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EY LAW Flash

# Bill on Subcontracting Matters



On November 12, 2020, President Andrés Manuel López Obrador, in the morning press conference, signed a bill on Subcontracting matters.

The purpose of the bill is to add and repeal various articles of the Federal Labor Law, Social Security Law, Law of the National Workers' Housing Fund Institute, Federal Fiscal Code, Income Tax Law and the Value Added Tax Law.

In labor matters, the most significant proposed changes are the following:

- ▶ Prohibition of subcontracting of personnel. Subcontracting of personnel is considered to be the service consisting of an individual or legal entity providing or making available its own workers for the benefit of another.
- ▶ Those who provide services or execute specialized works that are not part of the corporate purpose or economic activity of the beneficiary are not considered to be subcontracting of personnel.
- ▶ The specialized services or works shall be formalized through a written agreement and shall also have the authorization of the Ministry of Labor and Social Welfare to be able to provide them.

- ▶ If the specialized service provider fails to comply with its obligations to its workers, the beneficiary of the service shall be jointly and severally liable.
- ▶ The specialized service providers shall be up to date with their labor, tax and social security obligations and prove the specialized nature of the service as requirements for obtaining authorization from the Ministry of Labor and Social Welfare. This authorization shall be renewed every three years.
- ▶ A fine of 2,000 to 50,000 times the Unit of Measure and Update<sup>1</sup> shall be imposed on anyone who provides a subcontracted service or provides a specialized service without the corresponding authorization, as well as on the beneficiary of the service.
- ▶ The transfer from the substituted employer to the substitute employer of the assets subject matter of the company or establishment was added as a legal requirement for the employer substitution.

Regarding Social Security and Housing, this bill proposes the changes mentioned below:

#### Social Security Law

- ▶ Several sections are reformed to make them harmonious with the proposed changes in the Federal Labor Law.
- ▶ Only agreements entered with third parties that provide services or execute works in a specialized manner are permitted, which are also defined as those that are not contained in the main purpose or economic activity of the beneficiary entity.
- ▶ The joint and several liability of the contracting party is confirmed if the specialized services provider fails to comply with its obligations before the Institute.
- ▶ In order to verify compliance with these new obligations regarding Social Security and work, the Mexican Institute of Social Security shall enter into agreements with the Ministry of Labor and Social Welfare, including the exchange of information.
- ▶ The obligation to inform the Mexican Institute of Social Security every quarter of the agreements entered by the Specialized Services providers is maintained, its beneficiary is excluded.
- ▶ It eliminates the possibility of obtaining employer registrations by class and provides a transitional process for exchanging registrations by class previously granted.
- ▶ A penalty is included, and fines are set from 500 to 2,000 times the UMA for those who omit or extemporaneously file the information of the agreements entered for Specialized Services.

#### INFONAVIT Law

- ▶ The bill considers the figure of joint and several liability of substitute employers as already contemplated by the Social Security law.
- ▶ The beneficiaries of the Specialized Services shall be jointly and severally liable if the provider fails to comply with obligations before Infonavit, limited only to the workers who have participated in such projects.
- ▶ Just as the Social Security reform, it is harmonized with the changes in the Federal Labor Law.
- ▶ The obligation to report Specialized Services agreements to Infonavit every four months is included.

<sup>1</sup> The value of the Unit of Measure and Update for 2020 is \$86.88 pesos.

- ▶ Like the Mexican Institute of Social Security, in order to verify compliance with these new housing and labor obligations, Infonavit shall enter into agreements with the Ministry of Labor and Social Welfare that will include the exchange of information.
- ▶ The fact that a group of three or more people participate in the simulation of Specialized Services or in the provision of personnel subcontracting services is added to the FFC as a case of **organized crime**.

With respect to tax matters, this bill contemplates important changes to the Federal Fiscal Code (“FFC”), the Income Tax Law (“ITL”) and the Value Added Tax Law (“VATL”). The most relevant proposed changes are:

- ▶ Similar to the labor legislation, to deny the deduction for purposes of the ITL and the accreditation for purposes of the VATL in matters of subcontracting of personnel, clarifying that Specialized Services are not considered within this description.
- ▶ Fines are included for taxpayers who provide Specialized Services but do not provide the information required by the various tax laws.
- ▶ Inclusion as tax fraud of simulated schemes of Specialized Services or carry out the subcontracting of personnel.
- ▶ For matters of Specialized Services, both the ITL and the VATL provide new requirements to make deductible and creditable, respectively, such services, being primarily the obtaining by the contractor of information similar to that established in the laws in force until 2019 and in addition obtain a copy of the Specialized Services record. In this respect, it is proposed to repeal the withholding currently provided in Article 1-A of the VATL with respect to the services of provision of personnel.

According to the transitory provisions of the bill, in case it is approved, it would enter into force on the day following its publication in the Official Journal of the Federation, with the exception of the amendments to the Fiscal Code, Value Added Tax Law and Income Tax Law, that would enter into force on January 1, 2021. The bill has yet to go through the legislative process in the Congress of the Union, where it could undergo some changes before being approved, if any.

If the bill is approved in the terms in which it was filed, it would have substantial impacts on the companies that receive services for which personnel is made available, regardless of whether the service is provided by a related party or a third party.

For further information about this bulletin, please contact any of the following professionals:

**Óscar Ortiz**  
oscar.ortiz@mx.ey.com

**Adrian Guarneros**  
adrian.guarneros@mx.ey.com

**Alejandro Caro**  
alejandrocara2@mx.ey.com

**Juan Pablo Lemmen-Meyer**  
jpablolemmen@mx.ey.com

**Rodrigo Castellanos**  
rodrigo.castellanos@mx.ey.com

**Jorge Libreros**  
jorge.libreros@mx.ey.com

**Juan Carlos Curiel**  
juan.curriel@mx.ey.com

**Jesús Montaña**  
jesus.montano@mx.ey.com

**Carlos de la Fuente**  
carlos.de-la-fuente@mx.ey.com

**Rodrigo Ochoa**  
rodrigo.ochoa@mx.ey.com

**Jorge García G.**  
jorge.garcia@mx.ey.com

**Mario Ríos**  
mario.rios@mx.ey.com

**Yeshua Gómez**  
yeshua.gomez2@mx.ey.com

**Abril Rodríguez**  
abril.rodriguez@mx.ey.com

**Diego González**  
diego.gonzalez.aguirre@mx.ey.com

**Teresa Rodríguez**  
teresa.rodriguez@mx.ey.com

**Enrique González**  
enrique.cruz@ey.com

**Allen Saracho**  
allen.saracho@mx.ey.com

**Manuel González**  
manuel.gonzalezlpz@mx.ey.com

**Koen van’ t Hek**  
koen.van-t-hek@mx.ey.com

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