

client alert

Mexico City; on April 11, 2024

Payments for Teleworking are not included in the base salary of contribution

On March 22, 2024, it was published on the Federal Official Gazette ("**DOF**", for its acronym in Spanish) the accord **ACDO.AS2.HCT.27022024/37.P.DIR** (the "**Accord**") issued by the H. Technical Council of the Mexican Institute for Social Security (the "**Council**"), which approved the criterion number **01/2024/NV/SBC-LSS-27-I** (the "**Criterion**").

Please remember that article 330-E sections I and III of the Federal Labor Law ("**FLL**") sets forth that, on teleworking scheme, employers will have to comply, among other obligations, with provide, install and take of the maintenance of the necessary equipment for teleworking, such as computers, ergonomic chairs, printers, as well as to assume the costs associated to telecommunication services and the proportional part of the electricity service.

Moreover, the Criterion establishes that the amounts for teleworking granted by the employer **do not integrate the contribution base salary** ("**SBC**", for its acronym in Spanish), pursuant article 27 section I of the Social Security Law ("**LSS**", for its acronym in Spanish), which sets forth that are **excluded** from the SBC **working equipment such as tools, garments, and other similar items**.

Likewise, the Criterion establishes that, due to the nature of the amounts foreseen by the **FLL** on teleworking, that is to say, provide, install and maintain the necessary equipment for teleworking, the cost of telecommunication services, the proportional part of electricity service, among others, **shall be considered as working tools**, hence, **must not be integrated to the SBC**.

These payments must be accredited as expenses duly identified within the payroll and not as compensation, independently of the claiming of tax established for Income Tax.

Besides, the payments made for these concepts must be agreed in the individual employment agreement in order to be considered as working tools and excluded from the SBC.

Lastly, the Criterion sets forth that incurs in an **unlawful tax practice** on social security matters anyone who:

- Deliver to employees the amounts in cash, *via* payroll or by any mean, pretending that they are teleworking benefits derived from the employer's obligations, independently of the name used in accounting records, with the purpose of exclude them from the SBC, avoiding the payment of social security contributions.



- Advice to, provide services of or participate in the execution or implementation of the aforementioned practices.
- The authorized public accountant that issues a compliance opinion “clean and unreserved” in the social security reports of employers who incur in any of the aforementioned conducts.

The labor and social security practice of ECIJA Mexico, S.C. remain at your disposal, with respect to any support or advice you may require in this regard.

Labor and Social Security Practice of ECIJA Mexico, S.C.

socios.mexico@ecija.com

(+52 55) 56 62 68 40

www.ecija.com