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Newsletter

Labor, Social Security and Immigration, and Tax Practice Group

IMSS: Integration of employee profit sharing and payments made as productivity bonuses to base contribution salary

On July 7, 2023, agreement **ACDO.AS2.HCT.260623/160.P.DIR** and its Sole Annex were published in the Official Gazette of the Federation, approving the criteria regarding the integration of payments that exceed the maximum amount of employee profit sharing ("PTU") and payments made as productivity bonuses to the base contribution salary.

Said criterion establishes that the amounts that are delivered in cash, in kind or deposited in personal or payroll accounts to their workers for (i) surplus in payment of employee profit sharing, (ii) payment outside the terms established for the payment of PTU and (iii) productivity bonus payments are part of the base contribution salary in accordance with article 27 of the Social Security Law.

The following are considered undue tax practices in social security matters:

- Excluding from the base contribution salary the payments that exceed the maximum amount of the workers' profit sharing according to article 127, section VIII, of the LFT.
- Paying workers' profit sharing outside the term established in Article 122 of the LFT, whether before or after the established term.
- Excluding from the base contribution salary the payments made as productivity bonuses or of any other nature.
- Advising, counseling or providing services or participating in the performance or implementation of the aforementioned practices.
- Any approval by a public accountant of the issuance of a "clean and unqualified" compliance opinion in the social security opinion of employers who engage in any of the aforementioned conduct.

It is important to review in each company the procedure for determining and paying PTU, in order to comply with the applicable labor, social security, and tax provisions. On the other hand, the written or oral agreements in the collective bargaining agreement regarding PTU should be reviewed to determine the possible effects of integration on the base contribution salary, as well as on the integrated salary for the calculation of severance payments.

Sánchez Devanny's teams of professionals in the Tax and Labor, Social Security, and Immigration Practice Groups have the knowledge and experience to guide you in the correct determination and payment of employee profit sharing, as well as the integration of the base contribution salary to avoid compliance risk.

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