



## PROJECT

The President of the United States of Mexico has submitted to the Chamber of Deputies of the Congress of the Union an initiative with a project of Decree by means of which several dispositions of the Federal Labor Law, the Social Security Law, the National Fund Institute for the Housing of Workers Law, the Federal Fiscal Code, the Income Tax Law and the Value Added Tax Law are amended, added and derogated.

In its Explanatory Statement, the initiative refers that the National Development Plan 2019-2024 sets forth that the most important objective of the Fourth Transformation is that by 2024, the people of Mexico lives in a wellness environment; thus, in order to achieve this goal the initiative searches to strengthen the employment conditions through a policy that eliminates those practices that damage the labor rights of the employees and that decrease the obligations of the employers in detriment of the public treasury.

Therefore, the President of the United Mexican States proposes the following with his initiative:

### **A. Federal Labor Law**

Concept of outsourcing of personnel To set forth that the outsourcing of personnel is forbidden; modifying in its entirety the concept of outsourcing of personnel to set forth that it consists in an individual or entity providing workers of its own or making them available for the benefit of a third party.

### **Not considered as outsourcing of personnel**

To set forth that the outsourcing of personnel does not exist in the rendering of specialized services or the execution of specialized works that are not a part of the corporate purpose or of the economic activity of the person who benefits thereof, provided that the individual or entity who provides the services is authorized by the Labor and Social Security Ministry for the rendering of specialized services or for the execution of specialized works.

Additionally, that the rendering of specialized services or the execution of specialized works shall be formalized through a written contract which shall set forth the object of the services to be provided or of the works to be executed as well as the number of workers that will participate in the performance of such contract.

### **Authorization from the Labor and Social Security Ministry**

To obtain the authorization of the Labor and Social Security Ministry, the individual or entity who provides the specialized services or who executes the specialized works shall evidence the specialized character of the service that it grants and be in compliance of its labor, social security and tax obligations. The persons who already provide such services will have a term of 6 months, as of the publication of the general provisions issued by the Labor and Social Security Ministry, to obtain the authorization from such ministry.

The Labor and Social Security Ministry will issue the general provisions that will determine the related procedures for obtaining the authorization, within a term of 4 months as of the date in which the Decree for issuing such provisions becomes effective.

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The authorization shall be renewed every 3 years.

The Labor and Social Security Ministry will deny or revoke the authorization to those individuals or entities that do not comply with the requirements contemplated by the Federal Labor Law.

#### Joint Liability

The individual or entity that contracts the rendering of specialized services or the execution of specialized works will be jointly responsible with the individual or entity who provides the services, in regards to the obligations that the latest breaches with its workers, of those workers used for the rendering of the services contracted.

#### Sanctions

A fine of between 2,000 and 50,000 times the Unit of Measure and Updating will be imposed to whomever performs outsourcing of personnel, as well as to the individuals or entities that provide specialized services or execute specialized works without the corresponding authorization, regardless of any other liabilities under the applicable legislation.

The Labor and Social Security Ministry will inform the facts to the competent authorities.

The same sanction will be applicable to those individuals or entities that benefit themselves from the outsourcing of personnel or from the supply of specialized services or from the execution of specialized works without the corresponding authorization.

### **B. Social Security Law**

#### Joint Liability

The individual or entity who contracts the provision of specialized services or the execution of specialized works will be jointly responsible with the individual or entity that provides the services, in regard to the social security obligations that the latter breaches with its workers, of those workers used for the rendering of the services contracted.

#### Employers' Obligations

The individual or entity who renders specialized services or executes specialized works shall quarterly communicate, within the first 15 days of each January, April, July and October, the following information of the contracts entered into in the corresponding quarter:

1.- Of the Parties of the contract: Name, denomination or corporate name; type of entity, in its case; corporate purpose; corporate, fiscal, and in its case, conventional domicile for purposes of the contract; Federal Taxpayer Registry number; Employer Registration before the IMSS; information of its incorporation deed (such as number of public deed, date, notary public, number of notary and place that corresponds, section, book, page or mercantile folio, in its case, and date of registration before the Public Registry of Commerce); and name of the legal representatives of the parties who subscribed the contract.



2.- Of each contract: purpose; term; list of workers or other subjects of assurance that will be made available to the beneficiary of the services or works contracted, indicating their name, CURP, social security number and contribution base salary, as well as name and Federal Taxpayer Registry number of the beneficiary of the services for each of the contracts.

3.- Copy of the authorization issued by the Labor and Social Security Ministry for the rendering of specialized services or the execution of specialized works.

The information shall be submitted before the IMSS or through magnetic, digital, electronic, optical, optical magnetic or other means of any other nature, pursuant to the general rules issued for such purpose by the Technical Board.

Employers shall begin to provide the information of item 1 and 2 above, within a term of 6 months as of the date in which the Decree is effective.

The copy of the authorization shall be submitted once the Labor and Social Security Ministry makes available the mechanism for obtaining it.

#### Assignment of registration for each class

For purposes of the classification of the labor risk insurance, it eliminates the right of the employer to be assigned with an employers' registry for each one of the classes so required.

Employers who have requested to IMSS the assignment of one or more employers' registries for class for the inscription of their employees on a national level, will have a term of 120 days as of the legal reforms become effective to unsubscribe such employers' registries and, if applicable, request to the IMSS the granting of an employers' registry in terms of the provisions of the Regulations of the Social Security Law in matter of Affiliation, Classification of Companies, Collection and Inspection.

Once such term has concluded, such employers' registries for class that have not been unsubscribed, will be unsubscribed by the IMSS.

#### Breach and Sanction

It is included as breach not submitting or submitting out of the legal term the information of the contracts entered into during the correspondent quarter as mentioned above, which shall be sanctioned with a fine equivalent to the amount of between 500 and 2,000 the value of a Unit of Measure and Updating.

### **C. National Fund Institute for the Housing of Workers Law**

#### Joint Liability

The individual or entity who contracts the provision of specialized services or the execution of specialized works will be jointly responsible with the individual or entity that provides the services, in regard to the obligations in matter of social security that the latest breaches with its workers, of those workers used for



the rendering of the services contracted.

#### Employers' Obligations

The individuals or entities authorized to perform the rendering of specialized services or the execution of specialized works shall provide to the INFONAVIT each four months, no later than the 17<sup>th</sup> day of the month that follows the closing of such four month period, the following information:

- 1.- General data.
- 2.- Service contracts.
- 3.- Amounts of the contributions and amortizations.
- 4.- Information of the workers.
- 5.- Determination of the contribution base salary; and
- 6.- Copy of the authorization issued by the Labor and Social Security Ministry.

These requirements and the dates of submission before the INFONAVIT shall be complied pursuant to the procedures that this entity publishes through electronic means.

#### **D. Federal Fiscal Code**

##### Expenses not deemed as strictly indispensable

The payments or considerations performed for concept of outsourcing of personnel (its definition for tax purposes is identical to the definition in the Federal Labor Law) will not be considered as strictly indispensable expenses and will not have fiscal effects of deduction and crediting.

Such as in the Federal Labor Law, the rendering of specialized services and the execution of specialized works different from the corporate purpose or the economic activity of the beneficiary will not be considered as outsourcing of personnel for tax purposes, provided that the authorization referred by the Federal Labor Law has been granted and that such authorization is provided to the contracting party.

##### Joint Liability

It includes that the individuals or entities that receive services or that contract works referred by article 15-D of the Federal Fiscal Code are also jointly responsible with the taxpayers for contributions generated on behalf of the workers with which the service is provided.

##### Aggravating of breaches

It will also be an aggravating of a breach when a deduction or crediting is performed in contravention to the provisions of the Income Tax Law or of the Value Added Tax Law.



### Breach and Sanction

It is included as breach that the contractor does not comply with the obligation of delivering to the contracting party the information and documentation set forth as requisite for the deduction in matter of income tax law and for the crediting in matter of value added tax derived from the rendering of specialized services or from the execution of specialized works.

Such breach shall be sanctioned with between MX\$150,000 and MX\$300,000 for each unfulfilled obligation of delivering information.

### Qualified Crime

The crime of tax fraud will be qualified when simulated schemes of rendering of specialized services or of execution of specialized works are used or when the outsourcing of personnel is performed.

## **E. Income Tax Law**

### Requisites for deductions

For purposes of deduction of the rendering of specialized services or of the execution of specialized works, the contracting party shall obtain from the contractor:

- 1.- Copy of the authorization in force of the Labor and Social Security Ministry referred by article 15 of the Federal Labor Law.
- 2.- Copy of the tax receipts for concept of salaries of workers used to render the service or to execute the work that corresponds.
- 3.- Copy of the payment receipt issued by the banking institution of the statement of the tax withholdings performed to such workers.
- 4.- Copy of the payment of the employer-employee contributions to the IMSS; and
- 5.- Copy of the payment of the contributions to the INFONAVIT.

The contractor will be bound to deliver to the contracting party the foregoing evidence and information.

### Non-Deductibles

The payments performed for outsourcing of personnel will not be deductible for purposes of income tax.



## **F. Value Added Tax Law**

### Crediting requirements

For purposes of crediting the value added tax, in case of specialized services or execution of specialized works, the contracting party shall obtain from the contractor:

- 1.- Copy of the authorization in force of the Labor and Social Security Ministry referred by article 15 of the Federal Labor Law; and
- 2.- Copy of the value added tax declaration and evidence of the corresponding payment in which the contacting party paid the consideration and the value added tax that was transferred to it.

The contractor will be bound to deliver to the contracting party a copy of the foregoing information which shall be delivered before the last day of the month that follows the one in which the contracting party has paid the consideration for the service received and the value added tax transferred to it.

In case that the contracting party does not collect the documents referred by this section in the term indicated, it shall file a complementary declaration diminishing the amounts credited by such concept.

## **G. Transitory Articles of the Decree**

### Entry into force

The Decree will become effective on the day that follows its publication in the Federal Official Gazette, except for the provisions of the Federal Fiscal Code, the Income Tax Law and the Value Added Tax Law which shall become effective as of January 1<sup>st</sup>, 2021.

### Sanctions before the entry into force of the Decree

The criminal conducts committed before the entry into force of the Decree will be sanctioned pursuant to the legislation in force at the time of the occurrence of the facts.

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