

Amendments to the Maquiladora/IMMEX Decree

April 2011

On December 24, 2010, the Mexican Government published amendments to the Maquiladora/IMMEX Decree in the Official Federal Gazette. The changes include both changes designed to streamline the administrative burdens and those related to the tax status of the IMMEX company. The tax-related changes went into effect on January 1, 2011. The administrative changes took effect on March 24, 2011. The changes also harmonize some of the provisions of the IMMEX decree with Mexican Trade Rules, eliminating a source of legal confusion.

Major amendments

Administrative changes

- Goods: The list of goods in the Decree Annexes (I, I BIS, I TER, II and III) was modified to reduce the number of goods that qualify for IMMEX
- Temporary Importations: a new provision regulates the temporary importation of iron and steel, which can now remain in Mexico for only 9 months. The Secretary of Economy was to publish the specific requirements for importation of these products no later than March 24, 2011, but they have not been issued. Note, however, that IMMEX companies that are "certified" may import "sensitive" materials on a temporary basis for 18 months. "Sensitive" goods include alcohol, steel and textiles, among others.
- Public Health & National Security: Unless "sensitive" goods are imported, the Maquila/IMMEX entity need no longer register before the respective Importers Registry.
- Program Cancellation: A Maquila/IMMEX authorization may be cancelled or denied if its partners/shareholders are linked to other Maquila/IMMEX programs whose operating permits have been cancelled. No new programs would be authorized for those related shareholders for 5 years following the date of the cancellation. However, an IMMEX program will no longer be suspended for not being current in its accounting entries, registries, or inventory control.
- Certain other administrative changes benefit only "certified" companies.

Tax-related changes

Permanent Establishment in Mexico: The Decree clarifies what is required to qualify as a "maquila operation" for tax purposes so a company domiciled outside Mexico may avoid creating a permanent establishment in Mexico:

- At least 70% of materials must be foreign owned and enter Mexico on a temporary importation basis (This restriction does not apply to IMMEX companies in existence prior to December 31, 2009, if the company was using safe harbor or transfer pricing rules.)
Goods must be manufactured by a Maquila/IMMEX authorized entity

- At least 30% foreign owned machinery must be used

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- Under a maquila agreement between the IMMEX company and the foreign company
- If the manufacturing also requires permanently imported or domestic goods, these must be exported at the same time as those temporarily imported

Grandfather clause

The above amendments do not apply to Maquila/IMMEX operations that were in existence and compliant with all requirements as of December 31, 2010.

Repeal of Rules

The following major rules are repealed:

- Annex IV of the IMMEX Decree, which established the minimum requirements that the automated inventory system had to include (and conflicted with the Trade Rules). IMMEX operations must now comply only with the requirements set forth in Annex 24 of the Mexican "General Foreign Trade Rules" (Reglas de Carácter General en Materia de Comercio Exterior).
- The High Exporter Companies (ALTEX) and Foreign Trade Companies (ECEX) cease to exist. However, existing ALTEX and ECEX companies may retain their status by filing an annual report on their operation, provided that they continue to meet the Decree standards for their status.

Please let us know if you need assistance in determining how these amendments may affect your operation and/or on how to implement the necessary changes by the effective date.

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