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COUNTRY

Doing Business in
Mexico

Preface

This guide has been prepared by Baker Tilly México, an independent member of Baker Tilly International. It is designed to provide information on a number of subjects important to those considering investing or doing business in Mexico.

Baker Tilly International is the world's 8th largest accountancy and business advisory network by combined fee income, and is represented by 145 firms in 110 countries and over 25,000 personnel worldwide. Its member firms are high quality, independent accountancy and business advisory firms, all of whom are committed to providing the best possible service to their clients, both in their own marketplace and around the world.

This guide is one of a series of country profiles compiled for use by Baker Tilly International member firms' clients and professional staff. Copies may be obtained from Baker Tilly México or any of our independent member firms.

Doing Business in Mexico has been designed for the information of readers. Whilst every effort has been made to ensure accuracy, information contained in this guide may not be comprehensive and recipients should not act upon it without seeking professional advice. Facts and figures as presented are correct at the time of writing.

Up-to-date advice and general assistance on Mexican matters can be obtained from Baker Tilly México; contact details can be found at the end of this guide.

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1 Fact Sheet

Geography

Location	Middle America, bordering the Caribbean Sea and the Gulf of Mexico, between Belize and the US and bordering the North Pacific Ocean, between Guatemala and the US
Area	1,964,375km ²
Land boundaries	Belize, Guatemala and the US
Coastline	9,330km
Climate	The climate varies from tropical to desert
Terrain	High, rugged mountains; low coastal plains; high plateaux and desert
Time zone	GMT -6

People

Population	109,955,400 (July 2008 est.)
Language	Spanish is the main language, although there are various Mayan, Nahuatl and other regional indigenous languages spoken

Government

Country name	United Mexican States (Mexico)
Government type	Federal republic
Capital	Mexico (distrito federal)
Administrative divisions	31 states and one federal district
Political situation	Mexico is a federal republic with three branches: executive, legislative and judicial. Its legal system is a mixture of US constitutional theory and civil law system; judicial review of legislative acts; accepts compulsory ICJ jurisdiction, with reservations. Executive branch – the president is both the chief of state and head of government. Legislative branch – bicameral National Congress consists of the Senate (128 seats) serving six-year terms and the Federal Chamber of Deputies (500 seats) serving three-year terms. Judicial branch – Supreme Court of Justice; judges are appointed by the president with consent of the Senate

Economy

GDP – per capita	US\$12,400 (2007 est.)
GDP – real growth rate	3.2% (2007 est.)
Labour force	44.71 million (2007 est.)
Unemployment	3.7% plus under-employment as high as 25% (2007 est.)
Currency (code)	Mexican peso (MXN)



2 Business Entities and Accounting

2.1 Principal Types of Organisations

Business entities are governed by two laws – the Federal Companies Law and the local civil code of the respective state. Foreign investment is restricted in certain sectors (for example, petroleum and electricity). Co-operative companies are also used for business and subject to special regulations.

2.2 Types of Companies

Stock corporations are generally the vehicles for foreign and national investments in Mexico; the most common form is the “anonymous society” (Sociedad Anónima – S.A.). The S.A. may have fixed or variable capital, in which case the acronym “S.A.” becomes “S.A. de C.V.”.

Any legal entity may adopt the variable capital form and increase or reduce its capital stock after incorporation pursuant to the conditions provided in the charter of incorporation and in the related law.

Minimum capital is always fixed by law; variable capital is unlimited. Terms and conditions for increases or reductions in the variable capital stock of the corporations can be stated in the bye-laws in accordance with the Mercantile Societies Law.

Other types of companies established by the Mercantile Societies Law are:

- Limited responsibility society (Sociedad de Responsabilidad Limitada – S. de R.L.) – mostly used by US companies (very similar to the S.A.)
- Collective name society (Sociedad en Nombre Colectivo – S. en N.C.) – similar to a partnership where partners have unlimited liability for the company's obligations (rarely used)
- Sociedad en Comandita Simple and Sociedad en Comandita por Acciones (S. en C.S. and S. en C.A.) – similar to a limited liability partnership (LLP) (rarely used).

2.3 Sole Proprietorships

Many small businesses in Mexico are owned and operated by sole proprietors who use their own name for business and tax purposes.

2.4 Branches

A foreign company can perform business activities through a branch in Mexico; it is not required to form a Mexican subsidiary company.

A branch is not a separate legal entity but an extension of the foreign company. The foreign company is, therefore, responsible for its liabilities.

2.5 Audit and Accounting Requirements

All businesses must maintain proper books of account for taxation purposes and retain the accounting records and associated documents for not less than five years (ten years in certain cases).

All companies with an annual turnover exceeding MXP30.4m, total assets exceeding MXP60.9m, or over 300 workers (average in one year) must have their accounts audited by a qualified accountant approved by the tax authorities.

2.6 Filing Requirements

All companies must file annual tax returns as well as informative returns on salaries, fees, leasing, foreign payments and transfer price policies.

Branches of foreign companies and companies with foreign investors must file annual special information as required by the Foreign Investment Register of the Economy Department.

3 Finance and Investment

3.1 Exchange Control

There are no exchange controls on inward or outward investment. Foreign currencies can be bought and sold freely and there are no restrictions on the maintenance of foreign currency bank accounts in Mexico.

There are no limitations on the repatriation of profits from Mexico.

3.2 Sources of Finance

3.2.1 Banking

Mexico's central bank, Banco de México, acts as banker to the government and is responsible for setting base interest rates.

Banks offer short, medium, or long-term loans. Repayment terms are negotiable; the rate of interest may be fixed or variable.

To obtain bank finance, a business must provide adequate security, typically in the form of a mortgage over the business assets, as well as, in certain circumstances, personal guarantees from the owners.

In addition to traditional services, banks offer various other financing arrangements. These include instalment credit, leasing, factoring and invoice discounting and mezzanine finance.

3.2.2 Stock exchanges and trading facilities

The Mexican Stock Exchange provides a market for shares and other securities issued by public companies. To become and remain listed, a company must satisfy and abide by the extensive rules established by the exchange and receive approval of stock value qualifiers.

3.2.3 Venture capital companies

For businesses that are not large enough to consider stock exchange entry but which require finance, venture capital companies can provide equity for start-ups, development, or management buy-outs.

Venture capital companies may also be a source of finance for a business that does not have sufficient security to borrow from a bank, but they may require a higher return than a traditional bank.

3.2.4 Enterprise investment scheme

The PYMES programme is a government scheme designed to support small and medium-sized enterprises through low rate financing. To be eligible for this programme, a company must be incorporated in and reside for tax purposes in Mexico and must carry on a qualifying trade.

3.3 Investment Incentives

Mexico offers an attractive package of grants and incentives to encourage industrial development.

Foreign-owned companies are eligible for the same incentives as Mexican-owned companies. Incentives are focused primarily on increasing employment, technological research and development, construction and small businesses.

3.3.1 Assisted areas

Assisted areas are those parts of Mexico that are designated as development or intermediate areas.

Most manufacturing and some service industry projects within assisted areas are eligible for assistance in the form of a grant for the capital expenditure costs of a project, depending on the number of jobs to be created or maintained.

There are no assisted areas within the metropolitan area of Mexico City, Guadalajara, or Monterrey.

3.3.2 Local authority assistance

Regional government is conducted through local authorities empowered to promote the economic development of their particular area.

Assistance includes grants, loans, or guarantees of borrowing and the provision of property and services.

3.4 Research and Development Support

Grants are available to small and medium-sized enterprises for feasibility studies into innovative technology and development up to the pre-production proto-type stage of new products and processes. Financial support is also available for research programmes.

3.5 The Law and Money Laundering

It is an offence to provide assistance to a money launderer to obtain, conceal, retain, or invest funds.

It is an offence to inform the person that they are under suspicion of money laundering and that a report has been made.

It is an offence for a person who knows or suspects that another is engaged in money laundering not to report such knowledge or suspicion as soon as practical. Financial institutions and professionals who may assist you in setting up in Mexico will be required to verify your identity and background and monitor your institutions in the light of this legislation.

Banking institutions are obligated to withheld a 2% tax on the total amount of cash deposits exceeding MXP25,000 per month. This tax is creditable against other federal tax determined by the taxpayers in their own tax filings.

4 Employment Regulation and Social Security

4.1 Engagement and Dismissal

No employee may be taken on without a contract of employment, which may take the form of a letter. As a minimum, the employment contract must state:

- Rate of pay and hours worked
- Paid holiday entitlement (minimum four weeks)
- Paid sick leave entitlement
- Minimum notice of termination of employment
- Details of any pension scheme
- Clauses relating to health and safety
- Disciplinary procedures
- Grievance procedures
- National minimum wage.

An employee's contract of employment may be terminated for any reason within the first month of employment. Thereafter, termination without good reason and without following the statutory disciplinary procedures may result in a claim by the employee for unfair dismissal of three months' salary plus 20 days of salary for each year worked by the employee, and the seniority premium of twelve minimum salaries for each year worked.

Larger employers must consult their workforce before making any redundancies. An employee made redundant is entitled to a redundancy payment in addition to any payment in lieu of notice, according to a predetermined scale.

4.2 Trade Unions and Worker Councils

There is no legal requirement for employers to recognise any trade union unless a majority of the work force votes in favour. Agreements between employers and trade unions over pay and conditions are not binding by law and unions may not take industrial action without first securing a majority vote in a secret ballot of their members. There is no legal requirement for employees to be represented on the board of directors of companies.

4.3 Social Security and Other Labour Contributions

All employers are liable for social security contributions in relation to their employees:

- Employers – approximately 10.75% of an employee's compensation, up to MXN39,768 per month, plus a flat rate of MXN326
- Employees – 2.775% of compensations received, up to MXN39,968 per month.

Such rates include contribution to the retirement fund (2%).

Employers must pay 5% of an employee's compensation (up to MXN39,968 per month) as a contribution to the workers' housing fund.

4.4 Year-end Bonus, Vacation Premium and Employees' Profit Sharing

A minimum year-end bonus of 15 days of salary should be paid before 20 December. A 25% vacation premium on the salary related to the vacation period (six days in the first year, increasing every year up to 20 days) is payable when the vacation period starts.

Employees' profit share of 10% of taxable income should be distributed no later than 31 May.

5 Taxation

5.1 Companies

5.1.1 Scope

Companies incorporated under Mexican law and those which are managed and controlled from Mexico are liable to corporation tax on their worldwide profits.

Companies not incorporated under Mexican law and not managed and controlled from Mexico are liable to corporation tax on any trading profits that they derive from a Mexican branch or agency. Where there is a double tax treaty between Mexico and the country in which such company is based, treaty terms prevail for Mexican corporate tax purposes.

Foreign companies are also subject to Mexican taxes on revenues coming from Mexico, subject again to the terms of any relevant double tax treaty.

Construction companies with projects in Mexico for more than 183 days are liable to corporation tax on their trading profits.

The fiscal year end is 31 December for all corporations and individuals, except for corporations in liquidation. Tax returns must be filed within three months from the year-end.

Income tax and tax on assets can be paid by holding companies on a consolidated basis if approval is obtained.

Audited tax reports are mandatory for taxpayers with revenues over US\$2.9m, net assets over US\$5.8m, or over 300 employees (figures based on previous year). An audited tax report is optional for other taxpayers.

Tax authorities are restricted in performing direct visits to audited taxpayers if the auditor provides them with required information.

Tax payments and tax returns must normally be made electronically even if there is no payment.

Federal tax overpayments or other federal tax balances in favour of the taxpayer can be recovered by reimbursement or offset against other federal taxes.

Invoices related to taxable income or deductible expenses must comply with several requirements.

5.1.2 Taxable profits

Corporate income tax is charged on a company's income for each of its accounting periods. An accounting period is the calendar year, 1 January – 31 December, but special rules apply where such accounts cover a period of less than 12 months. A liquidation period is considered a single period no matter how long it lasts.

Dividends received from other Mexican companies are exempt from corporation tax (except for employees' profit sharing purposes). The principal part of a trading company's corporation tax computation is the adjustment of its profits for tax purposes. The starting point is the company's profit before tax as shown by the statutory accounts, less inflation effects. Disallowable expenses are then added back.

The general rule for deductible expenses is that they must be "wholly and exclusively" incurred for the purposes of the trade. Specific rules exist that disallow entertaining expenses, taxes, or contributions paid on behalf of third parties, payments to foreign companies on a prorata basis, bad debt and other provisions (as opposed to real related expenses), rental, depreciation and expenses for vacation homes, private airplanes or ships, amortisation of goodwill etc.

Rules on transfer pricing are included in the Mexican Income Tax Law.

Depreciation and amortisation of fixed assets, deferred charges and pre-operating expenses are updated by inflation for income tax purposes. An immediate deduction of fixed assets acquired out of the three major metropolitan areas (Mexico, Monterrey and Guadalajara) can be used.

An inflationary adjustment, calculated on the net monthly average balance of monetary assets less liabilities, is added (deducted) to the taxable income.

Sole Tax Rate for Entrepreneurial Activities

Business organisations, as well as some individuals, are obliged to pay a 17.5% tax starting in 2010 (16.5% in 2008 and 17% in 2009) applied to the net cash flow obtained during the year if they obtain income from any of the following activities:

- The sale of goods
- The provision of services
- The leasing of real property.

This tax is only payable in the amount exceeding the income tax for the year and there are specific provisions on deductions and special credits.

5.1.4 Interest payments

Interest payable is usually deductible from profits for tax purposes in the same way as any other trading expense. A limit exists when debt exceeds three times the stockholders' equity. Interest paid to foreign lenders, including banks and individuals, is subject to a withholding tax. However, most of Mexico's double tax treaties with other countries provide for a reduced rate of withholding tax or in some case no withholding tax.

Care should be taken with interest payable to an overseas parent company. In some circumstances the interest will not qualify for tax relief and will be treated as a dividend payment.

5.1.5 Royalty payments

Deductions are available for royalties paid or to be paid. Royalties paid to foreign companies and individuals are subject to withholding tax. Where the licensor is a resident abroad, the appropriate double tax treaty may provide for a reduced or a nil rate of withholding tax.

5.1.6 Dividend payments

No tax or withholding tax is payable when a Mexican company pays a dividend to an individual or another company including non-residents. Depending on the terms of particular double taxation treaties, the recipient may receive a partial tax credit and, in cases, a tax repayment.

Income tax should be paid by the company paying dividends, except when dividends are identified with previous year's taxed profits.

5.1.7 Calculation of liability

Corporation tax rate is 28%.

5.1.8 Due dates for payment

Corporation tax is payable three months after the end of the accounting period. Provisional monthly payments should be made based on the previous year's taxable income rate. Previous years' tax losses can be deducted from provisional monthly payments.

5.1.9 Relief for losses

Tax losses incurred in an accounting period may be carried forward against future taxable income in the next ten years, updated by inflation.

5.1.10 Administration

A system of self-assessment operates. Inflation updating and surcharges is payable on any underpayments of tax (only inflation updating is payable on tax overpayments) subsequently agreed. A corporation tax return is required from companies in respect of each accounting period. A penalty is levied if the return is not delivered within three months of the end of the accounting period.

5.1.11 Tax planning

An overseas organisation intending to set-up operations in Mexico should give early consideration to the manner in which its investment will be structured in order to avoid excessive taxes both in the home country and in Mexico.

Special consideration should be also given to operations with foreign-related parties which require that transfer price studies be performed to avoid price adjustments.

5.2 Individuals

5.2.1 Overview

Individuals who are resident and domiciled in Mexico are subject to Mexican tax on the aggregate of their worldwide income and capital gains. The annual income tax is determined using a progressive scale with a maximum rate of 28%.

Special rules exist to determine the taxable income on salaries, business and professional activities, real estate leasing, sale of assets, acquisition of assets, interests, awards and dividends.

Professional fees, as well as leasing of goods and real estate, are subject to a 10% withholding tax when paid by corporations. Other income is subject to 20%.

Medical and dental fees, hospital expenses paid in Mexico, donations approved by the tax authorities, interest on credits obtained for home acquisition, medical expense insurance and some other expenses are deductible for individual income tax in addition to the specific deductions established for each type of activity.

5.2.2 Business and professional activities

Individuals with business and professional activities are liable to income tax on their profits as adjusted for tax purposes in broadly the same way as profits are adjusted for corporation tax. Interest on loans to provide capital for the business is an allowable deduction. All other rules for corporations, including monthly provisional payments, apply to these activities.

5.2.3 Taxation of employees

Employees resident in Mexico are subject to income tax and social security contributions on almost all earnings and benefits provided by an employer.

5.2.4 PAYE

Income tax and social security contributions are deducted at source by the employer under the PAYE (pay-as-you-earn) system. It is the employer's responsibility to ensure that the PAYE system is operated correctly and to distinguish between those who are employed and those who claim to be self-employed. An audited report for social security purposes is mandatory for employers with 300 employees or more in the preceding year and is optional for other employers.

5.2.5 Income from land and property

The net income from these sources is added to the individual's other income and taxed according to the rates and thresholds set out. Interest on loans relating to land or property may be deducted for tax purposes. Payments to foreign residents are subject to a withholding tax of 25% on the gross income. The withholding tax can be reduced or avoided if calculated on the net income if the foreign resident has a representative in Mexico.

5.2.6 Capital gains

With few exceptions, tax is payable on all assets on which a gain is made. The taxable gain is calculated deducting to the sales price the cost updated by inflation. This gain is also reduced by "taper relief" which is calculated by reference to the number of complete years the asset was owned by the seller.

5.2.7 Administration

Mexico operates a system of self-assessment for tax on income and capital gains. A tax return for the year must be filed annually no later 30 April of the following year, together with a payment of the balance of any tax due for the relevant year.

5.3 Expatriates

5.3.1 Scope of Mexican taxation

Most people who come to Mexico for employment will be treated as Mexican residents unless more than 50% of their total income is obtained from outside Mexico.

Those coming to Mexico for long-term employment will be given resident status on arrival and the whole of their salary taxed, even if part of it may be earned outside Mexico.

5.4 Indirect Taxes

5.4.1 Value added tax (VAT)

The sale of goods, independent services, use or leasing of goods and importation of goods or services are taxed on a cash flow basis at the rate of 15%; when done at the border, the rate is 10%. A 0% (zero) rate is applicable to exportation of goods and services, as well as sale and importation of patented medicines, products for human and animal feeding and some publications.

VAT payable is the difference between VAT on the above taxable activities and the VAT paid for the purchase or importation of goods and services.

5.4.2 Customs duty

Duty is a one-off absolute cost. To pay the current duty, accurate classification and valuations accordingly to customs rules is vital. This valuation may differ markedly from the direct tax valuation or the VAT valuation.

5.4.3 Other indirect taxes

A special tax applies to the production and services on the first disposal or importation of alcoholic beverages, some soft drinks, tobacco, aviation fuel and gasoline, communications, as well as related services.

Tax on new automobiles is payable by the manufacturer or importer of these vehicles on their selling price.

Air passenger duty is a levy on the carriage of a passenger from all Mexican airports.

5.5 Other Taxes

5.5.1 Businesses

There are no local taxes levied on company profits. However, most States have a local tax of 2% on payroll, as well as a real estate tax around 15% on the real estate value.

Transfer of real estate or similar operations are taxable with the tax on acquisition of real estate at the rate of about 2%.

5.5.2 Individuals

Individuals pay local taxes by reference to the market value of domestic houses which they occupy as owners or lessees.

5.5.3 Tax planning

There are significant advantages built into the Mexican tax system for those who can claim successfully that they are domiciled outside Mexico, covering not only income tax and tax on capital gains but also inheritance tax on death or lifetime gifts. Detailed advice is necessary for the maximum benefit to be obtained. Companies which plan to send employees to Mexico should consult Baker Tilly México before their arrival or as soon as they arrive, so that prompt action can be taken to minimise their Mexican tax liabilities.

Appendix 1

Withholding Taxes on Interest Payments

Interest payments to overseas lenders are generally subject to the deduction of withholding tax at 4.9%, 10%, 15%, 21% and 32% depending on the source of finance. These rates may be reduced by the existence of a double taxation treaty. Prior authorisation must be obtained from the tax authorities before applying the reduced rate provided for by treaties.

Appendix 2

Withholding Taxes on Royalty and Technical Assistance Payments

Royalty and technical assistance payments are generally subject to the deduction of withholding tax at 25% (5% for the temporary use of railroad cars) but reduced rates are specified in some of the Mexico's double tax treaties with other countries.

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