

PwC-IMMEX ***Maquiladora Guide*** **Doing Business in Mexico**

*A guide for smart
investments.*

PwC Mexico

March 2013

Introduction

For your convenience, PwC put together a team of experts in the areas of Corporate Tax, Customs, Transfer Pricing, International Taxes, Corporate-legal, Audit and Advisory to issue this Guide for the assistance of those interested in carrying out manufacturing activities in Mexico mainly for exports (although domestic sales are allowed complying with certain rules) through what is known in Mexico as the “IMMEX Maquiladora” export program.

This document is not intended to cover exhaustively the subjects it highlights, but rather to provide some initial guidance and responses to some of the most common, important and broad questions that may arise when evaluating to start doing business in Mexico.

The material contained in this Guide was compiled as of November, 2012 and unless otherwise indicated, is based on information available at that time.

Companies working under this export program are subject to certain tax benefits that are normally not available to other Mexican taxpayers, so it will often be necessary to refer to various laws and regulations and proper tax, accounting and legal advice should be obtained. Additional information about these companies is provided later on in Section V, Sub-section 8.

Unless otherwise indicated, the amounts described in this document will be expressed in Mexican pesos.

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1. Brief background

As a response to an increase in the overall labor cost in highly developed countries (such as the United States) and to create employment opportunities for the once underdeveloped area just south of the border with the United States, the Mexican government adopted back in the late 60's, policies favoring the establishment in the border area of foreign owned companies to process and/or assemble temporarily imported materials and parts for re-export to the United States or other parts of the world.

These companies have been commonly known since then as “Maquiladoras” (now “IMMEX Maquiladoras”) and they have become an important support of the Mexican economy. In accordance to recent public information made available by the IMMEX Maquiladoras National Association (known as Index), this industry: i) represents 65% of the manufacturing exports; ii) employs 80% of the manufacturing labor force; iii) has 14% of the workers registered with the Mexican Social Security Institute (known in Mexico as IMSS), and iv) exports annually over \$178 billion US dollars.

IMMEX Maquiladoras may now be established anywhere around the country and may sell part of their production domestically, as long as customs duties are paid on the imported content of the products sold in Mexico and other corporate tax obligations are complied with. Moreover, although the leading States with this type of industry are Baja California, Chihuahua, Nuevo Leon, Tamaulipas and Coahuila (all of them located in the border limits with the United States), an interesting growth has occurred in states such as Jalisco, Queretaro, Guanajuato, Yucatan and others.

It should be recognized that the sustained growth of the Maquiladora industry has been significantly influenced among other factors, by the permanent existence over 45 years of the official Program to Promote Exports which has developed into what is currently known as the IMMEX Program.

2. Most common legal structure

One of the initial topics for an investor to evaluate is to identify the nature of the legal entity that has to be formed in Mexico in order to be able to obtain an IMMEX Maquiladora (also referred to simply as “maquiladora”) permit.

2.1. Type of legal entity

The most common types of legal entities under which IMMEX Maquiladoras are incorporated are the following:

- Sociedad Anonima de Capital Variable or S. A. de C. V. (which is a stock corporation with variable capital) or
- Sociedad de Responsabilidad Limitada de Capital Variable or S. de R. L. de C. V. (which is a limited liability corporation with variable capital).

It is commonly recommended to incorporate a new company as a variable capital entity, since capital distributions derived from capital reductions as well as increases thereof are subject to fewer corporate legal formalities.

The decision to incorporate one type of entity or another is driven more by foreign Corporate tax efficiencies rather than by advantages from a Mexican corporate legal or tax perspective (as their obligations are basically very similar). An example of such is the “check the box” tax election in the United States that has driven a tendency towards incorporating more limited liability corporations (S. de R. L. de C. V.).

2.2. Number of shareholders

It is allowed for a foreign investor to own 100% of the stock of any given legal entity working as an IMMEX Maquiladora, although a minimum of two shareholders is required, who must hold at least one share or equity ownership interest quota.

As mentioned, although by general rule, foreign investment may participate in the capital of Mexican entities up to 100% of their social capital, there are restrictions for certain activities and in other cases, foreign investment may have a limited participation. In any case, it will be most advisable necessary to analyze the sector where the Mexican company would operate in order to determine whether or not a consent from the National Commission of Foreign Investments abovementioned Commission is required.

2.3. Minimum capital contribution requirements

The minimum paid-in capital required will be as agreed by the shareholders in the chart of incorporation or bylaws. Formerly, there was a minimum capital requirement of \$50,000 for the S. A. de C. V. and \$3,000 for the S. de R. L. de C. V.

Currently no taxes are imposed on domestic or foreign capital contributions.

Public registration fees could be affected by the contributed amount of capital.

2.4. Time to incorporate

The incorporation of a Mexican corporation usually takes from two (2) to four (4) weeks if no consent is required from the National Commission on Foreign Investment.

2.5. Main information included in the chart of incorporation

The public instrument of incorporation will include information such as the following:

- Shareholders or partners' name, nationality and domicile.
- Corporate purpose.
- Corporate name.
- Term.
- Amount of capital stock.
- Contributions made by the shareholders or partners either in cash or kind, and the value and criteria for its appraisal.
- Corporate domicile.
- Management of the company.
- Appointment of corporate directors and legal representatives.
- Profits and losses distribution procedure.
- Amount of the corporate reserve fund.
- Early dissolution scenario.
- Liquidation process.

2.6. Other corporate legal procedures and considerations

Prior consent is required from the Ministry of Economy to establish a stock corporation in Mexico. No permit is needed to modify its bylaws, unless the amendment involves either a change in its corporate name or substitution of a provision prohibiting the participation of foreigners for one allowing such participation. The authorization is reproduced in a public document, which represents the combined charter and bylaws.

It is important to mention, that pursuant a statement known as “the Calvo Clause”, foreign shareholders or partners must consider themselves as Mexican nationals with respect to their shares or equity ownership interest quotas and agree not to request protection of their governments in matters connected with such ownership, under penalty of forfeiting in the benefit of the Mexican nation the shares or equity ownership interest quotas acquired by them.

To incorporate a Mexican company, a corporate name permit must be requested with the Ministry of Economy which authorizes the use of it and the type of business organization to be incorporated. This corporate name approval must be included in the charter of bylaws and transitory clauses of the Mexican company that will be incorporated. Additionally, such document must be formalized before a Public Attester and recorded before the Public Registry of Commerce which corresponds to its corporate domicile.

Proper Mexican tax ID registration must also be obtained from the Ministry of Finance.

3. Structuring and common operational models

3.1. Basic operational model

Once you have knowledge of the main legal requirements to have a legal entity incorporated in Mexico, it is worthwhile to evaluate the overall operational structure.

While doing so, management will most likely encounter the following key concepts that it should be familiar with while working under an IMMEX Maquiladora structure:

- **Principal:** foreign entity residing in a country with a tax treaty in effect that holds the toll or manufacturing agreement and in many cases is the owner of the fixed assets, inventory and materials that are sent to on a consignment basis to the IMMEX Maquiladora to be used by the latter in the Mexican operation;
- **Toll or contract manufacturing agreement:** represents the legal arrangement between the Principal and the IMMEX Maquiladora that stipulates the operational and economic terms on how the latter will provide its manufacturing services to the principal.
- **IMMEX Maquiladora:** Mexican legal entity that applies and obtains an IMMEX Maquiladora program approval (permit) to carry out those agreed upon manufacturing activities mainly for exports or for the domestic market (complying with the corresponding requirements).

Taking into consideration that the majority of Principals reside in the United States, the basic structure involves the IMMEX Maquiladora operating under the instructions and supervision of the Principal (as described in the toll or contract manufacturing agreement) and delivering the manufactured product as instructed by the Principal (mainly abroad, but as mentioned, domestic sales are allowed complying with certain rules).

3.2. Enhancing your manufacturing structure... “Value Chain of Transformation (VCT)”

In recent years, the search of more efficient operating structures from a tax perspective has generated interesting areas of opportunity for companies.

In this sense, our experts have identified certain interesting ways to enhance your manufacturing structure through what is called a “Value Chain of Transformation (VCT)”.

This concept includes most interesting structuring in the following areas:

- Toll manufacturer schemes-European Union (EU) principals and Mexican IMMEX Maquiladoras.
- Setting up an inter-regional shared services center.
- Centered Led manufacturing (and distribution) within principal structures.

Although some of the main features for each concept are outlined in Sections 3.2.1, 3.2.2 and 3.2.3., the nature of the topics as well as their evaluation and implementation will require a significant level of expert guidance.

3.2.1 European Union (EU) principals and Mexican IMMEX Maquiladoras.

- An EU principal vehicle is set up for the non-US manufacturing and distribution activities (potential locations: Spain, Luxembourg and the Netherlands).
- Use of a Mexican company for manufacturing activities acting under the special IMMEX Maquiladora regime.
- Principal should have enough substance/functions to meet the “substantial contribution” requirement for US subpart F purposes, as well as general anti avoidance in foreign “OpCo” countries.

3.2.1.1 General tax considerations.

- The Maquiladora is to be considered as a “fixed place of business” of the Principal from a Double tax treaty perspective (i.e. treated as a foreign “branch”).
- A Tax ruling (“Advance price agreement”) could be evaluated to confirm the income allocated to the Principal’s Mexican branch.
- The income allocated to the “branch” would not be taxable at the level of the principal (branch income exemption).
- There would be a Statutory permanent establishment relief for the foreign principal for its IMMEX Maquiladora activities. Thus income allocated to branch would neither be taxable in Mexico, provided it is not a separate entity from the IMMEX Maquiladora.

- From a Mexican tax perspective, returns are deemed to be arm's length when at least: the highest of 6.9% on its operating assets or 6.5% on its operating costs (safe harbor provisions). OECD methods are also allowed which may provide a lower return for the Mexican IMMEX Maquiladora.
- Corporate income and flat tax credits yield the IMMEX Maquiladora's effective tax rate to as low as 17.5% of its taxable profit.
- Import of raw materials and M&E should be VAT exempt under the temporary import regime.
- Service fee charged by IMMEX Maquiladora would be subject to 0% VAT.

3.2.2 *Setting up an inter-regional shared services center*

3.2.2.1 General considerations

- Follows global trends aimed to support and back office services concentration. Significant reductions of costs, enhancement of operating efficiencies and economies of scale are achieved.
- Matches the most efficient locations from both, operational and tax perspectives.
- Tax efficiency is achieved by using an EU Co. and a foreign branch to structure the Shared Services Center (SSC).
- Potential branch locations: Costa Rica, Panama and Uruguay.
- Potential use of tax treaty network of the EU Service Co. (preferred locations are Luxemburg, Netherlands or Spain).

3.2.2.2 Key tax considerations

- Withholding taxes on payments to SSC–DTT application.
- Income allocation to SSC Branch by EU Service Co.
- Exemption for branch profits obtained by EU Service Co.
- Potential application of CFC rules for parent Co.

3.2.3 *Centered Led manufacturing (and distribution) within principal structures*

3.2.3.1 General considerations

- Alternative to an integrated principal structure.
- Principal provides high value management and control, enhances the value of intangibles and assumes key business risks in exchange for a contingent fee.
- Local LRM maintains commercial relationships with suppliers and customers.

3.2.3.2 Key tax considerations

- Nature and tax treatment of balancing payments.
- Medium/long term analysis of actual risks allocated to Center Led.
- Substance aligned with Center Led's functional profile.

3.2.4 Other operational structures

Other existing operational structures that an investor might consider are the following:

- Shelter operations.
- Stand-alone operation.
- Site location.
- Regional clusters.
- Owning vs. leasing facilities.

4. Highlights of main IMMEX Maquiladoras tax features

The main taxes payable in Mexico are those levied by the federal government. State and municipal governments have more limited tax powers and also receive allocations of some federal taxes collected within their borders. The principal taxes are the federal income tax, flat tax, value-added tax, social security and federal housing contributions as well as other local payroll taxes.

4.1. Income tax

In general, the federal income tax system is an all-inclusive system with certain exceptions. The federal corporate income tax rate is 30 percent and is a regime that works on an accrual basis, where almost all revenue is taxed, but there are significant tax deduction requirements that have to be met in order to take a deduction for income tax purposes.

A normal fiscal year begins on January 1 and concludes on December 31 of each year.

4.2. Flat tax

A new Flat Tax Law became effective on January 1, 2008 and replaced the Asset Tax Law. The flat tax applies to Mexican resident taxpayers' income from worldwide sources, as well as to foreign residents with permanent establishments in Mexico, for such income attributed to the establishments.

A tax rate of 17.5% is applied to the taxable basis, which in general, is the excess of the income effectively collected related to the sale or disposition of property, the provision of independent services and the granting of the temporary use or enjoyment of assets over those amounts effectively paid for the acquisition of assets, the receipt of independent services and the temporary use or enjoyment of assets, as well as certain other expenses. Salaries and wages, employer contributions to the social security system, employee non-taxable benefits, most interest income, as well as royalties received from related parties for the temporary use or enjoyment of intangible assets, are not included as income under the Flat Tax Law and accordingly, payments for these types of expenses are also nondeductible for these purposes. Nevertheless, the employer is permitted to obtain a flat tax credit on "taxable" wages and social security contributions, which is intended to be equivalent to having had deducted these two items.

The flat tax operates as a supplemental tax to the income tax, to the extent the computation yields an amount which is higher than the income tax for the taxable year. Accordingly, the initial flat tax computation is reduced by a “credit” for an amount equal to the income tax of the taxable year, as well as the income tax arising from distributions of dividends exceeding the previously taxed earnings and profits account (in Mexico known as CUFIN).

The flat tax is calculated on a calendar year basis. Nevertheless, monthly advance flat tax payments are due based on the month-to-date flat tax gross income less the authorized deductions in that same period. Depreciation and amortization are not deductible for flat tax purposes. However any payments for these types of investments made as from 2008 are deductible in-full at the time of payment and a credit was available for those acquired in the period from 1998 through 2007.

4.3. IMMEX Maquiladora Tax Regime

Under Mexican Income Tax Law, IMMEX Maquiladoras are subject to a special advantageous tax regime that allows them to comply with Transfer Pricing rules, while avoiding a permanent establishment to be deemed to the foreign resident conducting operations in Mexico through the “maquiladora” operation, provided that: i) they are residents of a country which has a tax treaty in place with Mexico; ii) that all the terms and requirements of the treaty are complied and; iii) that the mutual agreements that Mexico and its Treaty Partner may have eventually observed.

For this purpose, IMMEX Maquiladoras must comply with any of the following options:

- To prepare and maintain transfer pricing documentation determining an arm’s length level of profitability for the IMMEX Maquiladora and adding to the result of this analysis a 1% on the net book value of the machinery and equipment owned by the foreign related company that is used by the IMMEX Maquiladora in its activities.
- To declare a “Safe Harbor” that consists in general of reporting a taxable income of at least the higher of the following values: a) 6.9% of those assets used in the “maquiladora” activity (including the inventories and fixed assets owned by the foreign related party), or b) 6.5% of total operating costs and expenses of the IMMEX Maquiladora.
- To prepare and maintain transfer pricing documentation considering a return on assets including the net book value of machinery and equipment owned by the foreign related company that is used by the IMMEX Maquiladora in its activities. In this case the corresponding return must be adjusted to recognize that the financial activities (and associated risks) for the procurement of such machinery and equipment are not carried out by the Maquiladora.

4.4. Tax incentives-income tax

On October 30, 2003, a Presidential Decree was published in the Mexican Official Gazette, by which various benefits for taxpayers are provided. Specifically, articles Tenth, Eleventh and Fourth Transitory, provide important tax benefits applicable for the Maquiladora Industry with the main purpose to promote its competitiveness.

The decree establishes that IMMEX Maquiladora companies are entitled to apply a partial income tax exemption. Such exemption will be calculated based on the difference in income tax resulting from the application of the percentages established in section II of article 216-Bis of the Mexican income tax law (“Safe Harbor” option as described above), and a 3% on the corresponding assets or costs. The application of this benefit can reduce corporate income tax in more than 55%.

4.5. Tax incentives-flat tax

On November 5th, 2007, the Mexican Executive branch issued a Decree (effective January 1, 2008) which released some of the concerns the Maquiladora Industry had on the flat tax.

The decree provides that Maquiladoras will be entitled to an additional credit against the flat tax which, in principle, should yield an effective tax rate of 17.5% on the taxable income as determined under any of the existing transfer pricing methodologies of the Mexican Income Tax Law relative to Maquiladoras (i.e. the Safe Harbor or self-assessment options for determining taxable income). Currently this means an estimated combined (income tax and flat tax) effective tax rate of 17.5% for the Maquiladora operation.

Taxpayers desiring to use the “cost plus” self assessment option to determine the taxable income floor for purposes of arriving at the credit would need to adjust the return on foreign owned assets to 1.5% (in lieu of the regular income tax rule of 1%) in order to compute this credit under that option.

This credit was initially granted for the 2008-2011 period; however a published Federal Decree, issued by the Mexican government has extended the flat tax incentive for Maquiladoras up until December 31, 2013.

In order to apply the decree, taxpayers must comply among others, with the following tax, customs and Maquiladora (IMMEX) filings and obligations during 2012 and 2013:

- To file all annual or monthly federal tax returns.
- The taxpayer must not have outstanding definitive tax credits or not be registered with the tax authorities.
- To file the annual auditor’s tax report (known in Mexico as “dictamen fiscal” or the simplified information submission where applicable).
- To file the informative tax return for operations with third parties.
- To file the informative return for Manufacturers, Maquiladoras and Export Services Business.

- To maintain an active tax registration with the authorities (i.e., not to have suspended activities, liquidation proceedings or cancellation of tax ID registration).
- To provide true and current information for tax registration.
- To comply with the IMMEX Program conditions (i.e., article 24 of the IMMEX Decree).
- To maintain the required export and import documentation.
- To comply with all tax and customs filings related to Maquiladora operations.
- Not to provide false names or addresses of foreign suppliers or recipients in invoices or customs declarations.

Taxpayers should review the application of the Decree in 2013 as changes to flat tax may be introduced with the newly elected Federal Administration.

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Transfer Pricing Partners

4.6. Transfer pricing considerations

4.6.1 Brief background

As explained, IMMEX Maquiladoras are companies that assemble or manufacture using temporarily imported raw material and components on consignment for subsequent export. Typically, an IMMEX Maquiladora uses machinery and equipment consigned by the non-resident using its services. The term “maquiladora” originally referred to a particular customs regime facilitating temporary imports and reducing costs for such imports such as customs fees, value added taxes, etc. However, this customs regime was combined with another similar regime (PITEX) in 2006, and the customs regime applicable to both is now termed the IMMEX Program.

Prior to 1995, IMMEX Maquiladoras were regarded as cost centers and were not required to report significant profits. However, since 1995 the government has required IMMEX Maquiladoras either to report arm’s-length profits or to meet a safe harbor. These alternatives were regulated by administrative rules subject to annual renewals.

Now these rules take into consideration the definition of a Maquiladora, which according to Section III of Article 2 of the IMMEX Decree is as follows:

“The industrial process or service for the production, processing or repair of foreign goods temporarily imported for export or export services.”

4.6.2 Main applicable rules

The foreign principal of an IMMEX Maquiladora will not be deemed to have a permanent establishment in Mexico for the maquiladora services, when:

- The foreign principal resides in a Treaty country.
- The Maquiladora complies with transfer pricing regulations.

For that purpose, transfer pricing options for maquiladoras include the following (various rules and calculations apply):

- Transfer pricing documentation determining an Arm's Length operating income, plus 1% of the net value of the M&E owned by the foreign resident.
- Safe Harbor equivalent to the higher of 6.9% on assets or 6.5% on costs and expenses.
- Transfer pricing documentation determining an operating income by applying the Transactional Net Margin Method with the Return on Operating Assets ("ROA"), including a return on the M&E owned by the foreign principal.

Mexican regulations also provide the possibility to request an Advance Pricing Agreement (APA) pertaining to their transfer pricing methodology. IMMEX Maquiladoras could request an APA for their maquiladora operation or any other intercompany transaction.

4.6.3 Transfer Pricing analysis

For these purposes, the transfer pricing method & profit level indicator (PLI) include the following:

- Transactional Net Margin Method – (TNMM)
- PLI:
 - Mark-up on total costs (MOTC)
 - Return on operating assets (ROA)
- To use comparable companies such as Contract and/or Toll manufacturers.
- To consider other Industry sectors such as: Electronic, Automotive, Medical, Plastics and Textile.

4.6.4 Actions taken by the Tax Authority.

Recently, the Tax Authority through its Central Administration of Transfer Pricing Audit has started a transfer pricing audit campaign of the Maquiladora industry.

These actions have basically derived from:

- Qualified or negative opinions in the auditor's annual tax report regarding the compliance with TP obligations.
- Inconsistencies in the data between the informative annual return, the income annual tax return, the transfer pricing study and the auditor's annual tax annual report.
- Unsatisfactory responses related to audit working papers.
- Taxpayer's desk reviews.

During these audit procedures, the tax authority focuses on reviewing the following:

- That the transfer pricing study complies with formal requirements.
- That there is detailed functional analysis.
- To apply with the best method rule.
- To comply with the calculation of the ROA.
- To evaluate financial information of the tested party, if applicable, based on segmented information in accordance with Accounting Principles.

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4.7. Value-added tax

The federal value-added tax (VAT, IVA in Spanish) represents a one-time tax, payable by the ultimate consumer of all types of products and services. However, each business entity involved in the process from the sale of raw materials to the production and distribution of finished products to the ultimate consumer is required to bill its customers the tax on its products (output tax) and to pay the tax on its purchases of goods and services (input tax), crediting the amounts so paid against the amounts due on its own activities. The net amount payable by each entity is considered to represent a tax on the value added by each.

VAT is payable on all types of operations at a general rate of 16 percent, except for exports which are taxed at a zero rate, and temporary imports that are exempt. Goods and services imported on a permanent basis by border residents are subject to VAT at 11 percent, provided these goods or services are used or received in the border regions. Taxpayers residing in the border zones apply the 11 percent rate on sales of goods and services delivered or rendered within those regions. However, the 16 percent rate applies to the sale of commercial and industrial real property in these zones, except for the value of the land, which is not subject to VAT in Mexico.

For these purposes, the border regions include, in addition to the 20-kilometer area along the northern and southern international borders, the states of Baja California and Baja California Sur, as well as a specified portion of the state of Sonora, including the municipality of Cananea in the northern region, and the state of Quintana Roo in the southern region.

Maquiladora services are considered as exports (0% rate), thus, overpayment usually results in a favorable VAT balance. This favorable balance can either be compensated against other federal taxes or be requested as a refundable balance. Certain requirements and obligations are required in both alternatives.

We must highlight that in general, VAT does not represent an additional cost to a Mexican taxpayer carrying out taxable business activities.

VAT refund procedures could normally take at least three months. Usually, these periods are extended if the Tax Authority requires additional information regarding the refund filing. These refund filing procedures will require a significant amount of time, resources and follow up with the Tax Authority.

4.8. Customs and Foreign Trade topics

4.8.1 Maquiladora Industry (IMMEX)

As mentioned, in order to create more employment opportunities, the Mexican government adopted certain policies that allowed the establishment of 100 percent foreign-owned companies that process or assembly temporarily imported materials into finished goods for export. Such companies were first created in the border area between Mexico and the United States and may now be established anywhere within the country. These entities are currently entitled to a reduced income tax for profits attributed to exported goods complying with certain conditions.

These companies may sell or deliver part of their production to the domestic market, as long as customs duties are paid on the temporarily imported raw materials included within the finished goods sold in Mexico.

The main regulations for the operations of the Maquiladoras are contained in the Law to promote Manufacturing, Maquiladora and Export services (IMMEX).

Companies wishing to operate as Maquiladoras (now named IMMEX Maquiladora companies) should be registered as such by the Ministry of Economy, which will approve an operating program. The program will specify, among other things, the machinery and equipment that will be temporarily imported; the types of materials, components, etc., to be brought into the country for processing or assembly during specified periods; and the technical and other types of assistance to be provided by the foreign contractor.

In many cases, U.S. import duties are levied only on the value added in Mexico, but even without this advantage, substantial savings are achieved by carrying out labor-intensive processes in Mexico at substantially lower wage rates, while the initial and possibly, the final operations are handled in the United States. These companies make extensive use of the procedures for temporary duty-free imports mentioned above, and their fees for assembly services charged to nonresidents are considered as subject to the zero rate tax under the VAT Law.

These companies can process or assemble temporarily imported materials from several countries, not only the U.S.

4.8.2 Strategic Bonded Warehouse

The Strategic Bonded Warehouse regime consists of introducing for a limited period of time, foreign, national or imported goods into authorized warehouses, with the purpose of being stored for safekeeping, exhibition, distribution or transformation or to be repaired. Authorized warehouses must be established next to a customs facility.

The main benefits of this regime are as follows:

- Neither import duties nor countervailing duties will be paid, except for those cases contemplated within the Free Trade Agreements Rules.
- Non-tariff restrictions and regulations do not have to be complied with, except for those regarding animal and vegetable sanitation, public health, environmental and national security.

- Sales carried out while the goods are under this customs regime will not be subject to VAT .

4.8.3 Industrial Parks

Industrial parks have been established in a number of areas all over the country to provide the required infrastructure. Land is usually available in these areas on relatively favorable terms. Some states have donated land for new industry or sold it at relatively low prices.

4.8.4 Free trade agreement

Mexico, the United States, and Canada signed a trilateral free- trade agreement commencing in 1994, and Mexico has entered into free-trade agreements with Colombia, Costa Rica, Bolivia, Nicaragua, Chile, the European Union, Israel, El Salvador, Guatemala, Honduras, Iceland, Norway, Liechtenstein, Switzerland, Uruguay and Japan.

4.8.5 Ministry of Economy (SE) export programs

4.8.5.1 Temporary imports of goods for subsequent export-IMMEX Maquiladoras (mentioned in previous paragraphs)

As explained, the SE created the Law to Promote Manufacturing, Maquila and Export Services Companies (IMMEX) which merged the existing Maquila and PITEX programs (previous temporary import programs). Entities exporting at least US\$500,000 or 10 percent of their production may enter into an IMMEX program authorized by the SE and obtain the following benefits:

- Temporary (duty-free) imports for up to 18 months for raw materials, supplies and packing materials used in the exported production.
- Exemptions from import duties on fuels, lubricants, spare parts, and other consumables used in the production of goods to be exported.
- A portion of the production (with foreign content) covered under the program may be sold domestically upon the payment of the corresponding import duties on the foreign content thereof.
- To enroll in this program, companies must be incorporated in Mexico and present a viable export project.
- Companies may also be approved under a Sectorial Relief Program (SRP) to enable manufacturers to import raw materials regardless of their origin and with certain conditions.
- VAT may be refunded within 20 days if there is a refundable balance.

The life of an IMMEX program is indefinite as long as the company complies with the provisions, including:

- Issuing an annual report covering foreign trade operations related to the program.
- Keeping an automated inventory record to control the merchandise.
- Exporting merchandise or changing the customs regime of raw materials in 18 months, at the latest.

IMMEX status is also granted to service companies, to perform repairing, cleaning, quality control testing, packing, painting, greasing activities and technological support services (back office, shared services centers).

4.8.5.2 Import duty drawback.

Under an import duty drawback, all exporters (including indirect exporter suppliers) are entitled to the refund of import duties paid up to one year before on imported merchandise integrated into exported goods or sold to other entities that physically export the related goods.

Exporters may also be able to recover import duties through the drawback system when they export products in the same condition in which they were imported.

4.8.5.3 Sectorial Relief Program (SRP).

The SRP benefit companies with preferential import tariff on goods intended for production, regardless of the country of origin. The rates vary from 0 to 5% depending on the type of industry.

The authorized industrial sectors in which companies are able to get the above benefit are the following:

- I. Energy industry.
- II. Electronic industry.
- III. Furniture industry.
- IV. Toy, recreational games and sporting goods industry.
- V. Footwear industry.
- VI. Mining and metallurgy industry.
- VII. Capital goods industry.
- VIII. Photographic industry.
- IX. Agricultural industry.
- X. Sundry industry.
- XI. Chemical industry.
- XII. Rubber and plastic manufacturing industry.
- XIII. Steel industry.
- XIV. Pharmaceutical, medication and medical equipment industry.
- XV. Transportation industry, except the automotive industrial sector.
- XVI. Paper and cardboard industry.
- XVII. Lumber industry.
- XVIII. Leather and fur industry.
- XIX. Automotive and auto parts industry.
- XX. Textile and apparel industry.
- XXI. Chocolate, sweets and candy industry.
- XXII. Coffee industry.

4.9. Social Security, Federal Housing and other local payroll taxes

4.9.1 Social Security, Federal Housing and other local payroll taxes

Additional contributions and mandatory expenditures of the like, which should be considered are:

4.9.1.1 Social Security contributions/premiums.

These are mandatory social contributions incurred by both, the employer and the employee (through a withholding procedure) and remitted to the Social Security Institute every month.

The employer's total burden could usually represent 14% to 22% of its labor payroll cost. The maximum basis (i.e., integrated salary) to calculate the Social Security contributions per employee is 25 times the Mexico City minimum wage.

Premiums are determined as a percentage of each employee's integrated wages and the computation varies depending on the following categories:

- Sickness and maternity.
- Life and disability.
- Day-care centers and social benefits.
- Retirement Savings System (SAR) and old age.
- Occupational risks.

4.9.1.1.1 Mandatory Social Security compliance audit report.

Employers with 300 or more workers in the immediately preceding fiscal year are obligated to report the compliance of their obligations established in the Social Security Law through an authorized public accountant. Employers who are not involved in such provision could elect this option and adhere to the benefits, among them, not to have a direct audit by the authority.

4.9.1.2 Workers' Housing Fund contributions.

This social contribution is payable by the employer and represents 5% of the integrated wages.

4.9.2 Other payroll taxes

Some Mexican states levy a relatively low tax over salaries and other income earned by the employees, which is payable by the employer. Usually there are initial exemption periods for IMMEX Maquiladoras, but proper investigation should be carried out.

The following chart reflects the local payroll taxes around the country:

State	Tax rate	State	Tax rate
Aguascalientes	2%	Morelos	2%
Baja California	2%	Nayarit	2%
Baja California Sur	3%	Nuevo Leon	3%
Campeche	2% up to 3%	Oaxaca	2%
Chiapas	2%	Puebla	2%
Chihuahua	1% up to 2.6%	Queretaro	2%
Coahuila	2%	Quintana Roo	2%
Colima	2%	San Luis Potosi	2%
Distrito Federal	3%	Sinaloa	2%
Durango	2%	Sonora	1% up to 2%
Estado de Mexico	3%	Tabasco	2.5% up to 3%
Guanajuato	2%	Tamaulipas	2%
Guerrero	2%	Tlaxcala	2%
Hidalgo	0.5% up to 2.0%	Veracruz	2%
Jalisco	2%	Yucatan	3%
Michoacan	2%	Zacatecas	2%

Please consider that these percentages could vary if tax reform bills take place.

5. Accounting reporting obligations and considerations

5.1. Audit reporting obligations

In addition to a taxpayer's (including an IMMEX-Maquiladora) compliance with its normal monthly and annual federal tax filings and obligations, those meeting with certain size criteria or belonging to a group that as a whole meet with such criteria must file with the Mexican Audit Administration by the end of June of each fiscal year what is known as a "tax compliance audit report" (in Mexico known as "dictamen fiscal") on an annual basis.

This report consists of audited financial statements and detailed schedules, together with an opinion signed by the auditor normally stating that no irregularities were observed in respect with the taxpayer's compliance with its federal tax obligations in the prior fiscal year. Any situation on contrary must be disclosed.

These reports must be filled electronically by an independent CPA registered with the Mexican Audit Administration and require a significant amount of time and effort by both, a company and its auditor to be completed. Since 2008, the amount of detailed information required to be filed and the auditor's responsibility in connection therewith, has increased significantly as well as the time and efforts to comply with this obligation.

The current thresholds are the following:

- Annual revenues of at least \$34,803,950*.
- Total assets of at least \$69,607,920*.
- Average of three hundred employees or more in each month of the preceding year.

* These amounts vary.

5.2. Accounting considerations

Conducting business in Mexico requires maintaining detailed accounting records. The Federal Tax Code and the Income Tax Law provide a summary of records that must be contained in the books such as:

- Historical minutes of Board of Directors and shareholding meetings.
- Inventories and trial balances record.
- Record of registered shares.
- A general ledger and journal.
- A record of debts held in foreign currency, credits and cash.

For all Mexican corporations, the accounting records must be in Spanish using Mexican Pesos and in accordance with Mexican Financial Reporting Standards (MFRS).

The main books and records with all supporting documentation must be maintained at the company's official address and remain available for 10 years.

Financial statements must be presented at an annual shareholder's meeting to be approved. All corporations incorporate under a stock corporation with variable capital structure (S. A. de C. V.) must have a statutory auditor (Comisario) appointed by the shareholders. The statutory auditor may not be an employee or executive of the Company.

5.3. Accounting Standards

The Mexican Financial Reporting Standards (MFRS) are a set of standards for the preparation of the financial reports.

On June 1, 2004, the Consejo Mexicano para la Investigación y Desarrollo de Normas de Información Financiera, A. C. (CINIF by its Spanish acronym) is an independent organization that assumes the function and responsibility of issuing the accounting standards in Mexico.

Since the CINIF in 2004 assumed the responsibility of the accounting standards in Mexico, it expressed its intention to converge to its possible extent with International Financial Reporting Standards (IFRS).

On January 27, 2009, the Mexican Tax Authority (the Secretaria de Hacienda y Credito Publico, SHCP by its Spanish acronym), issued regulations in which public Companies in Mexico should issue their financial statements based on IFRS beginning as of January 1, 2012.

The adoption of IFRS in Mexico represents to companies great challenges and opportunities. Changing from MFRS to IFRS requires companies to review their financial reporting procedures. Major changes in the requirements often have a ripple effect, impacting many aspects of a company's information reporting organization.

Nevertheless, the benefits to Mexican companies in reporting under IFRS are numerous. Among the greatest of these is the opening up of the Mexican Stock Market to overseas investors. By adopting IFRS, investors are able to compare two companies on different sides of the world with greater ease, and thus it is hoped that the change will encourage investment in Mexican companies.

Adoption of IFRS is not a straightforward process, and it will require time and effort on the part of the adopting entities to be able to ensure a smooth transition from MFRS to IFRS and ensure that the changes and benefits from this transition are duly implemented.

The CINIF has submitted Financial Reporting Standards projects that will cover certain subjects not included in MFRS, as a result, once they have been concluded the revision process, are issue and become effective, the supplementary application of the IFRS should be discontinued.

5.3.1 Some differences between MFRS and IFRS

Briefly and without trying to get into technical details, some areas where differences between MFRS and IFRS can be observed are the following:

- MFRS B-3 “Comprehensive income statement”...the choice of presenting the comprehensive income based on the function and nature of items.
- MFRS D-6 “Capitalization of the comprehensive financing result (RIF by its Spanish acronym)”...capitalization (compensation) of the positive comprehensive financing result is not allowed.
- MFRS B-10 “Inflation effects”...the economy is considered as inflationary when there has been a cumulative inflation of 26% in the most recent three year period.
- MFRS B-7 “Business acquisitions”...the recognition of a gain in business acquisitions is not allowed. The recognition of the contingent liabilities that do not meet with the statement requirements are not allowed.
- MFRS B-8 “Consolidated or combined financial statements”...the recognition at fair value of investments in subsidiaries which control has been lost is not allowed. It’s necessary to recognize investments in subsidiaries through the equity method in the non-consolidated financial statements.
- MFRS C-7 “Investments in subsidiaries (associates) and other permanent investments”...the recognition at fair value of investments in associates which the significant influence has been lost is not allowed. It’s necessary to recognize investments in subsidiaries through the equity method in the non-consolidated financial statements.

5.4. Auditing standards

As from 2012, the Mexican statutory financial statements audits will be performed according to the International Standards on Auditing (ISAs), therefore the Mexican Auditing Standards will be no more applicable.

6. The 2012 Labor Reform and labor relationship highlights

6.1. 2012 Labor Reform

The Mexican Federal Labor Law (FLL) governs all employment relationships in Mexico including unions. This law was first adopted in 1931, thereafter amended in 1970, and in November 30, 2012, a labor reform bill with several significant matters was published, being effective on December 1, 2012 and including among other, the following topics:

- Flexibility to hiring
- New provisions for subcontracting and outsourcing.
- Employers can pay employees on an hourly basis (hourly wage).
- Trial periods for new employees.
- Extension of maternity leave period; among others.

According to the current Federal Labor Law in force, disputes between the employer and their employees are resolved before the Local or Federal Labor Arbitration and Conciliation Board, according to the main activity developed by the employer.

6.2. Employer/employee relations

Employment agreements should be executed by and between the employer and its employees, either individually or through an employee's representative (Union). Working conditions should be in writing and contain at least the following:

- Name, age, nationality, sex, marital status, tax id, citizen number (CURP) and address of the employee and employer.
- Duration of the employment.
- Service or services to be rendered.
- Place or places where the work is to be performed.
- Working hours.
- Wages.
- Date and place of payment of wages.
- Declaration that employee will be trained in accordance with the procedure of the company.
- Type of labor relationship.
- Other conditions such as rest days, vacations, etc.

6.3. Foreign personnel

According with the provisions of the Federal Labor Law, it is required for at least 90% of the employees of a Mexican entity to be Mexican nationals. Therefore, foreign personnel shall not exceed 10% of the total number of workers in a Mexican company.

It should be considered that such provision shall not apply to directors, managing directors and general managers.

6.4. Unions

Unions in Mexico have a significant impact on the labor market.

The Federal Labor Law protects the right of both workers to associate without prior authorization and provides the framework to constitute a labor Union. Unions to be valid and in force must be registered with the labor authorities or with the Ministry of Labor.

As a result of having labor Unions, collective bargaining agreements are signed between representatives of the employer and the Union. The primary goals of collective bargaining agreements are to achieve better working conditions such as to achieve a raise in wages and fringe benefits.

6.5. Managerial (White collar) employees

White collar employees are those who develop functions of management, supervision, surveillance and inspection within a place of work.

In case of dismissal, employers are not obliged to reinstate white collar employees. Moreover, they are not entitled to participate in Unions nor to vote during strike proceedings.

6.6. Worker or Employee's Profit Sharing (known in Mexico as "PTU")

Employers are required to distribute 10% of their annual profits among their employees, except in the case of directors, administrators and general managers. Certain calculations apply to determine the profit that will be shared.

The payment of the PTU must be made within 60 days after the corresponding payment of the corporate annual income tax for the corresponding year.

The following employers are exempted to pay profit sharing in terms of the FLL:

- New companies during their first year of operation.
- New companies which manufacture new products during their first two years of operation.
- New mining companies during the exploration period.
- Non-profit organizations recognized by law.

- Mexican Social Security Institute and public institutions with cultural or welfare purposes.
- Companies with a social capital in an amount less to the provisions established by the Ministry of Labor.

6.7. Generalities on wages and salaries

Minimum wages are set per economic region in Mexico by the National Minimum Wage Commission.

For “blue collar” employees or workers, salary must be paid on a weekly basis and for “white collar” employees salary may be paid every two weeks.

Overtime must be paid at 100% of the normal hourly salary for the first nine hours per week and 200% of such salary in the event that overtime exceeds nine hours per week. However there is limitation established by the Federal Labor Law on the number of hours that an employee may work as overtime in any given working week, establishing a maximum of three daily hours and no more than three times per week.

Certain fringe benefits are commonly also granted in addition to the normal salary.

6.8. Mandatory benefits

Employer should grant to their employees the following minimum mandatory benefits set forth in the Federal Labor Law:

- A year-end bonus equivalent to at least fifteen days wages, payable prior to December 20 of each year (known as “Aguinaldo” or “Christmas bonus”).
- A yearly vacation period, the length of which depends on the worker’s seniority (i.e., six days for the first year; eight days for the second year; ten days for the third year; twelve days for the fourth year; fourteen days for the fifth year; and two additional days each five years thereafter).
- A vacation premium of 25% of the salary payable to the employee during the vacation period.
- Mandatory paid holidays.
- To register employees with the Mexican Institute of Social Security.
- Housing Fund and.
- To share them in the profits of the company, with the exception of the General Director or Manager, Chief Administrator or Chief Executive Officer (or the equivalent position, regardless of the title given).

6.9. Work shifts

The maximum work shifts are as follows:

- Day shift (8 hours), work is performed between 6 a.m. and 8 p.m.
- Night shift (7 hours), work is performed between 8 p.m. and 6 a.m.
- Mixed shift (7.5 hours), work is performed between day and night shifts, provided that the night shift is less than 3.5 hours

All the above with at least one dayoff per week.

During a continuous work shift employer must offer at least a 30 minute break to employees.

6.10. Termination of employment

In general terms, an employer cannot terminate, suspend or rescind an individual labor agreement without penalty unless it can demonstrate just cause under the terms of the Federal Labor Law.

An employee who is unjustly dismissed or who rescinds the relationship for cause is entitled to receive severance payments consisting of the following:

- Three months salary.
- 20 days of salary per each year of services rendered (if reinstatement is requested and denied by employer).
- A seniority premium equal to 12 days of salary per each year of services rendered.
- Back wages from the date of the dismissal through the date of payment.

If not paid, in most cases a dismissed employee may demand reinstatement in the same position with the company. In order to avoid such reinstatement, employers must evaluate thoroughly these severance compensation payments.

6.11. Seniority premium

Pursuant to law, a seniority premium equal to 12 days of salary for each year of services rendered should be paid to employees who:

- Voluntary leave if they have at least 15 years of service.
- Who leave their employment for just cause.
- Are dismissed with or without just cause.
- Die during the labor relationship, in such event their beneficiaries must receive such premium.

6.12. Availability of labor

With the rapid expansion of labor-intensive IMMEX Maquiladoras, a pool of skilled labor is available, especially in the northern border areas. Most companies find that the skills of the younger members of this pool can easily be upgraded through adequate training programs, particularly in the less-industrialized areas. Skilled technical and professional personnel and well trained office workers can usually be found or less-experienced personnel can be trained for more demanding positions.

7. Other business advisory reflections

7.1. Investment in the Mexican Market

The IMMEX Maquiladora industry is one of the most important and productive value chains in the Mexican economy and although it has suffered the impact of the worldwide economic crisis over the last few years, since 2010 its recovery has been remarkable.

We, at PwC, realize that it is one of the industries with the greatest growth potential in our country. However, special attention should be paid to the following points and recommendations, to take full advantage of business opportunities offered by this sector and minimize the risks arising from the current regional and worldwide economic situation.

Following is a brief list of the principal means for investing in Mexico which could respond to frequent questions asked by investors:

7.1.1 Incorporating a new company

As mentioned before, the most frequent vehicle used to structure an investment in Mexico is by incorporating a new company, being the most frequent type used the variable Capital Stock Corporation (S. A. de C. V.) or a Limited Liability Company (S. de R. L. de C. V.).

7.1.2 Mergers and acquisitions

Other ways of investing could be by means of a merger or the acquisition of another Mexican company. This can be done through three principal mechanisms:

- By purchasing the shares or partnership interest of an existing company.
- By purchasing the assets of an existing company.
- By merging two or more companies to create a new one, including the assets and liabilities of such companies.

7.1.3 Strategic alliances

Another option to invest in Mexico is to sign a contract with a company established in Mexico in order for a foreign resident to use the infrastructure and/or rights previously acquired by its commercial allies.

7.2. Compliance with legislation

We should always take into account, that regardless of the way in which it is decided to invest, parties operating in this industry must comply with all applicable laws, before operations begin and during business development.

Special attention should be given to accounting, economic competition, environment, tax, labor and administrative regulations, as well as to obtain proper licenses, permits and authorizations required for a proper operation.

7.3. Maquiladora Industry competitiveness (Strengths, Opportunities, Weaknesses and Threats):

Strengths

- Installed capacity is ample and continues to grow as a result of the multiannual investment programs of the large multinational manufacturers operating in Mexico.
- Skilled labor at relatively lower cost.
- World-class manufacturing systems operating with quality standards exceeding those of competitors in Latin America and in Asian countries such as China and India.
- A growing number of technological and engineering centers with the capacity to render value added service to the large manufacturers and auto parts suppliers.
- Exporting experience and the advantages of the commercial treaties signed with the US and Canada, the European Union, Japan and certain countries in Central and South America.
- The very advantageous geographic location favoring exports to North American markets, with considerable savings as concerns time and transportation costs.
- Development, production and distribution with a lower environmental impact.

Opportunities

- To diversify export destinations in order to reduce the dependence from the North American markets.
- To improve quality and service costs of distributors and distribution channels.
- To issue an official standard regulating pollution levels in an effort to reduce the existing environmental impact and the entry of jalopies, which compete with the established industry.
- To increase local and regional integration and value added percentages.
- To bring down or eliminate redundant operations.
- To search for improvements or benefits through strategic alliances or mergers.

Weaknesses

- Very large operating structures with significant direct costs.
- The rising weakness in the internal market over the last two years.
- The limited availability of high-level specialized engineers coming out of public or private Mexican universities.
- Labor legislation out of step with current needs and with the new international trends and strategies used in managing human resources.

Threats

- The drop in the demand for products, associated to economic crisis.
- Protectionist trends and the indiscriminate use of non-tariff barriers in certain Latin American markets.
- Competition benefiting other nations in the form of subsidies and dumping practices.
- Insufficient effect of federal government promotion programs.
- Negative effects on consumer preferences resulting from the activities of the organized crime.

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Doing Business in Mexico Structuring Guide

PwC Mexico

March 2013



Structuring Guide

I. Business purpose in Mexico

Manufacturing for Foreign (export) market

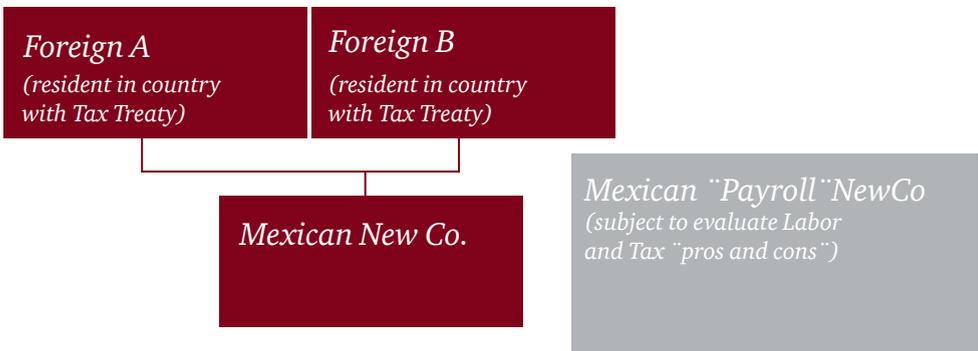


II. Most common legal structure

Foreign stock ownership structure

Most used legal entities

- S. A de C. V. (equivalent to a corporation)
- S. de R. L. de C. V. (limited liability Corporation that allows US “check the box” tax election).
- Both work and are taxed in a similar manner.
- Minimum capital: as agreed in Chart of Incorporation (i.e. \$1 peso)



III. Most common operational structure

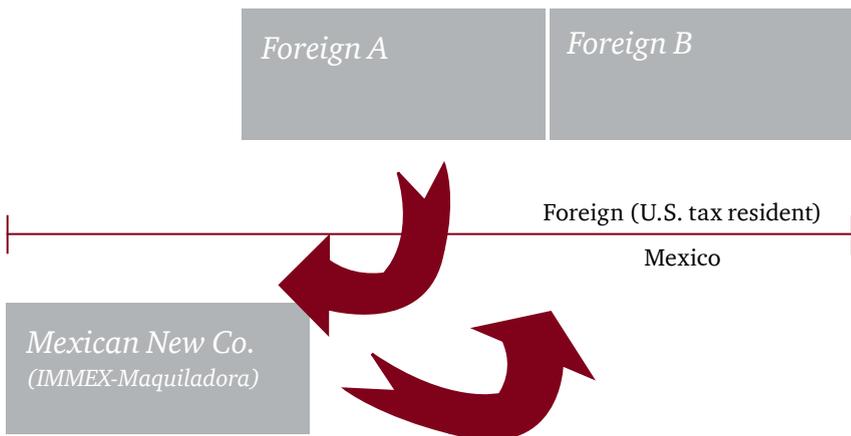
Foreign: ownership or holding of (example Foreign A):

Most used legal entities

- Toll or contract manufacturing agreement.
- Fixed assets and inventory.
- Cash-flow management of Mexican operation.
- Intangibles and intellectual property.

Highlights of Mexican operation

- Foreign owned assets are sent on consignment and used in Mexico.
- Mexican NewCo will apply to get IMMEX- Maquiladora (export) Program.
- IMMEX maquiladora has Customs, tax and VAT benefits not available for other Mexican companies.



IV. Highlights of IMMEX- Maquiladora Tax Features

1. Income and flat tax

- Limits taxation to manufacturing activities assigned to Mexican operation.
- Federal Decree for income and flat tax reductions available.
- Toll or manufacturing fee is calculated on a “cost + plus (mark-up)” basis.
- Compliance with transfer pricing regulations is achieved.
 - By using a Mark-up based on a transfer pricing study (most common alternative used).
 - By electing a “Safe Harbor”, that consists in declaring a taxable profit equivalent to at least the higher of 6.5% of operating expenses or 6.9% of total assets used in the operation (this option is usually not convenient for operations that use high value assets and inventory in Mexico).
- Avoids PE issues for foreign holders of toll or contract manufacturing agreements and/or ownership of assets used in Mexico.

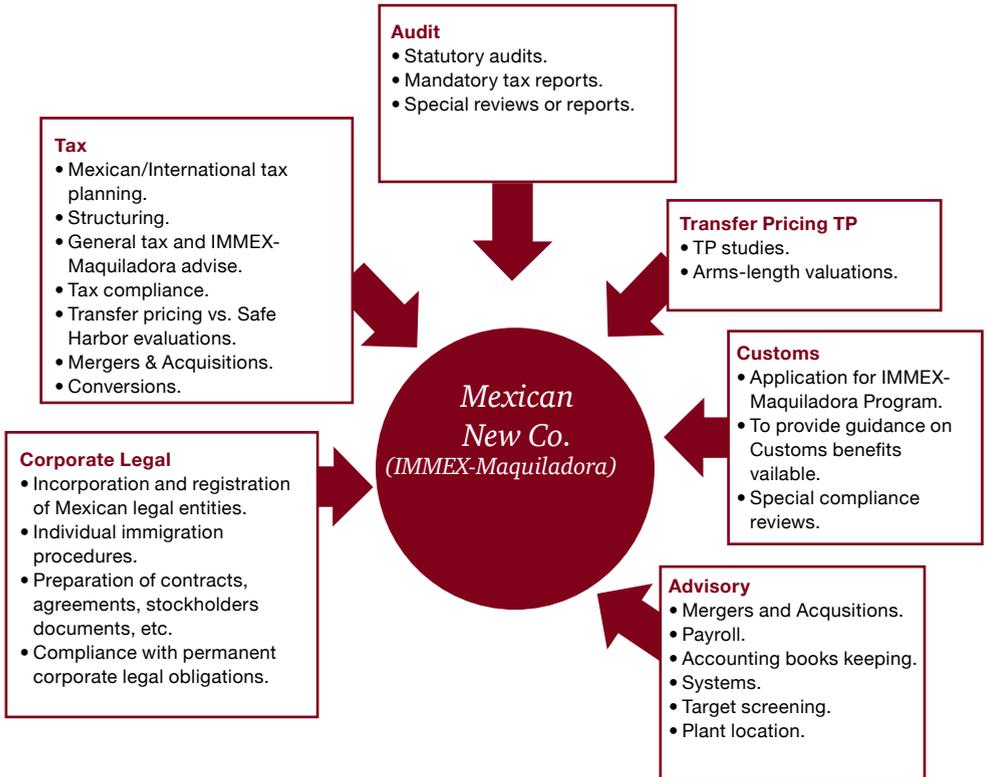
2. Customs

- Allows temporary imports.
- Benefits from other export programs are available.
- Sales for Mexican market can be achieved (certain requirements apply)

3. Value Added Tax (VAT)

- Refundable VAT balances will usually exist, since exports are 0% rated; thus, VAT paid to vendors can be recovered.
- Refund procedures could take at least 3 months; significant documental support, guidance and follow-up will be required.

V. How does PwC “team-up” with you?



VI. Main Mexican Federal tax obligations and highlights

- Monthly Income (IT, except in first year of operations), Flat (FT) and Value Added (VAT) Tax filings.....all due by the 17th of the following month.
- Annual IT and FT filings....due by March 31 of the following year.
- Mandatory Statutory Audit and Tax Report (in Mexico known as “dictamen fiscal), when meeting individually or as a Group for the prior fiscal year with any of the following thresholds:
 - Taxable income (IT) in excess of: \$34.8 million Pesos.
 - Net Assets used in excess of: \$69.6 million Pesos.
 - Monthly average of workers: 300.
- VAT refundable balances (occur when creditable VAT paid to Mexican vendors exceed the payable VAT collected from customers).
 - Refund procedures (specially VAT) require a significant amount of information and follow-up.
 - Refund procedures could take at least 3 months and could require to provide additional information.
- No tax on capital contributions.
- Tax-free dividends when paid from the Previously Taxed Earnings Account (CUFIN).

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