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Bill to Amend the Subcontracting Regime

Yesterday, during his morning conference, the President of Mexico announced the Proposal to Amend several provisions of the Federal Labor Law ("FLL"), the Social Security Law ("SSL"), the Law of the Institute of the National Fund for Employees' Housing ("LINFONAVIT"), the Federal Tax Code, the Income Tax Law and the Value Added Tax Law (the "Bill") in connection to the employment subcontracting regime.

According to the President, the purpose of the amendment is to "prohibit the personnel subcontracting regime which consists of providing personnel by one individual or company in favor of another individual or company".

The Bill provides, at first, a new definition for intermediary, indicating that the intermediary cannot be considered as an employer in any case. On the other hand, it expressly prohibits subcontracting personnel where a company's own employees are provided or made available for the benefit of a third party.

Additionally, the Bill provides that for the rendition of specialized services or execution of specialized projects to be valid, it must not be considered in the beneficiary's corporate object or economic activity, the contractor must have authorization from the Ministry of Labor and Social Welfare.

Furthermore, the Bill includes amendments to the SSL and the LINFONAVIT to harmonize with those set forth in the FLL regarding subcontracting regime and rendering of specialized services. Additionally, new obligations are included in the Bill, in connection to the agreements executed with the beneficiaries of services, as well as the elimination of certain administrative means related to the workmen's compensation insurance.

On the other hand, the Bill includes modifications to tax provisions, the most relevant of which is the prohibition to give tax effects (e.g., deductibility or value added tax credit) of payments for personnel subcontracting, except for the provision of specialized services.

The Bill also contains several sanctions, including the prohibition to utilize simulated schemes related to specialized services, execution of specialized works or to utilize the subcontracting regime, which could be interpreted as tax fraud.

According to the transitional articles of the Bill, the respective Decree would enter info force at the following day of its publication in the Federal Official Gazette, except for those related to the tax provisions, which would enter into force on January 1, 2021.

Currently, the Bill is pending to be analyzed by the Federal Congress in the corresponding legislative process.

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