

# Mexico

## Legal overview

### Executive Summary

Pursuant to the Mexican Federal Commerce Code, in Mexico, foreigners are free to undertake usual acts of commerce, subject to individual treaties between a foreigner's home country and Mexico. Foreign traders, are, however, subject to Mexican Legislation. Companies legally incorporated abroad, or that may have an agency or branch in Mexico, may also exercise acts of trade, subject to Mexican laws concerning such entities and subject to the jurisdiction of the courts of the Mexican Nation.

### Incorporating a Company

Companies incorporated in Mexico are regulated by the Mexican General Mercantile Corporations Law (Ley General de Sociedades Mercantiles) and the Mexican Federal Commerce Code (Codigo Federal de Comercio). They may also be subject to comply with other legislation depending on their individual business activities.

The main requirements to incorporate a company in Mexico are the following:

A minimum of five legal company names must be submitted to the Ministry of Economy for authorization. This process may take up to 2 weeks and is free of cost.

The type of company must be selected. The two main types of companies are the Sociedad Anonima and the Sociedad de Responsabilidad Limitada.

#### **“Sociedad Anonima”:**

This is a company of two or more shareholders whose liabilities for the company's acts are limited to the payment of their issued stock shares according to their capital contribution.

The stock shares are negotiable and the shareholders have to subscribe at least one share in order to incorporate the company.

The minimum capital stock is usually Pesos 50,000.00, which is required to be entirely subscribed at the point of incorporation.

The incorporation of the company must be formalised either before a notary public, public broker, or by public subscription.

The administration of the company is conducted by a Sole Administrator or by two or more members of a Board of Administration.

A Statutory Auditor must be named by the company, which will mainly audit and supervise the actions of the Board of Administration.

**“Sociedad de Responsabilidad Limitada”:**

This is a limited liability company, similar to a limited liability company, which is made up of two or more partners, which may be natural persons or corporations, which are only liable for the company's acts to the payment of their respective equity participations in the company.

The corporate capital shall be divided in non-negotiable equity participations, which can be of different value or class, but always shall be of one Mexican peso or its multiples.

At the point of incorporation of the company, the corporate capital shall be subscribed and paid up to at least the 50% of the value of each equity participation.

There can only be a maximum of 50 partners.

The incorporation of the company may only be formalised either before a notary public or a public broker. It cannot be by public subscription.

The administration of the company is conducted by a General Manager or by a Board of Managers.

Both types may be also constituted as “de Capital Variable”, which means that they have variable capital stock and, subject to their by-laws, it may be decreased and increased without the need to make any formal amendments to the company's by-laws.

When a foreign person or corporate entity acts as a shareholder or a partner in the incorporation of a Mexican company, the company's by-laws are required to state that:

*...”. according to the provisions set forth in the Mexican Constitution and in the Mexican Foreign Investments Law, any foreigner who acquires a share or partnerships interest in the company, shall by this simple fact be considered as a Mexican with respect to same, and it shall be understood that said foreigner agrees to not invoke the protection of his/its government, under penalty, in the event of a breach of this agreement, of the loss of said share or interest in favor of the Mexican Nation.”*

The object of the company must be defined. The by-laws shall define all the activities which the company shall engage in.

The company’s administration and appointment of members must be defined and listed.

The documentation required from foreign shareholder or partners (natural person) to formalise the incorporation of a company includes passport, migratory form issued by the Mexican National Institute of Migration, a Single Population Register Code (“CURP”) issued only for residents in Mexico and a proof of address. Information such as place of birth, nationality, occupation and marital status also needs to be provided.

**The documentation required from foreign Shareholders or Partners (legal person) includes incorporation deed, appointment of legal representative, proof of identity, and proof of tax ID.** These documents should be duly certified with an apostille stamp and translated into Spanish, if they are in a different language, by an official translator.

All documents should be duly certified with an apostille stamp and translated into Spanish, if they are in a different language, by an official translator.

The public deed of incorporation must be registered with the Mexican Public Commerce Registry. This may take up to 15 days.

The company is required to be registered with the Mexican Federal Tax Registry to obtain its tax identification which is required to perform any acts of commerce. This process depends entirely with the work load of the Mexican Tax Authority and may be done in a day or may take up to a week.

## Company's Social Obligations

According to the provisions set forth in the Mexican General Mercantile Corporations Law, any company incorporated in Mexico shall mainly comply with the following:

General Shareholders Assembly / General Partners Assembly. This is the supreme body of the company and its resolutions will define the company's operation as well as impact the decisions of the company. The assembly shall meet at least annually to approve the administration's annual report, the financial statements of the company and the results of the past year. The assembly will also ratify the administration of the company. The meetings may be Ordinary or Extraordinary, according to the company's by-laws.

Corporate Books. The company shall have at least the following:

- A record of the shareholders' or partner's' meeting to include the resolutions adopted by the General Shareholders Assembly and General Partners Assembly.
- A shareholder's' or Partners' Registry to record the general information of the proprietors of the stock shares and equity participations.
- If it is constituted as a variable capital company, to record any increase or decrease in capital movements.

The company shall file before the Mexican Tax Authority monthly declaration statements of its operations as well as its annual declaration before March 31st, for the payment of any applicable taxes.

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# Tax overview

## Company registration

All new entities that are incorporated as mercantile or civil companies must be incorporated by a notary public and registered with the following authorities:

Authority                      Who does the procedure?                      When?

Authority			Who does the procedure?	When?
a)	RPPC	Public Registry of Property and Commerce	The Notary Public	On incorporation
b)	SAT	Federal Tax authority	The Notary Public	On incorporation
c)	RNIE	National Registry of Foreign Investment	The Legal Representative	Within 40 days of incorporation
d)	IMSS	Mexican Institute of Social Security	The Legal Representative	When the company decides to hire employees.
f)	State	Local Tax authority	The Legal Representative	When the company decides to hire employees.

## Setting-up taxation

There are no setting-up costs in terms of taxation in Mexico, except for a small fee of \$100.00 USD that has to be paid to the Public Registry of Property and Commerce.

## National current benefit taxation

### Corporate income tax

Companies and branches (of foreign companies) that do business in Mexico, must pay an income tax of 30% from their taxable profits.

### Trade tax (local profits tax)

There is no local profits tax in Mexico.

## Other taxes

### VAT

VAT is a consumption tax, which is considered to end up being absorbed by the final consumer as part of its cost when the invoice is paid.

VAT paid to suppliers of goods or services is considered credited in the month in which the payment of the corresponding invoice is made, provided that the expense that gave rise to this is considered deductible for income tax purposes.

Taxpayers pay to the tax authorities the difference between the transferred VAT (effectively charged to customers) and the credited VAT (effectively paid to the suppliers of goods and services). This must be paid on a monthly basis.

The general VAT rate is 16%. There is, however, also a 0% rate applicable to but not limited to:

- alienation of: animals, except for those that are used as pets at home;
- non-industrialized vegetables;
- patent medicines;
- food products (with some exceptions);
- ice and water; fertilizers, pesticides, herbicides and fungicides;
- the provision of the following professional services: Loans to farmers and ranchers, grinding and crushing of corn or wheat, pasteurization of milk, those provided to hydroponic greenhouses, water supply for domestic uses, among others;
- the export of goods or services.
- The following operations are considered exempt from VAT include but are not limited to:
  - transfer of ownership of soil;
  - constructions fixed to the floor or destined for or used for the home;
  - books, newspapers and magazines;
  - copyrights;
  - used furniture, except for those sold by companies;
  - lottery tickets, raffles, draws or gambling;
  - shares and social ownership.

the provision of the following professional services: commissions derived from mortgage loans; fees of fund managers for retirement; teaching; doctors and hospitals; public land transport of people; those provided to members of associations and unions as normal

consideration for their fees;

In the case of international air transportation, 75% of the cost of the ticket is considered exempt and 16% will be paid as VAT over the remaining 25%.

### **Property transfer tax**

There is a **transfer tax** that has to be paid at the moment that properties are sold that ranges from 0.5% to 4.565% depending on the state in which the asset is located.

## **Treaties for the avoidance of double taxation**

Mexico has signed 59 Treaties for the avoidance of double taxation according to the model of the agreement drawn up by the Organization for Economic Cooperation and Development (OECD) and used by the vast majority of developed countries.

Argentina	Hungary	Poland
Australia	Iceland	Portugal
Austria	India	Qatar
Bahrain	Indonesia	Romania
Barbados	Ireland	Russia
Belgium	Israel	Saudi Arabia
Brazil	Italy	Singapore
Canada	Jamaica	Slovak Republic
Chile	Japan	South Africa
China	Korea	Spain
Colombia	Kuwait	Sweden
Czech Republic	Latvia	Switzerland
Denmark	Lithuania	Turkey
Ecuador	Luxembourg	Ukraine
England	Malta	United Arab
Estonia	Netherlands	Emirates
Finland	New Zealand	United Kingdom
France	Norway	United States of
Germany	Panama	America
Greece	Peru	Uruguay
Hong Kong	Philippines	

The negotiated rates for withholding taxes in all chapters of the treaties are generally much lower than those established in Mexican tax legislation and in some cases there are no taxes to be withheld.



**Benefit distribution** (national withholding taxes, international tax exemption option)

The company that pays dividends must keep a record of profits that have been taxed in a special account, known as CUFIN (Net Tax Profit Account). If dividends are distributed from a source other than the CUFIN, the distribution is subject to a 30% income tax.

Individuals, whether residents in Mexico or not, will be subject to an additional 10% income tax on dividends or profits distributed by companies resident in Mexico. Companies must withhold this tax at the time of paying those dividends or profits. This additional income tax of 10% is considered to be final.

Dividend payments made by a Mexican company to another company, whether or not resident in Mexico, will not have tax withheld as long as they come from the CUFIN, which is considered to have already paid the corresponding taxes.

**Tax treatment of losses**

Tax loss is equal to the difference between gross income for the fiscal year and the deductions authorised by this under the Income Tax Law, when deductions are greater than income.

Tax loss incurred in one fiscal year may be carried forward against the tax profit of the ten following years until it is depleted.

When in a given year the taxpayer fails to carry forward its tax loss from previous years, even though the taxpayer could have done so in accordance to the Income Tax Law, the taxpayer will forfeit the right to do so in subsequent years, for up the amount that could have been deducted.

The amount of the tax loss will be updated to recognize the inflationary effects, following specific rules established in the Income Tax Law.

The right to carry tax losses forward pertains exclusively to the taxpayer that suffered the losses and may not be transferred to any other person or entity, even as the result of a merger.

In case of a spin-off of companies, the tax loss carryforwards against tax profits must be divided between the original company and the companies spun-off following specific rules established in

the Income Tax Law.

In the event of a merger, the merging entity may carry forward the tax loss it has at the time of the merger only against tax profits corresponding to the same business lines as those in which the loss was incurred.

### **Employer obligations** (salary taxes, social security)

All employers are obliged to withhold wage tax & social security from payments to employees and to pay this to the tax authorities on monthly bases.

It is the employer's responsibility to withhold and pay the correct amount of wage tax and social security.

Employers provide at least the following benefits to their employees:

- a Christmas bonus for the duration of 15 days
- vacations for the duration of six days for the first year of service, increasing by two days for each year of service completed until reaching 12 years, then continuing to increase by two days for every 4 completed years. The holidays are to time off and do not necessarily have to be paid, subject to the right to a vacation bonus
- vacation bonus: 25% of the pay that would be owing if the individual had been at work
- official holidays
- social security

Hiring employees in Mexico entails the following costs:

**Social Security.** - This is a tripartite tax (government, employer and employee). The employer cost varies depending on the employee's salary. The higher the salary of the employee is, the lower the quota to be paid will be. Generally, the cost to employers ranges from 10% to 30% based on salary

**Housing Fund** - 5% on the salary base for contribution. As Social Security, salary for this concept cannot be higher than \$101.00 USD

**Payroll Tax** - This varies depending on the state where the employee is working and can range from 0% to 3% without establishing maximum salaries.

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