

Approval in Chamber of Deputies of the bill reforming subcontracting

Yesterday the Chamber of Deputies announced the approval opinion of the reform bill to regulate subcontracting, which bill was presented at the end of last year by the Federal Executive Branch. The laws that will be affected by the reform are the Federal Labor Act, the Social Security Act, the National Workers Housing Fund Institute Act, the Federal Tax Code, the Income Tax Act (hereinafter, IT) and the Value Added Tax Act (hereinafter, VAT).

The approval opinion by the Chamber of Deputies, once approved by the Chamber of Senators, will enter into force on the day following its publication in the Official Federal Gazette, with some exceptions that will enter into force on August 1, 2021 which are specified below in section B), includes the following essential considerations:

A) For labor purposes:

1. The subcontracting of personnel consisting of an individual or entity providing or making its own workers available to another is prohibited.
2. Subcontracting specialized services or the execution of specialized works is permitted, provided they do not form part of the corporate purpose or of the preponderant economic activity of the beneficiary thereof and that the personnel company is registered before the Ministry of Labor and Social Welfare (hereinafter, STPS), for such purposes.
3. The providing of specialized services is permitted with respect to complementary or shared activities provided between companies of the same business group, as long as such activities do not form part of the corporate purpose or of the preponderant economic activity of the company that receives them. In other words, shared service centers are permitted.
4. The formalities and requirements are established for the subcontracting of specialized services or the execution of specialized works, which include the execution of a written contract which establish the purpose of the services to provide or the works to execute, as well as the number of workers that will participate to perform it.
5. It is established that the individual or entity that subcontracts specialized services or the execution of specialized works with a personnel company that breaches the obligations derived from the relations with its workers, will be jointly liable in relation to the workers used to provide the services.
6. Those who provide the above mentioned services must be registered before the STPS. The registration must be renewed every 3 years. The STPS will create a registry of providers, which will be public and may be consulted online. The rules governing the registry must be issued within 30 calendar days after the entrance into force of the reform. The individuals or entities that provide subcontracting services will have a period of 90 calendar days to register.
7. In relation to employer substitution, it is established that the assets of the company or establishment must be transferred to the substitute employer for the employer substitution to take effect. The exception is that, for purposes of regularization of companies that currently have subcontracted employees, the transfer of assets will not be requested as a requirement as long as the rights and seniority of the transferred workers are respected during a period of 90 calendar days from the entrance into force of the Reform.
8. A limit is established on the payment of profit-sharing, which will be a maximum of three months of salary or the average of the share received in the last three years, whichever is more favorable to the worker.

9. Sanctions are imposed on anyone who:
 - a. Refuses inspection and oversight by the labor authorities in its establishment – 250 to 5,000 times the Unit of Measurement and Indexing (hereinafter, UMA – currently MX\$89.62).
 - b. Subcontracts personnel or presents subcontracting services without having the corresponding registration – 2,000 to 50,000 times the UMA.
 - c. Benefits from subcontracting in violation of the legal provisions– 2,000 to 50,000 times the UMA.

B) For tax purposes:

1. The payments or compensation for subcontracting personnel (definition incorporated into the Federal Tax Code in harmony with the reforms to the Federal Labor Act) to perform activities related to the corporate purpose or with the preponderant economic activity of the contracting company, may not be deducted (for purposes of IT) or credited (for purposes of VAT).
2. The services in which personnel are provided or made available to the contracting company will not be given tax effects for deduction or crediting when any of the following premises arises:
 - a. When the workers that the service company provides or makes available to the contracting company, have originally been workers of the latter and were transferred to the service company, by any legal concept, and
 - b. When the workers the service company provides or makes available cover the preponderant activities of the contracting company.
3. The deduction and the crediting of the payments or compensation made for subcontracting specialized services or the execution of works (that are not part of the corporate purpose or of the preponderant economic activity of the beneficiary thereof) is conditioned on the contracting company obtaining from the service company certain documentation and that the latter provides it.
In line with the above, the premise of withholding 6% of the value of the compensation actually paid for VAT purposes is eliminated.
4. The complementary or shared services or works between companies of the same business group will also be considered specialized as long as these do not form part of the corporate purpose or the preponderant economic activity of the company that receives them.
5. A premise of joint tax liability is incorporated for the receiver of specialized services or for the contracting party of specialized works, with respect to the contributions that would have been caused for the workers of the service company.
6. Premises of recidivism are incorporated that increase the penalties for cases in which illegal services are deducted or credited; and an infraction and sanction are established for the service company that does not provide the contracting company with the information that will be necessary for the expense to be deductible or the VAT transferred creditable (from MX\$150,000.00 to MX\$300,000.00 pesos for each violation).
7. The conducts consisting of using simulated schemes for providing specialized services or executing specialized works, or subcontracting personnel, constitute qualifiers in the committing of the crime of tax fraud and the equivalent.

C) For social security purposes:

1. The contracting party of services or works will be jointly liable with the service company that violates its social security obligations in relation to the workers used to provide such services or execute such works.
2. The service companies for specialized services or specialized works must provide quarterly (no later than the 17th of the months of January, May and September) for purposes of the Social Security Act and the National Workers Housing Fund Institute Act certain information on the contracts executed in the quarter in question.
Failure to file or tardiness in filing such quarterly information (for purposes of the Social Security Act) will be sanctioned with a fine of 500 to 2,000 times the UMA.
3. For purposes of the National Workers Housing Fund Institute Act it is established that, in the case of employer substitution, the substituted employer will be jointly liable with the new employer for the obligations arising before the date of the substitution, for a term of three months.
4. During the 90 calendar days following the entrance into force of the reform, the migration of workers

from the companies that operated under the labor subcontracting regime will be considered employer substitution (for purposes of the Social Security Act), provided the destination company of the workers recognizes their labor rights before the legal instances.

Furthermore, certain rules are established for the determination of the class, section and premium of the Occupational Hazards Insurance Branch in the case of this kind of employer substitution.

The next step in the legislative process is that the Chamber of Senators reviews the approval opinion and then amends it or approves it.

We will keep you informed of any advance or change. We are available to resolve any doubts regarding subcontracting matters, and for the preparation and implementation of action plans to comply with the reform.

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Mexico City, April 15, 2021.

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