Specialised Services (REPSE): New SAT reviews and risks for contracting parties

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For tax audit purposes, the Tax Authority (SAT) has once again launched a review campaign, this time related to the payment of invoices issued by REPSE-registered specialised service providers. Through email "invitations", taxpayers are being requested to provide a **"Response to the official letter, invitation or communication within the framework of an in-depth review".**

As background, and as a result of the labour reform, since 2021 the deductibility of payments or consideration made for the subcontracting of specialised services has been subject to compliance with certain requirements, as established in the penultimate paragraph of Article 15-D of the Federal Fiscal Code:

"For the purposes of the first paragraph of this Article, **tax effects of deduction or credit may be granted to payments** *or consideration for the subcontracting of specialised services or the execution of specialised works, which do not form part of the corporate purpose or the prevailing economic activity of the beneficiary thereof, provided that the contractor has the registration referred to in* ***Article 15 of the Federal Labour Law and that the other requirements established for such purpose in the Income Tax Law and the Value Added Tax Law, respectively, are complied with****."*

These requirements include that **Specialised Service Providers**:

- Hold registration with the Ministry of Labour and Social Welfare (Secretaría del Trabajo y Previsión Social – REPSE).

- Renew such registration every three years and maintain it in force.

- Submit to the Mexican Social Security Institute (Instituto Mexicano del Seguro Social – IMSS), on a four-monthly basis, information regarding the contracts entered into during the relevant four-month period.

- Also submit information regarding the aforementioned contracts to INFONAVIT.

In this regard, the Ministry of Labour and Social Welfare may deny or cancel, at any time, the registration of those who fail to comply with the applicable requirements and/or fail to pay contributions.

Likewise, both the Social Security Law and the INFONAVIT Law establish that such institutions shall inform the Ministry of Labour and Social Welfare of any non-compliance with the requirements for the purposes set out in the Federal Labour Law itself.

For their part, under the Income Tax Law (ISR) and Value Added Tax Law (VAT), **the recipient** of specialised services must verify:

1. That the subcontracted specialised services do not form part of its corporate purpose or its prevailing economic activity.

2. That the contractor holds a valid REPSE registration.

3. A copy of the tax receipts (CFDIs) issued in respect of employees' salary payments.

4. Bank-issued proof of payment corresponding to the filing and payment of tax withholdings (monthly return).

5. Payment of employer–employee social security contributions to the Mexican Social Security Institute (IMSS).

6. Payment of contributions to INFONAVIT.

The law expressly provides that, **should the recipient of the services fail to collect the above-mentioned documentation within the prescribed period**, it must file an amended tax return reducing the amounts previously credited for such concept.

Notwithstanding the above, the Federal Fiscal Code goes even further. Section XVI of Article 26 establishes joint and several liability for contracting parties in respect of contributions that may have been incurred by the employees of their specialised service providers.

In summary, inadequate control over specialised service providers could result in:

- Non-deductibility of payments.
- Disallowance of VAT credits.
- Joint and several liability in respect of omitted contributions.
- Fines and/or penalties.

How can we help?

- Implementation and/or review of controls.
- Compliance assessment (health check).
- REPSE supplier administration and compliance.
- Best practices.
- Defence file.

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