



Doing Business

in EL SALVADOR



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1.

About Andersen Global

Andersen Global

Andersen Global® was established in 2013 as an association of legally separate, independent member firms, with a worldwide presence and comprised of professionals that share a common background and the same vision no matter the location where they are.

Our growth is a byproduct of the outstanding client service delivered by our people, the best professionals in the industry and our objective isn't to be the biggest firm, it is to provide best-in-class client services in seamless fashion across the globe.

Outstanding client service has and will continue to be our top priority.

Our professionals are selected based on quality, like-mindedness, and commitment to client service and each and every one of the professionals that are a part of Andersen Global share our core values.

Andersen Global was established to create an enduring place – ONE FIRM where clients across the globe are afforded the best, most comprehensive tax and legal services provided by skilled staff with the highest standards.

Outstanding client service has and will continue to be our top priority.



2.

Country Highlights

Overview

San Salvador, the capital of El Salvador, has approximately 1,882,719 inhabitants, being the second-largest city in Central America.

El Salvador is located in the Southwest of Central America and on the coast of the Pacific Ocean. It is the only country in the region that has no coast in the Ocean Atlantic. Its culture and language derive from Spain, and its official language is Spanish.

El Salvador has been officially dollarized since January 1, 2001, there so the U.S. dollar is the currency used in the financial market and business relationships.

Political System

The democratic government of El Salvador consists of three powers: Executive (President and Ministers); Legislative (Legislative Assembly); and Judicial (Supreme Court of Justice). The body in charge of issuing the laws that ruled the country is the Legislative Assembly.

Since 1992, the country has entered a period of political and social stability, as well as a stable economic growth, with presidential elections held every five years, and legislative elections every three years.



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Economic Atmosphere

El Salvador has one of the most open economies in Latin America. In addition, it has signed Free Trade Agreements with the United States of America (along with the rest of the countries of Central America and the Republic Dominican), Mexico, Peru, Panama and Chile. El Salvador has also entered into the Promotion Treaties of Capital Investment and Reciprocal Protection with the United States and Germany. Currently, El Salvador, as a member of the Central American region, is in negotiations of a potential Free Trade Agreement with the European Union.

With the promulgation of the *Monetary Integration Law* of January 2001, which allows unrestricted use and unlimited U.S. dollars within the national territory, which stabilizes the Salvadoran economy and reduces the risk of carrying out future financial projects, given that there is no longer the possibility of a currency devaluation in relation to the U.S. dollar.

For all intents and purposes, the Salvadoran economy has been dollarized. Any foreign person or company, regardless of their country of origin, is free to invest, operate, manufacture, offer and/or promote their products or services in El Salvador. By law, El Salvador treats foreigners as nationals, which means that anyone, regardless of whether they are Salvadoran or foreign, will receive the same treatment before the law.

Please note that in June 2021, the Bitcoin Act was approved for said Cryptocurrency to be legal tender in the country, in addition to the U.S. Dollar. The act, effective as of September 2021, will have positive effects on the economy and foreign investment due to the novelty of said policy and international interest that has arisen since the act's approval.

Structures for Doing Business

Business Organization

In El Salvador, local companies can be incorporated, either as companies of individuals or of capital.

Personal companies differ from capital companies, in the sense that the essential condition to form the company, in the case of companies of persons, are the powers of its partners, while in capital companies, the essential condition is the economic contribution of their shareholders, which is represented in shares.

There are three categories of companies of persons:

- a. Collective partnership, in which the partners are jointly and severally responsible for all obligations contracted by the company without any limit.
- b. Simple limited partnerships, where there are two types of partners: the investment partner, who cannot participate in the administration of the company and will only be responsible to the extent of the investment; and the partner manager, who is in charge of the management of the company and is responsible for the obligations of the companies without any limit.
- c. Limited liability companies, in which the partners are responsible only to the extent of their investment.

There are two categories of capital companies in El Salvador:

- a. Limited partnership by shares, which reflects the characteristics of the limited partnership, with the difference mainly in the participation titles through which the share capital is represented (of shares versus personal shares).
- b. Corporation, in which the shareholders are only responsible for the obligations of the company up to the amount of their participation in the share capital of the same. This is the most kind of society used in El Salvador, which is due to several aspects, including:
 - *Flexibility*: In this type of company, the shares are freely transferable by the shareholders to through their endorsement or assignment incorporated in the corresponding action certificate (once they have been fully paid and there is no amount due).
 - *Limited liability*: The shareholders will be responsible for the liabilities of the company up to the number of their respective participation in the share capital of the same.

Steps to follow in the constitution of a Salvadoran corporation:

- i. Choose the commercial name of the company and carry out an investigation of the name in the Registry of Trade to confirm its availability.
- ii. Obtain a certified check payable to the corporation and drawn against a

Salvadoran bank for at least 5% of the existing capital.

- iii. (iii) incorporation of the corporation before a Salvadoran notary public.
- iv. Register the testimony of the deed of incorporation in the Commercial Registry. Society can begin its operations once it is duly registered. This registration takes approximately five to seven business days.

Establishment of a Foreign Company Branch

A foreign company can also operate in El Salvador, through the creation of a local branch.

In order to establish a branch of a foreign company, the legal representative or attorney designated of the local branch, will have to present a formal request in the National Office of Investments (ONI) of the Ministry of Economy, attaching the following documents to it:

- i. Bylaws of the foreign company proving that it has been legally incorporated and that it is currently in stock. In addition, a certificate of incorporation issued by the national authority in the country of origin of the foreign company (for example, from the Registry of Commerce, Secretary of State, or similar) that in the faith of its legal establishment and good reputation.
- ii. Documents that prove that the foreign company is authorized to operate

and establish branches abroad (if the aforementioned statutes and/or the certificate of incorporation do not indicate), and a certification of the shareholders' agreements or board of directors (according to company statutes), through which the foreign company has approved and authorized the establishment of a branch in El Salvador.

- iii. Power of attorney granted in favor of the person who will represent the foreign company in El Salvador; this person must reside in El Salvador. All these documents will have to be delivered properly authenticated and legalized by the nearest Salvadoran Consulate or by means of Apostille.
- iv. (Documents that prove that the foreign company has registered with the ONI at least the capital minimum required by law to carry out its operations in El Salvador; the minimum capital required by law for a foreign company to carry out acts of commerce in El Salvador is USD \$11,428.57.
- v. Initial Balance certified by a certified public accountant or auditor in the country, reflecting the capital of the applicant branch.

After the presentation of the documentation detailed above, ONI will register the branch of the foreign company in El Salvador; Subsequently, the aforementioned documents must be presented before the Salvadoran Commerce Registry.

4. Payroll Charges and Labor Rights



Overview

El Salvador promulgated its current Labor Code in 1972, its main purpose being the harmonization of relations between employers and workers, through the establishment of their respective rights and obligations, based on principles that provide the welfare of the living conditions of workers, especially in those established in Articles 37 to 52 of the Constitution.

The Labor Code regulates the employment relationship between private workers and their employers and between the state, municipalities, autonomous and semi-autonomous official institutions and their workers. In case of conflict in the application of labor laws, the most favorable rule for the worker will be the one it will prevail (*in dubio pro trabajo*).

Foreign Employees

Although foreigners may work in local societies there are some restrictions that apply to them. At least 90% of the employees of all companies must be Salvadoran or of origin Central American, and their wages must reach a minimum of 85% of the total wages paid by the company. However, the Ministry of Labor can grant authorization for a company-specific; may hire more than 10% of its workers to foreigners, under special circumstances, and with the purpose of employing people who are difficult or impossible to substitute for nationals. In this case, employers are obliged to train Salvadoran personnel in a period not exceeding five years, under the supervision of the Ministry.

However, the foregoing does not apply to those professionals who perform technical services or administrative in foreign companies or international companies and whose function is to direct, control and manage companies established in different countries. To benefit from this exception, companies foreign or international must obtain the respective authorization from the Ministry of Labor.

Employment Regulations

Work Schedule

Daytime hours are between 6 AM and 7 PM of the same day; and the night hours, between 7 PM and 6 AM of the next day. The ordinary working day will not exceed eight hours a day nor seven hours a night. The day shift will not exceed 44 hours a week, and the night shift will not exceed 39 hours a week.

Although foreigners may work in local societies there are some restrictions that apply to them.

In case of unhealthy or dangerous tasks, classified as such by law, a daily shift may not exceed seven hours a day or 39 hours a week, and the night shift may not exceed six hours a day or 36 hours a week.

The working hours can be divided. In case they are not divided, the work schedule should include meal time and break periods for workers. These breaks should last 30 minutes, however, if this is not possible due to the nature of the work, the employer must authorize the workers to take their food without affecting the normal development of their work.

Wages/Salary

An employee's salary includes:

- i. Payment for the provision of their services
- ii. Payment for extraordinary work
- iii. Payment for the provision of its services during weekly rest days or holidays

Wages and social benefits are considered by law as privileged credits, in reference to other credits against the employer and therefore, will have a priority ranking over others secured or unsecured creditors.

Employees who perform similar tasks in a company or firm, under the same circumstances, have the right to receive the same salary, regardless of sex, age, race, color, nationality, political identification or religious beliefs. Employees can sue for equal pay, in case of any type of discrimination with respect to the present.

Employers are obligated to maintain formal payment schedules and provide receipts of payment to their employees, detailing all accrued wages (for example, wages for ordinary work and overtime, wages for the provision of services during weekly rest days and holidays, commissions, etc.).

The salary for a full ordinary working day cannot be less than the minimum wage, which is periodically established by the National Minimum Wage Council. Currently, the minimum wage in El Salvador for the commerce and services sector is USD \$304.17 per month, but from August 1, 2021, an increase has been approved for the minimum wage, taking it to USD \$365.

5.

Salvadoran Taxes Overview

During the 1990s, El Salvador's tax system went through a reform process to simplify harvesting and optimize efficiency. The public income received by the government for internal taxes has been reduced to two basic sources: Income Tax and Tax on the Transfer of Personal Property and the Provision of Services (Value-Added Tax or VAT).

However, there are other types of internal taxes such as Transfer Tax Real Estate, Tax on Carbonated or Sweetened Beverages, and Tax on Drinks Foreign Alcoholics. In addition, Salvadoran tax legislation includes import tariffs as a source of government revenue.



6.

Corporate Income Taxes

The Corporate Income Tax (CIT) rate is 30%, and this rate is applicable to the total amount of the company's revenues.

CIT is based on the principle of territoriality, and, by general rule, taxes are paid on goods located, activities realized, and capital invested in El Salvador as well as on services rendered or utilized in the country. Nevertheless, there is a special rule regarding securities and financial instruments, since such income is considered to be obtained in El Salvador if the issuing entity is domiciled in El Salvador.

Taxable income is equal to gross income net of costs and expenses considered necessary for generating and maintaining the related source of income and other deductions allowed by law. Gross income is comprised of income or profits collected or accrued, either in cash or in kind, from any sources in El Salvador.

Corporations are required to follow the accrual method of accounting.



7.

Indirect Taxes

As an export incentive, all export operations have a tax rate of 0%.

The Tax on the Transfer of Personal Property and the Provision of Services (known in many countries as Value-Added Tax), was introduced in the outline of our tax laws in September 1992. It started with a fixed rate of 10% on the transfer, import, registration (in the Central American area), and consumption of movable and material goods, and on the provision, import, registration and self-consumption of services. Subsequently, the tax was increased to 13% (which was kept current to date).

As an export incentive, all export operations have a tax rate of 0%. However, taxes are collected when producers purchase goods and services necessary for the manufacture of products or for the provision of services that are exported.

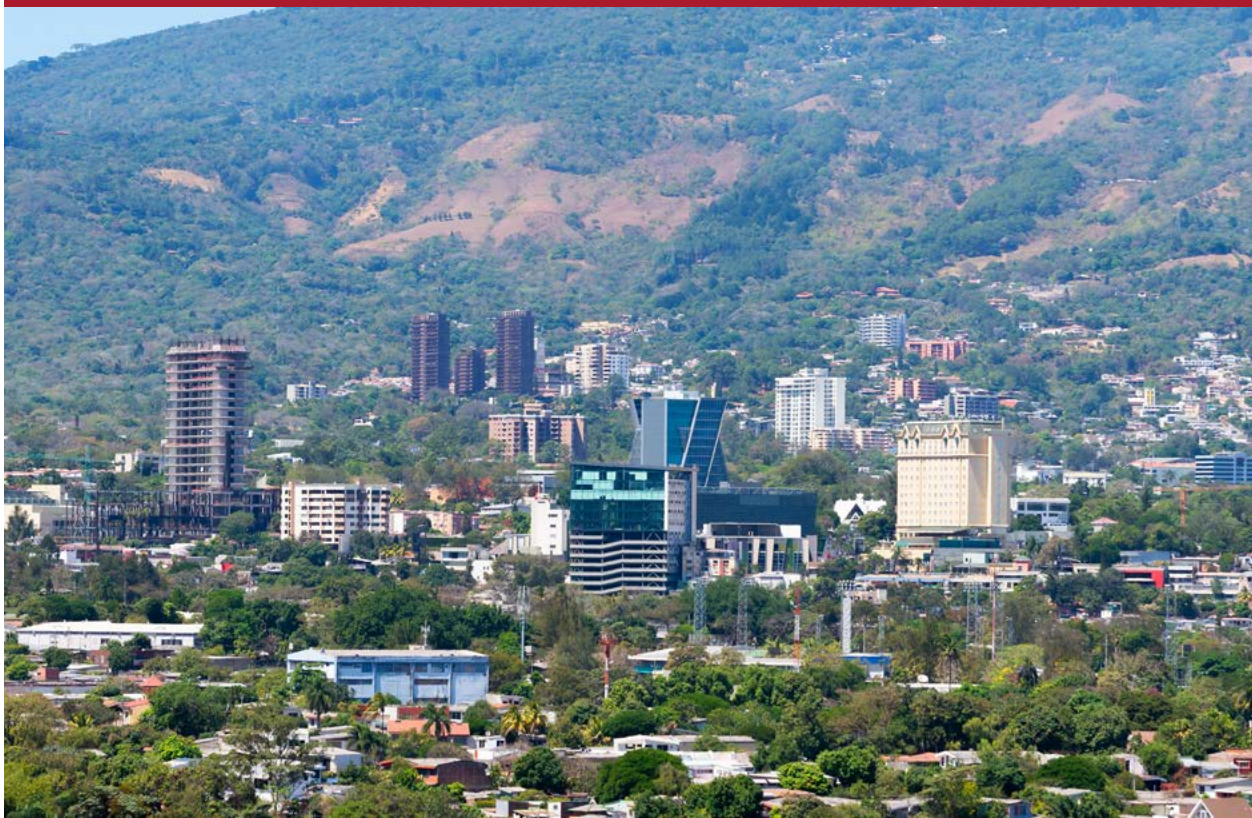
Pursuant to the VAT Law, VAT is charged on a supply of goods and provision of services. In relation to goods, a supply includes a sale, exchange, lease or hire purchase. Article 7 of the VAT Law provides a list of taxable transactions including:

- Personal use or consumption by the owner, partners and directors of the company of its property
- Transfer of own goods (self-supply)

- Company modifications, extensions, transformations, mergers or reorganizations
- Payments in-kind
- Title transfer of tangible personal property
- Contribution of personal property to companies, legal entities or unincorporated communities
- Transfer of consigned goods
- Transfer of a company's (business or commercial enterprise) property including its realizable assets
- Any form of supply of goods that gives the recipient the freedom to dispose of the goods as if they were the owner

In relation to services, a supply refers to providing, tendering, granting or conferring something for payment or consideration in exchange for benefit or advantage including:

- Technical advice and preparation of plans and projects
- A lease of movable property with or without a promise to sell
- A lease or sublease of movable property for business or industrial activities with or without a promise to sell



- Implementation of engineering work or similar materials that are used by the purchaser
- Repairs, alterations, or construction of new buildings
- Payment of membership dues or similar payment
- Insurance
- A lease, sublease or grant of enjoyment or the use of property such as intangibles (e.g., trademarks, patents)
- Services provided by advisors such as public notaries
- Transport (air, ground and sea) of goods and people

In relation to imports, *imports* refers to the final admission of goods, personal tangible property and services into the national territory of El Salvador.

8.

Other Taxes

In addition to the two main taxes detailed above (Income Tax and VAT), there are other taxes that generate a relevant percentage in relation to all tax revenues of El Salvador. For example, the Real Estate Transfer Tax taxes the transfer of real estate when its value exceeds USD \$28,571.43, with a fixed percentage of 3%.

There is also a vehicle circulation tax, which is annual and is paid each time the owner renews your circulation card in the country, or when it is permanently imported from abroad.

Additionally, in El Salvador, there are specific taxes corresponding to alcoholic beverages, cigarettes and carbonated drinks. It is important to mention that because the commercialization of these products corresponds to certain companies, the application of the law is not very complex and the control by part of the administration is effective and appropriate.



9. Tax Succession and Tax Penalties

According to Salvadoran Tax Code, Article 226, any action or omission that implies the violation of regulations or non-compliance with obligations of the same nature, contained in this code and in the respective tax laws, either substantive or formal in nature and intentional misconduct constitutes an infraction.

Penalties are imposed for late filing, failure to file, underreporting, or tax avoidance/evasion. Penalties also are imposed for non-compliance with formal requirements.

Failure to comply with each tax obligation will constitute an independent infraction, even when they originate from the same event. Consequently, they will be sanctioned independently, applying the sanction provided for each specific infraction, without prejudice that it can be done in one act.

For the purposes of the Tax Code and the respective tax laws, it shall be understood by sanction the pecuniary measure, confiscation, temporary closure and arrest, imposed by the tax administration or the competent judge in the case of a temporary closure of an establishment, for violation of the provisions contained in this code or in the respective tax laws. In any case, the sanction is provided for each specific infraction.



10. Transfer Pricing

Transfer pricing rules were introduced into the Tax Code in El Salvador in 2010. The rules require Salvadorian taxpayers to document the arm's length nature of intra-group transactions conducted with domestic and foreign-related parties, or with companies resident in low tax jurisdictions.

The regulations require taxpayers to produce transfer pricing documentation. Failure to comply with the arm's length principle enables the Salvadoran tax authority to make adjustments and apply penalties.

The reform to the Tax Code dated December 16, 2009, incorporates the formal obligation to taxpayers to submit to the tax administration no later than within the first three months following the end of the fiscal year, Form 982, *Report of Operations with Related Subjects*, which is equivalent to an Affidavit of Transfer Prices.

Pursuant to Article 124-A of the Tax Code, taxpayers who carry out operations with related subjects or domiciled subjects, constituted or located in countries, states or territories with preferential tax regimes, low or no taxation or tax havens during a fiscal year, and such operations, whether individually or jointly, are equal to or greater than USD \$571,429.00, must submit a report of the operations that they execute with said subjects, through the forms provided by the tax administration with the requirements and technical specifications that it has for that purpose (F-982).



Failure to file F-982 is sanctioned with a fine equivalent to 0.5% of the assets of the offending company, as established in Article 241 literal b) of the Tax Code.

Salvadoran legislation contemplates the use of internal and external comparable as considered by the Organization for Economic Co-operation and Development (OECD) Guidelines.



Central Law, El Salvador

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