



OUTSOURCING

A photograph of a person's hands typing on a laptop in an office setting. The laptop screen shows a website. A blue mug and a coffee cup are on the desk. The image is partially covered by a large blue diagonal graphic element.

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Important aspects to consider in the subcontracting reform

On November 12, 2020, the Federal Executive presented a bill before the Congress of the Union that contains several reforms to the Federal Labor Law (LFT for its acronym in Spanish), and other provisions in tax and social security matters, with the purpose to [regulate the labor subcontracting regime](#) in our country.

After months where the legislative discussion was idle, the Federal Government, the business sector and workers representatives, reached a consensus to advance in the approval of said reform, which once approved by the Senate, was published on [April 23, 2021](#) and came into force on [April 24, 2021](#).

Together with the modifications already approved by both chambers of the Mexican Congress, the reform should be considered as a legal system that establishes the conditions to enact new rules in the use of the subcontracting labor figure. Its use is limited to special cases, whose analysis and interpretation for purposes of making the necessary changes in the companies that used this scheme, must consider the aspects:

- labor,
- financial,
- tax,
- from social security and Infonavit,
- and corporate.

Therefore, the actions to be taken should be carried out through multidisciplinary groups that can shape, assess and execute the impacts derived from this reform, being the key points the following:

LABOR

1. **The subcontracting of personnel is prohibited;** however, only the **subcontracting of specialized services or works** that are not part of corporate purpose, nor of the predominant economic activity of the beneficiary of these, will be allowed; therefore, for such purposes, the companies that provide "Specialized Services" must **apply for a registry** with the Ministry of Labor and Social Security (STPS for its acronym in Spanish) which will serve to **be aggregated** in a public registry that must be available on an internet portal.

As of the entry into force of the reform, the STPS, within a term of **30 days**, must issue the provisions for purposes of the public registry of companies providing specialized services.

2. Among the companies commonly called **"insourcing"** or those that are part of the same business group, the services or complementary or shared works provided will also be considered as specialized as long as they are not part of the corporate purpose or the predominant economic activity of the receiving company.
3. The **Statutory Profit Sharing (PTU for its acronym in Spanish)** was one of the most discussed points as when the aforementioned reform came into force, the companies will have to absorb a large part of their workforce, which implies for many of them the payment of PTU to a larger number of employees. For this reason, it was agreed that the **PTU** will be "limited" to **up to three months of the salary** or, where appropriate, to the average amount received in the last three years therefrom, granting the higher amount on behalf of the worker.
4. **Joint and several liability** is stipulated so that the individual or company who contracts the services or the execution of works with a company that fails to comply with its obligations in labor and/or social security matters, is jointly and severally liable with the employees used for the execution of said contracts, regardless of other established sanctions.
5. Employers who have hired personnel under the subcontracting modality must "absorb" their personnel within a maximum period of 90 days, being said transition considered as **employer substitution**. If this period is exceeded, the substitution should be made by transferring the company's assets.

6. Stricter regulatory measures are established for those who use the outsourcing of personnel: (a) penalties from **2,000 to 50,000 times UMA (from MXN179,240 to MXN4,481,000 approximately)**; (b) the non-deductibility of invoices and the impediment to credit the Value Added Tax (VAT); (c) the possibility of considering said activity as criminal in terms of Tax Fraud with imprisonment from 2 months to 9 years.
7. The prohibition of the subcontracting of personnel will also be applicable to the Federal Law of the Workers at the Service of the State, impacting the labor relations between the workers of the public sector and the State.

SOCIAL SECURITY

New obligations are established and the elimination of the employer's registry by class stands out; additionally:

- The contracts entered into must be reported on a quarterly basis.
- The contractor will be jointly and severally liable when social security obligations are not accomplished.
- A copy of the registry issued by the STPS must be provided for the rendering of specialized services.
- Employer records by class will be eliminated and a period of **90 calendar days is granted to cancel employer records and apply for a new one**; failing to comply with will result in automatic cancellation.
- Within **90 calendar days** following to the entering into force of the reform, the migration of workers is considered as employer substitution, being able to keep the same working risk rate or adjust its classification to the new activities.

When carrying out an employer substitution, companies should consider the following:

- The company that absorbs the workers must perform a self-classification in accordance with the applicable social security regulations, keeping the current working risk rate of the prior employer, as long as said rate has been correctly classified according to the risks inherent to the trading activity in question and the applicable regulatory provisions; otherwise, the working risk rate must be adjusted to the average rate of the corresponding risk level.
- In the case of a company that absorbs the workers of one or other companies, with the same or different risk levels and therefore, it must adjust its classification to the new activities to be carried out, the risk level and fraction will be determined taking into account the risks inherent to the activity in question and the risk rate will be obtained by applying the following procedure:
 - a) For each employer registry, both of the absorbing company and of the other company or companies to be replaced, the assigned risk rate will be multiplied by the total of the base contribution salaries of the workers included in the registry. The base contribution salary to be considered will be the applied one in the prior month to the replacement, as notified to the Mexican Institute of Social Security (IMSS for its acronym in Spanish).
 - b) The sum of the products obtained in accordance with the previous paragraph will be divided by the sum of the base contribution salaries of the workers included in all the employer registers.
 - c) The resulting risk rate will be applied to the employer's registry of the company that absorbs the workers and will be in force until the last day of February after the replacement.
 - d) For the purposes of determining the risk rate for the following fiscal year, the absorbing company must consider the risk rate of completed work that may have occurred to the workers in the corresponding fiscal year. The foregoing, as long as the companies to be replaced have been correctly classified according to the risks inherent to the activity of the entity(es) in question and the applicable regulatory provisions; otherwise, the working risk must be adjusted to the average rate of rate of the corresponding risk level.
- Companies that have a current Medical Services Subrogation Agreement with Reversal of Rates on the date of entry into force of the reform will not be subject to modification of the conditions agreed upon therein.

INFONAVIT

The employer obligations contained in the Regulation of Registration, Payment of Contributions and Total of Discounts to the Institute of the National Housing Fund for Workers (INFONAVIT for its acronym in Spanish) are adapted and therefore:

- The replaced employer will be jointly and severally liable for a period of 3 months.
- A copy of the registry issued by the STPS must be provided for the rendering of specialized services.

FISCAL

Federal Tax Code (CFF by its acronym in Spanish)

- *Limits on deduction and crediting*

An article 15-D is added to the CFF specifying limits to the deductibility for purposes of Income Tax and accreditation of Value Added Tax, derived from the payments for the subcontracting of personnel for the development of activities related to the corporate object and to the preponderant economic activity of the contractor.

The added article limits the deduction and the corresponding accreditation when services subcontracted are provided with workers who originally belonged to the contractor and have previously been transferred to the contractor through any legal form.

Another limiting assumption is that the workers placed at the disposal of the contractor, encompass the predominant activities of the contractor.

The aforementioned article establishes that tax effects may be given to payments for subcontracting specialized services as long as the recipient of the payment has the corresponding registry of specialized company referred to in article 15 of the LFT, and the other requirements established in the income tax law and VAT law mentioned later.

It is specified in the CFF that the services or complementary works shared between companies of the same business group will be considered as specialized when they are not part of the preponderant economic activity of the company that receives them.

- *Join responsibility*

It is established as an assumption of joint and several liability in tax matters to the individuals or entities who contract services and works indicated in the aforementioned article 15-D for the contributions that would have been caused by the workers with whom the service is provided.

- *Infringements and sanctions*

It is established as an aggravating factor to infractions in tax matters to carry out the deduction or accreditation in subcontracting matters when the requirements established for this purpose by the income tax law and the VAT law, indicated in the following paragraphs, are not fulfilled.

Likewise, a fine of **MXN150,000 to MXN300,000** is specified when the specialized services provider does not comply with the obligation to deliver to the contractor the information and documentation referred to in the income tax law and the VAT law for the applicability of the deduction and accreditation, respectively.

- *Tax crimes*

Finally, a case of tax fraud is added to those who use a simulated scheme for the rendering of services and the execution of specialized works or carry out the subcontracting of personnel to perform operations related to the corporate purpose or predominant activity of the taxpayer.

Income Tax (ISR)

It is established as a requirement to deduct specialized services or the execution of specialized works which are not part of the corporate purpose or the predominant economic activity of the taxpayer, to verify at the moment of payment that the provider is registered in the STPS.

Likewise, the contractor must obtain from the provider of services (the latter is compel to deliver under **penalty of fine ranging from MXN 150,000 to MXN 300,000**) a copy of:

- a) Tax receipts for the payment of wages to the workers with whom the service has been provided or the work has been carried out.
- b) The bank payment receipt of the tax return where the income tax withholdings of said workers have been paid.
- c) The payment of the employer's social security quotes and of the contributions to INFONAVIT.

Payments for subcontracting personnel to carry out activities related to the corporate purpose or preponderant economic activity of the taxpayer or for services rendered from workers originally contracted by the taxpayer and transferred to the contractor will not be deductible.

Value Added Tax (VAT)

Among the considerations analyzed by the Congress of the Union for this reform, it is the record of the omission of VAT payment and processes of requests for refund of VAT balances when in many cases, the company that translated the VAT did not paid it to the Federation.

- **- Reforms**
 - **Article 1°.-A Section IV: WITHHOLDING 6% SUBCONTRACTING SERVICES:** Section IV deleted, recently added to this article 1-A on December 9, 2019 and which caused so much controversy that it generated Normative CRITERION 46/VAT/N, ended without effect with this reform. This fraction considered the 6% withholding of the value of the consideration actually paid, when these had been made by individuals with business activity or by entities who had received services where personnel were made available to carry out their functions in their facilities.
 - **Article 4; THE VAT will NOT BE CREDITABLE for Labor Subcontracting services:** This article 4 is amended to establish the NO possibility of crediting the VAT generated in the payments or consideration made for the SUBCONTRACTING of personnel, to carry out activities related to BOTH THE CORPORATE PURPOSE AND WITH THE PREPONDERING ACTIVITY OF THE CONTRACTOR.
 - Only in the cases of specialized subcontracting or the execution of specialized work, which are not part of the corporate purpose or the predominant activity of the contractor. Likewise, in the case of complementary or shared services or works provided between companies of the same business group.*
 - **Article 5; SPECIALIZED SERVICES OR SPECIALIZED WORK:** A new paragraph is added to section II of article 5 to establish as a complementary requirement to the accreditation, in the cases of subcontracting for specialized services or specialized work, the obligation for the contractor to verify that the service provider has the registry referred to in article 15 of the LFT and a copy of the tax return and VAT payment.

Given an event that originates changes in any matter, it is essential to obtain advice and multidisciplinary professional guidance. Therefore, any particular situation in business must be addressed individually and on a case-by-case basis.

At Kreston BSG®, we have a multidisciplinary team supporting businesses, identifying risks, proposing actions to be taken and analyzing possible consequences on business decisions made under the current circumstances.

For your convenience, we have included an informative table where the respective terms and dates to be considered are indicated in relation to the entry into force of the different provisions of the reform:

Table of references of entry into force of the various provisions of the reform in the matter of Labor Subcontracting/Outsourcing

Aspect of the Reform	Team Dates
Reform to the LFT.	April 24, 2021.
Reform to the social security law (LSS).	April 24, 2021.
Reform of the INFONAVIT Law.	April 24, 2021.
Reform of the CFF.	August 1, 2021.
Reform to the income tax law (LISR).	August 1, 2021.
Reform to the VAT law (LIVA).	August 1, 2021.
Issuance by the STPS of the general provisions/guidelines for incorporation into the registry of companies providing specialized services.	Within a term of 30 days, until May 24, 2021 by the latest.
Register of companies providing specialized services in the STPS register.	Within a term of 90 days as from the issuance of the general provisions/guidelines for incorporation into the registry of companies providing specialized services (tentatively on August 21, 2021 or before in the guidelines are issued before the ultimate term).
Employer substitution without transfer of company assets (recognizing labor rights).	Within a term of 90 as from the entry into force (July 22, 2021 by the latest).
Requesting of the employer's registration in terms of the LSS Regulations regarding Affiliation, Classification of Companies, Collection and Inspection.	Within a term of 90 days as from the date of entry into force (July 22, 2021 by the latest).
Quarterly report to the IMSS, on the 17th of the months of January, May and September; the information related to the contracts for rendering of specialized services.	Within a term of 90 days from the date of entry into force (July 22, 2021 by the latest).
Employer substitution in terms of the LSS, determining and reclassifying corresponding working risk rates.	Within a term of 90 days from the date of entry into force (July 22, 2021 by the latest).
Application of the rules of the LSS and the Regulations of the LSS in matters of Affiliation, Classification of Companies, Collection and Supervision of the Agreement for the Subrogation of Medical Services with Reversal of Quotas.	Upon expiration of the term of 90 calendar days from the entry into force (as from July 22, 2021).
Issuance by INFONAVIT of the rules on the procedure for the presentation of information on contracts for the rendering of specialized services.	Within a term of 60 days from the date of entry into force (June 22, 2021 by the latest).

Sincerely,
Kreston BSG® México
 Legal, Tax and Social Security Area.

For more information, write to contacto@krestonbsg.com.mx

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