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Bill to eliminate outsourcing schemes

On November 12, the Mexican President presented a bill to amend the Federal Labor Law, the Federal Tax Code, the Mexican Income Tax Law and the Value Added Tax Law, among other regulations, in order to eradicate illegal outsourcing schemes.

The following is a summary of the most relevant issues included in the proposed bill (which is intended to become enforceable starting 2021), which will be discussed in Congress and will generate a relevant discussion between the government and the private sector:

Federal Labor Law

- Outsourcing would be prohibited.
- The definition of “labor intermediaries” would be amended, and the obligation to have an authorization issued by the Ministry of Labor and Social Security would be included for cases in which specialized services or work is required. A registry of “specialized service providers” would be created for this purpose.
- Penalties would be established for those who implement outsourcing schemes, including taxpayers that provide specialized services without the corresponding authorization.

Federal Tax Code

- The concept of “outsourcing” would be defined for tax purposes.
- Payments made in connection with an outsourcing scheme would not be deductible and the corresponding VAT would not be creditable.
- Joint and several liability would exist for those who hire services through outsourcing, for an amount equivalent to taxes to be paid by the workers who provided the corresponding service.
- Significant penalties would be imposed whenever contractors do not comply with the obligation to deliver certain information and documentation, as well as for taxpayers who take the deduction or the credit.
- The implementation of “simulated schemes” related with the rendering of specialized services or work, or doing outsourcing, would be considered as aggravated tax fraud.

Mexican Income Tax Law

- Expenses derived from the rendering of specialized services could only be deducted if the service provider has the corresponding authorization and provides copies of (i) such authorization, (ii) the tax invoices issued for the related salary payments, (iii) the withholding tax returns and (iv) the labor contribution payments.

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Value Added Tax Law

- In order to credit VAT related with specialized services or work, the client should obtain copies of (i) the authorization issued by the Ministry of Labor and Social Security and (ii) the VAT tax return and of its proof of payment.
- The 6% withholding tax obligation imposed to taxpayers who hire services in which they have personnel at their disposal, would be repealed.

Transitory provisions

- Criminal conducts committed before the bill becomes enforceable, would be punished in accordance with the legislation applicable at the time such conducts were incurred.
- Collaboration agreements in order to exchange information and carry out parallel reviews with other governmental authorities, would be entered into.

It is important to follow the legislative process, as the bill may still be amended before its approval, as the case may be.

Should you require additional information, do not hesitate to contact Oscar López Velarde (olopezvelarde@ritch.com.mx) or Santiago Llano Zapatero (sllano@ritch.com.mx), partners of the Tax practice at Ritch Mueller.

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