# Tax and Legal Services

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# Senate approves outsourcing reform, thereby concluding the legislative process

The Mexican Senate supported the “decree bill” to reform various laws in terms of outsourcing, thereby ending the legislative process. It is now time for the Federal Executive to enact this reform.

The minutes forwarded by the Chamber of Representatives propose the reform of eight laws related to this matter:

- Federal Labor Law (FLL)
- Social Security Law (SSL)
- National Workers’ Housing Fund Law (NWHFL)
- Federal Tax Code (FTC)
- Income Tax Law (ITL)
- Value Added Tax Law (VATL)
- Federal Law for State Workers. Regulatory law of Article 123, Section B) of the Constitution
- Regulatory law of Article 123, Section B, subsection XIII of the Constitution.

**Some of the most relevant aspects:**

Personnel outsourcing is prohibited, a term understood as when an individual or corporation provides or makes its own workers available for the benefit of another party.

Companies will be able to outsource specialized services provided these are not part of the corporate purpose or main activity of the company benefiting the services.

The law provides various penalties, including criminal penalties, for companies using an outsourcing scheme that is considered illegal.

Individuals or corporations providing outsourcing services must obtain the respective registration with the Department of Work and Social Welfare (DWSW).

Individuals or corporations providing specialized services or performing specialized work must provide the information referred to by the SSL within 90 days following the enactment of this Decree.

The Decree will be effective on the day following

its publication in the Federal Official Gazette, except for the provisions of Articles Four, Five and Six, which will become effective on 1 August 2021, and the provisions of Articles Seven and Eight, which will become effective in fiscal 2022.

## 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. The bill would revoke 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 months 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.

## Social Security Law and National Workers' Housing Fund Law

1. **Joint liability in the engagement of services or performance of specialized work**
   An individual or corporation that contracts the provision of services or the performance of work with another individual or corporation that fails to comply with its social security and INFONAVIT obligations shall be jointly liable as regards the employees used for these purposes.

2. **Information reported to the IMSS and INFONAVIT every four months by specialized service providers**
   Individuals or corporations providing specialized services or performing specialized work must file the following information on the contracts executed during the respective four-month period with the IMSS and INFONAVIT, no later than on the 17th of January, May and September, as follows:

   i. On the parties to the contract: Name, corporate or business name; Taxpayer's Registration Number, corporate domicile or conventional domicile if differing from the contact tax domicile, e-mail and telephone information.

   ii. On each contract: Purpose; duration; listing of workers or other individuals who will provide the specialized services or perform specialized work for the beneficiary, including their name, sole population registry key (CURP), social security number and base fee wage, and name and taxpayer's registration number of the services beneficiary in each contract.

   iii. Copy of the registration issued by the DWSW for the provision of specialized services or the performance of specialized work. This registration must be provided to the IMSS and INFONAVIT once the DWSW makes the mechanism used to obtain it available to specialized service providers.

In addition to the above, for INFONAVIT purposes, contribution amounts and repayments made must also be reported, as well as the base fee wage determined for the workers related to the performance of specialized work or services. For such purposes, within 60 calendar days as of the effective date of the reform, the INFONAVIT must electronically publish the respective procedures to ensure compliance with this obligation.

In the case of the IMSS, specialized service providers must begin to provide the required

information within 90 calendar days as of the effective date of the reform.

**3. Employer's Registration Number per Risk Class**

A term of 90 calendar days as of the effective date of the reform is established for employers to deregister the employer's registration number per risk class (obtained under paragraph two of the LSS in effect) and, if applicable, request an employer's registration number in conformity with the Regulations of the SSL relative to Enrollment, Company Classification, Collection and Examination.

Once this period has concluded, the employer's registration numbers per risk class which have not been deregistered, will be eliminated by the IMSS.

**4. IMSS Employer Substitution, Determination of Occupational Risk Premium and Class**

For purposes of the SSL, within 90 calendar days as of the effective date of the reform, the migration of employees of companies which operated under the labor outsourcing scheme will be considered as an employer substitution, provided the destination company recognizes the labor rights of the employees, including their seniority and concluded occupational risks, with the respective legal entities. In these cases, special rules will be applied to determine the class, section and Occupational Risk Insurance coverage premium, as follows:

The company absorbing the employees will maintain the Occupational Risk Insurance coverage premium of the replaced employer, provided the latter was correctly classified; otherwise, this insurance must be covered with the average premium of the applicable class.

If a company absorbs the employees of one or more companies and, consequently, must adjust its Occupational Risk Insurance classification to the new activities it will perform, it will determine the insurance coverage premium by applying the procedure established in temporary article 7, sections a), b), c) and d), point 2 of the Decree, through which a weighted premium will be determined, similar to that currently determined for the sole employer's registration scheme.

This is the case as long as the companies which will be substituted were correctly classified according to the inherent risks of the activity of the related negotiation(s) and applicable regulatory provisions; otherwise, the company must be registered with the average premium of the applicable class.

**5. Medical Service with Reversal of Dues Subrogation Agreements in Effect**

Companies that as of the effective date of the reform have a Medical Service with Reversal of Dues Subrogation Agreement in effect and which, per the Decree, within 90 calendar days of its effective date carry out an employer substitution, will not be subject to amendments of the conditions established therein. Once the 90-calendar day term expires, the rules established in the SSL and its Regulations in terms of Enrollment, Company Classification, Collection and Examination will be applicable.

**6. IMSS, INFONAVIT and DWSW collaboration agreements**

To verify compliance with the obligations established in the FLL, the SSL and the NWHFL, the IMSS, INFONAVIT and the DWSW will execute collaboration agreements to exchange information and execute joint inspection actions in their respective field of competence.

The IMSS and INFONAVIT will notify the DWSW of any noncompliance by specialized work or service providers in filing the four-monthly registration granted by this Department for the purposes established in the FLL, which could lead to the cancellation of such registration.

**7. Infringement and penalties**

For social security purposes, failing to file the four-monthly information stated in Article 15-A, Paragraph 3 of the reformed LSS will be considered an infringement, establishing a fine equal to 500 to 2,000 times the unit of measurement and restatement (from $44,810 to $179,240).

**8. Joint liability in the employer's substitution with the INFONAVIT**

The joint liability term between substituted and substitute employer will be updated to three months (instead of the current two-year term). Once such term has concluded, all liabilities will be attributable to the new employer.

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