



On April 23rd, 2021, a decree was published in the Federal Official Gazette amending several provisions of the Mexican legal framework regarding labor subcontracting.¹ The purpose of the reform is to avoid abuses and violations of the workers' rights, as well as tax evasion.

In tax matters, the decree reformed the Federal Tax Code, the Income Tax Law and the Value Added Tax Law. We highlight the following points:

1. **No Tax Effects.** Payments or considerations made in account of subcontracting do not have tax effects for income tax deduction or VAT credit when:
 - A. Subcontracted workers perform activities related to both the corporate purpose and the main economic activity of the contracting party.
 - B. Subcontracted workers were originally workers of the contracting party and have been transferred to the company that provides the subcontracting service.
2. **Tax Effects.** The payments or considerations made on account of subcontracting not included in the previous cases may be applied by taxpayers with tax effects for Income Tax deduction or VAT credit provided that the company providing the subcontracting service is registered with the Department of Employment and Social Welfare (hereinafter referred to as "STPS").
3. **Tax Effects.** The payments or considerations made on account of subcontracting not included in the previous cases may be applied by taxpayers with tax effects for Income Tax deduction or VAT credit provided that the company providing the subcontracting service is registered with the Department of Employment and Social Welfare (hereinafter referred to as "STPS").
4. **Requirements for VAT Credit.** In subcontracting cases, and for VAT credit purposes, in addition to having previously carried forward the VAT expressly, and that is recorded separately in the tax receipts, the contractor must verify that the subcontracting company is registered with the "STPS". Likewise, the contracting party must obtain from the contracting company copies of:
 - A. Tax receipts on account of payment of the workers' salaries;
 - B. Receipt of payment for declaration of taxes withheld from the workers;
 - C. Payment of fees to the IMSS [Mexican Social Security Institute]; and
 - D. Dues on account of Infonavit [Workers' Housing Fund Institute].
4. **Requirements for VAT Credit.** In subcontracting cases, and for VAT credit purposes, in addition to having previously carried forward the VAT expressly, and that is recorded separately in the tax receipts, the contractor must verify that the subcontracting company is registered with the "STPS". Likewise, the contracting party must obtain from the contracting company copies of:
 - A. The VAT return; and
 - B. Acknowledgement of receipt of the payment that corresponds to the period in which the contracting party made the payment of the consideration and value added tax that was carried forward to the latter.
5. **Infringement.** When the company that provides the subcontracting service does not comply with the obligation of delivering to the contractor the information and documents mentioned in the two previous points.
6. **Penalty.** When the company that provides the outsourcing service does not comply with the obligation to deliver to the contracting party the information and documentation required in the previous point, the tax authority may impose a fine from \$150,000.00 to

\$300,000.00, for each non-compliant obligation to deliver the information.

7. **Jointly liability.** The persons or companies receiving services or contracting specialized services or the execution of specialized works are held liable jointly with the company that provides the subcontracting service for those taxes that would have been payable by the employees.

8. **Tax Fraud.** The use of simulated schemes to provide specialized services or the execution of specialized works and/or the subcontracting of workers that perform activities related to both the corporate purpose and the main economic activity of the contracting party, or workers that were originally workers of the contracting party, is considered a tax fraud offense.

Amendments to the tax provisions will become effective on August 1st, 2021.

If you have any questions about this issue, please feel free to contact us: gerardoperez@allestrategias.com.

Mexico City, May 7, 2021.



¹ DECREE amending, adding and repealing several provisions of: Federal Employment Law; the Social Security Law; the Law of the National Workers' Housing Fund Institute; the Federal Tax Code; the Income Tax Law; the Value Added Tax Law; the Federal Law of Workers in the Service of the State, regulatory of Section B) Article 123 of the Constitution; the Law Regulating Section XIII Bis, Section B, Article 123 of the Political Constitution of the United Mexican States, in the matter of Labor Outsourcing, published in the Federal Official Gazette on April 23rd, 2021, available at <https://bit.ly/3gLOIUw>