

IMSS DETERMINES THAT THE PAYMENT OF PROFIT SHARING IN EXCESS OR OUT OF TERM INTEGRATES THE BASE CONTRIBUTION SALARY

JULY 2023

EXECUTIVE SUMMARY:

- On July 7th, 2023, the IMSS published the Resolution ACDO.AS2.HCT.260623/160.P.DIR, which contains the Criterion number 02/2023/NV/SBC-LSS-27-IV.
- The Resolution determines that payments classified as profit sharing (PTU) made in different terms than the Law establishes integrate the base contribution salary.
- The Resolution became effective the day after its publication.



On July 7th, 2023, the Technical Council of the Mexican Social Security Institute ("IMSS" for its acronym in Spanish) published, in the Official Gazette of the Federation ("DOF" for its acronym in Spanish), the Resolution ACDO.AS2.HCT.260623/160.P.DIR, which was approved in the ordinary session of June 26th, 2023, and contains the Criterion number 02/2023/NV/SBC-LSS-27-IV, that determines that payments classified as profit sharing (PTU) made in different terms than the Law establishes integrate the base contribution salary because they lose the nature of PTU and, therefore, are not excluded in terms of article 27 of the Social Security Law.

As such, employers in Mexico must integrate into the base contribution salary:

- a) The amounts of PTU paid in excess of the legal limit of 3 months of salary or the average of the last 3 years, in terms of article 127, section VIII of the Federal Labor Law.
- b) The payments made for productivity bonuses or PTU advances that could imply the payment of PTU outside the legal deadlines.

Consequently, the IMSS will consider undue tax practitioners:

1. Whoever excludes the payments exceeding the maximum PTU amount from the base contribution salary.
2. Whoever pays PTU outside the term established in Article 122 of the Federal Labor Law (before or after).
3. Whoever excludes from the base contribution salary the payments made by way of productivity bonus or of any other nature.
4. Anyone who advises, counsels, provides services, or participates in performing or implementing the aforementioned practices.
5. Any authorized public accountant who issues a "clean and unqualified" social security

This Resolution, which becomes effective the day after its publication, can be consulted directly at the following link: https://www.dof.gob.mx/nota_detalle.php?codigo=5694775&fecha=07/07/2023#gsc.tab=0



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