

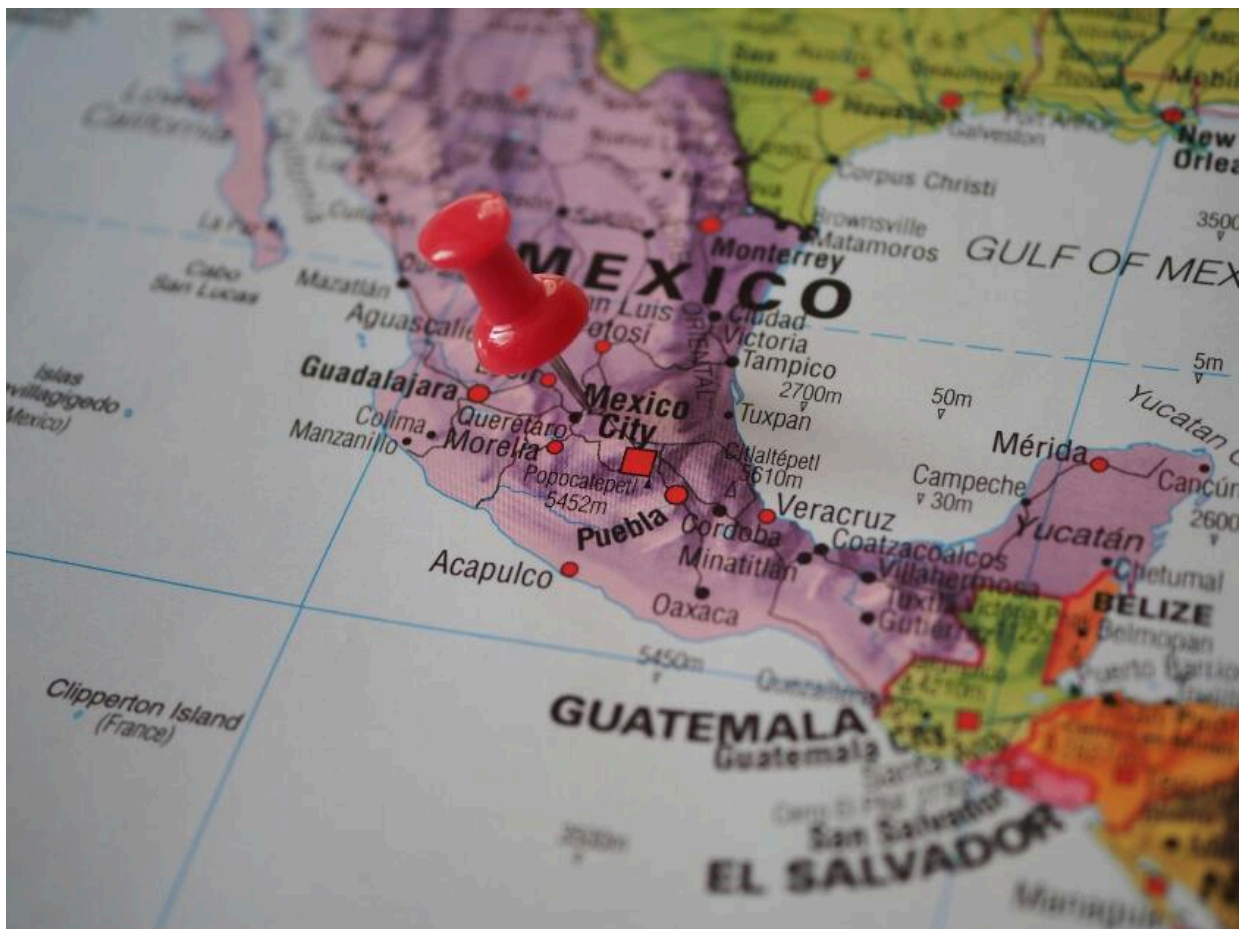
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Mexican state taxes worth investors' consideration in addition to federal taxes

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Santiago Llano Zapatero and Fernando Caballero Gout of Ritch Mueller examine the state-imposed taxes applicable to specific transactions in certain states in Mexico

While federal taxes such as income tax and VAT are well known to taxpayers in Mexico, state taxes applicable to notarised transactions are not generally known. Understanding the applicable rates and tax basis of these state-specific taxes is essential for companies operating in Mexico, as the financial cost may be considerable.

Although Mexico does not have capital duty, stamp duty, or federal transfer taxes, taxes related to property are more common. Examples include real estate property tax (*predial*) and the tax on the acquisition of real estate property (*impuesto sobre adquisición de inmuebles*). Additionally, there are taxes on raffles, lotteries, and salaries, which are typically state imposed rather than federal. Each state in Mexico holds the power to impose necessary contributions to cover its budget, although the Mexican Constitution does not explicitly confer these powers. The Constitution reserves certain powers for the states while also imposing prohibitions on specific types of taxes.

State-imposed taxes on notarised transactions

Despite the absence of federal taxes such as stamp duty and capital duty, several Mexican states have introduced their own taxes on legal transactions carried out through public notaries. For instance, states such as Aguascalientes, Chihuahua, Guerrero, San Luis Potosí, and Tabasco impose taxes on public deeds or legal instruments. These taxes can apply to mergers, capital contributions, dissolutions, or liquidations of entities, and financing and lease agreements, among other notarised transactions.

Mexican law requires a limited number of legal acts to be notarised. For instance, the General Law of Commercial Companies (*Ley General de Sociedades Mercantiles*) sets forth that incorporation documents, including by-laws, must be notarised as the final step in establishing a Mexican entity. Additionally, Article 182 of the same law specifies that extraordinary shareholders' meetings require notarisation and registration in the Public Registry of Commerce (*Registro Público de Comercio*). These meetings typically address corporate acts that could be subject to state taxes, such as capital increases and redemptions, mergers, and the issuance of bonds. Also, acts that are registered in the Public Registry of Commerce, such as the transfer of real estate property, must be notarised.

Even though some documents, such as private documents, do not require notarisation, a legal precedent issued some years ago by the Second Chamber of the Supreme Court of Justice of the Nation (*Suprema Corte de Justicia de la Nación*) reinforced its necessity. The court concluded that all private documents used by taxpayers as fiscal support for acquiring goods or executing contracts and transactions must bear a certain date. This precedent implies that taxpayers need to notarise or register all legal acts they intend to use as proof before tax authorities to demonstrate compliance with tax obligations, although other elements related to the transaction should also be considered (e.g., accounting registries and tax returns).

Each state regulates these taxes through its finance laws. They determine the applicable transactions and tax rates, which typically range from 0.1% to 1.5% on the amount established in the agreement or legal act, depending on the type of transaction. Notaries public collect these taxes, being jointly and severally liable with taxpayers. For example, in San Luis Potosí, a merger in which the paid-in capital of the subsisting entity increases from MXN 500 million to MXN 800 million would incur a 0.3% tax on the increased amount. Consequently, the notary public would withhold MXN 900,000 in taxes.

Potential conflicts with the Constitution

According to the Mexican Constitution, taxes must adhere to principles such as proportionality, equity, legality, and allocation to public expenditure. It is crucial for foreign entities participating in transactions subject to state taxes to assess whether these align with constitutional principles, thus determining their constitutionality.

For instance, an administrative court concluded in Thesis Contradiction Resolution No. 6/2013 that the tax imposed on public deeds or legal acts in Jalisco during 2011 and 2012 violated the principle of tax equity. This violation stemmed from discrepancies in the tax base used to determine such state taxes. The state of Jalisco has now repealed the articles governing taxes imposed on public deeds or legal acts.

Implications for foreign entities

For foreign entities, understanding these state-specific taxes is crucial. Transactions that may seem free of additional taxes at the federal level could still incur significant costs at the state level. These taxes can impact the structuring and overall costs of reorganisations and other business activities in Mexico. Therefore, foreign businesses must conduct thorough due diligence and consider state-specific tax regulations when planning transactions or restructurings.

Additionally, it is always important to assess if the applicable state tax aligns with constitutional principles or if it can be challenged in court.

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