

Amendments to the Maquiladora/IMMEX Decree

January 21, 2011

On December 24, 2010, the Mexican Government published in the Official Federal Gazette amendments to the Maquiladora/IMMEX Decree. The changes include both changes designed to streamline administrative burdens of the IMMEX program and those related to the tax status of the IMMEX company.

The administrative changes will become effective on March 24, 2011, while the tax-related changes were effective on January 1, 2011. The changes also harmonize some of the provisions of the IMMEX decree with the Mexican "General Foreign Trade Rules" (*Reglas de Carácter General en Materia de Comercio Exterior*), 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. Before March 24, 2011, the Secretary of Economy will publish the specific requirements for importation of these products. 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. A company domiciled outside Mexico may avoid creating a permanent establishment in Mexico if:
 - the goods are manufactured by a Maquila/IMMEX authorized entity
 - the goods are manufactured under a maquila agreement between the IMMEX company and the foreign company
 - the goods are manufactured using at least 30% foreign owned machinery
 - at least 70% of materials used in manufacture of the goods are foreign owned and enter Mexico on a temporary importation basis* and

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- if the manufacturing also requires permanently imported or domestic goods, these are exported at the same time as those temporarily imported

*This restriction does not apply to IMMEX companies in existence prior to Dec. 31, 2009 if the company was using safe harbor or transfer pricing rules.

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 Mexican General Trade Rules). IMMEX operations must now comply only with the requirements set forth in Annex 24 of the Mexican General Foreign Trade Rules.
- The High Exporter Companies (ALTEX) and Foreign Trade Companies (ECEX) cease to exist. However, existing ALTEX and ECEX companies may retain their status by filling an annual report on their operation, provided that they continue to meet the Decree standards for their status.