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## Labor, Social Security and Immigration Practice and Tax Practice Group Joint Newsletter



### Claim of illegal outsourcing. Labor and tax implications.

The Mexican Social Security Institute ("IMSS") created the website <http://www.imss.gob.mx/denuncia> for employees to anonymously report illegal subcontracting schemes.

The purpose is that employees report employers when they find irregularities, such as if the employer has not registered the employee at the IMSS or has registered the employee with a lower salary.

The ways to initiate a complaint with the IMSS are the following:

1. Telephone;
2. Email;
3. Before IMSS' audit department at any subdelegation; or
4. In writing addressed to the IMSS audit department.

To initiate the complaint, the employee must file a proof of payment and the way he/she received it (cash, bank deposit, bank statement of the employee in which the payment is mentioned, bank account number of his/her employer), service agreement contract (if

applicable), address of employer, approximate number of employees in the workplace, and other documents.

The IMSS considers "illegal outsourcing" as a scheme used to affect employees' rights or decrease employers' social security obligations. In these cases, companies that committed this type of hiring would be directly responsible for all social security obligations.

On the other hand, the IMSS establishes that these types of schemes may also affect contracting companies as follows:

1. If the contractor does not fulfill its legal requirements, such as the registration of employees before the IMSS with their real salary, the contracting company may be subject to taxes and administrative penalties.
2. It may consider the scheme as tax evasion, which may warrant the intervention of the tax and criminal authorities.
3. Labor claims could be made by the affected employees.

Similarly, the current federal administration has amongst

its priorities, to combat and eradicate “illegal outsourcing”. For such purpose, an Interdisciplinary Working Group (the “Federal Government Group”) has been formed, comprised of the following authorities:

1. Ministry of Labor (“STPS”);
2. Mexican Social Security Institute (“IMSS”);
3. Tax Administration Services (“SAT”);
4. Institute of the National Housing Fund for Employees (“INFONAVIT”);
5. Financial Intelligence Unit (“UIF”); y
6. The Federal Prosecutor’s Office (“PFF”).

As described above, employees have an easier way to report employers before the IMSS when they consider the employer is not complying with its labor and social security obligations. Therefore, an inspection by the IMSS can lead to any agency that is part of the Federal Government Group initiating another inspection against the reported employer.

Likewise, the STPS will launch an inspection campaign to review those companies that contract services and make available employees who work regularly in the client’s facilities, inspections that will be reactivated once the pandemic is over.

The main purpose of the campaign is to detect whether companies with such a service structure operate a labor outsourcing regime and, if applicable, if the conditions established by the Federal Labor Law are met. In the event of non-compliance by companies they may be liable for the fines established by the labor legislation.

### **Tax implications**

Recently, the tax legislation was modified to impose the obligation on companies that contract the provision of personal, to withhold 6% of the VAT transferred by the contracting companies, which becomes an administrative burden, which could condition the right to deduct the expense and the accreditation of the same VAT. This is a measure against the illegal outsourcing schemes (among other services) where the contracting companies do not report the corresponding VAT.

Due to the aforementioned, it is recommended that companies analyze deeply their outsourcing and insourcing structures, to be prepared for these changes and possible inspections by the agencies that are part of the Federal Government Group.

At Sanchez Devanny, our Labor, Social Security and Tax practice area has extensive experience advising on outsourcing, and the correct implementation and documentation as a defense before an audit or investigation. Please do not hesitate to contact us with any comment or question regarding these issues.

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