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## The Downfall of Outsourcing?

The Executive Branch has submitted for discussion a reform initiative that prohibits personnel hiring figures (outsourcing or insourcing) and instead regulates the rendering of specialized services.

The proposed initiative highlights the fact that all companies must have the necessary personnel to carry out their activities pursuant to their social purpose. That is, the labor force must focus with the boss, whether an individual or a company, who does in fact carry out the company's industrial or commercial activity and not through third-party companies, whether these are internal or external.

Those who have already read the initiative and know the main points<sup>1</sup> therein, readily understand that, as the expression goes, "the devil is in the details", since the proposed initiative does not outline the parameters for the hiring of specialized services. Hence, would such initiative then force all service providers to obtain the corresponding authorization from the Ministry of Labor and Social Welfare (MLSW)? And if so, would all service providers have to adapt to the proposed scheme?

We consider that if the reform succeeds, the authorities, in particular the MLSW, have a great task ahead of themselves in ruling said specialized services.

Despite the subcontracting prohibition, specialized services, their authorization and regulation will have to be assigned to those special service agreements whereby the contractor has to continue placing its personnel at the contracting party's disposal.

We consider that the initiative will be substantially approved and that it will be in effect shortly. For this reason, companies have to swiftly evaluate the validity of the structures through which their personnel is provided.

What is a fact is that at least topics related to joint and several obligations of the contracting party as well as the specialized services were already outlined in the current legislation, the courts have already been debating the interpretation the Tax Administrative System may give the labor dispositions for tax effects.

Based on the foregoing, the transitory provisions contained in the proposed initiative require special attention, especially the last one, which indicates that the omitting of payment of salaries, taxes and social security quotas that occurred prior to the reform going into effect will be an issue that the Mexican authorities will prosecute under the current legislation.

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1. Specialized contractor authorization by the MLSW, no deductibility (for Income Tax) and no credit (for Value Added Tax purposes) of an invoice for subcontracting or services that violate legislation, deductibility subject to the existence and delivery of a banking payroll stub to the contracting party, with a credit of payments for employer-employee fees, transfer of assets is mandatory in cases of employer substitution, possible aggravated tax fraud crime for violating the law, pre-trial detention and jail, regardless of joint or several liability and the applicable fines.