

November 13, 2020

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



Legal Analysis of the Subcontracting Regime Reform Initiative

On November 12th, President Andrés Manuel López Obrador announced the execution of the reform initiative to the Federal Labor Law ("FLL"), Social Security Law, INFONAVIT Law, Federation Fiscal Code, Income Tax Law ("ITX") and the Value Added Tax Law ("VATL") in order to eliminate subcontracting regime, "outsourcing" (external) and "insourcing" (business group) modalities, as well as the limitation to the provision of specialized services or execution of specialized works.

Labor and Social Security

- » The initiative prohibits the subcontracting of personnel, where personnel are provided to a beneficiary.
- » The provision of specialized services or the execution of specialized works that are not part of the corporate purpose or the economic activity of the beneficiary will not be considered subcontracting of personnel.
- » In order to be able to provide specialized services, companies must have the authorization of the Ministry of Labor.
- » Intermediary services that previously could hire personnel on behalf of an employer, may only provide recruitment, selection, and training, among others services.
- » With the repeal of articles that regulate subcontracting regimes (articles 15 A to 15 D of the FLL), the elimination of subcontracting as an alternative to hiring personnel by a third party is confirmed.
- » The sanction for providing subcontracting services or receiving such services will be a fine between 2,000 to 50,000 times the Unit of Measurement and Update ("UMA"). The same sanction will be applied to the provider of specialized services or that executes specialized work without the authorization of the Ministry of Labor.
- » An employer substitution only take place when goods object of the company or establishment are transferred to the substitute employer, aligning with the labor and social security legislation.
- » Regarding social security matters, the subcontracting regime is also eliminated. It is subsisted the possibility of providing services and executing specialized work where there will be joint liability between the contractor and the beneficiary, in case of non-compliance with social security obligations. The contractor must inform the Mexican Social Security Institute ("IMSS") quarterly of the agreements entered into, as well as providing information on

its personnel.

- » The fine for not submitting information to the IMSS by specialized service providers, or doing so outside the established deadlines, is increased from 500 to 2,000 times the UMA.
- » The reform in subcontracting matters would come into force the day after is published in the Official Gazette of the Federation, except for the modifications in tax legislation that would begin being enforced January 1, 2021.
- » The Ministry of Labor must issue the rules for the authorization of specialized service providers within 4 months after the reform takes effect, and the services providers must obtain the authorization within 6 months of the publication of the rules.

- ◇ Digital Tax Receipt ("CFDI") that proves the payment of employees' wages who have provided the service or executed specialized work.
- ◇ Statement of the full income tax withholdings made for employees.
- ◇ Declaration of the entire amount of VAT for the services provided.
- ◇ Total of the worker-employer contributions made to the IMSS, as well as payment of the contributions to INFONAVIT, corresponding to the employees.
- » The obligation to withhold 6% of VAT for personnel services when they are made available to the contractor (in force during 2020) is repealed.
- » The proposed changes in tax matters would take effect January 1, 2021.

Tax

a. Federation Tax Code

- » It is proposed to include in the definition of labor subcontracting, when an employer provides its own employees for the benefit of the contractor or when it makes them available to it.
- » The provision of specialized services or the execution of specialized works that are not part of the corporate purpose or the economic activity of the beneficiary will not be considered subcontracting services.
- » A new assumption of joint liability for the contracting parties is included, in order to guarantee the contributions of the employees that provide services.
- » A fine is established for failure to provide information by the contractor, which could be from \$150,000 to \$300,000 Mexican pesos for each requirement not fulfilled.
- » It is proposed to establish as a tax fraud crime any type of act that involves illegal or simulated labor subcontracting schemes.

b. ITX and VATL

- » The deduction for tax purposes and the accreditation for VAT purposes in labor subcontracting is prohibited.
- » The deduction for tax purposes and the accreditation for VAT purposes of the provision of services and the execution of specialized work is allowed, if service provider provides the following:
 - ◇ Current authorization issued by the Ministry of Labor

Preliminary conclusions, subject to the approval of the initiative:

- i. Companies with "insourcing" schemes must plan the reorganization of their business and transfer or distribute the personnel in the companies that will survive by January 1, 2021;
- ii. Companies with personnel hired by "outsourcing" must plan the termination of the service agreement that makes personnel available to them and/or that the service forms part of their economic activity, as well as the termination/transfer of such personnel;
- iii. Companies that have specialized service providers that are not part of their corporate purpose must plan to require and timely obtain authorization from the Ministry of Labor.

This newsletter was jointly prepared by Alfredo Kupfer Domínguez (akupfer@sanchezdevanny.com), David Puente Tostado (dpt@sanchezdevanny.com), Guillermo Villaseñor Tadeo (gvillasenor@sanchezdevanny.com), Luis Antonio Gonzalez Flores (luis.gonzalez@sanchezdevanny.com), Fermin Lecumberri Cano (flecumberri@sanchezdevanny.com) y Eduardo Barreira-Reynoso Monterrubio (ebreynoso@sanchezdevanny.com).

Sánchez Devanny is a leading Mexican law firm that provides **full-service legal advice** both to Mexican and international clients.

We build enduring client relationships because we make every effort to understand our clients' businesses and expectations, to serve as an ally, and to provide **complete, accessible and personalized advice**.

Contact

Labor

Alfredo Kupfer-Domínguez
akupfer@sanchezdevanny.com

David Puente-Tostado
dpt@sanchezdevanny.com

Tax

Abel Francisco Mejía-Cosenza
amejia@sanchezdevanny.com

Arturo Garza-Mátar
agarza@sanchezdevanny.com

Emilio García-Vargas
egarcia@sanchezdevanny.com

Guillermo Villaseñor-Tadeo
gvillasenor@sanchezdevanny.com

Jorge López-López
jlopez@sanchezdevanny.com

José Ángel Eseverri-Ahuja
jae@sanchezdevanny.com

José Ricardo Ibarra-Córdova
jribarra@sanchezdevanny.com

Luis Antonio Gonzalez-Flores
luis.gonzalez@sanchezdevanny.com

Mariana Eguiarte-Morett
meguiarte@sanchezdevanny.com

Pedro Angel Palma-Cruz
ppalma@sanchezdevanny.com

Ricardo León-Santacruz
rls@sanchezdevanny.com

Mexico City:

Av. Paseo de las Palmas #525 Piso 6
Col. Lomas de Chapultepec, 11000
Ciudad de México
T. +52 (55) 5029 8500

Monterrey:

José Clemente Orozco #335 Piso 4
Despacho 401 Col. Valle Oriente, 66269
San Pedro Garza García N.L.
T. +52 (81) 8153 3900

Querétaro:

Blvd. Bernardo Quintana #7001
Torre 1 Oficina 1109 Col. Centro Sur, 76090
Querétaro, Qro.
T. +52 (442) 296 6400



Sánchez Devanny Eseverri S.C.



@SanchezDevanny



/sanchezdevannymx

www.sanchezdevanny.com

Sánchez Devanny refers to Sánchez-Devanny Eseverri, S.C., a leading Mexican law firm that provides full-service legal advice both to Mexican and international clients.

This publication contains general information only and is just for informative purposes. Sánchez Devanny is not rendering legal advice or services by means of this publication. To obtain legal advice or services and before making any decision or taking any action that may affect your business you should consult a qualified professional advisor.

Sánchez Devanny provides legal services in the areas of Corporate and M&A; Corporate and Project Finance; International Trade and Customs; Real Estate, Infrastructure and Hospitality; Tax; Labor, Social Security and Immigration; Corporate Governance and Regulatory Compliance; Energy, Natural Resources and Environmental; Life Sciences; Intellectual Property, Entertainment and Sports Law; Litigation and Alternative Dispute Resolution; Antitrust; Financial Institutions and Services; Private Wealth Management and Estate Planning and Data Privacy and Information Technology to both public and private clients, especially in the automotive, retail, pharmaceutical, manufacturing, real estate and energy industries.