers for the benefit of another".
- Recognizes the participation, without employer liability, of employment **agencies and intermediaries** in the recruitment, selection, training and qualification of personnel.
- Excludes from the concept of subcontracting of personnel **the rendering of specialized services and the execution of specialized works**, which are not part of the corporate purpose or the predominant economic activity of the beneficiary thereof.
- It considers specialized the complementary or shared services and works rendered between the same **business group**, provided they are not part of the corporate purpose or the main activity of the company receiving them.
- It establishes that the contracting of specialized services and the execution of specialized works must be **formalized through a written agreement**, establishing the purpose of the services or works to be executed, as well as the approximate number of workers that will participate in the performance of said agreement.
- Establishes the **joint and several liability** of the contracting party regarding the contractor's failure to comply with the obligations arising from the relationship with its employees.
- The contractor must be **registered with the Ministry of Labor and Social Welfare** ("STPS") and it will be included in a public registry that will be available on an internet website. The registry shall be understood as granted by an automatic or express affirmative decision of the STPS. The STPS shall deny or cancel at any time the registration of those contractors that do not comply with the requirements of the law. The aforementioned registry must be renewed every 3 years.
- It establishes a **sanction** of 2,000 to 50,000 times the Unit of Measurement and Update ("UMA") (**\$174K to \$4.4 Million Pesos approx.**), to those subcontracting personnel or providing specialized services or performing specialized works without the corresponding registration, as well as to the beneficiaries thereof.



- It establishes a limit for the Employee Profit Sharing (PTU) of the company, consisting of 3 months of salary or the average of the participation received in the last 3 years, whichever is more favorable for the employee.

I.2. LSS

- Establishes the **joint and several liability** of the party contracting specialized services or works with respect to the social security obligations of the contractor related to the workers employed to execute said agreements.
- It incorporates the obligation to report on a quarterly basis the agreements for the rendering of specialized services or execution of specialized works entered into by the contractor and other information requested with respect thereto.

II.3. LINFONAVIT

- It establishes that contractors of specialized services or executing specialized works, are obliged to submit **quarterly information** related to the agreements entered into, such as general data, amounts of contributions, information of the workers, base salary of contribution and a copy of the authorization issued by the STPS.

II.4 CFF

- It establishes that the payments made for the **subcontracting of personnel** to perform activities related to both corporate purpose and the main economic activity of the contracting party **will not be tax deductible or creditable**.
- The tax effects will also **not be given** to services in which the contractor provides or makes available to the contracting party, **workers** who:
 - **Originally had been workers of the contracting party** and had been transferred to the contractor, by means of any legal scheme, and,
 - **Cover the main activities of the contracting party.**
- Establishes that tax effects may be given to payments for subcontracting of **specialized services or works**, provided the contractor is registered with the STPS.
- Sets forth **joint and several liability** for parties contracting specialized services or works for the taxes that would have been caused in charge of the workers with whom the service is rendered.
- Considers as an **aggravating** factor, the making of deductions or crediting of payments in connection with subcontracting.
- Stipulates that the crime of **tax fraud** is considered aggravated when simulated schemes of rendering specialized services or executing specialized labors are used, or subcontracting is conducted.



II.5 LISR

- Establishes that payments made for subcontracting **are not deductible**.

II.6 LIVA

- Establishes that the payments made for subcontracting are **not creditable**.

The reforms became effective, in general, on **April 24, 2021**, and for the following specific subject-matters, the following terms are considered:

- On **May 24, 2021, the STPS** shall issue the general provisions that determine the procedures related to **the registration** of contractors of specialized services or works.
- On **July 24, 2021**, contractors of specialized services or works must obtain **registration before the STPS**.
- Until **July 24, 2021**, workers hired under the labor subcontracting regime may be transferred to the beneficiary company via employer substitution, without the need for any transfer of assets and provided that the labor rights of the workers are recognized, including their seniority and terminated occupational risks.

ECIJA México, S.C.¹

Joaquín Rodríguez

(jrodriguezz@ecija.com)

Ricardo Chacón

(rchacon@ecija.com)

Berenice Sagaón

(bsagaon@ecija.com)

¹ All rights reserved, ©, ECIJA México, S.C., Insurgentes Sur 1605, Piso 10, Módulo D, Benito Juárez, Ciudad de México, C.P. 03900, 2021. All rights reserved. Any reproduction, distribution, public communication, public disclosure, transformation, whether total or partial, translation and any and all other acts or forms of exploitation of this work are expressly prohibited, except with prior written express authorization from ECIJA México, S.C.