



## Tax and Legal Services

Tax Alert 05/2021

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# Labor outsourcing report approved by the Chamber of Deputies

On 14 April 2021, the Plenary session of the Chamber of Deputies approved the Decree to amend, add and revoke different provisions of the Federal Labor Law, Social Security Law and Law of the National Workers' Housing Fund, together with the Federal Tax Code (FTC), Income Tax (ITL) and Value Added Tax (VATL) laws pursuant to labor outsourcing, which was submitted to the Senate to provide the legislative follow-up established by the Constitution.

## **Federal Labor Law (FLL)**

Please note that the legal reform bill on labor outsourcing approved by the Chamber of Deputies will be discussed in further detail by our labor experts in a separate bulletin.

Before discussing the tax reform approved by the Chamber of Deputies, we should briefly mention some of its labor aspects which will serve as a framework for understanding the main tax amendments:

1. Articles 15-A through 15-D, which currently regulate work performed under the outsourcing regime, would be revoked.
2. Personnel outsourcing would be prohibited; i.e., understood as the situation in which an individual or entity provides or makes its own workers available for the benefit of another party.
3. Employment agencies or intermediaries that intervene in the personnel hiring process would be able to participate in recruitment, selection and training activities, among others. However, they would not be considered as employers, as this capacity is assumed by the service beneficiary.
4. As exceptions to the above prohibition, the outsourcing of specialized services or the performance of specialized works that are not included in the corporate purpose or the main economic activity of the service beneficiary would be permitted, as long as the contractor is registered with the Public Registry of the Department of Work and Social Welfare and provided certain

procedural requirements are fulfilled.

5. Complementary or shared services or works provided by companies pertaining to the same business group would also be considered as specialized as long as they do not form part of the corporate purpose or the main economic activity of the beneficiary entity. A business group would be understood as a group of companies organized under a direct or indirect equity scheme, in which the same company controls these entities. Likewise, financial groups incorporated according to the Law to Regulate Financial Groups would also be considered as business groups.

Some of the amendments proposed with regard to labor outsourcing in the FTC, ITL and VATL are detailed below: services in which personnel are provided or made available to the contracting party; the subcontracting of specialized services or the performance of specialized works;

complementary or shared services or works performed between companies pertaining to the same group.

### Federal Tax Code

#### **1. Nondeductible outsourcing payments for which the respective VAT is non-creditable**

Payments made to outsource personnel to perform activities related to the corporate purpose and main economic activity of the contracting party would be nondeductible and the respective VAT non-creditable.

#### **2. Nondeductible payments for which the respective VAT is non-creditable made for services whereby personnel are provided or made available to the contracting party**

Services in which personnel are provided or made available to the contracting party would be nondeductible and the respective

VAT would be non-creditable when any of the following assumptions is fulfilled:

- i. When the workers provided or made available by the contractor to the contracting party were formerly workers of the latter, but were transferred to the contractor through any legal figure, and
- ii. When the workers provided or made available by the contractor perform the main activities of the contracting party.

#### **3. Deductible payments for which the respective VAT is creditable made for specialized services or the performance of specialized works**

Payments made to outsource specialized services or for the performance of specialized works that do not form part of the corporate purpose or main economic activity of the service beneficiary would be deductible and the respective VAT would

be creditable, as long as the contractor has the registration required by the FLL and provided the other requirements established in this regard by the ITL and VATL, respectively, are fulfilled.

**4. Deductible payments for which the respective VAT is creditable made for complementary or shared services or works performed between companies pertaining to the same group**

The complementary or shared services or works performed between companies pertaining to the same business group would also be considered as specialized as long as they do not form part of the corporate purpose or main economic activity of the company receiving them.

**5. Joint liability**

Companies or individuals that receive services or contract works involving those

detailed in the preceding four sections would assume joint liability with the taxpayer for any taxes incurred by the workers used to provide the service.

**6. Aggravating circumstances related to the infringement arising from the application of tax deductions and crediting for subcontracting and services in which personnel are made available to the contracting party**

Aggravating circumstances would be deemed to arise as regards the infringement related to the application of tax deductions or crediting derived from payments made for outsourcing and services whereby personnel are provided or made available to the contracting party, in which case, the respective fine would be increased from 60% to 90% of the omitted taxes or unlawful benefit.

**7. Infringements related to the obligation to file information and documentation through the website of the Tax Administration Service (SAT)**

When the contractor fails to deliver information and documentation to a contracting party regarding the provision of the specialized services or the performance of the specialized works referred to by the ITL and VATL, including, among other items, copies of its registration with the Department of Work and Social Welfare, payroll electronic invoices (CFDIS), the tax returns filed for the payment of withheld tax and VAT, it would be subject to a fine of between \$150,000.00 to \$300,000.00 for each unfulfilled information delivery obligation.

**8. Crime of tax fraud**

The crime of tax fraud would be deemed to have been committed when involving the use of schemes to simulate the provision

of specialized services or the performance of specialized works, or based on the outsourcing of personnel or services in which personnel are provided or made available to the contracting party, in which case the applicable penalty would be increased by 50%.

**Income Tax Law**

1. In the case of the provision of specialized services or the performance of specialized works, a deduction requirement would be established whereby, when paying for the received service, the contracting party must verify that contractor is registered with the Department of Work and Social Welfare, and must also obtain copies of CFDIS issued by the contractor when paying the salaries of the workers used to provide the service or perform the respective work, the payment receipt issued by the banking institution for the tax return filed to pay the taxes withheld from these workers, the payment of

worker-employer fees to the Mexican Social Security Institute (IMSS) and the payment of National Workers' Housing Fund (INFONAVIT) fees. The contractor must deliver the aforementioned CFDIS and information to the contracting party.

2. Payments made for outsourcing and services in which personnel are provided or made available to the contracting party would be nondeductible for tax purposes.

**Value Added Tax Law**

1. It would be revoked the obligation to withhold 6% of the tax transferred to taxpayers that are entities or individuals with business activities and which receive services whereby personnel are made available to the contracting party or a related party thereof, to perform their activities at the facilities of the contracting party or a related party thereof, or even outside these facilities, regardless of whether they are under the

direction, supervision, coordination or are dependent on the contracting party, notwithstanding the denomination given to the contractual obligation.

2. The tax transferred on outsourcing and other services through which personnel are provided or made available to the contracting party would not be creditable for tax purposes.
3. The following requirements would be added for tax crediting purposes in the case of specialized services or the performance of specialized works, when payment is made for the received service:
  - i. The contracting party must verify that the contractor has the aforementioned registration.
  - ii. The contracting party must obtain the following documentation from the contractor: a copy of the VAT return

and the respective acknowledgment of receipt for the period in which the contracting party made the payment on which VAT was transferred to it.

iii. The contractor must provide the aforementioned documentation to the contracting party, which must be delivered no later than the final day of the month following that in which the contracting party paid for the received service and through which VAT was transferred to it.

If unable to compile this documentation within the established deadline, the contracting party must file an amended tax return to subtract the amount of tax credited for these items.

### **Profit sharing**

The amount of payable Employee Statutory Profit-sharing (PTU) would have a maximum limit of three times the worker's salary or the average amount of PTU received during the last three years, whereby the most favorable amount for the worker would be applicable.

### **Temporary provision**

This Decree will take effect as of the day following its publication in the Federal Official Gazette, with the exception of the proposed amendments to the FTC, ITL and VATL pursuant to subcontracting; services in which personnel are provided or made available to the contracting party; the subcontracting of specialized services or the performance of specialized works, together with complementary or shared services or works provided between entities pertaining to the same group, which will take effect as of 1 August 2021.

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