



The Legal 500 Country Comparative Guides

Mexico

PRIVATE CLIENT

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This country-specific Q&A provides an overview of private client laws and regulations applicable in Mexico.

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MEXICO

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1. Which factors bring an individual within the scope of tax on income and capital gains?

Mexican Fiscal system establishes an income tax (hereinafter "Mexican Income Tax" or "MIT"). The system does not include a specific tax on capital gains; however, such gains are taxed under MIT rules.

Three factors bring an individual within the scope of MIT: (i) being a Mexican resident; (ii) being a foreign resident having a Permanent Establishment (hereinafter "PE") within Mexican territory and obtaining income attributable to such PE, or (iii) being a foreign resident who obtains income from a Mexican source of wealth.

1.1 Mexican Residents

Mexican residents are liable to pay MIT on their worldwide income, regardless of the income's country of source. This means that if a Mexican resident individual earns income from sources outside Mexico, such income shall also be included for the purposes of determining its Mexican income tax liability.

Individuals are deemed to be residents in Mexico for tax purposes if having a dwelling home in Mexico. If the relevant individual has a dwelling home in two countries, he/she shall be deemed resident in Mexico if his/her "centre of vital interests" (*centro de intereses vitales*) is located within Mexico, i.e., if (i) more than 50% of his/her total annual income is Mexican-sourced; or (ii) the primary place of his/her professional activities is located within Mexico.

Individuals who cease to be residents in Mexico must file a notice to the tax authorities no later than 15 days prior to the change of residence. Failure to file such notice will result in not losing resident status. Additionally, the individual losing Mexican resident status should appoint and maintain a legal representative for tax purposes in Mexico for the following 5 tax years and prove their residency change.

Neither will the condition of tax resident in Mexico be

lost (for the following 5 tax years) if the change of residence is not proven or even if it is proven, this change is made to a country considered a preferential tax regime (as defined in Mexican tax laws see 24 below) and such country does not have a comprehensive information exchange agreement with Mexico, as well as an international treaty that allows mutual administrative assistance in the notification and collection of taxes.

1.2. Non-Residents

Foreign residents) are subject to income tax in the following cases:

- a. If they have a PE in Mexico, in connection with the income attributable to such PE. The concept of PE is rather complex but in general terms consists of the foreign resident having a physical (e.g., offices) or juridical presence (e.g., agent) within Mexican territory through which he/she carries business activities or renders personal services. The PE concept shall also be determined under the provisions of Double Taxation Conventions, were applicable.
- b. If the relevant foreign resident does not have a PE, or the income is not attributable thereto, the non-resident would be taxed in respect of the income that is deemed to have a source of wealth located within Mexico (in the terms described under domestic law. For example, gains on rental income would be taxed in Mexico if the real estate is located within national territory, interest income is considered to have a Mexican source of wealth if the payer is a Mexican resident or if the capital from which the interest derives is invested in Mexico, etc. In this case, the taxes levied should usually be paid through a withholding agent. Taxes imposed under these rules may be reduced or eliminated through a Double Taxation Convention were applicable. For further examples see 3 below.

2. What are the taxes and rates of tax to which an individual is subject in respect of income and capital gains and, in relation to those taxes, when does the tax year start and end, and when must tax returns be submitted and tax paid?

2.1. Mexican Residents

For Mexican resident individuals, income is taxed under a schedular system, therefore it is necessary to classify and determine the tax base of each item of income under the rules corresponding to its category.

The income categories are: (i) salary and wages income; (ii) business and professional income; (iii) income from rents and the grant of temporary use and enjoyment; (iv) income from the alienation of goods; (v) income from the acquisition of goods; (vi) interest income; (vii) income from prizes; (viii) dividends and profit distributions; and (ix) other income.

The taxable profits from the different categories should be summed up and multiplied by the corresponding tax rate. Individuals are subject to progressive rates depending on their tax bracket, starting from 1.92% up to 35% (for income exceeding MXP \$3,898,140.12).

In Mexico the tax year runs from 1st January to 31st December (same as the calendar year). Individuals must file their annual tax return on April 30 of the following year to which the tax return corresponds.

As a general rule, taxpayers are required to make advanced payments before the 17th of the following month to which the advance payment corresponds. Advance payments may be credited against the annual MIT.

Income from prizes is not subject to advance payments and income from foreign sources is also not subject to advance payments, except for salary income from foreign sources (in this case the employee should directly assess and pay the advanced payment). For salary income from Mexican sources see withholding obligations in 3. below.

A recent regime called "Régimen Simplificado de Confianza para Personas Físicas" (Simplified Trust Regime for individuals or "RESICO" for its Spanish acronym) is in force since 2022, which is a special and optional regime for individuals and is applicable in respect of income obtained from carrying out business, professional activities and granting the temporary use or enjoyment of goods, provided that the total annual income obtained in the fiscal year does not exceed MXP

\$3,500,000.00.

The annual Income Tax rate goes from 1% if total annual income obtained is up to MXP \$300,000.00; 1.10% if total annual income obtained is up to MXP\$ 600,000.00; 1.50% if total annual income obtained is up to MXP\$ 1,000,000.00; 2.00% if total annual income obtained is up to MXP\$ 2,500,000.00; 2.5% if obtained income is up to MXN \$3,500,000.00. This regime disallows deductions.

2.2 Non-Residents

Foreign residents having a PE within Mexico will be taxed in respect the income attributable thereto as a corporation. Corporate income tax rate is 30% on net income.

Foreign residents (with no PE or with income not attributable thereto) obtaining Mexican sourced income will be subject to a withholding tax depending on the type of income they derive. For examples see 3.

3. Are withholding taxes relevant to individuals and, if so, how, in what circumstances and at what rates do they apply?

3.1. Mexican Residents

As mentioned in 2.1 above, Mexican residents are obliged to make advanced payments. Depending on the type of income, such advanced payment may be made through a withholding agent.

MIT advanced payments on salaries and wages income from a Mexican source are assessed, withheld, and paid by the employer to the tax authorities. However, MIT on salary income from a foreign source, must be self-assessed and paid directly by the employee as an advanced payment before the 17th of the following month by filing a tax return.

Payments for business and professional income, made by a legal entity to a Mexican resident individual are subject to a 10% withholding tax.

Income subject to RESICO (see 2.1 above)", , is subject to 1% up to 2.50% withholding tax (depending on the amount received), if paid by a legal entity.

Further, income from the sale and rendering of internet services through digital platforms, apps or similar is also subject to withholding by the payer if the latter is a Mexican resident legal entity or a foreign resident which operates the platform, app or similar (rates are 2.1% for transportation services, 4% for accommodation services

and 1% for sales of goods or services).

The above referred withholdings constitute advanced payments but in the case of sales of goods and services through internet, taxpayers not exceeding the MXP \$300,000.00 limit, may consider such tax as final as long as certain requirements are fulfilled.

Payments for rental income from immovable property, made by a legal entity to a Mexican resident individual are also subject to a 10% withholding tax on the gross income. Similarly, if the rental income in mention is received through a *Fideicomiso* the advanced payment should be made by the said *Fideicomiso* by applying the 10% tax rate on the gross income.

Income obtained from the transfer of immovable property made through a public deed is subject to advanced payments that should be determined and paid by the notary public, broker, judge or any other government officials. Income for the transfer of any other goods different from immovable property e.g. sale of shares, is subject to a 20% withholding tax on the value of the transaction and should be withheld by the acquiror if the latter is a Mexican resident or a foreign resident with a PE within Mexico (exceptions may be applicable).

Income obtained from the acquisition of goods made through a public deed in which the value was determined through appraisal, is subject to advanced payments that should be determined and paid by the notary public, broker, judge or any other government officials, by applying the 20% tax rate in the income obtained.

Interest received by individuals is subject to 0.08% withholding on the principal from which the interest derives and should be withheld by the institutions of the financial system. (Interest from foreign sources is not subject to this rule). Interest paid by companies which are not part of the financial system and deriving from securities that are not placed among the general investor public through authorized stock exchanges or widely traded markets are subject to a 34% withholding rate. The tax withheld may be considered as final tax if certain requirements are fulfilled.

Federal income tax on prizes from lotteries, raffles, draws and contests organized within national territory is 1% on the gross amount of the prize corresponding to each ticket as long as the local tax on prizes does not exceed 6%, otherwise the rate applicable will be 21%. In games with bet, organized within Mexican territory, the tax is determined by applying 1% rate on the total value of the amount distributed among all the participant tickets. In these cases the tax should be withheld by the

payer of the prize and is considered as a final tax as long as certain requirements are fulfilled.

In connection with dividends income, in addition to considering such income as accruable for the purposes of calculating the annual tax, individuals are subject to an additional 10% withholding tax on dividends. This additional tax should be withheld and paid by the issuer and is a final tax.

In connection with interest and exchange gains classified as "other income" and paid by a Mexican resident legal entity, such payments are subject to a 35% withholding tax.

As long as the above referred withholdings are deemed as advanced payments, they may be deducted for the purposes of determining the annual MIT.

3.2. Non-residents

As indicated in 2.2. above, foreign residents obtaining Mexican sourced income will be subject to a withholding tax depending on the type of income they derive, e.g. 25% withholding tax on gross income is applicable to income from personal services rendered within Mexico, rental income from real estate located within Mexico, income from the disposal of real estate located in Mexico, sale of shares of Mexican companies and royalties, technical assistance services or advertising payments if made by a Mexican resident. Interest income is subject to different rates (4.9% being the lowest rate and 35% rate being the highest) depending on the case. Dividends distributed by Mexican companies to foreign residents are subject to 10% rate. The referred rates may be reduced or eliminated through the application of Double Taxation Conventions where applicable.

4. How does the jurisdiction approach the elimination of double taxation for individuals who would otherwise be taxed in the jurisdiction and in another jurisdiction?

Mexico follows two different approaches for elimination of double taxation: (1) unilateral measure set forth under Mexican Income Tax Law and (2) bilateral measures through Double Taxation Conventions.

4.1. Unilateral Relief (Foreign Tax Credit)

Domestic legislation provides for unilateral relief for double taxation through the credit method i.e. Mexican residents may credit, against the tax payable in terms of Mexican Income Tax Law, the income taxes paid abroad

on income from foreign sources, provided that it is income for which they are obligated to pay MIT in terms of domestic law. The crediting referred to will only proceed provided that the accrued income includes the income tax paid abroad.

In general terms, the Foreign Tax Credit above referred is limited to the amount of Mexican Income Tax to be paid and the right to credit is limited per each country or jurisdiction.

The tax credit of a resident individual who is taxed abroad by reason of his nationality or citizenship (e.g. in the United States) is limited to the amount of the tax to which he would have been subject in the foreign country if he did not have such nationality or citizenship.

The foreign tax credit may be carried forward for 10 tax years following the year in which the relevant foreign tax was paid.

Where a Mexican resident has paid income tax abroad in excess of the tax credit limitation established under Double Taxation Conventions rules, he may take a credit for the excess, in accordance with Mexican domestic rules, only upon substantiation of the mutual agreement procedure established under the Convention has been exhausted.

4.2. Bilateral Relief

Mexico has more than 50 Double Taxation Conventions in force for the avoidance of double taxation with respect to taxes on income. These Conventions include bilateral remedies for elimination of double taxation that may be more beneficial than the unilateral measure established under domestic law.

The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the "Multilateral Instrument" or "MLI") was signed by Mexico on June 7, 2017 and its approval was published in the Federal Official Gazette on December 22nd, 2022. Publication of the Multilateral Instrument is pending. Once the Multilateral Instrument is published it will be deposited before the OECD and will enter into force 3 months after. It is expected that the MLI provisions will enter into force in 2023 and 2024. The Multilateral Instrument will update the Double Taxation Conventions concluded by Mexico.

5. Is there a wealth tax and, if so, which factors bring an individual within the scope of that tax, at what rate or rates is it

charged, and when must tax returns be submitted and tax paid?

Mexico has no wealth tax. Further under the current MIT rules, gifts to spouses, ascendants and/or descendants, as well as goods acquired by legacy or inheritances are tax exempt. See 6. and 7. below.

6. Is tax charged on death or on gifts by individuals and, if so, which factors cause the tax to apply, when must a tax return be submitted, and at what rate, by whom and when must the tax be paid?

If an individual resident in Mexico dies, the following income tax rules apply:

Income earned or accrued by the deceased individual and income generated by the estate after decease and until succession settlement

- a. For the income that would have been received by the deceased person from January 1 and up to the time of his death, it is the executor who must file the tax return for the income and pay the corresponding tax, within 90 days after his appointment. The filing of this tax return, as well as the applicable rates, is carried out in accordance with the general rules set forth in the previous question 2.
- b. For income accrued up to the time of death, but which has not been effectively received during the lifetime of the deceased, the following rules apply:
- c. Income from wages and salaries, rents and professional activities is exempt from income tax for heirs and legatees.
- d. Any other type of income other than those mentioned in a. above, may be subject to any of the following rules: (1) considered as income of the deceased and included in the tax return filed by the executor. In this case the tax paid is considered a final tax; or (2) the heirs and legatees have the option to accrue the corresponding portion of income in their tax returns and credit the tax payment made by the executor in the

- proportion that corresponds to them.
- e. For the income generated by the estate, it is the executor who has the obligation to file tax returns and pay the corresponding tax on behalf of the heirs and legatees, until the estate is settled. Once the estate is settled, the heirs and legatees may file supplementary tax returns for up to the 5 previous fiscal years, in order to include such income in their tax returns and credit the tax paid by the estate in the proportion that corresponds to them. *Tax exemption for the estate received by heirs and legatees*
- f. Individuals resident in Mexico will not pay income tax on income received by inheritance or legacy. When this income is greater than MXP \$500,000.00 it must be informed in the annual income tax return.

For exemption on gifts see 7. below.

7. Are tax reliefs available on gifts (either during the donor's lifetime or on death) to a spouse, civil partner, or to any other relation, or of particular kinds of assets (eg business or agricultural assets), and how do any such reliefs apply?

Income from donations is exempt from tax in the following cases:

- a. When they are made between spouses or those received by the descendants of their ascendants in a straight line, regardless of their amount.
- b. Those received by ascendants from their lineal descendants, provided that the assets received are not disposed of or donated by the ascendant to another lineal descendant.
- c. Donations that do not exceed the amount of MXP \$105,303.24 are tax exempt. Individuals who receive donations qualifying for exemption must inform them in their annual tax return when this income alone,

- or together with the income obtained from prizes, exceeds MXP \$600,000.00.
- d. Any other donations or gifts different to the above are taxed as income from acquisition of goods under the rules explained in question 2 above.

For rules on income from deceased persons see 6. above.

8. Do the tax laws encourage gifts (either during the donor's lifetime or on death) to a charity, public foundation or similar entity, and how do the relevant tax rules apply?

As mentioned in 6. above, goods received through inheritances or bequests, regardless of who receives them, are considered tax exempt, so any inheritance or bequest received by these types of entities will be exempt from tax.

Gifts will be tax exempt for charities, public foundations or similar entities as long as the latter qualify as tax exempt organizations under the "*Donatarias Autorizadas*" (Authorized Donees) regime. Further, these gifts are deductible items for the donor.

By virtue of *Donatarias Autorizadas* regime, qualifying entities may enjoy a preferential income tax regime consisting of not paying MIT on the income they receive (including income from donations), which is related to the authorized corporate purpose. Several requirements and compliance obligations should be fulfilled by qualifying entities to maintain the authorization.

9. How is real property situated in the jurisdiction taxed, in particular where it is owned by an individual who has no connection with the jurisdiction other than ownership of property there?

As a general rule foreign residents may directly own real property located within Mexican territory except if it is located within the exclusive economic zone situated outside the territorial sea (200-nautical-miles area, measured from the baseline of the territorial sea (measured from the coastline, 25 kilometres into the sea).

However, in connection with real property located within the exclusive economic zone, it is possible for foreign

residents to own such property indirectly through a *Fideicomiso*.

At the local level, 2 taxes are imposed on real property and are applicable to both foreign and Mexican residents: (1) Tax on the acquisition of real property, whose rate depends on the state where the property is located, usually tax goes from 1% up to 5% and the tax base is the highest value between appraisal, transaction value or cadastral value and (2) Property Tax, which is levied on the property of land or land and constructions and on the possession of said items if the owner is unknown, in Mexico City this tax should be determined on a bimonthly basis by applying the corresponding tariff to the cadastral value (0.2252 being the highest tariff), tariffs vary depending on the state where the property is located.

Rental income obtained by a foreign resident on real property located in Mexico is subject to a 25% withholding tax on the gross income. Disposal of such real property in principle is subject to a 25% tax on gross income however taxpayers may opt to pay 35% on the net income provided certain requirements are fulfilled. Double Taxation Conventions may provide benefits to this regard.

10. Are taxes other than those described above imposed on individuals and, if so, how do they apply?

At the federal level Value Added Tax ("VAT") is applicable. Individuals or legal entities carrying out supplies of goods or services or granting the temporary use and enjoyment of goods within Mexican territory, as well as carrying out imports of goods or services, will be subject to VAT payment.

As a general rule, the rate applicable is 16%; however certain transactions may be zero-rated or tax exempt. For example transfer of land is VAT exempt as well as transfer of land and constructions for dwelling houses. Further, the sale of participations in legal entities is also tax exempt.

In computing the tax liability, input VAT may be credited against output IVA, so that only the difference is taxed. IVA applies to all stages of production and distribution. Some withholding obligations may be applicable in connection with VAT payments, specially if VAT is triggered in transactions carried between individuals and legal entities and by Foreign residents.

11. Is there an advantageous tax regime

for individuals who have recently arrived in or are only partially connected with the jurisdiction?

No advantageous tax regime applies in Mexico. Any individual who meets the Mexican tax residence rules will be obliged to pay income tax on his/her worldwide income in accordance with the general regime applicable to individuals as described in 2 above. For the rules applicable under "Simplified Trust Regime for individuals" see 2 above.

12. What steps might an individual be advised to consider before establishing residence in (or becoming otherwise connected for tax purposes with) the jurisdiction?

Before becoming a tax resident in Mexico, the following should be considered:

Immigration Law Requirements: authorization to remain in Mexican territory may be obtained based on different grounds. In addition to the general framework applicable to employment and business activities, authorization to reside in Mexican territory may be granted to individuals performing investment activities.

Tax effects in its country of residence: it will be important to determine the tax effects that would be triggered for the individual in its country of residence for migration of tax residency to Mexico, especially in connection with exit taxes. Further, obtaining resident status in Mexico does not necessarily imply losing resident status in the other country, thus we recommend reviewing this situation to avoid potential double residence conflicts.

Obtention of resident status. For the requirements to obtain resident status in Mexico please see 1. above and please consider that it is necessary to register before the Mexican taxpayer's registry.

Tax Advice in Mexico: It is recommended for individuals planning to establish their tax residency in Mexico to consider the following issues:

- a. Analyze and determine the Mexican tax consequences that would be applicable to the individual derived from moving to Mexico and the tax obligations that shall be complied with by the individual. This analysis should consider the specific types of income that the individual would be receiving (see 2 above.). Further, deductions will depend on the type of

- income received.
- b. Analyze the best business structure that can be implemented by the individual in order to develop his activities in Mexico.
 - c. Analyze the best estate planning structure that can be implemented by the individual in connection with his assets in the benefit of his family.
 - d. Individuals should review their worldwide property, including shareholdings in companies or any other participation in foreign figures or entities (e.g. trusts, LPs, LLCs), especially if such vehicles are treated as tax transparent or are subject to a tax rate which is lesser than 22.5%, to ensure that becoming a Mexican resident will not trigger adverse tax treatment of this structures, as Mexico has anti-deferral regimes for the income obtained through such vehicles (e.g. controlled foreign company rules "CFC rules"). For tax rules on transparent entities and CFC see 24. below.
 - e. In general, the estate structure held by an individual should be analyzed so to review the assets that will stay abroad and the assets that should be monetized or transferred to Mexico.

13. What are the main rules of succession, and what are the scope and effect of any rules of forced heirship?

Answers provided in this chapter will be supported in Mexico's Federal's Civil Code ("CC"). Each state has its own civil code outlining its specific rules for succession; however, the rules in all states are similar to those established in the CC with only slight variances.

According to the CC, an individual is free to dispose of all or part of his/her property either by (a) executing a will detailing his/her wishes, or (b) through the legitimate succession process established in the CC. The individual may name a heir or heirs to the entirety of their estate, or legatees for specific assets. If the individual opts for a will, and there are assets not accounted for, the legitimate succession process will ensue to determine the property of such assets.

- a. If an individual opts to execute a will, there are no forced heirship rules determined by the CC, except in the case the individual owed alimony to any of the persons detailed in the cases (i) through (vi) below, and there are no other living relatives that can provide such alimony to the person in question. If both

conditions are met, then it is the obligation of the deceased to provide alimony to such relatives. If said alimony is not provided, the will may be declared unlawful by a family judge, and the legitimate succession process will ensue. Persons to which a deceased individual owes alimony through their estate after death:

- i. Descendants under the age of 18 for whom the individual had a legal obligation to provide alimony at the time of death;
 - ii. Descendants who are unable to work, regardless of their age; 18 for whom the individual had a legal obligation to provide alimony at the time of death;
 - iii. To the surviving spouse when he/she is unable to work and does not have sufficient assets;
 - iv. Ascendants;
 - v. Cohabiting partner during the two years immediately preceding his or her death or with whom he or she had a child; when the cohabiting partner is unable to work and does not have sufficient assets; and,
 - vi. To siblings and other collateral relatives within the fourth degree, if they are incapacitated, or until they reach the age of 18, if they have no assets to support their needs.
- b. It is important to note that the execution of the will may be done through a notary public if the following conditions are met: there must be no controversy between heirs and legatees, and heirs and legatees must be of legal age (18). If such conditions are not met the testamentary succession must be executed before the family courts of the corresponding state.

In the case no will is granted, or certain assets are not accounted for in the will, the estate will be distributed according to the legitimate succession process before the family courts and according to the laws of their residence. The laws of the CC favor the relatives of the deceased in the following order: (i) descendants, (ii) spouse, or cohabitant partner, (iii) ascendants, and (iv) siblings. Only relatives to the fourth degree will be considered for the legitimate succession. The proportions of the estate inherited by each relative will be determined by the laws of each individual state, always favoring the closest relatives (descendants and spouse or cohabitant partner).

14. Is there a special regime for matrimonial property or the property of a civil partnership, and how does that regime affect succession?

There are two possible matrimonial regimes regarding the property of the spouses, (a) community property regime, or (b) separation of property regime. The specific conditions and regulations of each property regime may be agreed by the spouses in a pre-nuptial agreement (*capitulaciones matrimoniales*) (“Prenup”), in lack of a Prenup, the norms established in the CC will apply.

- a. *Community property regime (Marital Partnership)*. All assets, rights, and property acquired during the marriage are property of both spouses, in equal parts (50%); however, an alternative ownership percentage may be agreed upon in the Prenup. All assets must be managed by both spouses, unless otherwise specified in the Prenup. The CC establishes certain assets and rights that belong to each spouse in this regime which include: those belonging to him/her before the marriage, and those acquired during the marriage by inheritance or donation, among others. It is important to note that neither spouse may, without the consent of the other, sell, rent or alienate, either in whole or in part, the property subject to the community property regime.
- b. *Separation of property regime*. Spouses retain the ownership and administration of all assets, rights, and property that respectively belong to them individually, acquired either before or during the marriage.

For both regimes, the legal consequences of marriage are the following: (i) provide alimony to spouse and children, and in case the marriage ends, provide alimony for a certain amount of time after the marriage to spouse, (ii) right to claim alimony through the declaration of the unlawfulness of the will of the deceased spouse, (iii) right to inherit through legitimate succession process, and (iv) presumption of paternity for children born within the marriage.

In the case of the members of a marital partnership, they may opt for the one who has the higher income to accrue the total income obtained from assets or investments in which both are owners or holders, being able to make the deductions corresponding to such

assets or investments.

The CC regulates cohabitant partnership (*concubinato*) through a set of norms that grant cohabitant partners (*concubinos*) the same legal status as if they were married with a community property regime. For this legal status to take effect the cohabitant partners would have to meet the following requirements: (i) have no legal impediments to marry, and (ii) have lived together, on a constant, and permanent basis, for a minimum period of two years. The rights and obligations derived from this legal status are only enforceable after the two-year period. Furthermore, the same cohabitant partnership status is gained without the two-year requirement, if the partners (i) have a child together, (ii) have no legal impediments to marry, and (iii) have lived together, on a constant, and permanent basis. It is important to note that the cohabitant partnership does not legally change the marital status of the partners.

The reciprocal rights and obligations acquired through a cohabitant partnership are the following: (i) provide alimony during the cohabitant partnership, and in case the cohabitant partnership ends, provide alimony for an amount of time equal to the duration of the cohabitant partnership, (ii) right to claim alimony if the will of the deceased partner is declared unlawful, (iii) right to inherit through legitimate succession process on the same terms as a spouse’s right of inheritance, and (iv) presumption of paternity for children born within 300 days after the dissolution of the cohabitant partnership.

Finally, the CC provides for a domestic partnership (*sociedad en convivencia*) that is a bilateral legal act that can be entered into between two persons. For the domestic partnership to be effective against third parties, the domestic partnership must be registered before the General Legal and Government Directorate of the corresponding state. The reciprocal rights and obligations acquired through a domestic partnership are the following: (i) provide alimony during the domestic partnership, and (ii) right to inherit in the same terms as a cohabitant partnership.

Mexican Income Tax Law does not provide for special rules for joint taxation in connection with cohabitant partnership or domestic partnership (as it does for marital partnerships). General rules applicable to cases of joint ownership by virtue of which the owners may opt to appoint a representative who will pay taxes in connection with the common property, may be applicable to cohabitant partnership or domestic partnership, where the members of such partnerships are considered as joint owners in respect of certain property.

15. What factors cause the succession law of the jurisdiction to apply on the death of an individual?

The competent judge to resolve a succession proceeding is the judge of the last domicile of the deceased. In the absence of such domicile, the judge competent in the jurisdiction of the domicile where the real property of the inheritance is located will resolve the proceeding. If there is real property located in several states, the succession proceeding may be brought before any judge of such domicile. In the absence of the above, the competent judge will be that of the place of death of an individual.

The CC defines the domicile of a person in the following order: the place where the individual usually resides, the law defines this as a place in which an individual remains in that domicile for more than six months. In the absence of a usual domicile, the place of their principal place of business of the individual will be considered as the domicile. In the absence of both, the CC considers a person's domicile the place where they simply reside, and in the absence thereof, the place where they are located.

16. How does the jurisdiction deal with conflict between its succession laws and those of another jurisdiction with which the deceased was connected or in which the deceased owned property?

Mexican law considers that the will has worldwide effects, so that the last will written by an individual will prevail over the others. In order to comply with the above, the applicable law and jurisdiction for the succession proceeding corresponding will be that of the country in which the last will was issued. Once the corresponding succession process has been carried out, the resolution or judgment of partition of the assets of the will must be homologated in all jurisdictions in which the individual had assets that must be transferred to his heirs or legatees. This process may be judicial or through a notary public on a case-by-case basis.

For certain assets (such as real property, shares, etc), it is advisable to issue a will limited to the specific asset in the jurisdiction where it is located, making specific reference to the main will, so that at the time of homologation in Mexico it can be done jointly with the Mexican will regarding the assets, and thus make the process of transferring the property to the corresponding legatee through a simpler process.

17. In what circumstances should an individual make a Will, what are the consequences of dying without having made a Will, and what are the formal requirements for making a Will?

An individual should make a will to determine their wishes regarding their property and rights, and declare or fulfill duties for after their death. It is convenient to make a will to determine individuals who will be heirs or legatees to an individual's estate. The consequence of dying without a will is that the heirs of an individual's estate will be determined through the corresponding laws of intestacy established in the CC through a process and ultimately a sentence issued by the competent family court that can be more costly and time consuming. The formal requirements of making a will in Mexico are the following: (i) to be older than 16 years of age, (ii) to be in full enjoyment of their mental capacities and be of sound judgement at the moment the will is granted, and (iii) to grant the will through a public deed before a notary public in Mexico. The notary public will be responsible to state in the corresponding public deed, with the appropriate proof, the judgment of the author of the will.

In case an individual owns assets in Mexico (such as real property or shares), it is recommended to make a will in this jurisdiction, that could allude to a will in the individual's domicile and state the exclusive purpose of the Mexican will being the legatee of a specific asset. This would make the process for the transmission of the asset more efficient, as the will could be processed before a notary public instead of a family court.

18. How is the estate of a deceased individual administered and who is responsible for collecting in assets, paying debts, and distributing to beneficiaries?

The executor is the person responsible for administering the estate of a deceased individual. An individual may designate the person they wish to be the executor of their estate in their last will and testament. If a person does not leave a will, the legitimate succession process will ensue, and the executor will be determined by the corresponding heirs with a simple majority vote according to the percentage of the estate to which they are entitled, as long as the majority also represents $\frac{1}{4}$ of the number of heirs. The executor can be an individual person or a legal entity.

The process for adjudicating the assets of the inheritance varies slightly between a testamentary

succession and a legitimate succession; however, they mainly consist of the following procedure:

- a. *Approval of the inventory and appraisal of the assets*: determine the assets and liabilities of the estate, and specify the rights, obligations and property that form part of the estate.
- b. *Expense Settlement*: The settlement of an inheritance consists of determining the estate that will be effectively distributed among the heirs and legatees from the common estate; therefore, all the debts “of the inheritance” are settled and the remaining estate is left to be distributed among the heirs.
- c. *Partition*: It is the act by which the rights of the heirs and legatees with respect to the estate are singularized, applying to them one or several assets, or an aliquot part thereof, which up to the time of the partition formed a common estate.
- d. *Adjudication*: It is the formal application to the heirs and legatees of certain assets in payment of their inheritance. Once the assets have been adjudicated to the heirs, instructions may be issued so that the Notary may draw up the respective public deeds in accordance with the partition.
- e. Executor accounts for the administration of the estate.

For tax aspects see 6.

19. Do the laws of your jurisdiction allow individuals to create trusts, private foundations, family companies, family partnerships or similar structures to hold, administer and regulate succession to private family wealth and, if so, which structures are most commonly or advantageously used?

Mexican laws allow for the creation of all structures listed in the prompt of this question; however, the two structures that are most suitable to administer and

regulate succession to private family wealth are (a) *Fideicomiso* (similar to a Trust), and (b) family companies. Both structures allow for cooperation and integration of other foreign structures that are focused on inheritance planning and wealth management.

- a. *Fideicomiso*. A *Fideicomiso* (hereinafter referred also as “Trust”) is a commercial contract entered into between a settlor or trustor (the person who will transfer assets or rights), beneficiaries (the persons determined by the trustor to be the ultimate beneficiary of such assets and rights), and a trustee (credit institution in charge of administering and protecting the Trust). Control Trusts (*fideicomiso de control*) are the most efficient vehicles for inheritance purposes. The trust fund can consist of any and all assets and rights, except those considered by law to be strictly personal. The objective of establishing a control Trust is to preserve and consolidate control over family assets through the following mechanisms: (i) make corporate decisions related to a family business, (ii) determine investment and distribution of resources (including dividends), and (iii) exercise of preemptive rights and transfers of wealth. The main benefits of establishing a control Trust are the following: (i) ensure the estate is kept in the family, (ii) guarantee an orderly succession to members of future generations in case of any eventuality, (iii) guarantee a good coexistence between family members and partners, through rules of coexistence, and (iv) increased insulation of the trust assets from potential seizures. Trusts are extremely adaptable to suit all wealth management structures and families, they can be revocable, or irrevocable. Its main control organisms for decision making include: (i) a technical committee that is the body in charge of the administration and protection of the Trust in the absence of the trustor, and (ii) an investment committee that determines the operation and administration of the assets in the trust fund.
- b. *Family Companies*. The company type most suitable for family businesses is the *Sociedad Anónima Promotora de Inversión* (“SAPI”). The SAPI allows some exceptions from those established in the general rules of other company types, resulting beneficial for wealth management

structures. Some of the protective clauses that can be included in the corporate bylaws for a SAPI are the following: (i) restrictions to the transfer of ownership or rights regarding the representative shares of the same series or class, of the capital stock (e.g. *Puts, calls, tag alongs, drag alongs, piggy back*); (ii) grounds for exclusion and separation of shareholders, in addition to those covered by the general rules (e.g. *squeeze out*); (iii) "special" shares, such as non-voting shares, limited voting shares, shares of limited participation in the profits of the company, and shares granted veto rights; (iv) mechanisms to resolve differences if shareholders do not reach agreements on specific issues (e.g. *deadlock*); (v) specific limits on liability for damages incurred by directors and relevant executives; and (vi) provisions to increase, limit or deny preferential rights, among others.

For tax aspects of *Fideicomiso* and SAPI see 22 below.

20. How are these structures constituted and what are the main rules that govern them?

- a. Trusts in Mexico are governed by the General Law of Negotiable Instruments and Credit Transactions (*Ley General de Títulos y Operaciones de Crédito*) ("LGTOC"). Below please find a list of the general process followed to enter into a trust:
 - i. Evaluation and selection of appropriate trustee.
 - ii. Drafting of relevant trust document, determination of the following: (i) assets of the trust fund, (ii) purpose of the Trust, (iii) beneficiaries, (iv) relevant rules and composition of controlling organs (technical committee, and investor committee), (iv) possible integration of foreign trust or structure, (v) rules for incapacity of trustor and other mechanisms to be carried out for the administration of the trust fund upon the death of the trustor.
- b. The SAPI is regulated by the Mexican Securities Market Law (*Ley del Mercado de Valores*) but is not subject to the supervision of the National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*). Below please find a list of the main requirements for incorporation:
 - i. Corporate Name. The use of a particular corporate name must be authorized by the Ministry of Economy (*Secretaría de Economía*) in order to avoid using a corporate name previously granted.
 - ii. Certain personal information of the incorporating shareholders must be gathered, please note that shareholders may be individual persons or legal entities. A board of directors must be established in the articles of incorporation of the SAPI, which may be the corresponding family members. Similarly, a statutory examiner must be appointed, as well as persons that will have faculties as Attorneys-in-Fact.
 - iii. Shareholders must agree on by-laws for the company, which shall be notarized in a public deed before the notary public at the time of incorporation. Incorporating shareholders must appear personally or represented by an attorney-in-fact before the Notary to incorporate the SAPI.
 - iv. When foreign ownership is permitted in a SAPI, a clause known in Mexico as the Calvo Clause (*Cláusula Calvo*) must be included in the SAPI's by-laws. This clause states that any foreign shareholder will be deemed as a Mexican national with respect to his/hers/its stock ownership in the corporation, and may not invoke the protection of his/hers/it government in matters connected with such ownership, and in the case of non-compliance, he/she/it must forfeit

his/hers/its holdings to the Mexican nation.

For tax aspects of *Fideicomiso* and SAPI see 22 below.

21. What are the registration requirements for these structures and what information needs to be made available to the relevant authorities? To what extent is that information publicly available?

- a. Trust/ *Fideicomiso*. Pursuant to the LGTOC a Trust which purpose and trust fund contains movable property shall be effective against third parties from the date of its registration in the Public Registry of Commerce (*Registro Público de Comercio* or “RPPC”). There are several interpretations in connection with this requirement, thus it is usually discussed on a case-by-case basis. Even though from a conservative point of view such this requirement applies to all *Fideicomisos*, it is common practice not to carry out such register, given that there are grounds for considering such requirement not applicable to certain *Fideicomisos*, such as those focused on inheritance planning and wealth management. However, depending on the trustee hired for each Trust, such inscription may be required by the banking institution. At the time of registration, the information may be limited accordingly to limit the public information of the trust fund and ultimate beneficiaries.
- b. SAPI. During the process of incorporation certain personal information of shareholders must be made available to the notary public for registration purposes. Similarly, certain documentation requirements regarding the Anti-money laundering law must be fulfilled. Once incorporated before a public notary, the following registrations must take place, all of which are not readily available to the public:
 - i. The corporation must be registered before the RPPC of its corporate domicile. Any acts carried out on behalf of the company prior to its registration before the RPPC, are jointly guaranteed by the individual representing the company.
 - ii. Upon incorporation, the company must be registered with the Tax Administrative Service (*Servicio de Administración Tributaria*) in order

to obtain its RFC to be registered as a taxpayer.

- iii. The Foreign Investment Law (*Ley de Inversión Extranjera*) provides that every corporation with foreign participation shall be registered before the Foreign Investment National Registry (*Registro Nacional de Inversiones Extranjeras*) and shall periodically (at least once a year) provide certain information related to such foreign investment and its annual status.

22. How are such structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?

22.1. Tax treatment applicable to Trusts (Mexican *Fideicomisos*)

Passive Income Fideicomiso

When the passive income represents at least 90% of the total income obtained through the Trust during the fiscal year in question, the Trust may be considered fiscally transparent.

The passive income concept includes interest income, foreign exchange gains, gains from derivative financial transactions, dividends, gains from the sale of shares, income from leasing, among others.

As long as a Trust is considered fiscally transparent in accordance with the above, the settlor/beneficiaries of such trust must report for tax purposes any income and deductions generated through the Trust in the proportion that corresponds to them. The trustee will not have any tax obligations in this regard.

Active Income Fideicomiso

Only if a *Fideicomiso* is deemed to carry out entrepreneurial activities it becomes opaque i.e. active income (business activities) represents more than 10% of the total income obtained through the Trust in the relevant fiscal year.

If business activities are carried out through a Trust, the trustee will determine the tax profit or loss of such activities in each fiscal year, based on the rules applicable to corporations, and will comply with the corresponding legal obligations for all

settlor/beneficiaries, including the obligation to make advanced payments.

However, the Trust has no obligation to pay the annual income tax, it is the settlor/beneficiaries the ones that shall include the profits derived from the Trust to their income for the fiscal year, in the portion corresponding to them, in accordance with the provisions of the trust agreement. The settlor/beneficiaries will have the right to credit the advanced payments made by the Trust in the proportion corresponding to them.

Losses obtained through the Business activities Trust may only be set off against profits obtained by such Trust i.e. they are schedular and cannot be offset against income from other activities carried out by the settlor/beneficiaries. Losses can be carry forward 10 years.

The distribution of cash or property by the Trust to the beneficiaries will be considered as reimbursement of contributed capital until such capital is recovered.

It is common in practice that the *Fideicomisos* used for estate planning purposes qualify as fiscally transparent vehicles in accordance with the rules abovementioned, unless active income represents more than 10% of the annual income obtained through the Trust, case in which the Trust will be opaque.

22.2. Tax Treatment applicable to SAPI

A SAPI is a company of a commercial nature therefore it is taxed under the rules applicable to corporations.

Mexican corporations are liable to the payment of MIT on their worldwide income and must calculate their MIT liability by applying to the "taxable profits" obtained during a fiscal year, a 30% corporate MIT rate.

In calculating its tax year's profits, Mexican companies are entitled to deduct or depreciate exclusively the items allowed by the ITL (i.e., investments in tangible and intangible assets, expenses, and other costs) and must comply with certain requirements specified in the ITL and its regulations

Profits generated by the SAPI will be taxed in the hands of the shareholders until distribution.

It is worth mentioning that dividends paid by a company resident in Mexico to its shareholders would not trigger additional corporate MIT (at the level of the company in Mexico) insofar as such dividends are paid out of its after-tax profits account ("CUFIN").

If dividends are not paid out of the CUFIN account, the

corporate income tax should be grossed up into the amount of the dividend (by multiplying the amount of the dividends being paid by a factor of 1.4286 and applying the corporate tax rate of 30% to the product).

It should be noted that such corporate tax could be credited by the company against its own IT liability in the relevant tax year or even during the two following fiscal years, subject to certain limitations set forth in the ITL.

Individuals must include in their income, the dividends or profits obtained from Mexican companies, and they are entitled to credit the corporate MIT paid by the company which paid the dividends or profits; in this case the individual must include the amount of the dividend plus the corporate MIT paid by the company which distributed it.

Resident individuals are subject to an additional 10% withholding tax on dividends or profits distributed by companies' resident in Mexico. Such companies must withhold and pay MIT as an advanced payment before the 17th of the following month. This tax is final.

Even when dividends are heavily taxed in Mexico, for estate planning purposes SAPI is a convenient vehicle because of the flexibility of its rules (see 19. above).

For the treatment of foreign vehicles see 24 below.

23. Are foreign trusts, private foundations, etc recognised?

In terms of Mexican choice of law rules any foreign legal act (including foreign trusts, private foundations, etc) validly created abroad shall be recognised in Mexico in the same way as they have occurred in its territory or jurisdiction subject to their laws of constitution or incorporation, except for those whose application are contrary to the Mexican fundamental principles or institutions of the Mexican public order.

24. How are such foreign structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?

Mexican Domestic Tax Law does not recognize tax transparency for foreign vehicles. This means that any foreign entities or legal figures (regardless of whether all or part of their income flows through to their members, partners, shareholders or beneficiaries on their country or jurisdiction of residence), shall be considered for Mexican tax purposes as legal entities and are subject to income tax in respect of any income they obtain (e.g. from Mexican sources) in terms of the corresponding

rules applicable to the particular case. In addition, if said foreign vehicle meets the tax residence rules (i.e. having its place of effective management or main place of administration within Mexico), it will be considered as a Mexican tax resident.

This, without affecting the tax transparency treatment for the beneficiaries, settlors, founders, etc.

The domestic provision above commented is switched over in relation to provisions for tax transparent entities contained in Double Taxation Conventions.

On the other hand, Mexican domestic law has two anti-deferral regimes for income obtained through foreign vehicles by Mexican residents and foreign residents with PE in Mexico in respect of income attributable thereto.

The first rule deals with income obtained through tax transparent entities and legal figures (regardless of the foreign figure being considered or not as fiscally transparent). This income should be included for annual tax payment purposes by the Mexican residents and foreign residents with PE in Mexico in respect of income attributable thereto, in proportion to its participation on such vehicles.

The second rule relates to controlled foreign companies ("CFC regime"). In this case income obtained through a CFC shall be included for annual tax payment purposes even if not distributed. A CFC is a company which is controlled by the taxpayer, and which is taxed under a preferential regime i.e. 75% less than the tax that would be applicable in Mexico in connection with the relevant income. As corporations are taxed in Mexico at a 30% rate, a foreign company will not fall under CFC regime if it is taxed at a 22.5% rate or higher.

25. To what extent can trusts, private foundations, etc be used to shelter assets from the creditors of a settlor or beneficiary of the structure?

According to the LGTOC the transfer of ownership by a settlor to the Trust is a definitive transfer of ownership; therefore, from the civil point of view, the owner of the assets is the trustee. However, in practice this may change according to the structure of the Trust since at the settlor's choice it may be a (i) revocable Trust, or (ii) irrevocable Trust.

The assets of the Trust, the private foundation or other vehicle are not part of the bankruptcy estate of the settlor or beneficiary. However, the settlor's or beneficiary's rights against the Trust, foundation or other vehicle (i.e. reversion rights) do form part of the

bankruptcy estate of the settlor or beneficiary. Furthermore, the bankruptcy court may set aside the placement of assets into a Trust, foundation or other vehicle in exercise of their avoidance powers.

26. What provision can be made to hold and manage assets for minor children and grandchildren?

Trusts are the most efficient vehicle to establish certain conditions regarding asset management for minor children and grandchildren. The trustor is free to determine whatever rules and conditions they consider best for the administration of assets, and the eventual access of minors to the portion of the estate belonging to them. Conditions regarding (i) age, (ii) marital status, and (iii) creation of businesses or projects, amongst others, can be established in the Trust by the trustor. Similarly, the investment committee and technical committee designated by the trustor are in charge of managing the trust estate according to the rules and instructions established by the trustor.

As a general rule, if a minor child obtains income, the referred minor will become a taxpayer and should report such income as indicated in 2 above. However, in the case of ascendants or descendants who are minors or disabled, in a straight line, who are economically dependent on the taxpayer, who obtain income taxed by the income tax law, which is less than that obtained by the taxpayer on whom they depend, the latter may choose to include in their income the total income obtained by the ascendants, descendants or disabled, being able to make the deductions corresponding to such income.

27. Are individuals advised to create documents or take other steps in view of their possible mental incapacity and, if so, what are the main features of the advisable arrangements?

Incapacity for all effects in Mexico is declared through a judgement of interdiction that must be decreed by a family judge through the corresponding trial. Legal incapacity, is defined by the CC as follows: individuals of legal age who, due to reversible or irreversible illness, or due to their particular state of disability, whether physical, sensory, intellectual, emotional, mental or several of them at the same time, are unable to govern themselves, bind themselves or express their will, by themselves or by any means that may replace it.

Any individual can take steps in view of their possible

mental incapacity by establishing the person or persons they wish to become their tutor or guardian in such case. The appointment of the tutor must be made before a notary public and must be recorded in a corresponding public deed. The public deed containing the appointment may expressly limit and detail the powers of attorney, decisions, and obligations which the tutor or guardian will be responsible for administering, including at least the following: (i) decisions regarding medical treatment and health care, and (ii) remuneration the tutor is entitled to receive.

If an individual determines it is convenient for them to establish a Trust for the administration of their estate, certain rules and mechanism can be agreed to determine the *de facto* incapacity for such individual. This *de facto* incapacity will be exclusively for the effect of the trust administration and will not affect any other legal capacity or have any other effects other than for the Trust. The individual is free to determine the mechanisms they consider most appropriate for *de facto* incapacity to be declared, which can include any of the following: (i) unanimous agreement of the individual's descendants, (ii) the corresponding opinion issued by a physician specialized in the field, (iii) or an opinion issued by a trusted physician. Once the *de facto* incapacity is declared, the technical committee will assume its functions as trust administrator, or the corresponding descendants as stipulated in the individual's Trust.

In the case of ascendants or descendants who are

minors or disabled, in a straight line, who are economically dependent on the taxpayer, who obtain income taxed by the income tax law, which is less than that obtained by the taxpayer on whom they depend, the latter may choose to include in their income the total income obtained by the ascendants, descendants or disabled, being able to make the deductions corresponding to such income.

28. What is the jurisdiction's approach to information sharing with other jurisdictions?

Mexico is part and have incorporated within its domestic legislation provisions for FATCA and CRS. Additionally, in most of the Double tax treaties that Mexico has celebrated, a specific clause of exchange of information has been agreed.

29. What important legislative changes do you anticipate so far as they affect your advice to private clients?

Despite the fact that for the fiscal year 2023, there was no new proposed amendments to the Mexican tax legislation, we foresee that an estate and gift tax will possibly be introduced (as of to this date, Mexico does not have an estate tax and gifts are tax exempt as explained in 7.)

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