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AMENDMENT TO THE FEDERAL LABOR LAW: SUBCONTRACTING REFORM BILL

A reform bill regarding subcontracting was presented by the president of the United Mexican States to the Congress this past November 12th, 2020. The intention of this bill is to prohibit personnel subcontracting operations and instead allow only specialized services or specialized works operations, however, with strict limitations, such as incorporating additional requirements, including the following:

I) Authorization from labor authorities to provide specialized services;
II) Creation of a registry of specialized services providers; and
III) Obligation of contractors to report their operations, contracts with third parties, and general information to labor authorities.

Additionally, the proposal includes amendments to tax and social security laws and establishes consequences for non-compliance, including the following:

1. The costs derived from unauthorized specialized services or specialized works operations will not be deductible for income tax purposes;
2. Withheld VAT regarding unauthorized specialized services or specialized works transactions will not be creditable;
3. Fines which go from MXN $173,760.00 to MXN $4'344,000.00 (approximately USD $8,645.00 to USD $216,120.48) are imposed for those who subcontract personnel, as well as for providing specialized services or carrying out specialized works without the corresponding authorization;
4. Carrying out subcontracting operations may be considered as tax fraud.

Before passing into law, the bill must be approved by the Congress, as well as by the Senate, either of which may suggest modifications for more precision regarding several aspects which at the moment remain unclear. Accordingly, labor authorities must issue additional legal provisions, including the applicable regulations to comply with the new obligations regarding the provision of specialized services.

If approved, the reform is intended to enter into force on January 1, 2021. Therefore, it is important to be prepared for the upcoming changes that its implementation will entail for the corporate structure and operations of businesses which currently:

a) Subcontract personnel through a two-entity structure (insourcing);
b) Subcontract personnel from a third-party (outsourcing); or
c) Provide outsourcing services.

Please contact us so that we may define if your business is in any of these cases and accordingly design the best legal strategy for the company.

We will keep you informed of the development of the legislative process of this reform bill.

November 23, 2020.