



Relevant Legal Challenges for U.S. Companies Doing Business in Mexico

Threats and Opportunities You Need to be
Aware of

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Presenters



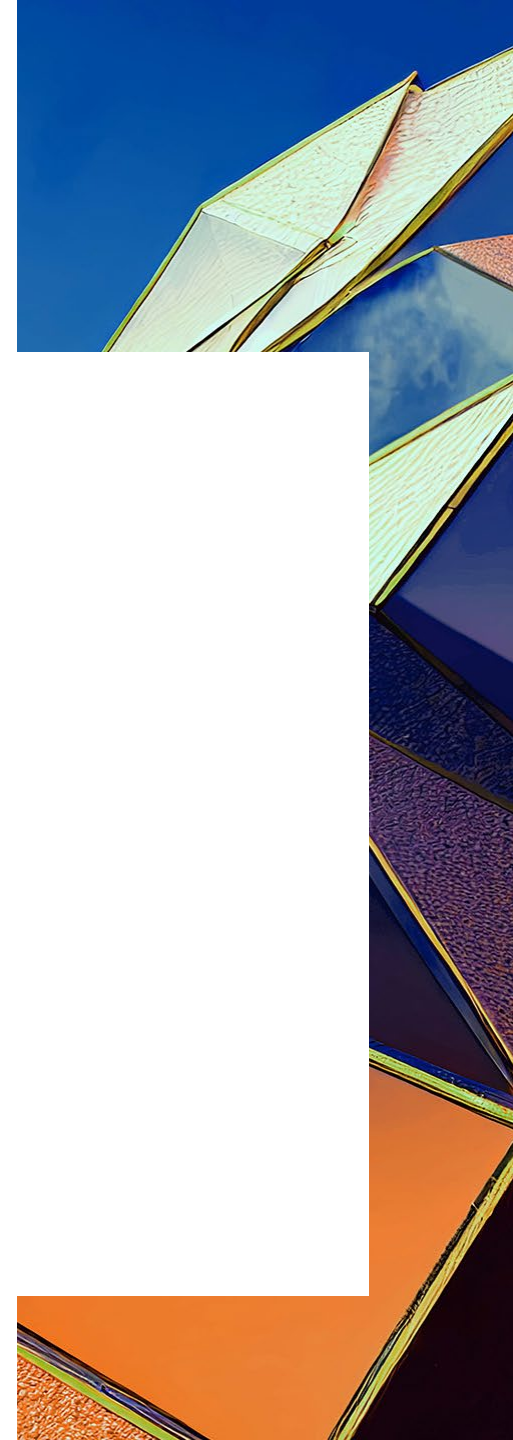
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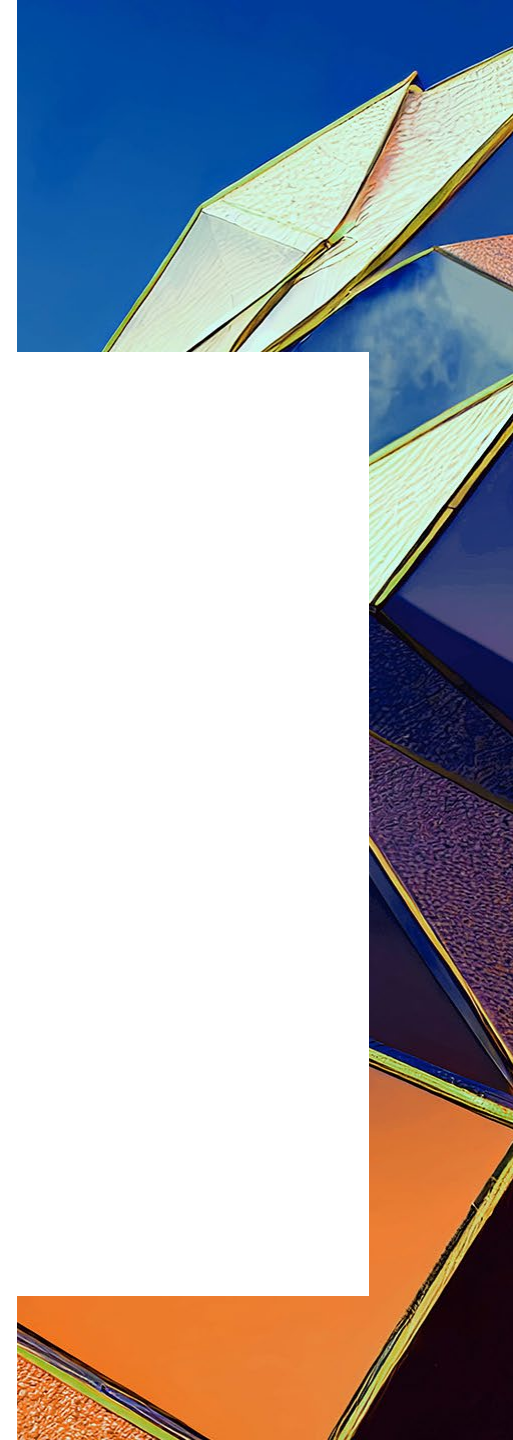
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Agenda

- 1.- Is USMCA changing labor relations in Mexico?
- 2.- New Court Precedent Eliminates “Double VAT” of certain sales by foreign companies in Mexico.
- 3.- Hidden Treasures in U.S. Funding Programs for USMCA Manufacturers.
- 4.- Nearshoring Tax Incentives.
- 5.- Maquilas (aka IMMEX) are old enough to take care of themselves... Right?
- 6.- Ultimate Beneficial Owner (UBO).
- 7.- Are Mexico’s TROs (Temporary Restraining Orders) an option?
- 8.- New Corporate Rules Applicable to Mexican Legal Companies.



Is USMCA changing labor relations in Mexico?

- Employer-friendly unions were the norm (*protection / white union contracts*).
- During USMCA negotiations, Mexico (forcedly?) obliged itself to reform its labor laws.
- May 2019, Mexico's amendments to anticipate the incoming USMCA labor provisions with gradual entry into force.
- July 2020, USMCA entered into effect (*clock began ticking for amendments enforcement*).

Is USMCA changing labor relations in Mexico?

- May 2023, all collective bargaining agreements in Mexico should have been *legitimized* through yes / no vote (roughly 25% did).
- The rest (+/- 75%) of collective bargaining agreements were automatically terminated (*What did your Mexican facilities end up with?*).
- Goals: *Freedom of Association and Collective Bargaining.*

Is USMCA changing labor relations in Mexico?

- Facility-Specific *Rapid-Response* Labor Mechanism (USMCA's Annex 31-A): 16-18 cases up brought to date, depending on how you count.
- UAW has recently “backed” the request of a specific Mexican Union to be elected (Draxton in Guanajuato).
- Upon delivering of request to MEX Govt for *Rapid-Response* review, the U.S. may delay the final settlement of customs accounts related to imports from MEX Facility.

Is USMCA changing labor relations in Mexico?

- Therefore, the new labor ball game in Mexico:
 - ✓ There will be real, working unions.
 - ✓ Contracts signed with employer-friendly unions (*protection / white unions contracts*) are already out the door.
 - ✓ Likely new leadership and possibly more than one union to a company.
 - ✓ Time to take a preventive look into your labor relations in Mexico.

New Court Precedent Eliminates “Double VAT” of certain sales of foreign companies in Mexico

- For many years, the Mexican Treasury took the position that certain sales (through virtual *V5 pedimentos*) that are deemed to take place in Mexico and that are made by non-Mexican residents, should be subject to Mexican VAT twice.
- The first VAT should be triggered as a result of the sale and should be subject to withholding by the Buyer, and the second VAT should be triggered upon the deemed importation of the goods.
- Mexican Courts had issued contradictory judgments in previous years regarding this matter.

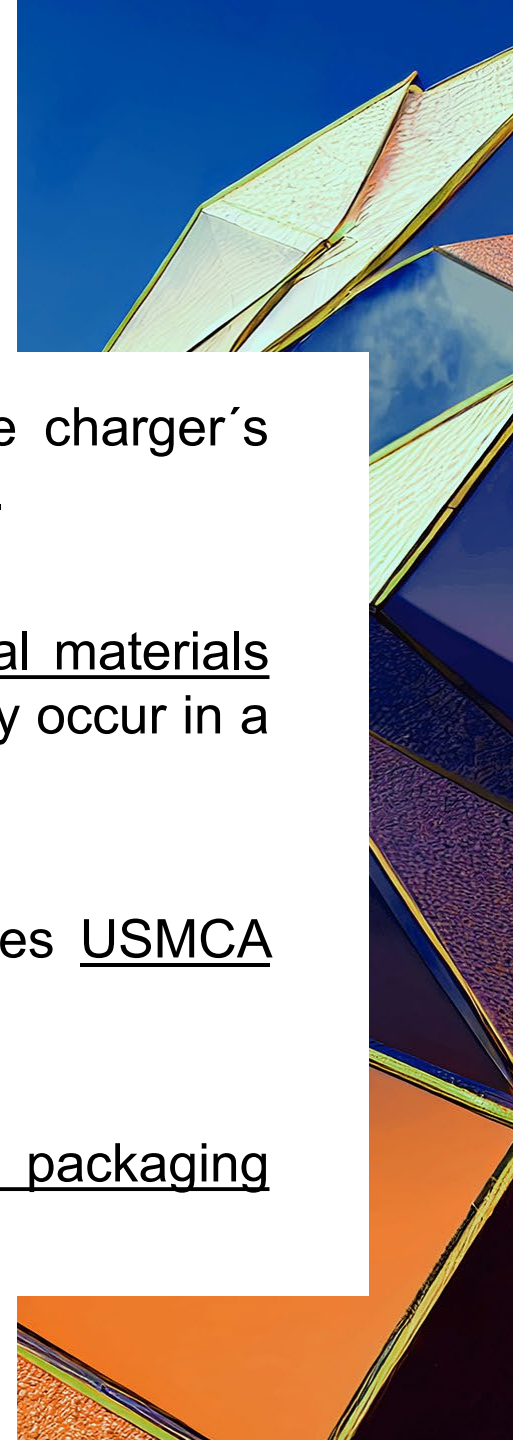
New Court Precedent Eliminates “Double VAT” of certain sales of foreign companies in Mexico

- On October 5, 2023, a Federal Court issued a judgment (which is mandatory for lower Courts) that ended the dispute. The judgment provides that no double VAT should be triggered.
- Relevant considerations for operations that fall within the scope of this judgment.
- Potential benefits that could result from the October 5, 2023 judgment.

Hidden Treasures in U.S. Funding Programs for USMCA Manufacturers

- In addition to State programs, some of the most advantageous U.S. Federal incentives include:
 - ✓ **Inflation Reduction Act**
 - ✓ **Build Back Better Framework**
 - ✓ **Buy American Act**
 - ✓ **CHIPS Act**

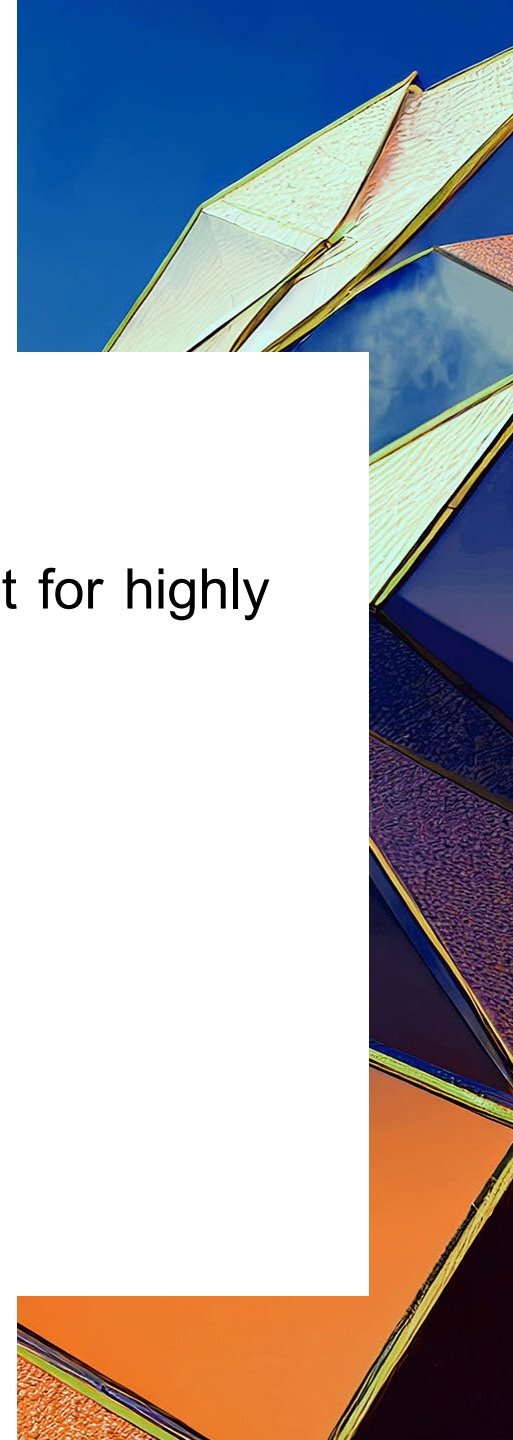
Hidden Treasures in U.S. Funding Programs for USMCA Manufacturers



- ✓ Federal Highway Administration’s “Buy America”: parts that go into the charger’s components (subcomponents) do not need to be manufactured in the U.S.
- ✓ Electric Vehicle Tax Credit: recycling, refining or supply of battery-critical materials could come from within the USMCA region, their extraction/processing may occur in a country with a U.S. FTA
- ✓ A full one-half of the Mineral Sourcing Requirement for batteries requires USMCA battery assembly.
- ✓ CHIPS Act: Mexico is well positioned to perform assembly, testing, and packaging (ATP).

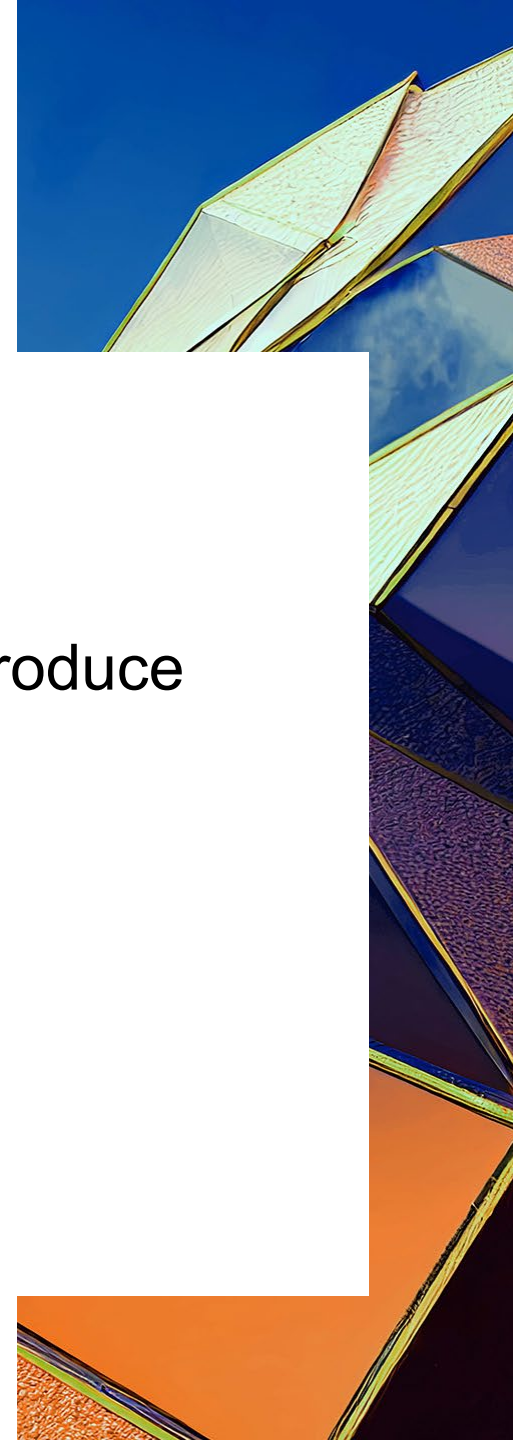
Nearshoring Tax Incentives

- Purpose
- Incentivize relocation of supply chains to destinations closer to the market for highly exporting industries:
 - ✓ Semi-conductors
 - ✓ Automotive (particularly electromobility)
 - ✓ Electric and Electronic
 - ✓ Medical & Pharmaceutical Devices
 - ✓ Agroindustry
 - ✓ Human and Animal Food



Nearshoring Tax Incentives

- Beneficiaries:
- Mexican companies and certain individuals that manufacture or produce certain goods on an industrial basis and that are exported.



Nearshoring Tax Incentives

- Benefits:
- Accelerated depreciation of new assets expressly listed at more beneficial rates (56% to 89%) than those provided under the current Mexican Income Tax Law (25% to 35%).
- Accelerated depreciation (56% to 88%) of new machinery and equipment used in the specified list of activities.
- 25% deduction of training expenses paid in 2023 through 2025, in excess of the average paid between 2020 thru 2022.

Nearshoring Tax Incentives

■ Requirements

- ✓ Invest in new assets during 2023 and 2024 (new assets defined as “assets used in Mexico for the first time”)
- ✓ Ensure that income from goods and work benefiting from the incentives represents at least 50% of the taxpayer’s total invoicing in each of 2023 and 2024.
- ✓ Comply with deductibility requirements provided under the Mexican Income Tax Law
- ✓ Be in good standing with the Mexican tax authorities
- ✓ File notice with the Mexican Treasury requesting the benefits
- ✓ Maintain specific accounting and tax records related to the application of the benefits

Maquilas (aka IMMEX) are old enough to take care of themselves... Right?

- Mexican Government has increased electronic audits regarding Maquila's Annex 24 (Automated Inventory Control System).
- Annex 24 controls the return of temporarily imported merchandise.
- Annex 24 needs attention: it is fed by inputs of parts, components, finished goods, Bills of Materials, waste, and scrap, among others.
- Frequently overlooked and could jeopardize the whole operation or create *gigantic* risks (i.e. determination of 5 years of temporary imports not being returned).

Ultimate Beneficial Owner (UBO)

- Tax requirement that became effective on January 1, 2022, and that continues to be an important matter for companies doing business in Mexico.
- Applicable to any legal entity, all parties to a trust (settlor, trustees, and beneficiaries), and any other party with respect to contracts of any legal arrangement (JV).
- What is the requirement about: To identify, obtain, and maintain, as part of the accounting records, and to provide to the Mexican tax authorities (upon request) accurate, complete, and updated information of the UBO.

Ultimate Beneficial Owner (UBO)

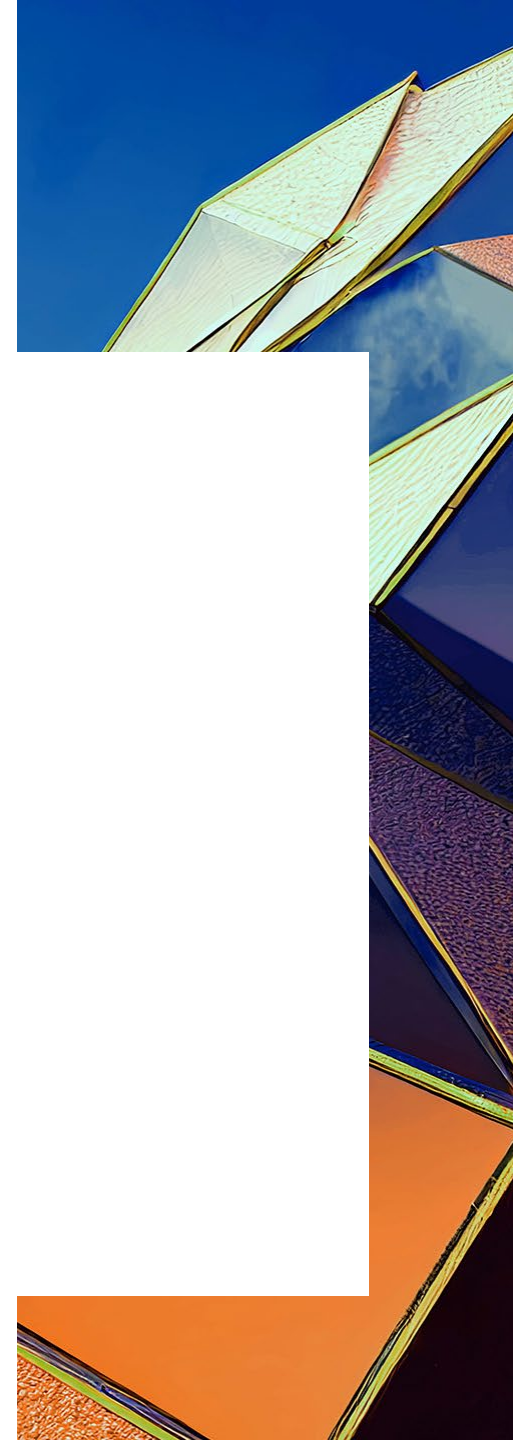
- Who is the UBO: individual or group of individuals that:
 - ✓ Directly or indirectly obtain a benefit resulting from their participation in an entity, trust or any other legal arrangement, or individual or individuals that ultimately exercise the rights of use, benefit, or disposal of an asset or service.
 - ✓ Directly or indirectly (even in a contingent way) has control of an entity, trust, or any other legal arrangement.

Ultimate Beneficial Owner (UBO)

- An individual or group of individuals shall be deemed to have control, through ownership of equity, or by contract, or any other legal act when such individual or group of individuals can:
 - ✓ Impose, directly or indirectly, decisions in the shareholders' or partners' meetings (or similar) or to designate or remove most of the members of the board of directors (or their equivalents)
 - ✓ Maintain ownership of the rights that allow them, directly or indirectly, to exercise voting rights with respect to more than 15% of the capital stock
 - ✓ Manage, directly or indirectly, the administration, strategy, or main policies of the legal entity, trust, or any other legal arrangement or body.

Ultimate Beneficial Owner (UBO)

- Potential consequences in addition to fines.
- Latest news regarding this issue.



Are Mexico's TROs (Temporary Restraining Orders) an option?

- Should consider State vs Federal statutory provisions
 - ✓ State: Mexico City has historically considered *Force Majeure* and Unforeseeability of Events Doctrine; other States still working around them.
 - ✓ Federal Civil Procedures, judges can grant all appropriate injunctions to maintain the *status quo*, even without prior notice to the Defendant. The requesting party should guarantee possible damages and loss of profits Defendant may suffer.
- [*Have you checked the children, When a Stranger Calls* (2006) situation?): Do you know what is considered in your current T&Cs?

New Corporate Rules Applicable to Mexican Legal Companies

- Mexican corporate rules applicable to Mexican companies were very old and did not provide flexibility for companies to operate.
- Currently, Mexican entities are entitled to include in their Bylaws more business-oriented provisions.
- The most recent amendment to Mexican corporate rules was issued on October 20, 2023.
- Mexican companies (SRLs and SAs) are now allowed to hold virtual meetings of shareholders or partners, and of board of directors or managers to adopt corporate resolutions.

New Corporate Rules Applicable to Mexican Legal Entities

- Companies conducting virtual meetings need to provide mechanisms to allow access, representation, sharing, and making available evidence for the meeting either physically or electronically.
- Companies should still memorialize and type the outcome of virtual meetings and resolutions in minutes to be recorded in corporate books or notary deeds. Electronic signatures will be allowed in the minutes.
- These new rules could only be applied if the Bylaws of companies are amended to adopt the new rules.

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