



# Doing Business in MEXICO



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## Andersen Global

**Andersen Global®** was established in 2013 as an association of legally separate, independent member firms, with a worldwide presence and comprised of professionals that share a common background and the same vision no matter the location where they are.

Our growth is a byproduct of the outstanding client service delivered by our people, the best professionals in the industry and our objective isn't to be the biggest firm, it is to provide best-in-class client services in seamless fashion across the globe.

Our professionals are selected based on quality, like-mindedness, and commitment to client service and each and every one of the professionals that are a part of Andersen Global share our core values.

Andersen Global was established to create an enduring place – ONE FIRM where clients across the globe are afforded the best, most comprehensive tax and legal services provided by skilled staff with the highest standards.

Outstanding client service has and will continue to be our top priority.

## Andersen in Mexico

Andersen in Mexico specializes in providing comprehensive tax & legal consulting services, building trust through interpersonal relationships, and offering tailored advice in different lines of service of our practice.



Andersen in Mexico consists of professionals with extensive experience, located in the major cities across Mexico, who provide a full range of cost-effective and added-value services to our clients. Our people take the necessary time to understand the complexities of each individual and company, adapting their services to their unique situation.

Andersen locations in Mexico include Mexico City, Guadalajara, Monterrey and Querétaro and we offer the following services among others:



### **Legal Services Lines at Andersen in Mexico**

- Corporate
- Mergers and Acquisitions
- Intellectual Property
- Litigation and Dispute Resolution
- Employment

### **Tax Services Lines at Andersen in Mexico**

- Corporate & International Tax
- Tax Compliance
- Transfer Pricing
- Customs & VAT
- Business Credits and Tax Incentives

### **Other Strategic Services at Andersen in Mexico**

- Regulatory Compliance
- Commercial Notary Services
- Valuation
- Real Estate
- Private Client Services – Wealth Management
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## 2.

# Country Highlights

Mexico has a geographical area of 760,000 square miles (1,970,000 square kilometers), making it the 12th largest country in the world. It is located in the southern part of North America (bordered by the United States of America) and is a Constitutional Federal Republic with 32 states (including Mexico City), where approximately 6,500 export manufacturing companies are located.

Mexico is open to direct foreign investment (DFI) in most economic sectors, being one of the largest recipients of DFI of the emerging markets. Its macroeconomic stability, large domestic market, skilled workforce and proximity to the United States have been fundamental factors in attracting foreign investors.

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For many years, Mexico has been considered a strategic trading partner of large markets such as the United States and Canada, countries with which it has entered into a trade agreement (USMCA) that has contributed to maintaining and promoting business investments.

Mexico is also a party to several agreements as a member of the Organization for Economic Cooperation and Development (OECD) that include foreign investment, the Code of Liberalization of Capital Movements and the National Treatment Instrument, among others.

According to the World Bank, Mexico is ranked 60th among 190 countries in the ease of doing business in 2020, making it one of the countries with the best business climate over other nations in Latin America.

- Capital: Mexico City
- Population – 130 million inhabitants
- Languages: Official language is Spanish, while English is understood by many businessmen and service providers in largest cities
- Currency: Mexican Peso (MXN)
- Government: Representative democracy, governed by a President freely elected for a 6-year period
- Political system: Mexico is a Republic constituted in three controls, Executive, Legislative and Judicial
- Inflation rate: 7.36% as of December 2021
- GDP: 1.17 US Trillion in 2021 (estimated)

## Corporate Aspects

From a legal perspective, it is possible to do business in Mexico through the Permanent Establishment of a foreign entity or through different corporate structures. Among these structures, the two most commonly used are Sociedad Anónima (S.A.), or joint stock company, and Sociedad de Responsabilidad Limitada (S.de R.L.), or limited liability company.

There is no minimum capital required to set up a company; nevertheless, once the capital is agreed by the shareholders for the S.A., at least 20% of the par value of the shares representing minimum capital stock must be fully subscribed to and paid in upon incorporation. For an S. de R.L. once the minimum capital is agreed by shareholders, at least 50% of capital stock must be fully subscribed to and paid upon incorporation. Stock or Shareholder's liability is generally limited to the amounts contributed to the company's equity.

All types of companies in Mexico may be incorporated by at least by two individuals or legal entities, with the exception of the Simplified Joint Stock Company (S.A.S.), in which incorporation by only one person is allowed. However, it must be considered that due to its restrictions (such as income limited to USD \$250,000 per year), the S.A.S. is not regularly used to conduct business in Mexico.

As for professional partnerships (Sociedad Civil), they are created to offer professional and personal services. These entities are regulated by local legislations and even



though the main structure is the same, it may vary from state to state.

### Direct Foreign Investment Policy

Mexico is open to direct foreign investment in the vast majority of economic sectors and has been one of the largest emerging market recipients of direct foreign investment.

The Foreign Investment Law provides national treatment, eliminates performance requirements for most foreign investment



projects, liberalizes criteria for automatic approval of foreign investment and provides details on which business sectors are open to foreign investors and to what extent.

Notwithstanding the above, Mexico reserves certain sectors, in whole or in part, for the state including petroleum and other hydrocarbons, control of the national electric system, radioactive materials, telegraph and postal services, nuclear energy generation, coinage and minting money, control, supervision and surveillance of ports of entry, among the more relevant ones. Certain professional and technical services, development banks and land transportation

of passengers, tourists and cargo (not including courier and parcel services) are reserved entirely for Mexican nationals (in recent years some reforms in energy, power generation, telecommunications and retail fuel sales sectors have allowed private companies including foreigners to participate to some extent).

Restrictions on real estate ownership by foreigners may apply, such as acquisition of land within 100 kilometers of the Mexican borders and 50 kilometers along the coast and limits on participation in the acquisition of real property for agricultural, forest and livestock activities.

## 4. Payroll Charges and Labor Rights

Employment relations are governed by the Federal Labor Law. An employment relationship is defined as the voluntary rendering of services by an individual (the employee) for consideration and benefits within the organization and under the direction of another entity or individual (the employer).

Based on the commercial needs of a company, it is feasible to determine which type of relationship is better for the business. The nature of the relationship will determine whether the protective labor law or the more flexible commercial law applies, if the labor or civil courts have jurisdiction and what the company's social security obligations are.

It is important to consider that after the Labor Reform enacted by the Mexican Government in April 2021, subcontracting services is prohibited and no deduction or crediting for tax purposes based on said services shall be allowed. In certain cases, contracting specialized services will be allowed as long as said services do not involve the same or similar activities carried out by the contracting party, and as long as specific requirements are met.

### Employment contracts

As a general rule, an indefinite-term employment agreement may apply, unless the specialized nature of the services to be provided allows, for example:

- Temporary contract (only for a specific work or project)
- Training contract (from one to six months max. and may vary depending on the position)

- Trial period contract

The Federal Labor Law establishes basic minimum rights and conditions, which in some cases may be modified by the applicable Collective Bargaining Agreement (CBA) or improved by the individual employment agreement. Please note that the labor relationship is governed by the employment agreement, the CBA, the Worker's Statute and Federal Labor Law.→

### Social Security Fees

All employers and employees shall be registered with the Mexican Social Security Institute and the Employees' Housing Fund Institute (IMSS and Infonavit, respectively for the Spanish acronyms) and they are obligated to pay the respective fees.

Employers are responsible for withholding and paying the amounts to be contributed by each employee and for the amounts payable by the employer in Social Security fees as well as to the Employees' Housing Fund Institute.

The amount of the Social Security and the Employees' Housing Fund payments are determined by applying established rates to the base amount for payments which, in turn, depends on the salary earned by the employee. The total amount of employer payments may be increased due to contingencies for occupational accidents or diseases, depending on how hazardous the employee's job is.

## 5.

# Tax Overview

Taxes in Mexico are levied both at the federal and local level. Nevertheless, the most significant government tax revenue is at the federal level.

From a federal perspective, Income Tax represents the biggest revenue for the Mexican government, followed by Value Added Taxes. At a local level, most states levy taxes on property ownership, property

transfers and payroll taxes (no tax is applied on corporate income at the local level).

Federal tax collection is regulated by the Tax Administration Service (SAT for the Spanish acronym). At the local level, each state has its own tax authority that may also collect certain federal taxes under specific conditions according to existing coordination agreements.

## 6.

# Income Tax

Income Tax is levied on overall income for all Mexican taxpayers and on attributable income for non-residents with a permanent establishment in Mexico.

Entities having their main administrative offices or their effective place of management located in Mexico are deemed to have residency for tax purposes. Nevertheless, tax treaty provisions could override domestic law definitions, so a different amount under a treaty could be applicable (if the taxpayer is eligible).

The general corporate tax rate is 30%, which is applied to the fiscal year's taxable income (on a calendar year basis). Taxable income is determined after deducting allowable costs and expenses.

As for tax losses, carry forward is allowed over a 10-year period. In any event, tax losses are considered a non-transferable right.

## Permanent establishment

Under current regulations, any place in Mexico where business activities or services are carried out or rendered by non-residents, such as agencies, offices, mining exploration sites, or any other place of exploration, extraction or exploitation of natural resources, regardless of the length of time involved, is deemed to be a Permanent Establishment (PE).

Additionally, foreigners acting in Mexico through a dependent agent could trigger a PE when the dependent agent habitually carries out the principal role leading to the fulfillment of contracts. A PE could be triggered by foreigners acting through an independent agent when they do not act within its ordinary framework of activities, such as a Mexican resident acting exclusively or almost exclusively on behalf of non-Mexican resident related parties.



In most cases the sites used for display, storage, or purchasing facilities, inventories imported in-bond to be processed by a third party, short-term construction services, offices to carry out auxiliary or preliminary activities and information gathering or scientific research should not be considered as creating a PE in Mexico. It is important to point out that the above exceptions would not apply when the foreigner performs functions in one or more business places in Mexico that are complementary to a cohesive business unit whose PR in Mexico is performing complementary activities, with related parties that are Mexican tax residents or foreign residents with a PE in Mexico or otherwise undertaking complementary activities at a place of business as part of a cohesive business unit that in turn results in such activities not having a preparatory or auxiliary nature

## **Taxation on dividends**

Net after-tax earnings may be distributed to Mexican corporate shareholders without any additional tax payment. However, net after-tax earnings distributed to foreign individuals or shareholders are subject to a 10% withholding rate.

## **Taxation of capital gains**

Direct or indirect transfers of shares, participations, interest and other rights in any local entity in exchange for consideration or for free are subject to income tax on the calculated earnings. On the other hand, earnings derived from selling shares on the Mexican Stock Exchange or in a regulated market are subject to a reduced 10% rate.

## **Non-residents**

Non-residents are subject to tax withholding on any Mexican source of income. Although there are specific taxes levied by local provisions, tax treaty benefits may be claimed if the receptor is eligible. A 40% tax withholding is applicable on any payment made to a tax haven.

## **Mandatory Profit Sharing (PTU)**

Any entity or individual considered an employer is subject to a mandatory profit sharing of 10% on taxable income, which has to be distributed among its employees. Therefore, a cap equivalent to three months of salary or the average salary calculated after the profit sharing received per employee in the three previous years, would be applicable to the profit sharing per employee. The higher amount of either will be applicable in benefit of the employee.

## 7. Indirect Taxes

### Value Added Tax

The Value Added Tax (VAT) is levied at a general rate of 16% on sales of goods and services, lease payments and imports of goods and services that take place in Mexico. Certain transactions are tax exempt (such as the sale of land, credit instruments, residential construction, interest paid by banks, medical services, education, salaries and wages among others), while some other transactions are taxed at a 0% as long as specific requirements are met (i.e., the sale of food and medicines, agricultural goods and services, exportations, etc.).

VAT is determined under a cash method (with few exceptions, such as interest in some cases), and must be calculated on a monthly basis. Any favorable VAT balances may be used as a credit in future tax calculations or claimed in a refund.

Any VAT credit derived from goods or services not specially identified as taxable, not subject to the tax or exempt activities for VAT purposes, must be calculated based on a ratio reflecting its proportion of effectively taxed activities. In any event, the non-creditable VAT may be deducted.

### Excise Tax

Excise tax is levied on diverse items and services provided in Mexico. The Excise Tax Law establishes different tax rates for this purpose:

Product / Service	Rate
Beer	26.5%
Wine	26.5% to 53%
Spirits	53%
Cigarettes and tobacco products	160% + additional quota
Gasoline	Variable
Energy drinks, concentrates, powders or syrup used for preparing them	25%
Junk food	8%
Commission, mediation and distribution of excise taxable items	30%
Raffle and gambling services	30%

On the other hand, goods are exempt from Excise taxes when exported. In these cases, excise taxes paid by exporters on their purchases are not creditable and become part of the cost.

Excise tax is computed on a cash basis. Any excess tax in excess in one month can be credited in the Excise tax calculation of the following months.

## 8.

## Property Taxes

Real property taxes are levied by all the states on a yearly basis. Rates vary depending on the state, but in all cases, the tax calculation is based on the values shown in property tax records.

Real estate transfers are taxed in most of the states. Tax rates across the country average between 2% and 5% applicable based on the transaction value, fair market value or registered municipality value, whichever is higher.

## 9.

## Digital Taxation

No specific taxation exists or is levied as of today on digital platforms, however, Value Added Tax and Income Tax include a regime for digital platforms as well as for users.

### Value Added Tax on Digital Services

Digital services subject to VAT consist of downloads or access to images, movies, text, information, video, audio, music, games, multimedia content, multiplayer environments, ringtones, online news services, traffic information, weather forecasts, statistics services, online clubs, dating websites, long-distance classes or testing video (with the exception of any download of books, newspaper and/or electronic journals).

Services are deemed VAT-taxable in Mexico in the event that:

- The recipient (client) names Mexico as their country of residence
- Payment for the service is made through an intermediary located in Mexico
- The recipient's IP address is assigned to Mexico

- The recipient has provided a telephone number with a Mexican country code

Digital platforms with no permanent establishment in Mexico will have to comply with several obligations such as:

- Applying for a Mexican Tax ID (RFC)
- Appointing a legal representative and requesting an e-signature (efirma)
- Naming an address for notification and verification purposes in Mexico
- Charging and collecting VAT for services rendered
- Calculating and paying VAT on a monthly basis
- Providing information about their transactions on a quarterly basis

### Taxation of individuals

A withholding regime has been established for individuals providing transportation services, lodging activities or selling goods through digital platforms (acting as intermediaries) for Income Tax and Value Added Tax purposes.

Foreign entities not having a permanent establishment in Mexico acting as intermediaries through digital platforms, must assure that the Value Added Tax is charged and collected on services provided, lodging offered or goods sold, as well as withhold the individual's Income Tax on income obtained through the digital platform. In this regard, digital platforms must comply with several obligations as follows:

- Withhold IT according to the tax brackets established for said purposes
- Withhold 50% of the VAT collected (or 100% if the individual using the digital platform does not provide its Mexican Tax ID)
- Obtain a Tax ID to act as a withholding agent
- Issue digital invoices to the individuals subject to withholding
- Pay any taxes withheld on a monthly basis



## 10. Funding Alternatives (Debt and Equity)

There is no minimum capital required for Mexican entities, nor are there restrictions on acquiring debt financing.

In the event of debt funding, the Income Tax law establishes withholding rates that are applicable on interest paid (they may vary from 4.9% to 40%). Tax treaty provisions may override domestic withholding, so a reduced rate according to treaty provisions could be applicable (if the taxpayer is eligible).

There is no minimum capital required for Mexican entities, nor are there restrictions on acquiring debt financing.

### Interest deduction

Interest expense is generally deductible to the extent that the acquired debt is used for/invested in the taxpayer's main business activity. Several requirements must be met for the purpose of deducting interest expenses, such as withholding taxes when applicable, as well as thin capitalization and the expense does not exceed the interest limitation rule.

Thin capitalization rules establish limitations to deducting interest derived from a loan by a non-resident related party whenever a Mexican taxpayer's (the borrower's) debt-to-equity ratio exceeds 3:1 compared to the contracted debt. In these cases, interest paid to the foreign related party (lender)

shall not be deductible to the extent the borrower's indebtedness does not exceed the permitted debt-to-equity ratio.

By way of contrast, thin capitalization rules are not applicable to entities considered to be part of the Mexican Financial System and taxpayers may also file for a ruling with the Mexican tax authority for the purpose of obtaining a higher financial leverage (the peculiarities of their business must be analyzed for this purpose).

Additionally, taxpayers' interest deductions are also limited to net interest (taxable accrued interest minus deductible interest) exceeding 30% of the adjusted taxable profit amount (the year's taxable income plus accrued interest, depreciation and amortization). A minimum deduction of MXN 20 million is recognized on a group basis, thus interest above said level would be affected by the limitation.

The above limitation does not apply to entities belonging to the Mexican financial system nor to interests on debts used to finance public infrastructure, construction located in Mexico (including land acquisition), the exploration, extraction, transport, distribution and storage of oil and hydrocarbons or other extractive industries, electric energy projects or water-related projects.

Lastly, Income Tax Law provides that the interest deduction limitation will only apply when said calculation results are more burdensome than the existing thin capitalization calculation.

# 11. International Trade

Mexico is one of the most open countries to trade in the world due to having signed different free trade agreements and treaties with more than 45 countries, including the United States-Mexico-Canada Agreement (USMCA) and free trade agreements with the European Union, the European Free Trade Association (EFTA), Japan, Israel and several countries in Central and South America.

The main benefit of free trade agreements is the marketing of goods due to the exemption of general import duties by any of the partner countries.

## Importing goods

All taxpayers intending to import goods into Mexico must comply with different obligations, among which is registration in the Importers Registry. They must first be registered in the Federal Taxpayers Registry (RFC) as well as being in good standing with their tax obligations.

All goods imported into Mexico are subject to a customs regime, depending on the destination of the goods (for sale in the domestic market, industrial processes, repair processes, for later exports, etc.). Importation of goods is subject to several taxes and fees, among which are a General Import Duty (0% - 20% approximately), Value Added Tax (16%) and Customs Processing Fee (0.08%).

## Maquiladora

The Mexican government seeks to promote the manufacturing industry and the export of goods, and to this end it has created

export incentive programs that reduce or exempt tax payments and, in some cases, non-tariff regulations and restrictions (both for residents in Mexico and for residents abroad).

The most beneficial export incentive is the IMMEX Program (Program for the Promotion of the Manufacturing, Maquiladora and Export Services Industry), which together with some other programs grant benefits to companies in the manufacturing sector to import raw materials on a temporary basis without paying the general import duty and value added tax (regardless of the degree of foreign ownership) to be used in an industrial process, goods repair process or to provide export services with the intention of exporting the finished processed goods.

In IT matters, it is important to point out that as long as specific requirements are met, no PE would be triggered for non-residents having legal or economic relationships with companies carrying out Maquiladora operations (in-bound, out-bound processing), or because of processing inventories maintained in Mexico, using assets provided by the non-resident or any related party. Among other requirements to be met, the non-resident (principal) must have its tax residence in a country having a tax treaty in effect and determine its tax profit (safe harbor) according to IT Law provisions.

## 12. Transfer Pricing

Existing Transfer Pricing rules in Mexico are based on OCDE guidelines, so on a high-level basis, all related-party transactions must follow arm's length principles.

In this regard, all Mexican companies shall prepare a contemporaneous transfer pricing report and make it available to the tax authority.

Current rules allow both traditional and profit-based methods; however, they consider that the application criteria must be strictly followed to select the applicable transfer pricing method (comparable uncontrolled price is the starting point and any other method may only be applied after stating its justification for not using CUP).

Existing Transfer Pricing rules in Mexico are based on OCDE guidelines, so on a high-level basis, all related-party transactions must follow arm's length principles.

### Country-by-Country, Master file and Local file

Taxpayers exceeding a specifically established revenue threshold must file a master information return, local information return and a country-by-country report that must be filed by Mexican multinational groups meeting the established revenue threshold or by foreign multinational groups meeting the specific criteria.

Applicable provisions for filing the previously mentioned reports are similar to those established after OECD's Base Erosion and Profit Shifting (BEPS) with respect to Action Plan 13: Guidance on the Implementation of Transfer Pricing Documentation and Country by Country Reporting.



## 13. Holding Company Analysis

There is no special holding treatment for Mexican entities having investments abroad. However as previously mentioned, Mexican taxpayers with investments in a PTR have to apply specific rules for the recognition of revenue obtained through a PTR.

## 14. Tax Succession and Tax Penalties

There is no succession tax; however, Income Tax is levied on donations and gifts. A general exemption is applicable on donations between spouses or received by direct descendants or ascendants.

Tax penalties are established in the Federal Tax Code. Depending on each specific situation, it may be a fixed amount or a percentage calculated on taxes overdue. In very specific cases, the tax authority may claim tax evasion and trigger criminal prosecution.





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