

## TAX FLASH

---

2012-1

---

### **Labor Reform**

On November 13, 2012 the Upper Chamber of the Mexican Congress approved the bill of amendments to the Federal Labor Law, which was sent to the Executive Branch for its enactment and publication, situation that we understand will happen in the following days.

Even when this reform includes several modifications to the labor law which only have impact in such field, certain amendments related to the labor subcontracting regime and the employees' profit sharing (PTU) stand out, which may give rise to important tax and social security implications.

The rules added in connection with the labor subcontracting regime establish certain parameters which may result in the contracting party being considered as the employer of the contractor's employees, which would have not only labor consequences, but also tax and social security implications, specifically, with respect to the PTU.

Subcontracting is defined as the regime under which an employer identified as the contractor carries out works or renders services with employees under its dependency, in favor of a contracting party (which may be a legal entity or an individual), which determines the activities to be carried out by the contractor and supervises him in the rendering of the services.

Activities carried out under the subcontracting scheme shall meet the following conditions: (i) shall not cover all the activities that are carried out in the workplace, either if they are equal or just similar; (ii) they shall be justified by their specialized nature; and (iii) they shall not comprise the same or similar activities to those carried out by the other employees of the contracting party.

If any of these conditions is not met, the contracting party shall be considered as employer for all purposes, even with respect to social security obligations.

Under the subcontracting scheme certain additional obligations are imposed to the contracting party.

The subcontracting regime will not be allowed when employees are deliberately transferred from the contracting party to the contractor with the purpose of reducing their benefits; any person that uses this structure with willful misconduct shall be penalized (penalty ranging between \$15,583 and \$311,650 Mexican pesos).

Regarding the rules related to the payment of the PTU, it is established that the employees "of a company's establishment" (branch, agency or similar) are part of said company for purposes of the PTU, which has given rise to some questions regarding its scope and that may lead to interpretations that may have an effect in the way in which the PTU has to be computed.

Considering the importance of these amendments, we recommend to review them thoroughly in order to identify in a timely manner any issue which may be of particular interest.

\* \* \* \* \*

Mexico City  
November 2012

This Tax Flash contains information of a general nature and, thus, it does not address any particular case or facts. The information contained herein is accurate as of the date of issuance; however, we make no representation as to the fact that such information be accurate in the future. Accordingly, we recommend that specific advice addressing your particular circumstances be requested.