

Tax Alert

Changes in the Social Security -IGSS- regime that impact the deductibility of the payroll cost for Income Tax purposes

On 16 January 2023, Government Agreement Number 9-2023 was published in the official gazette, through which the new Regulations for Registration in the Social Security Regime, Agreement Number 1529, were approved. This Government Agreement repeals Agreement Number 1123 issued by the Board of Directors of the Guatemalan Social Security Institute (IGSS).

This new Regulation eliminates the previous condition of having to contract three (3) or more workers to trigger the Employer's obligation to register with the Social Security Regime, and now establishes that all employers are obligated to register with the Social Security Regime and to register all their workers, regardless of how many they have.

In addition, this new Regulation eliminates the provision that had established that in the case of employer legal entities in which up to two legal representatives were accredited as shareholders or partners of such legal entities, they were not obligated to report those legal representatives as workers in the Social Security payrolls and pay the respective social security taxes.

Therefore, with the entering into effect of this new Regulation on 16 January 2023:

A.

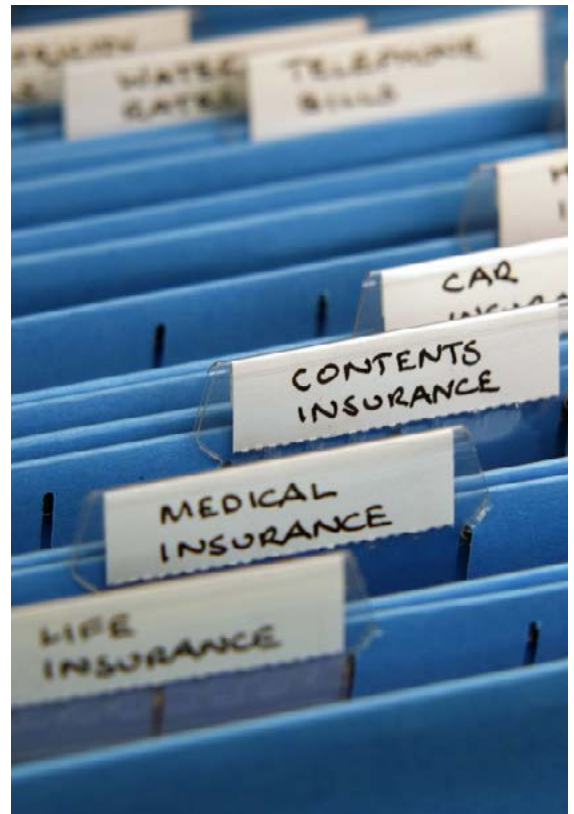
The Employers that had not been registered with the Social Security office because they had fewer than 3 workers must now register themselves and their employees, and start to pay the IGSS employer and employee contributions; and

B.

The legal representatives that had not reported themselves to IGSS as employees because they were shareholders or partners of the employing entity must start to be reported, and the employer and employee contributions must be paid on their remunerations subject to IGSS.

From the perspective of the employing entity, when it pays income tax under the profits regime, the cost or expense of the payroll for salaries, wages and benefits for the employees that per the new regulations must be registered and contribute under the Social Security Regime, but are not registered, is not deductible. This is due to the fact that the Tax Update Law establishes that the salaries, wages and benefits that are not demonstrated with the copy of the payroll of social security contributions filed with the Guatemalan Social Security Institute (IGSS), when applicable, are not deductible.

It is advisable that all employers immediately ensure that they are in compliance with the new regulations, in particular in those cases of employers with fewer than 3 employees, and in all those cases in which the legal representatives had not been making IGSS contributions and that now must do so.



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Byron Martínez

CEO Guatemala & El Salvador
TLB Lead Partner
bymartinez@deloitte.com



Mónica Alvarado

Tax Manager
mfalvarado@deloitte.com

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