Taxation and Investment in Mexico 2012

Reach, relevance and reliability

A publication of Deloitte Touche Tohmatsu Limited

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1.0 Investment climate

1.1 Business environment

Mexico is a federal republic comprised of 31 States and a Federal District. The political system is comprised of federal, state and municipal governments. The President is the head of state and there is a bicameral legislature (Senate and Chamber of Deputies).

Mexico's economy is driven by external trade. Export earnings are fueled by manufacturing, although petroleum, tourism, agriculture and mining also contribute to revenue.

The U.S. is Mexico's largest trading partner, due to its geographical proximity and the benefits of the North American Free Trade Agreement (NAFTA). Despite increasing competition from China and India, many foreign firms still choose Mexico for their assembly plants and other operations. Other major export markets include Canada, Spain and Japan. Major importers include Germany, Japan and Korea.

As a member of the World Trade Organization (WTO), Mexico has eliminated most export permits and substantially reduced export taxes and direct export subsidies. A variety of export incentive programs, including special temporary import programs, are in place to encourage export sales. The legislation promoting in-bond facilities in Mexico (maquiladoras) makes the country an attractive place to manufacture goods for export to the U.S.

Mexico is also a member of the OECD.

Economic activity is concentrated in Mexico City. The six northern border states are home to much of the country's manufacturing, particularly maquiladoras (in-bond assembly for re-export factories) producing goods that are then sold in the U.S.

Price controls

Mexico generally does not have price controls.

Intellectual property

Under the Federal Copyright Law, the National Copyright Institute (INDA), an independent agency of the Ministry of Education, is responsible for the administrative enforcement of copyright laws. The INDA is authorized to conduct investigations, request inspections, enjoin copyright violations and impose sanctions.

The law grants an author both "moral" and "patrimonial" rights (moral rights recognize the author as the first and sole perpetual owner of the rights of his/her works and patrimonial rights allow the author to "exploit the work exclusively or authorize others to exploit the work"). Penalties apply for violations of the copyright law.

The Industrial Property Law protects the exclusive right to use trademarks throughout the registration period. Trademark protection covers the goods and services registered under Nice Classification standards.

Patents are granted for up to 20 years and allow the owner the exclusive right to exploit an invention.

1.2 Currency

The currency in Mexico is the peso (MXN).

1.3 Banking and financing

Large foreign financial groups dominate Mexico's financial system. Their affiliates compete with independent financial firms operating as public development banks, public credit institutions, private commercial banks, private investment banks, savings and loan associations and mortgage banks. Other components of the financial system include securities market institutions, development trust funds, insurance companies, credit unions, factoring companies, mutual funds and bonded warehouses. The banking sector remains highly concentrated, with a handful of large banks controlling a significant market share, and the remainder comprised of regional players and niche banks.

The financial profile of the banking sector has improved due to the reduction in "problem assets." These improvements, combined with more stringent capital requirements, have contributed to an improvement in the level and composition of capital across the banking system, particularly among the larger institutions.

Mexico City is the country's main financial center, although Guadalajara and Monterrey (the country's second- and third-ranked cities, respectively) are important financial, industrial and commercial centers.

1.4 Foreign investment

Foreign investment is permitted in all areas except those specifically limited to the Mexican government. Foreign investors may hold up to 100% of the capital stock of any Mexican corporation or partnership, except in areas reserved exclusively for the state (i.e. petroleum and other hydrocarbons, basic petrochemicals, electricity, radioactive minerals, etc.) or reserved exclusively for Mexicans and Mexican corporations (e.g. retail trade in gasoline and liquefied petroleum gas, radio broadcasting and other radio and television services other than cable television, etc.). Investment in a classified or regulated sector such as banking, railways or telecommunications must be approved by the Foreign Investment Commission.

Foreign investment has been simplified by legislative amendments, a reduction in legal and administrative bureaucracy, a reduction in local content requirements, changes to the ceilings on foreign equity, the elimination of most import license requirements and an overhaul of the intellectual property legislation.

1.5 Tax incentives

The Mexican government has curtailed the use of direct tax incentives for investment. The most significant tax incentive still available is the accelerated depreciation allowance for investments in production facilities, which allows same-year deductions for up to 92% of an investment's value, which may vary by industry or asset type. The accelerated depreciation allowance applies only to new assets. Many state governments are pursuing foreign investment through state tax incentives.

Mexico does not offer any tax holidays for local or foreign investors; the country's accession to the General Agreement on Tariffs and Trade and to its successor, the WTO, has eliminated nearly all import duty exemptions.

Maquiladoras

The maquiladora (and manufacturing/PITEX) customs regime (now called "IMMEX," for Industrial, Maquila, Manufacturing and Export Services Program) was designed to promote exports and create jobs. This regime allows for the temporary importation of goods, (machinery and equipment (M&E), tools, raw materials, etc.) into Mexico with no customs duty or import VAT (with some exceptions). In general terms, benefits under the IMMEX program can be obtained if a taxpayer transforms or repairs materials, parts or components into finished goods that are destined for export.

Traditionally, a Mexican maquiladora would import most of the materials and export its production, with the inventory and M&E used in the operations generally owned by the foreign related party and provided to the maquiladora on a consignment basis.

The maquiladora regime also provides for preferential treatment under Mexico's income tax law. Foreign partners *of* maquiladoras are exempt from permanent establishment (PE) status in Mexico if the Mexican firm reports a safe harbor level of taxable income. There are two alternative ways for a maquiladora to avoid creating a Mexican PE: (1) adopt the safe harbor rules or prepare compliant transfer pricing documentation (and following specified procedures); or (2) elect to obtain an advance pricing agreement (APA) via a private letter ruling. Under the safe harbor, a maquiladora must report taxable income corresponding to the higher of the following:

- 6.9% of the value of its assets (taking into account the value of all assets employed in the maquila operations, including foreign-owned assets (both fixed assets and raw materials/inventory)); or
- 6.5% of its costs and expenses (taking into account operating costs and expenses as computed under Mexican GAAP).

Due to its importance to the Mexican national economy, the maquila industry has two important presidential decrees that directly stimulate this sector by decreasing the tax rate to 17.5% of its taxable income. This maximum rate of 17.5% covers both the income tax and business flat tax.

Further, on 12 October 2011, Mexico's president signed a decree to extend the flat tax benefits currently used by maquilas for the 2012 and 2013 tax years, provided certain requirements are met. The decree aims to reduce administrative hurdles through greater use of electronic filing and to simplify the tax calculation. Under the decree, maquilas are permitted to calculate their flat tax liability using the same tax base as used in computing their income tax. The decree also provides that noncompliance with requirements established by the tax authorities will result in cancellation of the register in the imports list, as well as credits for flat tax purposes.

1.6 Exchange controls

There are no restrictions on domestic or foreign currency held locally by nonresidents, and no official guarantees against inconvertibility. Bank accounts in dollars are permitted for companies, but not for individuals.

2.0 Setting up a business

2.1 Principal forms of business entity

Mexico has several forms of business organization, including the stock company (*sociedad anónima* – SA) and the limited liability company (*sociedad de responsabilidad limitada* – SRL), both of which can be forms of variable capital (CV).

The SA and the SA de CV are the most frequently used forms of organization for foreign investors (for U.S. tax purposes, the common form is the SRL because it is considered a transparent entity). The SA most closely resembles the public limited company or corporation. Foreign investors with wholly owned subsidiaries that want added flexibility in increasing or decreasing capital have favored the SA de CV. The only difference between the SA and the SA de CV is the variable portion of an SA de CV's capital stock, which is usually unlimited and not subject to notary certification upon fluctuation.

Formalities for setting up a company

Organizing a local corporation can take four weeks or longer, depending on the complexity of the project. A permit must be secured from the Ministry of Foreign Affairs, but after 15 June 2012, this permit should be requested from the Ministry of Economy. Companies can only carry out business in Mexico after registering with the Public Registry of Commerce.

At least two shareholders must appear before a notary public to sign the deed of incorporation, which must contain the names, nationalities and other particulars of the founders; the name, domicile, purpose and duration of the company; a breakdown of its capital and a statement of the founders' contributions and their value; a description of the manner of administration; names of directors, managers and supervisors; the manner of liquidation; and all other special agreements that will regulate the operation. At least 20% of the capital shares generally must be paid immediately, and the remainder within one year.

Forms of entity

Requirements for SA/SRL

Capital. *SA:* The law does not provide a minimum amount of capital, but at least 20% of the set minimum capital must be paid initially. *SRL:* The law does not provide a minimum amount of capital, but at least 50% of the set minimum capital must be paid initially.

Reserves. *Both:* 5% of profits must be placed in a legal reserve until the reserve equals 20% of authorized capital.

Shareholders/partners. *SA:* At least two shareholders (individuals or entities) are required. The liability of shareholders is limited to the value of the subscribed shares. *SRL:* At least two partners are required, up to a maximum of 50 (individuals or entities). The liability of partners is limited to their contribution.

Ownership. *SA:* The capital stock of the company is divided in shares with the same face value. *SRL:* The capital stock is divided in partnership interests that may have different values and categories (minimum of MXP 1 or its multiples).

Control. *Both:* A simple majority of shareholders/partners has control, unless the bylaws establish a greater majority (as frequently occurs for major decisions).

Meetings. *Both:* Annual general shareholders/partners meetings are required (at a minimum to approve the financial statements of the entity).

Management. *SA:* Sole administrator or board of directors (at least two) that may or may not be shareholders, Mexican or foreign, but in the latter case, the execution of duties as a member of the board within Mexico is subject to the prior authorization of the Ministry of the Interior. *SRL:* Sole manager or board of managers (at least two) that may or may not be partners, Mexican or foreign, but in the latter case, the execution of duties as a member of the board within Mexico is subject to the prior authorization of the Ministry of the Interior.

Officers. *SA:* Officers may be Mexican or foreign, but, in the latter case, the execution of their duties as officers of the company within Mexico is subject to the prior authorization of the Ministry of the Interior. *SRL:* Mexican or foreign, but, in the latter case, the execution of their duties as officers of the company within the Mexican territory is subject to the prior authorization of the Ministry of the Interior.

Labor. *Both:* There is no requirement that labor be represented on the board. No more than 10% of the workforce may be foreigners.

Taxes and fees. Taxes and fees on incorporation are minor, but legal fees may be substantial depending on the complexity of the structure.

Statutory auditor. *SA:* A statutory auditor is mandatory to monitor execution of the administration of the company and must be a person or company different from the shareholders or partners of the company. *SRL:* A statutory auditor is not mandatory, but, if the partners approve use of one, the position can be performed only by a Board of Statutory Auditors.

Branch of a foreign corporation

Approval from the Ministry of Foreign Affairs is not required for a foreign company to open a branch office in Mexico. Instead, newcomers deal exclusively with the Ministry of Economy.

Although a few companies have established branches in Mexico, they are at a disadvantage for several reasons. Branches may not own real estate and they may not deduct payments to the head office for interest, royalties, fees or other services. Establishing a branch takes more time and funds than establishing a corporation, and branch charters usually contain more restrictions than corporate charters. Because branch offices are not legally separate from the head office, the head office can be held responsible for the liabilities of a branch.

Branches are subject to the regular 30% corporate income tax rate.

2.2 Regulation of business

Mergers and acquisitions

Large mergers and acquisitions must be reported in advance to the Federal Competition Commission (CFC) to obtain proper authorization. Failure to comply can result in penalties, or a suspension or denial of the execution of the merger or acquisition.

Before any merger or acquisition, it is necessary to verify the type of entity that will be involved to ensure compliance with the legal and tax rules.

Mergers, spin-offs and acquisitions are taxed as transfers of property. Mergers and spin-offs will not be taxed if they meet the requirements in the Federal Tax Code, which in general terms are the following:

- Notifying the tax authorities;
- Maintaining a certain percentage of the voting stock (before and after the reorganization);
- Filing the tax returns corresponding to the last fiscal year and the information statements required by the tax law through the surviving company, in the case of a merger, or through the designated company, in the case of a spin-off where a company does not survive;
- In the case of a merger, the surviving company should continue to engage in the activities in which it, and the merged companies, engaged in before the merger;
- If a merger is going to take place within the five years of a previous merger or spin-off, authorization must be obtained from the tax authorities.

Monopolies and restraint of trade

Mexico's antitrust law prohibits monopolies and certain horizontal restrictive practices deemed to be "absolute monopolistic practices." Price fixing, restrictions on production and distribution, market sharing and concerted bidding in public tenders are strictly prohibited.

The law also prohibits the following practices (among others) by firms that have substantial power in the marketplace and that restrain or intend to restrain competition: vertical market sharing; restrictions on re-sales; tie-ins; exclusivity contracts; refusal to deal; and boycotts. Substantial market power is subject to a case-by-case investigation based on factors such as: market participation of the economic agent and whether it has the unilateral power to fix prices; presence of barriers to market access; existence and market power of competitors; access of the economic agent and its competitors to inputs and other raw materials; and recent market performance.

Although the law technically prohibits monopolies *per se*, in practice focus is placed on abuse of monopoly power. The president of the Federal Competition Commission and other officials have made it clear that the law will be applied only against companies that engage in prohibited practices, not against those that merely have the potential to exercise monopolistic powers.

2.3 Legal, accounting and auditing requirements

For corporate purposes, companies are obliged to maintain a shareholders' minutes book of meetings held, regardless of whether the meetings are ordinary, extraordinary or special. Companies also must maintain a shareholder registry in which the company officially recognizes the shareholders and records the company's shares, as well as a registry of its capital (both increases and decreases) and share purchases.

Accounting standards are set by regulatory bodies, such as the Mexican Council of Investigation and the Development of Financial Information Standards. Mexican companies are required to prepare their financial statements in Spanish and according to Mexican Financial Information Standards ("NIF," formerly "Generally Accepted Accounting Principles (PCGA)"). Accounting registries and books of accounting must be recorded in Spanish.

Additionally, corporations with gross revenue exceeding MXP 34,803,950, assets exceeding MXP 69,607,920 or those with least 300 employees (for each month of the tax year) must submit a special report (*dictamen fiscal*) prepared by an independent public accountant to the Mexican tax authorities. If the report is submitted, the tax authorities will not audit on general principles, but will instead review to verify that the audit was properly performed. Instead of filing the special report, a taxpayer may opt to electronically submit certain information to the tax authorities.

3.0 Business taxation

3.1 Overview

Companies doing business in Mexico typically are subject to the federal corporate income tax, value added tax (IVA), tax on real property and social security contributions on behalf of their employees. Some taxes are levied at the state and municipal levels. There is also a flat tax, under which corporations (including PEs of non-Mexican entities) and individuals pay the sum of the income tax computed under the income tax law and the excess of the flat tax over the income tax, if any. There is no excess profits tax or branch tax.

Under mandatory profit sharing rules, employers are required to distribute and pay 10% of their "adjusted" taxable income to employees. The actual distribution of profits must be paid within 60 days after the corporate income tax return has been submitted (and no later than 31 May of the following year).

3.2 Residence

A company is resident in Mexico if its place of effective management is located in Mexico.

3.3 Taxable income and rates

Residents are taxed on their worldwide income. Nonresident companies are taxed only on their Mexican-source income. Income is deemed to derive from Mexican sources when the assets or activities are in Mexico or when the sales or contracts are carried out in the country, regardless of where title passes.

The corporate tax rate is 30%, reducing to 29% for 2013 and 28% for 2014 and thereafter.

Taxable income defined

The gross income of a resident legal entity includes all income received in cash, in kind, in services or in credit, including income derived from abroad. This includes all profits from operations and income from investments not related to the regular business of the corporation, and capital gains.

The taxable income on which the corporate income tax rate is applied is the difference between taxable revenue and expenses. Revenue and expense recognition is on an accrual basis.

The taxable income of a company is the amount remaining from its gross income in a tax year after the deduction of allowable expenses and losses. Taxable income generally includes profits, capital gains and passive income, such as interest, royalties and rents.

The taxation of dividends paid by resident entities to resident shareholders depends on whether the profits from which the dividends are paid have been subject to tax at the corporate level. Relief for corporate income tax is provided at the shareholder level if the dividends already have been subject to tax at the corporate level. Thus, the Mexican payer company must keep a record of the profits that already have been taxed in a special account (the "CUFIN" account). If the dividends distributed do not come from the CUFIN account, the distribution is subject to income tax at the level of the distributing entity (and may reach 42.86% due to gross-up). Income tax paid on the distributed dividends, however, may be carried forward for up to two years.

Corporate capital gains or losses arising from the sale of fixed assets are treated as ordinary income or losses, taxable at the normal corporate rate. In calculating the taxable gains arising from the sale of land, buildings, equity shares and other capital interests, companies may apply an official schedule of inflation adjustments to the acquisition cost of the asset.

Deductions

Business expenses are deductible if they are properly documented and supported. Examples of allowable deductions include:

- Returns received or discounts or rebates granted in the tax year;
- Cost of goods sold;
- Expenses net of discounts, rebates or returns;
- Investments (depreciation under the straight line method, adjusted for inflation);
- Bad debt credits and losses arising from acts of God;
- Employee profit sharing and social security contributions made on behalf of employees;
- Contributions for the creation or increase of employee pension or retirement funds; and
- Accrued interest, subject to the thin capitalization rules.

Dividends are neither deductible by the distributing corporation nor included in the gross income of the recipient (although they are included in the income base for calculating profit sharing). Other nondeductible items include:

- Items that do not meet the formal invoicing requirements;
- Payments of income tax or VAT;
- Provisions for employee liability and indemnity reserves; and
- Goodwill.

The income tax law aims to recognize the "real" reduction in debt that occurs as a result of inflation and the corollary decrease in the return on assets. Under the law, any excess of the inflationary reduction in debt over the amount of interest paid is taxable as an "inflationary profit," but any excess of the inflationary increase in the value of assets over the return on assets is tax deductible. The system treats as interest both foreign exchange losses and net gains from the sale of financial instruments, such as petro-bonds.

Depreciation

Depreciation is calculated on a straight-line basis. The tax system offers the option of a one-time, present-value deduction for newly acquired assets, with the exception of investments in cars, trailers, buses and airplanes. Depreciation rates are set by the government and vary by industry and type of asset.

Losses

Tax losses may be carried forward and deducted from the taxable profit obtained in the following 10 fiscal years. The carryback of losses is not permitted; thus, losses not carried forward are forfeited.

3.4 Capital gains taxation

Capital gains arising from the sale of fixed assets, shares and real property are considered normal income and are subject to the standard corporate tax rate. Mexican law allows the proceeds from the sale of real property, shares and other fixed assets to be indexed to inflation.

3.5 Flat tax

The flat tax (IETU) is a minimum tax that is calculated on a cash-flow basis by applying the 17.5% tax rate on a tax base determined by reducing taxable revenue (primarily income derived from the sale of goods, the provision of independent services and the leasing of tangible goods) with specific deductions. Interest, salaries and royalty payments are not deductible, except in very circumscribed cases (e.g. royalties paid to independent third parties); a credit is granted to partially neutralize the impact of the nondeductible salaries. Under the flat tax rules, investments and inventory are fully deductible when purchased and paid, rather than deducted under the depreciation or cost of goods sold rules. If deductions exceed revenue ("losses"), a credit is granted on such "losses" equal to 17.5% or the applicable rate according to the relevant fiscal year, which may be credited against the IETU in the following years.

Taxpayers first compute their income tax liability and their flat tax liability for a fiscal year. Because the income tax liability may be credited against the flat tax liability, the flat tax is paid only to the extent it exceeds the income tax (i.e. the flat tax acts as a "minimum tax"). In contrast to the abolished asset tax, any flat tax paid is not creditable for Mexican income tax purposes in subsequent years.

3.6 Double taxation relief

Unilateral relief

A resident taxpayer that is taxed in Mexico on foreign-source income is, in principle, granted both a direct and an indirect tax credit that may be used against the liability to Mexican income tax to the extent the foreign income is taxable in Mexico. This is an ordinary foreign tax credit, i.e. it is limited to the amount of income tax due on the resident's total taxable income for the year calculated under Mexican law attributable to the foreign-source income.

Tax treaties

Mexico has a solid tax treaty network, with most treaties following the OECD model treaty. Mexico's treaties also generally contain OECD-compliant exchange of information provisions.

To obtain benefits under a treaty, the beneficiary must produce a tax residence certificate or a copy of its tax return filed for the most recent fiscal year, which shows that the beneficiary is resident in the treaty partner country. Any relevant conditions of the treaty also must be satisfied.

Mexico Tax Treaty Network			
Australia	Finland	Japan	Russia
Austria	France	Korea	Singapore
Barbados	Germany	Luxembourg	Slovakia
Belgium	Greece	Netherlands	South Africa
Brazil	Hungary	New Zealand	Spain
Canada	Iceland	Norway	Sweden
Chile	India	Panama	Switzerland
China	Indonesia	Poland	United Kingdom
Czech Republic	Ireland	Portugal	United States
Denmark	Israel	Romania	Uruguay
Ecuador	Italy		

3.7 Anti-avoidance rules

Transfer pricing

Mexico's transfer pricing rules generally follow the OECD transfer pricing guidelines. Entities that carry out transactions with related parties must comply with the arm's length principle for all transactions. Taxpayers should prepare and retain documents proving that transactions with foreign related parties were agreed using prices that would have been used by independent parties in comparable transactions. Taxpayers also are required to file with their tax returns a detailed information return on transactions with foreign related parties. Penalties apply for failure to comply.

Mexico recognizes six transfer pricing methods:

1. Comparable uncontrolled price method (CUP);
2. Resale price method (RPM);
3. Cost plus method (CPM);
4. Profit split method (PSM);
5. Residual profit split method (RPSM); and
6. Transactional operating margin method (TOPMM).

The methods are hierarchical. That is, starting with the CUP method, there should be an acceptance or rejection of this method, and then the taxpayer may use any other method, provided it can demonstrate that such method was the most appropriate or trustworthy method based on available information.

Transations within the scope of the transfer pricing rules include financing operations; the provision or receipt of services; the use, enjoyment or transfer of tangible assets, the use or transfer of intangible assets; and stock transfers.

The tax authorities are empowered to verify that transactions with related parties have been executed in accordance with the arm's length principle, make any necessary adjustments and request: unpaid taxes; a restatement for inflation; interest; and fines that may range between 55% and 75% of the unpaid tax (subject to reduction where documentation requirements are met).

Unilateral and bilateral advance pricing agreements may be negotiated (but transfer pricing documentation still must be kept for five years). Mutual agreement procedures also may apply for countries that have concluded a tax treaty with Mexico.

Thin capitalization

The main purpose of Mexico's thin capitalization rules is to limit the deductibility of interest derived from debt contracted with nonresident related parties that exceeds three times the taxpayer's equity. While excess interest is not deductible, it is not reclassified as a constructive dividend.

The thin capitalization rules are not applicable to taxpayers that obtain a favorable APA from the tax authorities, agreeing that the transactions are carried out at market prices, or to financial institutions.

Controlled foreign companies

Companies, individuals and resident foreigners must pay tax on all earnings from companies or accounts in low-tax jurisdictions. Foreign-source income is deemed to come from a low-tax jurisdiction if it is not subject to taxation abroad or if it is subject to an income tax that is less than 75% of the income tax computed under Mexican tax legislation. Mexico's current statutory rate is 30%, thus providing for a 22.5% rate threshold.

Passive income (i.e. dividends, interest, royalties and capital gains) derived directly or indirectly by a Mexican resident through a branch, entity or any other legal entity located in a preferential tax regime will be subject to taxation in Mexico in the year in which the income is derived. Specific rules apply that permit the non-taxation of active income in certain cases. Taxpayers earning income from a preferential tax regime must file an annual information return in February, as must taxpayers generating income from a jurisdiction on the black list and those that conduct transactions through fiscally transparent foreign legal vehicles or entities.

Some exceptions to the rules apply.

General anti-avoidance rule

The income tax law allows the tax authorities to deem transactions to have occurred between related parties and to calculate the Mexican-source income arising from such transactions. This rule is intended to be applied to counter tax avoidance associated with preferential tax regimes and multinational companies. However, the scope may be broader based on the actual wording of the rule, given that it makes reference to Mexican-source income.

This is the only general substance-over-form rule in Mexican tax legislation. The Mexican tax regime is generally a formal one and general policy has been to provide for specific anti-avoidance rules.

3.8 Administration

Tax year

The tax year is the calendar year.

Filing and payment

Corporate taxpayers must make advance income tax payments on the 17th day of the month. Advance payments are based on the preceding five most recent fiscal years in which a profit could be calculated, even if there was a loss in the immediately preceding fiscal period. All corporations must use the calendar year for financial and tax purposes.

Corporations may apply for a reduction in advance payments, although any delay in making advance payments will result in interest charges. Higher charges are applicable for unauthorized delays.

Tax returns must be filed three months after the end of the tax year.

Informative tax returns must be submitted to the tax authorities no later than February 15 of each year that include information on withholding, donations and salaries, among others.

Penalty interest for late payment of tax is assessed at 0.75% per month if an extension has been granted; otherwise, the rate is 1.13%. Penalty rates are adjusted monthly.

Consolidated returns

Mexican law allows corporate groups to be taxed on a consolidated basis. The filing of a consolidated return has significant advantages, most notably the fact that the losses of some group companies may be offset against the profits of others. Also, dividends paid among companies of the group are not subject to any tax, notwithstanding that dividends do not originate from the CUFIN (net-of-tax profit) account, until the related profits are distributed out from the groups and there is a lack of consolidated CUFIN. For tax purposes, a consolidated group consists of the Mexican holding company and the subsidiaries in which it has effective direct or indirect ownership interests in excess of 50% of the voting shares. Consolidation is on a proportional basis, based on the percentage owned directly or indirectly by the controlling company. Only companies resident in Mexico may be treated as holding companies.

The controlling company is required to annually calculate and pay income tax that was deferred under the provisions of the consolidation regime six tax years earlier (as long as such tax had not been paid at 31 December of the preceding tax year). In other words, the deferred tax benefit (i.e. the benefit arising from the consolidation regime) is restricted to a five-year period. The total amount of such deferred tax must be paid over a five-year period in the following installments: 25% in the first year, 25% in the second year, 20% in the third tax year, 15% in the fourth tax year and 15% in the fifth tax year. These amounts may be restated for inflation, as applicable.

For these purposes, the controlling company may elect to apply the regular rules applicable in a disincorporation or a deconsolidation, or a new set of rules provided for in the law. The elected rules must be applied for at least five years.

The tax must be paid along with the annual tax due under the consolidated tax return.

Failure to pay the corresponding portion of the tax that otherwise would have been deferred leads to a payment obligation for the total amount of the deferred tax, in addition to the regular interest and penalties under the Federal Fiscal Code.

Taxpayers must disclose in the tax report, issued by an independent public accountant, the amount of income tax that has been deferred as a result of electing to file a consolidated tax return. Failure to disclose this information will result in deconsolidation of the group.

Statute of limitations

The rights of the tax authorities in relation to audit, enforcement, assessment and collection of taxes expire after five years from the date on which the tax return is due. The income tax return is initially filed on 31 March of the year following the taxable year end and the statute of limitations begins on 1 April of each given period. A tax audit report prepared by an independent auditor is filed by 30 June. An amended return is filed if there are any differences between the figures used in the tax return and the outcome of the tax audit report. The statute of limitations will be extended for five (but no more than 10) years as from the date an amended return is prepared for any category of items adjusted in an amended return. The term is 10 years if the taxpayer is not registered with the tax administration, does not maintain accounting records or fails to file a tax return. In the latter case, the 10-year term is computed as from the date the return should have been submitted.

The statute of limitations is suspended if the taxpayer files an administrative appeal or commences litigation, if the authorities begin an audit of the taxpayer’s accounting records or if the tax authorities are unable to initiate an audit because the taxpayer failed to notify the authorities of a change in domicile.

Tax authorities

The SAT (*Servicio de Administración Tributaria*) is a decentralized agency responsible for assessing and collecting federal taxes and customs duties, while the respective Departments of Finance of each state or municipality are responsible for collecting state and local taxes. The federal government and the states, however, have entered into agreements for tax coordination and administrative cooperation, with the states now legally responsible for collecting and auditing the correct payment of federal taxes.

Rulings

Taxpayers may petition the tax administration for a (non-hypothetical) ruling in connection with the interpretation of tax provisions in specific cases that are not already under review by the tax authorities.

The authorities must make a decision within three months from the filing of a petition. If no decision is made within this period, the request is deemed denied. Where the request is denied or is deemed denied, the taxpayer may appeal to the Federal Tax Court for purposes of obtaining a written resolution.

For favorable resolutions issued in writing, the taxpayer is granted the rights in the resolution, but the resolution is not binding on the taxpayer. However, the taxpayer can only contest the favorable resolution after the tax authorities have actually applied it to the taxpayer’s situation.

Administrative resolutions concerning the taxation of a specific taxpayer or group of taxpayers are effective only for the period in which they are issued. If the resolution is issued within three months from the end of the tax period, it may be applied for the preceding tax period. At the end of the period for which the resolution remains effective, the interested party must take steps to obtain a new resolution if so desired. This rule is not applicable to authorizations for deferrals of payments and approvals of guarantees, depreciation allowances and authorization to file a consolidated income tax return.

4.0 Withholding taxes

4.1 Dividends

Mexico does not impose a withholding tax on dividends.

Income tax paid by a nonresident company that distributes dividends to another nonresident company, which, in turn, distributes dividends to a Mexican corporation, may be credited against the Mexican corporation's income tax liability provided the following conditions are satisfied:

- The dividend and the income tax are accrued by the Mexican corporation;
- The Mexican corporation owns at least 10% of the first-tier company;.
- The first-tier company owns at least 10% of the second-tier company;
- The minimum combined ownership in the second-tier company is 5%; and
- The Mexican government has concluded a broad exchange of information agreement with the country in which the second-tier company is resident.

4.2 Interest

The general withholding tax rate on interest is 30%. Interest payments to foreign banks are subject to a 4.9% withholding tax provided they are registered as banks in Mexico and resident in tax treaty countries; otherwise, the rate is 10%, unless reduced under a tax treaty. Financial leases are taxed at 15%, and business enterprises that make payments must withhold a 15% tax on the interest portion of lease payments.

4.3 Royalties

Payments abroad for technical assistance, know-how, use of models, plans, formulae and similar technology transfer, including use of commercial, industrial or scientific information or equipment, are subject to a 25% withholding tax. Royalties paid to a foreign licenser of patents, trademarks and trade names – without the rendering of technical assistance – are subject to a 30% withholding tax, unless reduced under a tax treaty.

Business enterprises that pay fees or make rental payments to a nonresident must withhold a 25% tax on such payments.The tax and an information statement must be submitted to the tax authorities in February of the following year.

4.4 Branch remittance tax

Mexico does not levy a branch profits tax.

4.5 Wage tax/social security contributions

All federal states in Mexico apply a tax (between 1% and 3%) on salaries. In Mexico City, for example, the rate is 2.5%. Some local tax authorities also require withholding on payments for personal independent services rendered in their territory where the service provider is not registered as a taxpayer and is domiciled outside the relevant territory. The tax is deductible for income tax purposes.

Employers must contribute an amount equivalent to 2% of payroll to an employee retirement fund and 5% of the total payroll to a housing fund (which will be added to the retirement fund if not used for a housing credit) that, together, constitute a pension fund managed by private financial institutions.

5.0 Indirect taxes

5.1 Value added tax

Value added tax (IVA) applies to both goods and services at a standard rate of 16% (11% in certain border zones, subject to certain conditions). Interest on non-business loans and credit card debt also is subject to IVA.

The following are exempt: land and residential buildings; books and newspapers; share transfers; used chattel; tickets and other evidence permitting participation in lotteries, raffles, games of chance and competitions of every nature; national and foreign currency and gold and silver pieces; and alienation of goods among nonresidents or by a nonresident to a Mexican entity registered in an authorized program to promote exportation of goods.

Exports are subject to a 0% rate. Imports of IMMEX supplies are exempt if specific conditions are satisfied. Services utilized abroad are subject to the 0% rate on exports of services if the services are contracted and paid by a nonresident with a PE in Mexico.

Companies may credit IVA payments against income or other tax payments; if the excess cannot be credited in its entirety, the taxpayer may apply for a refund.

Companies must settle IVA on a monthly basis, making the IVA payments for the preceding month. For imports, IVA is based on customs value plus tariffs. All companies should demand that IVA payable on their purchases be separated from deductible expenses.

All persons must be registered to be able to credit the IVA paid to vendors, suppliers or at the border. Nonresidents that make taxable supplies of goods or services in Mexico also must register for IVA purposes.

5.2 Capital tax

Mexico does not levy capital duty.

5.3 Real estate tax

The municipal authorities levy “rates” on the ownership of real property. Rates are deductible in calculating corporation tax liability.

5.4 Transfer tax

A rate between 2% and 5% applies to the transfer of real estate.

5.5 Stamp duty

Mexico does not levy stamp duty.

5.6 Customs and excise duties

Customs contributions arise on the import or export of goods according to the following:

- General Import Tax (ID) – Determined according to the goods’ tariff classification number;
- Customs Processing Fee (CPF) – Paid for using the Customs facilities and its personnel and systems, etc.;
- IVA – At rates depending on the import/export regime; and
- Special Tax on Production and Services (STPS) – Please see point 5.7

The treatment of goods imported into Mexico and the tax and customs obligations are determined according to the purpose of the foreign trade operation. These purposes are classified into five customs regimes for imported goods: definitive; temporary; transit of goods; fiscal deposits “in bond”; and strategic bonded warehouse.

Mexico has in force 11 free trade agreements (FTAs) signed with 49 different countries and 19 commercial agreements with 12 countries. The main benefit granted under these agreements is the application of preferential ID rates on the import of goods that are considered as originating goods from the FTA's member nations.

Additionally, to encourage and support national exports and promote foreign investment in Mexico, the government implemented the Decree Establishing Sector Promotion Programs (PROSEC) and the Decree to Encourage the Industrial, Maquila, Manufacturing and Export Services Program ("IMMEX" or "maquila").

PROSEC aims to encourage the manufacture of products in Mexico within a number of strategic industrial sectors, with the main objective of improving competitiveness. PROSEC basically enables the importation of specific goods (e.g. components, parts, raw materials, capital assets, etc.) and application of listed preferential ID rates, conditioned only on use in the manufacturing process, without any condition of the origin or export.

The IMMEX regime also was created to encourage foreign investment in Mexico by granting authorized companies certain tax and customs benefits, which include:

- The importation of raw materials without payment of IVA and with possible deferment of the ID;
- The importation of capital assets at the exempt IVA rate;
- Avoiding triggering IVA on sales between IMMEX entities or on sales between nonresidents when the goods are sold by nonresidents and the delivery takes place in Mexico (subject to certain customs conditions);
- Administrative and customs benefits to facilitate operations and reduce costs; and
- Potentially, certain fiscal benefits: e.g. a PE shield for foreign residents for manufacturing operations handled through an IMMEX and a preferential income and flat tax base determination.

5.7 Environmental taxes

Mexico does not levy environmental taxes or duties.

5.8 Other taxes

Cash deposit tax

A cash deposit tax at a rate of 3% applies on the amount of any cash deposits made in a taxpayer's bank accounts that exceed MXP 15,000, and only on the excess of that amount, determined by considering all cash deposits made in the same bank, even if in different accounts. The cash deposit tax is creditable against other federal taxes.

Tax on production and services

A tax on production and services is charged on manufacturers and wholesalers of certain goods, including alcoholic beverages and tobacco. The rates vary by product.

6.0 Taxes on individuals

6.1 Residence

An individual is considered resident if he/she has a permanent home in Mexico. If an individual has a home in two countries, the key factor is the location of his/her center of vital interests. Foreign nationals, in principle, are considered tax residents, subject to the permanent home and/or center-of-vital-interests test.

According to the immigration law, foreign nationals permanently residing in Mexico enjoy the same rights as citizens (absent the right to vote) and incur the same responsibilities. Permanent resident status may be obtained after an individual resides in Mexico for five years; this is different from residence for tax purposes.

6.2 Taxable income and rates

Mexican residents are taxed on worldwide income; nonresidents are taxed only on Mexican-source income.

Taxable income

Taxable income includes remuneration for personal services (including salary, bonuses and special allowances, such as housing), interest, corporate dividends paid out of gross income, capital gains, rental income, etc. Pension benefits are tax-exempt up to nine times the legal minimum salary for the region. Severance payment benefits are exempt up to 90 times the daily base salary of the region multiplied by the number of years employed.

In calculating capital gains for tax purposes, individuals increase the historical cost by a factor to adjust for inflation and reduce the cost by accumulated depreciation at a rate varying with the type of asset. The difference between the result and the selling price constitutes the net gain. Based on the number of years the asset was held, a certain proportion of the net gain is added to other taxable income to determine the top tax rate payable. Capital gains resulting from an individual's sale of publicly traded shares are tax-exempt in certain circumstances.

Some states and the Federal District impose separate taxes on wages and salaries, which are usually an employer tax liability.

Deductions and reliefs

The following expenses are deductible in computing personal income tax:

- Medical and dental fees and hospital expenses incurred by the taxpayer and the taxpayer's spouse or other dependents with income no higher than the annual minimum salary;
- Health insurance premiums and charitable donations;
- Mortgage interest payments (real interest);
- Personal pension account contributions up to five minimum annual salary;
- School transportation expenses of direct descendants, when such transportation is mandatory under local laws; and
- School fees up to certain limits.

Taxpayers whose income consists of professional fees may deduct normal and documented expenses, similar to those deductible by businesses. A simplified tax system for individual taxpayers that engage in business activities is available.

Rates

The income tax rates are progressive up to 30% for 2012 (29% for 2013 and 28% for 2014 and thereafter). Employers withhold provisional tax payments.

Nonresidents on a temporary assignment and working for firms or subsidiaries based in Mexico are exempt from income tax on the first MXP 125,900 for a period of 12 months; they are taxed at 15% on income of MXP 125,901 to MXP 1 million. All income exceeding MXP 1 million is taxed at 30%, with no deductions allowed. Nonresidents on temporary assignment that are paid by nonresident foreign firms are exempt from income tax if the employee spends less than 183 days (consecutive or not) in Mexico in a 12-month period. Otherwise, the employee will be subject to tax. Taxes paid as a nonresident are considered final and there is no obligation to file annual tax return.

6.3 Inheritance and gift tax

Mexico does not levy inheritance or gift tax.

6.4 Net wealth tax

Mexico does not levy a net wealth tax.

6.5 Real property tax

The municipal authorities levy “rates” on the ownership of real property. Rates are deductible in calculating the individual’s taxable income applicable to leasing of real property.

6.6 Social security contributions

Employed individuals are required to make social security contributions, with the amount based on the individual’s salary with a ceiling up to 25 times the daily minimum wage salary of the region.

6.7 Other taxes

Flat rate business tax

Individuals and legal entities resident in Mexico, as well as residents abroad having a PE in the country, are subject to payment of the flat rate business tax at a rate of 17.5% on income (regardless of where generated) derived from the transfer of assets; the provision of independent services; and the granting of temporary use or enjoyment of assets.

Cash deposit tax

A cash deposit tax at a rate of 3% applies on the amount of any cash deposits made in a taxpayer’s bank accounts that exceed MXP 15,000, and only on the excess of that amount, determined by considering all cash deposits made in the same bank, even if in different accounts. The cash deposit tax is creditable against other federal taxes.

6.8 Compliance

The tax year is the calendar year.

Tax on employment income is withheld by the employer and remitted to the tax authorities. Income not subject to withholding is self-assessed; the individual must file a monthly tax return by the 17th of the following month. An annual tax return must be filed during the month of April of the following year.

Monthly tax payments for purposes of the flat tax are due by the 17th of the following month, and an annual return is due in April of the following tax year.

7.0 Labor environment

7.1 Employee rights and remuneration

Mexico's labor legislation is set forth in the Federal Labor Law and the country's constitution. This legislation regulates labor contracts, minimum wages, hours of work, legal holidays and paid vacations, among other working conditions, as well as labor unions, strikes and dismissal compensation.

Regulations issued by the Ministry of Labor and Social Welfare outline allowable workplace practices with a focus on assessing risk, preventing accidents and educating workers on potential hazards. The safety regulations emphasize self-regulation and allow private sector "certifiers" to conduct safety inspections.

Working hours

The work week consists of six eight-hour days for the day shift, seven-hour days for the night shift and seven and a half–hour days for a mixed shift, with a half-hour break in all cases. For every six-day work period, a worker is entitled to one day of rest with full pay. (Wages are calculated on a seven-day week.) Overtime is paid at twice the normal rate and may not exceed nine hours per week. Additional weekly work hours are forbidden and must be paid at triple the normal rate. Workers receive a 25% premium for Sunday work.

7.2 Wages and benefits

The National Minimum Wage Commission, a tripartite group, comprising representatives of business, labor and government, sets a three-tiered minimum wage (reflecting Mexico's three main regions). Minimum wage increases have varied in size and frequency.

An average minimum wage hike of 4.2% was approved for 2012. The variable increase is an attempt to equalize wages throughout the country, with the lowest percentage for Mexico City workers (since they receive the highest wages). The minimum wage is subject to a premium (often 60%-70%) for mandatory fringe benefits and premiums for work considered hazardous. Actual industry wages are higher than the legal minimum. Often, a salary of two to three times the minimum wage is considered acceptable in many industries.

The overall burden of fringe benefits is substantial as the costs are frequently in excess of 70%-100% of payroll, depending on salary levels. A relevant employee benefit is profit sharing, under which all entities must distribute 10% of their pretax profits to employees (some exceptions apply in case of partnerships).

Pensions

The tax administration service issued general provisions in 2011 applicable to pension plans established by employers or those derived from collective hiring according to article 190 of the Social Security Law.

Social insurance

The social security system, administered by the Social Security Institute, provides many benefits. Its programs cover work-related accidents and illness; non-occupational diseases and paid maternity leave; old age and various death benefits; and unemployment insurance. The cost of the system is shared among employers, employees and the government. The employer generally picks up most of the cost, with its share roughly totalling 20% to 30% of payroll.

Other benefits

The labor legislation grants seven paid holidays annually, plus one for Inauguration Day every sixth year. Labor contracts call for another nine to 10 paid holidays. After working for a year, employees are entitled to at least six days' paid vacation, increased by two days for each of the subsequent three years. A bonus of 25% of normal pay during the vacation period is mandatory. A Christmas bonus of 15 days' pay is also obligatory and must be paid before 20 December. Companies also must contribute a sum equal to 5% of payroll to the national workers' housing institute (Infonavit). The funds go into special accounts for workers.

Companies with more than 100 employees must maintain a fully equipped infirmary under the direction of a qualified doctor; firms with more than 300 employees must establish hospital facilities. A mandatory worker-training program has added to employer costs.

In addition to the mandatory fringe benefits, most labor contracts provide for such "voluntary" benefits as savings plans, life insurance, lunches and *vales de despensa* (redeemable for food and general merchandise at supermarkets). Most large companies maintain a cafeteria on the premises that provides below-cost meals to employees. Many companies supply work clothes. Some employers set up additional incentive plans to stimulate production and sales. To qualify for tax deductions, fringe benefits generally must be provided to all employees.

A 2011 law with labor, administrative, sanitary and tax implications promotes and controls implementation of food assistance schemes to benefit employees by improving their nutritional status, preventing diseases associated with poor nutrition and otherwise protecting health in the occupational sphere.

7.3 Termination of employment

Unless dismissed for cause (such as dishonesty or excessive absenteeism), laid-off employees are entitled to three months' pay, plus 20 days' additional pay for every year employed. Individuals employed for more than 15 years receive an additional 12 days' pay for every year of service, up to a ceiling of twice the minimum wage at the time of dismissal multiplied by 12 days and the number of years. An employee who wins a dismissal appeal receives full pay from the date of termination until the matter is judicially resolved.

Unjustifiably dismissed workers may choose between reinstatement and indemnification amounting to three months' severance pay. Employers may refuse to reinstate apprentices and workers with less than one year of service, but they must add 20 days of pay for each year of service to the standard three months' severance pay or pay half the time worked, if less than a year.

7.4 Labor-management relations

Nearly 40% of Mexico's workforce is unionized; unions represent some 80% of industrial workers in establishments with more than 20 employees. Most of these workers belong to one of the nine national labor federations. Only about 20% of unionized workers belong to single-company unions; the remainder are members of nationwide organizations. Federal law requires that collective bargaining agreements be renewed at least once every two years. Salaries must be reviewed annually.

Strikes are legal only when employers refuse to comply with a legal or contractual obligation (e.g. to make or revise a union contract, to accept an award by an arbitration board or to make mandatory profit-sharing payments). A strike also may be called to support another strike, provided the majority of workers agree. Unions must follow specific procedures in instituting job actions.

7.5 Employment of foreigners

Under NAFTA, and as part of a nationality law, Mexico has agreed to permit temporary entry to four categories of non-Mexican North Americans: business visitors; traders and investors; intra-company transferees; and certain other professionals. The three NAFTA signatory countries also have agreed to provide access to nationals who hold professional licenses (e.g. lawyers, doctors and accountants).

The Federal Labor Law requires that at least 90% of a company's skilled and unskilled workers be Mexican nationals. A special provision permits temporary employment of foreign technicians (up to 10%) if a company can prove that skilled workers are not available locally. The 10% limit does not apply to managers, directors and other key officers, who must secure special immigration permits. Operations along the border with the US are exempt from the personnel requirements.

Mexico has several categories of immigrants, but the following are of special interest to foreign investors:

- *Cargo de confianza* (management employee) status may be obtained by foreigners who fill key executive posts or other positions of responsibility in established corporations or institutions. The Ministry of the Interior will grant such status only if it is satisfied that the work is necessary and cannot be performed by a local national. Companies should apply for this status well in advance, since the process may take several months. Occasionally, a foreigner may qualify for initial non-immigrant status, which may subsequently be amended to immigrant status upon re-entry into the country.
- *Inversionista* (investor) status may be obtained by foreigners who invest in industrial activities that contribute to the economic and social development of the country. The one-year visa may be renewed up to four times and allows for multiple entries.
- *Técnico* (technician) status may be granted to persons who undertake research, technical or other specialized activities for which no qualified residents are available.

Mexico also provides immigrant status for scientists, professionals, persons with independent income, dependants of immigrants, permanent immigrants and retirees. Generally, to obtain immigrant status for employees, a company must file an application with the Ministry of the Interior and submit evidence of investment and tax payment. Some Mexican consulates grant visas directly, waiving filing requirement with the Ministry.

In general, a new company may not apply for permanent residence visas for its personnel unless the government considers its activity of importance to the nation and it has been operating for two years. If approved, the permit is granted provisionally for five years and reviewed every year.

8.0 Deloitte International Tax Source

Professionals of the member firms of Deloitte Touche Tohmatsu Limited have created the Deloitte International Tax Source (DITS), an online resource that assists multinational companies in operating globally, placing up-to-date worldwide tax rates and other crucial tax material within easy reach 24/7.

Connect to the source and discover:

A unique tax information database for 65 jurisdictions including –

- Corporate income tax rates;
- Domestic withholding rates;
- Historical corporate rates;
- In-force and pending tax treaty rates on dividends, interest and royalties;
- Indirect tax rates (VAT/GST/sales tax); and
- Holding company and transfer pricing regimes.

Guides and Highlights – Deloitte's Taxation and Investment Guides provide an analysis of the investment climate, operating conditions and tax system of most major trading jurisdictions while the companion Highlights series summarizes the tax landscape of nearly 150 jurisdictions.

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Webcasts – Live interactive webcasts and Dbriefs by Deloitte professionals give you valuable insights into important tax developments affecting your business.

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9.0 Office locations

To find out how our professionals can help you, please contact us at the headquarters office listed below or through the “contact us” button on http://www.deloitte.com/tax.

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