



# TAX BULLETIN

2nd FIFTEEN, APRIL 2021



We hereby summarize the labor and tax information disclosed through different media during the second fifteen day period of April 2021 such as the Internet Web page of the Tax Administration Service (SAT) and the Official Daily Gazette (DOF - as per its initials in Spanish), among other things.

## TAX

### LABOR SUBCONTRACTING REFORM

The Executive Branch saw fit to enact Reforms to distinct federal laws that were published in the afternoon edition of the DOF on April 23, 2021, through the Decree that reforms, adds, and repeals various provisions of the Federal Labor Act (LFT - as per its initials in Spanish), the Social Security Law (LSS), Institute of national housing Fund for Workers Law (LINFONAVIT), the Federal Tax Code (CFF), the Income Tax Law (LISR), the Value Added Tax Law (LIVA), the Federal Act on Public services (LFTSE), Regulations of Section B) of Article 123 of the Constitution, the Regulatory Law of Subsection XIII Bis of Section B of Article 123 of the Political Constitution of the Mexican United States in labor Subcontracting matters which, in general, became effective on April 24, except for the reforms to the CFF, LISR, LIVA, which will start to be applied beginning August 1, 2021,

We present a summary below of the additions and modifications carried out on the different laws referred to above, as follows:

#### LFT

- ▶ Labor subcontracting, which is understood as when an individual or legal entity places its own workers in benefit of another person, is prohibited.
- ▶ Employment agencies and intermediaries engaged in the process of contracting personnel may participate in recruiting, selecting, training, and instructing, among other things, but they will not be considered employers.
- ▶ Subcontracting of specialized services or execution of specialized works that do not form part of the corporate purpose nor of the predominant economic activity of the beneficiary thereof is permitted, provided that the contractor is registered with the STPS (as per its initials in Spanish) in the public list of companies of subcontracting services and specialized works.
- ▶ The services or complementary or shared works rendered between companies of the same business group will also be considered as specialized, provided that they do not form part of the corporate purpose nor of the predominant economic activity of the company that receives them.
- ▶ The subcontracting of specialized services or execution of specialized works should be formalized through a written contract, which sets forth the purpose of the services to be rendered or the works to be executed, as well as the approximate number of workers who will participate in the performance of that contract.

- ▶ Individuals or legal entities that render specialized services or execute specialized works should start to provide information of the contracts entered into in a period of 90 calendar days, counted as of the effectiveness of this Decree, except for a plain photocopy of the registry issued by the STPS, since this copy will be provided once the STPS places the mechanism for obtaining the registry at the disposal of individuals and legal entities.
- ▶ The individual or legal entity that subcontracts specialized services or the execution of specialized services from a contractor that does not meet the obligations arising from relationships with their workers, (labor, tax, and social security) will be jointly and severally liable in connection with the workers used for those engagements.
- ▶ Individuals or legal entities that provide subcontracting service should be registered with the STPS. They should evidence that they are current in their tax and Social Security obligations to obtain the registry. That registry will have to be renewed every three years.

The STPS will issue the guidelines for registering within the 30 days subsequent to the effectiveness of this decree.

Individuals or legal entities that render subcontracting services should obtain the registry with the STPS in a period of 90 calendar days, counted as of the publication of the guidelines for the registry that will be issued by that agency referred to in the above paragraph.

- ▶ The companies that currently have subcontracted workers whose activities not different from their corporate purpose nor their predominant activity have 90 calendar days to recognize them and transfer them to their work staff. At any rate, they should recognize labor rights, including their seniority that would have been generated by the effect of the employment relationship.
- ▶ The fine for carrying out or benefiting from subcontracting personnel or from rendering services or specialized works without an STPS registry will be from 2,000 to 50,000 times the daily value of the Unit of Measurement and Update (UMA - as per its initials in Spanish) ranging from \$179,240.00 to \$ 4,481,000.00, taking into account that the daily value of that reference is placed at \$ 89.62 for 2021, without prejudice to the other pertinent liabilities.
- ▶ The amount of profit sharing will have a maximum three-month limit on the salary of the worker or the average of the profit sharing received in the last three years. The amount that is more favorable to the worker will be applied.

### LSS and LINFONAVIT

- ▶ The engagement of specialized services or execution of specialized works should meet the conditions and requirements set forth in the LFT.
- ▶ The contractor will have to report the contracts entered into every four months no later than the 17th of January, May, and September in the four-month period at issue, as well as a plain photocopy of the registry issued by the STPS for rendering specialized services or executing of specialized works.

- ▶ Within a period of 60 calendar days counted as of the effectiveness of this Decree, the National Workers' Housing Fund Institute should issue the rules that set for the procedures for reporting on those contracts entered into.

Individuals or legal entities that render specialized services or execute specialized works should start to furnish a plain Photocopy of the registry of the STPS, once this agency places the mechanism for obtaining the background document at the disposal of those persons.

- ▶ The fine for not filing or delivering the service rendering or specialized works report late is set in an amount equivalent to 500 to 2,000 times the value of the UMA, that is, ranging from \$44,810.00 to \$179,240.00.
- ▶ Those employers that had applied for the assignment of one or more employer registries with the IMSS to register their workers nationwide will have a period of 90 calendar days to withdraw those employer registries and, if it has merit, apply for an employer registry with the IMSS.
- ▶ For purposes of the Social Security Law, the migration of workers from companies that operated under the labor subcontracting regime will be considered as employer substitution for the 90 calendar days subsequent to the effectiveness of this reform, provided that the company receiving the workers recognizes their labor rights, including their seniority and terminated work risks with the corresponding legal authorities. The rules set out in the same Decree shall apply in these assumptions, for purposes of the determination of the class, fraction, and occupational Hazard Insurance.

## CFF

- ▶ Payments or considerations realized for subcontracting of personnel to carry out activities related to the corporate purpose, as well as the predominant economic activity of the contracting party will not undergo tax deduction or tax credit effects.
- ▶ The services in which personnel are provided or placed at the disposal of the contracting party will not undergo tax deduction or tax credit effects, when any of the following assumptions is updated:
  - a. When the workers that the contractor provides or places at the disposition of the contracting party, they have originally been workers of the contracting party and had been transferred to the contractor through any legal concept.
  - b. When workers who are provided or placed at the disposal of the contractor cover the predominant activities of the contracting party.

Payments of considerations for subcontracting specialized services or executing specialized works that neither form part of the corporate purpose nor of the predominant economic activity of the beneficiary thereof may give rise to tax deduction or tax credit effect, provided that the contractor is registered with the STPS and that all the other requirements are met

as set forth for that purpose in the Income Tax Law and the Value Added Tax Law, respectively.

The services or complementary or shared works rendered between companies of the same business group will also be considered as specialized, provided that they do not form part of the corporate purpose nor of the predominant economic activity of the company that receives them.

- ▶ Joint and several liability of legal entities or individuals that receive services or contract works for the contributions that would have been assessed due to the workers with which the service is rendered.
- ▶ It also defines taking a deduction or credit as an aggravating circumstance in the commission of a violation, in contravention of the provisions set forth in the LISR and LIVA with regard to subcontracting.
- ▶ A contractor will be considered to have committed a violation when it does not meet the obligation of delivering the registry with the STPS to a contracting party, as well as a copy of the tax receipts for payment of salaries to the workers that rendered the service or executed the corresponding work to the contracting party, the payment receipt issued by the banking institution for the tax payment voucher of the withholdings made from those workers, the payment of worker-employer contributions to the IMSS, as well as the payment of contributions to the INFONAVIT. Consequently, that contractor will be subject to a fine ranging from \$ 150,000.00 to \$ 300,000.00 for each information delivery obligation not met.
- ▶ Using simulated schemes for rendering specialized services or executing specialized works that neither form part of the corporate purpose nor of the predominant economic activity of the beneficiary of those services or subcontracting personnel will be considered comparable to tax fraud.

## LISR

- ▶ As a requirement to make the payment of considerations received by the contracting party deductible, the contracting party is bound to verify that the contractor is registered in the list of providers of services or specialized services with the STPS, as well as a copy of the tax receipts for payment of salaries of the workers that rendered the service or executed the corresponding work received by the contracting party, the payment receipt issued by the banking institution for the tax payment voucher of the withholdings made from those workers, the payment of worker-employer contributions to the IMSS, as well as the payment of contributions to the INFONAVIT.
- ▶ The following will not be deductible:
  - a. Payments or considerations realized for subcontracting of personnel to carry out activities related to the corporate purpose, as well as the predominant economic activity of the contracting party.
  - b. The payments or considerations for the workers that the contractor provides or places at the disposition of the contracting party, they have originally been

employees of the contracting party and had been transferred to the contractor through any legal concept.

- c. The payments or considerations for workers who are provided or placed at the disposal of the contractor cover the predominant activities of the contracting party.

## VAT LAW

- ▶ The obligation is eliminated that contracting companies had to withhold 6% VAT on the value of the consideration effectively paid.
- ▶ VAT shifted for the services of payments or considerations made for subcontracting of personnel will not be creditable.
- ▶ In order to credit VAT on specialized services or executed specialized works, the contracting party should verify that the contractor is registered with the STPS, as well as obtain copies of the corresponding CFDIs, a copy of the payment receipts from a banking institution, a copy of the payment of worker-employer contributions to the IMSS and contributions to the INFONAVIT.
- ▶ The contractor should furnish the contracting party with the documents referred to in the above paragraph no later than the last day of the month subsequent to the month in which the contracting party has made payment of the considerations. If the foregoing documents are not obtained, then an amended return should be filed with the decrease in the amounts that would have been credited.

## LFT-SECTION B

- ▶ In order for the public sector not to resort to subcontracting personnel, an express prohibition is expressly included in the LFT, Regulatory Law of Section B) of Article 123 of the Political Constitution, as well as in the Regulatory Law of Subsection XIII Bis of Section B of Article 123 of the Political Constitution of the Mexican United States.
- ▶ The possibility that entities, agencies, and bodies of federal public administration may resort to engaging specialized services or executing specialized works is regulated insofar as they neither form part of their essential administrative activities, nor for rendering public services, provided that the contractor is registered in the list set out in the LFT.
- ▶ The reforms for the public sector will become effective beginning January 1, 2022.

## **FIRST RESOLUTION OF MODIFICATIONS TO THE ANNUAL TEMPORARY TAX REGULATIONS (RMF) FOR 2021 AND ITS EXHIBIT 1-A**

On May 3, 2021, the First Amendment to the Annual Temporary Tax Regulations (RMF - as per its initials in Spanish) from 2021 and its Exhibits 1-A, 3, 9, 11, 14, 15, AND 29 was published in the DOF, with regard to which we have discussed the most significant rules in our other bulletins.

This amendment will generally become effective on May 4.

We hereby place some of the links where you may find our complete prior bulletins below where the early versions of that first amendment were published.

[https://www.bdomexico.com/getattachment/43849274-2c0d-4cf8-978e-d39019d62491/BF\\_1%C2%AA-Quincena-de-marzo-de-2021.pdf](https://www.bdomexico.com/getattachment/43849274-2c0d-4cf8-978e-d39019d62491/BF_1%C2%AA-Quincena-de-marzo-de-2021.pdf)

<https://www.bdomexico.com/es-mx/publicaciones/flash-fiscal/primera-resolucion-de-modificaciones-a-la-resolucion-miscelanea-fiscal-para-2021-y-su-anexo-1-a,-ant>

## **PRODECON PUBLISHES ITS INTERNATIONAL NEWS BULLETINS FOR THE PERIODS COVERING FROM APRIL 19 TO 23 AND FROM APRIL 26 TO 30 OF TAX YEAR 2021**

The Attorney General's Office for Taxpayer Defense (PRODECON) disclosed its international news bulletin on its internet page: [www.prodecon.gob.mx](http://www.prodecon.gob.mx), for the periods that cover from April 19 to 23 and from April 26 to 30 for tax year 2021, which is highlighted as follows:

### **Bulletin from April 19 to April 23, 2021.**

- 1. Digital platforms have a significant role to play in the value added tax policy in the collaborative economy.<sup>1</sup>**

Digital platforms can play a significant role in the application of VAT policies/special excise tax (VAT/GST) in the collaborative economy, according to a new report from the Organization for Cooperation and Economic Development (OCED)

The growth impact of the collaborative economy and agreements in policies and management of VAT/GST presents an array of solutions for applying these policies to operators of the collaborative and exchange economy.

These solutions are designed to guarantee an equal playing field between operators in the economy of shared work and technological work in rapid growth and more traditional companies.

The report highlights the central role that can be played by the platforms of the collaborative and exchange economy at the time of providing information to the tax authorities, and collect VAT/GST on the activities of the exchange and rapid growth economy. The report also sets out the central components of a comprehensive VAT/GST policy for tax authority in response to the growth of the shared and technological economy. It analyzes the main business models of the collaborative economy and of the gig economy and the challenges that it creates for collection and managing VAT/GST, by presenting a series of measures to address these challenges.

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<sup>1</sup> Source: <https://www.oecd.org/tax/consumption/digital-platforms-have-an-important-role-to-play-in-value-added-taxpolicy-in-the-sharing-and-gig-economy.htm>

## 2. The Committee of Experts of the United Nations approve a new digital tax article for a tax model.<sup>2</sup>

The United Nations Committee of Experts on International Cooperation in Tax Matters accepted the text of a new article and comment for the United Nations model tax treaty that would grant additional tax rights to countries where the customers of an automated digital service provider are located.

The proposal for the new United Nations model article was first put forward by Bansal, a member of the Indian Revenue Agency, who later became a member of a 13-person drafting group tasked with refining the UN digital site tax proposal.

The new article is considered to be an alternative to the OECD-led work on the first pillar. Unlike the first pillar, the right to tax is not conditioned to income thresholds.

Unlike the preferred US version of Pillar One, it only applies to companies participating in the digital economy.

The new tax law would apply to automated service revenue, that is, revenue received with little human input from the service provider. It would apply to income derived from online providing advertising services, user data, online search engines, online matchmaking platform services, social media platforms, digital content services, online games, cloud computing services, or standardized online teaching services.

## 3. Ireland and Mexico among the countries that fight to solve the MAP tax and transfer pricing cases on a timely basis.<sup>3</sup>

Five of the eight countries in the latest round of OECD peer review reports failed to resolve mutual agreement procedure (MAP) cases within the 24-month average time frame sought by Action 14 of the OECD Minimum Standard on the Tax Base Erosion and Profit Shifting Project (BEPS), on dispute resolution.

The review assessed compliance with the minimum MAP standard by Australia, Ireland, Israel, Japan, Malta, Mexico, New Zealand, and Portugal.

Mexico and Portugal took the longest, with an average of 38 months each, more than a year above the target.

Ireland was the next slowest country with 32 months on an overall average. Ireland was also more than a year behind on its transfer pricing cases, which, with an average time of 38 months to complete, took longer than the other cases.

The eight countries overall obtained better results on the other elements of the minimum standard to make dispute resolution more effective. Only one country, Portugal, did not meet the standard to prevent disputes, that is, through advance pricing agreements (APA), since it did not allow the APA to be reversed.

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<sup>2</sup> Source: <https://mnetax.com/un-tax-committee-approves-new-digital-tax-43504>

<sup>3</sup> Source: <https://mnetax.com/ireland-mexico-among-countries-struggling-to-timely-resolve-map-tax-and-transferpricing-cases-43484>



## Bulletin from April 26 to 30, 2021.

### 1. Tax inspectors without borders and their partners exceed a one billion milestone in additional tax revenue for developing countries.<sup>4</sup>

Through its innovative approach to audit assistance, Tax Inspectors Without Borders (TIWB) has significantly strengthened the capacity of developing countries to tax multinational companies effectively.

TIWB is a joint initiative of the OECD and UNDP that deploys qualified experts to developing countries in Africa, Asia, Eastern Europe, Latin America and the Caribbean to help develop fiscal capacity in the areas of auditing, criminal tax investigations and the efficient use of automatically exchanged information.

TIWB assistance has given rise to increased domestic resource mobilization in some of the world's least developed countries.

The TIWB initiative now has 42 programs completed and 45 ongoing worldwide. Demand continues to be strong for TIWB audit assistance, in addition to pilot programs focused on criminal tax investigations and the effective use of automatically exchanged financial account information.

### 2. The countdown begins for the global tax against tax havens.<sup>5</sup>

The global battle to prevent transnational companies from shifting their profits to tax havens, and countries competing for investments with an even floor in tax matters has taken on new vigor with the proposal to implement a global tax on corporate giants, promoted by OECD and G20 countries.

The proposal is to apply a global minimum tax to the profits of multinational companies (known as ISR [Income Tax] in Mexico) in the OECD and G20 countries.

There is still no defined percentage, although there are several figures on the table for discussion: The United States proposes 21%, whereas the minimum rate for OECD countries is 9% in Hungary, and the highest is 32% in France. The average in these countries is 23%.

This tax would only apply to companies with more than 750 million euros per year. If a multinational Mexican company invests in countries where tax is not paid or lower rates are paid (tax havens), based on this provision, Mexico would have to assess income tax on all income companies have in that country, explained Cesar Catalan Sanchez, a member of the international tax technical commission of the “Colegio de Contadores Públicos de México”.

The proposal is addressed to companies of the digital economy such as Google, Amazon or Facebook, since the same rate would be changed in the countries where their services and products are consumed and where the services are located, explained the head of Hacienda (Mexican counterpart of the US IRS).

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<sup>4</sup> Source: <https://www.oecd.org/tax/tax-inspectors-without-borders-and-partners-pass-usd-1-billion-milestone-in-additional-tax-revenues-for-developing-countries.htm>

<sup>5</sup> Source: <https://www.eltiempo.com/economia/sectores/le-contamos-como-un-grupo-de-empresas-le-hacia-el-quite-a-los-impuestos-581969>

Place the link of the PRODECON at your disposal below, where you may find the complete bulletins:

<http://www.prodecon.gob.mx/index.php/home/relaciones-institucionales/sub-relaciones-institucionales/boletin-noticias-internacionales>

Our specialists from BDO Mexico will be at your service to attend any questions or comments related with the topics above.\* \* \*

**SALES AND MARKETING**

BDO Mexico City  
Tel.: + 52 (55) 8503 4200

[mercadotecnia@bdomexico.com](mailto:mercadotecnia@bdomexico.com)