

## **Mexico's Subcontracting Regime Amendment**

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On April 23rd, 2021, a decree was published in Mexico's Official Gazette amending, adding and abrogating several provisions of the Federal Labor Law, the Social Security Law, the Law of the National Workers' Housing Fund Institute, as well as the Federal Tax Code, the Income Tax Law and the Value Added Tax Law, regarding Labor Subcontracting.

This decree became effective the day after its publication in the Official Gazette of the Federation.

The following are the main points of the Amendment:

- Subcontracting of personnel is prohibited, which is understood as when an individual or legal entity provides or makes available its own workers for the benefit of another.
- The subcontracting of specialized services and/or the execution of specialized projects that are not part of the corporate purpose or the main economic activity of the beneficiary is allowed, provided that the contractor is registered before certain public registry.
- Complementary or shared services or projects rendered between companies of the same corporate group will also be considered as specialized as long as they do not form part of the corporate purpose or of the main activity of the company receiving them.
- Joint and several liability (with respect to the contractor's workers) is established for the individual or legal entity that subcontracts with a contractor that fails to comply with the obligations derived from the relations with its workers.
- The obligation is included for specialized service providers to register with the Ministry of Labor and Social Welfare, which will be created for this purpose. Said registry must be renewed every three years.
- A maximum limit of three months of salary per employee is established for profit sharing or the average of the profits received in the last three years, whichever amount is more favorable to the employee.
- The deductibility or accreditation for purposes of the Income Tax Law and the Value Added Tax Law, respectively, is regulated. Only payments for the subcontracting of services or projects of a specialized nature will be deductible, and not those derived from schemes that are considered as subcontracting. Tax provisions to be in full force and effect as of September 1<sup>st</sup>, 2021.

Subsequently, on May 24th, 2021, the general provisions for the registration of legal entities that provide specialized services or perform specialized projects referred to in Article 15 of the Federal Labor Law were published in the Official Gazette of the Federation, which entered into force on May 25, 2021. The following are some points to take into account for

the registration of legal entities in the Public Registry of Contractors of Specialized Services or Specialized Projects (hereinafter the "Registry"):

- Legal entities wishing to register in the Registry must be up to date with their tax and social security obligations as of the date on which the application for registration is made.
- Legal entities wishing to be included in the Registry and obtain registration must establish precisely the service they wish to provide or the type of project they wish to execute.
- The Ministry, through the Unit of Dignified Work, through the General Directorate of Federal Labor Inspection, may deny or cancel the registration.
- Through the Platform it will be possible to verify at any time the registration and the validity of the registration of companies that provide specialized services or perform specialized projects.

As per the above information, every business Group doing business in Mexico should review its current outsourcing / insourcing schemes from a multidisciplinary perspective that includes labor, corporate, tax and social security aspects, in order to make the pertinent adjustments aiming to comply with the new regulations.